UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1215

September Term, 2014

GUSTAVO CASABE

v.

SANDRA SZUCHMAN

Eyler, Deborah S.,
Kehoe,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: June 12, 2015

In the Circuit Court for Montgomery County, Gustavo Casabe, the appellant, filed a motion to terminate alimony, alleging that it was necessary to do so in order to avoid a harsh or inequitable result. His ex-wife, Sandra Szuchman, the appellee, opposed the motion, arguing that the parties' separation agreement prohibited modification or termination of alimony on that ground. The circuit court denied the petition to terminate. Casabe appeals, presenting one question for review, which we have rephrased: Did the circuit court err by ruling that termination of alimony was prohibited by the parties' separation agreement? For the following reasons, we answer that question in the negative and therefore shall affirm the order of the circuit court.

FACTS AND PROCEEDINGS

Casabe and Szuchman were married for more than 20 years. They separated on February 7, 2005.

On September 25, 2008, the parties entered into a "Voluntary Separation and Property Settlement Agreement" ("the Agreement"). Paragraph 4.1 governs alimony:

> The husband shall pay to the wife as and for non-modifiable permanent alimony the sum of $3,900.00 per month until the first to occur of the following: the wife remarries or the wife's death.

Section 12 of the Agreement contains "Miscellaneous" provisions. At paragraph 12.4, it states: "Pursuant to the provisions of Article 8-103(b) and (c), Family Law Volume, Code of Maryland,[1] the parties have elected that the provisions of this Agreement may not be

[1]Md. Code (1984, 2012 Repl. Vol., 2014 Supp.), section 8-103(b) & (c) of the Family Law Article ("FL") provides that a court may modify a provision of a separation agreement regarding alimony unless the parties expressly state that those provisions "are not subject to

(continued...)

modified by any court or other judicial tribunal," with the exception of modifications of child support, custody, and visitation.

On May 21, 2009, the circuit court entered a judgment of absolute divorce. The Agreement was incorporated, but not merged into the judgment.

On August 9, 2013, Szuchman filed a petition seeking to hold Casabe in contempt for failure to pay child support and alimony. She alleged that Casabe was $1,200 in arrears on child support and $56,000 in arrears on alimony.

On October 9, 2013, Casabe filed motions to modify custody and terminate alimony. In the latter motion, he alleged that "due to health reasons and other circumstances affecting his economic resources, [he] [was] not able to continue paying the alimony" and that requiring him to pay alimony "would create a harsh and inequitable result."

On April 14, 2014, the parties appeared before a master for a hearing on the pending motions. Szuchman's attorney argued as a threshold matter that the court had no authority to modify or terminate Casabe's alimony obligation because the Agreement expressly provided that alimony was non-modifiable and permanent and only would terminate if Szuchman remarried or died. He argued that this Court's decision in *Bradley v. Bradley*, 214 Md. App. 229 (2013), controlled and mandated that the motion to terminate alimony be denied. Casabe countered that the language of the Agreement differed from the language in the separation agreement construed by this Court in *Bradley* and justified a different result.

[1](...continued)
any court modification."

The master agreed with Szuchman and advised the parties that he would not take any testimony on the issue of termination of alimony. The hearing went forward on Szuchman's petition for contempt and Casabe's motion to modify custody.[2]

On April 29, 2014, the hearing was reconvened for the master to announce his findings and recommendations. With respect to the motion to terminate alimony, the master concluded that paragraphs 4.1 and 12.4 of the Agreement unambiguously reflect that Casabe is to pay non-modifiable, permanent alimony, terminable only upon the death or remarriage of Szuchman. On that basis, he recommended that the motion be denied.[3]

Casabe excepted to the master's recommendation that his motion to terminate alimony be denied.

On July 2, 2014, the court held an exceptions hearing. After entertaining argument on the issue of termination of alimony, the court overruled Casabe's exceptions. On July 16,

[2]Casabe testified that he had worked as the manager of sales at a Toyota dealership for seventeen years, earning more than $200,000 a year by the end of his tenure. In February of 2012, he had a heart attack and had two stents placed. He missed two months of work. When he returned, he was unable to handle the long hours he previously had worked. Consequently, in November of 2013, he lost his job. In December of 2013, he began working at a Mazda dealership, but left after less than 2 months. At the time of the master's hearing, he was working for a different Toyota dealership as a used car manager, earning approximately $6,300 per month ($75,600 per year).

[3]On the contempt petition, the master found that Casabe was $70,776 in arrears on alimony. He recommended that the petition for contempt be denied because he did not think "there [was] a purging act which [was] within [Casabe's] financial ability that would coerce him into . . . compl[ying] with [the divorce judgment]." The master recommended, however, that the court enter judgment against Casabe and in favor of Szuchman in the amount of the alimony (and child support) arrears.

2014, the court entered an order denying the motion to terminate alimony and otherwise affirming the master's recommendations. This timely appeal followed.

DISCUSSION

FL section 11-108 states that "[u]nless the parties agree otherwise, alimony terminates: (1) on the death of either party; (2) on the marriage of the recipient; or (3) if the court finds that termination is necessary to avoid a harsh and inequitable result." In the instant case, Casabe contends the circuit court erred by denying his motion to terminate alimony without taking evidence and making a finding as to whether the continuation of his alimony obligation would produce a "harsh and inequitable result." Szuchman counters that the parties "agree[d] otherwise," *i.e.*, that alimony only would terminate upon her death or remarriage, and therefore the court correctly denied the motion to terminate alimony.

Two cases guide our resolution of this issue. In *Moore v. Jacobsen*, 373 Md. 185 (2003), the Court of Appeals considered whether a provision of a separation agreement that obligated a husband to pay alimony to his wife terminated when the wife remarried. The parties' separation agreement stated that the husband would pay the wife "non-modifiable alimony" for a term of seven years and that "no court shall have the power to modify [the] agreement." *Id*. at 187. The agreement was incorporated, but not merged, into the divorce decree. Six months after the divorce, the wife remarried. The husband stopped paying alimony. The wife sought a judgment against him for the alimony arrears. The husband opposed entry of a judgment on the ground that his obligation to pay alimony had terminated

by operation of law upon the wife's remarriage. The circuit court entered judgment against the husband for the arrears and this Court affirmed on appeal.

The Court of Appeals granted a petition for writ of *certiorari* and reversed. It held that a separation agreement "must contain express and clear language evidencing the parties' intent that alimony will continue after remarriage of the recipient spouse; otherwise, pursuant to the language of [FL section 11-108], remarriage terminates the obligation." *Id*. at 189. It reasoned that section 11-108 creates a statutory presumption that alimony will terminate upon remarriage absent an express agreement to the contrary, consistent with the long history in Maryland that alimony "'cease[d] unconditionally upon the wife's remarriage.'" *Id*. at 190 (quoting *Knabe v. Knabe*, 176 Md. 606, 613 (1939)).

The Court rejected the wife's argument that language in the separation agreement stating that "no court shall have the power to modify this agreement" amounted to an express agreement that alimony would not terminate upon her remarriage. The Court explained that termination and modification are not synonymous: termination "occurs by operation of law," while modification requires "court action." *Id*. at 191. For that reason, termination was "not prohibited by the nonmodifiability clause." *Id*.

Ten years later, this Court decided *Bradley v. Bradley*, 214 Md. App. 229 (2013). In that case, like the instant case, the parties entered into a separation agreement that was incorporated into their divorce decree. It provided for non-modifiable alimony payable by the husband to the wife "until the first to occur of any of the following events: (a) remarriage of [w]ife, (b) death of either party." *Id*. at 231-32. That provision was "not . . . subject to

modification by any court" absent certain circumstances not relevant here. *Id*. at 232. The parties "expressly waive[d] the right ever [thereafter] to have any court change or make a different provision for the support and maintenance of [w]ife," and agreed never to "apply to any court for an increase or decrease in the amount of or a modification of the terms" of the alimony provision. *Id*.

More than ten years after their divorce, the husband filed a petition to terminate alimony, alleging that he had become "permanently disabled," was unable to work, had no income, had filed for bankruptcy, and, consequently, the continuation of his alimony obligation would work a "harsh and inequitable result." *Id*. The wife moved to dismiss the petition, arguing that the husband had waived any right to seek modification of alimony by entering into the separation agreement. The circuit court dismissed the petition and the husband appealed.

Before this Court, the husband argued, in reliance on *Moore*, that because the parties had not "expressly agree[d] that avoidance of a harsh and inequitable result would not terminate the obligation to pay alimony," the court retained its statutory authority under section 11-108 to terminate alimony on that basis. *Id*. at 233. The wife responded that the parties had "agreed not to subject [their separation agreement] to court review" and that the obligation to pay alimony would continue until the wife remarried or either party died. *Id*. at 234. She asserted that absent the occurrence of one of those events, the alimony obligation was not subject to modification or termination by any court.

We agreed with the wife that the alimony obligation was not subject to termination under section 11-108 to avoid a harsh and inequitable result. We explained that the rule announced in *Moore* was one of contract construction applicable to separation agreements. We declined to extend that rule to "construe separation agreements where the parties have not stated explicitly that the payment of alimony is not terminable when circumstances arise that make termination necessary to avoid a harsh and inequitable result." *Id*. at 236. We opined:

> The parties' agreement is very clear. It is terminable only upon the remarriage of [the wife] or death of either party. Because the parties "waived the right ever hereafter to have any court change or make a different provision for the support and maintenance of [w]ife," the termination of [the husband]'s obligation to pay alimony is terminable only upon [the wife]'s remarriage or the death of either party.

Id.

We went on to reason that policy considerations also did not justify extending the rule of construction announced in *Moore*. It would "not foster certainty or reduce litigation" to require parties to a separation agreement to expressly waive the right to seek termination to avoid a harsh or inequitable result because, unlike the termination of alimony by operation of law upon remarriage or death, termination to avoid a harsh and inequitable result is a fact-intensive and subjective determination. *Id*. at 236-37. It also was not consistent with longstanding practice as, traditionally, Maryland courts have refused to terminate alimony to avoid a harsh and inequitable result when the parties have entered into an agreement providing for the payment of alimony. *Id*. at 237 (citing *Winkel v. Winkel*, 178 Md. 489,

504-05 (1940)). We noted, finally, that the "statutory grant of authority to a court to terminate alimony" to avoid a harsh and inequitable result is of recent vintage, having been established by statute in 1980. *Id*.

We return to the case at bar. Casabe attempts to distinguish the "bare bones language" of the Agreement from the "far meatier" language construed in *Bradley*. We disagree that the language differs in any material respect. In both agreements, the parties specified that alimony would continue unless and until the wife remarried or either party died. In both agreements, the parties agreed that the provisions of the agreement were not subject to modification by any court. The holding in *Bradley* controls.

In apparent recognition of this fact, Casabe also urges us to revisit the *Bradley* decision, which he argues departed "from well-established Maryland precedent" and cannot be "reconciled with *Moore*." We decline this invitation. For the reasons stated in *Bradley,* the circuit court did not err by denying Casabe's motion to terminate alimony to avoid a harsh and inequitable result because the parties had "otherwise agree[d]" that alimony only would terminate upon Szuchman's remarriage or upon either party's death.

ORDER OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.