Circuit Court for Prince George's County
Case No. CAD16-28411

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 542

September Term, 2019

ARCHIE L. RICH, II

v.

SHARIFA CHANGA GREGORY

Berger,
Nazarian,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: September 18, 2020

*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 Archie L. Rich, II ("Mr. Rich") and appellee Sharifa Changa Gregory ("Ms. Gregory") were granted a divorce on July 17, 2017. The Judgment of Absolute Divorce issued by the Circuit Court for Prince George's County incorporated, without merger, the terms and provisions of the parties' Marital Settlement Agreement ("MSA"). As pertinent here, the MSA provided Mr. Rich the right to purchase Ms. Gregory's share of their marital home "[o]n or before April 1, 2018." In the event that Mr. Rich exercised his right to purchase the marital home, the MSA provided that he would pay Ms. Gregory $18,500 and obtain her release "from all liabilities associated with the [marital home]." The MSA further authorized the court to appoint a trustee to sell the marital home in the event Mr. Rich "does not or cannot" purchase Ms. Gregory's interest in the home by April 1, 2018.

Because Mr. Rich had not purchased her interest in the home by April 1, 2018, Ms. Gregory filed a "Petition to Enforce," requesting that the court appoint a trustee to conduct a judicial sale of the property. Mr. Rich objected and, after an assortment of motions filed by both parties, the parties agreed to a Consent Order dated September 18, 2018 ("Consent Order"), in which the parties agreed to certain amendments to their MSA. Relevant to this case, the parties agreed that Mr. Rich would have until March 17, 2019, to purchase Ms. Gregory's interest in the marital home by paying her $18,500 and obtaining her release from all liability associated with the property. Ms. Gregory in turn agreed "to sign all necessary documents to effectuate any sale/purchase/refinance." The Consent Order provided:

> Status hearing set now for on or after March 18 (in the event property has not been sold/refinanced/purchased or mortgage assumed by March 17, granting Court power to act immediately while ensuring both parties have Notice and opportunity to be heard). The parties agree that at said hearing, the parties will . . . submit a joint consent order authorizing appointment of David Cross as trustee to sell the home at that time, in the event property has not been sold/refinanced/purchased or mortgaged assumed by March 17, 2019.

On March 8, 2019, approximately one week before his right to purchase the home pursuant to the Consent Order expired, Mr. Rich moved to extend the March 17, 2019 purchase deadline "by sixty (60) days." Ms. Gregory filed an opposition to Mr. Rich's motion and her own "Motion to Enforce September 18, 2018 Consent Order By Appointment of a Trustee to Sell Parties' Real Property." Mr. Rich thereafter filed a petition for contempt, alleging that Ms. Gregory had failed to cooperate with Mr. Rich's efforts to obtain refinancing of the mortgage.

All pending motions were heard on May 2, 2019. Significantly, neither party introduced any evidence—testimonial, documentary, or otherwise—at the motions hearing. Instead, Mr. Rich's counsel argued extensively why the March 17, 2019 deadline should be extended. Those arguments, based on contract law, included: assertions that Ms. Gregory had materially breached by delaying Mr. Rich's application for refinancing; that Mr. Rich had substantially performed his obligations under the Consent Order; that Ms. Gregory cancelled a pending insurance claim related to the property, thereby delaying completion of an appraisal; that Ms. Gregory materially breached the Consent Order because she failed to transfer funds pursuant to a Qualified Domestic Relations Order; and that Ms. Gregory generally had "unclean hands." Ms. Gregory likewise did not produce

any evidence, but generally denied Mr. Rich's claims. She requested the court to appoint a trustee to sell the marital home as stipulated in the Consent Order.

After hearing arguments, the court noted that the Consent Order expressly required Mr. Rich to purchase Ms. Gregory's interest in the home by March 17, 2019. Because Mr. Rich had not complied with his obligations to purchase the home by March 17, 2019, the court enforced the "default mechanism" expressly set forth in the Consent Order, *i.e.*, appointment of a trustee to sell the property.[1]

On this record, we perceive no error and shall affirm.

DISCUSSION

Mr. Rich's basic appellate argument is that the trial court "failed to apply standard Maryland contract law when analyzing any alleged breach, failure to perform, right to cure, or any contract defenses[.]" In his view, had the court properly applied Maryland contract law to the Consent Order, the court would have been compelled to extend the March 17, 2019 deadline for him to purchase Ms. Gregory's interest in the marital home.

We begin with Maryland Rule 2-612, which provides that "[t]he court may enter a judgment at any time by consent of the parties." The Court of Appeals has recognized the distinction between consent judgments and settlement agreements:

> The Court of Special Appeals erred in equating the Consent Order . . . with a mere settlement agreement. Although a settlement agreement is not a final judgment, a consent order is. *See Jones v. Hubbard*, 356 Md. 513, 525–26 (1999). "A consent judgment or consent order is an agreement of the parties with respect to the resolution of the issues in the case or in settlement

[1] The court also dismissed Mr. Rich's petition for contempt. Mr. Rich makes no argument that the court erred in dismissing his contempt petition. The court noted that Mr. Rich failed to produce any evidence in support of his contempt petition.

> of the case, that has been embodied in a court order and entered by the court, thus evidencing its acceptance by the court." *Long v. State*, 371 Md. 72, 82 (2002) (citing *Jones*, 356 Md. at 529; *Chernick v. Chernick*, 327 Md. 470, 478 (1992)). A consent decree memorializes the parties' agreement to relinquish the right to litigate the controversy, "and thus save themselves the time, expense, and inevitable risk of litigation." *Id.* at 82 (quoting *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971)).
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> Although consent judgments are, at the same time, contractual and judicial in nature, "consent judgments should normally be given the same force and effect as any other judgment, including judgments rendered after litigation." *Jones*, 356 Md. at 532; *Chernick*, 327 Md. at 478. It is a "judgment and an order of court. Its only distinction is that it is a judgment that a court enters at the request of the parties." *Jones*, 356 Md. at 528. Thus, a consent order entered properly carries the same weight and is treated as any other final judgment.

Kent Island, LLC v. DiNapoli, 430 Md. 348, 359–60 (2013).

In *Dennis v. Fire & Police Emps. Ret. Sys.*, the Court, after noting that consent judgments "have attributes of both contracts and judicial decrees[,]" stated that "[i]n interpreting the parties' agreement as embodied in a consent judgment, we have applied the ordinary principles of contract construction." 390 Md. 639, 655–56 (2006). In *Dennis*, the Court was tasked with determining whether deferred retirement option plan ("DROP") retirement benefits constituted "pension" payments within the meaning of Qualified Domestic Relations Orders ("QDROs") contained in police officers' divorce judgments. *Id.* at 642. In construing the QDROs there, the Court applied the objective theory of contracts:

> A court construing an agreement under [the objective theory] must first determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated. In addition, when the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed. In these circumstances, the true test of what is meant

> is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant.

Id. at 656–57 (quoting *Gen. Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261 (1985)). In holding that the DROP payments were included in the pension distribution provisions of the QDROs, the *Dennis* Court concluded that "the plain language of the QDROs unambiguously provides that all payments from the Retirement System pension . . . are subject to division in accordance with the terms of the QDROs." *Id.* at 656.

Here, neither party asserted that the terms of the Consent Order were vague or ambiguous, and there was no suggestion by either party at the May 2, 2019 hearing that the court should utilize principles of contract interpretation to ascertain the meaning of any term or phrase contained within the Consent Order. Indeed, we see nothing ambiguous in the Consent Order.

Nevertheless, Mr. Rich is apparently of the view that all contract defenses apply to consent judgments that endorse or incorporate settlement agreements. Although we doubt the validity of that view, we need not resolve that issue here because Mr. Rich failed to produce *any evidence* to support his claimed contract defenses. To be sure, Mr. Rich's counsel argued that Ms. Gregory had materially breached the terms of the agreement incorporated in the Consent Order. And counsel further argued that Mr. Rich had substantially performed his contractual obligations, that he had a right to cure any breach, and that it was inequitable to require Mr. Rich to strictly comply with the March 17, 2019

deadline contained in the Consent Order.[2] But argument does not constitute evidence. As noted previously, the parties presented no testimonial or documentary evidence at the hearing, nor did they produce any other evidence such as stipulations or admissible deposition testimony.[3] Thus, even assuming *arguendo* that Mr. Rich could validly raise contract defenses to the provisions of the Consent Order, he utterly failed to sustain his burden to produce evidence in support of his asserted defenses. *See Diamond Point Plaza Ltd. P'ship v. Wells Fargo Bank, N.A.*, 400 Md. 718, 759–60 (2007) ("If a party seeking relief, who has the burden of establishing its right to that relief, fails to produce evidence legally sufficient to sustain that burden, the relief must be denied."); *Zdravkovich v. Bell Atl.-Tricon Leasing Corp*., 323 Md. 200, 208 (1991) ("A mere announcement by counsel as to the amount of damages the plaintiff seeks does not constitute proof of damages. The failure to offer any evidence, other than counsel's statement as to the amount of damages sought, require[s] reversal of the judgment[.]"). Indeed, it would have been reversible error had the trial court found in Mr. Rich's favor based solely on the arguments of counsel. *David v. Warwell*, 86 Md. App. 306, 319–21 (1991) (court erred in granting motion to enforce settlement agreement where there was no evidence before the court to substantiate

[2] Ms. Gregory's counsel in turn argued that Ms. Gregory had not breached the settlement terms and that the court should reject Mr. Rich's asserted contract defenses.

[3] There is nothing in the transcript that would alert the trial court that counsel's argument somehow constituted a proffer in lieu of the formal presentation of evidence. To the contrary, the court specifically asked Mr. Rich's counsel, "Why didn't you call [the mortgage broker] as a witness today?" The only potential evidence offered at the hearing was the reading into the record of a letter from an insurance representative concerning a homeowners' insurance claim. Even if we were to consider that letter as evidence, such "evidence" was legally insufficient to sustain Mr. Rich's burden.

the terms of the settlement agreement).

On this record, we discern no error in the circuit court's enforcement of the clear and unambiguous provision in the Consent Order for the appointment of a trustee to sell the marital home in the event that the "property has not been sold/refinanced/purchased or mortgage assumed" by March 17, 2019.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.