

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

MARC B. RORICK

C.A. No. 09CA009533

Appellee

v.

CHRISTINE L. RORICK

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 07DU068295

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 30, 2009

MOORE, Presiding Judge.

{¶1} Appellant, Christine Rorick, appeals from the judgment of the Lorain County Court of Common Pleas. This Court affirms.

I.

{¶2} In September of 2007, Appellant, Christine Rorick (“Wife”) and Appellee, Marc Rorick (“Husband”), each filed claims for divorce. Wife is employed as a public school teacher and consequently, participates in the State Teachers Retirement System (“STRS”). Husband is employed by a bank and does not have a pension. Husband will collect social security benefits upon his retirement.

{¶3} On September 22, 2008, the parties and their counsel appeared in court for their final hearing. On that date, the parties signed a judgment entry of settlement and submitted the entry to the court. The judgment entry contained several hand-written notations. In light of these hand-written additions to the document, the trial court gave the parties additional time in

which to prepare a clean copy of the judgment entry. Thereafter, a dispute arose between the parties concerning a provision that Wife claimed should have been included in the judgment entry. Specifically, Wife claimed that the original judgment entry erroneously omitted any reference to a theoretical Social Security offset against her STRS pension benefits. The parties did not submit a re-typed version of the judgment entry of settlement.

{¶4} On October 9, 2008, the trial court held a meeting with the parties’ counsel to discuss the dispute. Husband filed a motion to enforce the settlement agreement on October 27, 2008. Wife filed a brief in opposition to the motion on November 5, 2008. On December 4, 2008, the trial court held a hearing on the motion to enforce the settlement agreement. The trial court granted Husband’s motion on December 29, 2008. On January 5, 2009, the trial court filed the final judgment entry of divorce. On February 3, 2009, Wife filed her notice of appeal. She has raised two assignments of error for our review. We have combined the assignments of error to facilitate our review.

II.

ASSIGNMENT OF ERROR I

“THE TRIAL COURT ERRED IN GRANTING [HUSBAND’S] MOTION TO ENFORCE SETTLEMENT[.]”

ASSIGNMENT OF ERROR II

“THE TRIAL COURT ERRED IN FAILING TO ORDER A SOCIAL SECURITY OFFSET RELATIVE TO THE DIVISION OF [WIFE’S] STRS PENSION[.]”

{¶5} In Wife’s first assignment of error, she contends that the trial court erred in granting Husband’s motion to enforce settlement. In her second assignment of error, Wife argues that the trial court erred in failing to order a social security offset relative to the division of Wife’s STRS pension. We disagree with both assignments of error.

{¶6} “Absent fraud, duress, overreaching, or undue influence, a settlement agreement entered into by parties in a divorce is enforceable.” *Haas v. Bauer*, 156 Ohio App.3d 26, 2004-Ohio-437, at ¶16. Settlement agreements

“may be either written or oral, and may be entered into prior to or at the time of a divorce hearing. Where the agreement is made out of the presence of the court, the court may properly sign a journal entry reflecting the settlement agreement in the absence of any factual dispute concerning the agreement.” (Citations omitted.) *Muckleroy v. Muckleroy* (Sept. 5, 1990), 9th Dist. No. 14443, at *2.

“‘[W]hen the parties agree to a settlement offer, [the] agreement cannot be repudiated by either party, and the court has the authority to sign a journal entry reflecting the agreement and to enforce the settlement.’” *Haas*, supra, at ¶16, quoting *Shetler v. Shetler* (May 23, 2001), 9th Dist. No. 00CA0070, at *2.

{¶7} This Court reviews a trial court’s decision to adopt a settlement agreement for an abuse of discretion. *Meyer v. Meyer*, 9th Dist. No. 21023, 2002-Ohio-5038, at ¶9. The term “abuse of discretion” connotes more than a mere error of judgment or of law; rather, it implies that the court’s ruling was arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶8} This Court has held that “[w]here parties enter into a settlement agreement in the presence of the trial court, such an agreement constitutes a binding contract.” *Campbell v. Buzzelli*, 9th Dist. No. 07CA0048-M, 2008-Ohio-725, at ¶8, citing *Spercel v. Sterling Industries, Inc.* (1972), 31 Ohio St.2d 36, paragraph one of the syllabus. Further, “‘it has long been the rule in Ohio that if the parties voluntarily enter into a separation agreement, the agreement becomes a valid and binding contract between the parties.’” *Haas*, supra, at ¶19, quoting *Russell v. Russell* (June 7, 1999), 5th Dist. No. 98-CA-0127; *Peters v. Peters* (1968), 14 Ohio St.2d 268.

{¶9} The transcript from the September 22, 2008 proceeding reflects that both parties were examined under oath, acknowledged that they had resolved the issues, understood the settlement agreement and that they found the agreement to be the best agreement that each of them could make on that day. In addition, both parties' counsel stated on the record that the documents were fair to their respective clients.

{¶10} In this matter, Wife has not argued that the settlement agreement was procured by fraud, duress, overreaching or undue influence. Rather, Wife's main contention is that the agreement is inequitable. We have held that "when the parties enter into an in-court settlement agreement, so long as the court is satisfied that it was not procured by fraud, duress, overreaching or undue influence, the court has the discretion to accept it without finding it to be fair and equitable." *Campbell*, supra, at ¶8, quoting *Walther v. Walther* (1995), 102 Ohio App.3d 378, 383.

{¶11} Further, the record reflects that the parties' counsel had thoroughly discussed settlement arrangements and had exchanged settlement proposals. At least one of Wife's proposed settlement agreements included an offset against her STRS pension for Husband's hypothetical Social Security benefits. Husband rejected this proposal.

{¶12} All of the cases Wife has cited that involve Social Security offsets pre-date the Ohio Supreme Court's decision in *Neville v. Neville* (2003), 99 Ohio St.3d 275, at ¶11, in which the Court held that "to make an equitable distribution of marital property, [the trial court] *may* consider the parties' future Social Security benefits in relation to all marital assets." (Emphasis added.) *Neville* clearly does not mandate that the trial court consider Social Security benefits when equitably dividing marital assets.

{¶13} Lastly, the cases Wife cites involved trials to the court wherein the court divided the parties' assets, etc., not settlement agreements brokered by the parties. The First District Court of Appeals discussed this distinction in *Walther* wherein it explained:

“When a husband and wife end their marriage, they have a fundamental choice to make about the division of property, the allocation of parental responsibilities, and support. The parties can reach an agreement as to these issues or the parties can litigate them and have the domestic relations court decide the issues.

“There are different avenues for the parties to come to their own agreement about the division of their property, allocation of parental rights and responsibilities, and support. They can enter into a separation agreement pursuant to a dissolution of marriage, they can enter into a separation agreement pursuant to a divorce, or they can enter into an in-court settlement agreement. All are contracts and all are permissible. The role of the court differs slightly in each context.

“All three types of agreement share a common element. They are agreements in lieu of a trial and adjudication by the court. In the absence of any of these forms of agreement, the court will divide the property for the parties.

“In a trial, the court is obligated to make a division based on principles of equitable distribution. This does not necessarily mean equal distribution, only fair and equitable distribution. Nevertheless, implicit in a property hearing is a requirement that the division be fair and equitable.

“On the other hand, a contract does not have to be fair or equitable to be enforceable. Contracts, including settlement agreements, can be unfair or favor one side over the other. They are still binding and enforceable, so long as they are not procured by fraud, duress, overreaching or undue influence.

“Thus, when the parties enter into an in-court settlement agreement, so long as the court is satisfied that it was not procured by fraud, duress, overreaching or undue influence, the court has the discretion to accept it without finding it to be fair and equitable. Settlement agreements are favored in the law.” (Internal citations and quotations omitted.) *Walther*, 102 Ohio App.3d at 382-83.

{¶14} Wife's counsel acknowledged this distinction when she stated on the record at the December 4, 2008 proceedings: “Well, I submit to the court, if this case had gone to trial, this Court would have had to consider an offset of [Husband's] Social Security and done the appropriate thing to make sure an equitable distribution was achieved.”

{¶15} The parties undisputedly entered into a settlement agreement in the presence of the court, which both parties acknowledged to be their agreement. This agreement constitutes a binding contract. *Campbell*, supra, at ¶8. Wife has failed to demonstrate that the failure to include the offset in the agreement renders the agreement unenforceable. More importantly, there is no evidence that the agreement was procured by fraud, duress, overreaching or undue influence. *Id.*; *Walther*, 102 Ohio App.3d at 383. Consequently, neither “[a] change of heart [n]or poor legal advice is [] grounds to set aside a [settlement] agreement. *Haas*, supra, at ¶19. We conclude, therefore, that the trial court did not err in failing to order a Social Security offset relative to the division of Wife’s STRS pension and further that the trial court did not abuse its discretion in granting Husband’s motion to enforce the settlement agreement.

{¶16} Wife’s assignments of error are overruled.

III.

{¶17} Wife’s assignments of error are overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

CARR, J.
CONCURS

DICKINSON, J.
CONCURS, SAYING:

{¶18} As noted by the majority, the agreement entered into by the parties in the trial court’s presence “constitutes a binding contract.” *Campbell v. Buzzelli*, 9th Dist. No. 07CA0048-M, 2008-Ohio-725, at ¶8. Under these circumstances, to not enforce it would have been a mistake of law. Accordingly, the applicable standard of review is de novo, not abuse of discretion. As the Ohio Supreme Court recently wrote in *Medical Mutual of Ohio v. Schlotterer*, 2009-Ohio-2496, at ¶13, “[w]hen a court’s judgment is [arguably] based on an erroneous interpretation of the law, an abuse-of-discretion standard is not appropriate.”

APPEARANCES:

KIMBERLY K. YODER, Attorney at Law, for Appellant.

JOHN J. KOVACS, Attorney at Law, for Appellee.