[Cite as *In re J.S.C.*, 2017-Ohio-968.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104548

IN RE: J.S.C.
A Minor Child

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. CU 14105769

BEFORE: Jones, J., Kilbane, P.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: March 9, 2017

ATTORNEYS FOR APPELLANT/CROSS-APPELLEE

Michael A. Partlow
112 South Water Street, Suite C
Kent, Ohio 44240

Ronald A. Sears
P.O. Box 23071
Chagrin Falls, Ohio 44023

ATTORNEYS FOR APPELLEE/CROSS-APPELLANT

Joseph G. Stafford
Carolyn C. Soeder
Hannah R. Pasku
Stafford & Stafford Co., L.P.A.
55 Erieview Plaza, 5th Floor
Cleveland, Ohio 44114

ATTORNEY FOR GUARDIAN AT LITEM

Tyrone C. Fazio
1360 East 9th Street
The IMG Center, Suite 910
Cleveland, Ohio 44114

ATTORNEY FOR CHILD SUPPORT ENFORCEMENT AGENCY

Yvonne C. Billingsley
C.C.D.C.F.S.
3955 Euclid Avenue
Cleveland, Ohio 44115

LARRY A. JONES, SR., J.:

{¶1} The judgment at issue in this case was issued by the trial court on May 2, 2016. C.L.C., plaintiff-appellant/cross-appellee, Father (hereinafter "Father"), appeals the portion of the judgment granting the motion of J.B., defendant-appellee/cross-appellant, Mother (hereinafter "Mother"), to "enforce the settlement agreement." Mother cross-appeals from the portion of the judgment declaring both parties the legal custodian of the minor child, J.S.C., when she is in Father's and Mother's respective possession.

{¶2} For the reasons that follow, we affirm the trial court's judgment in toto.

Procedural and Factual History

{¶3} Although no transcripts of any of the in court proceedings have been made part of the record, the record that is before us establishes that Mother and Father were not, at any relevant time, married, and that in March 2014, they had a child, J.S.C. In May 2014, Father initiated this action in juvenile court by filing an application to determine custody of J.S.C. The record demonstrates that Father sought an order for shared parenting, as evidenced by his proposed "shared parenting" plan. Mother, however, proposed a "parenting plan" that did not make mention of "shared parenting."

{¶4} Both parties were represented by counsel throughout the trial court proceedings, and the record demonstrates that the parties, through their counsel, engaged in extensive negotiations in attempting to resolve this case.

{¶5} In February 2016, Mother filed a first "motion to enforce settlement agreement," and attached to her motion a "parenting plan" signed by herself and Father on January 4, 2016.[1] The substantive portion of each page of the plan contained Mother's and Father's initials at the bottom of the page, and any interlineation in the text were also initialed where the changes occurred. A review of the document demonstrates that it was the parenting plan that Mother had originally proposed, and the parties worked off that proposed document, making additions and deletions.

{¶6} In regard to the child's residence, the plan initially stated, "Mother is hereby designated as sole residential parent and legal custodian of the minor child." But "and legal custodian of the minor child" was crossed out, and replaced with "for school purposes." Thus, after the correction, the sentence read as follows: "Mother is hereby designated as sole residential parent for school purposes." Mother and Father both initialed the corrected sentence.

{¶7} In her first motion to enforce the settlement agreement, Mother alleged the following: "As this court is aware, controversy developed when * * * counsel for Father changed the terms and conditions of the Agreement by having his client interlineate a statement on page 6 without notification to anyone that he had made the change." Mother contended that the change was detected when the plan was being presented to the court. One sentence on page six with changes contains only Father's

[1]Mother signed the plan on both October 8, 2015, and January 4, 2016; Father signed on January 4, 2016.

initials and, thus, that is the sentence he presumably altered. The sentence originally read as follows: "No provision in this agreement shall supersede Mother's final decision making authority in regard to all issues relating to the minor child." The portion of the sentence "all issues relating to the minor child" was crossed out and in its place was added "day to day decisions." With the correction, the sentence read, "No provision in this agreement shall supersede Mother's final decision making authority in regard to day to day decisions."

{¶8} A judgment entry relating to a January 4, 2016 hearing, which was scheduled as "trial," was filed and stated that,

> Parties requested a recess in an attempt to negotiate an agreement in this matter, with no resolution reached * * *. The Court was advised that parties have been unable to reach an agreement in this matter and there are no stipulations in this matter.

The entry also stated that the matter proceeded to trial with the testimony of Father.[2]

{¶9} In March 2016, Mother filed a second "motion to enforce settlement agreement." In addition to the alleged January 4 agreement, Mother contended that the parties also reached a settlement on February 8, 2016. The plan attached to Mother's second motion was the same plan as attached to her first motion, except that relative to the sentence on page six, the previously added portion (presumably by Father) of that sentence was crossed out, and in its place was added "normal and routine issues." The

[2]We disregard Father's contention that some of the court's judgment entries are "quite confusing" because the dates on them "do not correspond properly with the dates that the parties were before the court," because he has not made the transcripts of the proceedings part of the record.

sentence therefore read, "No provision in this agreement shall supersede Mother's final decision making authority in regard to normal and routine issues." Both Mother's and Father's initials were by the sentence.

{¶10} After Mother's second motion to enforce settlement was filed, the trial court issued a judgment entry on March 25, 2016, that provided that the matter came on for trial on March 23, 2016, but the parties

> advised the court they had reached and signed an agreement, [but] when the court held a hearing to reiterate the terms on the record, the Father was not in agreement since he desired shared parenting and the plan was silent as to a legal custodian.

The entry stated that the court continued the matter to give Father time to file a written brief in opposition to Mother's motion to enforce the settlement; Father filed his brief in April 2016. The entry further stated that "if the matter is not resolved, the trial shall continue."

{¶11} In his brief in opposition, Father again referred to the court's "confusing" judgment entries,[3] and advanced the arguments he sets forth in this appeal, that is, that

[3]Three days after the March 25, 2016 judgment, the trial court filed another judgment entry on March 28, stating that the matter came on for trial January 4, 2016, and the court "continued to hear [Father's] testimony." Father contends that the judgment refers to a February 8, 2016, not January 4, 2016, hearing. Thus, according to Father, the court believed that the parties had not reached a settlement and heard trial testimony on two different dates. Father further asserts that a third day of trial was set for March 23, 2016, but when the parties convened, the court decided not to proceed to trial and, rather, issued the judgment granting Father leave to oppose Mother's motion to enforce the settlement agreement.

the plan does not name a residential parent and it is unclear whether it is a shared parenting plan.[4]

{¶12} On May 2, 2016, the trial court issued the judgment that is the subject of this appeal. The judgment provides that the parenting plan failed to designate a legal custodian and because of that, the court considered R.C. 3109.042(A), governing custody rights of unmarried mothers. After considera-tion of the statute, the court made the following determination:

> Juvenile court is a court of competent jurisdiction and has treated the Mother and Father as standing upon equality when making the designation. The court finds that Mother * * * and Father * * * are designated the legal custodians when the minor child is in their possession. The plan submitted by the parties allocates significant parenting time to the Mother and Father. Although the Mother shall make decisions over the routine day-to-day healthcare and school decisions concerning the minor child, major healthcare decisions shall be made jointly. When the parents do not agree, the plan mandates the parents follow the recommendation of the healthcare provider.

{¶13} Further, the court stated that it had considered Father's desire for shared parenting, but that the

> signature of the Mother and Father clearly indicates that the terms of the plan are acceptable and both desired the plan to be ordered into execution. The time to negotiate, discuss or argue about the term "shared parenting" was prior to the Mother and Father signing the plan. The court finds that the omission of two words, "shared parenting," is not sufficient reason to reject the plan and engage in a protracted litigation. Therefore, the Father

---

[4]In addition to the "confusing" judgment entries, Father also makes mention in his opposition to a March 8, 2016 letter from Mother's attorney to the trial court. The letter was attached to Mother's second motion to enforce the settlement agreement, and states that it was written in response to the court's inquiry about the "agreement that the parties recently reached at court." A copy of the second parenting plan was attached to the letter.

> * * * and Mother * * * are designated legal custodians when the minor child is in their respective possession * * * pursuant to statute.

{¶14} Thus, the trial court granted Mother's motion to enforce the settlement agreement, and adopted the plan signed by the parties, modifying it as stated above to address legal custody of J.S.C.

Alleged Errors

{¶15} Father's assignment of error reads, "The trial court erred, as a matter of law, by granting the appellee's motion to enforce settlement."

{¶16} Mother's cross-assignment of error reads, "The trial court erred as a matter of law by designating both parents the legal custodian of the minor child."

Law and Analysis

{¶17} The issue raised in Father's assignment of error and the issue raised by Mother in her cross-appeal are intertwined and therefore will be considered together.

{¶18} Settlement agreements are generally favored in the law. *Szmania v. Szmania*, 8th Dist. Cuyahoga No. 90346, 2008-Ohio-4091, ¶ 8, citing *Vasilakis v. Vasilakis*, 8th Dist. Cuyahoga No. 68763, 1996 Ohio App. LEXIS 2569 (June 20, 1996). "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} When parties enter into a settlement agreement, the agreement constitutes a binding contract and 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). A settlement agreement 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. *Vasilakis*, 1996 Ohio App. LEXIS 2569 at *5-6; *Walther* at *id.* Contracts, including settlement agreements, can be unfair or favor one side over the other. *Walther* at *id.*

{¶20} Father contends that no agreement was reached between himself and Mother because the plan is "silent as to the actual allocation of parental rights. No one is named as 'residential parent' and the plan is unclear as to whether it is a shared parenting plan." Thus, it is Father's position that the "written document executed by the parties simply does not resolve this issue," and that this was an essential element that needed to be resolved to finalize the parties' dispute.

{¶21} The plan does address who is the residential parent, stating that "Mother is hereby designated as sole residential parent for school purposes." As mentioned, "for school purposes" was added to the sentence, replacing "and legal custodian for the minor child." Mother and Father both initialed this specific change. Thus, Father's contention

that the plan lacked agreement on an essential term, that is, who was the residential parent, and, therefore, was incomplete and unenforceable, is without merit.

{¶22} The trial court relied on *Richmond v. Evans*, 8th Dist. Cuyahoga No. 101269, 2015-Ohio-870, in granting Mother's motion to enforce the settlement. Contrary to Father's assertions, we find the case to be on point. In *Richmond*, the parties entered into a written settlement agreement, after which the wife sought to avoid it on the ground of mutual mistake of fact. Specifically, the wife claimed that the parties had not considered the tax consequences of the agreed-upon distribution of a retirement account. This court, however, found that there had been no mutual mistake of fact, fraud, or distress, and therefore, that the wife was bound by the agreement.

{¶23} Here, too, there is no evidence of mutual mistake of fact, fraud, or distress. The record, rather, demonstrates that Mother and Father assented to the terms of parenting their daughter as set forth in the plan that they both executed. They worked off of Mother's originally proposed parenting plan, which never made any mention of shared parenting. Further, we note that even though Father apparently made changes to the document without Mother's consent and approval, he did not make changes to the residential parent, or add in a legal custodian or the words "shared parenting." This further evidences that he intended to be bound by the document as it was executed.

{¶24} Thus, Father is correct, as mentioned, that the words "shared parenting" did not appear in the agreement.[5] But because those words do not appear in the agreement does not make it incomplete or missing an essential element.

{¶25} It is well established that decisions of a trial court involving the care and custody of children are accorded great deference upon review. *Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988). Thus, any judgment of the trial court involving the allocation of parental rights and responsibilities will not be disturbed absent a showing of an abuse of that court's discretion. *Davis v. Flickinger*, 77 Ohio St.3d 415, 418, 674 N.E.2d 1159 (1997). "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude was unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶26} Because the agreement signed by the parties did not name a legal custodian (again, the legal custodian language was crossed out and initialed by both parties), the court considered the issue on its own. The following discussion segues into the issue raised by Mother in her cross-appeal, that is, whether the trial court erred in designating both parents as the legal custodian.

---

[5]Shared parenting, as used in the Ohio Revised Code, "means that the parents share * * * all or some of the aspects of physical and legal care of their children." R.C. 3109.04(K).

{¶27} In reaching its determination about legal custody, the trial court first considered R.C. 3109.042, which governs an unmarried mother's custodial rights. Subsection (A) of the statute provides as follows:

> An unmarried female who gives birth to a child is the sole residential parent and legal custodian of the child *until* a court of competent jurisdiction issues an order designating another person as the residential parent and legal custodian. A court designating the residential parent and legal custodian of a child described in this section shall treat the mother and father as standing upon an equality when making the designation.

(Emphasis added.)

{¶28} Mother contends that based upon R.C. 3109.042(A), she "has always been the legal custodian of the minor child." But the statute makes it clear that an unmarried mother is the residential parent and legal custodian "until" a court orders otherwise. The trial court here ordered otherwise. In so ordering, the court treated Mother and Father "as standing upon equality," as statutorily required. The court noted that the parties' plan allocated "significant parenting time to the Mother and Father," and thus, designated each parent as the legal custodian when their daughter is in their respective possession. The trial court's decision was not an abuse of its discretion. Further, it goes without citation that in allocating parental rights and responsibilities, trial courts must do so with the best interest of the child in mind. The record here supports a finding that the trial court acted in the best interest of J.S.C.

{¶29} In light of the above, Father's sole assignment of error is overruled, and Mother's cross-assignment of error is overruled.

{¶30} Judgment affirmed.

It is ordered that appellant and appellee split the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

LARRY A. JONES, SR., JUDGE

MARY EILEEN KILBANE, P.J., and
EILEEN T. GALLAGHER, J., CONCUR