

Circuit Court for Baltimore County
Case No. 03-C-16-000716

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2486

September Term, 2018

BARBARA A. DAVIS

v.

WAYNE W. DAVIS, JR.

Graeff,
Friedman,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, J.

Filed: February 12, 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.

This appeal arises from a judgment of absolute divorce of the Circuit Court for Baltimore County. Barbara A. Davis, appellant, claims that she did not consent to the terms of a settlement agreement that the circuit court incorporated into the divorce judgment. Appellant also contends that the circuit court abused its discretion by entering the divorce judgment without first addressing her petitions for contempt against her former husband, Wayne W. Davis, Jr., appellee.

For the reasons set forth below, we shall affirm the judgment of the circuit court.

BACKGROUND

Appellant filed a Complaint for Limited Divorce from appellee on June 21, 2010, after five years of marriage. Following a hearing on February 3, 2017, the parties agreed to a *pendente lite* consent order, providing that appellee pay appellant alimony in the amount of \$275.00 per month, retroactive to September 1, 2016, and \$55.00 per month toward the outstanding arrearage of \$330.00.¹ Appellee filed an Answer to the Complaint and Counterclaim for Absolute Divorce on February 7, 2017.

On June 23, 2017, appellant filed a petition for contempt for appellee's failure to comply with the *pendente lite* order. A hearing on the contempt petition was postponed and rescheduled multiple times. On December 8, 2017, appellant filed a second amended petition for contempt, citing appellee's ongoing failure to comply with the *pendente lite*

¹ The court issued the *pendente lite* consent order on February 16, 2017.

order. The court scheduled an evidentiary hearing of the divorce complaint and contempt petition for June 14, 2018.

At the June 14, 2018 hearing, counsel for appellee placed on the record the terms of a settlement agreement the parties had reached regarding alimony, alimony arrears, and a vehicle to be provided to appellant by appellee:

THE COURT: Okay. And who would like to put the settlement on the record? [Counsel for appellee]?

[COUNSEL FOR APPELLEE]: Your Honor, the parties have resolved the open issues. [appellee] has agreed to pay [appellant] - - continue paying her alimony in the sum of \$400 per month, plus \$50 per month towards the remaining arrears, which is as of this month \$495. He is going to pay it in accordance with his bi-weekly pay schedule. He gets paid every two weeks.

The terminal events of this alimony will be the first to occur of either [appellee] dying, [appellant] dying, [appellant] remarrying, or March 31st, 2019, whichever [occurs first].

Upon the termination of the alimony on March 31st ... I think that would leave \$45 remaining on the arrearage. I guess we can just agree to just take care of that as of March 31st. Okay. So I guess [on] March 31st, instead of paying 50 on the arrearage, he will pay 95 on the arrearage, which will take care of the remaining arrearage.

In other words, as of March 31st, 2019, the alimony stops, and he will have satisfied any arrearage.

[Appellee] has agreed to provide [appellant], not later than August 15th of 2018, a motor vehicle to be titled in her name that will have passed Maryland inspection. It will have a Maryland inspection certificate by an authorized safety inspection station that has been certified by the MVA. It will be an automatic transmission.

Other than that, there were no other - - oh, sorry. [Appellee] has agreed, he currently has [appellant] covered on his health insurance policy through his employment. He has agreed to, when this matter is reset on the merits, to request that it be reset after January 1st of 2019, so that [appellant]

can remain on his currently existing health insurance through the end of this year.

Other than that, there are no other claims between the parties. **They release each other from any further matters arising out of the marriage.**

I believe that is the sum and substance of the agreement.

THE COURT: Okay. Would you - - do you agree with that as her attorney?

[COUNSEL FOR APPELLANT]: With one - - well, with a couple of additions.

The arrearage balance is contingent on the check that [appellee] wrote to [appellant] dated March 4th, 2018, Check Number 0100 in the amount of \$600 as an alimony payment. **Contingent on that actually clearing the bank and those being good and available funds, then we would agree with the balance of the arrears.**

We are also asking that it be done through earnings withholding, if we can get that in place before we return to court.

And with regards to the automobile, she does need to have an automobile that is an automobile that is an automatic and not a stick shift.

Counsel then inquired as to the parties' understandings of the terms of the settlement agreement. Appellant testified as follows:

[COUNSEL FOR APPELLANT]: ... [Appellant], you've heard the terms that we have placed on the record that [counsel for appellee] stated, and **are you in agreement with those terms?**

[APPELLANT]: **I am.**

[COUNSEL FOR APPELLANT]: Okay. And are you voluntarily and willingly accepting those terms?

[APPELLANT]: I do.

[COUNSEL FOR APPELLANT]: And has anyone pressured you or threatened you or forced you to agree?

[APPELLANT]: None.

[COUNSEL FOR APPELLANT]: **And you understand that these terms will be binding on you and [appellee] up until the point that we return to court and we would, in January or later of 2019, we will be placing testimony on the record to resolve all of the final issues in this matter?**

[APPELLANT]: Yes.

[COUNSEL FOR APPELLANT]: **Okay. And do you want to proceed in such a manner?**

[APPELLANT]: Yes.

Following the hearing, appellee’s counsel drafted a proposed consent order reflecting the terms of the agreement that had been placed on the record, but appellant’s counsel refused to approve it. On September 12, 2018, appellant noted an appeal to this court.²

On January 7, 2019, the circuit court held an evidentiary hearing on the complaint for divorce. At the hearing, appellant’s counsel argued that the parties had not reached an agreement at the June 14, 2018 hearing, and requested that the court consider appellant’s petitions for contempt before receiving evidence regarding the merits of the divorce. The court determined that the parties had reached an agreement at the June 14, 2018 hearing, and incorporated the terms of that agreement into the judgment of absolute divorce. The court further determined that appellant’s petitions for contempt were moot because the

² Appellant identified the draft consent order as the subject of her appeal and indicated that the case was appropriate for alternative dispute resolution. The case had not yet been assigned a conference date before appellant filed an amended notice of appeal.

divorce judgment addressed appellee’s alimony obligation and the amount of outstanding arrears, which had been the subject of the contempt petitions. A written judgment of divorce dated January 7, 2019, was entered on January 12, 2019.

On January 16, 2019, appellant noted an amended appeal to include the judgment of absolute divorce.

DISCUSSION

Appellant argues that the circuit court abused its discretion by incorporating the terms of the agreement placed on the record at the January 7, 2019 hearing into the divorce judgment because the parties had not reached an agreement as to those terms. Specifically, appellant contends that she and appellee had not agreed upon the amount of outstanding alimony that appellee owed, nor did she agree to waive future claims against appellee arising out of the marriage. She further claims that the court materially changed the terms of the agreement by recalculating the amount of arrears due and by failing to provide a date on which appellee was required to provide appellant with a vehicle. In appellant’s view, she was entitled to a hearing on her contempt petitions regarding appellee’s noncompliance with the terms of the *pendente lite* order, and the circuit court abused its discretion in determining that her petitions for contempt were moot as a result of the divorce judgment.

We review the circuit court’s approval of a settlement agreement in a divorce proceeding for an abuse of discretion. *Smith v. Luber*, 165 Md. App. 458, 467 (2005). An “abuse of discretion occurs ‘where no reasonable person would take the view adopted by the [trial] court’; or ‘when the court acts without any guiding rules or principles.’” *Id.* (quoting *Das v. Das*, 133 Md. App. 1, 15-16 (2000)).

“It is well established in Maryland that a valid settlement agreement between the parties is binding upon them.” *Chernick v. Chernick*, 327 Md. 470, 481 (1992). “The public policy of encouraging settlements is so strong that settlement agreements will not be disturbed even though the parties may discover later that settlement may have been based on a mistake or if one party simply chooses to withdraw its consent to the settlement.” *Long v. State*, 371 Md. 72, 85 (2002). Settlement agreements and consent agreements are subject to the same rules of construction that apply to other contracts. *Barnes v. Barnes*, 181 Md. App. 390, 415-16 (2008). ““It is the parties’ agreement that defines the scope of the decree ... [t]his is equally applicable where the parties entered into an agreement in open court, which under Maryland law is binding upon the parties.”” *Id.* (quoting *Smith*, 165 Md. App. at 470)).

Generally, a party may not appeal an order to which he has agreed. *Smith*, 165 Md. App. at 468; *Long*, 371 Md. at 86. The only question that can be raised on appeal of an agreement is whether the parties consented to enter into the agreement. *Smith*, 165 Md. App. at 468; *Barnes*, 181 Md. App. at 411; *Dorsey v. Wroten*, 35 Md. App. 359, 361 (1977).

Maryland follows the rule that an agreement accurately dictated into the record is binding on the parties. *Barnes*, 181 Md. App. at 416; *Chertkof v. Harry C. Weiskittel Co.*, 251 Md. 544, 552-53 (1968). In *Barnes*, the parties in a divorce proceeding entered into a settlement agreement on the record. *Id.* at 398-400. Counsel for the husband prepared an order incorporating the terms of the agreement, but wife’s counsel refused to sign it. *Id.* at 400. The circuit court signed the order over wife’s objection. *Id.* at 406. We reviewed the record and determined that “there [was] no evidence on the record to contradict the

conclusion that both parties voluntarily agreed to the terms of the [consent order],” and we dismissed the appeal. *Id.* at 420.

Similarly, in *Chertkof*, counsel for Weiskittel dictated into the record the terms of an agreement the parties had reached resolving Chertkof’s breach of contract claim. 251 Md. at 547. Chertkof’s lawyer neither objected to the terms as dictated, nor did he argue that the terms were an inaccurate or incomplete representation of the parties’ agreement. *Id.* When presented with a draft agreement reflecting those terms, Chertkof refused to sign it and requested that additional terms be included in the agreement. *Id.* The circuit court enforced the agreement, finding that “the settlement agreement entered into by the parties in the presence of the [c]ourt is a binding contractual obligation on all parties to this case.” *Id.* at 549. The Court of Appeals affirmed, holding that the settlement agreement was “fully in accord to what was agreed to orally ... and reduced to writing[.]” *Id.* at 552.

In this case, appellant’s arguments that she had not agreed to the amount of outstanding arrears or to a waiver of further claims is contradicted by the transcript of the June 14, 2018 hearing. The transcript confirms that appellee’s counsel stated on the record that the parties had reached an agreement that appellee would pay alimony of \$400 per month plus \$50 per month towards the remaining arrears of \$495, with a final payment for arrears of \$95 on March 31, 2019. Appellee’s counsel also represented that the parties had agreed that there were no other claims between the parties and that “[t]hey release each other from any further matters arising out of the marriage.”

Counsel for both parties examined their clients on the record and confirmed that the parties understood the terms of the agreement and agreed to immediately be bound by the

agreement. Appellant’s counsel made no objection on the record to the terms of the agreement, nor did she take any action in the circuit court to set aside the agreement following the hearing. We agree with the circuit court that the agreement placed on record at the June 14, 2018 hearing was binding on the parties and that appellant failed to preserve any objections she may have had to the terms of the agreement.

Appellant’s argument that the court erred in determining that her contempt petition was moot is also without merit. “‘A case is moot when there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy.’” *O’Brien & Gere Engineers, Inc. v. City of Salisbury*, 447 Md. 394, 405 (2016) (quoting *Clark v. O’Malley*, 434 Md. 171, 192 n. 11 (2013)); *Dept. of Human Resources, v. Roth*, 398 Md. 137, 143 (2007) (citation omitted). *See also Cianos v. State*, 338 Md. 406, 410 (1995) (a claim is moot when a decision on it “cannot have any practical effect on the controversy”) (citation omitted).

There was no existing controversy regarding alimony or arrears before the court at the time of the January 7, 2019 hearing. Appellee did not dispute that he had not paid alimony since the June 14, 2018 hearing or that he had not provided a vehicle to appellant. The parties had agreed that appellee was obligated to pay alimony of \$400.00 per month through March 31, 2019 and, that as of June 14, 2018, he owed arrearages of \$495.00. The court incorporated those terms into the judgment and added alimony that had accrued from the June 14, 2018 hearing to the January 7, 2019 hearing. The court further ordered that the alimony be deducted from appellee’s salary by income withholding and that appellee provide appellant with a vehicle equipped with an automatic transmission, titled in her

name, that had passed Maryland inspection, as appellant had requested. Because the judgment was immediately enforceable, it was unnecessary for the court to include a further deadline by which appellee was to provide the vehicle. The divorce judgment addressed the issues raised in appellant’s contempt petitions, and there was no further relief that the court could provide.

At oral argument, appellant’s counsel argued that appellee has not complied with the terms of the judgment of divorce entered on January 12, 2019. Appellee’s counsel disagreed. At this juncture, appellant’s remedy for appellee’s noncompliance with the terms of the final judgment lies in the circuit court.

We conclude that the court did not abuse its discretion in determining that the judgment of absolute divorce resolved the controversy between the parties and, therefore, appellant’s contempt petitions were moot.

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