UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0876

September Term, 2015

TRACEY PRIBBLE

v.

ROBERT PRIBBLE

Meredith,
Friedman,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: April 21, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Tracey Pribble ("Tracey"), appellant, appeals from a judgment entered by the Circuit Court for Anne Arundel County, refusing to grant Tracey's Petition to Enforce Agreement with Robert Pribble ("Robert"), appellee.

QUESTION PRESENTED

Appellant presents a single question for our review:

> Did the Trial Court err when it issued a Declaratory Judgment and ruled that the agreement that both parties consented to on the record on December 16, 2014, was not a binding or enforceable agreement of any of the outstanding issues between the parties?

We conclude that the trial judge did not commit reversible error in refusing to enforce the asserted settlement agreement.

FACTS AND PROCEDURAL HISTORY

Robert and Tracey Pribble were married in 1992 in Rhode Island. The marriage produced two children, a son now 17, and a daughter now 15. In April 2012, Robert and Tracey separated, and, on May 31, 2013, Tracey filed a Complaint for Absolute Divorce. A trial on the merits of all issues was scheduled for December 16, 2014. On the morning that trial was scheduled to begin, the parties and their attorneys engaged in several hours of settlement negotiations at the courthouse. Following these negotiations, the parties reported to the assigned trial judge that they were prepared to place their negotiated agreement on the record. The trial judge stated on the record: "We're going to put the settlement on the record today. We're going to call the case back in a couple of months for finalization and testimony so that at that point you'll get the divorce decree; however, the settlement will now be read."

Counsel for appellee made a lengthy statement describing the substance of the parties' agreement as to various issues. Counsel for appellant responded with additional comments.

After counsel for each party concluded their remarks about the settlement agreement, the court asked questions of Tracey and Robert to confirm that they knowingly and voluntarily entered into the agreement their counsel described in court. Robert's attorney was tasked with drafting "the first draft of the agreement," and Tracey's attorney was to respond. Counsel for Tracey further advised the court:

> [W]e're agreed, if the Court has no objections and your clerk checked on it, to come back on March the 11 of 2015 at 1:30 p.m. to resolve any outstanding issues.

The attorneys projected that they would be able to submit a written agreement to the court in two months.

Subsequent to the proceedings on December 16, there were numerous communications between counsel, but they were not able to come to complete agreement regarding the language to be included in their written settlement agreement. As a result, Tracey filed a Petition to Enforce Agreement which included a proposed seven-page "consent" order which she contended was based upon the audio recording of the December 16, 2014, proceedings. She requested that the court execute her proposed consent order to enforce the agreement placed on the record on December 16, 2014.

Robert filed an opposition to the Petition to Enforce Agreement, and also filed a Counter-Petition for Declaratory Judgment, Reformation of Contract, and Other Relief, seeking a declaration that there was no enforceable contract between the parties, or, in the

alternative, that the court reform the contract to clarify the division of Robert's deferred bonus and deferred compensation. Tracey moved to dismiss Robert's Counter Petition. On June 2, 2015, Robert filed an "Amended Counter-Petition for Rescission of Contract, Reformation of Contract, and Other Relief." In that pleading, Robert asked the court to order rescission of any purported agreement reached on December 16, 2014, "and for such other relief as the Court may deem proper." The amended counter-petition also requested, in the alternative, that the court reform any agreement with respect to deferred compensation or bonus, and also with respect to holiday visitation.

At a hearing on April 6, 2015, the court heard legal arguments. At an evidentiary hearing on May 8, 2015, the court heard testimony from the attorney who represented Robert in negotiations on December 16, 2014. One month later, at a hearing on June 8, 2015, the court heard testimony from Lauren Torggler, an attorney who assisted in representing Tracey at the proceedings on December 16, 2014. Ms. Torggler's typewritten notes dated December 18, 2014, were moved into evidence.

On June 23, 2015, the trial judge issued a Declaratory Judgment and a Memorandum Opinion, concluding that there was no enforceable agreement between the parties. The court concluded its opinion as follows:

> Having considered the evidence and arguments of counsel, for the reasons set forth above, the court finds that Husband carried his burdens of proving, and of persuading the court, that the statements made on the December 16, 2014 record (and the discussions between the lawyers that followed) do not constitute a valid or enforceable agreement between the parties. "There was, at best, an agreement to agree in the future . . ., and this is not a sufficient basis for [an] enforceable contract." *Grooms v. Williams*,

> 227 Md. 165, 172 (1961). Accordingly, the matter will be rescheduled for a trial on the merits.

This interlocutory appeal followed.

STANDARD OF REVIEW

In the course of reviewing a circuit court's ruling on a question regarding the enforceability of a separation agreement, we described the standards of appellate review as follows in *Shih Ping Li v. Tzu Lee*, 210 Md. App. 73, 96 (2013) *aff'd*, 437 Md. 47 (2014) (quoting *Fischbach v. Fischbach*, 187 Md. App. 61, 88–89 (2009)) (internal citations and quotation marks omitted):

> We review the circuit court's factual findings under a clearly erroneous standard and its legal conclusions *de novo*. If any competent material evidence exists in support of the trial court's factual findings, those findings cannot be held to be clearly erroneous. When reviewing mixed questions of law and fact, we will affirm the trial court's judgment when we cannot say that its evidentiary findings were clearly erroneous, and we find no error in that court's application of the law. On the other hand, regarding pure questions of law, the trial court enjoys no deferential appellate review, and the appellate court must apply the law as it discerns it to be.

DISCUSSION

As a preliminary issue, we note that the ruling which appellant has challenged on appeal was not a final judgment that disposed of all claims in the matter. Appellant asserts that the denial of a motion to enforce a settlement agreement is immediately appealable. She cites *Hudson v. Housing Authority of Baltimore City*, 402 Md. 18, 25-26, 935 A.2d 395 (2007); *Jackson v. State*, 358 Md. 259, 747 A.2d 1199 (2000); *Buzbee v. State*, 199 Md. App. 678, 24 A.2d 153 (2011); *Rio v. State*, 186 Md. App. 354, 974 A.2d 366 (2009);

Barnes v. Barnes, 181 Md. App. 390, 956 A.2d 770 (2008); *Milburn v. Milburn*, 142 Md. App. 518, 790 A.2d 744 (2002); *McCormick Const. Co. v. 9690 Deerco Rd. Ltd. Partnership*, 79 Md. App. 177, 180-81, 556 A.2d 292 (1989); *Kinkaid v. Cessna*, 49 Md. App. 18, 430 A.2d 88 (1981).

In *Clark v. Elza*, 286 Md. 208, 213 (1979), the Court of Appeals allowed an interlocutory appeal from a circuit court's decision denying a motion to enforce a settlement agreement in a civil suit. *Accord Kinkaid, supra*, 49 Md. App. at 21 n.2. Accordingly, we are satisfied that we have jurisdiction to consider this matter.

Moreover, we observe that the ruling entered by the circuit court was, in effect, a denial of appellant's Petition to Enforce Agreement. Because appellant's petition sought to compel action by the appellee, the court's denial of the petition was in the nature of an order refusing to grant an injunction, which would also be appealable pursuant to Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article ("CJ"), § 12-303(3)(iii).

Tracey asserts that the circuit court erred in granting a declaratory decree in a divorce action, and erred in ruling that the agreement placed on the record by counsel on December 16, 2014, was not enforceable.

Although Section 3-409(d) of the Courts and Judicial Proceedings Article states that "[p]roceeding by declaratory judgment is not permitted in any case in which divorce or annulment of marriage is sought," there is authority supporting the availability of declaratory relief to resolve disputes regarding the validity of separation agreements. In *Young v. Anne*

Arundel County, 146 Md. App. 526, 562 (2002), we stated: "Like other contracts, '[t]he validity of a separation agreement may be determined by filing an action for declaratory relief,' even without a filing for divorce." (Quoting J. FADER & R. GILBERT, MARYLAND FAMILY LAW, § 13– 3(d)(3) (2d ed. 1995), and citing *Hale v. Hale*, 66 Md. App. 228, 233–34 (1986)).

We are satisfied that the circuit court's use of a declaratory format to explain the court's resolution of the controversy regarding the enforceability of the settlement agreement in the present case was not an impermissible action prohibited by CJ § 3-409(d). The court could have styled the opinion and order explaining its ruling in another manner, but the result would have been the same: the court was declining to grant Tracey's Petition to Enforce Agreement, and concurrently granting Robert's counter-petition to deny enforcement.

On the merits of the enforcement issue, Tracey puts forth several arguments to support her assertion that the circuit court was obligated to enforce the agreement that counsel placed on the record on December 16, 2014. Robert responds with numerous reasons he contends the court did not err. Both parties urge us to apply general contract principles to resolve the controversy. As the Court of Appeals noted in *Heinmuller v. Heinmuller*, 257 Md. 672, 676 (1970): "A separation agreement being a contract between the parties is subject to the same general rules governing other contracts, ..."

The circuit court concluded in this case that the terms of the ostensible settlement agreement announced by counsel on December 16, 2014, could not be enforced. In *Falls*

Garden Condominium Ass'n Inc. v. Falls Homeowners Ass'n, Inc., 441 Md. 290 (2015), the Court of Appeals provided useful guidance regarding the principles that apply when a party seeks enforcement of a purported agreement. The Court stated:

> "[A] contract, to be final, must extend to all the terms which the parties intend to introduce, and material terms cannot be left for future settlement." *Peoples Drug Stores, Inc. v. Fenton Realty Corp.*, 191 Md. 489, 494, 62 A.2d 273, 276 (1948). "Failure of parties to agree on an essential term of a contract may indicate that the mutual assent required to make a contract is lacking." *Cochran* [*v. Norkunas*], 398 Md. [1,] 14, 919 A.2d at 708 [(2007)]. Every possible term does not need to be included, however, because "[e]ven though certain matters are expressly left to be agreed upon in the future, they may not be regarded by the parties as essential to their present agreement." *See* CORBIN ON CONTRACTS, *supra*, § 2.8, p. 138. As stated in CORBIN ON CONTRACTS:
>
>> It is quite possible for parties to make an enforceable contract binding them to prepare and execute a subsequent final agreement. In order that such may be the effect, it is necessary that agreement shall have been expressed on all essential terms that are to be incorporated in the document. That document is understood to be a mere memorial of the agreement already reached. If the document or contract that the parties agree to make is to contain any material term that is not already agreed on, no contract has yet been made; the so-called 'contract to make a contract' is not a contract at all.
>
> *Id*. at § 2.8, p. 133–34.

441 Md. at 304-05.

In the present case, Robert asserted, as one of his arguments against the enforceability of the purported settlement agreement, that there was clearly a failure to agree upon (at least) one material term because, as counsel conceded when they placed the terms on the record, they had not concluded their negotiations and resolution of the manner in which they would divide their jointly owned personal property. The circuit court specifically found that "the

'agreement' did not address how the parties would divide $30,000 to $35,000 in personal property." The court also made findings that there were other issues constituting an agreement to agree, but, because the evidence in the record relative to the personal property is so clear, we need not consider whether there was additional justification for the circuit court's refusal to enforce the purported settlement agreement.

When the counsel for the parties attempted to place their agreement on the record on December 16, 2014, counsel for Robert provided the following explanation of the status of the agreement regarding personal property: "The parties own certain personal property, furniture, furnishings either in his home or her home. They have agreed to come to an equitable division of that personal property." In response, counsel for Tracey stated:

> [W]e have agreed to an equitable distribution of the personal property, the furniture in their homes. Whatever he has, whatever she has. **They haven't discussed it, we don't know what it is yet, we don't know what he wants out of the home**, **but we assume that they can work this out** without intervention by the Court.

(Emphasis added.)

Notwithstanding Tracey's contention that it is common for divorcing parties to agree to divide personal property pursuant to terms to be determined in the future, the circuit court judge deemed the admitted lack of final agreement upon this issue to constitute a material unresolved term of the settlement between these parties. Because that conclusion was supported by the evidence and not clearly erroneous, the circuit court's refusal to require Robert to proceed with other terms of the purported settlement was not an abuse of discretion. *Cf. Hensley v. Alcon Laboratories, Inc.*, 277 F.3d 535, 542 (4th Cir. 2002) ("if

[the district court] finds . . . that a material term of settlement was not agreed to, then it may not enforce the settlement nor supply a material term. Rather, it must allow [the plaintiff] to proceed [to trial] on the merits.”).

In the *Falls Garden* case, the Court of Appeals explained that CORBIN ON CONTRACTS identifies four distinct categories of letters of intent and distinguishes which of those four categories of purported agreements can be enforced as binding contracts. 441 Md. at 301-02. The Court quoted its prior summarization of the “distinct categories” of agreements:

> [“](1) At one extreme, the parties may say specifically that they intend not to be bound until the formal writing is executed, or one of the parties has announced to the other such an intention. (2) Next, *there are cases in which they clearly point out one or more specific matters on which they must yet agree before negotiations are concluded*. (3) There are many cases in which the parties express definite agreement on all necessary terms, and say nothing as to other relevant matters that are not essential, but that other people often include in similar contracts. (4) At the opposite extreme are cases like those of the third class, with the addition that the parties expressly state that they intend their present expressions to be a binding agreement or contract; such an express statement should be conclusive on the question of their ‘intention.’[”]

441 Md. at 301 (quoting *Cochran, supra*, 398 Md. at 13) (emphasis added). The *Falls Garden* Court noted that it had held in *Cochran* that a “‘valid contract generally has been made if a letter of intent properly falls within either the third or fourth category.’” 441 Md. at 301-02 (quoting *Cochran*, 398 Md. at 14).

But, in the present case, the comments made by the parties’ attorneys on the record on December 16, 2014, regarding the status of their agreement with respect to the necessary

division of jointly owned personal property falls within the second category identified in *Falls Garden* and *Cochran*. "[T]hey clearly point[ed] out one or more specific matters on which they must yet agree before negotiations are concluded." 441 Md. at 301. Although counsel expressed optimism about the prospects for future agreement "without intervention by the Court," counsel for Tracey acknowledged that they had no final agreement on the division as of December 16. That being the case, the circuit court did not commit reversible error in refusing to enforce the parties' incomplete settlement agreement.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.