Circuit Court for Anne Arundel County
Case No.: C-02-FM-18-003315

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 380

September Term, 2023

SAMANTHA SAAVEDRA

v.

LUIS A. SAMAYOA

Reed,
Zic,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Getty, J.

Filed: January 18, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal stems from a consent order modifying the parties' custody and child support obligations. After unsuccessful attempts at court-ordered mediation on these subjects, Appellant Samantha Saavedra[1] ("Mother") and Appellee Luis Samayoa ("Father") reached an agreement at a pretrial settlement conference in the Circuit Court for Anne Arundel County. Mother's counsel read the terms of the agreement into the record, and the court directed them to submit a consent order embodying those terms by the end of the week.

Mother filed a proposed consent order she contends accurately reflected the terms placed on the record, but Father had refused to sign it. Instead, Father filed a Motion to Enforce Settlement Agreement, claiming that Mother's proposed order misrepresented the parties' agreement. Father included his own proposed order containing several terms not discussed at the hearing, which also incorporated, but did not merge, a separate Parenting and Custody Agreement with more terms. The circuit court granted Father's motion and entered his proposed order. Mother appealed.

Mother presents two questions for our review,[2] but we need address only one, which we have rephrased here:

[1] As part of its Judgment of Absolute Divorce, the court restored Ms. Samayoa to her former name, Samantha Saavedra. We shall therefore refer to Appellant as "Ms. Saavedra" or "Mother" in this opinion.

[2] Mother's questions are:

> 1. Did the trial court abuse its discretion by entering the Order granting Father's Motion to Enforce Settlement Agreement, when the Order failed to accurately reflect the terms of the oral agreement that had been placed on the

(continued)

Did the trial court abuse its discretion in entering Father's proposed consent order?

For the reasons below, we vacate the circuit court's judgment and remand for further proceedings consistent with this opinion.

BACKGROUND

Mother and Father divorced in December 2019. They had four children during their marriage, all of whom are still minors. The divorce judgment incorporated, but did not merge, a consent order granting Mother and Father joint legal and shared physical custody. It also set forth Father's child support obligations.

The 2019 Judgment governed the parties' relationship through July 2022 when Mother petitioned the circuit court for modification of custody and child support. As part of her petition, Mother also sought permission to relocate to Florida with the children. Father filed a counter-petition for modification two months later. Although mandated mediation was ultimately unsuccessful, Mother and Father reached an agreement concerning custody and support at a pre-trial settlement conference on March 13, 2023.

Mother's counsel read the terms of the agreement into the record. When he finished, Mother's counsel checked with Father's counsel "to make sure there w[ere] no additions or corrections from his side." Father's counsel responded that there were "just small things

---

record and incorporated but did not merge an unsigned written agreement, in violation of *Smith v. Luber*, 165 Md. App. 458 (2005)?

2. Did the trial court err when it entered an Order that suspends Father's child support obligation in months when he has the children, in violation of *Lorincz v. Lorincz*, 183 Md. App. 312 (2008)?

Our resolution of the first question moots the second.

in the written agreement that [they] had," which he stated he would send to Mother's counsel following the hearing "[j]ust [to] flesh[] out things." He confirmed, however, that Mother's counsel's recitation "hit the major points."

The court then directed the parties to "submit a consent order . . . with these terms in it." Father's counsel suggested that he had instead already drafted "a parenting agreement with a potential consent order to say that it's incorporating but not merging because it fleshe[d] out a little bit of the details in terms of things like luggage[.]" Mother's counsel conveyed that he would "certainly look at that. And if [Mother] agree[d] to it then [they would] do it that way. But . . . the default w[ould] be just submit a consent order." Mother's counsel then re-confirmed that his on-the-record recitation "hit all the other salient points[.]" Father's counsel responded: "Yes."

Next, both parties were qualified about their acceptance of the agreement on the record. Mother confirmed that nobody promised her "anything outside of the terms that were stated" to coerce her to enter into the agreement. She also confirmed that she understood "that even though [they were discussing] the submission of a document in writing that [the oral recitation of] the agreement [was] enforceable against her and [Father.]" Finally, she affirmed that nothing "was left out of this agreement with regards to the terms that [she] would have agreed to."

Father's *voir dire* went less smoothly. When asked whether the terms read into the record "reflect[ed] [his] understanding and agreement to the entry of an order respecting those terms[,]" Father replied, through an interpreter: "Not accepted but [Mother's Counsel] mentioned a lot of . . . Correct." Father's counsel then asked whether he had "any

changes, modifications, or questions regarding the information that [Mother's Counsel] stated." Father replied:

> [Mother's Counsel] did mention a lot [of] big points. Okay. But there was a lot of language and a lot of legal details in the parenting and custody agreement. So I don't know if I should say yes or not but there's a lot of things that were left out that was in the agreement.

At that point, the court interjected and directed Father's counsel to "just ask him if he . . . agree[d] to all the terms in the parenting plan." Father confirmed that he "accepted the terms in the parenting plan as modified by [Mother's counsel's] statements." He also agreed "that this parenting agreement, as modified, would be incorporated but not merged into an order modifying custody and child support." The court then found that the parties were entering into the agreement "voluntarily and with a complete understanding of all of the elements of the agreement." It directed the parties to submit an order by the end of the week.

The parties continued discussions but were unable to reach a subsequent agreement on the "small things" Father's counsel mentioned at the settlement conference. So, keeping with the court's March 17 deadline, Mother filed a proposed consent order containing terms that tracked those placed on the record at the settlement conference. Despite her efforts, Father did not sign this proposed order. Instead, just two hours later, he filed a Motion to Enforce Settlement Agreement along with his own proposed order. The terms of Father's proposed order differed from those in Mother's in several ways. Father's proposed order also incorporated, but did not merge, an attached parenting agreement containing additional terms. However, the parenting agreement, which appears to be a working draft from the

mediation session, was not signed by either party. Mother opposed this motion and attached emails between the parties' counsel suggesting that "there was not a meeting of the minds" with respect to the extra terms contained in Father's order. The circuit court granted Father's motion and entered his proposed order on March 28. This appeal timely followed.

We will include additional facts below as necessary for our discussion of the issues.

STANDARD OF REVIEW

"In reviewing [a ruling on] a motion to enforce a settlement agreement, we review the circuit court's factual findings for clear error and its legal conclusions *de novo*." *Na v. Gillespie*, 234 Md. App. 742, 749 (2017). That said, when, as here, "the parties entered into an agreement in open court, which under Maryland law is binding upon [them]," intending that the court will later reduce the agreement to a written order, the legal principles regarding consent orders are "equally applicable" to the resulting order. *Smith v. Luber*, 165 Md. App. 458, 170–71 (2005). We review the entry of such an order for an abuse of discretion. *See id.* at 468–70. In this context, "a court abuses its discretion if it enters an order containing terms that vary from, or otherwise fail to reflect, those to which the parties have agreed." *4900 Park Heights Ave. LLC v. Cromwell Retail 1, LLC*, 246 Md. App. 1, 18 (2020) (citing *Smith*, 165 Md. App. at 467).

DISCUSSION

Ordinarily, a party may not appeal from a consent judgment. *Barnes v. Barnes*, 181 Md. App. 390, 411 (2008). There is, however, a narrow, relevant exception: We will entertain an appeal from a consent judgment where the appealing party contends "that the

'consent judgment' was not in fact a consent judgment because [it] exceeded the scope of consent, or for other reasons there was never any valid consent." *Id.* (quoting *Chernick v. Chernick*, 327 Md. 470, 477 n.1 (1992)). In attacking such a judgment, "[t]he only question that can be raised . . . is whether in fact the decree was entered by consent." *Id.* (quoting *Dorsey v. Wroten*, 35 Md. App. 359, 361 (1977)). Put differently, we must examine the record to determine whether Mother consented to the terms of the Order. *See id.*

Consent judgments are, at their core, a fusion of contracts and judicial decrees. *Smith*, 165 Md. App. at 470. Maryland follows the objective law of contracts when interpreting contractual language. *Id.* at 471. "[W]hen the language is clear and unambiguous we must presume that the parties meant what they expressed, leaving no room for construction." *Id.* (cleaned up). The language in the court's written order need not be identical to what the parties stated in open court. *Id.* But because that order "will govern the rights of the parties should there be any dispute[,]" it must still accurately reflect the terms of the parties' agreement placed on the record. *See id.*

In her brief, Mother identifies five issues that were settled by the parties on the record but were later either modified by the court's Order or added without her agreement. One of these, the children's relocation to Florida, is now moot. We will examine only the four issues that remain viable to determine whether, in fact, the court's Order reflects the parties' agreement on the record.

I. Incorporation of the Parenting and Custody Agreement

Mother first argues that the parties never agreed to incorporate the separate Parenting and Custody Agreement into the Order. We do not find any indication in the

record that Mother agreed to any of the provisions in Father's proposed order, which the court ultimately entered. At the hearing, Father's counsel mentioned that the parties had agreed on additional "small things" that were not read into the record, "like luggage[.]" But the Agreement goes far beyond luggage and includes additional provisions ranging from designating permissible airports into which Father may fly the children, to granting Father additional "reasonable access with the [children] for all other special events or special circumstances[.]" We can find no reference to these extra provisions anywhere in the record.

Still, Father contends that the parties referenced the Agreement on the record and had been working from the document throughout the settlement process, so Mother and the court were both aware of it at the time of the hearing. But the only clear references to the Agreement came after Mother's counsel's recitation of agreed upon terms. To be sure, based on his answers to counsel's qualifying questions, it seems Father was aware of the other terms in the Agreement. But when Father's counsel mentioned incorporating the Agreement to Mother's counsel, Mother's counsel responded:

> [Mother's counsel]: [S]o I will certainly look at that. And *if my client agrees to it* then we'll do it that way. But I think the default will be just submit a consent order. But, yeah, I mean, I'll take a look at it with [Mother] right after this. And *if it's acceptable*, I'll let you know and we'll do it that way.

(Emphasis added).

It is unclear what agreement is being referenced, especially because no such draft agreement had been entered into the record. Regardless, it is clear that Mother had not

accepted it. Likewise, it is unclear from the record what the court knew: the prior mediations were handled by other judges, the Agreement was not entered into evidence at the hearing, and nothing suggests that the court was aware of its terms. Although we have no reason to doubt the truth of Father's counsel's statements on this issue at oral argument, our review is confined to the record before us. *See* Md. Rule 8-131(a). *See also Maddox v. Maddox*, 174 Md. 470, 477 (1938) ("Whatever information may have been laid before the [circuit court] in reports and proceedings which do not appear on the record at bar, the appellate Court must confine its review within the limits of the record."). Based on our review of the record, Mother did not consent to the incorporation of the Agreement into the order.

II. Legal Custody

Mother next contends that the court's Order modified the parties' agreement concerning legal custody. The record shows that the parties agreed to joint legal custody of the children:

> [Mother's Counsel]: With respect to legal custody, the parties have agreed to continue to do joint legal custody. [Father] has agreed to respond within the deadlines provided by [Mother] in discussions concerning the children's welfare. And if he does not, he therefore waives his right to provide input.

In contrast, the court's Order stated:

> [T]he Parties shall have joint legal custody of their four (4) minor children . . . ; *provided however*, that, if a party fails to timely respond to a written request for input or position regarding a legal custody decision regarding the health, welfare, or education of the Minor Children within any reasonable deadline set to make the decision, then such party waives the right to provide input as to said decision[.]

(Emphasis in original).

Thus, under the term placed on the record, only Father was obligated to timely respond to discussions concerning the children's welfare. Father did not object to this at the hearing. However, the court's Order expanded this obligation to cover both parties. But the language on the record is clear and unambiguous, and so "we must presume that the parties meant what they expressed [with] no room for construction." *Smith*, 165 Md. App. at 471. The expansion of this obligation was therefore improper.

III. Children's Relocation to Florida

While this appeal was pending, the parties continued settlement discussions through this Court's Alternative Dispute Resolution Division, and, as a result, the children relocated to Florida with Mother as scheduled. Thus, the issue is moot.

IV. Visitation Periods

Mother next contends that the court's Order improperly expands Father's visitation and access schedule beyond what was agreed to on the record. The agreement was recited into the record:

> [Mother's Counsel]: [Father's] visitation and access schedule shall provide him with time during the children's summer break which shall be defined as a period commencing the Monday after the school year ends in June and ending . . . at least eight days before the next year starts.
>
> He shall also have time during the Thanksgiving break as defined by the school calendars where the children are matriculated.
>
> He'll also have time during the winter break as defined by the school calendar where the children attend.

> He'll also have time at his election for spring break as defined by the school calendar where the children attend.
>
> And then we also set out President's Day weekend and Easter weekend as potential dates that [Father] could see or have time with the children.

The court's Order laid out Father's visitation schedule as follows:

> [Father] shall have physical custody of, visitation with, and access to the Minor Children, during the following periods:
>
> a. Summer Break – defined as the period commencing on the Monday after the school year ends in June of each year and ending on the eighth (8th) day before the next school year starts;
>
> b. Thanksgiving Break – defined as the period of time commencing on the Saturday before Thanksgiving to the Sunday after Thanksgiving;
>
> c. Christmas/New Year's Break – as defined by the Lee County school calendar, inclusive of the preceding and/or following Saturday and Sunday;
>
> d. President's Day Weekend – defined as the period commencing on the Saturday prior to President's Day through President's Day Monday;
>
> e. Spring Break – as defined by the Lee County school calendar, inclusive of the preceding and/or following Saturday and Sunday;
>
> f. Easter Weekend – defined as the period of time commencing on Good Friday through to include Easter Monday; and
>
> g. Additional Visitation as agreed pursuant to the Parenting and Custody Agreement[.]

Put simply, the terms on the record define Father's access periods by the children's school calendars. The court's Order does the same, but also specifies that those periods include surrounding weekend days and further adds the Additional Visitation provision

contained in the Parenting and Custody Agreement. As discussed above, including the Additional Visitation provision was improper because Mother did not agree to it. We do not, however, believe that the court's specified inclusion of surrounding weekend days was improper.

Under Maryland's objective approach to contract interpretation, "the court's inquiry is initially bounded by the 'four corners' of the agreement." *Impac Mortg. Holdings, Inc. v. Timm*, 474 Md. 495, 506 (2021). If, however, a contract provision is ambiguous, "the narrow bounds of the objective approach give way[.]" *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 394 (2019). "Ambiguity arises when a term of a contract, as viewed in the context of the entire contract and from the perspective of a reasonable person in the position of the parties, is susceptible of more than one meaning." *Impac Mort. Holdings*, 474 Md. at 507 (citing *Ocean Petroleum, Co. Inc. v. Yanek*, 416 Md. 74, 87 (2010)).

Here, the provision defining Father's access periods could be understood one of two ways. On the one hand, a reasonable person could interpret the provision as including only the days on which the children would ordinarily be in school but, because of the break, are not—*i.e.*, Thanksgiving Break is Wednesday through Friday, but not the following Saturday and Sunday; Spring Break is Monday through Friday, but not the preceding or following weekend; etc. On the other hand, an equally reasonable person could interpret the provision as including *all* of the days the children are consecutively out of school—*i.e.*, Thanksgiving Break is Wednesday through Sunday; Spring Break is Saturday through Sunday; etc. Thus, the provision, as read into the record, was ambiguous.

If a contract provision is ambiguous, "the court may consider extrinsic evidence to ascertain the mutual intent of the parties." *Id.* In doing so, "the court is to consider admissible evidence that illuminates the intentions of the parties at the time the contract was formed." *Id.* (citations omitted). To that end, "[c]ommunications between the parties about a contract subsequent to the execution of that contract may be admissible as evidence of an interpretation by both parties." *Id.* at 508 (cleaned up).

In her opposition to Father's Motion to Enforce Settlement Agreement, Mother attached email communications between the parties' attorneys discussing provisions of Father's proposed Parenting and Custody Agreement. Within these emails was a draft of the Agreement redlined by Mother's counsel. Although the portion of the provision concerning Additional Visitation was heavily edited, the portion defining Father's access periods during school holidays—which uses language identical to the court's Order—showed no edits. Because the term placed on the record was ambiguous, the court was permitted to consider this extrinsic evidence as an interpretation by both parties. *See id.* It did not err in using clearer language in the Order.

V. Suspension of Father's Child Support Obligation

Mother's final contention concerns a provision in the Order that suspends Father's child support obligation at times. The record reflects that the parties agreed a downward deviation from the child support guidelines was in the best interests of the children. They agreed Father would pay $1,000 per month—a $590 downward deviation from the guidelines. The court's Order accurately reflected this, but it also added the following:

> [P]rovided, however, that to the extent that the Minor Children are with [Father] for thirty (30) consecutive days or more, [] Father shall not be required to pay the child support obligation for the corresponding month.

(Emphasis omitted).

We can find no such language in the agreement on the record. The language does appear in Father's proposed Parenting and Custody Agreement, but as discussed above, Mother never accepted the Agreement. It was therefore error to include this added language in the Order.

CONCLUSION

A consent decree implies that the parties have consented to the agreement. Upon our examination of the Order and the record, we have concluded that several provisions of the court's Order fail to accurately reflect the agreement of the parties on the record. Thus, the court's Order, as entered, improperly modified the parties' agreement and altered the rights of the parties under the agreement. Therefore, we hold it was an abuse of discretion for the circuit court to enter the Order, and we remand the case.

Unlike *Smith v. Luber*, however, we cannot simply direct the court to enter a revised order tracking the terms and language as they appear in the record. There, "[t]he parties entered into a valid consent settlement agreement on the record in open court[.]" *Smith*, 165 Md. App. at 479. Here, despite the circuit court's finding that the parties had "a complete understanding of all of the elements of the agreement," Father expressed concerns about "a lot of things that were left out[.]" He appears to have accepted the terms placed on the record only as far as they modify the proposed Parenting and Custody Agreement, and only after the court directed his counsel on what to ask. If Father's acceptance was in

any way qualified or conditional, it was no acceptance at all—it was a rejection and counteroffer. *See Post v. Gillespie*, 219 Md. 378, 385–86 (1959). Accordingly, on remand, the circuit court should first make additional factual findings on whether the parties understand the precise scope and terms of the agreement on the record and whether they accept those terms without condition. If the court finds that they do, only then should it enter an appropriate consent order reflecting their agreement.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.