SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1772-16T4

ERICA H. MERCADO,

Plaintiff-Respondent,

v.

EDWIN MERCADO,

Defendant-Appellant.

Submitted November 27, 2017 – Decided January 25, 2018

Before Judges Sabatino and Whipple.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Hudson County, Docket No. FM-09-1700-15.

Law Offices of Ashton E. Thomas, attorneys for appellant (Ashton E. Thomas, of counsel and on the brief).

Laterra & Hodge, LLC, attorneys for respondent (Matthew N. Tsocanos, on the brief).

PER CURIAM

Defendant Edwin Mercado appeals the December 9, 2016 Family Part orders enforcing a marital settlement agreement (MSA)

regarding college expenses without an evidentiary hearing and awarding plaintiff attorney's fees. We affirm.

The parties were married on June 20, 1990 and had a daughter. In 2015, they divorced and entered into a MSA which provided, among other things, the parties would share equally their daughter's education expenses.

Approximately a week before the daughter's sophomore year at a college in Arizona began, plaintiff filed an emergent application seeking defendant's contribution for college expenses. On the day the motion was heard, defendant secured a loan and paid his share of the tuition.

Defendant cross-moved seeking relief from future student loan debt. He argued the MSA was premised on an underlying agreement the daughter would become an Arizona resident after her first year, which would significantly lower tuition expenses. The trial court denied defendant's cross motion, ordered him to reimburse plaintiff for certain back expenses, and granted plaintiff attorney's fees under Rule 1:10-3.

Defendant moved for reconsideration, and plaintiff cross-moved seeking to enforce the MSA. The trial court denied defendant's motion for reconsideration in its entirety and essentially ordered defendant to abide by the MSA. This appeal followed.

On appeal, defendant argues: (1) the trial court applied an incorrect legal standard regarding reformation of contracts; (2) the trial court improperly failed to conduct a plenary hearing; and (3) the trial court erred in awarding plaintiff attorney's fees. We disagree.

I

Defendant argues the trial judge erred by concluding an ambiguous agreement is necessary to support mutual mistake. He further contents that, in this case, a mutual mistake of fact supports reformation of the MSA. We reject these contentions.

A settlement agreement is governed by basic contract principles. J.B. v. W.B., 215 N.J. 305, 326 (2013) (citing Pacifico v. Pacifico, 190 N.J. 258, 265 (2007)). "[W]hen the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement as written, unless doing so would lead to an absurd result." Quinn v. Quinn, 225 N.J. 34, 45 (2016). "To the extent that there is any ambiguity in the expression of the terms of a settlement agreement, a hearing may be necessary to discern the intent of the parties at the time the agreement was entered and to implement that intent." Ibid. (emphasis added).

Our Supreme Court has observed it is "shortsighted and unwise for courts to reject out of hand consensual solutions to vexatious

personal matrimonial problems that have been advanced by the parties themselves." Konzelman v. Konzelman, 158 N.J. 185, 193 (1999) (quoting Petersen v. Petersen, 85 N.J. 638, 645 (1981)). Thus, "fair and definitive arrangements arrived at by mutual consent should not be unnecessarily or lightly disturbed." Quinn, 225 N.J. at 44 (citation omitted). Moreover, "a court should not rewrite a contract or grant a better deal than that for which the parties expressly bargained." Id. at 45 (citing Solondz v. Kornmehl, 317 N.J. Super. 16, 21-22 (App. Div. 1998)).

Reformation of a contract is justified only where there has been "mutual mistake or unilateral mistake by one party and fraud or unconscionable conduct by the other." St. Pius X House of Retreats, Salvatorian Fathers v. Diocese of Camden, 88 N.J. 571, 577 (1982). "The doctrine of mutual mistake applies when a 'mistake was mutual in that both parties were laboring under the same misapprehension as to a particular, essential fact.'" Bonnco Petrol, Inc. v. Epstein, 115 N.J. 599, 608 (1989) (quoting Beachcomber Coins, Inc. v. Boskett, 166 N.J. Super. 442, 446 (App. Div. 1979)). The party seeking reformation must present "clear and convincing proof that the contract in its reformed, and not original, form is the one that the contracting parties understood and meant it to be." Cent. State Bank v. Hudik-Ross Co., 164 N.J. Super. 317, 323 (App. Div. 1978) (citation omitted).

Contrary to defendant's contention, the MSA was unambiguous and defendant presented no evidence of a mutual mistake of fact. The plain language of the MSA, although it did state the daughter would be attending a college in Arizona, did not mention or contemplate any course of action regarding Arizona residency. The MSA simply stated the parties would share equally in the cost of education. There was no genuine issue of fact in dispute in the motion proceedings, and notably, on appeal, defendant presents no other material fact in dispute. As such, we cannot agree the trial court applied an incorrect legal standard in determining whether the MSA here should be subject to reformation.

II

Next, defendant asserts the trial court erred by not granting him a plenary hearing to determine whether, before entering into the MSA, plaintiff told defendant their daughter would become an Arizona resident after her freshman year. We generally defer to the trial court's judgment as to whether a plenary hearing is necessary. Jacoby v. Jacoby, 427 N.J. Super. 109, 123 (App. Div. 2012). "[I]t is only where the affidavits show that there is a genuine issue as to a material fact, and that the trial judge determines that a plenary hearing would be helpful in deciding such factual issues, that a plenary hearing is required." Ibid. (quoting Shaw v. Shaw, 138 N.J. Super. 436, 440 (App. Div. 1976)).

As noted above, the trial judge found no ambiguity existed in the MSA and defendant did not present any evidence showing a mutual mistake of fact warranting a plenary hearing. As written, the MSA does not include any language requiring the daughter to become an Arizona resident. Defendant, who was represented by counsel in the drafting of the MSA, bore the risk of that omission.

Moreover, reformation of a contract for a mutual mistake of fact requires both parties to be operating under the same mistake. See Beachcomber Coins, Inc. v. Boskett, 166 N.J. Super. at 445 (rescission for mutual mistake of fact occurs "where parties on entering into a transaction that affects their contractual relations are both under a mistake regarding a fact assumed by them as the basis on which they entered into the transaction[.]"). Indeed, mutual mistake requires "the parties must share this erroneous assumption." Bonnco Petrol, 115 N.J. at 608 (emphasis added). Defendant did not substantiate with contemporaneous documentation or otherwise demonstrate plaintiff also was operating under this purported mistake of fact. Hence, there was no necessity for an evidentiary hearing.

III

Finally, defendant argues the trial court abused its discretion in awarding plaintiff attorney's fees. We review the imposition of fees against a litigant pursuant to Rule 1:10-3

under the abuse of discretion standard. Innes v. Carrascosa, 391 N.J. Super. 453, 498 (App. Div. 2007).

Pursuant to Rule 1:10-3, "[t]he court in its discretion may make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule." Here, the trial judge awarded plaintiff attorney's fees because defendant was essentially silent and required plaintiff to file an emergent motion to ensure the payment of tuition. After hearing testimony from both parties, the judge determined that even if defendant did not act in bad faith, he failed to communicate with plaintiff. Moreover, as noted by the trial judge, before filing her motion, plaintiff's attorney sent defendant and his attorney three separate letters informing defendant of his tuition obligation under the MSA, but defendant never responded. Accordingly, the trial court was within its discretion in awarding plaintiff attorney's fees in these circumstances.

Affirmed.