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FIRST DIVISION
December 8, 2014

No. 1-14-2494
2014 IL App (1st) 142494-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE MARRIAGE OF:)	
)	
ARLEEN ARVELO,)	Appeal from the
)	Circuit Court of
Petitioner-Appellant,)	Cook County.
)	
v.)	No. 10 D 5785
)	
RICHARD PLAZA,)	Honorable
)	Leida Gonzalez Santiago,
)	Judge Presiding.
Respondent-Appellee.)	

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

Held: The marital agreement was ambiguous; the trial court abused its discretion in granting husband's petition for preliminary injunction where husband failed to make a *prima facie* showing.

¶ 1 Petitioner Arleen Arvelo appeals from the trial court's order granting respondent Richard Plaza's petition for a preliminary injunction which prevented her from taking their minor child out of the state of Illinois. Arvelo contends that the trial court erred as a matter of law in finding

an ambiguity in the parties' Marital Settlement Agreement (Agreement) and in granting the preliminary injunction. For the following reasons we reverse and remand.

¶ 2

I. BACKGROUND

¶ 3 The parties were lawfully married on June 8, 2002, and had one child, M.A., who is now 12 years old. On June 8, 2010, Arvelo filed a petition for dissolution of marriage. The parties negotiated arrangements pertaining to M.A., which were delineated in their Agreement. The Agreement designated Arvelo as having sole custody of M.A. The paragraph at issue in this case reads as follows:

"The parties agree that the Wife may be moving out of the state to the State of Florida. Husband agrees with the Wife taking the child with her to reside permanently out of the state of Illinois. The parties agree to confer and work out a visitation schedule satisfactory to both parties and in the best interest of the child."

¶ 4 Over the course of the next four years, M.A. resided primarily with Arvelo. Arvelo then got remarried to her current husband who resides in Texas. Arvelo purchased a home in Texas with the intention to move to Texas. Plaza filed a petition to modify custody and sought the sole care, custody, control, and education of M.A. Plaza also filed a petition for entry of a preliminary injunction to enjoin Arvelo from removing M.A. from Illinois to Texas.

¶ 5 In his motion for a preliminary injunction, Plaza stated that the parties never contemplated or negotiated a move to Texas when the judgment of dissolution of marriage was entered, and that a move to Texas was not in the best interest of M.A. Plaza further argued that when the Agreement was negotiated, and the "provision with regard to Florida was agreed to," it

was done so on the basis that a move to Florida would not be contrary to the best interests of M.A.

¶ 6 A hearing was held on Plaza's petition for a preliminary injunction. Plaza testified that at the time the Agreement was signed, he was not represented by counsel. Plaza testified that Alvero discussed moving to Florida because she liked warmer climates and that if she moved at all, it would be to Florida. Plaza testified that he agreed to it because he had family in Florida and thought he could get a job there (he works in construction). Plaza stated that no other states were discussed that that time, and it was not his intention to allow his daughter to move to any other state than Florida.

¶ 7 Arvelo testified that when they were negotiating the Agreement, she told Plaza that she would most likely move to Florida, but it was not a sure thing, and she was "waiting for the house to come out of my name before I [could] make a final decision on exactly where I wanted to move." Arvelo stated that she made sure the attorney put "may" in because she was not sure what state she would be moving to, and she wanted the option of either Florida or Texas depending on job opportunities, the housing market, and schools. On cross-examination, Arvelo admitted that when she and Plaza had these conversations, they only discussed Florida, and that at the time she had not yet met her current husband who has family in Texas.

¶ 8 After hearing the testimony, the trial court stated that the Agreement could be construed to be ambiguous. The trial court noted that "the standard for issuing a preliminary injunction has been met, and [Arvelo] will be prohibited from removing the minor child from the state of Illinois to the State of Texas." The trial court also issued a brief written order which stated that the Agreement was ambiguous, and that "it was the intent of the parties at the time the Agreement was executed to remove the minor child to Florida; and that [Plaza] has met all of the

elements of an injunction.” Arvelo now appeals this order, arguing that the trial court erred as a matter of law in finding an ambiguity in the Agreement, and that Plaza did not plead sufficient facts to sustain the issuance of a preliminary injunction.

¶ 9 Arvelo first contends that the language of the Agreement is clear and unambiguous, and it gives Arvelo the right to remove M.A. from the state of Illinois to any other state where it states: “Husband agrees with the Wife taking the child with her to reside permanently out of the state of Illinois,” regardless of the sentence before it which indicates that Arvelo was contemplating a move to Florida. Plaza maintains that the paragraph at issue is ambiguous, and that the only state contemplated by the parties that Arvelo could remove M.A. permanently to was Florida.

¶ 10 “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.” *In re Marriage of Hall*, 404 Ill. App. 3d 160, 166 (2010). Traditional contract interpretation principles in Illinois require that a written agreement is presumed to represent the intentions of the parties who signed it. *Western Illinois Oil Co. v. Thompson*, 26 Ill. 2d 287, 291 (1962). “It speaks for itself, and the intention with which it was executed must be determined from the language used” and must not be changed by extrinsic evidence. *Id.* This approach is referred to as the “four corners” rule. *URS Corp. v. Ash*, 101 Ill. App. 3d 229, 234 (1981).

¶ 11 In applying this rule, a court initially looks to the language of a contract alone. *Rakowski v. Lucente*, 104 Ill. 2d 317 (1984). If the language of the contract is facially unambiguous, then the contract is interpreted by the trial court as a matter of law without the use of parol evidence. *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462 (1999). If, however, the trial court finds that the language of the contract is susceptible to more than one meaning, then an

ambiguity is present, and the trial court may consider parol evidence to aid in resolving the ambiguity. *Id.* at 462-63. Whether the agreement reflected the actual intent of the parties is a question of law we review *de novo*. *Id.*

¶ 12 Here, we agree with the trial court that the language of the Agreement is ambiguous, and agree that it was proper for the trial court to consider parol evidence in deciding the intentions of the parties. Arvelo urged the court to read the second sentence of the paragraph in question without consideration to the first sentence. However, a sentence in a contract cannot be read in isolation. Rather, a contract "is to be construed as a whole, giving meaning and effect to every provision thereof, if possible, since it will be presumed that everything in the contract was inserted deliberately and for a purpose." *Martindell v. Lake Shore National Bank*, 15 Ill. 2d 272, 283 (1958). The intentions of the parties should not be gathered from detached portions of a contract from any clause or provision standing alone, but rather "each part of the instrument should be viewed in the light of the other parts." *Id.* To accept Arvelo's interpretation of the paragraph in question would render the first sentence of the paragraph superfluous. See *Lukasik v. Riddell, Inc.*, 116 Ill. App. 3d 339, 347 (1983) (an agreement is to be construed to give meaning to all parts and the court must avoid a construction which renders some provisions superfluous). There would be no need for the first sentence of the paragraph in question, indicating Arvelo was contemplating a move to Florida, if the parties agreed that Arvelo could take M.A. to any state she wished. Accordingly, we find that the trial court properly found the provision in question to be ambiguous.

¶ 13 We agree with Arvelo, however, that Plaza did not plead sufficient facts to sustain the issuance of a preliminary injunction. "A preliminary injunction is an extraordinary remedy that is applicable only to situations where an extreme emergency exists and serious harm would result

if it were not issued." *In re Marriage of Slomka and Lenehan-Slomka*, 397 Ill. App. 3d 137, 143 (2009). A party seeking a preliminary injunction must demonstrate that he: (1) possesses a certain and clearly ascertainable right that needs protection; (2) will suffer irreparable harm without the protection of the injunction; (3) has no adequate remedy at law; and (4) is likely to succeed on the merits of the case. *Id.* Once the party establishes these elements, "the court must balance the equities to determine the relative inconvenience to the parties and whether the burden on the defendant should the injunction issue outweighs the burden on the plaintiff should it be denied." *Franz v. Calaco Development Corp.*, 322 Ill. App. 3d 941, 946 (2001). The issuance of a preliminary injunction is within the sound discretion of the trial court upon a *prima facie* demonstration that there is a fair question as to the existence of these four elements. *Village of Westmont v. Lenihan*, 301 Ill. App. 3d 1050, 1055 (1998). This court will not overturn a circuit court's decision regarding a request for a preliminary injunction absent an abuse of that discretion. *In re Marriage of Schmitt*, 321 Ill. App. 3d 360, 371 (2001).

¶ 14 Here, we find that Plaza did not make a *prima facie* demonstration that there was a fair question as to the existence of the four elements of a preliminary injunction. In Plaza's petition for a preliminary injunction, he stated that he had no adequate remedy at law preventing Arvelo from moving with M.A. to Texas and that absent a court order prohibiting her from doing so, Plaza feared that Arvelo would make the move without notice to him. Plaza stated that preventing the move was in M.A.'s best interests, and that the balance of hardships favored the entry of an injunction. Plaza also stated that he had a high likelihood of success on the merits because the only removal contemplated was to Florida, and Arvelo had not yet filed a petition for removal to any other state. There was no argument made, either in his petition or at the hearing, as to what Plaza's clearly ascertainable right was that needed protecting, or as to the purported

irreparable harm. Accordingly, we find that the trial court abused its discretion in granting a preliminary injunction, as no reasonable person could have found that Plaza made a *prima facie* showing in this case. *Lenihan*, 301 Ill. App. 3d at 1055 (in order to grant preliminary injunctive relief, the trial court must find that plaintiff has demonstrated a clearly ascertained right in need of protection); *People ex rel. Madigan v. Petco Petroleum Corp.*, 363 Ill. App. 3d 613, 634 (2006) (a trial court abuses its discretion when no reasonable person would adopt the court's view).

¶ 15 Moreover, we note that section 11-101 of the Code of Civil Procedure states that every order granting an injunction "shall set forth the reasons for its entry" and "shall be specific in terms." 735 ILCS 5/11-101. This court has specifically found that an injunction order which restrained husband from entering his marital home, which did not set forth reasons for its issuance, and was not specific in its terms, failed to comply with the requirements of section 11-101. See *Hoda v. Hoda*, 122 Ill. App. 2d 283, 289 (1970). Here, the trial court failed to give any reasons in support of its grant of a preliminary injunction.

¶ 16 For the forgoing reasons, we reverse the trial court's grant of a preliminary injunction and remand for further proceedings.

¶ 17 Reversed and remanded.