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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3711-21**

MARITZA BRANNING,

Plaintiff-Respondent,

v.

RICHARD BRANNING,

Defendant-Appellant.

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Argued May 30, 2023 – Decided June 22, 2023

Before Judges Mawla and Smith.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Sussex County,  
Docket No. FM-19-0258-19.

Steven J. Kossup argued the cause for appellant.

Linda A. Peoples argued the cause for respondent.

PER CURIAM

The Estate of Richard Branning appeals from an August 1, 2022, trial court order granting plaintiff Maritza Branning's motion to enforce the parties'

Marital Settlement Agreement (MSA). The trial court ordered certain debts and liens be paid by the Estate within thirty days. The Estate complied with the order, then appealed, arguing the trial court erred by improperly modifying terms of the MSA, and had no jurisdiction to prioritize which debts should be paid by the Estate and the order in which those debts should be paid. We dismiss the appeal as moot for the reasons that follow.

Maritza and Richard Branning (Richard) entered into an MSA on March 11, 2020.<sup>1</sup> The MSA was incorporated into the Final Judgement of Divorce (FJOD), which was dated that same day. Paragraph 6.1 of the MSA stated that the parties were joint owners of the marital home, and that they agreed to list the home for sale "no later than" July 2021. The same paragraph also stated Maritza would have "exclusive use and occupancy" of the home and pay most of the carrying costs until its sale. The sole exception to the carrying costs provision was a secured home equity line of credit (HELOC), secured by the marital residence. The parties mutually agreed in paragraph 6.1 to "cease payment" of the HELOC.

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<sup>1</sup> Because the parties have the same last name, we employ first names for ease of reference in this opinion. We intend no disrespect.

Paragraph 7.2 of the MSA stated, in part, that Richard would be "solely responsible for any and all federal and state tax debt incurred with respect to the parties' jointly filed tax returns, as well as his individually filed tax returns" regardless of when the liability attached during the marriage. The parties also contemplated what would happen if Richard failed to satisfy the outstanding IRS debt prior to the sale of the marital home. Paragraph 6.1 added conditional language, which supplied guidance to the parties on how to implement paragraph 7.2. It read as follows:

[I]f the IRS debt . . . has not been paid in full by [Richard], and any portion of [Maritza's] share of the net proceeds from the sale of the home is seized by the IRS or any other authority to be applied towards the outstanding tax debt, [Richard] shall then be liable to reimburse [Maritza] . . . . The parties shall discuss a payment plan for said reimbursement and if unable to agree as to same, shall attend mediation regarding this issue prior to seeking [c]ourt intervention.

On April 1, 2021, Richard died intestate. His daughter was appointed administrator of the estate on November 16, 2021. In November 2021, the Estate and Maritza retained a realtor to list the property for sale. Over the next few months, the parties were unable to sell the heavily encumbered property. The record shows that outstanding encumbrances included: a mortgage, a home

equity line of credit in default, a federal tax lien, and a docketed child support judgment.

On March 8, 2022, Maritza filed a motion to enforce the MSA against the Estate. The court heard argument and issued an order and written statement of reasons on August 1, 2022. The trial court made findings and concluded the MSA was enforceable against the Estate. The court ordered the Estate to pay one-half of the closing cost. The trial court also ordered that the Estate "provide clear title to the property" and effectively barred the Estate from using sale proceeds to pay estate related debts except for the mortgage and the HELOC. The trial court rejected Maritza's application for reimbursement of her closing costs and counsel fees.

The Estate appealed on August 9, 2022. Closing for sale of the marital home took place on August 15, 2022, and the debts and liens which the trial court ordered paid, were satisfied from the sale proceeds.

On appeal, the Estate argues that: paragraphs three and four of the court's August 11, 2022 order were an improper modification of the MSA; the trial court abused its discretion in compelling the Estate to pay marital debts in advance of the sale of the home; the court erred in issuing an order which was legally

impossible for the Estate to perform; and the court had no jurisdiction to prioritize payment of marital estate debts over other estate related debts.

"Mootness is a threshold justiciability determination rooted in the notion that judicial power is to be exercised only when a party is immediately threatened with harm." Betancourt v. Trinitas Hosp., 415 N.J. Super. 301, 311 (App. Div. 2010) (citing Jackson v. Dep't of Corr., 335 N.J. Super. 227, 231, (App. Div. 2000)). "An issue is 'moot when our decision sought in a matter, when rendered, can have no practical effect on the existing controversy.'" Redd v. Bowman, 223 N.J. 87, 104 (2015) (quoting Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 221-22 (App. Div. 2011)).

Appellate courts defer to the trial court's findings of fact "when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998) (citing Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)). That deference is greater in Family Part cases "[b]ecause of the family courts' special jurisdiction and expertise in family matters . . . ." Id. at 413.

Matrimonial settlement agreements are governed by basic contract principles and, as such, courts should discern and implement the parties' intentions. 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). "[A] court should not rewrite a contract or grant a better deal than that for which the parties expressly bargained." Ibid. (citing Solondz v. Kornmehl, 317 N.J. Super. 16, 21-22 (App. Div. 1998)). "At the same time, 'the law grants particular leniency to agreements made in the domestic arena,' thus allowing 'judges greater discretion when interpreting such agreements.'" Pacifico, 190 N.J. at 266 (quoting Guglielmo v. Guglielmo, 253 N.J. Super. 531, 542 (App. Div. 1992)). "The court's role is to consider what is written in the context of the circumstances at the time of drafting and to apply a rational meaning in keeping with the 'expressed general purpose.'" Ibid. (quoting Atl. N. Airlines, Inc. v. Schwimmer, 12 N.J. 293, 302 (1953)).

The Estate argues the trial court erred by improperly modifying the MSA terms, and effectively permitting Maritza to leapfrog estate creditors. It contends that, under paragraph 6.1, Maritza was required to discuss a payment plan for reimbursement of her share of the IRS tax lien by the Estate. The Estate contends the trial court improperly ignored this provision.

The trial court ordered the Estate pay real estate related debts and provide clear title free of liens, effectively including IRS liens, within thirty days of

August 1. The Estate complied, satisfying all debts attached to the former marital residence at the time of August 15, 2022 closing. This included satisfaction of Richard's tax lien debt through seizure.

The MSA, contained no mechanism to establish an appraised value for the marital residence. Indeed, paragraph 6.1 of the MSA expressly acknowledged the parties' intent to not establish the marital home's fair market value through an appraisal in preparation for sale. Next, the parties' MSA memorialized their joint plan to default on the HELOC, precipitating action by the HELOC mortgagee against the property. The record also documents the parties' contentious communications regarding responsibility for maintenance and upkeep of the marital home between November 2021 and the sale date.

The trial court was faced with a marital asset in default. This was a crisis precipitated in part by the parties, who agreed to not appraise the property and default on one of the mortgages, and who failed to agree on how to maintain the asset for equitable distribution purposes.

The record reveals a negative spiral of events continuously impacting the marital estate. In the absence of an appraised value, and in light of the ongoing asset deterioration over one year after Richard's death, we cannot conclude the trial court abused its discretion as it attempted to "discern and implement the

parties' intentions" by preserving a marital asset in advance of the August 15, 2022 sale. J.B., 215 N.J. at 326. However, mindful of the post-sale posture of this matter, we conclude answering the questions raised on appeal "can have no practical effect on the existing controversy." Redd, 223 N.J.at 104. Consequently, we do not reach them. The appeal is dismissed as moot.

Dismissed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION