

COURT OF APPEALS
HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

TAMMY S. HUNDLEY	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
	:	Hon. William B. Hoffman, J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	
-vs-	:	
	:	Case No. 16CA002
CURTIS M. HUNDLEY	:	
	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Holmes County Court
of Common Pleas, Case No. 15DR035

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: June 17, 2016

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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CURTIS M. HUNDLEY PRO SE
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Gwin, P.J.

{¶1} Appellant appeals the February 2, 2016 judgment entry of the Holmes County Court of Common Pleas.

Facts & Procedural History

{¶2} Appellee Tammy Hundley (“Wife”) filed a complaint for divorce from appellant Curtis Hundley (“Husband”) on May 20, 2015. The parties were married in June of 1996 and have two children, one who was emancipated at the time of the filing of the divorce and one child who was a minor at the time the divorce was filed, but attained the age of majority during the pendency of the case. Husband, through counsel, filed an answer to the complaint on June 29, 2015.

{¶3} On October 6, 2015, the trial court issued a notice setting the final divorce hearing for January 7, 2016. The trial court held the final divorce hearing on January 7, 2016. On the same day, the trial court issued a judgment entry stating both parties appeared with their counsel at the hearing. Further, that the parties “reached an agreement, the agreement was read into the record and agreed to by the parties.” The trial court ordered Wife’s attorney to draft and submit a final judgment entry of divorce by January 28, 2016.

{¶4} On January 11, 2016, Husband filed a motion to remove counsel and informed the trial court he was terminating his attorney. On the same day, Husband also filed a motion to reject the divorce agreement and stated he objected to the January 7, 2016 agreement because his counsel coerced him and deceived him into consenting to the agreement.

{¶5} Husband filed a motion for discovery of documents and motion for financial disclosure of Wife on January 19, 2016. Husband requested Wife's attorney provide him with all financial documents and records of Wife in his possession. The trial court set these motions for non-oral hearing on February 1, 2016. Wife filed a motion for attorney fees on January 21, 2016, requesting the trial court grant her fees incurred as a result of Husband's frivolous conduct and attempt to withdraw his consent to the settlement agreement.

{¶6} Husband's counsel filed a motion to withdraw on January 25, 2016, and the trial court granted the motion on January 27, 2016. The trial court set Husband's motion on the agreed journal entry and Wife's motion for attorney fees for a hearing on February 2, 2016.

{¶7} Husband filed a motion to stay agreement on January 28, 2016, arguing he did not have adequate counsel. On February 1, 2016, Wife filed a motion to strike and/or dismiss Husband's motion for discovery and financial disclosure due to the January 7th settlement agreement. Husband filed a motion to reject Wife's request for attorney fees on February 2, 2016.

{¶8} The trial court conducted an oral hearing on February 2, 2016 and issued a judgment entry on February 3, 2016. In the judgment entry, the trial court noted that on January 7, 2016, the parties both appeared with counsel for a final divorce hearing and entered negotiations to resolve the case. After an agreement was reached, the agreement was read into the record, assented to by the parties, and approved by the trial court. After the hearing, review of all the pleadings, and statements made in court, the trial court: found Husband's motion for discovery of documents and for financial

disclosure moot and dismissed them because the case had already been adjudicated; granted Wife's motion for attorney fees and awarded Wife \$1,260 in attorney fees as reflected in Exhibit A; dismissed the motion to stay agreement; determined that, pursuant to the pleadings and review of the agreed judgment entry submitted by counsel for Wife on January 19, 2016, the judgment entry/decreed of divorce conforms to the testimony given at the final divorce hearing on January 7, 2016; and executed the judgment entry/decreed of divorce so that it became the final order in the case. The trial court signed the agreed judgment entry/decreed of divorce on February 2, 2016. Husband refused to approve the entry. Wife approved the entry via e-mail approval on January 19, 2016. Wife's counsel approved the entry on January 19, 2016.

{¶9} Husband appeals the February 3, 2016 judgment entry of the Holmes County Court of Common Pleas and assigns the following as error:

{¶10} "I. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF/APPELLEE/DIVORCE/DISSOLUTION THROUGH AN UNSIGNED AGREEMENT BETWEEN THE PLAINTIFF AND THE DEFENDANT BY IGNORING THE PLAIN AND UNAMBIGUOUS LANGUAGE OF OHIO DIVORCE LAWS UNDER 3505 OF THE OHIO REVISED CODE.

{¶11} "II. THE TRIAL COURT ERRED WHEN IT GRANTED JUDGMENT ENTRY AGAINST THE DEFENDANT/APPELLANT AFTER THE APPELLANT FILED MOTIONS WITH THE HOLMES COUNTY COMMON PLEAS COURT TO REMOVE HIS PAID COUNSEL FROM THE CASE, BASED ON INEFFECTIVE COUNSEL. THEN REQUESTED THE COURT TO ALLOW THE DEFENDANT TO REPRESENT HIMSELF AS PRO SE, IN THE CASE BEFORE THE COURT. HOWEVER, THE JUDGE FAILED

TO REVIEW THE MOTION AND FAILED TO ALLOW THE DEFENDANT/APPELLANT TO MOVE FORWARD ON HIS OWN BEHALF WITH HIS DIVORCE AGAINST PLAINTIFF TAMMY S. HUNDLEY.

{¶12} “III. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF/APPELLEE SUMMARY JUDGMENT FOR DIVORCE PRIOR TO THE COURT’S HEARING MOTIONS FROM THE DEFENDANT (PRO SE) FOR THE PLAINTIFF/APPELLEE TO TURN OVER ALL FINANCIAL DOCUMENTS FOR REVIEW.

{¶13} “IV. THE COURT ERRED BY ORDERING THE DEFENDANT TO PAY PLAINTIFF LEGAL FEES OF \$1,260.00 WHEN IN FACT THE JUDGE AND THE PLAINTIFF’S ATTORNEY AGREED THAT SHE WOULD PAY HER OWN ATTORNEY FEES AND SIGNED INTO THE FINAL JOURNAL ENTRY BY THE JUDGE ON FEBRUARY 5, 2016.

{¶14} “V. THE JUDGE ERRED BY GRANTING SUMMARY JUDGMENT TO THE PLAINTIFF BY AGREEING THAT AN EMAIL SIGNATURE OF THE PLAINTIFF SUFFICE FOR ACKNOWLEDGMENT OF THE AGREEMENT, WHEN IN FACT OHIO DIVORCE LAWS REQUIRE THE ACTUAL SIGNATURE OF THE PLAINTIFF AND DEFENDANT ON AN AGREEMENT, AND IF THE AGREEMENT IS NOT SIGNED BY BOTH PARTIES, THE COURT SHOULD HAVE DISMISSED THE COMPLAINT.

{¶15} “VI. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF/APPELLEE SUMMARY JUDGMENT FOR DIVORCE WHEN THE COURT FAILED TO REVIEW THE DEFENDANT/APPELLANT’S MOTION TO MOVE FORWARD WITH A TRIAL IN THE COURT BASED ON THE APPELLEE/PLAINTIFF’S ADULTEROUS AFFAIRS, FRAUDULENT CONTRACT, AND GROSS NEGLECT OF DUTY.”

Transcript

{¶16} We first note that Husband has failed to file a transcript of either the January 7, 2016 hearing or the February 2, 2016 hearing. Pursuant to App.R. 9(B), it is the obligation of the appellant to ensure that the proceedings the appellant considers necessary for inclusion in the record are transcribed. When portions of the transcript or statement of proceedings necessary for resolution of the assigned errors are omitted from the record, the reviewing court has nothing to pass on and thus, as to those assigned errors, this Court has no choice to presume the validity of the lower court's proceedings. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 400 N.E.2d 384 (1980).

I.

{¶17} In his first assignment of error, Husband argues the trial court erred in granting the divorce and adopting the settlement agreement as the agreement was invalid because Husband did not sign the settlement agreement.

{¶18} Settlement agreements and compromise are highly favored by the law. *State ex rel. Wright v. Weyandt*, 50 Ohio St.2d 194, 363 N.E.2d 1387 (1997). A trial court's authority to enforce an in-court settlement agreement is discretionary. *Tyron v. Tyron*, 11th Dist. Trumbull No. 2007-T-0030, 2007-Ohio-6928. As such, the trial court's decision will not be disturbed on appeal unless it is clear that the trial court's decision was unreasonable, arbitrary, or unconscionable. *Id.*

{¶19} "Where the parties enter into a settlement agreement in the presence of the court, such an agreement constitutes a binding contract." *Jackson v. Jackson*, 5th Dist. Richland No. 12CA28, 2013-Ohio-3521, quoting *Tyron v. Tyron*, 11th Dist. Trumbull No. 2007-T-0030, 2007-Ohio-6928. Neither a change of heart nor poor legal advice is a

ground to set aside a settlement agreement. *Pastor v. Pastor*, 5th Dist. Fairfield No. 04 CA 67, 2005-Ohio-6946.

{¶20} Under established case law, where the parties' in-court settlement agreement is complete and the proposed judgment entry is consistent with the terms of the in-court settlement, the trial court may enforce the in-court settlement agreement and it may be incorporated into the trial court's judgment entry of divorce even in the absence of an agreement in writing or when one of the parties later refuses to give written approval. *Frost v. Frost*, 10th Dist. Franklin No. 14AP-1044, 2015-Ohio-3596; *Torrence v. Torrence*, 5th Dist. No. 1996CA00223 (July 31, 1997); *Gulling v. Gulling*, 70 Ohio App.3d 410, 591 N.E.2d 349 (9th Dist. 1990). Specifically, this Court has previously held as follows:

Settlement agreements * * * which are stipulated to by counsel for the parties in the presence of the trial court, represented by counsel for the parties to be the agreement of the parties, and which are read into the record before the court and in the presence of the parties, are enforceable agreements when adopted by the court and are enforceable even though the stipulation of settlement is not signed by the parties.

Thomas v. Thomas, 5 Ohio App.3d 94, 449 N.E.2d 478 (5th Dist. Licking 1982).

{¶21} In this case, the judgment entry after the January 7, 2016 hearing stated that the parties "reached an agreement, the agreement was read into the record and agreed to by the parties." In the judgment entry after the February 2nd hearing, the trial court found that at the January 7th hearing, the parties both appeared with counsel for the hearing, the agreement was read into the record, the agreement was assented to by the parties, and the agreement was approved by the trial court. Further, the trial court

found Wife's proposed judgment entry conforms to and is consistent with the testimony at the January 7th hearing.

{¶22} Here, because Husband did not file a transcript of the January 7th or February 2nd hearings, we must presume the regularity of the trial court's determination that Wife's proposed judgment entry conforms to the testimony given at the hearing on January 7th and is consistent with the terms of the in-court settlement. See *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 400 N.E.2d 384 (1980). Accordingly, we find the trial court did not abuse its discretion by accepting the settlement agreement and executing the settlement agreement so it became the final order in the case. Husband's first assignment of error is overruled.

II.

{¶23} In his second assignment of error, Husband contends the trial court erred when it granted the divorce after Husband filed a motion to remove his counsel. Further, that the trial court erred in failing to allow Husband to proceed on his own behalf. We disagree.

{¶24} We first note that there is no constitutional right to counsel in a domestic relations matter. *Lynch v. Lynch*, 5th Dist. Fairfield No. 7-CA-92, 1993 WL 35325 (Jan. 15, 1993). Further, as noted above, neither a change of heart nor poor legal advice is a ground to set aside a settlement agreement. *Pastor v. Pastor*, 5th Dist. Fairfield No. 04 CA 67, 2005-Ohio-6946.

{¶25} In this case, the trial court permitted Husband's counsel to withdraw prior to the February 2nd motion and also permitted Husband to file his motions pro se. Husband attended the February 2nd hearing and the trial court allowed him to represent himself

pro se. Husband's real complaint in this case seems to be with the performance of his counsel. However, as detailed above, settlement agreements read into the record and in the presence of the parties who are represented by counsel are enforceable even if unsigned, and even if the party received poor legal advice. *Thomas v. Thomas*, 5 Ohio App.3d 94, 449 N.E.2d 478 (5th Dist. Licking 1982); see also *Moe v. Moe*, 12th Dist. Butler No. CA2004-03-0057, 2005-Ohio-1681. Accordingly, Husband's removal of his counsel and his proceeding pro se did not affect the enforceability of the settlement agreement. Further, because Husband failed to file the transcript of either the January 7th or February 2nd hearing, we must presume the regularity of the proceedings. See *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 400 N.E.2d 384 (1980). Husband's second assignment of error is overruled.

III. & VI.

{¶26} In his third and sixth assignments of error, Husband argues the trial court erred in granting the divorce prior to hearing his various motions regarding Wife turning over financial documents for his review and his motion to move forward with a trial based on Wife's affairs and gross neglect of duty. We disagree.

{¶27} In this case, as discussed *infra* in Husband's first assignment of error, the trial court did not err or abuse its discretion in adopting and granting the divorce based upon a valid settlement agreement. Husband's motions did not deal with the enforceability of the settlement agreement. Given the valid settlement agreement, the issues Husband attempts to litigate in the motions are moot. Accordingly, the trial court did not err in granting the divorce and incorporating the settlement agreement prior to

ruling on Husband's motions. Husband's third and sixth assignments of error are overruled.

IV.

{¶28} In his fourth assignment of error, Husband argues the trial court erred in ordering him to pay Wife's legal fees of \$1,260 when the agreement states Wife would pay her own attorney fees.

{¶29} Pursuant to R.C. 3105.73(A), a divorce court "may award all or part of reasonable attorney's fees * * * to either party if the court finds the award equitable." In determining whether an award of fees is equitable, the court may consider the parties' marital assets and income, any award of temporary spousal support, the conduct of the parties, and any other relevant factors the court deems appropriate. *Id.* An award of attorney fees in a divorce proceedings is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *Kirkpatrick v. Kirkpatrick*, 5th Dist. Tuscarawas No. 2014AP050018, 2015-Ohio-427.

{¶30} In this case, Wife did not seek any of the attorney fees she incurred during the period of time from the filing of her complaint until after the final hearing on January 7th. Wife's motion requested only fees incurred as a result of Husband's attempt to withdraw his consent to the settlement agreement. The amount of fees totaled \$1,260.00 for that period of time and Wife offered Exhibit A, an affidavit and invoice of the attorney fees, to establish this figure. The fees included work for the approval of the settlement agreement, the review of and response to Husband's motions, and attendance at the hearing on Husband's motions. The trial court was able to review this exhibit, affidavit, and invoice, and award attorney fees accordingly. As Husband did not file a transcript or

an App.R. 9(C) statement of proceedings of the February 2nd hearing, there is no evidence Husband objected to Exhibit A, and we have no choice but to presume the validity of the lower court's proceedings. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 400 N.E.2d 384 (1980).

{¶31} Accordingly, we find the trial court did not abuse its discretion in awarding Wife the amount of \$1,260 in attorney fees. Husband's fourth assignment of error is overruled.

V.

{¶32} In his fifth assignment of error, Husband contends the trial court erred in not dismissing the settlement agreement because Wife's e-mail signature was not sufficient for approval of the agreement. We first note that Husband fails to cite any law providing an e-mail approval is not sufficient on a settlement agreement, particularly where the person whose signature is at issue is not contesting the validity of the signature. Additionally, Wife's counsel approved the settlement agreement via original signature on January 19, 2016. Further, even if Wife's e-mail approval was not valid, as discussed above, a settlement agreement which is stipulated to by counsel for the parties in the presence of the trial court, represented by counsel for the parties to be the agreement of the parties, and which is read into the record before the court and in the presence of the parties, is an enforceable agreement when adopted by the court and is enforceable even though it is not signed by the parties. *Thomas v. Thomas*, 5 Ohio App.3d 94, 449 N.E.2d 478 (5th Dist. Licking 1982).

{¶33} Husband's fifth assignment of error is overruled.

{¶34} Based on the foregoing, we overrule Husband's assignments of error. The February 3, 2016 judgment entry of the Holmes County Court of Common Pleas is affirmed.

By Gwin, P.J.,
Hoffman, J., and
Wise, J., concur