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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3547-16T1

R.M.¹,

Plaintiff-Appellant,

v.

A.S.M.,

Defendant-Respondent.

Argued March 6, 2018 - Decided April 3, 2018

Before Judges Reisner and Mayer.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Hunterdon
County, Docket No. FM-10-0418-08.

Angelo Sarno argued the cause for appellant
(Snyder Sarno D'Aniello Maceri & Da Costa,
LLC, attorneys; Angelo Sarno, of counsel and
on the briefs; Lydia S. LaTona, on the
briefs).

Robert J. Donaher argued the cause for
respondent (Herold Law, PA, attorneys; Robert
J. Donaher, on the brief).

PER CURIAM

¹ We use initials to protect the parties' privacy interests.

Plaintiff R.M. appeals from a March 13, 2017 order denying her motion to compel defendant A.S.M. to pay her one-half of the proceeds from the settlement of a lawsuit filed subsequent to the parties' divorce, and her alternate request for discovery and a plenary hearing on the money defendant received from the settlement of that litigation. We affirm.

During the marriage, defendant had an ownership interest in several drug treatment clinics. Habit Opco, Inc. (Habit Opco) purchased one of defendant's clinics in 2009. In 2011, while the divorce action was pending, defendant was involved in two litigations related to the clinics. These litigations, alleging the clinics overbilled Medicaid for drug screens performed with a certain device, settled in June and July 2011. In accordance with the settlement of the clinic litigations, defendant was required to pay money to the government and Habit Opco. The money used to fund the settlement with Habit Opco was drawn from an indemnification and non-compete escrow fund established as part of Habit Opco's purchase of defendant's clinic.

After settling with Habit Opco, defendant received \$475,789.22 representing his share of the remaining escrow fund after the settlement payment. That sum was disclosed to plaintiff during the negotiation of the Property Settlement Agreement (PSA) resolving the parties' divorce action. The PSA required an

accounting of the escrow fund to confirm the exact amount received by defendant.

On August 17, 2011, subsequent to the settlement of the clinic litigations, the parties executed the PSA and were divorced pursuant to a Dual Judgment of Divorce. Pursuant to Article III, Paragraph 1.C. of the PSA, defendant retained his ownership interest in five drug treatment clinics, and "[p]laintiff waive[d] all claims, rights and interest in the [five] corporate entities." In accordance with Article III, Paragraph 3 of the PSA, plaintiff received "the lump sum of \$1,750,000 as payment in full of all claims for equitable distribution of marital assets[,]. . . spousal support and any and all other possible claims against [d]efendant." Pursuant to Article III, Paragraph 6 of the PSA, plaintiff's portion of the Habit Opco escrow proceeds was included in the lump sum payment, and plaintiff expressly waived her claim to any funds reimbursed to defendant from the settlement of the Habit Opco litigation. If it was discovered that defendant received more than \$475,789.22 from the escrow fund, he was obligated to share any amount above that sum with plaintiff. After the divorce, defendant submitted the required accounting of the escrow fund in accordance with the PSA, verifying he received only \$475,789.22.

On March 4, 2013, two years after the parties divorced, defendant filed a lawsuit against the device manufacturer and its corporate successor (the subsequent litigation). In the subsequent litigation, defendant asserted claims for negligence, negligent misrepresentation, breach of contract, and fraud in connection with the marketing and sale of the certain device used to perform drug screens. Specifically, defendant claimed the device manufacturer misrepresented the proper way to code and bill the use of its device when submitting claims to Medicaid. Defendant alleged the device manufacturer's improper advice and representations caused defendant's drug treatment clinics to be subject to a governmental investigation and enforcement proceeding and forced defendant to defend a lawsuit brought by Habit Opco. The subsequent litigation was resolved in a confidential Stipulation of Settlement and Consent Order for Dismissal dated May 18, 2015.

About a year after defendant resolved the subsequent litigation, plaintiff's counsel wrote to defendant, stating plaintiff believed defendant received additional funds from the 2011 clinic litigations and was entitled to one-half of the proceeds. Defendant's counsel explained that no further funds had been received related to the 2011 clinic litigations.

Plaintiff pursued her claim that she was entitled to a fifty percent share of the subsequent litigation settlement. Plaintiff filed a motion in the family court alleging the subsequent litigation was inextricably related to the 2011 clinic litigations, was not the result of events arising after the divorce, and any settlement of the subsequent litigation was an asset of the marriage required to be split equally between plaintiff and defendant pursuant to the PSA.

The family judge denied plaintiff's motion for disclosure of the subsequent litigation settlement and a fifty percent share of that settlement payout. The judge found the PSA contemplated only the litigations pending at the time of the divorce and did not provide for any further equitable distribution to plaintiff. In her written statement of reasons, the judge found:

the parties' [PSA] is a complete and total culmination of the parties' agreement during their divorce. The parties' [PSA] does not carve out any further equitable distribution that the [p]laintiff may be entitled to after the parties' divorce. The only suit that the [PSA] took into account was the suit that the [p]laintiff received funds from that was part of her equitable distribution from the marriage. At the time of the divorce, the parties treated this suit as an asset and it was distributed accordingly.

Plaintiff appeals, alleging the judge's findings were not supported by the plain language of the PSA. Plaintiff also claims

the judge was required to grant discovery and conduct a plenary hearing on her application.

It is well established that the courts have "[t]he equitable authority . . . to modify property settlement agreements executed in connection with divorce proceedings." Miller v. Miller, 160 N.J. 408, 418 (1999). A PSA may be set aside "when it is the product of fraud or overreaching by a party with power to take advantage of a confidential relationship." Guglielmo v. Guglielmo, 253 N.J. Super. 531, 541 (App. Div. 1992) (quoting Dworkin v. Dworkin, 217 N.J. Super. 518, 523 (App. Div. 1987)). New Jersey has a "strong public policy favoring stability of arrangements in matrimonial matters." Quinn v. Quinn, 225 N.J. 34, 44 (2016) (quoting Konzelman v. Konzelman, 158 N.J. 185, 193 (1999)). Absent compelling reasons to depart from clear, unambiguous, and mutually understood terms of a marital settlement agreement, a court is generally bound to enforce them. Id. at 45.

We agree with the family judge that the PSA was express and unambiguous. Plaintiff received a lump sum payment of \$1,750,000 "as payment in full of all claims for equitable distribution of marital assets not specifically or otherwise mentioned herein, spousal support[,] and any and all other possible claims against [d]efendant." By accepting the lump sum, plaintiff released any future claims against defendant for equitable distribution of

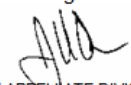
marital assets or any other right arising from the marital relationship.

We further agree with the family judge that plaintiff was not entitled to discovery and a plenary hearing on her claimed entitlement to one-half of the settlement proceeds from the Alere lawsuit. Plaintiff's professed understanding of the PSA does not negate the plain and unequivocal language of the PSA barring assertion of any additional claims for equitable distribution.

For the first time on appeal, plaintiff claims that the family judge's decision deprives her of an asset subject to equitable distribution and unjustly enriches defendant. We "decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation [was] available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 483 (2012) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)). Because plaintiff failed to raise these issues before the family court, and the claims do not concern the jurisdiction of the trial court or matters of great public interest, the issues are not properly before us.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION