SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4895-15T2

T.L.H.

Plaintiff-Appellant,

v.

M.H.,

Defendant-Respondent.

Submitted August 30, 2017 – Decided November 14, 2017

Before Judges Alvarez and Gooden Brown.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FM-20-0910-13.

Ronald A. Cohen, attorney for appellant.

Andrew M. Wolfenson, attorney for respondent.

PER CURIAM

Plaintiff appeals from the May 27, 2016 Family Part order terminating defendant's alimony obligation pursuant to the parties' Marital Settlement Agreement (MSA). We affirm.

After a twenty-year marriage, the parties divorced on July 11, 2013. An Amended Final Judgment of Divorce (JOD) was filed

on August 19, 2013, which incorporated an MSA requiring defendant to pay alimony in the amount of $500 per week, effective September 1, 2013. The MSA provided that the alimony would "increase to $700 per week when [plaintiff was] forced to leave the marital home due to . . . foreclosure." In paragraph 5.2, the MSA provided that alimony would terminate:

> [U]pon the death of either party, or the marriage or cohabitation of [plaintiff]. The term "cohabitation[,"] in addition to its meaning as construed by New Jersey courts, shall also incorporate the scenario if [plaintiff] should take up residence with any family members (other than the children of the parties) or friends.

Paragraph 8.1 of the MSA provided, in pertinent part:

> In arriving at this agreement both [plaintiff] and [defendant] had an opportunity to obtain the assistance of separate legal counsel and to be advised regarding the legal and practical effects of this [a]greement. . . . The parties have read this agreement in its entirety and each of them has entered voluntarily into this agreement. They have consented to and assume all of the covenants herein contained, having read the same and having fully understood them. They both acknowledge that it is a fair, just and reasonable agreement and [is] not the result of any fraud, duress, or undue influence exercised by either party upon the other or by any other person and that there have been no representations, warranties, covenants, or undertaking other than those as set forth herein.

On October 22, 2015, plaintiff was forced out of the former marital home, due to a Sheriff's sale, and moved in with her sister. When defendant ceased paying alimony, plaintiff moved to enforce litigant's rights. In support of her motion, plaintiff certified that she was paying her sister $800 per month to live with her, which increased her monthly expenses. Plaintiff explained "[t]he whole reason [she] negotiated an increase in alimony after [she] left the former marital home [was] because [she] knew [her] expenses would be higher."

Based on plaintiff's cohabitation with her sister, defendant cross-moved to terminate his alimony obligation in accordance with paragraph 5.2 of the MSA. Defendant averred "the whole reason . . . [he] negotiated [p]aragraph 5.2 . . . [was] because [he] expected that [plaintiff] would move in with her sister or another family member." Plaintiff countered in a reply certification that she disagreed with "defendant's definition of cohabitation[.]" According to plaintiff, "living with someone and cohabiting with them are two different things." Plaintiff admitted that she was living in her sister's home; however, her understanding of "cohabitation, for the purpose of alimony, mean[t] that someone else [was] supporting [her] or significantly contributing to [her] support[,]" which was not the case. Plaintiff certified that she

was unable to work and had applied for disability benefits, but was denied because of her receipt of alimony.

Plaintiff sustained injuries after a fall, which resulted in the adjournment of the plenary hearing on the motions. Over the next three months, conflicting schedules thwarted reaching an agreement on a new date. As a result, on May 27, 2016, the trial court granted defendant's cross-motion on the papers. In the statement of reasons accompanying the May 27, 2016 order, the court acknowledged that "[w]hile plaintiff [was] not cohabitating in the legal sense of the word as defined by case law, . . . she [was cohabitating] for purposes of the parties' own [MSA]." The court noted that a MSA was favored by courts, and was "essentially a contract, which [was] to be enforced as written, absent a demonstration of fraud or other compelling circumstances."

The court rejected plaintiff's argument, pointing out that:

> Plaintiff does not argue that she did not understand the terms of the MSA or that there was some level of fraud, duress or undue influence involved, she merely argued that her cohabitation is not cohabitation at all under current case law. While [p]laintiff is correct in her assertion that residing with her sister does not rise to the level of cohabitation under Konzelman [v. Konzelman, 158 N.J. 185 (1999)], her own MSA carves out an express addition to the meaning of cohabitation, which she seemingly chooses to ignore.

The court concluded:

> The parties' MSA is explicit and unambiguously includes taking up residence with a family member under the definition of cohabitation, as [p]laintiff admits she has. It is uncontroverted that [p]laintiff resides with her sister, who is clearly a family member, which would then trigger the cohabitation provision of the MSA. Additionally, the MSA includes a provision outlining that the agreement was entered into freely and voluntarily and without coercion. It is clear that while [p]laintiff's residing with her sister does not equate to the Konzelman definition of "cohabitation," the parties voluntarily expounded the definition for purposes of their own agreement. Plaintiff never once in her moving papers certifies that she was unaware of the provision, did not understand the meaning, or signed the agreement under duress. The [c]ourt will not venture to modify the parties' agreement, merely because [p]laintiff has now found it to [be] inconvenient. Of note, [p]laintiff did certify that she was denied disability benefits as a result of her receipt of alimony, therefore, the impediment of alimony will be removed, and [p]laintiff will be able to collect disability benefits leaving her in a similar position as she would have been in if she had continued to receive alimony payments. The [c]ourt finds that [p]laintiff is cohabiting under the parties' MSA, therefore, in accordance with same, [d]efendant's alimony obligation is terminated.

This appeal followed.

On appeal, plaintiff argues that the court erred in "[d]ispensing with the plenary hearing" because "[a] genuine issue of fact existed . . . as to the intent of the parties in crafting certain language in the [MSA]." Plaintiff also argues that the

court erred in interpreting the cohabitation clause so as to dispense with the requirement to examine "the economic circumstances[.]" We disagree.

"Settlement of disputes, including matrimonial disputes, is encouraged and highly valued in our system." Quinn v. Quinn, 225 N.J. 34, 44 (2016). "[I]t 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.'" Ibid. (quoting Konzelman, supra, 158 N.J. at 193). "Therefore, 'fair and definitive arrangements arrived at by mutual consent should not be unnecessarily or lightly disturbed.'" Id. at 44-45 (quoting Konzelman, supra, 158 N.J. at 193-94). "Moreover, a court should not rewrite a contract or grant a better deal than that for which the parties expressly bargained." Id. at 45.

"An agreement that resolves a matrimonial dispute is no less a contract than an agreement to resolve a business dispute" and "is governed by basic contract principles." Ibid. "Among those principles are that courts should discern and implement the intentions of the parties" and not "rewrite or revise an agreement when the intent of the parties is clear." Ibid. "Thus, when 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." Ibid. "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. (citing Pacifico v. Pacifico, 190 N.J. 258, 267 (2007)).

Undoubtedly, "'the law grants particular leniency to agreements made in the domestic arena' and vests 'judges greater discretion when interpreting such agreements.'" Id. at 45-46 (quoting Pacifico, supra, 190 N.J. at 266). Nevertheless, "the court must discern and implement 'the common intention of the parties' and 'enforce [the mutual agreement] as written[.]'" Ibid. (citations omitted) (first quoting Tessmar v. Grosner, 23 N.J. 193, 201 (1957); then quoting Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (1960)). "A narrow exception to the general rule of enforcing settlement agreements as the parties intended is the need to reform a settlement agreement due to 'unconscionability, fraud, or overreaching in the negotiations of the settlement.'" Id. at 47 (quoting Miller v. Miller, 160 N.J. 408, 419 (1999)).

In Quinn, supra, our Supreme Court considered a spouse's receipt of alimony under a marital settlement agreement, and the circumstances in which alimony may be terminated. The Court acknowledged that "[i]n the absence of an agreement that permits

the obligor former spouse to cease payment of alimony, this Court has permitted a modification of alimony, including cessation of alimony, in the event of post-divorce cohabitation 'only if one cohabitant supports or subsidizes the other under circumstances sufficient to entitle the supporting spouse to relief.'" Id. at 49 (quoting Gayet v. Gayet, 92 N.J. 149, 153-54 (1983)).

"On the other hand, when the parties have outlined the circumstances that will terminate the alimony obligation, [the] Court has held that it will enforce voluntary agreements to terminate alimony upon cohabitation, even if cohabitation does not result in any changed financial circumstances." Id. at 50. In so doing, the Court reiterated its declination "to import the Gayet economic dependence or reliance rule when the parties have agreed in a marital settlement agreement that cohabitation is an alimony-termination event." Id. at 55. The Court summarized its holding thusly:

> [A]n agreement to terminate alimony upon cohabitation entered by fully informed parties, represented by independent counsel, and without any evidence of overreaching, fraud, or coercion is enforceable. . . . When a court alters an agreement in the absence of a compelling reason, the court eviscerates the certitude the parties thought they had secured, and in the long run undermines this Court's preference for settlement of all, including marital, disputes.
>
> [Ibid.]

Here, there were no compelling reasons to depart from the clear, unambiguous, and mutually understood terms of the MSA.[1] The agreement was voluntary, knowing and consensual, and the alimony-termination event upon cohabitation was fair under the circumstances of the case. We agree with the court's finding that, while residing with her sister does not rise to the level of cohabitation under Konzelman, supra, plaintiff understood that residing with her sister was an event that could trigger termination of alimony under the description of cohabitation specified in her MSA. In our view, the explicit terms in the MSA obviated the need for a plenary hearing. Accordingly, we find no error in the court deciding the cross-motion on the papers.

Affirmed.

[1] On September 10, 2014, the Legislature enacted N.J.S.A. 2A:34-23, which provides that "[a]limony may be suspended or terminated if the payee cohabits with another person." L. 2014, c. 42, § 1. The Legislature clarified that this law "shall not be construed either to modify the duration of alimony ordered or agreed upon or other specifically bargained for contractual provisions that have been incorporated into: a. a final judgment of divorce or dissolution; b. a final order that has concluded post-judgment litigation; or c. any enforceable written agreement between the parties." Id. § 2. Because this law was enacted after the MSA in this case was entered, it does not govern this case, and, in any event, the terms of the MSA apply. See Quinn, supra, 225 N.J. at 51 n.3.