

[Cite as *Obloy v. Sigler*, 2015-Ohio-877.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101672

RONALD J. OBLOY

PLAINTIFF-APPELLEE

vs.

DIANE MARIE SIGLER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-12-344143

BEFORE: S. Gallagher, J., Jones, P.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: March 12, 2015

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SEAN C. GALLAGHER, J.:

{¶1} Appellant Diane Marie Sigler appeals the decision of the trial court that denied her Civ.R. 60(B) motion for relief from judgment. For the reasons stated herein, we affirm.

{¶2} On October 12, 2012, appellee Ronald J. Obloy filed a complaint for divorce against Sigler. Obloy and Sigler were married in October 1982 and had three children, two of whom were emancipated and one was a minor at the time of filing of the case. Sigler filed an answer and a counterclaim for divorce. An agreed judgment entry as to parental rights and responsibilities was filed on September 18, 2013.

{¶3} A trial order was issued on December 8, 2013. The order instructed that all discovery was to be completed and exchanged by February 7, 2014, and that a notice of submission and receipt of such discovery was to be filed with the court. The order also addressed the filing of witness lists and exhibit lists in advance of trial, which was scheduled for March 24, 2014. The order indicated that a failure to comply with the order “may result in sanctions, including, but not limited to, dismissal of the case for failure to prosecute, the preclusion of evidence at trial, and the award of attorney fees.”

{¶4} A settlement conference was held on March 21, 2014. At that time, Obloy’s counsel claimed to have not received all discovery requested. The court acknowledged that Sigler claimed to have provided the requested discovery; however, no proof of the submission of discovery had been filed as previously directed by the trial order. Thus, there was no proof of submission of the requested discovery. The court further indicated that Sigler had not filed a trial brief, a witness list, or an exhibit list in compliance with the trial order. As a result, an agreed magistrate’s order was issued that instructed Sigler to submit the discovery at issue to

Obloy by 5:00 p.m. that day. Notice was again included that the failure to comply could result in sanctions, which could include the dismissal of Sigler's counterclaim.

{¶5} On the date of trial, the parties engaged in settlement negotiations to resolve the matter. After several hours of negotiation, the magistrate went on the record and expressed that the parties had more than enough time to complete discovery and reach an agreement during the pendency of the case, that the case was scheduled for trial that day, and that the parties deserved to have the divorce completed. After counsel for the parties represented that significant progress had been made, additional time was provided in an effort to reach an agreement. Following a brief recess, counsel for the parties indicated only a few more pages of the separation agreement needed to be read and that the parties needed to sign the agreement. After another short recess, it was represented that everything had been signed and the settlement agreement would be processed. Thereupon, the matter was adjourned.

{¶6} On March 26, 2014, the magistrate issued a decision finding the parties were entitled to a divorce according to the terms of the agreed judgment entry/separation agreement. The decision, which included the signatures of the parties and counsel, included a waiver of the right to object to the magistrate's decision and a stipulation to the findings of the magistrate. On March 27, 2014, the trial court issued a judgment entry of divorce, which incorporated the terms of the separation agreement.

{¶7} On April 28, 2014, Sigler filed a motion to stay and a request for relief from judgment.¹ Sigler claimed she was entitled to relief from judgment under Civ.R. 60(B)(3) and (5), on grounds of fraud, misrepresentation, or other misconduct of the adverse party, and for any other reason justifying relief. Sigler claimed that at the time of the March 21, 2014 settlement

conference, the plaintiff had received the requested discovery that counsel represented was not received. She further claimed that the settlement was coerced because she was informed by the magistrate that none of her documentary evidence would be received in evidence. She also asserted there was an unfair division of assets and liabilities and there were mistakes on the child support worksheet. Finally, she alleged Obloy had concealed money missing from accounts.

{¶8} On June 26, 2014, the trial court denied the motion, finding Sigler failed to demonstrate that she has a meritorious defense or claim to present if relief were granted. Sigler timely filed this appeal. She raises two assignments of error for our review.

{¶9} Under her first assignment of error, Sigler claims the trial court erred in denying her motion for relief from judgment because she asserts there was fraud on the court and the settlement was obtained under duress.

{¶10} We review a trial court's denial of a Civ.R. 60(B) motion for relief from judgment under an abuse of discretion standard. *See Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20, 520 N.E.2d 564 (1988). To constitute an abuse of discretion, the trial court's ruling must be "unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). In order to prevail on a motion for relief from judgment pursuant to Civ.R. 60(B), the movant must demonstrate the following: (1) a meritorious defense or claim to present if relief is granted; (2) entitlement to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the timeliness of the motion. *GTE Automatic Elec., Inc. v. ARC Industries*, 47 Ohio St.2d 146, 150-151, 351 N.E.2d 113 (1976). The failure to establish any one of these requirements will result in the denial of the motion. *See Rose Chevrolet, Inc.*, at 20.

¹ Supplements to the motion were also filed.

{¶11} The parties do not contest the timeliness of Sigler's motion, which was filed one month after the judgment entry of divorce. Sigler requested relief from judgment on grounds under Civ.R. 60(B)(3) for fraud, misrepresentation or other misconduct of the adverse party, and under Civ.R. 60(B)(5) for any other reason justifying relief from judgment. The judgment entry of divorce in this case was entered after the parties executed a written separation agreement.

{¶12} Ohio law favors the enforcement of an in-court settlement agreement voluntarily reached between the parties. *Walther v. Walther*, 102 Ohio App.3d 378, 383, 657 N.E.2d 332 (1st Dist.1995). Such an agreement is binding and enforceable, so long as it is not procured by fraud, duress, overreaching, or undue influence. *Id.* Furthermore, "neither a change of heart nor poor legal advice is a reason to set aside a settlement agreement." *Id.*

{¶13} Elements common to a claim of duress include an involuntary acceptance of the terms of another under circumstances that permit no other alternative and that were the result of coercive acts of the opposite party. *Blodgett v. Blodgett*, 49 Ohio St.3d 243, 246, 551 N.E.2d 1249 (1990). "It is not enough to show that one assented merely because of difficult circumstances that are not the fault of the other party." *Id.*

{¶14} Sigler argues that plaintiff's counsel misrepresented that certain discovery had not been received. She further claims that she was under duress to settle and the settlement was coerced because the magistrate informed her that none of her documentary evidence or exhibits would be accepted and that her answer and counterclaim could be dismissed.

{¶15} Our review of the record reflects that the magistrate fully considered Sigler's assertion that the discovery had been provided at the settlement conference. However, there was no proof of submission of the requested discovery. A notice of submission of the discovery was never filed with the court as required by the trial order. Further, Sigler had not filed a trial brief,

a witness list, or an exhibit list in compliance with the trial order. As a result, an agreed magistrate's order was issued, allowing Sigler an extension of time to submit the discovery and documents by 5:00 p.m., on March 21, 2014. The order indicated that the failure to comply "may result" in sanctions, including the preclusion of evidence at trial. Thus, Sigler was afforded the opportunity to comply with the trial order and avoid any preclusion of evidence at trial.

{¶16} Rather than proceeding to trial, the parties engaged in lengthy settlement negotiations that culminated in the separation agreement being reached between the parties. Sigler acknowledged in the agreement that it was voluntarily entered and her belief that it was fair and just. The magistrate's decision indicates that the parties verbally acknowledged the same.

{¶17} Sigler also asserts there were inaccuracies in alimony on the child-support worksheet, concealment of funds by Obloy, and an unequal division of assets, property, and debts. The record shows that Sigler reviewed and executed the separation agreement, initialed changes made therein, and voluntarily agreed to all terms and obligations thereunder. Sigler agreed to be obligated to pay debts that had been incurred by her, while Obloy assumed debts incurred by him. The parties agreed to the division of assets, and the parties acknowledged that there was a fair and equitable distribution of property. Although it appears alimony was mistakenly attributed to each party, the amounts were equal and modification can be sought. Sigler offered no more than an allegation from her daughter that Obloy had informed her he moved money to a separate account two to three years ago.

{¶18} Upon review, we find that the record does not support Sigler's claims of duress and coercion, and she failed to present sufficient operative facts to demonstrate fraud,

misrepresentation, or misconduct or to otherwise justify relief under Civ.R. 60(B). Finding no abuse of discretion, we overrule appellant's first assignment of error.

{¶19} Under her second assignment of error, Sigler claims she should be granted relief from judgment because the transcript of proceedings is devoid of testimony to grant a divorce and does not reveal the waiver of the right to object to the magistrate's decision. Sigler cites no authority for her argument.

{¶20} The transcript reflects that the parties represented on the record that they had reached a settlement and signed a separation agreement. The magistrate's decision further reflects that an agreed judgment entry along with a separation agreement was reached, and includes a waiver of the right to object to the decision that was signed by the parties. The judgment entry of divorce incorporates the separation agreement that was executed by the parties.

Accordingly, appellant's second assignment of error is overruled.

{¶21} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing 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.

SEAN C. GALLAGHER, JUDGE

LARRY A. JONES, SR., P.J., and
ANITA LASTER MAYS, J., CONCUR

