SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3059-15T1

HARRY GULUTZ,

Plaintiff-Appellant,

v.

KAREN GULUTZ,

Defendant-Respondent.

Submitted May 24, 2017 – Decided February 8, 2018

Before Judges Fuentes and Simonelli.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FM-12-0408-11.

Tarella & Liftman, attorneys for appellant (James A. Tarella, on the brief).

Respondent has not filed a brief.

The opinion of the court was delivered by

FUENTES, P.J.A.D.

This matter originated in the Law Division, Special Civil Part when plaintiff Harry Gulutz filed a complaint against his former wife Karen Gulutz to collect $7160.07 that she borrowed on

November 11, 2012. Defendant memorialized her debt to plaintiff in a handwritten note signed by both parties on November 16, 2012. In this note, defendant promised to pay plaintiff from the proceeds of the sale of their marital home "within [two] weeks or by December 2, 2012." Plaintiff began this collection action when defendant failed to pay the debt.

In lieu of an answer, defendant moved to transfer the matter to the Family Part pursuant to Rule 5:1-2(a), claiming the dispute arises from the provision in the Property Settlement Agreement (PSA) that addressed and resolved the equitable distribution of the marital estate. The parties executed the PSA on August 23, 2011 and the Family Part incorporated it in the final Judgment of Divorce (JOD) entered that same date. In an order dated August 26, 2013, the Family Part granted defendant's motion. However, in an order dated September 13, 2013, the Family Part Judge who would eventually decide this dispute, sua sponte directed the parties

> to re-file their requested relief in Family Court in accordance with New Jersey Court Rules. In addition, all future filings in this matter are to be made in Family Court . . . Any requested relief not specifically addressed in this Order is DENIED.

Thereafter, the parties engaged in unspecified discovery and added a number of claims based on alleged failures to abide by the

terms of the PSA. In response to the parties'[1] cross-motions seeking relief in a variety of areas related to past and present financial obligations, the judge entered an order on December 20, 2013 that "RESERVED" decision pending the outcome of a plenary hearing on all of the six specific requests for relief sought by plaintiff. With respect to the two specific requests sought by defendant, the judge granted her request and ordered plaintiff

> to provide her the business K-1's for 2012 including any required compensation and same going forward . . . [t]he Plaintiff is hereby ordered to provide the Defendant with the business K-1's for Gordon New Brunswick MAB Urban Renewal, LLC and VG Resources, LLC. Section 6.8 of the parties' PSA states that the wife shall be entitled to ten percent (10%) of the Husband's share of all future distributions and profits paid in regard to Gordon New Brunswick MAB Urban Renewal, LLC and VG Resources, LLC. Plaintiff is to provide the wife on an annual basis copies of the K-1['s] relating to these businesses, as proof of all distributions and/or profits paid. Said K-1's shall be provided to the wife by April 1st of each year, or as soon thereafter as same become available.

The judge "RESERVED" decision pending the outcome of a plenary hearing with respect to defendant's request to require plaintiff "to pay 50% of the bills and maintenance of the marital home and the outstanding IRS payments totaling $5864."

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[1] Defendant was pro se at the time the Family Part decided these cross-motions. However, she was represented by counsel thereafter, including during the plenary hearing.

Finally, the judge provided the parties with forty-five days to complete discovery. "Written requests," which included both interrogatories and a demand for production of documents, had to be made within fifteen days with responses due thirty days after. When the discovery period concluded, "the parties [were] to contact the calendar coordinator to schedule the plenary hearing."

In October 2014, plaintiff sold his interest in the business known as VG Resources, LLC, for $500,000. Section 6.8 of the PSA addressed the "Distribution of Businesses and Business Interests." Plaintiff took the position that defendant expressly agreed under Section 6.8 to limit her claims to this business to ten percent of plaintiff's "share of all future distributions and profits paid[.]" According to plaintiff, defendant agreed to this limitation in return for not having any "obligation and/or liability associated with [this business] at any time in the future." Furthermore, plaintiff argued that consistent with this provision in the PSA, he contributed approximately $259,000 to VG Resources, LLC, after the divorce. He also had a dispute with his partners, which ultimately settled when plaintiff agreed to accept "a gross sale[s] price of $500,000."

Defendant viewed her rights under the PSA differently. She filed an Order to Show Cause claiming she was entitled to a share of the $500,000. Despite the language in Section 6.8 of the PSA

that limits defendant's putative claim to "ten percent (10%) . . . of all future distribution and profits," which in this case would be $50,000, the court ordered plaintiff's counsel to hold $100,000 in escrow pending the outcome of a plenary hearing.

The plenary hearing took place over two days on May 7 and 12, 2015. In addition to the parties, plaintiff called a certified public accountant "for the purpose of testifying as to what the basis is with respect to the purchase of Mr. Gulutz's interest in VG and CNV. What he received, how . . . the basis was established. And, also from an accounting standpoint, whether the transaction would trigger the issuance of a K-1." The judge accepted this witness "as an expert in accounting." Defendant called the attorney who represented her during the dissolution of the marriage, including the negotiation of the PSA.

The judge made his factual findings and conclusion of law on September 15, 2015. The judge found defendant's testimony credible. He based this on his observation of her testimony, and on "how she answered the questions during the course of the plenary hearing[.]" Conversely, he found plaintiff was "not credible." The judge concluded plaintiff's answers were "evasive, and[] sometimes confrontational." The judge also characterized plaintiff's answers to the sale of the business as "split[ting] hairs." He gave as an example plaintiff's response distinguishing

between the word "buyout" and "sale." The judge noted that plaintiff insisted that "[t]his was no buying out of [his] interest because another entity owned it" which, the judge explained was "not true, because his partners bought him out of the entity." The judge concluded this was merely a semantic, legally inconsequential distinction because "[i]n the end, he did receive $500,000."

In construing Section 6.8 of the PSA, the judge rejected plaintiff's argument that defendant is not entitled to any part of the $500,000 because it was not "profits and distributions." According to the judge, acceptance of plaintiff's construction of the language used in Section 6.8 would mean defendant would "get nothing from a marital asset[.]" In the judge's view, this "[m]akes no sense."

The judge also found credible the testimony of Eileen Foley, the attorney who represented defendant during the negotiations of the terms of the PSA which led to the ultimate divorce judgment. Of specific relevance here, Ms. Foley testified that defendant agreed to accept only ten percent of the sale of VG Resources, which was less than her fair share of this marital asset, "to not have to make contributions, and[] avoid any liabilities." The judge ultimately reached the following conclusion:

> The [c]ourt finds that the defendant agreed to take a smaller percentage than what she was entitled to, to avoid having to contribute in the future. This was testified to by Ms. Foley, her attorney from the underlying matrimonial action. Also, this was the credible testimony of the defendant.
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> In addition, . . . [the PSA] required it to be secured in his will. To interpret the [PSA] in a [manner] that supports the plaintiff's position would be grossly unfair to the defendant. If she was not entitled, why would there be . . . language in the [PSA] requiring him to provide closing documents?
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> In short, the plaintiff's argument is, you didn't receive ten percent of any profits or distributions, as there were none. And, now that I've been bought out, and received a half million dollars, you get nothing. Even though it was a marital asset. The [c]ourt finds that she is entitled to ten percent.

Against this factual backdrop, plaintiff now argues that the judge's decision improperly rewrote the PSA to award defendant a share of plaintiff's buyout that she was not legally entitled to receive. We disagree. We begin our analysis by reaffirming a well-settled principle of appellate jurisprudence. We accord deference to the Family Court's decisions because of its "special jurisdiction and expertise," especially "in the field of domestic relations." Cesare v. Cesare, 154 N.J. 394, 412-13 (1998). Furthermore, the factual findings made by a trial judge "are binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411-12. This deference is particularly

appropriate "when the evidence is largely testimonial and involves questions of credibility." Ibid. (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). However, our review of the court's legal conclusion is de novo because "the trial court is in no better position than we are when interpreting a statute or divining the meaning of the law." D.W. v. R.W., 212 N.J. 232, 245 (2012).

Here, we discern no basis to disturb the Family Part Judge's factual findings. The judge emphasized that his credibility findings were influenced by the opportunity he had to observe the witnesses' testimony, including their demeanor. The judge's conclusion that defendant was entitled to receive ten percent of the $500,000 plaintiff received from his disposition of a marital asset was supported by a plain reading of the language negotiated by the parties in the PSA and incorporated by the court in the JOD.

In reviewing a contract, a court must enforce the intent of the parties under the express terms of the contract, considering both its underlying purpose and based on the circumstances surrounding its formation. Cypress Point Condo. Ass'n v. Adria Towers, L.L.C., 226 N.J. 403, 415 (2016). We are also obliged to effectuate each provision of a contract in accordance with its plain meaning and avoid rendering any provision superfluous or

simply surplusage. Highland Lakes Country Club & Cmty. Ass'n v. Franzino, 186 N.J. 99, 115-16 (2006).

The conclusion reached by the Family Part here is in full accordance with these principles. We discern no legal basis to disturb it. Plaintiff's remaining arguments lack sufficient merit to warrant discussion in a legal opinion. R. 2:11-3(e)(1)(E).

Affirmed.