[Cite as *Richmond v. Evans*, 2015-Ohio-870.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101269

HEATHER RICHMOND

PLAINTIFF-APPELLANT

vs.

PETER J. EVANS

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-13-345428

BEFORE: E.A. Gallagher, P.J., Kilbane, J., and Blackmon, J.

RELEASED AND JOURNALIZED: March 12, 2015

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EILEEN A. GALLAGHER, P.J.:

{¶1} Plaintiff-appellant Heather Richmond appeals from a judgment entry of divorce that incorporated a written settlement agreement Richmond and her husband, defendant-appellee Peter Evans, had executed following two days of in-court negotiations with counsel. Richmond contends that the agreement was invalid and unenforceable due to the parties' alleged failure to consider the tax ramifications of a property settlement payment provided for in the settlement agreement and that the trial court, therefore, abused its discretion in incorporating the settlement agreement into the divorce decree without conducting an evidentiary hearing to determine the merits of Richmond's claims. For the reasons that follow, we affirm the trial court's judgment.

Factual Background and Procedural History

{¶2} On January 25, 2013, Richmond filed a complaint for divorce, alleging that she and Evans were incompatible. Richmond and Evans had been married 22 years and had three children together, one of which was still a minor. On February 15, 2013, Evans filed his answer and counterclaim in which he admitted the facts establishing jurisdiction and venue and that the couple was incompatible.

{¶3} On February 5, 2014, the parties appeared in court with their attorneys. A three-day trial was scheduled to begin that day before the magistrate, but it never commenced. Instead, after pretrial discussions with the magistrate, the parties (with the assistance of their respective counsel) spent the next two days negotiating the terms of a written settlement agreement. On the evening of February 6, 2014, after the court had closed for the day, Richmond and Evans executed a nine-page, single-spaced handwritten settlement agreement memorializing the terms of the agreement the parties had negotiated with the assistance of counsel. The settlement agreement resolved all of the disputed matters in the divorce, including the division of the

parties' assets and debt, spousal support and the allocation of parental rights involving the couple's minor son. In addition to signing the agreement, Richmond and Evans initialed each page of the agreement, further acknowledging their agreement to its terms.

{¶4} Because the court had closed and court personnel had already left for the day, the parties and their attorneys agreed that a typed version of the document would be prepared for the parties' signature and that a final uncontested divorce hearing would be held the following day.

{¶5} Evans's attorney thereafter prepared and circulated a typed version of the agreement. None of the terms of the handwritten settlement agreement was modified in the typed version of the agreement.[1]

{¶6} When the parties appeared in court with their counsel for the final divorce hearing on February 7, 2014, Richmond refused to sign the typed version of the settlement agreement or to go forward with the divorce hearing.[2]

{¶7} On February 14, 2014, Evans filed a motion to enforce the settlement agreement. In support of the motion, he attached a copy of the handwritten settlement agreement and an affidavit describing the circumstances surrounding the parties' negotiation and execution of the agreement.

{¶8} On March 3, 2014, Richmond filed a brief in opposition to the motion to enforce the settlement agreement along with a motion to set aside the "purported settlement agreement" and a request for a "full evidentiary hearing." In support of her filings, Richmond attached an

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[1]The typed version of the settlement agreement does not appear in the record; however, there is apparently no dispute that the typed version of the settlement agreement did not modify any of the terms of the handwritten version of the settlement agreement.

[2] There is no transcript of what occurred when the parties appeared in court on February 7. Accordingly, we have only the representations of the parties as to what occurred that day.

affidavit describing the circumstances surrounding the parties' negotiation and execution of the agreement and her purported understanding (or rather, alleged misunderstanding) of the terms of the agreement.

{¶9} Richmond argued that there was "no complete or other agreement between the parties" due to "factual disputes as to the meaning of material provisions of the purported partial agreement." She claimed that a "mutual mistake" existed with respect to Richmond's obligation under the settlement agreement to cash in her marital share of Evans's retirement plans and to use those funds to pay Evans $225,000 as a property settlement. Richmond claimed that "[i]t was never contemplated that [Richmond] would not have ample funds from this transaction to pay [Evans] and satisfy her tax obligations" and that the agreement failed to address how any shortfall would be handled. She argued that this "mistake of fact" went to "a basic assumption" on which the agreement was made, negating any "meeting of the minds," and had the "practical effect of * * * eliminat[ing] any consideration paid to [Richmond]." She argued that the entire agreement must, therefore, be "voided" and requested that the court conduct an evidentiary hearing to resolve the issue.

{¶10} Richmond also argued that the handwritten settlement agreement was unenforceable on procedural grounds because: (1) the agreement was not signed in the presence of the magistrate during court hours; (2) the agreement was not read into the record in open court; (3) the agreement was not confirmed by the parties under oath; and (4) there was no finding by the court that the agreement was fair, just and equitable based on the parties' sworn testimony.

{¶11} No hearing was held on the motions. On March 18, 2014, the trial court issued a judgment entry granting Evans's motion to enforce the handwritten settlement agreement and

denying Richmond's motion to set aside the settlement agreement. The trial court rejected each of the arguments raised by Richmond, concluding that there is "no legal requirement in Ohio," that a "signed written in-court agreement" be reached in the presence of the court during court business hours, be confirmed by the parties under oath, be read in open court or be found by the court to be fair, just and equitable, for the agreement to be enforceable and adopted in the divorce decree. The trial court likewise rejected Richmond's argument that a mutual mistake required the rescission of the agreement. As the court explained:

> The Court finds that Plaintiff's arguments are not well taken. The in-court agreement * * * is very detailed and disposes of all relevant issues. It contains specific provisions stating that the parties were satisfied with the disclosures made, legal advice received, and waived the right to conduct further discovery, "notwithstanding any potential negative financial consequences." The Court finds, after considering the pleadings in a light most favorable to Plaintiff, that she is asking this court to set aside a valid handwritten in-court agreement because she had experienced a "change of heart" based upon her further analysis of the tax ramifications of the agreement's property division provisions. The face of the handwritten agreement itself sets forth that the parties were not aware of the specific amount that Plaintiff would have to pay in taxes, hence the language awarding her "any" balance after Defendant received his share, as opposed to "the" balance of the two retirement accounts. * * *

{¶12} The trial court ordered Evans's counsel to prepare and submit to the court a divorce decree "in accordance with the pleadings, and the parties' valid handwritten in-court agreement."

{¶13} The agreement between the husband and wife that was drafted and executed after court hours did not constitute an "in-court agreement" in spite of the fact that the trial court found it to be so. An in-court agreement is one that occurs "during the course of a hearing" and in the "presence of the court." *Kolar v. Shapiro*, 11th Dist. Lake No. 2007-L-148, 2008-Ohio-2504, quoting *Booth v. Booth*, 11th Dist. Lake No. 2002-P-0099, 2004-Ohio-524.

{¶14} On March 20, 2014, Richmond filed a combined "notice of objection to and trial court's failure to conduct a hearing pursuant to Ohio law," motion for reconsideration and to vacate and set aside the March 18, 2014 judgment entry, a further request for an evidentiary hearing and a "notice of intent to file objections to proposed judgment entry, pursuant to Local Rule 28." Richmond argued that, pursuant to Civ.R. 75 and R.C. 3105.171, the trial court could not grant the parties a divorce or incorporate the settlement agreement into a judgment without holding an evidentiary hearing and determining that the settlement agreement was fair, just and equitable. Richmond also claimed that the March 18, 2014 judgment entry was deficient because, although the matter had been referred to the magistrate, no magistrate's decision was ever issued. On March 21, 2014, Richmond filed her objections to Evans's proposed judgment entry and another request for a hearing to address her objections and "other issues."

{¶15} On March 26, 2014, the trial court issued its judgment entry of divorce. Based on the pleadings, the trial court made the requisite findings supporting the court's jurisdiction and venue and determined that the parties were entitled to a divorce on grounds of incompatibility. The trial court further found that settlement agreement was fair, just and equitable and incorporated the terms of the handwritten settlement agreement (and the March 19, 2014 findings it had previously made with respect to that agreement) into the divorce decree. Because Richmond had not alleged that the settlement agreement was procured by fraud, duress, overreaching or undue influence, the trial court concluded that Richmond was not entitled to a hearing regarding the enforceability of the agreement and denied Richmond's motion to vacate and other filings related to the trial court's March 18, 2014 decision granting the motion to enforce the settlement agreement.

{¶16} Richmond timely appealed, raising the following three assignments of error for review:

> I. The trial court erred and abused its discretion by enforcing a purported in-court agreement and adopting Peter's proposed judgment entry of divorce over Heather's objections due to a dispute over the validity and terms of the purported in-court agreement.
>
> II. The trial court did not conduct a hearing in regard to the parties' respective claims for divorce; the parties' purported agreement and dispute surrounding the purported agreement; Heather's brief in opposition to Peter's motion to enforce in-court settlement agreement; Heather's motion to set aside purported settlement agreement; and request for full evidentiary hearing o[n] any of the issue[s] as required by Ohio law.
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> III. There is no magistrate's decision present in the record and Heather did not [waive] her rights under Civil Rule 53.

Enforceability of the Handwritten Settlement Agreement

{¶17} In her first assignment of error, Richmond contends that the trial court abused its discretion in enforcing the settlement agreement and incorporating it into the divorce decree over Richmond's objections. Richmond claims that the settlement agreement and judgment entry of divorce incorporating that agreement were based on a "mutual mistake" relating to the property division payment specified in the settlement agreement and that, as a result, the settlement agreement was invalid and unenforceable. Richmond further claims that because her objections to the settlement agreement involved a "factual dispute regarding the existence and terms of the settlement agreement," the trial court was required to conduct an evidentiary hearing "to determine the validity of [her] claims" prior to incorporating the settlement agreement into the judgment entry of divorce. Richmond's arguments are meritless.

{¶18} Settlement agreements are generally favored in the law. *Szmania v. Szmania*, 8th Dist. Cuyahoga No. 90346, 2008-Ohio-4091, ¶ 8, citing *Vasilikas v. Vasilikas*, 8th Dist. Cuyahoga No. 68763, 1996 Ohio App. LEXIS 2569 (June 20, 1996). Settlement agreements in divorce proceedings "'may be either written or oral, and may be entered into prior to or at the time of a divorce hearing.'" *Bottum v. Jankovic*, 8th Dist. Cuyahoga No. 99526, 2013-Ohio-4914, ¶ 11, quoting *Haas v. Bauer*, 156 Ohio App.3d 26, 2004-Ohio-437, 804 N.E.2d 80, ¶ 16 (9th Dist.). "As with usual contract interpretations, the court's role is to give effect to the intent of the parties * * * as reflected in the language of the contract." *Jackson v. Jackson*, 5th Dist. Richland No. 12CA28, 2013-Ohio-3521, ¶ 22. The enforceability of a settlement agreement "'depends upon whether the parties have manifested an intention to be bound by its terms and whether these intentions are sufficiently definite to be specifically enforced.'" *Tryon v. Tryon*, 11th Dist. Trumbull No. 2007-T-0030, 2007-Ohio- 6928, ¶ 23, quoting *Franchini v. Franchini*, 11th Dist. Geauga No. 2002-G-2467, 2003-Ohio-6233, ¶ 9.

{¶19} Where the parties to a divorce enter into a settlement agreement, the agreement constitutes a binding contract; it cannot be unilaterally repudiated by one of the parties. *Walther v. Walther*, 102 Ohio App.3d 378, 383, 657 N.E.2d 332 (1st Dist.1995), citing *Spercel v. Sterling Indus., Inc.*, 31 Ohio St.2d 36, 285 N.E.2d 324 (1972). "'Neither a change of heart nor bad legal advice is a ground to set aside a settlement agreement.'" *Grubic v. Grubic*, 8th Dist. Cuyahoga No. 73793, 1999 Ohio App. LEXIS 4200, *10 (Sept. 9, 1999), quoting *Walther* at 383. A settlement agreement — even one in a divorce proceeding — does not have to be fair and equitable to be binding and enforceable, so long as it is not procured by fraud, duress, overreaching or undue influence. *Id.*; *Vasilikas*, 1996 Ohio App. LEXIS 2569 at *5-6; *Walther* at

383. Contracts, including settlement agreements, can be unfair or favor one side over the other. *Walther* at 383.

{¶20} We review a trial court's decision to enforce a settlement agreement in a divorce proceeding for an abuse of discretion. *Schneider v. Schneider*, 110 Ohio App.3d 487, 491, 674 N.E.2d 769 (11th Dist.1996); R.C. 3105.10(B)(2). An abuse of discretion is more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶21} Where a party claims fraud, duress, overreaching, undue influence or a factual dispute over the existence or terms of a settlement agreement, the trial court is required to conduct an evidentiary hearing to determine the existence or the terms of the agreement. There is, however, no requirement that a trial court conduct an evidentiary hearing to confirm the existence of a settlement agreement in the absence of such allegations. In the absence of fraud, duress, overreaching, undue influence or a factual dispute over the existence or terms of the settlement agreement, the trial court is not required to inquire further and "may adopt the settlement as its judgment." *Walther* at 383, 657 N.E.2d 232.

{¶22} In this case, there was no claim of fraud, duress, overreaching or undue influence. Nor was there any meaningful dispute as to the existence of the settlement agreement or the meaning or application of its terms. A "factual dispute over the existence or terms" of an in-court settlement agreement typically involves the situation where a settlement agreement is purportedly reached by the parties but its terms are not memorialized on the record and one of the parties later disputes the terms of the agreement or there is a dispute as to whether the language used in a subsequent written agreement or journal entry purportedly memorializing the settlement agreement accurately reflects the agreed terms. *See, e.g., Bolen v. Young*, 8 Ohio App.3d 36, 37,

455 N.E.2d 1316 (10th Dist.1982); *see also Tabbaa v. Koglman*, 149 Ohio App.3d 373, 2002-Ohio-5328, 777 N.E.2d 338, ¶ 34 (8th Dist.) ("Short of laboriously hammering out a handwritten agreement in court the preferred process is to agree to settle on condition that the language (rather than the terms themselves) can be agreed to in the near future * * *. In the event that a party fails to make a good faith attempt to agree on the language the trial judge can (after hearing) determine the terms and construct a reasonable journal entry outlining the agreement."), quoting *Tepper v. Heck*, 8th Dist. Cuyahoga No. 61061, 1992 Ohio App. LEXIS 6291 (Dec.10, 1992); *see also Roth v. Roth*, 8th Dist. Cuyahoga No. 89141, 2008-Ohio-927, ¶ 46-47 (where a factual question existed with regard to whether the schedules appellee submitted to the court with her proposed journal entry of divorce were the same schedules agreed to by the parties in mediation and referenced in the body of the separation agreement, trial court erred by failing to hold a hearing to determine the legitimacy of the submitted schedules; appellant should have been given an opportunity to prove to the court that the schedules submitted by appellee were not the ones agreed to by the parties and intended to be attached to the separation agreement). In such circumstances, a trial judge cannot adopt his or her understanding of the parties' agreement as a judgment of the court without conducting an evidentiary hearing. *Bolen* at 38. This, however, is not such a case.

{¶23} Here, the terms of the parties' settlement were memorialized in a handwritten agreement that was signed or initialed by each of the parties ten times and ultimately filed with the court. In this case, the trial court did not adopt its understanding of the parties' settlement agreement in the judgment entry of divorce; the trial court adopted the parties' agreement itself.

{¶24} Richmond does not dispute that she executed the handwritten settlement agreement and agreed to all the terms set forth therein. Richmond has not claimed that the handwritten

settlement agreement failed to accurately and completely set forth all the terms agreed to by the parties during their negotiations. She has not claimed that the handwritten settlement agreement omitted any term that had been agreed to by the parties or included any term that had not been agreed to by the parties. Likewise, she does not contend that any of the language used in the agreement is ambiguous. Rather, Richmond contends that shortly after she executed the settlement agreement, she realized that there could be adverse tax consequences associated with her obligation under the settlement agreement to cash in her marital share of Evans's retirement plans and to use those funds to pay Evans $225,000 as a property settlement and that her allegations of "mutual mistake" arising out of this realization entitled her to an evidentiary hearing to determine whether a factual dispute existed. We disagree.

{¶25} The provision giving rise to Richmond's allegations of "mutual mistake" states as follows:

> Husband shall transfer to wife, by QDRO, one-half of the balance in his Cleveland Clinic 403(B) Plan and in his Cash Balance Plan and in his Prudential John Hopkins 403(B) Plan as of 12/31/13 plus interest, gains and losses on her share until distribution.
>
> Once the QDROs have been approved and the funds transferred into wife's name, wife shall immediately thereafter request a w/drawal of her portion of the 403(B) and Cash Balance Plan. Within 7 days of her receipt of these funds, wife shall pay directly to husband the sum of $225,000 as and for a property settlement payment. Any add't[l] funds that wife receives from her share of these two retirement account [sic] shall be and remain her property, free and clear of any claims by husband. Upon husband's receipt of the full $225,000 payment,

husband's spousal support obligation shall be increased according to paragraph 2 below.[3]

{¶26} The provision as drafted is clear and unambiguous. Richmond does not dispute that (as set forth in this provision) the parties agreed that following her receipt of her marital share of Evans's retirement funds, Richmond would withdraw those funds and pay $225,000 to Evans as a property settlement payment. However, Richmond contends that "[i]t was never contemplated that [Richmond] would not have ample funds from this transaction to pay [Evans] and satisfy the tax obligation created by the withdrawal" and that because the agreement did not address the tax obligations to be incurred by Richmond as a result of the withdrawal of the retirement funds in the event of a "shortfall" — i.e., if her marital share of the retirement funds was insufficient to cover both the $225,000 property settlement payment to Evans and the tax obligations she would incur as a result of the transaction — the agreement was "incomplete," was based on a "mutual mistake," and there was no "meeting of the minds."[4]

{¶27} A "mutual mistake" exists "when a mistake by both parties as to a basic assumption on which the contract was made has a material effect on the agreed exchange of performances." *Motorists Mut. Ins. Co. v. Columbus Fin., Inc.*, 168 Ohio App.3d 691, 2006-Ohio-5090, 861 N.E.2d 605, ¶ 10 (10th Dist.) citing *Reilley v. Richards*, 69 Ohio St.3d 352, 632 N.E.2d 507 (1994), citing Restatement of the Law 2d, Contracts, Section 152(1) (1981). A

[3]Under the terms of the settlement agreement, Evans's spousal support obligation increased from $10,000 per month to $15,000 per month "[o]n the 15th or 30th day of the month (whichever comes first) following husband's receipt of the full $225,000 property settlement payment" for the remainder of the term of spousal support.

[4]Although Richmond contends that "[t]he result of the terms of the purported agreement leaves [Richmond] with a shortfall of funds due to the tax obligations imposed by the liquidation of retirement funds and the repayment terms to [Evans]," there is nothing in the record substantiating that claim or identifying the extent of the "shortfall" Richmond would allegedly sustain as a result.

"mutual mistake" at the time a contract was made "calls into question the very existence of the contract" and can render a contract voidable. When mutual mistake exists, the contract is voidable by the adversely affected party, unless that party bears the risk of the mistake. *Jackson v. Force*, 2d Dist. Miami No. 2014 CA 6, 2014-Ohio-3167, ¶ 34. The intention of the parties must be frustrated by the mutual mistake. *Reilley* at 353.

{¶28} A party bears the risk of a mistake when: (1) the risk is allocated to the party by agreement of the parties; (2) the party is aware, at the time the contract is made, that he or she has only limited knowledge with respect to the facts to which the mistake relates but treats his or her limited knowledge as sufficient; or (3) the risk is allocated to the party by the court on the ground that it is reasonable in the circumstances to do so. *Motorists Mut. Ins. Co.* at ¶ 10, citing 1 Restatement of the Law 2d, Contracts, Section 154, at 385 (1981); *Hikmet v. Turkoglu*, 10th Dist. Franklin No. 08AP-1021, 2009-Ohio-6477, ¶ 65.

{¶29} In this case, the facts alleged by Richmond — even if true — could not support a finding of mutual mistake. Although Richmond claims to have put forth "prima facie evidence" of a "mutual mistake" that she contends "entitled [her] to a hearing" regarding the issue, the record reveals otherwise. In support of her claim of mutual mistake, Richmond offered only the following conclusory assertions (set forth in her affidavit submitted in support of her opposition to Evans's motion to enforce the settlement agreement and her motion to vacate the settlement agreement) regarding a potential misunderstanding on her part:

> 8. Affiant further states that there can be no agreement because there was no meeting of the minds in regard to material provisions of the partial "agreement." There is a factual dispute as to the meaning of the terms of the purported partial "agreement."

9. Affiant further states that the partial "agreement" is neither fair, just nor equitable and I do not agree to the terms as set forth in the purported partial agreement.

10. Affiant further states that the basis of the purported agreement was factually inaccurate therefore there was no meeting of the minds in regard to material provisions between myself and Dr. Evans. The mistake is in regard to a basis assumption on which the purported "agreement" was made that has a material effect on the agreed exchange of performances.

* * *

12. Affidavit further states that the result of the terms of the purported partial "agreement" would result in a shortfall of funds for me if the terms and conditions were implemented due to the tax obligations imposed by liquidation of retirement funds and the repayment terms to Dr. Evans. Such a result *was not contemplated by me* and negates the basis of the agreement. The practical effect of the purported partial "agreement" eliminates any consideration paid to me therefore the partial "agreement" cannot be a contract. The mutual mistake and misunderstanding in regard to the net effect of the partial "agreement" requires the entire partial "agreement" to be voided.

13. Affiant further states that the purported partial "agreement" does not accurately reflect the true terms of the "agreement" and there is no mutual assent to the partial "agreement" reduced to writing. There is a factual dispute regarding the meaning of the terms and the application of the terms of the purported partial "agreement."

14. Affiant further states that the lack of mutuality undermines the integrity of the purported partial "agreement" and constitutes sufficient grounds to set aside the purported partial "agreement."

15. Affiant further states that enforcing the purported partial "agreement" be [sic] an inequitable settlement of a lengthy marriage with substantial assets given the lack of mutual assent.

16. Affiant further states that the lack of consideration, and inequitable result prevented the formation of a binding contract because there was no meeting of the minds in regard to material terms and provisions. * * *

(Emphasis added.)

{¶30} While Richmond may have been mistaken about certain facts at the time she entered into the settlement agreement (or perhaps never even considered the potential tax consequences of the property settlement payment prior to executing the agreement), she has not alleged any facts that would suggest that any "mistake" was *mutual*. A mutual mistake requires a mistake made by *both* parties regarding the *same* fact. *Reilley*, 69 Ohio St.3d at 353, 632 N.E.2d 507. The "mistake" that Richmond alleges, however, is at most, a unilateral mistake. Furthermore, it is clear, that under the terms of the settlement agreement, Richmond bore the risk of any mistake relating to the financial consequences of the property settlement. The handwritten agreement included the following language:

> The parties have exchanged extensive asset & debt statements, income statements and other discovery documents and both husband and wife are satisfied w/ the disclosure by the other. Both husband and wife are satisfied w/ the documents that he & she have received. Neither party has been forced to sign this agreement and each party is satisfied w/ his & her legal representation & w/ the terms of this agreement.
>
> Each party has been counseled by his or her respective atty(s) of the right to conduct further discovery, and each party voluntarily & knowingly waives that right, notwithstanding any potential negative financial consequences.

{¶31} A unilateral mistake is a mistake on the part of only one party to a contract as to a basic assumption on which the contract was made that has a material effect on the agreed exchange of performances and is adverse to the party seeking relief. *State ex rel. BDFM Co. v. Ohio DOT*, 10th Dist. Franklin No. 11AP-1094, 2013-Ohio-107, ¶ 65. "'A unilateral mistake occurs when only one party has an erroneous belief as to the facts,'" *LB. Trucking Co., Inc. v. C.J. Mahal Constr. Co.*, 10th Dist. Franklin No. 01AP-1240, 2002-Ohio-4394, ¶ 46, quoting 2 *Farnsworth on Contracts*, Section 9.4, at 585-586 (2d Ed.1998), i.e., when, at the time the

agreement is executed, "one party recognizes the true effect of an agreement while the other does not." *Gen. Tire, Inc. v. Mehlfeldt*, 118 Ohio App.3d 109, 115, 691 N.E.2d 1132 (9th Dist.1997). A unilateral mistake can be grounds for rescission of a contract if the other party had reason to know of the mistake or was at fault in causing the mistake such that enforcing the contract would be "unconscionable." *State ex rel. BDFM Co.* at ¶ 65; *Hikmet*, 2009-Ohio-6477 at ¶ 62-64, citing Restatement of the Law 2d, Contracts, Section 153 (1981). Here, Richmond alleged no facts that suggested that Evans knew of her "mistake" or was at fault in causing her "mistake" at the time they executed the settlement agreement. To the contrary, she has argued that the "mistake" was mutual. Furthermore, relief for unilateral mistake will not be granted where, as here, the party seeking relief bore the risk of mistake or where the mistake was the result of that party's own negligence. *Jackson v. Jackson*, 5th Dist. Richland No. 12CA28, 2013-Ohio-3521, ¶ 23-26 (where, during settlement negotiations, wife consulted with her own attorney regarding terms of husband's 401(K), settlement agreement was silent as to date wife was to receive 401(K) payment, and wife did not discover that withdrawal terms of 401(K) differed from her understanding until after settlement agreement was executed, wife was not entitled to vacate settlement agreement based on mutual or unilateral mistake).

{¶32} Because the facts alleged by Richmond — even if true — would not constitute a meritorious defense to enforcement of the settlement agreement, i.e. they would not provide a basis for voiding the otherwise valid and binding settlement agreement on grounds of mutual or unilateral mistake, we conclude the trial court was not required to hold an evidentiary hearing to determine the validity of Richmond's "mutual mistake" claims prior to ruling on the parties' motions relating to enforcement of the settlement agreement and incorporating the terms of the parties' settlement agreement into the divorce decree.

{¶33} Richmond also contends that because the settlement agreement was not "arrived at by the parties in open court" and was not "preserved by being read into the record," it was not enforceable as an "in-court settlement agreement." Richmond contends that the reading of a settlement agreement on the record "is paramount to enforcement" so that "both parties may confirm under oath that they understood the in-court agreement, had discussed it with their attorneys, and would abide by it." There is, however, no requirement that a settlement agreement must be reached "in open court" or otherwise be "read into the record" in order to be enforceable. The cases Richmond cites in support of her argument are distinguishable in that they involved oral settlement agreements. Placing an agreement on the record is of greater significance in cases involving oral settlement agreements, because, where the terms of a settlement agreement have not been memorialized in the court's records, a trial judge cannot generally adopt his or her recollection and understanding of a settlement agreement as a judgment of the court without an evidentiary hearing. *See Bolen*, 8 Ohio App.3d at 37, 455 N.E.2d 1316. Where, on the other hand, a settlement agreement is memorialized on the record, the trial court may "approve a journal entry which accurately reflects the terms of the agreement, adopting the agreement as his judgment." *Id.*, citing *Holland v. Holland*, 25 Ohio App.2d 98, 266 N.E.2d 580 (10th Dist. 1970); *see also Gulling v. Gulling*, 70 Ohio App.3d 410, 412, 591 N.E.2d 349 (9th Dist.1990) ("An in-court settlement agreement may be adopted by the court, incorporated into judgment entry, and enforced even in the absence of written approval by one party."); *Bottum*, 2013-Ohio-4914 at ¶ 10, citing *Grubic*, 1999 Ohio App. LEXIS 4200 at *9. However, a settlement agreement — particularly one memorialized in a written settlement agreement executed by both parties — is not unenforceable simply because it was not "entered in open court" or "read into the record" at the time the parties reached their agreement. *See Fowler*

v. Smith, 12th Dist. Butler No. CA2003-02-042, 2003-Ohio-6257, ¶ 16, citing *Erbeck Farms, Inc. v. Mason*, 12th Dist. Warren No. CA90-09-065, 1991 Ohio App. LEXIS 2356, *7 (May 20, 1991).

{¶34} A review of the record demonstrates the parties made a binding and enforceable settlement agreement. In this case, we are not dealing with an oral settlement agreement. In this case, the parties, with the assistance of counsel, negotiated the terms of the settlement for two days, then prepared and executed a detailed, nine-page written settlement agreement, memorializing the terms of their agreement. The written agreement was signed or initialed by each party ten times and was ultimately filed with court as part of Evans's motion to enforce the settlement agreement. The trial court thus had "all that was required" to adopt the settlement in the divorce decree. *Bottum* at ¶ 13.

{¶35} The fact that Richmond may have misunderstood her obligations or experienced a change of heart based upon her further consideration of the tax ramifications of the property settlement payment does not negate the settlement she previously agreed to. "Bad advice from counsel or haste are not meritorious defenses to the enforceability of [a] contract [Richmond] of the contract signed or initialed [ten] times." *Vasilikas*, 1996 Ohio App. LEXIS 2569, at *7.

{¶36} Richmond also contends that the settlement agreement "fail[s] for lack of consideration" due to the taxation implications of the retirement withdrawals and the "intertwinement of the payment and amount of spousal support with the division of property." However, the record reveals otherwise. Under the terms of the settlement agreement, Richmond was to receive ample consideration in exchange for her promises and performance under the agreement. In addition to her marital share of Evans's retirement accounts, Richmond was to receive spousal support of $10,000-$15,000 per month (totaling between $780,000 and

$1,170,000) for 78 months. Further, Evans was to take on the lion's share of the parties' debt, including the "significant deficiency" anticipated in closing on the sale of the marital home.

{¶37} Accordingly. Richmond's first assignment of error lacks merit and is overruled.

Hearing under Civ.R. 75(M) and R.C. Chapter 3105, et seq.

{¶38} In her second assignment of error, Richmond contends that the trial court abused its discretion and that the trial court's judgment entry of divorce should be vacated because Civ.R. 75(M) and R.C. Chapter 3105, et seq. required that the trial court "personally hear and determine the cause and basis of the divorce." She further contends that without an evidentiary hearing involving witness testimony or "other credible evidence" the trial court could not make its "required independent determinations," including the grounds and basis for divorce, jurisdiction, venue and other issues related to the divorce. She also contends that under R.C. 3105.10(B)(2), the trial court was required to make a determination "that it would be in the interests of justice and equity to require enforcement of the [settlement] agreement" prior to incorporating the agreement into its divorce decree and that the trial court could not reasonably make such a determination in the absence of an evidentiary hearing. Once again, we disagree.

{¶39} Civ.R. 75(M) provides in relevant part:

> *Judgment for divorce * * * shall not be granted upon the testimony or admission of a party not supported by other credible evidence.* No admission shall be received that the court has reason to believe was obtained by fraud, connivance, coercion, or other improper means. The parties, notwithstanding their marital

> relations, shall be competent to testify in the proceeding to the same extent as other witnesses.

(Emphasis added.)

{¶40} R.C. 3105.10(A) provides, in relevant part:

> The court of common pleas *shall hear any of the causes for divorce* or annulment charged in the complaint and may, *upon proof to the satisfaction of the court*, pronounce the marriage contract dissolved and both of the parties released from their obligations.

(Emphasis added.)

{¶41} The trial court's judgment of divorce in this case was not granted "upon the testimony or admission of a party not supported by other credible evidence." It was based on the undisputed facts asserted in the parties' pleadings and the terms of the parties' voluntary settlement agreement. R.C. 3105.01 permits a court to grant a divorce on any of 11 enumerated grounds, including "incompatibility, unless denied by either party." R.C. 3105.01(K). In this case, Richmond alleged in her complaint that she and Evans were incompatible. Evans admitted that the couple was incompatible in his answer and counterclaim. Likewise, jurisdiction and venue were established based on undisputed facts asserted in the parties' pleadings. Accordingly, no hearing was necessary to establish the grounds for divorce, jurisdiction, or venue as these matters were established through the parties' pleadings. Nothing in Civ.R. 75(M) or R.C. 3105.10(A) requires that the trial court conduct an evidentiary hearing prior to entering a divorce decree where the parties have agreed to all the relevant facts. *See, e.g., Flash v. Flash*, 8th Dist. Cuyahoga No. 72319, 1998 Ohio App. LEXIS 1513, *13 (Apr. 9, 1998) ("R.C. 3105 applies to contested divorce proceedings and has no application to settlement agreements"),

citing *Davis v. Davis*, 8th Dist. Cuyahoga Nos. 68672 and 69121, 1996 Ohio App. LEXIS 1612 (Apr. 18, 1996).

{¶42} Further, even if these provisions required a hearing, the trial court's failure to conduct such a hearing would not constitute grounds for vacating the divorce decree. "'The failure to follow procedural rules does not constitute reversible error unless the appellant demonstrates prejudice. This general rule has also been applied to procedures set forth for domestic relations courts by rule or statute.'" *Roth*, 2008-Ohio-927 at ¶ 58, quoting *Millstein v. Millstein*, 8th Dist. Cuyahoga Nos. 79617, 79754, 80184-80188, and 80963, 2002-Ohio-4783, ¶ 37. Richmond has not demonstrated any prejudice as a result of the trial court's failure to conduct a hearing regarding the "causes" and basis for the parties' divorce.

{¶43} R.C. 3105.10(B)(2) provides:

> A separation agreement that was voluntarily entered into by the parties may be enforceable by the court of common pleas upon the motion of either party to the agreement, if the court determines that it would be in the interests of justice and equity to require enforcement of the separation agreement.

{¶44} R.C. 3105.10(B)(2) simply recognizes that a trial court has discretion whether to enforce a separation agreement. Pursuant to R.C. 3105.10(B)(2), a trial court is not bound by the terms of a separation agreement if it determines that it would not be in the interests of justice and equity to require enforcement of the separation agreement. *See, e.g.*, *Snell v. Snell*, 5th Dist. Richland No. 13CA80, 2014-Ohio-3285, ¶ 35. R.C. 3105.10(B)(2) does not require that a trial court conduct an evidentiary hearing to determine that it would be "in the interests of justice and equity" prior to enforcing a settlement agreement.

{¶45} The record reflects that the trial court conducted an independent review of the settlement agreement prior to enforcing it. Although, as stated above, trial court was not required to make a determination that the handwritten settlement agreement was "fair, just and equitable" prior to incorporating it within the divorce decree and had the discretion to accept the parties' settlement agreement without finding it to be "fair, just and equitable," the record reflects that it did so. As the trial court stated in its March 26, 2014 judgment entry of divorce:

> The Court further finds that the parties have entered into an In-Court Settlement Agreement, which is fair, just and equitable and orders the agreement * * * be included herein as if fully rewritten and its terms ordered into execution.
>
> The Court made detailed findings with regard to the adoption of the parties['] In-Court Settlement [A]greement in its Judgment Entry entered March 19, 2014 * * *.

{¶46} The "detailed findings" made by the trial court in its March 19, 2014 judgment entry, included the following, based on its independent review of the settlement agreement:

> The Court is not required to find that the handwritten agreement is fair, just and equitable in order to adopt it in the Divorce Decree. However, the Court notes that the spousal support to which the Plaintiff is entitled under the hand written agreement could amount to $1,170,000 for the entire 78 month term (in addition to the temporary spousal support she has already received), depending upon when Plaintiff pays to Defendant his share of her marital pension account. This spousal support award is subject to further order of court and will be secured by life insurance on Defendant's life. Further, under the agreement, Defendant is responsible for a "significant" deficiency with regard to the sale of the marital residence. Finally, the Plaintiff is not required to pay child support even though the Defendant is being designated as residential parent and [has] legal custody of the parties' minor child.

{¶47} Richmond argues that these cannot be regarded as "real findings * * * supported by the record" because the trial court "neglected to hold a hearing on the pending issues" and thus "abandoned its duty to make the necessary findings of fact that the judgment entry of

divorce and purported in-court settlement agreement on which it relied was fair, just and equitable through sworn testimony in court." However, in deciding whether to enforce the settlement agreement, the trial court had before it the nine-page handwritten settlement agreement as well as affidavits from both parties detailing the circumstances surrounding the negotiation and execution of the settlement agreement. The parties had also previously filed numerous financial affidavits with the court, detailing the parties' assets, debts, expenses and other issues relevant to the allocation of the parties' assets and liabilities and spousal support. Moreover, even if these findings constituted an abuse of discretion by the trial court, "it would not require reversal of the judgment" given that the trial court "'does not have a duty to determine if the agreement is fair and equitable when the parties enter into an in-court settlement agreement.'" *See Colosimo v. Colosimo*, 8th Dist. Cuyahoga No. 91883, 2009-Ohio-3892, ¶ 14, quoting *Szmania*, 2008-Ohio-4091 at ¶ 8.

{¶48} We find no abuse of discretion by the trial court in entering a divorce decree based on the parties' admissions in the pleadings and the terms of the parties' written settlement agreement. Nor did the trial court abuse its discretion by failing to hold a hearing on Richmond's objections to the journal entry prepared by Evans's counsel. *See Colosimo*, 2009-Ohio-3892 at ¶ 13-14 ("no hearing was required" on appellant's objections to judgment entry prepared by appellee's counsel where appellant did not allege fraud, duress, undue influence or a factual issue regarding the existence or terms of settlement agreement or that judgment entry did not accurately reflect the agreement). Accordingly, Richmond's second assignment of error is overruled.

Magistrate's Decision

{¶49} In her third assignment of error, Richmond contends that the judgment entry of divorce should be vacated because, although the case was referred to the magistrate for trial, no magistrate's decision was issued under Civ.R. 53. Like Richmond's other arguments, this argument is meritless.

{¶50} No magistrate's decision was issued relating the divorce proceedings in this case because there was nothing for the magistrate to decide. Civ.R. 53(D)(3)(a)(i) states when a magistrate's decision is "required." Under Civ.R. 53(D)(3)(a)(i), "a magistrate shall prepare a magistrate's decision respecting any matter referred under Civ.R. 53(D)(1)." *See also In re Bortmas*, 11th Dist. Trumbull No. 98-T-0147, 1999 Ohio App. LEXIS 4879, *5 (Oct. 15, 1999) ("Once a matter has been referred to a magistrate and all required action has been taken, the magistrate is required to prepare a 'magistrate's decision.'"). The record reflects that this case was scheduled for a three-day "contested trial" before the magistrate beginning on February 5, 2014. However, before the trial began, the parties commenced settlement negotiations, resulting in the handwritten settlement agreement. Because the "contested trial" was not held and Richmond refused to go forward with the final divorce hearing on February 7, 2014 after the parties reached a settlement, there was nothing for the magistrate to "decide" "respecting [the] matter referred [to him]" under Civ.R. 53(D)(3)(a)(i). No testimony or other evidence was presented and no arguments were made before the magistrate that required him to make a decision. The magistrate, therefore, was not required to issue a magistrate's decision. Richmond has not cited any authority supporting her contention that a magistrate's decision must be issued under such circumstances.

{¶51} Further, even if a magistrate's decision had been required, Richmond has not even alleged — much less demonstrated — that she was in any way prejudiced as a result. A

trial court's failure to comply with Civ.R. 53 constitutes grounds for reversal "'only if the appellant shows the alleged error has merit and the error worked to the prejudice of the appellant.'" *Skydive Columbus Ohio, LLC v. Litter*, 10th Dist. Franklin No. 09AP-563, 2010-Ohio-3325, ¶ 6, quoting *In re Estate of Hughes*, 94 Ohio App.3d 551, 554, 641 N.E.2d 248 (9th Dist.1994), citing *Erb v. Erb*, 65 Ohio App.3d 507, 510, 584 N.E.2d 807 (9th Dist.1989); *B.J. Alan Co. v. Andrews*, 7th Dist. Mahoning No. 10 MA 87, 2011-Ohio-5165, ¶ 24-31 (where parties entered into a stipulation at hearing before magistrate agreeing that $20,000 was a fair and reasonable amount for attorney fees in lieu of requiring an amount and reasonableness hearing, fact that magistrate did not enter a decision regarding the topic did not warrant reversal of trial court's order adopting the stipulation where appellant could not have been prejudiced by trial court's adoption of stipulation). This is not a case in which a magistrate conducted an evidentiary hearing and made recommendations to the trial court without issuing a magistrate's decision. Nor is this a case in which the trial court adopted the magistrate's recommendations without a magistrate's decision having been filed. The purpose of requiring a magistrate's decision is to permit the parties an opportunity to file objections to the magistrate's decision and to provide the trial court with sufficient information to conduct its own independent analysis. *Performance Constr., Inc. v. Carter Lumber Co.*, 3d Dist. Hancock No. 5-04-28, 2005-Ohio-151, ¶ 15-16. Because the magistrate heard no evidence and made no recommendations to the trial court regarding the matters set forth in the judgment entry of divorce, this was not a concern in this case. Accordingly, Richmond's third assignment of error is overruled.

{¶52} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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EILEEN A. GALLAGHER, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
PATRICIA A. BLACKMON, J., CONCUR