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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4788-15T1

RANDY KARPMAN,

Plaintiff-Respondent,

v.

STACEY KARPMAN,

Defendant-Appellant.

Argued December 12, 2017 – Decided January 19, 2018

Before Judges Gilson and Mayer.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FM-02-1694-07.

William J. Heimbuch argued the cause for
appellant (Heimbuch & Solimano, PC, attorneys;
William J. Heimbuch, on the brief).

Lisa M. Fittipaldi argued the cause for
respondent (DiFrancesco, Bateman, Kunzman,
Davis, Lehrer & Flaum, PC, attorneys; Lisa M.
Fittipaldi and Robert P. Manetta, on the
brief).

PER CURIAM

Defendant Stacey Karpman appeals from a March 28, 2016 order of the Family Part partially granting her motion to enforce a settlement agreement. Defendant argues the family court judge erred by enforcing only certain provisions in an agreement between herself and plaintiff Randy Karpman. We reverse, finding there was no enforceable settlement between defendant and plaintiff.

Plaintiff and defendant divorced on January 22, 2008. An amended final judgment of divorce (AJOD) was filed on October 2, 2008. After entry of the AJOD, the parties filed motions addressing post-judgment issues including alimony and equitable distribution.

On May 9, 2013, the judge entered an order resolving some of the post-judgment issues. On the unresolved issues, the judge embodied the parties' agreement to participate in "mediation, and if that fails, binding arbitration" before a retired judge, mediator, or arbitrator. The specific issues for mediation or arbitration in the judge's order were: (1) credits for damages or content loss of the parties' former marital home; (2) equitable distribution; (3) child support arrears, if any; (4) a time share; (5) distribution and personal property credits; and (6) alimony.

Mediation with the appointed individual was unsuccessful. Consequently, on April 20, 2015, the parties commenced arbitration before the same individual. The next scheduled date for

arbitration was June 26, 2015. In lieu of proceeding with the second day of arbitration, the parties, with their counsel, engaged in settlement discussions. The parties remained in one office, while their attorneys went to another office to negotiate the terms of a settlement. The arbitrator, who was not in the room when counsel were discussing the terms of a settlement, later asked each party if they understood the terms of the settlement. The parties stated that they understood the agreement and were satisfied. No agreement was placed on the record or reduced to a writing by the arbitrator. The parties decided to execute a consent order memorializing the agreement at a later date.

On or about July 10, 2015, defense counsel sent a draft consent order memorializing the settlement agreement to plaintiff's counsel. Counsel exchanged various edits to the draft consent order. After one month of trading revisions to the consent order, both counsel contacted the arbitrator and requested his assistance in resolving the disputed settlement terms. The arbitrator conducted an off-the-record conference with the parties' counsel and discussed additional revisions to the consent order. After this conference, counsel continued to exchange drafts of the consent order, but were unable to come to an agreement on a final consent order.

One month later, defense counsel requested a hearing before the arbitrator to resolve the settlement terms and the arbitrator provided dates that he was available for such a hearing. Rather than proceed with a hearing, defense counsel submitted a "motion" to the arbitrator seeking to enforce the terms of the settlement agreement.¹ Plaintiff's counsel responded with a "cross-motion" directed to the arbitrator requesting denial of defendant's "motion" and continuation of binding arbitration pursuant to the May 9, 2013 court order.

On December 1, 2015, the arbitrator signed two "orders" and attached a statement of reasons granting defendant's motion and denying plaintiff's cross-motion. In his statement of reasons, the arbitrator stated that defendant's motion "correctly states what was agreed upon by both parties" and that it was "in conformity with" the arbitrator's notes from the settlement discussion conducted on the second day of the scheduled arbitration.

Two weeks later, defendant filed a motion with the family court to confirm the arbitrator's "orders" pursuant to N.J.S.A.

¹ The parties failed to provide any citation to a court rule or the order compelling arbitration authorizing the arbitrator to entertain motions and sign orders that would be binding upon the family court.

2A:23A-12.² On or about January 7, 2016, plaintiff cross-moved "to vacate the arbitration award." The family court heard argument on February 10, 2016.

At the motion hearing, plaintiff admitted that he agreed to pay alimony of \$1500 per month and agreed to pay a specific amount toward alimony arrearages and for equitable distribution. However, plaintiff certified that he never agreed to a provision allowing defendant to garnish his wages for the failure to pay alimony. Plaintiff further stated that at no time did he agree to a provision allowing defendant to monitor his income. In contrast, defendant claimed that she only agreed to resolve the issues of alimony, equitable distribution, and arrearage payments in return for monitoring of plaintiff's income and automatic wage garnishment if plaintiff failed to pay timely alimony.

By order dated March 28, 2016, the judge denied plaintiff's cross-motion and partially granted defendant's motion. The judge noted that the arbitrator did not "decide" any issues as an arbitrator, and questioned whether the arbitrator had the authority to sign the December 1, 2015 "orders" pursuant to N.J.S.A. 2A:23A-12, particularly as to issues that were not

² The arbitrator did not render an arbitration award in this matter and, therefore, we question the applicability of N.J.S.A. 2A:23A-12(a).

designated for binding arbitration in accordance with the May 9, 2013 order.

Because the arbitrator failed to issue an "arbitration award," the judge considered defendant's application as a motion to enforce a settlement, and deemed plaintiff's application a motion to return the matter to binding arbitration. After reviewing the written submissions and hearing the arguments of counsel, the judge found the parties reached a settlement on the issues of alimony, arrearages, and equitable distribution. As for all other issues, including defendant's request for probation reporting, the judge deemed such issues were not subject to the original arbitration order and, therefore, were not part of a settlement between the parties.

Defendant moved for reconsideration of the March 28, 2016 order, which was denied by the family judge.

On appeal, defendant challenges certain paragraphs in the judge's March 28 order, specifically the court's denial of subparagraphs 1(e), (f), and (g) of that order.³ Defendant does

³ These paragraphs related to defendant's request for monitoring of plaintiff's income through the family part probation department and automatic wage garnishment, absent a court order, if plaintiff missed an alimony payment.

not appeal the judge's enforcement of a settlement as to alimony, equitable distribution, and arrearages.⁴

We will uphold a settlement agreement between spouses in a matrimonial action that is "voluntary, fair and equitable." Brawer v. Brawer, 329 N.J. Super. 273, 284 (App. Div. 2000). "[T]he enforceability of [a marital] settlement agreement is subject to the same standards as that in any other case." Id. at 282. "A settlement agreement between parties to a lawsuit is a contract." Nolan v. Lee Ho, 120 N.J. 465, 472 (1990). "Interpretation and construction of a contract is a matter of law for the court subject to de novo review." Fastenberg v. Prudential Ins. Co. of Am., 309 N.J. Super. 415, 420 (App. Div. 1998). "Accordingly, we pay no special deference to the trial court's interpretation and look at the contract with fresh eyes." Kieffer v. Best Buy, 205 N.J. 213, 223 (2011). However, "[b]ecause of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference" to the factual findings of the family court judge. Cesare v. Cesare, 154 N.J. 394, 413 (1998).

⁴ During appellate argument, in response to a question presented by the panel, defendant's attorney conceded that defendant could not appeal only portions of the March 28, 2016 order. Either all of the provisions were agreed upon by the parties and were enforceable or, alternatively, the provisions were not universally agreed to by the parties resulting in no settlement agreement.

On appeal, defendant claims that the family judge erred when he declined to enforce the December 1, 2015 "order" allowing monitoring of plaintiff's income, specifying earning triggers for increased alimony, and providing the "automatic right of the [d]efendant to obtain an income withholding in the event of a future default in the payment of alimony." Defendant contends that she only agreed to a reduction in plaintiff's alimony amount in exchange for the ability to monitor his future income, receive increased alimony under certain conditions, and have the right to an immediate remedy for default in the payment of alimony.

We begin our analysis with a review of the orders appointing and authorizing the arbitrator to resolve the parties' disputes emanating from the original order of the family court. In accordance with the May 9, 2013 order, the parties agreed to mediate or arbitrate specific issues before a particular individual. Upon appointment by the family court to serve as the mediator or arbitrator, the arbitrator executed an "agreement to mediate [or] arbitrate" expressly identifying the issues he would mediate or arbitrate. On November 5, 2013, the parties and the arbitrator signed a consent order for arbitration. In accordance with that order, the arbitrator was required to "render a written decision which shall include specific Findings of Fact and Conclusions of Law" and the parties agreed to be bound by the

arbitrator's fact findings and legal conclusions. The consent order for arbitration provided that "[n]othing in this Consent Order shall prevent the Arbitrator, with the written consent of the parties to the arbitration, from mediating an issue or issues submitted, and such agreed-upon mediation shall not disqualify the Arbitrator from arbitrating the issue(s) should mediation not be successful."

Since the parties were unable to reach an agreement with the arbitrator acting as a mediator, the parties commenced binding arbitration in accordance with the consent order for arbitration. However, the arbitrator never issued an arbitration award because the parties decided to forego the partially completed arbitration and resolve the matter on their own. At no time did the parties provide written consent to return to a mediation setting with the arbitrator. See Minkowitz v. Israeli, 433 N.J. Super. 111, 147 (App. Div. 2013) (reasoning that, absent an agreement by the parties, an appointed arbitrator may not assume the role of mediator and, thereafter, resume the role of arbitrator because of the potential for confusion when one person both mediates and arbitrates).

In this case, the parties did not provide their written consent authorizing the arbitrator to serve as a mediator after arbitration commenced. Nor did the parties provide a writing

memorializing additional issues to be mediated by the arbitrator beyond the issues expressly stated in the May 9, 2013 order. Having reviewed the record, and considered the arguments of appellate counsel, we hold that the arbitrator exceeded the scope of the consent order for arbitration by signing the December 1, 2015 "orders."

Having concluded that the arbitrator's December 1, 2015 orders were ultra vires, we next examine whether the ability to monitor plaintiff's future income, receive increased alimony triggered by specific circumstances, and have the right to an immediate remedy for any default in alimony payments were part of an enforceable agreement as argued by defendant. Defendant contends that the arbitrator's statement of reasons with his December 1 orders supports a finding that all of the terms sought by defendant were agreed upon by the parties. However, an "arbitrator's findings of fact and conclusions of law shall not be evidential in any subsequent trial de novo, nor shall any testimony given at the arbitration hearing be used for any purpose at such subsequent trial. Nor may the arbitrator be called as a witness in any such subsequent trial." R. 4:21A-4(e). In "a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any

statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this State acting in a judicial capacity." N.J.S.A. 2A:23B-14(d). Thus, defendant's reliance on the arbitrator's statement of reasons attached to the December 1 orders is not competent evidence and cannot support her argument in favor of an enforceable settlement.

Since there was no arbitration award rendered by the arbitrator, we consider whether there was a mediation agreement reached in this case. Even assuming that the parties consented to the arbitrator returning to a mediation forum once binding arbitration proceedings commenced, a mediated settlement agreement, like other contracts, must be knowingly and voluntarily reached. Minkowitz, 433 N.J. Super. at 139. A mediated settlement agreement must also be incorporated into a signed written agreement. See Willingboro Mall, Ltd. v. 240/242 Franklin Ave, LLC, 215 N.J. 242, 256-57 (2013). A "meeting of the minds" on all of the terms of an agreement is an essential element of a contract. Morton v. 4 Orchard Land Trust, 180 N.J. 118, 120 (2004). "[I]f the parties do not agree to one or more essential terms, the agreement is unenforceable." Graziano v. Grant, 326 N.J. Super. 328, 340 (App. Div. 1999).

Here, there was no meeting of the minds as to material terms of an agreement, namely the monitoring of plaintiff's income and the right to a remedy in the event of a missed alimony payment. Defendant claims she would never have agreed to a reduced alimony amount absent the ability to monitor plaintiff's income and obtain an order if plaintiff failed to make an alimony payment. Plaintiff is equally adamant that he would not have agreed to the provisions sought by defendant based on defendant's false allegations of alimony non-payment on prior occasions.


The family judge, having reviewed the exhibits and certifications, determined that plaintiff did not agree to the disputed terms. We agree with the family judge that there was no meeting of the minds as to an agreement on all issues by the parties. However, we disagree with the judge's decision to enforce certain terms admittedly agreed to by the parties. As counsel conceded during oral argument, either there was an agreement by the parties as to all terms or there was no agreement between the parties.

Because the parties failed to achieve an enforceable settlement on all issues, the family judge's order dated March 28, 2016, is reversed. The parties may file applications with the family court to resolve the issue of alimony and any other issues

requiring adjudication by the family court based upon the parties' current circumstances.

Reversed. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION