

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MICHELLE DUDDY

Appellant

v.

THOMAS J. DUDDY III

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1688 MDA 2013

Appeal from the Decree entered August 22, 2013
In the Court of Common Pleas of Tioga County
Civil Division at No(s): 228 Family Section 2011

BEFORE: GANTMAN, P.J., ALLEN, J., and LAZARUS, J.

MEMORANDUM BY GANTMAN, P.J.:

FILED APRIL 04, 2014

Appellant, Michelle Duddy ("Wife"), appeals from the divorce decree entered in the Tioga County Court of Common Pleas, which made final the prior order granting the petition of Appellee, Thomas J. Duddy III ("Husband"), to enforce the parties' marital settlement agreement ("MSA"). We affirm.

In its opinion, the trial court fully set forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.

Wife raises a single issue for our review:

DID THE TRIAL COURT ERR IN ORDERING THE PARTIES
TO FOLLOW THE TERMS OF THE AGREEMENT ALLEGEDLY
ENTERED INTO AT THE OCTOBER 15TH, 2012 CONFERENCE
WHEN THE AGREEMENT WAS NEVER FORMALIZED AND

APPELLANT DID NOT HAVE AN OPPORTUNITY TO REVIEW
AND SIGN THE AGREEMENT?

(Wife's Brief at 2).

A court order upholding a marital settlement agreement "is subject to an abuse of discretion or error of law standard of review. An abuse of discretion is not lightly found, as it requires clear and convincing evidence that the trial court misapplied the law or failed to follow proper legal procedures." **Holz v. Holz**, 850 A.2d 751, 757 (Pa.Super. 2004), *appeal denied*, 582 Pa. 700, 871 A.2d 192 (2005) (internal citations omitted).

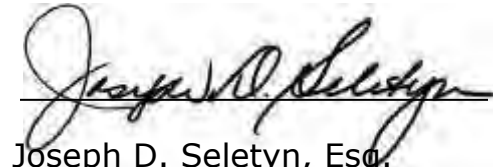
A marital settlement agreement "is enforceable by utilizing the same rules of law used in determining the validity of contracts." **Luber v. Luber**, 614 A.2d 771, 773 (Pa.Super. 1992), *appeal denied*, 535 Pa. 636, 631 A.2d 1008 (1993). "Absent fraud, misrepresentation, or duress, parties are generally bound by the terms of their agreements." **Adams v. Adams**, 848 A.2d 991, 993 (Pa.Super. 2004). The intent of the parties to be bound is a question of fact, and "[a] reviewing court must defer to the findings of the trier of the facts if they are supported by the evidence." **Luber, supra** at 773.

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Robert E. Dalton, Jr., we conclude Wife's issue merits no relief. The trial court opinion comprehensively discusses and properly disposes of the question presented. (**See** Trial Court Opinion, filed October 18, 2013, at 2-5) (finding Husband

and Wife entered into MSA, resolving all outstanding economic issues between them, at October 15, 2012 meeting with their respective counsel present; counsel for both parties took notes during meeting, which resulted in production of handwritten agreement; Wife's counsel at meeting testified to formation of MSA and to Wife's intent to resolve economic issues according to terms discussed by parties; MSA contains large amount of detail as to disposition of parties' assets and debts and other issues, which indicates great deal of negotiation took place; parties spent four hours negotiating with clear intent to finalize matter; parties agreed to cancel upcoming equitable distribution hearing scheduled for October 26, 2012; Wife contacted different attorney to discuss matter immediately following meeting; Wife's argument that her counsel was supposed to type up information in handwritten notes and make some changes does not support her assertion that no agreement was ever made because agreement already contained essential terms of marital settlement; both parties' legal interests were fully represented, and they had ample opportunity to contribute to formation of agreement; MSA is binding and enforceable). Accordingly, we affirm on the basis of the trial court opinion.

Decree affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", is written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/4/2014

MICHELLE DUDDY : IN THE COURT OF COMMON PLEAS
VS. : OF TIOGA COUNTY, PENNSYLVANIA
THOMAS J. DUDDY, III : NO. 228 FS 2011

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CLERK OF COURTS

OPINION

The Appellant in this matter is Michelle Duddy(hereafter Wife), Plaintiff in the original divorce action and Respondent to the Petition to Enforce Agreement. Appellee is Thomas J. Duddy, III,(hereafter Husband) original Defendant in the divorce action and Petitioner seeking enforcement of a marital settlement agreement.

Husband's Petition was filed on October 26, 2012 and the matter was heard by the court on March 26, 2013. The court entered an order on April 5, 2013 granting the Petition to Enforce Agreement and directing the parties to follow the terms of the Agreement reached on October 15, 2012. Wife filed a Motion for Reconsideration of the April 5, 2013 order. For disposition of that Motion, see the court's order of August 12, 2013. A final divorce decree was signed by the court on August 22, 2013. On September 20, 2013, Wife filed a Notice of Appeal to the court's order of April 5, 2013 granting Husband's Petition to Enforce Agreement, an order which became final upon entry of the divorce decree.

The parties were married on June 13, 1998 and separated on or about July 2, 2011. Wife filed a Complaint in Divorce on August 1, 2011. On October 15, 2012, depositions of Plaintiff and Defendant were scheduled at the Law Office of Rita Alexyn, then counsel for Wife. At the

time of the depositions, as alleged by Husband and found by the court, the parties and their attorneys discussed all aspects of the case and the parties reached an Agreement resolving all outstanding issues between them, thereby cancelling depositions. The parties further agreed to cancel all upcoming proceedings, including the Equitable Distribution hearing scheduled for October 26, 2012.

Counsel for both parties took notes during the negotiations and which resulted in the production of a handwritten agreement. On October 19, 2012, Husband's counsel received a telephone call from Stephen Banik, Esquire, newly retained by Wife after having reached the Agreement. Mr. Banik informed counsel for Husband that Wife had no intention of following through with the terms of the Agreement and wished to seek other options.

Rita Alexyn, Esquire, testified at the hearing on the petition to enforce the agreement. Her testimony established that all of the economic issues that remained between the parties were resolved at that four-way meeting between both parties and their respective attorneys, including the division of their assets and debts. Additionally, the issue of Wife's request for alimony, health insurance and contribution towards her counsel fees were resolved. Counsel for Wife confirmed Mrs. Duddy's intent to resolve the economic issues according to the terms discussed by the parties.

The parties agreed that they would roll over Husband's Merrill Lynch 401K retirement account to Wife who would then immediately cash it out. The net amount received from the cash-out, after taxes, would be applied to the credit card debt accumulated by the parties during their marriage. The parties agreed that any remaining debt, would be divided between the parties such that Wife would pay 42.5% of the remaining marital credit card debt and then Husband

○ would pay the balance. The parties agreed to maximize the debt on Husband's Cabela's Credit Card with Wife agreeing to pay the monthly payment with the plan to refinance the account into her own name. Wife agreed to pay 100% of her Chase Credit Card Account. The parties agreed that Husband would retain the 2008 Polaris Sportsman and to sell a trailer to Wife's father for the sum of \$650.00, with Husband to receive that amount by the end of October, 2012. The parties agreed that Husband would pay alimony to Wife in the then current spousal support amount until May 31, 2013, and then \$800.00 per month for June, July and August, 2013. Wife agreed that Husband would not reimburse the third-quarter un-reimbursed medical expenses as she had requested. The issue of custody and related issues were also discussed. The parties also agreed that Husband would reimburse Wife 50% of the cost of a storage trailer containing a majority of their personal property. They agreed to attempt to divide the property. If the parties could not agree on the disposition of the content of the storage trailers, they agreed that issue alone would be decided by the court. If a QDRO was necessary, it was agreed that Law Data would prepare the Qualified Domestic Relations Order to transfer the 401k. Husband was to pay the costs of the preparation of any QDRO. At that same time, a hearing was pending on a Petition for Protection From Abuse, in addition to a summary hearing on harassment. The parties also agreed to a disposition of those matters. Likewise, a petition for special relief filed by Wife was also resolved.

At times during negotiations, Wife and her counsel would step out of the room to hold a private discussion and then rejoin Husband and his counsel. The entire settlement conference took place over a period of four hours.

Immediately following the meeting, Wife attempted to contact a different attorney to

discuss the matter. She was of the belief that Attorney' Alexyn intended to type up the information contained in the handwritten version, but with some changes. Wife's assertion is that she did not agree to anything that day.

We disagreed with Wife's position and issued the order to affirm and enforce the Agreement. It is established law in the Commonwealth that parties may bind themselves contractually prior to the execution of a written document through mutual manifestations of assent, even where a later formal document is contemplated. (Citation omitted). The intent of the parties to be bound is a question of fact which must be determined by the factfinder. *Luber v Luber*, 418 Pa.Super. 452, 614 A.2d 771 (1992).

The Agreement herein contains a large amount of detail as to the disposition of debt and assets which indicates to the court that a great deal of negotiation took place. The parties spent four hours in negotiation with the clear intent to finalize this matter.

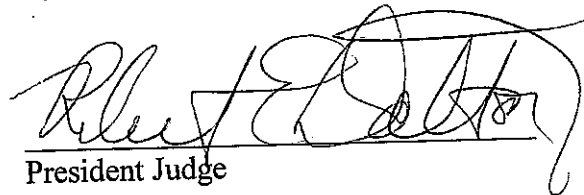
Wife's argument that the Agreement would be typed by her counsel and that some changes were to have been made does not support her assertion that there was no agreement. As long as the oral agreement contained essential terms of the marital settlement, it could be enforced, despite the fact that additional terms were to be added to embellish the agreement when it was reduced to writing. (Citation omitted). Where the parties have reached an oral agreement, the fact that they intend to reduce the agreement to writing does not prevent enforcement of the oral agreement. *Luber, supra. citing Kazanjian v New England Petroleum Corporation*, 332 Pa.Super. 1, 480 A.2d 1153 (1984).

The Agreement does indeed contain essential terms of the marital settlement as testified to at the March 26, 2013 hearing which we noted above. Each parties' legal interests were fully

represented and they had ample opportunity to contribute to formation of the Agreement. It is therefore a binding, enforceable Agreement. Wife's "buyer's remorse" after the fact does not invalidate the Agreement.

We respectfully submit this matter for appellate review.

By the Court,



President Judge

October 17, 2013

cc: Stephen Banik, Esq.
Christina Dinges, Esq.
Michael Dinges, Esq.
James Rague, Esq.