SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2292-15T4

MARIE SIX,

Plaintiff-Respondent,

v.

FREDERICK SIX,

Defendant-Appellant.

Submitted May 23, 2017 – Decided August 1, 2017

Before Judges Koblitz and Mayer.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Burlington County, FM-03-1355-14.

Law Offices of Robbins and Robbins LLP, attorneys for appellant (Aileen Gardner, on the brief).

Michael S. Rothmel, LLC, attorney for respondent.

PER CURIAM

Defendant appeals from the partial denial of his post-judgment matrimonial motion seeking to recalculate equitable

distribution. The motion court sent the parties to mediate some of the issues raised in the motion, rendering the January 22, 2016 order interlocutory.[1]

> Under Rule 2:2-3(a)(1), an appeal as of right may be taken to the Appellate Division only from a "final judgment." To be a final judgment, an order generally must "dispose of all claims against all parties." S.N. Golden Estates, Inc. v. Cont'l Cas. Co., 317 N.J. Super. 82, 87 (App. Div. 1998). "This rule, commonly referred to as the final judgment rule, reflects the view that 'piecemeal [appellate] reviews, ordinarily, are [an] anathema to our practice.'" Ibid. (quoting Frantzen v. Howard, 132 N.J. Super. 226, 227-28 (App. Div. 1975)).
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> [Janicky v. Point Bay Fuel, Inc., 396 N.J. Super. 545, 549-50 (App. Div. 2007).]

In the interest of justice, however, we grant leave to appeal sua sponte, Rule 2:4-4, and affirm the motion court's decision to reform the Marital Settlement Agreement (MSA) with regard to two issues only, substantially for the reasons expressed by the court.

The parties divorced in 2015 after 28 years of marriage. The final judgment of divorce incorporated an MSA negotiated with the assistance of counsel. The MSA stated that defendant, Frederick Six, had a "T. Rowe Price account with an agreed upon value of $1,417,035.98, [a]pproximately $400,000 is pre-marital." The

[1] After our request for a status of the proceeding, we were informed that mediation was unsuccessful and neither party has sought a further resolution from the motion court.

agreement states that plaintiff, Marie Six, "shall receive a total sum of $627,673 from this account and [defendant] shall retain $789,362.98." The agreement also states that defendant would retain his Roth IRA account valued at $248,220. The agreement required the parties to divide their personal property and household items and that plaintiff would return certain jewelry to defendant in court. The MSA also stated that defendant would retain his pre-marital AT&T retirement accounts without contribution to plaintiff. The equitable distribution breakdown of the MSA stated that the total value of the parties' assets is $2,181,192.40, with $1,050,207.50 retained by plaintiff and $1,130,984.90 retained by defendant.

Defendant filed a motion to vacate certain portions of the MSA, asserting that the MSA contained mistakes. Defendant asserted that the equitable distribution chart in the MSA erroneously included $400,000 of exempt premarital funds in the T. Rowe Price account valued at $1,417,035.98. Defendant asserted that the correct value of the T. Rowe Price account subject to equitable distribution should have been $1,017,035.98. Defendant also asserted that his Roth IRA account valued at $248,220 was mistakenly double-counted because it was listed as a separate asset from his T. Rowe Price account when in fact it was a part of the T. Rowe Price account and was already included in its

$1,417,035.98 valuation. Defendant also asserted that his pre-marital AT&T stock valued at $50,306 was erroneously included in the equitable distribution chart. Defendant asserted that the total value of the couples' assets subject to equitable distribution was $1,482,610.57[2] and each party was to receive $741,305.28. Defendant also asserted that plaintiff retained $120,000 in jewelry and collectibles that were not addressed in the MSA, thus defendant was entitled to half the value, $60,000.

The motion court issued an order granting in part and denying in part defendant's motion. The court wrote:

> The Court finds that a reformation of the Marital Settlement Agreement is appropriate as equity dictates. Accordingly, the Court further finds that the AT&T stock is a premarital asset not subject to equitable distribution pursuant to paragraph 5 of article III. A. of the Marital Settlement Agreement. The Court does find that $400,000 of the T. Rowe Price account is a premarital asset; however, this premarital asset has already been addressed by the Marital Settlement Agreement and is included in the proceeds Defendant is to receive from the T. Rowe Price Account. Accordingly, the Court does not find this amount to be at issue. The Court also finds that the Defendant's Roth IRA was double counted as it is included in the Defendant's T. Rowe Price Account. The entry entitled Husband's Roth IRA Account is hereby removed from the Six v. Six Equitable Distribution breakdown as said account is already included in Husband's T. Rowe Price Account. With respect to the AT&T stock and

[2] This excludes defendant's pre-marital T. Rowe Price funds, the AT&T stock and the double-counted Roth IRA.

> the Husband's Roth IRA, these matters are hereby sent to Mediation . . . . The purpose of the Mediation is to determine what, if any, adjustments need to be made to the overall distribution of assets.

The court denied defendant's request for an order requiring plaintiff to pay him $60,000 for half of the value of the jewelry, finding that the MSA "specifically and clearly addressed the distribution of personal property."

After defendant appealed, the motion court issued a supplemental opinion to its January 22 order on February 23, 2016. In its supplemental opinion, the motion court stated:

> [T]he Court finds that the personal property was distributed in accordance with the intent of the parties and in accordance with the parties['] MSA.
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> The second issue raised by Defendant relates to $400,000 of premarital funds. With respect to this issue, the MSA, in relevant part, states, "[h]usband has a T. Rowe [P]rice account with an agreed value of $1,417,035.98. Approximately $400,000 is premarital. As such, Wife shall receive a total of $627,673 from this amount and Husband shall retain $789,362.98." Defendant claims that the $400,000 premarital asset should have been subtracted from the account and then the remaining amount, $1,017,035.98, would be subject to equitable distribution. The Court finds that other than Defendant's self-serving statement, there is no other evidence in support of his position and the Court will not modify the parties' MSA relative to this issue. Marital settlements are generally upheld absent clear and convincing evidence of fraud or other compelling circumstances, such as mutual mistake, undue haste, pressure

> or unseemly conduct in settlement negotiations.
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> . . . .
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> Furthermore, because the word "approximately" was used in describing the premarital amount rather than an exact amount that had to be subtracted from the T. Rowe Price account prior to equitable distribution, the Court concludes that Plaintiff was to receive the sum of $627,673 from the account regardless.

Defendant argues that the motion court erred by denying his request, pursuant to Rule 4:50-1(a) and (f), to vacate and reform the MSA because the MSA contained mutual mistakes that result in plaintiff receiving a substantially higher proportion of the parties' assets than she was entitled to.

The motion court accepted two of defendant's claims. First, the court accepted defendant's argument that the Roth IRA was double-counted on the equitable distribution chart, thereby overstating the value of the parties' assets by $248,220. Secondly, the court accepted defendant's argument that despite the parties' agreement that defendant's AT&T stock valued at $50,362 was a pre-marital asset, the equitable distribution chart erroneously added the value of the AT&T stock to the total value of the parties' assets subject to equitable distribution.

Defendant argues that the motion court erred, however, in not accepting that the equitable distribution chart in the MSA improperly included the full $1,417,035.98 value of the T. Rowe

Price account, incorrectly increasing the total value of the parties' assets subject to equitable distribution by defendant's immune $400,000. Defendant contends that in reaching its decision to deny defendant's application to vacate and reform portions of the MSA relating to the T. Rowe Price account, the motion court improperly considered documents from the parties' pre-divorce mediation, contrary to N.J.R.E. 408.

Defendant further contends that over $120,000 worth of jewelry and collectibles that he and plaintiff owned were mistakenly excluded from the MSA and retained by plaintiff. Defendant argues that he is entitled to $60,000, a one-half share of the value of the jewelry and collectibles.

Plaintiff contends that during pre-divorce mediation, she sought and defendant agreed to give her an extra $100,000 from his T. Rowe Price account because defendant received the marital residence, in which plaintiff had invested $150,000 of her pre-marital inheritance. Plaintiff asserts that this change was not a mistake, "but an agreed upon change during the course of negotiations." Plaintiff contends that the equitable distribution chart was then executed by both parties, signifying their agreement with the distribution of the T. Rowe Price account.

Plaintiff further argues that no mistake was made with regard to the jewelry and collectibles because the personal property

provision of the MSA distributed the jewelry and all other items in the marital residence.

Rule 4:50-1(a) and (f) allow the court to relieve a party from a final judgment or order for mistake and for "any reason justifying relief from the operation of the judgment or order." "The motion to vacate a judgment under either R. 4:50-1(a) or (f) 'should be granted sparingly, and is addressed to the sound discretion of the trial court, whose determinations will be left undisturbed unless it results from a clear abuse of discretion.'" Fineberg v. Fineberg, 309 N.J. Super. 205, 215 (App. Div. 1998) (quoting Hous. Auth. of Town of Morristown v. Little, 135 N.J. 274, 293-84 (1994)).

A spousal agreement is viewed with "a predisposition in favor of its validity and enforceability." Petersen v. Petersen, 85 N.J. 638, 642 (1981). There is no legal or equitable basis to reform a parties' MSA absent unconscionability, fraud, or overreaching in the negotiations of the MSA. N.H. v. H.H., 418 N.J. Super. 262, 282 (App. Div. 2011).

"Designed to balance the interests of finality of judgments and judiciary efficiency against the interest of equity and fairness, relief from judgments pursuant to R. 4:50-1(f) requires proof of exceptional and compelling circumstances." Harrington v. Harrington, 281 N.J. Super. 39, 48 (App. Div.) (internal

citations omitted), certif. denied, 142 N.J. 455 (1995). "Ordinarily, to establish the right to such relief, it must be shown that enforcement of the order or judgment would be unjust, oppressive or inequitable." Ibid.

N.J.R.E. 408 states:

> When a claim is disputed as to validity or amount, evidence of statements or conduct by parties or their attorneys in settlement negotiations, with or without a mediator present, including offers of compromise or any payment in settlement of a related claim, shall not be admissible to prove liability for, or invalidity of, or amount of the disputed claim. Such evidence shall not be excluded when offered for another purpose . . . .

The court did not use the evidence of prior proposed settlements to prove liability or amount of a disputed claim, but rather to rebut the allegation of a mutual mistake. The record did not support a mutual mistake with regard to the jewelry and collectibles or the T. Rowe Price account. Defendant was represented by counsel during mediation and when the MSA and equitable distribution charts were executed by both parties. Both defendant and plaintiff endorsed each page of the MSA. At the divorce hearing, defendant gave sworn testify that he agreed to and understood the terms of the MSA and that he intended to be bound by the MSA. Defendant also testified that the MSA embodied the entire agreement between the parties.

The motion court did not abuse its discretion in its ruling, nor did it violate N.J.R.E. 408 when it reviewed documents from the settlement.

Affirmed.