[Cite as *Spicer v. Spicer*, 2015-Ohio-799.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Jennifer Spicer	Court of Appeals No. E-14-101
Appellee	Trial Court No. 2009-DR-0122
v.	
Edward Spicer	**DECISION AND JUDGMENT**
Appellant	Decided: March 6, 2015

* * * * *

Patricia Horner, for appellee.

Michele A. Smith, for appellant.

* * * * *

SINGER, J.

{¶ 1} This is an appeal from a decision from the Erie County Court of Common Pleas, Domestic Relations Division, denying a motion to set aside a consent judgment entry. For the reasons that follow, we affirm.

{¶ 2} Appellee, Jennifer Spicer, filed a motion to modify her child support and spousal support. Appellant, Edward Spicer, voluntarily entered into an agreement with appellee to settle. The parties agreed to an increase in child support but not spousal support. As a result, appellant's child support obligation increased from $719.47 a month to $1,100 a month.

{¶ 3} The agreement was read into the record at a hearing on May 13, 2014. At the hearing, appellant was represented by counsel and outwardly manifested assent to the terms of the agreement. The agreement was read into the record as follows:

> [Appellee's counsel]: All right. Your Honor, based on Father's income of $86,594, and Mother's income of $12,000, there would be a child support order in the amount of $1061.20 per month; however, based on the best interest of the children and based on the need for a special needs child, the parties have agreed to differentiate from this amount and they're agreeing to a monthly child support obligation of $1,100 per month which would commence on September 1st, 2013, and all other provisions from the June 28, 2010 Divorce Decree shall remain in full force and effect.

{¶ 4} The Court then questioned appellant about the agreement as follows:

> The Court: All right. Thank you very much [Ms. Spicer]. Mr. Spicer, is that your understanding of the agreement?
>
> Mr. Spicer: Yes, Your Honor.

The Court: All right. Do you have any questions in regards to the agreement?

Mr. Spicer: No, Your Honor.

The Court: And you're asking the Court to adopt that as your agreement between you and your former wife.

Mr. Spicer: Yes, sir.

The Court: Okay. And you understand by going forward today you're giving up your right to have a hearing on the matter?

Mr. Spicer: Yes, Your Honor.

The Court: All right. Then the Court will in fact adopt the agreement[.]

{¶ 5} Appellant made no further objections until filing a Civ.R. 60(B) motion to vacate the consent agreement on June 20, 2014. The motion also requested a hearing where appellant would argue that the figures used in the child support computation worksheet was incorrect. However, he had an opportunity to correct it at the May 13 hearing.

{¶ 6} The lower court denied the motion and entered the judgment entry finding appellant failed to put forth justifiable reasons as to why the judgment should be set aside. Appellant now brings this appeal setting forth two assignments of error:

I. It Was An Abuse of Discretion For The Trial Court to Fail to Hold an Evidentiary Hearing Upon The Appellant's Motion to Vacate

When The Motion to Vacate Was Filed Prior to The Court Issuing A Consent Judgment Entry.

II. It Was An Abuse of Discretion For The Trial Court to Issue a Child Support Order Including An Upward Deviation In The Appellant's Child Support Calculation Worksheet Containing Numerous Errors Including Errors in The Parties' Base Income and Including Appellant's One Time Moving Allowance As Income.

{¶ 7} In appellant's first assignment of error, he asserts that it was an abuse of discretion for the trial court to fail to hold an evidentiary hearing upon his motion to vacate the consent judgment entry.

{¶ 8} Prior to addressing the merits of the appeal, we address the effect of the stipulations to which the parties agreed.

{¶ 9} A stipulation is a voluntary agreement entered into between opposing parties concerning the disposition of some relevant point to avoid the necessity for proof on an issue. *In re Guardianship of Lavers*, 6th Dist. Lucas No. L-11-1044, 2012-Ohio-1668, ¶ 24. A stipulation may also be defined as "a voluntary agreement, admission, or concession, made by the parties or their attorneys concerning disposition of some relevant point to eliminate the need for proof or to narrow the range of issues to be litigated." *Wilson v. Harvey*, 164 Ohio App. 3d 278, 2005-Ohio-5722, 842 N.E.2d 83, ¶ 24 (8th Dist.). (Citation omitted.)

{¶ 10} Moreover, where the parties in an action voluntarily enter into an oral settlement agreement in the presence of the court, such agreement constitutes a binding contract. *See Kolar v. Shapiro*, 11th Dist. Lake No. 2007-L-148, 2008-Ohio-2504, ¶ 21, citing *Spercel v. Sterling Indus., Inc.*, 31 Ohio St.2d 36, 285 N.E.2d 324 (1972), paragraph one of the syllabus. Ordinarily, an in-court settlement binds the parties, even if they do not reduce it to writing. *Id*. at ¶ 22. (Citation omitted.) Where the settlement agreement is arrived at by the parties in open court and preserved by being read into the record or being reduced to writing and filed, then a trial judge may approve a journal entry which accurately reflects the terms of the agreement, adopting the agreement as his judgment. *Id*. at ¶ 23. (Citation omitted.)

{¶ 11} In order to effect a rescission of a binding settlement agreement entered into in the presence of the court, a party must file a motion to set the agreement aside. *Spercel* at paragraph two of the syllabus.

{¶ 12} Civ.R. 60(B) provides, in pertinent part, that on motion and upon just terms, the court may relieve a party from a final judgment for mistake, inadvertence, surprise, excusable neglect, or any other equitable reason justifying relief. In order for a party to be entitled to such relief, the party would thus have to demonstrate that they had a meritorious defense or claim to present, and, they were entitled to such relief in accordance with Civ.R. 60(B)(1) through (5). *Vargyas v. Brasher*, 6th Dist. Lucas No. L-14-1193, 2015-Ohio-464, ¶ 7. (Citation omitted.)

{¶ 13} A lower court's determination to not set aside a judgment is reviewed for abuse of discretion, requiring a finding that the trial court's attitude was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). (Citation omitted.)

{¶ 14} Appellant here contends that the trial court should have granted him an evidentiary hearing prior to the issuance of the consent judgment. However, this is a misstatement of the law. A lower court must grant an evidentiary hearing only where there is a lack of finality or there are terms of the agreement in dispute. *Rulli v. Fan Co.*, 79 Ohio St.3d 374, 377, 683 N.E.2d 337 (1997). The ultimate inquiry is essentially whether the court finds an evidentiary hearing necessary to clarify the terms or effect of the agreement. *Id*.

{¶ 15} The agreement entered into here was clear, voluntarily assented to, and executed in the presence of the trial court. Further, appellant does not claim undue influence, duress, fraud or coercion in their attempt to settle. Appellant confirmed to the court his understanding of the agreement and its terms. He also expressly affirmed his intention to waive any hearings on the matter. Accordingly, the agreement was enforceable and neither lacked finality nor lacked clarity in its terms. Appellant's first assignment of error is found not well-taken.

{¶ 16} In appellant's second assignment of error, he asserts that it was an abuse of discretion for the trial court to issue a child support order including an upward deviation in his support obligation.

{¶ 17} R.C. 3109.05 governs court-ordered child support and allows the domestic relations court to order either or both parents to support or help support their children in cases of divorce. Pursuant to R.C. 3119.022, a child support computation worksheet is mandated as a guideline for courts ordering that child support be paid to the residential parent. However, courts often allow the willing parties to stipulate to the amount of support one party must pay the other. *Kestner v. Kestner*, 173 Ohio App.3d 632, 2007-Ohio-6222, 879 N.E.2d 849, ¶ 31 (7th Dist.); *Baddam-Reddy v. Baddam-Reddy*, 8th Dist. Cuyahoga No.85038, 2005-Ohio-3432, ¶ 8; *Earl v. Earl*, 9th Dist. Lorain No. 04CA008432, 2004 Ohio 5684, ¶ 7.

{¶ 18} The court then computes the support obligation based on the parties' stipulation. *Id.* This computation may be reviewed on appeal for an abuse of discretion. *Id*. at ¶ 6.

{¶ 19} Here, appellant contends that the lower court incorrectly calculated his child support obligation for two reasons. First, there were alleged nonrecurring allowances included in his computed income. Second, minimum wage was not imputed to appellee as was done on the parties' divorce decree. However, appellant freely, voluntarily, and with counsel, entered into the in-court agreement; thus confirming and assenting to the stipulated to amount of support he was obligated to pay. *See Maury v. Maury*, 7th Dist. Carroll No.06CA837, 2008-Ohio-3326, ¶ 11 (stating "neither a change of heart nor poor legal advice is a ground to set aside such a settlement agreement").

{¶ 20} For the forgoing reasons, this court finds that the Erie County Court of Common Pleas, Domestic Relations Division, did not err in including an upward deviation in appellant's support obligation. Appellant's second assignment of error is found not well-taken.

{¶ 21} On consideration whereof, the judgment of the Erie County Court of Common Pleas, Domestic Relations Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R.24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE