NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ERIN C. JENKINS, Appellee v. EARNEST C. JENKINS, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1025 WDA 2012

Appeal from the Order Entered June 6, 2012
In the Court of Common Pleas of Fayette County
Civil Division at No(s): 599 OF 2008, G.D.

BEFORE: BOWES, LAZARUS, and COLVILLE,* JJ.

MEMORANDUM BY BOWES, J.: **FILED SEPTEMBER 26, 2013**

Earnest C. Jenkins appeals from the order entered June 6, 2012 finding him in breach of a marital settlement agreement. After careful review, we affirm.

The trial court delineated the relevant facts as follows.

> The parties married on November 27, 1992. They are the natural parents of three (3) children, Ryan Jenkins, born May 27, 1993, Klayton Jenkins, born November 15, 1998 and Nathan Jenkins, born November 7, 2003.
>
> Wife resides in the marital residence located at 251 Ball Hill Road, Adah, Fayette County, Pennsylvania. Husband currently lives at 47 East Kerr Street, Uniontown, Fayette County, Pennsylvania.

---

* Retired Senior Judge assigned to the Superior Court.

During the marriage, the parties acquired certain parcels of real property. One parcel in particular is a ninety-three (93) acre strip of land located in German Township, Fayette County, Pennsylvania. The 93 acre parcel is undeveloped and is used primarily for harvesting timber and hunting. At present, no oil and gas leases encumber the 93 acre parcel.

Wife filed for divorce on February 26, 2008. A marital settlement agreement was signed on July 29, 2011. *Inter alia*, the Marital Settlement Agreement details the distribution of numerous properties owned jointly by the parties. The Marital Settlement Agreement awarded the 93 acre parcel in its entirety to Husband.

Paragraph No. 26 of the Marital Settlement Agreement entitles Wife to certain oil and gas proceeds from the 93 acre parcel. Paragraph No. 26 provides:

> **OIL and GAS**. The parties acknowledge that they may be owners of certain oil and gas rights in connection with the ninety-three acres of undeveloped property which is distributed to Husband pursuant to paragraph twenty-four above. The parties agree that for three years from the date of the execution of this agreement any and all proceeds from any oil and gas lease shall be equally divided between the parties including but not limited to sign on bonuses and royalties. The parties further agree that for two years after the expiration for the three year period above referred to any and all such proceeds shall be divided with seventy-five percent (75%) to Husband and twenty-five percent (25%) to Wife. Thereafter, that is after a five year period from the date of the execution of this agreement, all proceeds shall be Husband's exclusively.

The divorce decree was signed on August 5, 2011. On April 11, 2012, Wife filed her Petition for Special Relief alleging that Husband had abandoned all efforts to negotiate an oil and gas lease for the 93 acre parcel. A hearing on the matter was held on May 31, 2012. [The trial court] found Husband in breach of the Marital Settlement Agreement[.]

Trial Court Opinion, 10/2/12, at 2-3 (internal citations omitted).

This timely appeal ensued. The trial court directed Husband to file and serve a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Husband complied, and the court authored its trial court opinion. The matter is now ready for our review. Husband presents six questions for this Court's consideration.

> 1. Did the trial court err in finding that Appellant had a duty pursuant to the marital settlement agreement to negotiate an oil and gas lease?
>
> 2. Did the trial court err in considering parole [sic] evidence when the marital settlement was clear and unambiguous?
>
> 3. Did the trial court err in finding that Appellant intentionally obstructed recording of the deed of the subject marital property?
>
> 4. Did the trial court err in finding that Appellant abandoned any and all communications with oil and gas companies?
>
> 5. Did the trial court err in finding that Appellant failed to act within a reasonable amount of time?
>
> 6. Did the trial court err in ordering that the proceeds from any and all future oil and gas leases shall be distributed in accordance with paragraph 26 of the marital settlement agreement regardless of when the lease(s) are executed?

Husband's brief at 5.

Husband first contends that the trial court erred in finding that he had a duty to negotiate an oil and gas lease under paragraph 26 of the marital settlement agreement, where entering into such a lease was not part of the contract. He argues that the parties negotiated and bargained over the

terms of the contract in question. According to Husband, he did not inform any person that he intended to enter an oil and gas lease and that the plain language of paragraph 26 does not require him to negotiate a lease. Rather, the provision merely provides a mechanism for dividing income received from an oil and gas lease if Husband entered into such an accord. Husband maintains that an implied duty of good faith and fair dealing cannot trump the express provision of the settlement agreement. Since there are no terms mandating that he negotiate an oil and gas lease, he asserts that the trial court erred in concluding that he breached a duty to negotiate in such a lease in good faith.

Wife counters that the doctrine of necessary implication applies and that the contractual provision necessarily implied that Husband was to act in good faith by attempting to secure an oil and gas lease. She highlights that, prior to entering the agreement, Husband had entered into discussions with Chevron as to an oil and gas lease for the subject property. Wife contends that Husband abandoned all communications with that gas company after the parties entered into the agreement and declined to record the deed to the 93 acre parcel "in an effort to appear unable to enter into an oil and gas lease[.]" Wife's brief at 5-6. According to Wife, actions by both parties demonstrated that Husband would negotiate an oil and gas lease soon after the marital agreement was entered.

We construe marital settlement agreements under established principles of contract law. ***Kraisinger v. Kraisinger***, 928 A.2d 333, 339 (Pa.Super. 2007). The interpretation of a contract is a question of law for which our standard of review is *de novo*. ***Id***. "A cornerstone principle of contract interpretation provides that where the words of the document are clear and unambiguous, we must "give effect" to the language." ***Tindall v. Friedman***, 970 A.2d 1159, 1165 (Pa.Super. 2009). In ascertaining the meaning of a contract and the intent of the parties, we look to the express language of the agreement and "need only examine the writing itself to give effect to the parties' intent." ***Melton v. Melton***, 831 A.2d 646, 654 (Pa.Super. 2003). By statute, absent a specific provision to the contrary, a contract pertaining to the disposition of property rights is not subject to modification by the court. ***See*** 23 Pa.C.S. § 3105; ***see also Stamerro v. Stamerro***, 889 A.2d 1251 (Pa.Super. 2005). Concomitantly, courts are not to add to a complete written contract absent fraud, mistake, or accident. ***See Yocca v. Pittsburgh Steelers Sports, Inc.***, 854 A.2d 425, 436-437 (Pa. 2004) (discussing parol evidence rule).

Nonetheless, under the doctrine of necessary implication, even if the language is unambiguous, a court may imply an obligation that is clearly within the contemplation of the parties at the time of contracting or that is necessary to carry out the contract. ***Slater v. Pearle Vision Center, Inc.***, 546 A.2d 676, 679 (Pa.Super. 1988). Phrased differently,

> In the absence of an express provision, the law will imply an agreement by the parties to a contract to do and perform those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made and to refrain from doing anything that would destroy or injure the other party's right to receive the fruits of the contract.

Id. (quoting ***Frickert v. Deiter Bros. Fuel Co., Inc.***, 347 A.2d 701 (Pa. 1975) (Pomeroy, J., concurring) (quoting ***D.B Van Campen Corp. v. Building and Const. Trades Council of Phila.***, 195 A.2d 134, 136 (Pa.Super. 1963)).

Courts may only imply a missing term where it both prevents an injustice, and "it is **abundantly clear** that the parties intended to be bound by such term." ***Glassmere Fuel Service, Inc. v. Clear***, 900 A.2d 398, 403 (Pa.Super. 2006) (emphasis in original); ***see also Kaplan v Cablevision of PA, Inc.***, 671 A.2d 716, 720 (Pa.Super. 1996) (*en banc*). In determining whether it is abundantly clear that the parties intended a term not provided in the contract, this Court has looked to the entirety of the agreement. ***See Slater***, ***supra***; ***Glassmere***, ***supra***; ***Kaplan***, ***supra***.

Wife's and the trial court's reliance on the common law doctrine of necessary implication and ***Stamerro***, ***supra***, is persuasive. In ***Stamerro***, the issue involved a husband's voluntary reduction of his income. The marital settlement agreement allowed him to seek a reduction in alimony should his income fall below a certain level. This Court held that the husband therein had not proven that his income decreased below the contractually designated amount. In the alternative, the ***Stamerro*** Court

found that the agreement necessarily precluded him from intentionally reducing his income to avoid paying higher alimony payments.

Here, the marital settlement's primary focus was on the distribution of real property. The purpose of the marital settlement in ***Stamerro***, which extensively involved issues of child support and alimony, would have been completely defeated if the husband could simply reduce his income. In this case, the provision of the marital agreement in question would be entirely eviscerated if it did not require Husband to negotiate in good faith an oil and gas lease. In sum, it is abundantly clear that the contract provision itself indicates an intent on the part of Husband to negotiate in good faith for an oil and gas lease on the property in question. Thus, his first issue does not entitle him to relief.

Husband's next contention is that the trial court erred in considering parol evidence.[1] According to Husband, in construing the marital agreement, the trial court relied on parol evidence in the nature of testimony from Wife and a representative of Chevron. Husband submits that since the document was clear and unambiguous, it was error to rely on anything other than the plain language of the marital agreement. Wife responds that the trial court did not consider parol evidence to alter the terms of the contract,

---

[1] Both the parties and the trial court continually misspell parol as parole. The latter spelling applies to proceedings governing criminals' eligibility for release after completing their minimum sentence and not the contractual rule at issue herein.

but applied the doctrine of necessary implication and considered the contested testimony in determining whether Husband acted in good faith.

Despite its name, the parol evidence rule is a rule of substantive law rather than a rule of evidence. ***O'Brien v. O'Brien***, 66 A.2d 309, 311 (Pa. 1949); ***Rempel v. Nationwide Life Ins. Co., Inc.***, 323 A.2d 193 (Pa.Super. 1974). Our Supreme Court cogently detailed the parol evidence rule in ***Yocca***, ***supra***. Therein, the High Court set forth that, absent fraud in the execution of the contract or mistake, whenever a party deliberately puts its engagements in writing, "the law declares the writing to be not only the best, but the only, evidence of their agreement. All preliminary negotiations, conversations and verbal agreements are merged in and superseded by the subsequent written contract." ***Id***. at 436. Accordingly, "terms and agreements cannot be added to nor subtracted from by parol evidence." ***Id***.

In order "for the parol evidence rule to apply, there must be a writing that represents the 'entire contract between the parties.'" ***Id***. (quoting ***Gianni v. Russell & Co.***, 126 A. 791, 792 (Pa. 1924)). In deciding whether a written agreement constitute the parties' entire contract, we examine the writing to determine "if it appears to be a contract complete within itself, couched in such terms as import a complete legal obligation without any uncertainty as to the object or extent of the parties' engagement[.]" ***Id***. Whenever the writing includes an integration clause providing that the

written agreement is intended to represent the parties' entire contractual agreement, it is presumed that the writing "expresses all of the parties' negotiations, conversations, and agreements made prior to its execution." ***Id***.

Previous oral or written negotiations involving the same subject matter as the written contract are "almost always inadmissible to explain or vary the terms of the contract[,]" if the writing is determined to be the complete agreement. ***Id***. at 436-437. Of course, "where a term in the parties' contract is ambiguous, 'parol evidence is admissible to explain or clarify or resolve the ambiguity, irrespective of whether the ambiguity is created by the language of the instrument or by extrinsic or collateral circumstances.'" ***Id***. at 437 (quoting ***Estate of Herr***, 400 Pa. 90, 161 A.2d 32, 34 (1960)).

The agreement herein contains an integration clause and the trial court found the contract language to be clear and unambiguous; however, it then stated, "the Parole [sic] Evidence Rule does not apply." Final Order, 6/6/12, at 1. This conclusion is an imprecise statement of the law and flips the rule on its head. It is whenever a contract is not integrated or a provision is ambiguous that the parol evidence rule will not apply. ***Kehr Packages, Inc. v. Fidelity Bank, Nat. Ass'n***, 710 A.2d 1169, 1173 (Pa.Super. 1998) ("before the parol evidence rule is applied, the court must determine, as a matter of law, whether the writing at issue is an integrated agreement."); ***West Conshohocken Restaurant Associates,***

Inc. v. Flanigan, 737 A.2d 1245, 1248 (Pa.Super. 1999) ("if the terms of the contract are ambiguous, parol evidence may be introduced to aid in the interpretation of the agreement"). In this regard, parol evidence may be used in interpreting the meaning given to a phrase or term in a contract. ***See Trapuzzano v. Lorish***, 354 A.2d 534, 536 (Pa. 1976). Parol evidence is also allowed to decide the question of whether a contract is fully integrated, partially integrated, or not integrated at all. ***See Dunn v. Orloff***, 218 A.2d 314 (Pa. 1966); ***Lenzi v. Hahnemann University***, 664 A.2d 1375, 1379-1380 (Pa.Super. 1995). The trial court stated that it considered the testimony in question "to determine whether the parties' intent was being obstructed, which the doctrine of necessary implication permits the [c]ourt to do[.]" Trial Court Opinion, 10/2/12, at 5.

The precise interplay between the parol evidence rule and the doctrine of necessary implication has not been fully explored, likely because in most circumstances an agreement necessarily does not encompass the full contract if a term must be implied. In ***Glassmere***, ***supra***, this Court did discuss both the parol evidence rule and the doctrine of necessary implication. Therein, the ***Glassmere*** Court determined that under the facts of that case, the doctrine of necessary implication did not overcome the parol evidence rule. ***Id***. at 402-403 (finding that agreement did not include other provisions indicating the parties contemplated the unexpressed term); ***Kaplan***, ***supra*** (same). Additionally, in those cases that have applied or

argued in favor of application of the common law doctrine, the courts have not relied on parol evidence to imply a contractual term. Rather, those decision have solely examined to the language of the contract itself, generally referring to the agreement as a whole. ***See Slater***, ***supra*** at 679 (determining that other provisions in lease provided "ample evidence" that the parties intended a non-explicit term); ***Frickert***, ***supra*** (Pomeroy, J. concurring).

Hence, it is apparent that, in applying the doctrine of necessary implication, our courts have not utilized parol evidence to imply a term. Instead, the courts have focused on the contract itself. We believe this is sound jurisprudence where there is no dispute over the meaning of a specific phrase and no party contests whether the contract is integrated. Of course, in the situation where the contract is ambiguous or it is not integrated, the parol evidence rule is no impediment in considering evidence outside the contours of the written agreement.

Instantly, we can affirm because a reading of the clause alone, without resort to the additional testimony, places an obligation on the part of Husband to seek an oil and gas lease. Absent such a requirement, there would simply be no reason for the oil and gas paragraph to exist. Since all contracts require the parties to act in good faith, the contract provision in question would be meaningless without mandating Husband enter negotiations for a lease within three years, and the oil and gas provision

itself conclusively establishes that the parties' contemplated oil and gas negotiations to either continue or ensue, Husband's second issue fails.

Husband's third, fourth, and fifth issues, are waived due to his failure to provide any citation to pertinent authority relevant to his positions. ***Kent v. Kent***, 16 A.3d 1158 (Pa.Super. 2011). Indeed, Husband's arguments for his third and fourth issue consist of only two sentences and the position he advances for his fifth claim contains three sentences. As Husband's assertions are inadequate to establish the trial court erred, he is not entitled to relief on those issues. ***See id***.

The final claim Husband levels on appeal is that the trial court erred in ordering that the proceeds from any and all future oil and gas leases shall be distributed in accordance with paragraph 26 of the marital settlement agreement regardless of when the leases are executed. Husband maintains that the settlement agreement entitles him to all proceeds of any oil and gas lease after five years from the execution of the agreement. Thus, he submits that the trial court had no authority to order Wife receive her share of the oil and gas revenue, pursuant to the agreement, for five years from when an oil and gas lease is signed. Wife counters that the trial court's remedy for Husband's breach was fair and equitable. She contends that due to Husband's "failure to timely negotiate an oil and gas lease equity and fairness can only be accomplished if the five year distribution commences when the leases are executed." Wife's brief at 9.

We find that under the Domestic Relations Code, the trial court's remedy in this matter was not error. First, we note that a party to a marital settlement agreement "may utilize a remedy or sanction set forth in [the Domestic Relations Code] to enforce the agreement to the same extent as though the agreement had been an order of the court except as provided to the contrary in the agreement." 23 Pa.C.S. § 3105(a). The remedies available to a trial court in enforcing a marital property settlement agreement may be equitable or at law. ***See Stamerro***, ***supra***.

The Domestic Relations Code grants the court full equity powers, 23 Pa.C.S. § 3323(f). That statute reads:

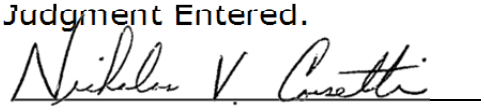
> **(f) Equity power and jurisdiction of the court.--**In all matrimonial causes, the court shall have full equity power and jurisdiction and may issue injunctions or other orders which are necessary to protect the interests of the parties or to effectuate the purposes of this part and may grant such other relief or remedy as equity and justice require against either party or against any third person over whom the court has jurisdiction and who is involved in or concerned with the disposition of the cause.

In keeping with the broad equitable powers afforded to the court below, we find that the remedy fashioned protects the interests of Wife in light of Husband's bad faith conduct and places the parties in substantially the same position as they were in at the time they entered the settlement agreement.

Order affirmed.

Judge Colville files a Dissenting Memorandum.

Judgment Entered.



Deputy Prothonotary

Date: 9/26/2013