Circuit Court for Garrett County
Case No. C-11-CV-20-000035

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 22

September Term, 2022

IN RE ESTATE OF MARLIN RAY LAWSON

Wells, C.J.
Shaw,
Ripken,

JJ.

Opinion by Shaw, J.

Filed: January 4, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

*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.

Appellant, Bonita P. Merschat-Lawson, appeals an order from the Circuit Court for Garrett County granting a Motion to Enforce Settlement Agreement. Appellant presents one question for our review:

1. Did the Circuit Court err in concluding that the Proposed Terms, standing alone, constituted a binding and legally enforceable settlement agreement?

BACKGROUND

Marlin Ray Lawson died on May 10, 2019, survived by his wife, children, and grandchildren. On May 29, 2019, his wife, Bonita P. Merschat-Lawson, filed a Petition for Estate Administration in the Orphans' Court for Garrett County, seeking appointment as Personal Representative in accordance with Mr. Lawson's Last Will and Testament, executed on June 15, 2015. The Will was admitted to probate on the same day and Mrs. Merschat-Lawson was appointed Personal Representative. Mr. Lawson's Will provided for Mrs. Merschat-Lawson and their grandchildren, but not his three surviving children, including Sherry Fike.

On November 22, 2019, Appellee, Ms. Fike filed a Petition to Caveat seeking: (1) the judicial invalidation of the Will, (2) the removal of Mrs. Merschat-Lawson as Personal Representative, (3) the admission of a December 2012 Will to probate, and (4) the appointment of Roger Sisler as Personal Representative. On April 7, 2020, the Orphans' Court entered an Order Transmitting the Issues to the Circuit Court for resolution pursuant to a Joint Petition. The circuit court then held a hearing where the parties agreed to continue the matter to participate in mediation. Mediation was held in November and both parties

were represented by counsel. At the conclusion of the mediation, the parties executed a handwritten document, which states:

> Proposed Terms to Resolve Estate of Marlin Ray Lawson
>
> 1) Liquidate all Garrett Co. Real Property
> 2) Proceeds of Sale of said Properties to Go to the Estate. Personal Property shall remain with Bonnie except as provided in Paragraph #6
> 3) Estate will reimburse either party for Funeral Expenses upon proof of payment to Funeral Home for Marlin's funeral
> 4) The Maryland Attorneys for both parties shall be paid by the Estate
> 5) Remaining Proceeds will be distributed as follows:
>   1) 50% - Bonnie
>   2) 50% - Marlin's Grandchildren to split evenly among them or their heirs
> 6) All personal property in the Home of Marlin shall be distributed Equitably to Marlin's Grandchildren or their heirs
> 7) With respect to the Florida Property, the Marital Agreement dated 2-21-2013 shall govern the distribution of said property, along with Florida Law.
> 8) Subject to a formal Settlement Agreement & Release to be prepared & agreed upon.
>
> /s/ Bonita P. Merschat-Lawson   /s/ Sherry Fike
> Bonita P. Lawson   Sherry Fike

On December 27, 2020, Appellee's counsel received an email from Appellant's counsel, which stated that the "current terms of the settlement were unacceptable to her." Appellee then filed a Motion to Enforce Settlement Agreement on February 17, 2021, and on March 5, 2021 filed an Amended Motion to Enforce Settlement Agreement. Appellant filed a response opposing the motion on March 22, 2021. The court held a hearing on July 6, 2021 and at the hearing's conclusion, both parties were invited to submit supplemental memoranda to the court. The court ultimately granted the motion to enforce the agreement. Appellant timely appealed.

DISCUSSION

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*." *Sang Ho Na v. Gillespie*, 234 Md. App. 742, 749 (2017). "A trial court's factual findings are not clearly erroneous as long as they are supported by any competent material evidence in the record." *Saxon Mortg. Servs. v. Harrison*, 186 Md. App. 228, 262 (2009).

I. The Circuit Court did not err in concluding that the proposed terms constituted a legally binding settlement agreement.

Appellant argues she had no intention to be bound by the mediation agreement, she understood it to be preliminary and it did not rise to the level of a final, complete, and legally binding settlement agreement. Appellant argues the agreement was preliminary and was labeled "Proposed Terms to Resolve Estate of Marlin Ray Lawson." She also contends that Paragraph 8 contains the phrase "subject to", which does not denote a mutual intention to be bound and is a condition precedent to a final agreement. She further asserts the agreement did not resolve all of the parties' outstanding issues because it did not provide for disposition of:

> (1) whether the within caveat proceeding is to be concluded by dismissal, by consent order remanding the Issues back to the Orphans' Court, or by other means,
>
> (2) how the Issues themselves are to be answered,
>
> (3) whether Merschat-Lawson will or will not continue to serve as Personal Representative, and

(4) whether Merschat Lawson or some other person will be responsible for carrying out the settlement on behalf of the Estate.

Appellee argues the agreement is a binding settlement because it memorializes the parties' mutual assent and contains clear and definite terms by which the parties intended to be bound. Appellee contends the parties' intention can be discerned from the language of the agreement, the conduct of the parties at the mediation, and their subsequent conduct in furtherance of the agreement. According to Appellee, the agreement is not conditional.

Generally, settlement agreements are "enforceable as independent contracts, subject to the same general rules of construction that apply to other contracts." *4900 Park Heights Ave. LLC v. Cromwell Retail 1, LLC*, 246 Md. App. 1, 18 (2020) (citing *Erie Ins. Exch. v. Estate of Reeside*, (citation omitted)). Contracts are interpreted under the objective theory of contract interpretation and "the primary goal is to ascertain the intent of the parties in entering the agreement and to interpret the contract in a manner consistent with that intent." *Credible Behav. Health, Inc. v. Johnson,* 466 Md. 380, 393 (2019) (quoting *Ocean Petrol., Co. v. Yanek*, 416 Md. 74, 86 (2010)). "[U]nless a contract's language is ambiguous, we give effect to that language as written without concern for the subjective intent of the parties at the time of formation." *Ocean Petrol., Co. v. Yanek*, 416 Md. 74, 86 (2010). Where the language is unambiguous, "we consider the contract from the perspective of a reasonable person standing in the parties' shoes at the time of the contract's formation." *Id.*

A contract requires a manifestation of mutual assent and the parties must be in agreement as to its terms. "Manifestation of mutual assent include two issues: (1) intent to

be bound, and (2) definiteness of terms." *Advance Telecom Process LLC v. DSFederal, Inc.,* 224 Md. App 177, 183 (2015).

In *Cochran v. Norkunas*, the Supreme Court of Maryland[1] analyzed the enforceability of a five-paragraph, handwritten document, a letter of intent regarding the sale of real property. *Cochran v. Norkunas*, 398 Md. 1, 18 (2007). The first paragraph contained the Buyers' offer and the terms of payment. *Id.* The second paragraph stated that a "standard form Maryland Realtors Contract" would be delivered to the Seller within forty-eight hours for her signature. *Id.* The letter then explained the financing details and the home inspection contingency. *Id.* Lastly, the letter contained, in the margins, the following statement, "Buyer to honor seller's leases." *Id.*

The Supreme Court noted that "some letters of intent are signed with the belief that they are letters of commitment and assuming this belief is shared by the parties, the letter is a memorial of a contract." *Id.* at 13. The Court explained, citing Corbin on Contracts: "[w]hen parties agree on terms to resolve a dispute, but contemplate that those terms will eventually be incorporated into a final written agreement, whether the preliminary agreement is itself binding depends on which of the following categories best characterizes the preliminary agreement:"

> (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.

[1] On December 14, 2022, by subsequent gubernatorial proclamation, the name of the Court of Appeals was changed to "the Supreme Court of Maryland." We shall use the current appellation of that court throughout this opinion.

(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."

Cochran v. Norkunas, 398 Md. 1, 13 (2007) (quoting Joseph M. Perillo, Corbin on Contracts § 2.9, at 157-58 (rev. ed. 1993)).

The Court, in referring to the Corbin categories, explained that, generally, a valid contract has been made if a letter of intent falls within either the third or the fourth categories. *Id.* at 14. The Court concluded that the Cochran letter did not constitute a binding contract because "the parties had no intent to be bound until the standard form Maryland Realtors Contract was signed." *Id.* at 21. The Court characterized the document as a "type of preliminary agreement to agree." *Id.*

In 2015, the Supreme Court of Maryland in, *Falls Garden Condominium v. Falls Homeowners,* analyzed whether a settlement letter in a declaratory judgment action regarding ownership of parking spaces was a binding agreement. *Falls Garden Condominium v. Falls Homeowners,* 441 Md. 290 (2015). The parties executed a letter of intent but could not agree that it was a final settlement, and the homeowners filed a motion to enforce the agreement. *Id.* at 294. The circuit court granted the motion to enforce and found the letter binding because it was "inclusive and definite as to all material terms." *Id.* at 298, 307. The Supreme Court found that the letter did not fit into either the first or fourth

Corbin categories and turned its analysis to the second and third categories. *Id.* at 304. In analyzing those categories, the Court focused on whether the terms in the document were definite. *Id.* The Court observed that the letter specifically included the length of the lease, the number of parking spaces, the location, and the price. *Id.* at 307. While the letter did include a provision that "[t]he Falls shall prepare the Lease and submit the same to Falls Garden for review, comment and execution[,]" the Court held the letter was enforceable. *Id.* at 308. The Court found that the material terms of the lease were included in the letter of intent and held the "contemplation of future agreements" did not mean that the terms of the letter were indefinite. *Id.* The letter fit into the third Corbin category, "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." *Id.* at 308 (citing Corbin on Contracts, *supra*, at 158.).

In the case at bar, we find the express language of the document is clear and unambiguous, and the terms do not specify an intent by the parties not to be bound. The document, also, does not describe matters that the parties must yet agree upon. We note, as in, *Falls Garden*, the terms in the document are definite and the document encompasses all necessary terms. Simply because there were other matters that the parties had yet to agree upon does not render the document unenforceable as indefinite.

Appellant argues that the phrase, "subject to" indicates that the parties did not intend to be bound by the document, and it is rather, a condition precedent. Appellant cites *All State Home Mortgage v. Daniel*, arguing that a "condition precedent . . . must occur before performance under a contract is due." However, in *All State*, the parties had an agreement

that stated that it would become "effective and binding . . . when both parties sign[ed] it." *All State Home Mortg., Inc. v. Daniel*, 187 Md. App. 166, 184 (2009). We held that the language of that agreement created a condition precedent and, thus it was not final in nature. *Id.*

We agree with Appellant that "a contract may be subject to conditions" and that "a condition precedent, moreover, may govern whether or not a binding agreement even exists." We note that, here, the document contains no conditions. As we see it, the phrases, "proposed" and "subject to" refer to the parties' decision to create a formal document that would be a recitation of the handwritten agreement. The handwritten document was subject to "a formal Settlement Agreement & Release to be prepared & agreed upon." In other words, the parties merely needed to agree that the handwritten and typed documents were the same. We hold the inclusion of language regarding the submission of a formal agreement does not render the handwritten document incomplete or lacking in finality. The parties had reached an agreement.

We observe, further, that it is undisputed that both parties signed the handwritten document. Appellee contends that she signed the Agreement believing that it "resolved all the outstanding issues in the case[,]" while Appellant argues that she understood the Agreement to be "preliminary in nature" and that she "would have time to further reflect upon the terms . . . ." Appellant, however, does not contend that she sought to alter the agreement or otherwise change its terms. The email sent to Appellee merely states that the terms were "unacceptable." Appellant took no action to have the case returned to court for a merits hearing or other resolution. It appears that she simply changed her mind after

executing the agreement. However, a signature affixed to a document normally signifies an intent to be bound and an agreement. *See Walther v. Sovereign Bank,* 386 Md. 412, 430 (2005) ("[A] party that voluntarily signs a contract agrees to be bound by the terms of that contract."). The document contains no language that the parties agreed otherwise.

In 2020, this Court examined a circuit court's decision to enforce a settlement agreement placed on the record in *4900 Park Heights Ave. LLC v. Cromwell Retail 1*, *LLC*, 246 Md. App. 1 (2020). In that case, one day prior to trial, the parties reached what they believed to be a settlement. *Id.* at 10. Counsel appeared in court, placed the terms of the agreement on the record and stated that it would be followed by a written document. *Id.*at 10-11. Two months later, the parties had not agreed on the formal document. *Id.* at 13. Cromwell filed a motion to enforce the settlement agreement that had been placed on the record and 4900 Park Heights opposed the motion. *Id.* The court held a hearing and found that "each of the parties clearly intended to be bound by th[e] terms" and that "the terms of the agreement are definite . . . clear, unambiguous and there were no open material terms to the agreement." *Id.* at 13-14. This Court affirmed the trial court's decision, finding that the parties' intended to be bound by the agreement, specifically, referencing the court proceedings where the agreement was placed on the record, the recitation of the material terms of the settlement, and counsels' confirmation regarding the agreement. *Id.* at 15-16.

In the present case, the circuit court, after taking the matter, under advisement, found no ambiguity in the language of the document and held that the settlement agreement was enforceable. The court stated:

> All of the essential terms necessary to express the intentions of the parties are enumerated regardless of the fact that there may be subsequent terms and/or written memorializations contemplated. Additionally, the same agreement that forms the basis of this dispute is signed by the Petitioner, Sherry Fike and the Respondent, Bonita P. Merschat-Lawson clearly evidencing their intent to be bound by the agreement.

We agree with the circuit court and hold that, under the circumstances in this case, "[A] reasonable person standing in the parties' shoes would understand the Agreement to be a contract" because the parties "express[ed] definite agreement on all necessary terms . . . ." While there was no court proceeding where the parties placed the agreement on the record, there was sufficient indicia from the definitive language of the document itself and the parties affixing their signatures to it, that they agreed to be bound. We hold the circuit court did not err in its determination that the agreement is a legally enforceable settlement.

JUDGMENT OF THE CIRCUIT COURT FOR GARRETT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.