

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

TINA LUDROWKSY,	:	O P I N I O N
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2011-L-158
KEITH LUDROWSKY,	:	
Defendant-Appellant.	:	

Civil Appeal from the Lake County Court of Common Pleas, Domestic Relations Division, Case No. 11 DR 000081.

Judgment: Affirmed.

Anna M. Parise, Dworken & Bernstein Co., L.P.A., 60 South Park Place, Painesville, OH 44077 (For Plaintiff-Appellee).

Stacy E. Dame and Michael C. Lucas, Wiles and Richards, 37265 Euclid Avenue, Willoughby, OH 44094 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Keith Ludrowsky, appeals the judgment of the Lake County Court of Common Pleas, Domestic Relations Division, adopting and ordering into execution the Separation Agreement entered into by Ludrowsky and plaintiff-appellee, Tina Ludrowsky nka Robinson, before a magistrate of the court. The issue before us is whether the trial court committed plain error by adopting the parties' Agreement, where the circumstances of its negotiation allegedly demonstrate that

Ludrowsky did not enter the Agreement knowingly or voluntarily. For the following reasons, we affirm the decision of the court below.

{¶2} Ludrowsky and Robinson married on July 29, 2004, in South Carolina. No children were born as issue of the marriage.

{¶3} On February 1, 2011, Robinson filed a Complaint for Divorce against Ludrowsky.

{¶4} On October 24, 2011, the parties appeared for trial before a magistrate of the domestic relations court. Robinson appeared with counsel; and Ludrowsky appeared pro se, as he had throughout the course of the proceedings. During the course of the day (about seven hours), the parties negotiated a Separation and Property Settlement Agreement that was signed, notarized, and its terms were reviewed by the magistrate and the parties. Section 6.5 of the Agreement provides: “Each party fully understands all of the terms herein set forth, and has read this Agreement and finds it to be in accordance with his or her understanding, and each voluntarily executes this Agreement and affixes his and her signature hereto * * *.”

{¶5} On October 31, 2011, the magistrate issued his Decision, adopting the parties’ Separation and Property Settlement Agreement. The magistrate made the following findings: “In open court and on the record the parties thoroughly reviewed the attached [copy of the] separation and property settlement agreement. Both parties indicated an understanding of the separation and property settlement agreement and an intent to be bound thereby, without imposition of duress or undue influence by any source.”

{¶6} On November 9, 2011, the domestic relations court issued a Judgment Entry adopting the Magistrate's Decision and granting the parties a divorce upon grounds of incompatibility.

{¶7} On the same date, the domestic relations court issued a Judgment Entry of Divorce with Attached Separation Agreement, affirming the grant of divorce and incorporating the parties' Separation and Property Settlement Agreement, the original of which was attached thereto. The Judgment Entry of Divorce with Attached Separation Agreement was signed by both parties, indicating their approval thereof.

{¶8} On December 9, 2011, Ludrowsky, through counsel, filed a Notice of Appeal. On appeal, he raises the following assignment of error:

{¶9} "[1.] The trial court erred to the prejudice of appellant, when it issued an order adopting the parties' separation agreement and judgment entry of divorce."

{¶10} A trial court's adoption of a magistrate's decision is generally reviewed under an abuse of discretion standard. *Allen v. Allen*, 11th Dist. No. 2009-T-0070, 2010-Ohio-475, ¶ 24; *Goulding v. Goulding*, 11th Dist. No. 2007-T-0011, 2007-Ohio-6927, ¶ 26.

{¶11} "If no timely objections are filed, the court may adopt a magistrate's decision, unless it determines that there is an error of law or other defect evident on the face of the magistrate's decision." Civ.R. 53(D)(4)(c). "Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ. R. 53(D)(3)(b)." Civ.R. 53(D)(3)(b)(iv). *See generally*

Booth v. Booth, 11th Dist. No. 2002-P-0099, 2004-Ohio-524, ¶ 6-9 (the parties' in-court agreement before the magistrate was adopted without objection by the domestic relations court).

{¶12} “It is a common practice in Ohio for parties in a contested divorce to reach an ‘in-court’ agreement, i.e., during the course of a hearing, regarding the terms of their separation.” *Id.* at ¶ 6. To be enforceable, the parties must manifest their intention to be bound by the terms of the agreement and those terms must be sufficiently definite to be enforced. *Presjak v. Presjak*, 11th Dist. No. 2009-T-0077, 2010-Ohio-1455, ¶ 37. “In the absence of fraud, duress, overreaching or undue influence, or of a factual dispute over the existence of terms in the agreement, the court may adopt the settlement as its judgment.” *Walther v. Walther*, 102 Ohio App.3d 378, 383, 657 N.E.2d 332 (1st Dist.1995).

{¶13} Ludrowsky argues that the domestic relations court's adoption of the parties' Separation and Property Settlement Agreement constitutes plain error, in that he “was subjected to undue influence, was denied the ability to seek counsel, and did not sign the Separation Agreement voluntarily and knowingly.” More specifically, Ludrowsky asserts that he was not represented by counsel and lacked extensive legal knowledge. He did not fully understand the agreement, which was the product of intense negotiations with an adversary spouse and her skilled attorney under the threat of impending trial. Ludrowsky claims that he did not have an adequate opportunity to review the Agreement and that there was pending discovery regarding Robinson's assets.

{¶14} For factual support, Ludrowsky relies solely on the transcript of the proceedings before the magistrate.

{¶15} Ludrowsky's arguments lack merit. No objections to the Magistrate's Decision were filed and there was no error of law or other defects on the face of that decision. Ludrowsky's understanding of and assent to the terms of the Separation Agreement were attested by the magistrate's findings of fact, the terms of the signed Agreement, and Ludrowsky's signing the Agreement and the Judgment Entry of Divorce incorporating the Agreement. Ludrowsky's reliance on the transcript of the proceedings before the magistrate is misplaced. This transcript was not before the domestic relations court when it adopted the parties' Agreement. The domestic relations court cannot be faulted for failing to consider a document that was not before it; nor will this court consider such a document on appeal. *In re K.L.S.*, 11th Dist. No. 2011-T-0077, 2012-Ohio-2563, ¶ 31, fn. 3 (the court of appeals will not consider the transcript of proceedings before the magistrate that was not before the trial court when it adopted the magistrate's decision).

{¶16} The sole assignment of error is without merit.

{¶17} For the foregoing reasons, the judgment of the Lake County Court of Common Pleas, Domestic Relations Division, adopting and ordering into execution the parties' Separation Agreement, is affirmed. Costs to be taxed against appellant.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.