

RECORD IMPOUNDED

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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3383-21**

R.B.,¹

Plaintiff-Appellant,

v.

E.A.C.,

Defendant-Respondent.

Submitted September 18, 2023 — Decided October 3, 2023

Before Judges Mawla and Chase.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Monmouth County,
Docket No. FM-13-1159-18.

August J. Landi, attorney for appellant.

Respondent has not filed a brief.

PER CURIAM

¹ We use the parties' initials pursuant to Rule 1:38-3(a).

Plaintiff R.B. appeals from a May 23, 2022 dual judgment of divorce entered incorporating the terms of a May 10, 2022 settlement agreement. We affirm.

Plaintiff and defendant E.A.C. were married for twenty-two years at the time plaintiff filed her complaint for divorce in 2018. Pendente lite, the parties were under contract to sell the former marital residence, which had \$1 million in equity. However, the realtor reported plaintiff was not abiding by the court ordered sale and was attempting to thwart the sale. In February 2019, the trial court entered an order stating it was "concerned about . . . [p]laintiff's ability to make decisions and hereby appoints Howard [A.] Bachman, Esq. as [g]uardian [a]d [l]item [(GAL)] to explore if [p]laintiff has the mental ability to engage in the litigation of this matter." The court ordered the GAL to "expeditiously arrange for an evaluation of [p]laintiff."

The divorce trial was scheduled for April 1, 2019, but the parties failed to appear, prompting the court to schedule a hearing the following day. At the hearing, the court learned the marital residence fell into foreclosure and a final judgment was entered. Plaintiff claimed the bank was willing to accept a sum less than the full payoff amount in the foreclosure judgment. However, the bank was unwilling to accept a sum less than the final judgment amount. Defendant's

attorney reported the property was under contract for sale. To preserve the equity in the marital residence, the court entered an order granting the GAL power of attorney to sign the closing documents in the event plaintiff failed to cooperate. In addition to releasing funds to the parties' attorneys, the GAL, and advanced equitable distribution to each party, the court also allocated funds for "a medical expert to evaluate . . . plaintiff and prepare a report as a result thereof."

At the hearing, the court learned the parties did not appear for trial because they entered a consent order to arbitrate the divorce. The court's order memorialized "defendant and his counsel signed a consent order . . . [and] plaintiff through counsel indicated that she also wished to proceed to arbitration. [However, o]n the record . . . plaintiff indicated that she would not sign the order for arbitration." Therefore, the court scheduled a date for plaintiff to show cause "why her pleadings should not be stricken for failure to appear on the date of trial and/or failure to remove the matter to arbitration" Plaintiff later agreed to arbitration and signed an arbitration agreement and the consent order.

The GAL retained a psychiatrist who issued a report in May 2019. The psychiatrist found plaintiff had "no signs of formal mental illness(es) or

psychosis, but . . . appears to have personality issues at the basis for her lack of more direct self-protective legal action." The psychiatrist concluded

plaintiff's incidents of non-compliance to judicial requests and/or passivity in the face of possibly unnecessary financial loss from her divorce indicate personality problems. In view of her passivity in legally protecting herself, and with a reasonable degree of medical probability or certainty [plaintiff] needs the protection of a [GAL] to handle her divorce proceedings.

As a result, the court entered an order on May 26, 2020, directing the GAL proceed with his charge and submit a written report with the results of his investigation "and a recommendation as to whether a [g]uardianship hearing should proceed under Rule 4:86." Separately, the arbitrator stayed the arbitration "pending the reconsideration of the appointment of a [g]uardian for [p]laintiff . . . subsequent to . . . S.T. v. 1515 Broad Street, LLC, [241 N.J. 257 (2020).]"

In July 2020, the GAL issued a report detailing the history of the case and plaintiff's conduct; this included her interference with the sale of the former marital residence and misconduct during court proceedings. The GAL explained that following the issuance of the psychiatrist's report, he participated in the divorce proceeding on plaintiff's behalf along with her attorney and "[a]t all times she expressed great displeasure with [the GAL's] appointment." The GAL

noted that "[d]uring many of [his] conversations with [plaintiff] she had varying moods. Often, she will not let [him] speak. She reaches conclusions without support and is unwilling to listen to any comment inconsistent with her thoughts." Plaintiff was uncooperative and "at a moment's notice . . . loses her temper, becomes oppositional and tunes out to all around her." Although plaintiff told the GAL she was retaining a new attorney, she never did.

The GAL's report explained the parties agreed to mediate their matter with the arbitrator. However, plaintiff "was adversarial and oppositional with [her attorney] and [the GAL] during [the] mediation [She] refused to provide information and documentation to support her position and claims." The GAL noted the court ordered a second evaluation pursuant to S.T. The GAL "discussed and forwarded [S.T.] to [plaintiff] . . . [and she] originally was pleased with the necessity of a second evaluation" but later refused to cooperate.

The GAL concluded as follows:

I have found [plaintiff] to be an extremely bright person. I do believe that she understands what is being said to her regarding her legal matters. However, it is clear to me that [she] lacks the capacity to appropriately handle her legal matters. She has an inability to focus on the issues at hand and comply with reasonable requests for her participation. The request for her participation is for information that only she has available to her. . . .

. . . In my opinion, [plaintiff] needs a [GAL] in her divorce litigation. To be clear, I do not believe that [she] needs a guardian of her person. At all times that she has spoken and appeared before me, she is appropriately dressed, not under the influence of any substance, is able to communicate her thoughts to me and I believe able to understand what I am saying to her. She is not in any apparent physical distress. To the best of my knowledge, she has appropriate accommodations, is well fed, and manages her day[-]to[-]day affairs. However, in discussing matters related to her divorce litigation, she becomes easily irritated, critical, at times irrational, and without the ability to make business[-]like decisions.

On August 20, 2020, the court held a status conference and entered an order memorializing the "GAL advised [that] plaintiff . . . is willing to cooperate and meet with a second doctor." The court appointed a second doctor and ordered plaintiff to comply with the evaluation. On December 7, 2020, the court entered an order directing the GAL to issue an updated report following his receipt of the second doctor's report.

On January 8, 2021, the second doctor issued her report. She noted plaintiff refused to comply with a cognitive screen but completed all diagnostic testing and interviews. The doctor opined plaintiff's diagnosis was

[a]lcohol [a]buse [d]isorder, [m]ild to [m]oderate. She has a history of ADHD The additional identified personality characteristics involving emotional reactivity, aggression, interpersonal conflicts, risk taking behaviors . . . are suggestive of a [p]ersonality

[d]isorder. . . . This diagnosis brings characteristics such as anger responses, impulsive/self-destructive behaviors, feelings of loneliness/emptiness, [u]nstable relationship[s], high sensitivity/overwhelming emotions and reactions.

The doctor concluded plaintiff required mental health treatment because there was "no evidence that these mental health functioning risk factors have been sufficiently addressed to reduce her risk and enable her to act in her best interests in [the] divorce proceedings." Further, it was in plaintiff's "best interest to maintain a [GAL] through the completion of her divorce proceedings."

The GAL issued a second report, which enclosed the second mental health evaluation. The GAL further noted plaintiff advised him that she had entered a forty-five-day alcohol rehabilitation program and had jettisoned her divorce attorney. The GAL recommended the court schedule a guardianship hearing pursuant to Rule 4:86.

On March 9, 2021, the court entered an order noting it had reviewed the GAL's report and recommendation. The court stayed the divorce and scheduled a guardianship hearing. Subsequently, the court entered an order directing the GAL to initiate the guardianship proceeding. On April 8, 2021, the court held a status conference and entered an order memorializing that plaintiff instead requested the GAL continue to serve on her behalf. The order also appointed

new divorce counsel and directed defendant's attorney to release marital funds held in trust to pay counsel's retainer for plaintiff. The court directed the parties to resume arbitration within twenty days.

On May 23, 2022, the parties appeared with their respective counsel and the GAL for an uncontested divorce hearing. The trial judge took testimony from the GAL and defendant. Plaintiff was also placed under oath.

Both counsel and the GAL represented to the court the matter was resolved in mediation and provided a handwritten document signed by defendant, his counsel, plaintiff's counsel, the GAL, and the mediator. The settlement provided for: an alimony buyout payable over twelve and one-half years; plaintiff's waiver of an interest in defendant's pre-marital and inherited real estate, business, and trust interests; rollover of defendant's entire IRA to plaintiff; payment of ninety percent of the remaining marital home proceeds to plaintiff; and each party retaining their own vehicle, bank, and investment accounts. The settlement agreement provided: the parties would not pay direct child support to each other; absolved plaintiff of an obligation to contribute to the children's college, unreimbursed medical, and car expenses; and obligated defendant and the children to bear those expenses. There was no marital debt to distribute,

each party would pay their own debts and counsel fees, and plaintiff would bear the GAL's fees.

At the uncontested hearing, plaintiff told the court she did not agree to the settlement because it was "completely an unfair settlement," and the GAL and her attorney should have advocated for a "much better" settlement "than what . . . was agreed to." She claimed she wanted to proceed to arbitration but was denied the right to do so and now wanted a trial.

Plaintiff's counsel noted plaintiff did not attend the final mediation session and did not sign the settlement agreement because she previously stipulated the GAL "could make the ultimate decision on her behalf." Plaintiff denied that was the case and told the judge she wished to "rescind any request . . . for [the GAL] to sign on [her] behalf." Plaintiff's counsel noted after she communicated the settlement to plaintiff, she received emails from plaintiff, including on the morning of the uncontested hearing. Her emails advised she wanted to proceed with arbitration or a trial and she did not trust the GAL or her own counsel.

The trial judge noted the case was over four years old and the GAL had been appointed "many years ago." The judge recounted the lengthy procedural history of the case, including the court ordered evaluations and guardianship hearing. He noted the guardianship hearing did not occur because plaintiff "was

very satisfied with [the GAL's] services and, as embodied in my [April 8, 2021] order, she consented and requested that [the GAL] continue to assist her" The judge concluded the evidence presented showed the GAL "had authority to assist [plaintiff] in the conduct of this litigation, which is precisely what he did." After counsel questioned the GAL and defendant regarding the settlement and the cause of action, the judge entered the judgment of divorce.

On appeal, plaintiff argues the trial judge erred when he concluded the GAL had authority to make decisions for her. She asserts this is precisely what happened in S.T., and the Supreme Court reversed there because the trial court failed to conduct a guardianship hearing. Plaintiff argues the trial judge here could neither accept the settlement nor enter the judgment of divorce because plaintiff's "competency was never properly vetted," she "'rescinded' her consent to the GAL proceeding in her behalf[.]" and thus there was no evidence the parties had freely entered into the agreement.

Plaintiff concedes she was disruptive at the uncontested proceeding, but asserts the judge deprived her of the ability to express her objections on the record by muting her microphone. She notes neither mental health evaluator found her incompetent. Nor did the judge conclude she was mentally

incapacitated; "merely that she is annoying and aggravating to others when she believes her concerns are not being listened to or respected."

"We accord deference to a trial court's factfindings, particularly in family court matters where the court brings to bear its special expertise." Moynihan v. Lynch, 250 N.J. 60, 90 (2022) (citing Cesare v. Cesare, 154 N.J. 394, 413 (1998)). "Under that deferential standard of review, we are bound to uphold a finding that is supported by sufficient credible evidence in the record." Ibid. "However, we owe no deference to a trial court's interpretation of the law, and review issues of law de novo." Cumberland Farms, Inc. v. N.J. Dep't of Env't Prot., 447 N.J. Super. 423, 438 (App. Div. 2016).

Plaintiff argues the trial judge failed to follow S.T. We are unpersuaded. S.T. suffered a head injury and filed a personal injury suit against defendants for her injuries. 241 N.J. at 261. When she rejected defendants' offer of judgment against the advice of her attorney, he applied to the trial court for the appointment of a GAL unbeknownst to S.T. Id. at 261, 276. The court appointed the GAL, ceded authority to the GAL to determine whether S.T. had the mental capacity to settle her case, and based on the GAL's recommendation that she did not, accepted the settlement over S.T.'s objections. Id. at 262.

The Supreme Court reversed, holding the trial court deprived S.T. of the right to control her lawsuit and decide whether to accept the settlement by empowering the GAL to settle the case against her wishes. Id. at 275. The trial court "vested the [GAL] with the singular authority to settle the case without holding a hearing to determine whether S.T. suffered from a mental incapacity that rendered her unable to make that legal decision for herself." Ibid.

The Court explained a GAL's role is to

act as an independent investigator and inform the court on the subject of the client's mental capacity. . . . After completing its inquiry, the [GAL] submits a report to the court containing the results of the investigation and recommends whether a formal hearing should proceed under Rule 4:86. . . . The [GAL's] recommendations are not binding on the court; ultimately the court must make its own independent factfindings. . . . The court should not "cede [its] responsibility and authority" as the decisionmaker to the [GAL].

Nothing in our court rules, statutes, or case law suggests that a [GAL] appointed to investigate a client's alleged mental incapacity has the power to make legal decisions for the client before a judicial determination on her mental capacity.

[Id. at 278-79 (quoting Milne v. Goldenberg, 428 N.J. Super. 184, 202 (App. Div. 2012)).]

At the outset, we note the trial court here followed S.T. Based on its own observations of plaintiff's behavior, the court appointed the GAL who,

consistent with the Rules of Court and S.T., conducted a thorough investigation into plaintiff's mental capacity, obtained two evaluations, and reported those findings and his own back to the trial court. The court then ordered a guardianship hearing as required by S.T.

Here, unlike S.T., plaintiff had notice of the application to appoint a GAL and the trial court never ceded its authority to decide plaintiff's mental capacity to the GAL. Furthermore, unlike S.T. who contested the GAL's role, the record here reveals plaintiff declined to proceed with the guardianship hearing and designated the GAL as her agent to settle her case with the assistance of her attorney.

Contrary to the arguments raised on appeal, the dispute here was no longer about plaintiff's competency because plaintiff removed this issue from consideration by dispensing with the guardianship hearing. Rather, the issue was whether the GAL, as designated by plaintiff and her attorney, had authority to settle the case on her behalf. The credible evidence in the record shows plaintiff exhibited oppositional behavior throughout the proceedings; a fact plaintiff readily concedes on appeal. These circumstances convince us it was not unreasonable to have an intermediary—in this case two attorneys—negotiate and facilitate the divorce. Indeed, a settlement achieved by a party through their

representative is just as valid as one directly assented to by the party themselves. See Harrington v. Harrington, 281 N.J. Super. 39, 47 (App. Div. 1995) (citing Davidson v. Davidson, 194 N.J. Super. 547, 549-50 (Ch. Div. 1984)).

Finally, we note there is no evidence, let alone argument, that the settlement was unconscionable. Unconscionability occurs when there is "overreaching or imposition resulting from a bargaining disparity between the parties, or such patent unfairness in the contract that no reasonable person not acting under compulsion or out of necessity would accept its terms." Howard v. Diolosa, 241 N.J. Super. 222, 230 (App. Div. 1990). Unconscionability occurs when there is: "(1) unfairness in the formation of the contract; and (2) excessively disproportionate terms." Est. of Cohen ex rel. Perelman v. Booth Comput., 421 N.J. Super. 134, 157 (App. Div. 2011).

The record shows the settlement process and the agreement contained none of the badges of unconscionability. The trial judge appropriately concluded the GAL and plaintiff's attorney had authority to settle her case and an enforceable settlement agreement was achieved. This decision was neither a mistaken understanding of the facts nor a misapplication of law.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION