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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2878-22

M.L.,

Plaintiff-Respondent,

v.

P. L.,

Defendant-Appellant.

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Submitted May 13, 2024 – Decided May 22, 2024

Before Judges Mawla and Chase.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FM-02-0724-21.

Patricia Powers-Simonelli, attorney for appellant.

Ruiz Doolan Law Firm, LLC, attorneys for respondent (Marina Ginzburg, on the brief).

PER CURIAM

Defendant P. L. appeals from the trial court's April 14, 2023 order denying her Rule 4:50-1 motion to vacate the judgment of divorce and incorporated

property settlement agreement ("PSA") she entered with plaintiff M.L.[1] We affirm.

The parties were married in 1983 and have one adult daughter together. When plaintiff filed for divorce in September 2020, the parties had been living separately for over twenty years. They maintained separate households and finances, and aside from retirement accounts, had no assets. The parties' attorneys began negotiating a buyout to discharge any claim defendant had to plaintiff's retirement assets and ultimately agreed on $5,000. Plaintiff received a draft PSA reflecting that arrangement, which he signed and returned to defendant's attorney.

Article XII of the PSA, titled Voluntary Character, stated, "Each party acknowledges that this Agreement has been entered into of their own free will and volition with full knowledge of the facts to the legal rights and obligations of each, and that each believes this Agreement to be fair and reasonable under the circumstances." Article XIV, titled Legal Counsel, similarly stated:

> The parties acknowledge that each has had the right to have independent legal advice by counsel of his or her own choosing and/or informed of the ability to seek information as to his or her legal rights and obligations.

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[1] Initials are used to protect the parties' privacy interests. R. 1:38-3(d).

> With such knowledge, each is signing this Agreement freely and voluntarily.

Just before the May 2021 hearing to finalize the divorce, defendant refused to countersign the PSA. The court granted the parties additional time to resolve the matter. Eleven days later, plaintiff's attorney received a fully executed copy of the PSA from defendant's then-attorney. Defendant had initialed each page and signed and dated the final page. As a result, plaintiff sent defendant a check for $5,000, the receipt of which was confirmed by defendant's attorney.

The divorce hearing was rescheduled for June 2021, but as before, defendant refused to follow through with the proceeding at the last minute and stated she was no longer in agreement with the terms of the fully executed PSA. Defendant's then-attorney moved the court to be relieved as counsel, which the court granted. Plaintiff cross-moved for enforcement of the property settlement agreement, and the court scheduled a Harrington[2] hearing on the PSA in September.

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[2] Harrington v. Harrington, 281 N.J. Super. 39, 46-47 (App. Div. 1995) (holding a verbal marital settlement agreement can be enforceable and binding where the parties agree on material terms).

Defendant appeared pro se at the Harrington hearing. She conceded she had not filed opposition, but stated she opposed the divorce because she was "medically disabled" and "need[ed] the support from . . . [plaintiff's] medical insurance to continue to assist" her.

She testified she did not understand the PSA and was forced into signing it. Defendant represented to the court it was her understanding her treating physician had faxed her medical records to chambers, but the court had not received them. She told the court the records would illustrate her "history of medical disability from . . . a stroke, seizure, two aneurysms, heart attack and went into a coma for [twenty-three] days." She told the court these incidents occurred in 2015. The court replied, "[u]nless there is an opinion in there that says you were not able to execute documents or negotiate documents on May 20, 2021, that would all be irrelevant."

The court granted plaintiff's motion to enforce the agreement, noting that unlike in Harrington, the parties "signed a comprehensive written document entitled settlement agreement that resolved all of the key issues in dispute." As to defendant's newfound claims of incapacity, the court declined to find "such a bald assertion rises to the level of a necessity for a plenary hearing or creates an

issue of material fact" and characterized defendant's claim as "merely a self-serving statement."

After hearing testimony from plaintiff, the court granted his motion to enforce the PSA. The court entered a judgment of divorce and ruled the PSA was valid and enforceable.

In August 2022, through new counsel, defendant moved the court to set aside the judgment of divorce and the PSA under Rule 4:50-1 and requested appointment of a guardian ad litem to represent defendant's interests. Relying specifically on subsection (f) of the Rule, defendant maintained her lack of capacity to enter into the agreement qualified as "truly exceptional circumstances" rendering the judgment "unjust, oppressive[,] or inequitable." Defendant attached the medical records from her doctor, reflecting a visit in October 2021, after the judgment of divorce was entered, in which she self-reported memory issues that "may have recently interfered with her divorce proceedings." The records reflected that prior to those notes, defendant had last visited her doctor in November 2020, six months before signing the PSA; no record reflected a visit around the time of the PSA.

Defendant also included a June 27, 2022 letter from her doctor reflecting her history of multiple sclerosis, a cerebral aneurysm, brain hemorrhage,

hydrocephalus, and migraines. The doctor stated images of defendant's brain indicated "persistent residual brain injury" as a result of her injuries and multiple sclerosis. He concluded, "I believe to within a reasonable degree of medical certainty that she has residual cognitive deficits which can impair her ability to make decisions and understand complex situations." He went on to explain, without the same degree of certainty, he believed "that on May 20, 2021[, defendant] would not have had the ability to understand the PSA she signed."

The same judge who presided over the divorce proceedings heard defendant's motion to vacate. The judge observed the doctor's records did not reflect treatment for cognitive issues anywhere around the time of the PSA, and defendant raised issues of her capacity for the first time at the September divorce hearing, while her earlier communications reflected dissatisfaction with the substance of the PSA. He noted the doctor opined as to defendant's current deficits to a reasonable degree of certainty, but the same certainty was not expressed with respect to defendant's capacity in May 2021. He also noted the certification from defendant's prior attorney, submitted with her motion to be relieved as counsel, detailed her thorough explanation of the PSA to defendant, as well as defendant's dissatisfaction with the attorney's services, but did not contain any assertion that defendant lacked capacity at the time of the signing.

The judge denied defendant's application to vacate the judgment of divorce. He awarded plaintiff counsel fees for responding to the motion, which were to be deducted from the $5,000 owed to her under the PSA. A decision to grant or deny vacatur of a judgment under Rule 4:50-1 is reviewed for an abuse of discretion. U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). Reversal may be warranted "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Id. 209 N.J. at 467-68 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)). The same deference is not extended where "a judge makes a discretionary decision but acts under a misconception of the applicable law or misapplies the law to the facts." D.M.C. v. K.H.G., 471 N.J. Super. 10, 27 (App. Div. 2022).

Due to the special expertise in family matters, a reviewing court should "defer to the [family] court's determinations 'when supported by adequate, substantial, credible evidence.'" N.J. Div. of Child Prot. & Permanency v. Y.A., 437 N.J. Super. 541, 546 (App. Div. 2014) (quoting N.J. Div. of Youth & Family Servs. v. I.Y.A., 400 N.J. Super. 77, 89 (App. Div. 2008)). In family matters, "'substantial weight' must be given to the judge's observations of the parties' 'demeanor, comprehension and speech' when they appeared before the court."

Rolnick v. Rolnick, 262 N.J. Super. 343, 360 (App. Div. 1993) (quoting Barrie v. Barrie, 154 N.J. Super. 301, 307 (App. Div. 1977)). We likewise defer to a trial court's evidentiary ruling absent an abuse of discretion. Rowe v. Bell & Gossett Co., 239 N.J. 531, 551 (2019).

Defendant argues the trial court erred in not recognizing the factual dispute raised by her claim of incapacity and did not conduct the kind of extensive voir dire necessary to establish the PSA was entered into voluntarily so as to obviate a plenary hearing. She also argues the court erred in failing to give proper weight to her medical records and improperly dismissed her doctor's letter as a net opinion.

Rule 4:50-1(f) provides a court may relieve a party from a final judgment or order for "any . . . reason justifying relief from the operation of the judgment or order." To prevail under this subsection, a movant must demonstrate "exceptional circumstances," In re Estate of Schifftner, 385 N.J. Super. 37, 41 (App. Div. 2006), such that enforcement of the order would be "unjust, oppressive[,] or inequitable." 257-261 20th Ave. Realty, LLC v. Roberto, 477 N.J. Super. 339, 367 (App. Div. 2023) (quoting Pressler & Verniero, Current N.J. Court Rules, cmt. 5.6.1 on R. 4:50-1 (2023)).

Relief under the Rule should be granted sparingly. F.B. v. A.L.G., 176 N.J. 201, 207 (2003); Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283-84 (1994). A movant is therefore entitled to a hearing on the application only upon showing a genuinely disputed issue of material fact. Barblock v. Barblock, 383 N.J. Super. 114, 123-24 (App. Div. 2006); see also Harrington, 281 N.J. Super. at 47 (noting that not every factual dispute in a matrimonial action requires a plenary hearing).

Whether the Rule can be invoked to vacate an agreement in light of claims of one party's incapacity turns on the evidence of the incapacity at the time of the agreement, not when the motion was made. See, e.g., Barrie, 154 N.J. Super. at 305-06 (plaintiff's motion to either vacate her property settlement agreement under Rule 4:50-1(f) or grant a plenary hearing was properly denied where psychiatrist's certification did not address her capacity at the time she entered into an agreement); Fineberg v. Fineberg, 309 N.J. Super. 205, 215-17 (App. Div. 1998) (affirming the trial judge's denial of defendant's motion to set aside a divorce judgment because he had opposed a prior motion regarding guardian ad litem appointment by arguing that he was competent).

Moreover, "the use of consensual agreements to resolve marital controversies" is particularly favored in divorce matters. Konzelman v.

Konzelman, 158 N.J. 185, 193 (1999); Weishaus v. Weishaus, 180 N.J. 131, 143 (2004). Voluntary agreements for the purpose of matrimonial settlement are enforceable so long as they are fair and equitable. Segal v. Segal, 278 N.J. Super. 218, 222 (App. Div. 1994); Schlemm v. Schlemm, 31 N.J. 557 (1960). Because New Jersey courts favor the validity of matrimonial settlement agreements arrived at by mutual consent, such arrangements "should not be unnecessarily or lightly disturbed." Konzelman, 158 N.J. 193-94 (quoting Smith v. Smith, 72 N.J. 350, 358 (1977)).

Here, the trial court found defendant produced no evidence of her incapacity when she signed the agreement in or around May 20, 2021. Her doctor's letter was dated June 2022, which was over a year after the relevant time frame. The court also relied on defendant's former counsel's certifications as well as the court's own observations of the defendant, including her testimony at the September hearing that her dissatisfaction with the PSA was due to her desire to remain on plaintiff's health insurance. The court also noted the PSA was signed while defendant was represented and in her counsel's presence. Given these facts and circumstances, the trial court properly declined to hold a plenary hearing because there was no genuine issue of fact regarding defendant's capacity at the time she signed the PSA.

The trial court also properly declined to consider the doctor's letter as relevant to defendant's capacity at the time of signing, and properly disregarded it as a net opinion.[3] The net opinion rule is a corollary of N.J.R.E. 703 and bars "an expert's bare conclusions, unsupported by factual evidence." Buckelew v. Grossbard, 87 N.J. 512, 524 (1981). Even though a treating physician may be permitted to testify as a fact witness based on their observations, such testimony "is limited to issues relevant to the diagnosis and treatment of the individual patient." Delvecchio v. Twp. of Bridgewater, 224 N.J. 559, 579 (2016). "[I]f a particular claim requires medical testimony extending beyond the plaintiff's own diagnosis and treatment, the plaintiff may require the testimony of an expert, conforming to N.J.R.E. 702 and 703." Ibid.

Although the doctor was defendant's treating physician, it is clear his letter was submitted for purposes of defendant's motion and purported to provide an expert opinion by opining based on a degree of medical certainty. However, the letter was a net opinion because it did not address defendant's capacity in May 2021, at the signing of the PSA. Furthermore, the trial court found the doctor

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[3] Defendant's appellate appendix also includes the results of a June 2022 neuropsychological evaluation conducted by a different doctor, which was not a part of the proceedings before the trial court. We decline to consider information that was not presented to the trial court. R. 2:5-4(a).

based his opinion on his treatment history of defendant, which had a notable gap from November 2020 to October 2021. Therefore, even to the extent the doctor could offer factual evidence of his observations of defendant's condition when he did treat her, the evidence was irrelevant to whether she lacked capacity when she entered the PSA in May 2021.

The trial court did not abuse its discretion in rejecting the doctor's letter as evidence of defendant's claims of incapacity. Defendant presented no competent evidence of her incapacity at the time of signing the PSA. To the extent we have not addressed any remaining arguments, it is because they are without sufficient merit to warrant a discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.