

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

RICHARD A. ESTACIO,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
INNA Y. BELOPOLSKY,	:	
	:	
Appellee	:	No. 2591 EDA 2012

Appeal from the Order Entered July 17, 2012
In the Court of Common Pleas of Montgomery County
Domestic Relations No(s): 2011-04359

BEFORE: LAZARUS, OLSON, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.:

FILED MAY 22, 2013

Appellant, Richard A. Estacio (“Father”), the father of J.E. (“Child”), appeals *pro se* from an order entered in the Court of Common Pleas of Montgomery County. The order granted a petition to enforce a private child support agreement (“Agreement”) filed by Inna Y. Belopolsky¹ (“Mother”). Father argues Mother’s breach of the Agreement suspended his obligation to pay child support. We affirm.

The parties were married on March 22, 1999, and are the parents of J.E., born in August of 1999. The parties separated ten days later. In

* Former Justice specially assigned to the Superior Court.

¹ We corrected the caption to reflect the correct spelling of her last name, as reflected in her signature.

September of 2004, the parties entered into the Agreement. The Agreement, in pertinent part, provided:

4. . . . Father shall pay \$500.00 per month for the support of [Child] allocated as follows: \$300.00 per month payable to Mother and \$200.00 per month to be deposited into a restricted custodial savings or investment account for [Child's] post-secondary education

* * *

6. It is not the intent of Father and Mother to cause this Agreement to be filed in the Domestic Relations Office of any county of appropriate jurisdiction

7. In the event Mother should breach this Agreement by filing a support complaint in any Domestic Relations Office in the Court of Common Pleas of the appropriate jurisdiction, Father's obligation to pay . . . shall be, and is, declared null and void

8. Mother and Father agree that the within Agreement shall not be enforceable in any Court and is not being entered as an Order of Court.

Agreement, 9/2/04, at ¶¶ 4, 6-8. The Agreement provided that Father's support obligation was suspended for two months in the summer when he had primary custody. *Id.* at ¶ 5.

Prior to the execution of the Agreement, Mother deposited \$10,000 into a "529 account"² that she opened on October 27, 2003. N.T. Custody Modification Hr'g, 12/13/11, at 74. Mother explained her rationale for opening the account:

² **See** 26 U.S.C. § 529. Generally, a 529 plan is used to prepay tuition and other expenses at an accredited institution of higher education.

[Mother's counsel]: Did you open up an account for your son, an educational account?

[Mother]: Yes.

[Counsel]: And did you deposit money into that account?

[Mother]: Yes. When he and I started talking about the custody and the support and the \$200 a month, I thought well, instead of me having to bother to do this every month and plus to allow the money to grow, I'll just put in like five years' worth. I put in \$10,000 and I thought that's fine, that will take care of about five years and I don't have to worry about it

[Counsel]: Did you tell him you had done that?

[Mother]: I've told him repeatedly that I have done that.

* * *

[Counsel]: Now, when you say that he was aware of that, that you had opened up this account, can you tell me on what occasions you told him this?

[Mother]: When he would ask about it or when I guess the discussion of child support would come up.

[Counsel]: And just estimating, how many times did you tell him you had opened up this account and you had put money into it?

[Mother]: Over the seven year period that it's been open?

[Counsel]: Yes.

[Mother]: 15 times.

N.T. Custody Modification Hr'g, 11/21/11, at 238-39.³

³ This was a hearing on Father's petition to modify custody, which was filed on February 18, 2011.

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After the parties executed the Agreement, Mother did not deposit \$200 of Father's monthly payments into the 529 account. Father discovered Mother's inaction and stopped making payments after January of 2010. **See, e.g.**, N.T. Pet. for Contempt, 7/16/12, at 22. Mother unsuccessfully requested Father to resume his child support payments.

On March 5, 2012, Mother filed the instant petition for contempt and for enforcement of the Agreement. The petition alleged, *inter alia*, Father stopped making all support payments when he learned Mother had not been depositing \$200 of the \$500 monthly payment into the 529 account. Mother further alleged that "child support and custody agreements were negotiated over a long period of time and that she had opened up an account for [Child] and had deposited \$10,000 into it so as not to have to make the \$200 payments each month." Mother's Pet. for Contempt & Enforcement of Agreement, 3/5/12, at ¶ 9.

After an evidentiary hearing on July 16, 2012, the court entered an order on July 17, 2012, holding that both parties breached the Agreement. The court explained that Father breached the Agreement by failing to pay all support and Mother breached the contract by failing to notify him that she was prepaying. Trial Ct. Op., 10/5/12, at 4. The court's order required Father to pay the sum of \$11,500 to satisfy the outstanding amount owed under the Agreement. Order, 7/17/12. The court also found Mother's testimony "extremely credible" that she prepaid the college portion of

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Father's support obligations because she did not want to deposit \$200 per month for five years. Trial Ct. Op. at 5.

On August 16, 2012, Father filed a timely notice of appeal. Father filed a timely court-ordered Pa.R.A.P. 1925(b) statement.

Father raises the following issues:

1. Did the lower court err when it ruled that it had jurisdiction to hear and enforce the parties' private support Agreement pursuant to 23 Pa.C.S.[] Section 3105?
2. Did the trial court err when it failed to correctly apply substantive contract law to interpret the private support Agreement?
3. Did the trial court err in failing to find that [Mother] materially breached the Agreement by refusing to deposit \$200.00 per month into a separate account for the parties' son college expenses?
4. Did the court below err when it ruled that [Father] had breached the private support Agreement when he stopped paying pursuant to the Agreement upon discovering that [Mother] had breached the Agreement?

Father's Brief at 3.

We summarize Father's arguments for all of his issues. In his first issue, Father argues that the Agreement is not enforceable by the trial court because the Agreement's provisions expressly provided to the contrary. He further argues, "the Agreement herein specifically provided to the contrary, *i.e.*, that it would not be enforceable as an order of court. Thus, this statute provides that it is not to be used as an enforcement remedy where it is clear

from the express wording of the Agreement that the parties had clearly intended otherwise.” Father’s Brief at 6.

Father further claims the trial court erroneously applied substantive contract law when it held that (1) Mother had not materially breached the Agreement by failing to deposit \$200 per month into the 529 account, and (2) Father had breached the Agreement when he stopped paying. He complains the 529 account “was opened in 2003, a year before the existence of the Agreement in September 2004.” *Id.* at 4. Therefore, Mother’s failure to deposit \$200 of his payment per month into the college account, Father suggests, “was certainly material in that it was essentially her **only real substantive duty** under the Agreement.” *Id.* at 7 (emphasis in original). Father concludes a “material breach of an Agreement suspends the other party’s obligation to perform under the Agreement.” *Id.* We hold Father is not entitled to relief.

This Court has stated the standard of review as follows:

Contract principles apply to the interpretation of post-nuptial agreements. In determining whether the trial court properly applied contract principles, the reviewing Court must decide, based on all the evidence, whether the trial court committed an error of law or an abuse of discretion. We do not usurp the trial court’s fact-finding function.

* * *

Private support agreements are subject to contract principles and enforceable in an action at law for damages or in equity for specific performance. Absent fraud, misrepresentation, or duress, spouses should be bound by the terms of their agreements.

Sams v. Sams, 808 A.2d 206, 210-11 (Pa. Super. 2002) (citations and quotation marks omitted). With regard to private child support agreements, this Court has stated: “Contracts between husband and wife, **if fairly made**, are generally considered binding as to them, **although legally ineffective to oust the jurisdiction of the court in a support action.**” *Id.* at 211 (second emphasis added). Specifically,

visitation and custody matters will be enforced according to the best interests of the child **and as with support [o]rders, advisory effect will be given to the Agreement but without binding effect on the court** when it is not in the best interests of the child. Parties to a separation agreement cannot bargain away the rights of the children; the interests of the child will always be subject to the watchful eyes of the court.

Thomson v. Rose, 698 A.2d 1321, 1323 (Pa. Super. 1997) (citation and quotations marks omitted).

A mother cannot, by contract, bargain away the right of her minor [children] to adequate support from the father, regardless of the validity of the agreement as between the parents themselves In each case it is for the court to determine whether or not the terms of the agreement are reasonable, made without fraud or coercion, and have been carried out in good faith.

Sams, 808 A.2d at 211.

The Divorce Code provides:

§ 3105. Effect of Agreement between parties

(a) Enforcement.—A party to an agreement regarding matters within the jurisdiction of the court under this part, whether or not the agreement has been merged or incorporated into the decree, may utilize a remedy or

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sanction set forth in this part 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).

This Court has interpreted section 3105(a) as follows:

Section 3105(a) pertains to matters under Part IV of Title 23; **it is Part V that addresses child support**, specifically Chapter 43. The legislature did not extend section 3105(a) of the Divorce Code to Part V of the Domestic Relations Code, because parties' agreements pertaining to matters of child support or child custody **are always subject to court intervention**.

Rose, 698 A.2d at 1323-24 (citations omitted).

With regard to Father's first issue, the trial court "determined that while the structure of this Agreement may have served the parties' interests at one time[,], it is contrary to the minor child's interests and contrary to the policy of this Commonwealth to ensure that the right to child support be enforceable and therefore, the [c]ourt is authorized to enter an Order to satisfy the support due to the minor child" pursuant to the Agreement. Trial Ct. Op. at 4. We agree the trial court had jurisdiction, notwithstanding paragraphs six through eight of the Agreement. **See Rose**, 698 A.2d at 1323-24; **see also Sams**, 808 A.2d at 211. Because the parties' contract addresses child support, public policy bars Father from enforcing any contract clause divesting the court of jurisdiction. **See Rose**, 698 A.2d at 1323-24; **see also Sams**, 808 A.2d at 211.

With regard to Father's next three issues, the trial court determined that Father breached the Agreement by failing to pay the full amount. The record substantiates the trial court's determination. **See, e.g.**, N.T. Pet. for Contempt, 7/16/12, at 22. Moreover, based on Mother's testimony that she had notified Father of the 529 account fifteen times since it was opened in 2003, the trial court determined that he had notice of the 529 account. **See** N.T. Custody Modification Hr'g, 11/21/11, at 238-39. As to the intent of the parties, "the [c]ourt did not conclude it was a breach of the Agreement because the money was in a college fund and therefore the intent of the parties was still being fulfilled. How Mother chose to put the funds into the college account did not concern [the trial court] so long as funds were deposited into the college account." Trial Ct. Op. at 5. We agree.

Instantly, the parties voluntarily entered into the Agreement. Thus, principles of contract law govern. **See Sams**, 808 A.2d 206. Father conceded that he stopped paying all child support after discovering that Mother did not deposit \$200 per month into the 529 account. Father's Brief at 4; **see, e.g.**, N.T. Pet. for Contempt, 7/16/12, at 22. We hold that Father breached the contract by unilaterally deciding to cease paying the entire \$500 per month to Mother. **See id.**

Father, however, attempts to excuse his breach by referencing Mother's failure to make monthly deposits of \$200 into the 529 account, which he suggests was a material breach that suspended or terminated the

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Agreement. We conclude this argument is meritless because Father knew of Mother's deposit of \$10,000 to pre-pay Father's obligations. **See** N.T. Custody Modification Hr'g, 11/21/11, at 238-39; **see also** Trial Ct. Op. at 5. For all these reasons, the trial court did not abuse its discretion by granting Mother's petition for contempt and enforcement of the Agreement. **See Sams**, 808 A.2d at 210. Accordingly, having discerned no error of law or abuse of discretion, we affirm the order below. **See id.** at 210-11.

Order affirmed.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Kevin Gambetta", written over a horizontal line.

Prothonotary

Date: 5/22/2013