[Cite as *Michaels v. Michaels*, 2010-Ohio-963.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF MEDINA	)	

ARTHUR J. MICHAELS Appellant v. KIMBERLY A. MICHAELS Appellee	C.A. No. 09CA0047-M APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO CASE No. 05 DR 0182

DECISION AND JOURNAL ENTRY

Dated: March 15, 2010

WHITMORE, Judge.

{¶1} Plaintiff-Appellant, Arthur Michaels ("Husband"), appeals from the judgment of the Medina County Court of Common Pleas, Domestic Relations Division. This Court affirms.

I

{¶2} Husband and Kimberly Michaels ("Wife") married in July 1986. On March 17, 2005, Husband filed a complaint for divorce. Wife filed a counterclaim for divorce as well as a third party complaint naming several businesses in which Husband had an interest. After many filings and continuances, the court held a settlement hearing on April 9, 2007. The parties indicated that they had reached an agreement on all of the issues except for the issues of spousal support and the period of time Wife would be permitted to remain in the marital residence pending its sale while Husband paid the mortgage. The terms of the parties' settlement were read into the record and both parties indicated that they agreed upon those terms. The following day, the parties again appeared before the court. The parties indicated that they also had reached

an agreement on the issue of spousal support and the period through which Wife would be able to remain in the marital residence while Husband paid the mortgage. The parties further indicated that they had reached a settlement on the issues of health insurance and personal property from the marital residence. All of the additional terms were read into the record, and the parties once again indicated that they agreed upon all of the terms.

{¶3} Subsequently, Wife submitted a proposed judgment entry/decree of divorce to Husband and filed the proposed entry with the court. Husband notified the court that he disagreed with Wife's proposed entry and was securing a transcript of the settlement hearing. Nevertheless, on May 9, 2007, the court filed a judgment entry/decree of divorce. Husband filed objections, a Civ.R. 60(B) motion, and an appeal in this Court. On May 12, 2008, this Court issued its decision in Husband's appeal, reversing the lower court's judgment and remanding the matter for further proceedings. *Michaels v. Michaels*, 9th Dist. No. 07CA0058-M, 2008-Ohio-2251, at ¶21. We held that the court violated its own local rule when it entered judgment on Wife's proposed judgment entry over Husband's rejection of the entry because the court had specifically told the parties that they would both have to sign the entry before it was filed as the order of the court. Id. at ¶18.

{¶4} On June 17, 2008, Husband filed a motion for a court declaration that the parties' "purported settlement agreement" was incomplete and did not amount to a final settlement. On July 28, 2008, the court held a hearing and asked the parties to submit proposed judgment entries based on their agreement at the April 9 and 10, 2007 settlement hearing. Rather than do so, Husband filed an "objection to entry of any judgment" based upon the parties' settlement hearing because the retired judge who had presided over first day of the hearing was never properly

assigned to the case and had no authority to receive a settlement.[1] Husband also filed a motion to disqualify the judge presiding over the case upon remand, citing the judge's "friendship and relationship with [opposing counsel]." On September 26, 2008, the judge presiding over the case denied Husband's motions, but indicated that she was requesting the assignment of a visiting judge to exclusively handle the matter. The same day, however, the judge issued a "final judgment entry" of divorce. The entry did not set forth the terms of the divorce, but indicated that the court was "adopt[ing] the parties' agreement verbatim as they read it into the record on April 9 and 10, 2007 by attaching the actual transcripts hereto and adopting the terms as if fully rewritten herein." Once again, Husband filed a Civ.R. 60(B) motion and an appeal in this Court. Wife filed a cross-appeal. While the appeals were pending, Chief Justice Moyer assigned a retired judge to preside over the case. On November 13, 2008, this Court dismissed Husband's appeal and Wife's cross-appeal for lack a final, appealable order. *Michaels v. Michaels* (Nov. 13, 2008), 9th Dist. No. 08CA0073-M.

{¶5} On January 13, 2009, the newly assigned judge held a hearing to discuss resolving the case. The court informed the parties that it had prepared a judgment entry based on proposed entries that the parties had filed and the transcripts of the April 9th and 10th settlement hearing. The court provided the parties with a copy of the proposed entry and gave them ten days to respond to it. Unsurprisingly, both parties filed objections to the proposed entry. Husband filed a Civ.R. 60(B) motion, which the court restyled as a motion to set aside the agreement as the court had yet to enter a final judgment. On March 13, 2009 and April 29, 2009, the court held hearings on Husband's motion to set aside the agreement. The parties presented testimony and

[1] The judge who presided over the first day of the settlement hearing recused himself shortly after the case was remanded.

numerous exhibits detailing their financial interests. Additionally, the court gave the parties thirty days from the date of the second hearing to submit written arguments.

{¶6} On May 28, 2009, Wife submitted proposed findings of fact and conclusions of law as well as a proposed judgment entry. Husband filed several items in opposition, but never offered his own proposed judgment entry. On July 24, 2009, the court filed two items: (1) a judgment entry setting forth findings of fact and conclusions of law; and (2) a judgment entry/decree of divorce. The first judgment entry concluded that the parties had reached a settlement during the April 9 and 10, 2007 hearings. The second judgment entry set forth the terms of the parties' divorce.

{¶7} Husband now appeals from the trial court's judgment and sets forth four assignments of error for our review. For ease of analysis, we consolidate two of his assignments of error.

II

Assignment of Error Number One

"THE TRIAL COURT ERRED IN FINDING THAT THE TRANSCRIPT OF THE RECITATION OF TERMS CONSTITUTED A FULL AND FINAL SETTLEMENT AGREEMENT AND IN ENTERING A DECREE BASED ON THAT RECITATION."

Assignment of Error Number Three

"THE TRIAL COURT ERRED IN RELYING UPON AND IN APPLYING TO THIS CASE THE PRINCIPLES STATED IN *CAMPBELL V. BUZZELLI*, 2008-OHIO-725[.]"

{¶8} In his first assignment of error, Husband argues that the trial court erred by entering a divorce decree based upon a "tentative agreement" that the parties reached in hearings before the Court. Specifically, he argues that the parties never had a meeting of the minds so as to form an enforceable contract. In his third assignment of error, Husband argues that the trial

court erroneously applied *Campbell v. Buzzelli*, 9th Dist. No. 07CA0048-M, 2008-Ohio-725. Specifically, he argues that *Campbell* does not apply because the parties did not reach a "full and final" agreement in open court. We disagree with Husband's arguments.

> "Where parties enter into a settlement agreement in the presence of the trial court, such an agreement constitutes a binding contract. 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. Furthermore, an oral settlement agreement can be enforced by the court in those circumstances where the terms of the agreement can be established by clear and convincing evidence. Clear and convincing evidence is that which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." (Internal citations, alterations, and quotations omitted.) *Campbell* at ¶8.

If the existence of an oral settlement or the meaning of its terms is disputed, a trial court must conduct an evidentiary hearing before entering judgment. *Rulli v. Fan Co.* (1997), 79 Ohio St.3d 374, syllabus. "Parties cannot repudiate a settlement agreement when, in hindsight, they find that they no longer agree with the terms." *Hughes v. Yanikov*, 9th Dist. No. 07CA009235, 2008-Ohio-2904, at ¶14.

{¶9} When the parties appeared before the court on their April 9, 2007 trial date, they indicated that they had reached a "full and final settlement" with the exception of the issues of spousal support and the period during which Wife would remain in the marital residence while Husband paid the mortgage. Wife's counsel read the terms of the settlement into the record with input from Husband's counsel. After the terms of the settlement were set forth, the following exchange took place:

> "THE COURT: Mr. and Mrs. Michaels, did each of you hear and understand what the attorneys stated to be their understanding of your agreement? Mr. Michaels?
>
> "[HUSBAND]: Yes.
>
> "THE COURT: Mrs. Michaels?

"[WIFE]: Yes.

"THE COURT: Is that, in fact, the agreement the two of you have reached? Mr. Michaels?

"[HUSBAND]: Yes.

"THE COURT: Mrs. Michaels?

"[WIFE]: Yes.

"THE COURT: Is your agreement based upon both of your having made a full and complete disclosure of all of your properties and all of your debts? Mr. Michaels?

"[HUSBAND]: Yes.

"THE COURT: Mrs. Michaels?

"[WIFE]: Yes.

"THE COURT: Are you satisfied that the agreement fairly, equitably, and to your mutual satisfaction divides those properties and debts? Mr. Michaels?

"[HUSBAND]: Yes.

"THE COURT: Mrs. Michaels?

"[WIFE]: Yes.

"THE COURT: Do each of you understand that if I approve this agreement it will be final and binding upon both of you, and the only matters reserved for trial will be spousal support and what happens to the marital residence while it's pending sale. Do[es] each of you understand that? Mr. Michaels?

"[HUSBAND]: Yes.

"THE COURT: Mrs. Michaels?

"[WIFE]: Yes.

"THE COURT: Do each of you further understand that your agreement will remain intact regardless of whatever decision I may make on the outstanding issues? Mr. Michaels?

"[HUSBAND]: Yes.

"THE COURT: Mrs. Michaels?

"[WIFE]: Yes.

"THE COURT: All right. Are each of you entering into this agreement knowingly, voluntarily, and intelligently? Mr. Michaels?

"[HUSBAND]: Yes.

"THE COURT: Mrs. Michaels?

"[WIFE]: Yes.

"THE COURT: Do each of you want me to approve your agreement and, in fact, make it the orders of the Court? Mr. Michaels?

"[HUSBAND]: Yes.

"THE COURT: Mrs. Michaels?

"[WIFE]: Yes.

"THE COURT: Mr. Michaels, do you have any questions of [your counsel]?

"[HUSBAND]: No.

"THE COURT: Have you been satisfied with his advice?

"[HUSBAND]: Yes.

"THE COURT: Do you have any questions of the Court?

"[HUSBAND]: No."

The following day, April 10, 2007, the parties reconvened and notified the court that they had settled the outstanding issues. Wife's counsel read additional terms into the record for the items of spousal support, health insurance, and personal property at the marital residence. Once again, both Husband and Wife indicated that they understood and agreed to the terms set forth by Wife's counsel.

{¶10} Since the April 9 and 10, 2007 hearings, Husband has repeatedly taken the position that the parties never reached a full and final settlement. As he did over and over in the court below, Husband points to flaws in the April 9 and 10, 2007 transcript and the court's

original judgment entry of divorce, which this Court reversed in 2008. *Michaels* at ¶21. Husband argues the following:

> "Judge Hayes[2] cannot be filling in the gaps from his own recollection of what happened at the hearing. He wasn't there. This was presided over by Judge Ramsey, more than a year before Judge Hayes was appointed to the case. Clearly, what Judge Hayes is doing is either speculating beyond the record as to what happened or he is taking someone else's word for what happened outside of the record."

Clearly, Husband overlooks the fact that Judge Hayes: (1) received voluminous filings from both parties on the terms of their settlement; (2) held a hearing on January 13, 2009 to clarify the procedure the court would employ to resolve this matter; (3) gave the parties a proposed judgment entry and allowed them to comment and offer corrections; (4) held hearings on March 13, 2009 and April 29, 2009 at which he permitted nine witnesses, including Husband and Wife, to testify, admitted eighty-three exhibits, and listened to evidence with regard to the parties' assets, earning abilities, income, and their understandings of the terms of their settlement; (5) provided the parties with an additional thirty days to prepare and file written arguments; and (6) reviewed the written arguments and other post-hearing materials that the parties filed before he issued a judgment. The fact that the first and second divorce decrees the court issued in May 2007 and September 2008 contained errors is irrelevant because this Court reversed the first decree, id., and the second was never finalized. Moreover, the fact that the April 9 and 10, 2007 hearing transcripts contained misstatements (e.g., a statement that there were temporary orders when, in fact, no temporary orders had been issued) is also irrelevant because the court did not rely solely upon those transcripts when crafting the July 2009 decree. The court had the benefit

[2] Chief Justice Moyer appointed Judge Hayes on November 13, 2008 to exclusively preside over this matter.

of an evidentiary hearing and the parties' voluminous filings. See *Rulli*, 79 Ohio St.3d at syllabus (instructing a court to conduct an evidentiary hearing before entering judgment when parties dispute the existence or terms of an oral settlement).

{¶11} The record reflects that after Husband agreed to enter into a settlement, which included a spousal support award of $6,500 per month and a $625,000 property equalization payment, Husband realized he would be unable to borrow sufficient funds to pay these amounts. Husband then attempted to distance himself from the settlement by filing motions attacking the court's authority to hear the settlement, arguing that the second judge who presided over the case was biased in favor of Wife's counsel, seeking the disqualification of Wife's attorney, and claiming that the court placed him under duress to force him to agree to the terms set forth in the record on April 9 and 10, 2007. Husband's own attorney at the time of the April 9 and 10, 2007 hearings did not substantiate his claims. Rather, the attorney testified at the April 29, 2009 evidentiary hearing that it was his understanding that the parties had reached a full agreement as of April 10, 2007. The attorney also testified that he prepared a proposed judgment entry after the April 9 and 10, 2007 hearings, but he never submitted it to the court because Husband did not approve it.

{¶12} As previously noted, "[p]arties cannot repudiate a settlement agreement when, in hindsight, they find that they no longer agree with the terms." *Hughes* at ¶14. Husband explicitly and repeatedly represented to the court at the April 9 and 10, 2007 hearings that he and Wife had reached a settlement. He repeatedly assented to the terms of the settlement as read into the record by Wife's counsel. Further, he had numerous opportunities after the fact to explain what he thought the terms of the settlement meant. Husband only points to numerous flaws in the transcripts from the April 9 and 10, 2007 hearings and prior divorce decrees in support of his

argument on appeal. He neglects to explain why the hearings the court held on March 13 and April 29, 2009 did not remedy any confusion that existed with regard to the meaning of the terms of the settlement. Contrary to Husband's argument, the "record" does not consist solely of the transcripts from the April 9 and 10, 2007 hearings. The trial court did not have to rely solely upon those transcripts to discern the terms of the parties' settlement because the court also had the benefit of the additional hearings and voluminous filings submitted by each party. Furthermore, Husband does not specifically identify what findings, if any, were erroneously determined by Judge Hayes after the March 13 and April 29, 2009 hearings. See App.R. 16(A)(7). Based on our review of the entire record, we cannot say that the lower court erred by applying *Campbell* and entering a final divorce decree. The record contains clear and convincing evidence of the terms of the parties' agreement. As such, Husband's first and third assignments of error lack merit.

Assignment of Error Number Two

> "THE TRIAL COURT ERRED IN NOT ENFORCING THE AGREEMENT THAT THE SETTLEMENT WOULD NOT BE EFFECTIVE UNTIL REDUCED TO WRITING AND SIGNED BY THE PARTIES."

{¶13} In his second assignment of error, Husband argues that the court erred by issuing the parties' decree in the absence of a written agreement signed by both parties. Once again, Husband relies upon the April 9 and 10, 2007 hearing transcripts to argue that the trial court informed the parties they would have to sign a written agreement containing the terms of their settlement before it would become final. Husband argues that because he never signed a written settlement agreement, the court erred by issuing a divorce decree. Husband also argues that because the parties never signed a written agreement, their divorce decree violates the statute of frauds.

{¶14} It is true that the first trial judge in this case told the parties they would have to sign a written agreement before it would become the order of the court. By telling the parties they would have to sign a written agreement before the court would enter it, the first trial judge invoked Loc.R. 8.01 of the Medina County Court of Common Pleas, Domestic Relations Division. When the first trial judge issued a divorce decree in the absence of Husband's signature, this Court reversed the judgment on appeal as being in violation of Loc.R. 8.01. *Michaels* at ¶21. Yet, the trial court did not follow the foregoing procedure in entering the July 2009 divorce decree. The newly appointed judge specifically told Husband and Wife that he would be entering judgment after receiving evidence at the March 13 and April 29, 2009 hearings and written, post-hearing arguments from the parties. Husband fails to point to any law that would have required the lower court to apply the procedure set forth in Loc.R. 8.01 again upon remand. See App.R. 16(A)(7). The court specifically opted for a different procedure, notified the parties of the procedure it intended to follow, and gave them several opportunities to respond. The fact that a prior trial court judge followed a different procedure is irrelevant. Husband's argument that the July 2009 decree is invalid because he never signed a written agreement lacks merit.

{¶15} Similarly, Husband's argument that the divorce decree runs contrary to the statute of frauds lacks merit. This Court has recognized the propriety of a judgment entry codifying the terms of an oral settlement agreement reached in the presence of the trial court. *Campbell* at ¶8-12. The statute of frauds does not apply when a court codifies an in-court settlement by way of a written journal entry. *In re Estate of Polling*, 4th Dist. No. 04CA18, 2005-Ohio-5147, at ¶38; *Rothfusz v. Fitzgerald* (Feb. 3, 1994), 8th Dist. No. 64526, at *2; *Thomas v. Thomas* (Feb. 18, 1982), 5th Dist. No. 81-CA-2815, at *6-7. Husband's second assignment of error is overruled.

Assignment of Error Number Four

"THE TRIAL COURT ERRED IN HAVING PREJUDGED THE CASE RATHER THAN DECIDING THE ISSUES ON THEIR MERITS."

{¶16} In his fourth assignment of error, Husband argues that the trial court erred by prejudging the case. Specifically, Husband argues that the court rushed to conclude this matter without ensuring that the parties reached a full and fair agreement. There is no indication in the record that the trial court prejudged this case. As previously noted, the court accepted voluminous filings and held hearings at which the court accepted voluminous exhibits and listened to testimony. The court gave both parties multiple opportunities to present arguments, to comment on the proposed entry that the court created, to submit their own proposed entries, and to respond to each other's proposed entries. The fact that the court modeled its entry after Wife's proposed entry is unsurprising because Husband never submitted an entry of his own. Husband's fourth assignment of error lacks merit.

III

{¶17} Husband's assignments of error are overruled. The judgment of the Medina County Court of Common Pleas, Domestic Relations Division, 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 Medina, 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.

BETH WHITMORE
FOR THE COURT

MOORE, J.
BELFANCE, P. J.
CONCUR

APPEARANCES:

ANDREW J. MICHAELS, Attorney at Law, for Appellant.

RANDAL A. LOWRY, Attorney at Law, for Appellee.