2023 IL App (3d) 210482-U

Order filed March 31, 2023

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2023

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| *In re* MARRIAGE OF | ) | Appeal from the Circuit Court |
| | ) | of the 14th Judicial Circuit, |
| LOUIS D. KAISER, | ) | Rock Island County, Illinois. |
| | ) | |
| Petitioner-Appellee, | ) | |
| | ) | |
| and | ) | |
| | ) | |
| JANICE M. KAISER, | ) | |
| | ) | |
| Respondent-Appellant | ) | |
| _____ | ) | Appeal No. 3-21-0482 |
| | ) | Circuit No. 18-D-138 |
| (Estate of Louis M. Kaiser, | ) | |
| Deceased, | ) | |
| | ) | |
| Janice M. Kaiser, | ) | |
| | ) | |
| Respondent- Appellant | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| Kristal Kaiser, | ) | Honorable |
| | ) | Peter W. Church, |
| Third Party Plaintiff-Appellee). | ) | Judge, Presiding. |

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JUSTICE HETTEL delivered the judgment of the court.
Justices McDade and Peterson concurred in the judgment.

## ORDER

¶ 1 *Held*: Trial court did not abuse its discretion in denying respondent's section 2-1301 motion to vacate dissolution judgment, which incorporated the parties' settlement agreement; although judgment did not include petitioner's life insurance policy, facts failed to support respondent's claim that its existence was fraudulently misrepresented or concealed.

¶ 2 Respondent, Janice Kaiser, appeals the circuit court's denial of her section 2-1301 motion to vacate judgment for dissolution of marriage based on petitioner, Louis Kaiser's, fraudulent concealment of a life insurance policy. Respondent argues the court abused its discretion in failing to grant her motion because substantial justice deemed vacatur of the dissolution judgment appropriate. We affirm.

¶ 3 BACKGROUND

¶ 4 Louis and Janice married in August 1974. On April 3, 2018, Louis filed a petition for dissolution. During the dissolution proceedings, the parties exchanged financial affidavits. In Louis's initial affidavit filed on May 31, 2018, he listed two life insurance policies, a Deere & Company policy and a State Farm policy. He averred that the death benefits of both policies were unknown. On July 1, 2019, Louis filed an amended affidavit, averring that the Deere & Company policy had a cash value of $0 and death benefits of $40,000. Janice's financial affidavit listed two life insurance policies, a Met Life policy and a Brighthouse Financial policy. She provided that both policies had $10,000 in death benefits.

¶ 5 Prior to trial, both parties filed verified memoranda that provided monthly income, debts, and personal property and included a statement of contested issues. Neither party listed any life insurance policies, nor listed life insurance ownership and benefits as a contested issue to be negotiated.

¶ 6 In an amended joint memorandum filed on July 9, 2019, Louis asserted that the parties had limited assets, consisting primarily of two residential properties in Rock Island, one at 1923 9½ Street and another at 1524 8th Street, each with an assessed value of approximately $14,000. Janice averred that the properties had fair market values of approximately $44,000 each. The joint memorandum included a statement of contested issues. Those issues included maintenance, respondent's pensions, ownership of bank accounts, division of residential and personal property, reimbursement of medical expenses, and custody of the parties' dog.

¶ 7 On July 11, 2019, the parties negotiated the distribution of property and reached an agreement. At the prove-up hearing conducted that same day, Janice's attorney read the terms of the settlement agreement into the record. The oral pronouncement revealed that, according to the parties' negotiations, Janice would be awarded the house at 1923 9½ Street and Louis would receive the house at 1524 8th Street. Janice would receive 50% marital interest of Louis's 401(k) Fidelity account and his John Deere retirement plan. The parties agreed that Louis would receive his Walmart pension in the amount of $1,814 and that Janice would be awarded the insurance policies she owned free and clear of any interest of Louis. Louis also agreed to pay Janice $235 per month in permanent maintenance beginning August 1, 2019.

¶ 8 Both Louis and Janice testified that they agreed to the terms of the settlement. Janice testified that she discussed the settlement with her attorneys, that she understood the terms, and that she was not under duress or coerced into entering the agreement. When asked if she was satisfied with the services provided by her attorneys, she replied, "Very much."

¶ 9 At the conclusion of the prove-up hearing, the trial court approved the terms of the agreement. The court found that the settlement was "knowing and voluntarily given based on the testimony," and asked Louis's attorney to prepare a written judgment.

¶ 10 For various reasons, the hearing to approve and enter the written judgment of dissolution was not scheduled until March 2020. It was then postponed indefinitely due to a COVID-19 stay-at-home order issued by the circuit court. On April 6, 2020, counsel for both parties appeared telephonically, and the court conducted a hearing on an emergency motion for entry of judgment. At the hearing, Louis's attorney informed the court that Louis was on life support and his death was imminent. Along with the emergency motion, counsel submitted a proposed written judgment. Janice's attorney, who had filed a motion to withdraw a few weeks earlier, stated that he was unable to agree to entry of judgment due to his inability to communicate with Janice. Over counsel's objection, the court entered judgment dissolving the marriage and signed the written judgment of dissolution. Louis passed away two days later, on April 8, 2020.

¶ 11 On May 5, 2020, Janice's new attorney filed a motion to vacate judgment pursuant to section 2-1301 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301(e) (West 2020)). In her motion, Janice claimed there was no indication that Louis was "on his death bed" when she agreed to the terms of dissolution on July 11, 2019, and that the negotiated permanent maintenance provision held "nominal meaning" when it was entered on April 6, 2020, days before Louis's death. She claimed that the intervening events made the settlement agreement unconscionable. In a closing paragraph, the motion also stated: "Furthermore, there appears to be some inconsistencies between the terms indicated on July 9, 2019 [sic] transcript and those incorporated into the Judgment entered April 6, 2020."

¶ 12 On February 16, 2021, Janice filed an amended motion to vacate the dissolution judgment. In her amended motion, Janice alleged that during the pendency of the motion to vacate, she discovered Louis had a $40,000 Deere & Company life insurance policy and that the beneficiary of the policy had been changed from Janice to the couple's daughter, Kristal Kaiser,

shortly before the July 11, 2019, hearing. She claimed that allowing the proceeds of that policy to go to Kristal also made enforcement of the dissolution judgment unconscionable "given the limited liquidity of the marital estate."

¶ 13 Louis's Estate and Kristal filed an objection to Janice's motion to vacate.[1] In the objection, counsel informed the court that he represented Louis in the initial dissolution proceedings and admitted that, in a rush to prepare and enter the dissolution judgment, several negotiated terms were inadvertently omitted from the written judgment approved on April 6. A proposed amended judgment of dissolution correcting the errors was attached to the objection. Counsel later filed a "Motion to Correct Judgment of Dissolution of Marriage" on behalf of the Estate, asking the court to substitute the proposed revised judgment *nunc pro tunc* to April 6, 2020.

¶ 14 The trial judge who presided over the dissolution proceedings and the April 6 emergency hearing retired, and the matter proceeded to a hearing before a newly assigned judge on September 8, 2021. At the beginning of the hearing, counsel for the Estate acknowledged that most of the inconsistencies were due to his oversights in preparing the written judgment and offered a revised judgment that included the omitted terms that were read into the record at the prove-up hearing on July 11, 2019. However, he noted that the Deere & Company insurance policy was not included in the written judgment, emphasizing that "Louis Kaiser's insurance is different. It was not mentioned at all, Judge, by anybody and it was not part of the settlement negotiations."

[1] On May 14, 2020, Kristal Kaiser filed a petition for letters of administration to open Louis's estate. Counsel for Janice then filed motions to have the Estate and Kristal made parties to this dissolution proceeding.

¶ 15 Several witnesses then testified. Janice maintained that she did not have any conversations with her former attorneys regarding life insurance policies and that she did not know of any life insurance policies that Louis owned. She claimed that she first learned of the Deere & Company policy, naming Kristal as the beneficiary, a few weeks after Louis passed. She further testified that she never received a copy of Louis's financial affidavits and she could not recall receiving a copy of his pretrial memorandum.

¶ 16 Jeffery Neppl and Theresa Sosalia represented Janice through the July 11 prove-up hearing. They testified that they could not recall talking to Janice about the Deere & Company policy. However, both indicated that it was part of their practice to list assets on the financial affidavit and in the pretrial memorandum. Neppl testified that although he did not remember a specific conversation, life insurance policies certainly would have been discussed in connection with preparing the financial affidavit. He stated that he would be "shocked" if he and Janice did not discuss life insurance, and he was "sure [Louis's life insurance] came up." Neppl acknowledged that if there was an insurance policy it would have been reflected in the financial disclosure forms.

¶ 17 Kristal testified that on March 9, 2019, she was appointed as Louis's temporary guardian for a 60-day period. Louis changed the beneficiary on the life insurance policy some time in 2019. She did not change the policy. Louis told Kristal after he changed the policy that he had named her as the beneficiary. He said he changed the policy because "he did not want Janice to have any blank thing from him."

¶ 18 At the conclusion of the hearing, the court granted the petitioners' objection to Janice's motion and the *nunc pro tunc* motion. The court found, in part:

"[I]t's clear that, and it's undisputed, that there are terms in the judgment of dissolution of marriage or the marital settlement agreement that do not fully reflect the agreement that was reached in open court, recited into the record by the parties, each which then indicated that it was not unconscionable and that they agreed to be bound by the same, and then was approved by the judge presiding as not unconscionable and should be approved and entered by the Court."

¶ 19 The court also denied Janice's motion to vacate the dissolution judgment, finding that the Deere & Company policy had been disclosed. The court noted that the life insurance policy was listed in Louis's initial and amended financial affidavits and denied Janice's request to vacate the dissolution judgment, ruling:

"Now, with regard to the issue of the life insurance, it's silent on that. So I'm not going to reach that issue, but what I'm going to do is find that I am not going to vacate the judgment. I'm not going to reopen it. What I am going to do is enter a judgment *nunc pro tunc* that reflects the correct agreement the parties reached in open court in front of Judge VandeWiele, and that agreement remains silent as to the life insurance. It was never addressed in that particular proceeding.

But I would note that, to the extent there's an argument, that this is undisclosed, your first financial says that the value was—life insurance, Deere & Company, unknown. Probably was unknown. But the amended financial specifically sets forth the existence of that life insurance policy and in the amount of $40,000. So obviously it's not the cash value. These policies have little cash value. You only get to enjoy the benefit of the policy, unfortunately, if your life ends during the term of the policy. And that's what happened here."

¶ 20 The trial court entered two written orders, one denying Janice's motion to vacate and another granting the Estate and Krystal's motion to issue a judgment *nunc pro tunc*.

¶ 21 II. ANALYSIS

¶ 22 On appeal, Janice argues the trial court erred in denying her section 2-1301 motion to vacate the dissolution judgment based on fraud. She claims the evidence demonstrates there was an active and deliberate effort on Louis and Kristal's part to prevent her from receiving the benefit of the Deere & Company life insurance policy and the court's refusal to vacate the judgment was an abuse of discretion.

¶ 23 A. Standard of Review

¶ 24 First, we must address the standard of review in this case. Both parties acknowledge that Janice moved to vacate a dissolution judgment which incorporated a settlement agreement, i.e., an agreed order. Janice contends that there is a split of authority as to the criteria for vacating an agreed order less than 30 days old. She notes that in *In re Marriage of Rolseth*, 389 Ill. App. 3d 969 (2009), the Second District held that agreed orders may be modified or vacated only upon a showing that meets the standard applied to petitions filed under section 2-1401 of the Code. *Rolseth*, 389 Ill. App. 3d at 972. To meet that standard, a petitioner must affirmatively set forth specific factual allegations supporting due diligence and a meritorious defense. See *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220 (1986). Relying on the First District's decision in *Draper*, Janice argues that her motion should be reviewed under the more lenient section 2-1301 standard, where the movant must simply show that "substantial justice was not achieved" by the agreed order. *Draper & Kramer, Inc. v. King*, 2014 IL App (1st) 132073, ¶ 25.

¶ 25 The Estate and Kristal urge us to follow *Rolseth*, claiming that a motion to vacate an agreed order, whether filed within 30 days or after 30 days, should be held to the higher standard

of a section 2-1401 petition. In *Rolseth,* the trial court entered an agreed order finding that the petitioner was not the father of two children mentioned in the dissolution judgment. *Rolseth,* 389 Ill. App. 3d at 971. Several days later, the respondent filed a motion to vacate the order. Because the respondent sought to vacate an agreed order, the reviewing court applied the higher standard applied to section 2-1401 petitions. *Id.* at 972. In reaching its decision, the *Rolseth* court relied on cases involving petitions and motions brought after 30 days of entry of the order.

¶ 26 We see no reason to impose a stricter standard on a section 2-1301 motion to vacate simply because the movant seeks to vacate an agreed order. We find that the lower standard applied to section 2-1301 motions is still valid in such cases. A lower hurdle is the movant's "reward" for filing the motion in a more timely manner than if it was brought under section 2-1401. See *Draper*, 2014 IL App (1st) 132073, ¶ 25. That reward, and its underlying motivation, still apply, regardless of the agreed nature of the challenged order. Accordingly, we decline to follow *Rolseth* and instead adhere to the standard of review governing section 2-1301 motions as discussed in *Draper.*

¶ 27 B. Janice's Section 2-1301 Motion to Vacate

¶ 28 Under section 2-1301(e) of the Code, courts "may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable." 735 ILCS 5/2-1301(e) (West 2020). The primary consideration is " 'whether or not substantial justice is being done between the litigants and whether it is reasonable, under the circumstances, to compel the other party to go to trial on the merits.' " *Draper*, 2014 IL App (1st) 132073, ¶ 23 (quoting *In re Haley D.*, 2011 IL 110886, ¶ 57). Whether substantial justice was done and whether it is now reasonable to compel a trial are determined by assessing the facts of each case. *Id.*; see also *Mann v. Upjohn Co.*, 324 Ill. App. 3d 367, 377 (2001) ("[w]hat is just

and proper must be determined by the facts of each case, not by a hard and fast rule applicable to all situations regardless of the outcome.").

¶ 29 To succeed on a motion to vacate filed within 30 days, the movant need not show the existence of a meritorious defense or a reasonable excuse for not asserting one earlier. *Haley D.*, 2011 IL 110886, ¶ 57. However, determining whether substantial justice is achieved by vacating an agreed order still requires consideration of several factors, including: (1) the movant's diligence or lack thereof; (2) the existence of a meritorious defense; (3) the severity of the penalty resulting from the order sought to be vacated; and (4) the relative hardships on the parties from granting or denying vacatur. *McNulty on Behalf of McNulty v. McNulty*, 2022 IL App (1st) 201239, ¶ 45; see also *Draper*, 2014 IL App (1st) 132073, ¶ 25 (citing *Jackson v. Bailey,* 384 Ill. App. 3d 546, 549 (2008)).

¶ 30 Illinois law favors the amicable settlement of marital disputes. See 750 ILCS 5/102(3) (West 2020) (enumerating the purpose and rules of construction of the Illinois Marriage and Dissolution Marriage Act). As such, when a party moves to vacate a settlement agreement incorporated into a dissolution judgment, the settlement is presumed valid. *In re Marriage of Baecker*, 2012 IL App (3d) 110660, ¶ 25. Courts will set aside a settlement agreement "only if it is shown that the agreement was procured through coercion, duress, or fraud; or if the reviewing court finds that the agreement is contrary to any rule of law, public policy, or morals [citations] or is unconscionable." *Flynn v. Flynn*, 232 Ill. App. 3d 394 (1992). To prevail on a claim of fraud, a plaintiff must establish: (1) a false statement of fact by the defendant; (2) made with knowledge that the statement was false; (3) an intent to induce the plaintiff to act; (4) action by the plaintiff in justifiable reliance on the statement; and (5) damage to the plaintiff resulting from

such reliance. *Bonhomme v. St. James*, 2012 IL 112393, ¶ 35 (discussing the elements of fraud based on claim of fraudulent misrepresentation).

¶ 31 A decision to grant or deny a motion to vacate under section 2-1301 is discretionary, and we review the trial court's ruling for an abuse of discretion. *In re Estate of B.R.S.*, 2015 IL App (3d) 150038, ¶ 11; *Draper*, 2014 IL App (1st) 132073, ¶ 26. An abuse of discretion occurs when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court. *McNulty*, 2022 IL App (1st) 201239, ¶ 42.

¶ 32 Here, a review of the substantial justice factors demonstrates that the denial of Janice's motion to vacate the judgment incorporating the settlement agreement was not arbitrary, fanciful, or unreasonable. Considering the allegations in her motion, Janice is unable to demonstrate the existence of a meritorious claim for fraud. As the trial court noted, both of Louis's financial affidavits listed the Deere and Company life insurance policy and the amended affidavit specifically listed the policy as having death benefits of $40,000 and a cash value of $0. Although the policy was not mentioned at the prove-up hearing on July 11, 2019, nothing in the record demonstrates that Louis, Kristal, or their attorney took steps to conceal its existence. In fact, the parties pre-trial memorandum suggest that Louis's life insurance policies were not mentioned during negotiations because they were not a contested issue, not because they were unknown. Moreover, Janice testified during the prove-up hearing that she was happy with the terms her attorney negotiated. She informed the court that she voluntarily agreed to the terms of the settlement, that she was not under duress, that she had not been coerced, and that she believed the agreement was fair. Thus, we cannot say that the trial court's refusal to vacate the dissolution judgment on the basis of fraud was unreasonable

¶ 33 Reviewing other factors under section 2-1301 results in the same conclusion. The penalty resulting from the agreed judgment is not severe. The terms of the settlement agreement did not unreasonably favor Louis. The agreement equitably divided the marital property between Janice and Louis, giving each a residence, providing Janice 50% of Louis's John Deere pension and his 401(k), and awarding Janice permanent maintenance. In addition, the relative hardship to the parties if the matter goes to trial is significant because Louis is now deceased. He can no longer negotiate the terms of the settlement agreement and the policies proceeds have presumably been paid.

¶ 34 Every motion to vacate must be considered on its unique facts (see *McNulty*, 2022 IL App (1st) 201239, ¶ 54), and, here, the facts are unique. At the prove-up hearing, Janice testified that she voluntarily agreed to the terms of the settlement agreement, that she was not under duress, that she had not been coerced, and that she believed the agreement was fair. More than a year later, the dissolution judgment incorporating the terms of the settlement agreement had yet to be presented to the court for approval. By that point, Louis had become gravely ill and a COVID-19 order had been issued by the circuit court that further prevented the proceedings' resolution. Counsel presented an emergency motion and the trial court eventually signed the written judgment of dissolution on April 6, 2020, some 11 months after the prove-up hearing and within days of Louis's death. At the hearing on the motion to vacate, Janice claimed that the settlement agreement was unconscionable based on fraud and misrepresentation of a life insurance policy that named Kristal as the beneficiary. But at the prove-up hearing, Janice admitted that she agreed to the settlement terms and did so freely and voluntarily, without contesting Louis's life insurance. On these facts, we find that the trial court did not abuse its discretion in denying the motion to vacate the dissolution judgment.

¶ 35 CONCLUSION

¶ 36 The judgment of the circuit court of Rock Island County is affirmed.

¶ 37 Affirmed.