

2012 IL App (2d) 110292-U
No. 2-11-0292
Order filed June 6, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

KAREN L. FALAT,)	Appeal from the Circuit Court
)	of Du Page County.
Petitioner-Appellee,)	
)	
v.)	No. 08-D-372
)	
ROBERT A. LOFFREDI,)	Honorable
)	Rodney W. Equi,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hudson concurred in the judgment.

ORDER

Held: Where documents established that respondent knew about jewelry prior to execution of marital settlement agreement, circuit court properly dismissed postjudgment motion for failure to disclose assets.

¶ 1 Respondent, Robert A. Loffredi, appeals from an order of the circuit court granting dismissal to petitioner, Karen L. Falat, in this case involving postjudgment dissolution of marriage issues. On appeal, respondent argues that: (1) the circuit court erred in applying section 2-1401 to count IV of his complaint; (2) the circuit court erred in stating that the disclosure clause language in count IV

was prefatory; (3) the issue of purported prefatory language should be considered in this appeal; and (4) petitioner's affirmative defenses do not warrant dismissal of count IV. We affirm.

¶ 2

I. BACKGROUND

¶ 3 On May 20, 2008, the circuit court entered a judgment for dissolution of marriage that incorporated the parties' marital settlement agreement. At the time of the dissolution, respondent was charged with criminal fraud by the Security Exchange Commission. The parties' marital settlement agreement provided:

“The Court has been advised on the record of orders entered by Judge Suzanne B. Conlon on October 19, 2007, in Case No. 07 C 5727 in the United States District Court for the Northern District Eastern Division that freeze all of the assets of Respondent and Petitioner's business, Advanced Sales and Marketing Corp. The Court has also been advised that there exists a pending settlement between petitioner and the SEC which would upon final approval by the District Court lift the asset freeze and allow the allocation of assets contemplated by this Order.

* * *

E. The written Marital Settlement Agreement entered into by and between the parties dated February 17, 2008, shall be and the same is hereby approved and incorporated into and made part of this Judgment for Dissolution, and subject to the provision in Section G below, the parties are ordered and directed to comply with every item and provision thereof.

* * *

G. The provisions of Section E hereof as it related to the allocation and distribution of assets *** are hereby stayed pending application by the Petitioner to lift the stay, which application

shall be granted upon presentation to this Court of evidence that the District Court Orders of October 19, 2007, are modified or lifted so as to allow the distribution of the Respondent's assets and Petitioner's business consistent with the terms of the Marital Settlement agreement."

¶ 4 On August 4, 2008, respondent filed a *pro se* "Emergency Motion" in the circuit court. The motion stated, in part:

"Since [I had] the Federal Court Asset Freeze, turning over [my] assets needed formal approval from the Securities and Exchange Commission, (SEC), and Federal Court Judge Suzanne Conlon. [Petitioner's attorney] lead [*sic*] Judge Kelsey and [me] to believe that he was going to immediately submit the divorce decree to the SEC.

* * *

On July 21, and 22, 2008[,] I corresponded with the SEC and they were surprised to hear of the divorce, and obviously they never received or seen [*sic*] the divorce decree. *** This has put me in a very dangerous and serious position. I have violated the Federal Court order by signing over my assets, as well as Raymond Financial Group's, Inc. assets[,] without authorization from the SEC or Federal Court Judge Suzanne Conlon.

* * *

I am requesting and demanding that all assets be returned to their original forms. I did not have the right or ability to sign over any assets. I am in violation and in contempt of court regarding the Federal Asset Freeze.

* * *

It was never my intent to transfer my assets without the SEC and Federal Court approval.

* * *

I would hope the assets turned over will be returned to me in the form that they were in before being turned over.

Third, undo the settlement agreement because it was done in bad faith.

* * *

I need to re-open the settlement agreement because many items detailed in it are not true.

* * *

Here are a few of the items that will be immediately contested:

* * *

It is interesting that no jewelry is listed in the joint assets. There is at least \$350,00-\$400,000 worth/value of jewelry, diamond rings, gold and silver. The easiest way to get the valuation is the Chubb home owners insurance policy. All valuables had appraisals done in order to be covered by insurance.

* * *

These are most of the items that now need to be contested.”

¶ 5 On August 8, 2008, petitioner filed a motion to strike respondent’s “Emergency Motion.” Petitioner’s motion to strike sought an order striking respondent’s “Emergency Motion,” and “Any other relief this court deems just and proper.” Petitioner alleged that respondent’s motion was essentially a motion to vacate pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/1401 (West 2008)). Petitioner alleged that, because respondent filed his motion 76 days after the entry of the judgment of dissolution, his motion to vacate was untimely.

¶ 6 The circuit court dismissed respondent’s “Emergency Motion.”

¶ 7 On January 25, 2010, respondent filed a five-count petition seeking postjudgment relief against respondent alleging the following. Only count IV, which was dismissed pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/619 (West 2010)) is at issue in this appeal.¹

Count IV, titled “Undisclosed Assets,” stated:

“The [parties’ marital settlement] agreement stated on page 2:

[‘]WHEREAS, each party states that they have received from the other party a proper financial disclosure, including the income, assets, and liabilities of the other party, which is satisfactory to the respective party to whom it has been furnished, and each party represents and warrants that they have made full and complete disclosure to the other party of their respective income, assets and liabilities. In the event a court of competent jurisdiction subsequently determines that either party owned or otherwise possessed property not so listed, the party owning such undisclosed property shall pay to the other party, on demand, the full value of the undisclosed property as of the date of the execution of this Agreement.’

[Petitioner] did not disclose items of jewelry the fair market value of which at the time of the execution of the [marital settlement] agreement was \$238,680. See attached itemization of Masterpiece.

¹Count I, titled “Visitation,” sought “an appropriate visitation schedule” for the parties’ minor child. Count II, titled “Unpaid Liens,” alleged that petitioner failed to satisfy certain liens against the marital residence. Count III, titled “Assets of Raymond,” sought certain physical assets allegedly in petitioner’s control. Count IV, titled “Undisclosed Assets,” alleged that petitioner “did not disclose items of jewelry the fair market value of which at the time of the execution of the agreement was \$238,680.” Count V sought attorney fees for the bringing of the petition.

WHEREFORE, Pursuant to the foregoing excerpt from the agreement, this court is requested to determine that [petitioner] owned property not listed in her disclosure of property to [respondent] and order the [petitioner] pay to [respondent] the sum of \$238,680.00 upon the demand of [respondent] ”

¶ 8 On March 1, 2010, petitioner filed a motion to dismiss counts II, III, IV and V of respondent’s petition pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2010)). Regarding count IV, petitioner argued: (1) it was improper pursuant to section 2-1401 of the Code; (2) it was barred by the doctrine of *res judicata*; (3) “All Jewelry Was in the Possession and Owned by [Petitioner]; and (4) petitioner’s “Jewelry Was Fully Disclosed Prior to Judgment.”

¶ 9 Counts I and III were resolved by the parties and dismissed by the circuit court. On May 11, 2010, the circuit court dismissed count II with prejudice. On June 2, 2010, the circuit court dismissed count IV with prejudice. The circuit court stated:

“With respect to Count 4, the Court[,] although Mr. Caplan was persuasive and articulate, still finds that, first of all, the language that he relies upon is just preparatory language. It is only the preface of the agreement. The failure to disclose in writing in a particular document the Court does not find is enough to sustain a cause of action. Ultimately, it is, in fact, a Motion to Vacate the judgment that is more than 30 days old and, therefore, must be interpreted as a 2-1401 Petition. It cannot be—this Court cannot accept the proposition that due diligence was presented in the bringing of this motion, cannot be alleged, cannot be proven, and therefore, Count 4 is dismissed with prejudice.”

On August 25, 2010, the circuit court struck count V for attorney’s fees and the order stated, “This is a final order.”

¶ 10 On September 21, 2010, respondent filed another petition for attorney’s fees. On February 16, 2011, the circuit court ordered petitioner to pay respondent \$2,000 for attorney’s fees. The order stated, “This is a final and appealable order the court finding all other matters have [sic] heretofore been resolved.” On March 18, 2011, respondent filed a notice of appeal challenging only the dismissal of count IV.

¶ 11

II. ANALYSIS

¶ 12 On appeal, respondent argues that the circuit court erred by dismissing count IV as an improper section 2-1401 motion to vacate. Respondent contends that he did not seek to vacate the judgment of dissolution of marriage; rather, he sought to enforce it. Respondent argues and alleged that, pursuant to the marital settlement agreement, petitioner owes respondent \$238,680 because petitioner failed to disclose jewelry at the time of the execution of the agreement. Assuming, *arguendo*, respondent’s unnamed petition was a petition to enforce, the circuit court properly dismissed it, for the following reasons.

¶ 13 “When reviewing ‘a motion to dismiss under section 2-619, a court must accept as true all well-pleaded facts in plaintiffs’ complaint and all inferences that can reasonably be drawn in plaintiffs’ favor.’ ” *American Service Insurance Co. v. City of Chicago*, 404 Ill. App. 3d 769, 776, (2010) (citing *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 488 (2008)). The circuit court may consider pleadings, depositions, and affidavits when ruling on a section 2-619 motion to dismiss. *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 262 (2004).

¶ 14 Illinois law is clear that rules of contract construction are applicable to the interpretation of provisions in a marital settlement agreement, and the primary objective is to effectuate the intent of

the parties. *Blum v. Koster*, 235 Ill.2d 21, 33 (2009). When the terms of the agreement are unambiguous, the intent of the parties is determined solely from the language of the agreement. *Id.*

¶ 15 The language contained in the marital settlement agreement provides:

“WHEREAS, each party states that they have received from the other party a proper financial disclosure, including the income, assets, and liabilities of the other party, which is satisfactory to the respective party to whom it has been furnished, and each party represents and warrants that they have made full and complete disclosure to the other party of their respective income, assets and liabilities. In the event a court of competent jurisdiction subsequently determines that either party owned or otherwise possessed property not so listed, the party owning such undisclosed property shall pay to the other party, on demand, the full value of the undisclosed property as of the date of the execution of this Agreement.”

¶ 16 In this case, respondent alleged that petitioner did not disclose the jewelry with a fair market value of \$238,680. Respondent attached a document from the parties’ insurer, Chubb National Insurance Company, listing the items of jewelry. The insurance document listed both parties’ names as the insureds and was dated May, 6, 2007, over one year before the execution of the marital settlement agreement. Further, petitioner attached to her motion to dismiss a fax sent from respondent to Chubb National Insurance Company, listing the parties’ jewelry, on May 8, 2006, over two years before the execution of the marital settlement agreement. In addition, respondent’s August 2008 “Emergency Motion” acknowledged that the jewelry was appraised for the “Chubb home owners insurance policy” and that “All valuables had appraisals done in order to be covered by insurance.” Regardless of whether petitioner alone owned the jewelry and was obligated to disclose

it pursuant to the agreement, respondent knew about it, and therefore, it was not “undisclosed.” Accordingly, the circuit court properly dismissed count IV of respondent’s petition.

¶ 17 Respondent also argues that the circuit court erred by stating that the disclosure clause language was prefatory and that the issue of purported prefatory language should be considered in this appeal. Regardless of whether the clause is substantive or prefatory, respondent did not establish that petitioner failed to disclose the jewelry or that she was required to disclose it. Thus, we need not address this argument.

¶ 18 Next, respondent argues that petitioner’s affirmative defenses do not warrant dismissal of count IV. We need not address all of the affirmative defenses objected to by respondent because we have already determined that the affirmative matter presented by petitioner was sufficient to defeat count IV of respondent’s petition.

¶ 19 **III. CONCLUSION**

¶ 20 For these reasons, the judgment of circuit court of Du Page is affirmed.

¶ 21 Affirmed.