NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MARY LOU DIFRANCESCO Appellant v. WILLIAM MCSWAIN, ESQUIRE AND DRINKER BIDDLE & REATH, LLP Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1359 EDA 2012

Appeal from the Order Dated April 17, 2012
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): November Term, 2010, No. 003135

BEFORE: FORD ELLIOTT, P.J.E., MUNDY, J., and FITZGERALD, J.*

MEMORANDUM BY MUNDY, J.: Filed: March 8, 2013

Appellant, Mary Lou DiFrancesco, appeals *pro se* from the April 17, 2012 order granting the motion to enforce a settlement agreement filed by Appellees, William McSwain, Esquire, and Drinker, Biddle & Reath, LLP. After careful review, we affirm.

The trial court summarized the relevant facts and procedural history of this case as follows.

> Briefly, [Appellees] representation of [Appellant] originated in 2008 in connection with the proceedings ancillary to the divorce action from her former husband, Wayne R. DiFrancesco. [Appellees] were specifically retained by [Appellant] for the limited purpose of representing her in a challenge of a [p]renuptial [a]greement which was being enforced

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* Former Justice specially assigned to the Superior Court.

in the divorce action initiated by Mr. DiFrancesco. [Appellant]'s chief contention of the [p]renuptial [a]greement was that Mr. DiFrancesco allegedly hid his true financial worth at the time [Appellant] signed it. [Appellant] retained a separate divorce attorney to represent her in the divorce action since [Appellees] were not matrimonial lawyers. [Appellees] dealt only with the contractual issues relating to the [p]renuptial [a]greement.

Apparently, sometime around December 17, 2008, [Appellant] was advised by [Appellees] that it was unlikely she would succeed in her challenge of the [p]renuptial [a]greement and that she should enter into a settlement agreement. [Appellees] and Mr. DiFrancesco's counsel conducted negotiations and in the presence of the [trial] court, [Appellant] and Mr. DiFrancesco settled the issues involved in their divorce action; *to wit*: the parties' property rights, claims for maintenance, support, alimony, alimony *pendent lite*, counsel fees and equitable distribution.

In her complaint of professional negligence, [Appellant] asserts that after the execution of the settlement agreement, she learned of the alleged inadequacies of [Appellees]' representation, *to wit*: [Appellees] had not taken appropriate discovery on [Appellant]'s behalf, particularly of Mr. DiFrancesco's financial statements, such as personal tax returns or corporate tax returns for his numerous businesses; [Appellees] had failed to hire [a] forensics expert to evaluate the financial information; [Appellees] did not properly and fully advise [Appellant] of her rights, options and relative risks and rewards of proceeding with the settlement agreement versus pursuing her rights under the prenuptial agreement; the settlement agreement did not adequately preserve [Appellant]'s rights to alimony and support; [Appellees] did not consult with the matrimonial lawyer regarding the matrimonial issues resolved by the settlement agreement; and [Appellees] failed to conduct independent research as to the law or facts with respect to [Appellant]'s entitlement to alimony

and support, nor did they do an independent analysis as to whether the settlement agreement was more favorable to [Appellant] than simply withdrawing the petition to void the [p]renuptial [a]greement and accepting the terms of the [p]renuptial [a]greement itself. [Appellant] argues that had the [p]renuptial agreement simply been enforced rather than entering into the recommended settlement agreement, she would have received a significant amount more than what she ultimately received pursuant to the settlement agreement.

On November 22, 2010, represented by Steven E. Angstreich, Esquire (Attorney Angstreich) of Weir & Partners, LLP, [Appellant] filed a professional liability action against [Appellees] claiming they committed legal malpractice/negligence and breach of contract. [Appellees] filed a counterclaim against [Appellant] seeking approximately $35,000.00 in unpaid legal fees.

On October 14, 2011, [Appellees]' counsel Alan C. Promer, Esquire (Attorney Promer), called [Attorney] Angstreich offering to resolve the instant litigation through mutual releases with no payment by either party to the other. On January 18, 2012, [Attorney] Angstreich, with authority from [Appellant], called [Attorney] Promer and accepted [Appellees]' proposal to resolve the instant litigation. This oral agreement was memorialized by an email submitted that same day timed 2:11 p.m., from [Attorney] Promer to [Attorney] Angstreich[.]

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Between January 24 and February 1, 2012, correspondence between [Attorney] Promer and [Attorney] Angstreich produced a written settlement agreement that incorporated the material terms of the January 18, 2012 agreement: mutual releases and no payment by either party to the other.

On February 22, 2012, [Attorney] Angstreich and his law firm, Weir & Partners LLP, filed a petition

to withdraw as counsel. The petition advised the [trial] court that subsequent to February 1, 2012, when the release agreement was forwarded to [Appellant] for her execution, a breakdown in communications occurred between [Appellant] and counsel. The petition further averred that despite numerous attempts to communicate with [Appellant], she had neither responded to telephone calls nor had acknowledged receipt of or executed the finalized settlement agreement. The petition also referenced an outstanding balance due for fees and costs incurred in prosecuting the litigation. By [o]rder dated February 28, 2012, a rule to show cause hearing was scheduled for March 12, 2012.

In the interim, on March 5, 2012, a court-ordered settlement conference was held in this case. Counsel for [Appellees], [Appellant], and Amy Brandt, Esquire (of Weir & Partners LLP), attended. At the settlement conference and in the presence of all counsel and the judge *pro tem*, [Appellant] allegedly admitted that on January 18, 2012, she had agreed to the settlement terms [Attorney] Angstreich had accepted on her behalf to resolve the instant litigation, but that shortly thereafter she changed her mind.

On March 8, 2012, [Appellees] filed the [instant] motion to enforce settlement.

On March 12, 2012, at the scheduled rule hearing, [Appellant] appeared and provided the [trial] court a reply in opposition to the petition to withdraw as counsel. Therein, [Appellant] admitted to [the trial court] that she initially agreed to the terms of the settlement but changed her mind an hour later, and was told by counsel that the deal was done and that the settlement had occurred. Thereafter, after consideration of the argument made, [the trial court] granted the petition to withdraw as counsel. [Appellant] was instructed to either obtain new counsel or to proceed *pro se*.

> By [o]rder dated April 13, 2012, [the trial court] granted [Appellees]' motion to enforce the settlement agreement finding that "[Appellant] and [Appellees] have a valid, binding agreement to resolve the instant litigation, [Appellant] shall sign/execute herself that 'Praecipe to Mark Action Discontinued [w]ith Prejudice' and return it to counsel for [Appellees] within ten days of the entry of this [o]rder; failure to do so may result in sanctions." The order was officially recorded [on the docket] on April 17, 2012.

Trial Court Opinion, 9/4/12, at 2-6 (footnotes omitted). On April 23, 2012, Appellant filed a timely notice of appeal.[1]

On appeal, Appellant raises two issues for our review.

> 1. Whether the trial court erred in concluding that a binding settlement was reached regarding [Appellant]'s claims and in failing to conduct an evidentiary hearing to resolve the factual dispute concerning the existence of the alleged settlement agreement[?]
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> 2. Whether the trial court erred in failing to conduct an evidentiary hearing to resolve the factual dispute concerning the existence of apparent versus express authority of [Appellant]'s then counsel to agree to a settlement where [Appellant] denied that authority was given to settle and denies that a settlement exists[?]

Appellant's Brief at 4.

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[1] Appellant and the trial court have complied with Pa.R.A.P. 1925.

As Appellant's issues are interrelated, we will address them as one. We are guided by the following in our assessment of a trial court's determination that a settlement agreement was reached.

> Our standard of review of a trial court's review of a settlement agreement is plenary as to questions of law. We are, however, bound by those factual findings that are supported by competent evidence. The evidence must be viewed in the light most favorable to the prevailing party. Thus, we will overturn the trial court's decision only when the court's factual findings are contrary to the weight of the evidence or when its conclusions are erroneous.

Urmann v. Rockwood Cas. Ins. Co., 905 A.2d 513, 518 (Pa. Super. 2006) (citations omitted).

Our Supreme Court has long recognized,

> [t]he enforceability of settlement agreements is governed by principles of contract law. Courts will enforce a settlement agreement if all its material terms have been agreed upon by the parties. A settlement agreement will not be set aside absent a clear showing of fraud, duress, or mutual mistake.
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> Further support for enforcing settlement agreements according to contract law principles is found in ***Buttermore***[***v. Aliquippa Hosp.***, 561 A.2d 733 (Pa. 1989)], where this Court opined:
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> > Parties with possible claims may settle their differences upon such terms as are suitable to them. They may include or exclude terms, conditions and parties as they can agree. In doing so, they may yield, insist or reserve such right as they choose. If one insists that to settle, the matter must end then and forever, as between them, they are at liberty to do so. They may agree for reasons of their own that they will not sue each other or any one for the

> event in question. However improvident their agreement may be or subsequently prove for either party, their agreement, absent fraud, accident or mutual mistake, is the law of their case.

[***Id.***] at 735.

Pennsbury Village Associates, LLC v. Aaron McIntyre, 11 A.3d 906, 914-915 (Pa. 2011) (quotation marks and some citations omitted).

The crux of Appellant's argument is that factual evidence is in dispute, and therefore, she is entitled to an evidentiary hearing. Specifically, Appellant argues no "settlement agreement exists between herself and [Appellees]." Appellant's Brief at 10. Appellant avers that the trial court incorrectly "bases their [sic] determinations and findings from the parties' petitions and answers and from what was alleged to have been said at an unrecorded mandatory pre-trial settlement conference." ***Id.*** at 13.

In support of her averment that the trial court erred in failing to hold an evidentiary hearing, Appellant cites to various Commonwealth Court cases. "[W]e note that decisions rendered by the Commonwealth Court are not binding on this Court." ***Beaston v. Ebersole***, 986 A.2d 876, 881 (Pa. Super. 2009). Appellant does, however, also rely on a decision of this Court, specifically, ***Christian v. Allstate Ins. Co.***, 502 A.2d 192 (Pa. Super. 1985). ***See*** Appellant's Brief at 12. In ***Christian***, this Court held that "[w]here the pleading raises an issue of fact relative to a purported settlement, the trial court must conduct an evidentiary hearing[.]"

Christian, ***supra*** at 194. Specifically, "[t]he court may be required to determine if an offer to settle was tendered, if it was accepted, if counsel had authority to act, the terms of the settlement and possibly other matters." ***Id.*** The ***Christian*** Court remanded for an evidentiary hearing because the record did "not fulfill the requirements of specific findings of fact on the record containing the date of the offer and the circumstances surrounding it." ***Id.***

Instantly, however, the trial court notes the following occurred.

> [A] valid offer was made; the offer was accepted by [Appellant] for the consideration of each party terminating the case at no expense charged to the other. [Appellant] admits to giving her counsel authority to bind her to the terms of the settlement, *albeit*, she later changed her mind. Without a doubt, there was a meeting of the minds and [Appellant]'s later revocation cannot undo the validity of the settlement agreement reached. A party's "change of heart" regarding an otherwise valid settlement agreement is not a basis to invalidate or disallow it.
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> Further, the detailed pleading and responses dispel any ambiguity as to whether [Attorney] Angstreich had authority to settle the instant litigation. [Appellant] suggests that due to the emotional stress caused by [Attorney] Angstreich's attitude and the feeling that she lacked control over her own case, "in haste and in great emotional distress" she told [Attorney] Angstreich, on January 18, 2012, that she wanted to end this litigation and was going to propose a settlement. Based upon their discussion, [Attorney] Angstreich accepted [Appellees'] proposal to settle whereby each side mutually releasing the other and neither party paying the other any proceeds. The settlement agreement provided substantial benefit to [Appellant] in that it relieved her of the obligation to

> pay $35,000.00 for the outstanding legal fees owed to [Appellees].

Trial Court Opinion, 9/4/12, 9-10.

After careful review of the certified record, we agree with the trial court's conclusion. As noted by both the trial court and Appellees, Appellant clearly states in the pleadings that she "changed her mind an hour after she decided to settle and told [Appellees] she changed her mind. In that time, she was told that the deal was done and the settlement had occurred." [Appellant's] Memorandum of Law in Reply to [Appellees'] Request for Leave to Withdraw as Counsel, 3/5/12, at 3. "However improvident their agreement may be or subsequently prove for either party, their agreement, … is the law of their case." ***Pennsbury Village Associates***, ***supra*** at 915 (citation omitted). Therefore, as Appellant does not allege fraud, accident or mutual mistake, we discern no error on the part of the trial court enforcing a settlement agreement Appellant admits to having agreed to. ***See id.*** at 914 (stating, "[a] settlement agreement will not be set aside absent a clear showing of fraud, duress, or mutual mistake[]"). Further, as there is no factual issue in dispute, Appellant is not entitled to an evidentiary hearing. ***See Christian***, ***supra*** at 194.

Accordingly, we conclude Appellant is bound by the settlement agreement and the encompassing April 17, 2012 Order. Therefore, we affirm.

Order affirmed.