

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

E.C.B.,

Appellant

v.

R.J.C.,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2742 EDA 2014

Appeal from the Order Entered August 28, 2014
In the Court of Common Pleas of Delaware County
Civil Division at No(s): 08-012526

BEFORE: FORD ELLIOTT, P.J.E., OLSON AND WECHT, JJ.

MEMORANDUM BY OLSON, J.:

FILED AUGUST 04, 2015

Appellant, E.C.C.¹ ("Wife"), appeals from the order entered on August 28, 2014. We vacate and remand.

The relevant factual background of this case is as follows. Wife and R.J.C. ("Husband") were married on September 7, 1990 and divorced on August 18, 2009. On May 19, 2011, the parties entered into a marital settlement agreement which included provisions for child support. The marital settlement agreement did not merge with the divorce decree. Also on May 19, 2011, the parties filed a stipulation relating to child support with the domestic relations section of the Court of Common Pleas of Delaware County.

¹ As this case involves child support issues, we abbreviated the names of the parties to protect the identity of the children. We amended the caption accordingly.

The relevant procedural history of this case is as follows. On December 4, 2013, Husband filed a petition to decrease his child support obligation in the domestic relations section of the Court of Common Pleas of Delaware County. On January 30, 2014, the master entered an order granting Husband's petition. Wife appealed and requested a *de novo* hearing. A *de novo* hearing on Wife's challenge to the reduction of Husband's child support obligation was scheduled for October 29, 2014 before the Honorable William C. Mackrides. On February 11, 2014, Wife separately filed the instant petition for contempt, seeking enforcement of the May 2011 marital settlement agreement with Husband. Wife filed her contempt petition in the Court of Common Pleas of Delaware County and the matter was assigned to the Honorable Linda A. Cartisano ("trial court"). Husband moved to quash the petition for contempt. On August 21, 2014, the trial court heard argument on Husband's motion to quash and Wife's petition for contempt. On August 28, 2014, the trial court denied Wife's petition and ordered that the parties proceed before "support court". Trial Court Order, 8/28/14, at 1. On September 18, 2014, Wife filed a motion for reconsideration. On September 23, 2014, the trial court denied the motion for reconsideration. This timely appeal followed.²

² On September 30, 2014, the trial court ordered Wife to file a concise statement of errors complained of on appeal ("concise statement"). **See** Pa.R.A.P. 1925(b). On October 14, 2014, Wife filed her concise statement. On December 2, 2014, the trial court issued its Rule 1925(a) opinion. Wife's (*Footnote Continued Next Page*)

Wife presents two issues for our review:

1. Whether the August 2[8], 2014 [o]rder of [c]ourt is a final appealable [o]rder[?]
2. Whether the [trial c]ourt erred in denying Wife's [p]etition for [c]ontempt and [e]nforcement of [p]roperty [s]ettlement [a]greement and refusing to enforce the terms of the parties' [p]roperty [s]ettlement [a]greement[?]

Wife's Brief at 4.

It is axiomatic that "[a]n appeal lies only from a final order, unless permitted by rule or statute." **Stewart v. Foxworth**, 65 A.3d 468, 471 (Pa. Super. 2013). In this case, it is undisputed that no statute or rule of court permits this appeal. Therefore, in order to be appealable, the order entered on August 28, 2014 must be a final order. Pennsylvania Rule of Appellate Procedure 341 provides that "[a] final order is any order that: (1) disposes of all claims and of all parties; or (2) is expressly defined as a final order by statute; or (3) is [certified as a final order by the trial court]." Pa.R.A.P. 341(b). Whether an order is final is a question of law; therefore, our standard of review is *de novo* and our scope of review is plenary. **See Commonwealth v. Scarborough**, 64 A.3d 602, 607 (Pa. 2013) (citation omitted).

Wife argues that the August 28, 2014 order is final because it puts her out of court with respect to all claims arising under the marital settlement

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lone substantive issue raised on appeal was included in her concise statement.

agreement with Husband. She contends that the domestic relations section of the Court of Common Pleas of Delaware County lacks the authority to enforce a marital settlement agreement. Therefore, according to Wife, the transfer of the petition to the domestic relations section effectively prohibits her from obtaining relief on her petition. Husband, on the other hand, contends that the domestic relations section of the Court of Common Pleas of Delaware County possesses the authority to enforce a marital settlement agreement. Thus, according to Husband, Wife could obtain relief in the domestic relations section. As such, Husband contends that the instant order is interlocutory in nature and this appeal must be quashed.

In order to determine whether the trial court's order is final, we must interpret the order. Interpretation of a court order is a question of law; therefore, our standard of review is *de novo* and our scope of review is plenary. ***Cf. United Servs. Auto. Ass'n v. Elitzky***, 517 A.2d 982, 985 (Pa. Super. 1986) (citation omitted) ("The construction of a writing is a question of law[.]"). "When [interpreting another court's order], a 'court is bound by the words of the order itself, supplemented, if at all, only by statements or documents of record at the time the order was made.'" ***All Seasons York S. v. Commw. of Pa., Dep't of Transp. (In re Condemnation by Commw., Dep't of Transp.)***, 2008 WL 9405091, *4 n.14 (Pa. Cmwlth. Dec. 4, 2008), *quoting Commonwealth v. Brennan*, 195 A.2d 150, 151 (Pa. Super. 1963).

At the conclusion of the hearing on Wife's petition for contempt and Husband's motion to quash, the trial court stated "actually I'm going to do an [o]rder **transferring or denying** the [p]etition and having it heard in support court". N.T., 8/21/14, at 53 (emphasis added). Thereafter, the trial court entered an order that reads as follows:

And now, to wit, this 27th day of August 2014, after [argument] held on August 21, 2014 on [Husband's] motion to quash petition for contempt and enforcement of property settlement agreement filed on February 19, 2014, it is hereby ordered and decreed that **[Wife's] petition for contempt and enforcement of property settlement agreement is denied.** The parties shall proceed in support court.

Order, 8/28/15 (emphasis added; certain capitalization omitted).³

Based upon the statements that the trial court made at the conclusion of the hearing and the plain language of the order that was entered, the trial court chose the option of denying Wife's petition. Nothing in the order leads to the conclusion that the trial court transferred Wife's petition to Judge Mackrides or the domestic relations section. Furthermore, it is evident that the reference to proceeding "in support court" refers to proceeding with Husband's petition to decrease his support obligation that was awaiting a *de novo* hearing before Judge Mackrides. It wasn't until the trial court issued its Rule 1925(a) opinion that the trial court clarified its position. Specifically, in her 1925(a) opinion, Judge Cartisano stated that her August 28, 2014

³ Although the order was dated August 27, 2014 it was not docketed until August 28, 2014.

order “deferr[ed] the matter of enforcement of the [p]roperty [s]ettlement [a]greement to [s]upport [c]ourt, where the parties are already scheduled to appear before [] Judge [Mackrides] who likewise has the authority to modify child support in a separation agreement upon a showing of changed circumstances.” Trial Court Opinion, 12/1/14, at 7-8. Under the rules of interpretation, however, we are only to consider “the words of the order itself, supplemented, if at all, only by statements or documents of record at the time the order was made.” ***All Seasons York S., supra.*** The trial court’s statements during the hearing and its subsequent order establish that the trial court denied Wife’s petition for contempt and did not transfer it to another judge for consideration. As such, the trial court’s August 28, 2014 order disposed of all parties and all claims related to Wife’s petition for contempt. Therefore, it was a final and appealable order.

Having determined that the order entered by the trial court was final, we turn to Wife’s second issue on appeal. Wife contends that the trial court erred as a matter of law by denying the petition on procedural grounds. Specifically, Wife argues that the trial court erred in refusing to hear the merits of Wife’s petition for contempt and, instead, ordering Wife to seek enforcement of the support-related provisions within the marital settlement agreement before the domestic relations section of the Delaware County Court of Common Pleas. Appellant’s Brief at 15. Husband, on the other hand, contends that the trial court properly denied Wife’s petition as the trial

court lacked jurisdiction over the petition and a petition for contempt was the incorrect means by which to enforce the marital settlement agreement. We review the denial of a petition for contempt for an abuse of discretion. **See Lugg v. Lugg**, 64 A.3d 1109, 1114 (Pa. Super. 2013).

We agree with Wife that the trial court erred by refusing to consider the merits of Wife's petition for contempt. In **Knorr v. Knorr**, 588 A.2d 503 (Pa. 1991), the parties entered into a marital settlement agreement which did not merge with the divorce decree. **Id.** at 504. Instead, the agreement was incorporated into a separate court order relating to child support. **Id.** Eventually, the obligor filed a petition seeking a reduction in his child support obligation. **Id.** The obligee moved to dismiss the petition, arguing that the marital settlement agreement set a floor on the amount of child support the obligor owed. **Id.** The trial court granted the obligee's motion. **Id.** This Court reversed the trial court and our Supreme Court affirmed this Court's decision. Our Supreme Court held that the trial court erred as a matter of law because the marital settlement agreement was separate from the child support order and could not be invoked in the child support action. **Id.** at 505. Instead, our Supreme Court held that the obligee was required to seek enforcement of the agreement via an assumpsit or equity action.⁴

⁴ It is for this reason that the trial court's rationale in its Rule 1925(a) opinion is flawed. **Knorr** bars Judge Mackrides from considering Wife's contempt petition regarding the marital settlement agreement when conducting the *de novo* hearing on Husband's petition to reduce his child
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Id. at 505 & n.1; **Nicholson v. Combs**, 703 A.2d 407, 417 (Pa. 1997) (“Where an agreement and support order coexist, the payee does not abandon his or her right to sue on the contract merely by bringing an action under the existing order.”); **Swartz v. Swartz**, 689 A.2d 302, 304-305 (Pa. Super. 1997) (citations omitted) (There “is an abundance of precedent in Pennsylvania establishing the proposition that private support agreements and court determined support orders may exist simultaneously, stand apart[,] and be enforced separately.”); **Brown v. Hall**, 435 A.2d 859, 861 (Pa. 1981), citing **Silvestri v. Slatowski**, 224 A.2d 212, 215 (Pa. 1966) (Notwithstanding a child support order, “equity has jurisdiction to order specific enforcement of payments due under a contract for support.”).

More recently, in **Annechino v. Joire**, 946 A.2d 121 (Pa. Super. 2008), this Court expanded **Swartz** and held that a party can seek enforcement of a marital settlement agreement in family court in addition to being able to seek enforcement of the marital settlement agreement via a new assumpsit or equity action. Specifically, this Court held that the family court possessed jurisdiction under 23 Pa.C.S.A. § 3105, which provides, in relevant part, that:

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,

(Footnote Continued) _____
support obligation. The petition to enforce the marital settlement agreement is to be considered independent of the *de novo* hearing on Husband’s petition to reduce support.

may utilize a remedy or 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.A. § 3105(a). This Court held that “it was the General Assembly’s intent in enacting section 3105(a) to make the enforcement provisions of the Divorce Code available to parties to a[marital settlement] agreement[.]” **Annechino**, 946 A.2d at 125.

Husband argues that the trial court, *i.e.*, Judge Cartisano, lacked jurisdiction to enforce the marital settlement agreement under section 3105 because there were no child support, equitable distribution, or alimony claims raised in the divorce action between the parties. In **Annechino**, however, this Court addressed this same concern. This Court held that as long as the matters covered in the marital settlement agreement could have been raised under Part IV of the Divorce Code, section 3105 granted the trial court jurisdiction to enforce the agreement. **Id.** at 124-125. Child support is included within Part IV of the Divorce code. 23 Pa.C.S.A. § 3104(a)(3). Alimony and equitable distribution are likewise included within Part IV of the Divorce Code. 23 Pa.C.S.A. § 3104(a)(1); 23 Pa.C.S.A. § 3701. As such, Judge Cartisano had jurisdiction under section 3105 to enforce the marital settlement agreement.

Under section 3105, a petition for contempt is a legitimate means of enforcing the marital settlement agreement since the petition seeks to

enforce the agreement as though it were an order of court.⁵ **See** 23 Pa.C.S.A. § 3105. Husband's citation to **Nicholson** and **Ballestrino v. Ballestrino**, 583 A.2d 474 (Pa. Super. 1990), in support of his argument that a contempt petition is not the appropriate means by which to seek enforcement of the marital settlement agreement is misplaced. Both of those cases addressed a trial court's authority to modify a child support order, which is a separate and distinct question from enforcement of a marital settlement agreement. **See also** note 4, *supra*. Accordingly, the trial court erred by dismissing Wife's petition on procedural grounds.⁶

In sum, we conclude that the trial court's August 28, 2014 order was a final order. The trial court possessed jurisdiction over Wife's petition and erred by dismissing it on procedural grounds. We therefore vacate the trial court's order and remand for further proceedings consistent with this memorandum.⁷

Order vacated. Case remanded. Jurisdiction relinquished.

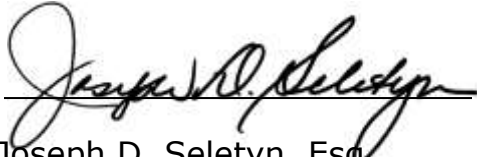
⁵ There was nothing in the marital settlement agreement that prohibited the agreement from being enforced as if it were a court order.

⁶ Nothing in this memorandum prohibits the trial court, upon remand, from transferring the matter to Judge Mackrides to separately consider Wife's petition to enforce the marital settlement agreement.

⁷ To the extent Wife seeks us to reverse, and order the trial court to enforce the terms of the marital settlement agreement, we decline to do so. We believe that the trial court should address the merits of Wife's petition in the first instance.

J-A11027-15

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: 8/4/2015