2017 IL App (1st) 153393-U

No. 1-15-3393

FIFTH DIVISION
March 17, 2017

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF:	)	Appeal from the
	)	Circuit Court of
ALANNA KLEIN,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 13 D3 30060
	)	
DARRELL KLEIN,	)	The Honorable
	)	Alfred L. Levinson,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Hall concurred in the judgment.

O R D E R

¶1 *HELD*: The parties' oral settlement agreement constituted a binding contract upon which the trial court properly based the judgment for the dissolution of the parties' marriage.

¶2 Respondent, Darrell Klein, appeals the trial court's judgment dissolving his marriage to petitioner, Alanna Klein. Respondent contends the trial court erred in finding the parties entered

into a valid oral settlement agreement, the basis of which constituted the dissolution judgment. Based on the following, we affirm.

¶3 FACTS

¶4 Petitioner and respondent were married in June 1996 and had two children. On January 22, 2013, petitioner filed a verified petition for the dissolution of the parties' marriage, in addition to an emergency petition for injunctive relief and a petition for temporary and permanent custody of the children, child support, maintenance and spousal support, and other relief. The trial court granted petitioner's emergency petition for injunctive relief on the same date. Respondent then filed his own petition for the dissolution of the parties' marriage on January 24, 2013. The dissolution petitions were consolidated.

¶5 The parties' case was set for trial on November 2, 2015. Prior to that time, the parties conducted financial discovery. In addition, the parties entered into a joint parenting agreement, which was accepted by the court in a joint parenting judgment and final custody order.[1] The trial court entered an order to close discovery as of October 1, 2015 and scheduled the matter for a pretrial conference on October 20, 2015. Notwithstanding, the parties appeared at respondent's former attorney's office for a scheduled deposition on October 20, 2015. In lieu of the deposition, however, the parties participated in a settlement conference. Both parties and his or her counsel were present for the settlement conference. A court reporter also was present and recorded the settlement conference. Following the conference, the parties appeared before the trial court. The details of the settlement conference are as follows:

> "[PETITIONER'S COUNSEL]: This is *In Re the Marriage of: Alanna Klein and Darrell Klein* ***. We've been scheduled to take [respondent's] and [petitioner's]

[1]That judgment and order is not at issue in this appeal.

depositions today. As we have a trial date set on November 2 and a pretrial this afternoon, instead of taking the depositions, we have sat down and had extensive settlement negotiations between the attorneys and the [p]arties. The [p]arties have agreed to the following settlement. Again, these are the general terms of the settlement with the details—minor details to be worked out later.

The parties' Park Ridge home will be awarded to [petitioner]. It has a fair market value of $280,000. The marital business, Calibration Consultants, will be awarded to [respondent]. That has a value of $150,000. There will be a cash equalization payment made from [petitioner] to [respondent] to essentially equalize the [p]arties' respect [*sic*] interests in the house and the business. [Petitioner] will be paying $65,000 to [respondent].

[RESPONDENT'S COUNSEL]: Within?

[PETITIONER'S COUNSEL]: We have to figure it out. She has to get it through a mortgage. I would say 60 to 90 days.

[RESPONDENT'S COUNSEL]: 90 days.

[PETITIONER'S COUNSEL]: 90 days to be realistic.

[RESPONDENT]: Shorter.

[PETITIONER'S COUNSEL]: [Petitioner] has to qualify for a mortgage. I would say sometime around 90 days. Off the record.

(WHEREUPON, a discussion was had off the record.)

[PETITIONER'S COUNSEL]: [Petitioner] will be paying [respondent] the amount of $65,000 in 90 days from entry of the judgment. In turn, [petitioner] will sign any and all documentation transferring her interest in Calibration Consultants to

[respondent], and [respondent] will execute a quick [*sic*] claim deed transferring any and all interest he has in the house. If [petitioner] does not pay [respondent] $65,000 within 90 days from entry of the judgment, the house will be listed for sale.

With regard to child support, [petitioner] will be receiving from [respondent], meaning [respondent] will pay to [petitioner], the amount of $1,600 per month until the children graduate from high school.

[Respondent] will be paying maintenance to [petitioner] in the amount of $2,000 a month for a period of six years at which time the maintenance award will be reviewable by the Court upon [petitioner's] filing of a petition to extend maintenance.

Each party will keep the cars in their possession.

The escrow amount held by Joseph Rodney [*sic*], which is anticipated to have around $6,000 in it, will be awarded to [respondent].

[Respondent] will retain his Charles Schwab IRA or 401(k) plan.

The parties will have joint custody of the children. The children will reside with [petitioner].

Each party is responsible for payment of their own attorneys' fees and costs incurred in this cause.

Each is [a]warded any bank accounts in their respective names.

Each is awarded any debt in their respective names.

Off the record.

(WHEREUPON, a discussion was had off the record.)

[PETITIONER'S COUNSEL]: Last, but certainly not least, the camper at [Y]ogi Bear Park will be awarded to [respondent].

[RESPONDENT]: Camper and accessories. It has to be identified.

[PETITIONER'S COUNSEL]: Which we will identify and [respondent] will assume any and all liability with respect to the camper.

[RESPONDENT'S COUNSEL]: Off the record.

(WHEREUPON, a discussion was had off the record.)

[PETITIONER'S COUNSEL]: For the tax year 2015, [respondent] will be allowed to claim any and all tax deductions associated with ownership of the Park Ridge residence. However, in subsequent years, [petitioner] will be entitled to claim those deductions.

With regard to the dependency exemption for the children, each [p]arty shall be entitled to claim one child for future tax years. In the event that there's only one child that's able to be claimed, the [p]arties will alternate the years for that child.

[RESPONDENTS'S COUNSEL]: Off the record.

(WHEREUPON, a discussion was had off the record.)

[PETITIONER'S COUNSEL]: Any trusts that have been established shall be—children—

[PETITIONER]: I'm not sure what's in it. Maybe we should ask that—maintain the life insurance.

[PETITIONER'S COUNSEL]: If there's a trust set up for the kids, it will continued [*sic*] to be maintained for the kids. That's it.

[PETITIONER]: What about the life insurance?

[PETITIONER'S COUNSEL]: I don't care if there's a million dollars in the trust.

It's going to the kids. In the event of any trusts or other testamentary documentation that has been established, the beneficiaries of all those shall remain the children of the [p]arties.

[RESPONDENT]: Life insurance?

[PETITIONER'S COUNSEL]: The life insurance will be maintained by [respondent] naming the children as the beneficiaries of the policy.

[PETITIONER]: How long does he keep the life insurance for?

[PETITIONER'S COUNSEL]: Through college. As long as the children are in high school or college.

[RESPONDENT'S COUNSEL]: Just through the age of—

[PETITIONER'S COUNSEL]: 26? 23?

[RESPONDENT'S COUNSEL]: 23.

[PETITIONER'S COUNSEL]: [Respondent] shall maintain life insurance coverage naming the children as beneficiaries through age 23.

[RESPONDENT]: Does that also include Alyssa?

[PETITIONER'S COUNSEL]: That's outside the marriage.

[PETITIONER'S COUNSEL]: [Petitioner], I'm asking you: You just heard the details of the settlement. You understand those terms, correct?

[PETITIONER]: Yes.

[PETITIONER'S COUNSEL]: You participated in the negotiation of those terms, correct?

[PETITIONER]: Yes.

[PETITIONER'S COUNSEL]: You agree to be bound by the terms that we agreed when they are put into a settlement agreement correct?

[PETITIONER]: Yes.

[PETITIONER'S COUNSEL]: [Respondent], you heard the terms of the settlement, correct?

[RESPONDENT]: Correct.

[PETITIONER'S COUNSEL]: You participated in the negotiation of the settlement, correct?

[RESPONDENT]: Correct.

[PETITIONER'S COUNSEL]: You understand the terms of the settlement?

[RESPONDENT]: Yes.

[PETITIONER'S COUNSEL]: You agree that you're going to be bound by the terms of settlement when they're put in a final divorce decree, correct?

[RESPONDENT]: Yes.

(WHEREUPON, a discussion was had off the record.)

[PETITIONER'S COUNSEL]: We will also add that [respondent] will cover—will provide health insurance coverage for the children.

[RESPONDENT'S COUNSEL]: Split uncovered.

[PETITIONER'S COUNSEL]: And any uncovered medical expenses, extracurricular activities, and mandatory school fees shall be paid equally by the [p]arties."

¶6 As stated, the parties appeared before the trial court following the settlement conference. On that date, October 20, 2015, the trial court entered an order setting the matter for prove-up on

November 3, 2015. The court's written order provided that "terms of financial settlement as indicated in deposition transcript from today's date, 10/20/15, shall be incorporated into the forthcoming marital settlement agreement."

¶7 Then, on October 27, 2015, respondent filed an emergency motion for substitution of attorneys, to strike the prove-up date, to extend discovery, and to set the case for trial. In the motion, respondent alleged that he no longer agreed with the November 3, 2015, prove-up date, that the date should be stricken, that no depositions were taken in the case and discovery should be reopened, and that respondent "would be extremely prejudiced if the parties were not given additional time to complete discovery." Respondent did not object to the contents of the October 20, 2015, order. Petitioner responded by filing a memorandum of law in lieu of an answer. Attached to the memorandum was a copy of the transcript from the October 20, 2015, settlement conference. The following day, on October 28, 2015, the trial court entered an order granting respondent leave to substitute his attorney, but, over his new counsel's objection, denied respondent's motion to strike the prove-up date, to extend discovery, and to set the case for trial. In addition, the trial court stated in the order that it found "the oral settlement agreement agreed on 10-20-15 is a binding agreement."

¶8 Respondent then filed an emergency motion to disqualify the trial court judge pursuant to Illinois Supreme Court Rule 63(C)(1)(a) and an emergency motion to reconsider the October 28, 2015, order. In the motion to disqualify the trial judge, respondent alleged petitioner's memorandum in lieu of an answer improperly included the unsworn transcript from the October 20, 2015, meeting, which included "off-the-record private conversations" about questions of fact regarding the property at issue in the case. Respondent argued that the judge read the private, hearsay communications between the parties and then ruled that the parties had a binding

agreement. As a result, respondent alleged the trial judge should disqualify himself pursuant to Rule 63(C)(1)(a). In the motion to reconsider, respondent alleged the prove-up date should be vacated because the parties did not sign an uncontested cause stipulation in violation of Cook County Local Rule 13.5. Respondent further argued the October 28, 2015, order finding a binding agreement should be vacated because there was no admissible evidence to prove the existence of a valid enforceable agreement and the alleged agreement violated the statute of frauds.

¶9 On November 2, 2015, following extensive arguments by counsel, the trial court denied respondent's emergency motions to disqualify the judge and to reconsider the October 28, 2015, order. In addressing whether he should disqualify itself after having read the transcript from the settlement conference, the trial judge stated:

> "you're talking about me hearing things. You know what? If I take your rule of thumb that you want me to take *** I will never again have a pretrial conference, I hear something about the case. I hear some facts. I hear some evidence. I hear something to help me make a recommendation to the parties. That's what these pretrial conferences are for. And just because you attach something that said this is our agreement, we've made this agreement so on and so forth, that's in furtherance of his motion. I don't think there was anything wrong within the attachment. At least I knew that they had a contract."

¶10 The matter then proceeded to the prove-up. Petitioner and respondent testified regarding the oral agreement. The following discussions ensued:

> "[THE COURT]: I told you at that time [on October 28, 2015] that the only thing for me, once I saw the entire Judgment, was to determine whether or not that contract was conscionable or not conscionable. That [is] what I told you the only thing left was. It has

> been approved by the parties. It is a contract. The question is whether or not the Court approved it under the law as being a conscionable contract. That's what's left. I don't care why the agreement was made just because it was made at a deposition where people normally sit down and start talking before [the] deposition was taken.
>
> * * *
>
> [PETITIONER'S COUNSEL]: We were just about to start the depositions, and we didn't start them because after hours of talking and negotiating, we reached a settlement, and we wanted the Court to know that we specifically took the time to put all of the terms we agreed to on the record, and the order entered by your Honor on October 20th, an agreed order, reflected the terms of the settlement in that transcript."

The trial court highlighted the fact that respondent did not assert an actual objection to the agreement or a basis for reconsideration; rather, respondent merely wanted to "back out" of the agreement because he did not "like it." Contrary to respondent's allegation in his brief, respondent's counsel acknowledged that the settlement agreement was "put on record." Nonetheless, respondent's counsel argued that the agreement did not constitute an oral contract where the testimony was unsworn. The trial court responded that an oral contract is valid in Illinois and need not be sworn. Respondent's counsel agreed.

¶11 With regard to whether the agreement was conscionable, the trial court stated that the agreement "pretty much splits everything 50/50," adding that "[t]here is nothing that I saw in that agreement to make it unconscionable if at all." In fact, the trial court stated that, if anything, the agreement was unconscionable as to petitioner where she was "losing" $1,500 of maintenance for just over 15 years for a total of $273,600, where respondent received more of the assets, and

where respondent was receiving the differential of the marital home based on a higher valuation than established by the market.

¶12 Notwithstanding, respondent's attorney made repeated attempts to cross-examine petitioner regarding the existence of $297,000 in funds. The trial court prohibited the line of questioning and restricted respondent's attorney to providing an offer of proof, but warned that "whatever documents [respondent's counsel] has in his possession, obviously, his client had in his possession and the attorneys had in their possession before this agreement was made. Whatever he is going to say has been merged into the contract. So if they knew about it beforehand—they made the contract anyway. It's inadmissible." The trial court insisted that respondent's counsel was restricted from conducting discovery during the prove-up. Additionally, the trial court noted respondent's consistent refusal over the course of the divorce proceedings to agree to maintenance of petitioner and associated the questioning regarding the $297,000 as an attempt to avoid having to pay such maintenance. In response to respondent's counsel's inquiry of whether the court would allow him to ask petitioner about the $297,000, the court stated that it did not "know of the existence of $297,000," adding that asking petitioner about the sum "should have been done at the deposition, or it should have been done earlier, or it should have been part of the contract. It should have been something. If your client didn't mention it, his lawyer didn't mention it, nobody mentions it and they make an agreement." Respondent acknowledged that the matter of the $297,000 was raised during the settlement conference, but he argued it was "brushed off." Moreover, the trial court highlighted the fact that there was never a claim for dissipation pursuant to section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(d) (West 2014)) asserted by respondent over the course of the three years of divorce proceedings.

¶13 The transcript repeatedly demonstrates the trial court's finding that, on October 20, 2015, the parties appeared before it with their counsel and advised the court that they had reached an agreement; therefore, the court concluded there was a contract. Petitioner's attorney added that:

> "[T]he agreement was not reached two minutes before we were to step up. The agreement was reached at least two hours before, and we all came to court two hours later, and the agreement was still as we all thought it was."

Respondent admitted that he entered into the verbal agreement, but stated that he did not understand the consequences of doing so.

¶14 The trial court ultimately entered a judgment for the dissolution of the parties' marriage incorporating thereto the October 20, 2015, settlement agreement. In so doing, the trial court stated:

> "They've also entered into a Marital Settlement Agreement. It was an oral agreement. It is now reduced to writing as part of a Judgment for Dissolution of Marriage. I've listened to the testimony of both. I find specifically that on the issue of credibility, I believe the [p]etitioner and not the [r]espondent. I believe that [respondent] has been less than honest with the Court. I believe that he made this agreement; that he knows what this agreement contained; that he's a businessman. He's well-versed in finances. He earns a substantial income. He owns and [has] been involved in the purchase of substantial real estate between his own real estate that he has, along with the marital residence. It's probably far in excess of a half a million dollars worth of real estate. I don't see anything in there to show mortgages anywhere. He owns a camper with accoutrements involved with the camper. I don't see anything here that would say that he didn't understand this agreement. So I find on the issue of credibility especially with his

admission that he made the agreement; he just didn't understand. I don't believe that for one minute. So on the issue of credibility, I certainly believe the [p]etitioner. I might state I find it very interesting that he does admit that the $297,000 was brought up at that meeting. It's not part of this agreement because, apparently, there's nothing there for it. If it was really that important then, it would have been part of this agreement, or there would have been some consideration for that, and there isn't. I have read the agreement such as it stands after three years of litigation."

¶15 This appeal followed.

¶16 ANALYSIS

¶17 Respondent first contends the marital settlement agreement reached by the parties on October 20, 2015, was unenforceable as it did not constitute a binding contract. Respondent, therefore, contends the dissolution judgment, which was based upon the marital settlement agreement, is invalid.

¶18 The determination of whether a settlement agreement is valid is within the discretion of the trial court and will not be reversed on appeal " 'unless the court's conclusion is against the manifest weight of the evidence—that is, unless an opposite conclusion is clearly evident.' " *In re Marriage of Baecker*, 2012 IL App (3d) 110660, ¶ 25 (quoting *Webster v. Hartman*, 309 Ill. App. 3d 459, 460 (1999)).

¶19 At the time the parties entered into their oral settlement agreement, section 502 of the Act (750 ILCS 5/502 (West 2014)) provided, in relevant part, that "to promote amicable settlement of disputes between parties to a marriage attendant upon the dissolution of their marriage, the parties may enter into a written or oral agreement containing provisions for disposition of any property owner by either of them." Section 502 has since been amended to "promote amicable

settlement of disputes between parties to a marriage attendant upon the dissolution of their marriage, the parties may enter into an agreement containing provisions for disposition of any property owner by either of them." Pub. Act 99-90, § 5-15 (eff. Jan 1, 2016). Accordingly, the legislature omitted the express description of the settlement agreement as oral or written and replaced the language with the more general description of "an agreement." In addition, the amended version of section 502 continues by stating that "[a]ny agreement pursuant to this Section must be in writing, except for good cause shown with the approval of the court, before proceeding to an oral prove up." Pub. Act 99-90, § 5-15 (eff. Jan 1, 2016).

¶20 Traditionally, new statutes do not apply retroactively unless the legislature expressly states that they do. *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 37 (2001). The Illinois Supreme Court has adopted the retroactivity test developed by the United States Supreme Court in *Landgraf v. USI Fild Products*, 511 U.S. 244, 280 (1994). *Commonwealth Edison Co*., 196 Ill. 2d at 37. Under the *Landgraf* test, if the legislature has clearly indicated the temporal reach of an amended statute then it must be given effect, absent constitutional prohibition to the contrary. *Id*. at 38. If no indication of temporal intent exists, the court must determine whether applying the statute would have retroactive impact. *Id*. A retroactive impact will be found where application of the amended statute " 'would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.' " *Id*. (quoting *Landgraf*, 511 U.S. at 280). If the amended statute would have no retroactive impact, it may be applied; however, if the amended statute would have a retroactive impact, the court must presume the legislature did not intend that it be so applied. *Id*.

¶21 The legislature did not indicate a temporal reach for section 502(a) of the Act; therefore, we must determine whether application of the amended version of the statute would have a retroactive impact. Because the "transaction" between the parties, namely, the settlement agreement, was completed on October 20, 2015, prior to the amendment at issue, and the amended version of the statute imposed new duties by requiring that an agreement be in writing unless good cause was shown with approval of the court, we conclude that the amended version of the statute would have a retroactive impact on the parties. As a result, we must presume it does not apply to the case at bar. Consequently, there was no requirement that the parties' settlement agreement be reduced to writing in this case. In fact, case law prior to the legislature's amendment of section 502(a) provided that settlement agreements may be oral. See, *e.g.*, *Baecker*, 2012 IL App (3d) 110660, ¶ 25.

¶22 Respondent acknowledges the amended statute does not apply, but nevertheless contends that there was no binding oral settlement agreement between the parties.

¶23 A settlement agreement is governed by the principles of contract law. *Rose v. Mavrakis*, 343 Ill. App. 3d 1086, 1090 (2003). A marital settlement agreement qualifies as a contract. *In re Marriage of Haller*, 2012 IL App (5th) 110478, ¶ 26. An oral agreement is binding on the parties when there is an offer, an acceptance, and a meeting of the minds. *K4 Enterprises, Inc. v. Grater, Inc.*, 394 Ill. App. 3d 307, 313 (2009). A "meeting of the minds" will be found between the parties where there has been assent to the same things in the same sense on all essential terms and conditions. *Haller*, 2012 IL App (5th) 110478, ¶ 26. " 'It is not necessary that the contract provide for every collateral matter or every possible future contingency which might arise in regard to the transaction. It is sufficiently definite and certain to be enforceable if the court is enabled from the terms and provisions thereof, under proper rules of construction and applicable

principles of equity, to ascertain what the parties have agreed to do.' " *Id*. ¶ 28 (quoting *Morey v. Hoffman*, 12 Ill. 2d 125, 130-31 (1957)). Moreover, "[t]he mere reference to a future written document does not negate the existence of a present contract where the parties have assented to all the terms of the oral agreement." *Id*. ¶ 30. "Whether a contract exists, the terms of the contract, and the intent of the parties are questions of fact to be determined by the trier of fact, and this court will not reverse the trial court's judgment unless it is contrary to the manifest weight of the evidence." *Haller*, 2012 IL App (5th) 110478, ¶ 29 (citing *In re Marriage of Gibson-Terry*, 325 Ill. App. 3d 317, 322 (2001)).

¶24 Respondent argues that there was no "meeting of the minds" and that the elements of the contract were not sufficiently definite and certain where the transcript from the settlement conference on October 20, 2015, demonstrates there were "minor details to be worked out later." Respondent additionally argues that the October 20, 2015, transcript merely represents unsworn, private conversations between the parties and their attorneys and cannot be relied up to evince the intent of the parties or as demonstrative of an agreement.

¶25 The uncontroverted facts are these: the parties engaged in divorce proceedings and various forms of negotiations for nearly 3 years prior to agreeing to cancel the scheduled deposition for October 20, 2015, and instead participate in a settlement conference regarding the couples' finances; the terms of the agreement were transcribed and respondent agreed that he heard the terms of the settlement, participated in the settlement negotiation, understood the terms of the agreement, and agreed to said terms; the parties appeared before the trial court to advise the court that a pre-trial conference was no longer necessary because the parties had reached an agreement; the trial court entered an order on the same date, October 20, 2015, stating the "terms of financial settlement as indicated in the deposition transcript from today's date, 10/20/15, shall

be incorporated into the forthcoming marital settlement agreement;" and respondent did not object to the October 20, 2015, order. We find that the parties' oral settlement agreement was sufficiently definite and certain to be enforceable where the trial court was able to ascertain what the parties had agreed to do. See *Haller*, 2012 IL App (5th) 110478, ¶ 28. The fact that the October 20, 2015, transcript contained unsworn statements has no bearing on the validity of the oral contract entered into between the parties where it is clear that there were multiple offers, acceptances, and a demonstrated meeting of the minds. See *K4 Enterprises, Inc.*, 394 Ill. App. 3d at 313. While it is true that, at the settlement conference, the parties acknowledged the further need to address minor details in the future, such future addition of collateral details did not negate the existence of a contract at the time. See *Haller,* 2012 IL App (5th) 110478, ¶¶ 28, 30. The parties assented to the same things in the same sense on all essential terms and conditions. See *Haller,* 2012 IL App (5th) 110478, ¶ 26. Moreover, the addition of collateral details in the written dissolution judgment did not negate the existence of the October 20, 2015, oral agreement. See *id.* We need not address respondent's attempt to highlight additional terms found in the written dissolution judgment in an effort to establish there was no meeting of the minds where respondent raised the argument for the first time in his reply brief in violation of Illinois Supreme Court Rule 341(h)(7). Ill. S. Ct. R. 341(h)(7) ("[p]oints not argued are waived and shall not be raised in the reply brief.")

¶26 Based on our review of the November 2, 2015, transcript, it is obvious that respondent agreed to the terms of the settlement contract and then scrambled to find a way to back out of the agreement. Respondent fired his attorney and hired a new one in an attempt to claim that he did not understand the terms of the agreement. The trial court noted respondent's history of firing and hiring attorneys, and also noted respondent's consistent attempt to avoid paying maintenance

to petitioner. The November 2, 2015, transcript makes it clear that respondent attempted to assert a dissipation argument without actually making a dissipation claim. Respondent, however, admitted that the alleged dissipation took place before he entered into the October 20, 2015, agreement and was raised during the settlement conference. Notwithstanding, respondent agreed to the terms of the settlement and never objected to the trial court's October 20, 2015, order providing that "the terms of financial settlement as indicated in deposition transcript from today's date, 10/20/15, shall be incorporated into the forthcoming marital settlement agreement." In sum, considering our standard of review, we find it is not clearly evident that the parties' oral settlement agreement did not constitute a contract. See *Baecker*, 2012 IL App (3d) 110660, ¶ 25.

¶27 Respondent argues that the case at bar is distinguishable from *Baecker* and *Haller* where no material terms of the alleged settlement agreement were read into the trial court record and he never testified under oath that he understood the agreement. We disagree.

¶28 In *Baecker*, prior to the second day of trial, counsel for both parties advised the trial court that they had reached an oral agreement on all outstanding issues. 2012 IL App (3d) 110660, ¶ 8. The terms of the oral settlement agreement were read into the record. The trial court then admonished the respondent to ensure she understood the terms of the agreement and agreed to be bound by the agreement. The court also confirmed that the petitioner, who was not present because he was incarcerated at the time, gave his attorney the authority to agree to the settlement and similarly admonished the petitioner's counsel on behalf of the petitioner. *Id*. ¶ 10. The oral settlement agreement was accepted as part of the record, and the parties were instructed to prepare a dissolution judgment. Thereafter, the petitioner "changed his mind" and refused to sign the dissolution judgment and accompanying settlement agreement. *Id*. ¶ 11. The petitioner filed a motion to vacate the oral agreement, arguing, *inter alia*, there was no meeting of the minds on an

essential element of the contract. The trial court enforced the agreement where it found the petitioner "simply changed his mind," which was not a proper basis to set aside a settlement agreement. *Id*. ¶ 14. The Third District agreed, finding the petitioner's attorney had the authority to enter the agreement on the petitioner's behalf, that the agreement was read into the record in open court, and the petitioner was fully admonished *vis a vis* his attorney regarding the terms of the agreement. *Id*. ¶ 31. The Third District concluded by stating that " '[a] court should not set aside a property settlement agreement merely because one party has second thoughts.' " *Id*. ¶ 32 (quoting *In re Marriage of Steichen*, 163 Ill. App. 3d 1074, 1079 (1987)).

¶29 In *Haller*, on the date scheduled for trial--after 3.5 years of dissolution proceedings, the parties informed the trial court that they had negotiated an oral settlement agreement. *Haller*, 2012 IL App (5th) 110478, ¶ 4. The settlement agreement was read into the record. The parties testified that they understood the terms of the agreement and entered the agreement freely and voluntarily. *Id*. ¶ 9. Thereafter, the respondent filed a motion to set aside the settlement agreement, arguing there was no meeting of the minds where the maintenance portion of the agreement was calculated using future financial figures that had not come to fruition. *Id*. ¶ 11. The trial court denied the respondent' s motion. *Id*. ¶ 19. The Fifth District also refused to set aside the agreement where it was clear, certain, and definite in its material provisions, and where the record demonstrated both parties understood the agreement and its binding effect and finality, and their desire that it be accepted by the court. *Id*. ¶¶ 30, 45.

¶30 Although we acknowledge that the settlement agreements were read into the record in both *Baecker* and *Haller*, respondent fails to cite any authority stating that an out-of-court agreement must be read into the court record in order to be enforceable. On the contrary, this court has stated that the failure of a trial court to record a parties' oral settlement agreement does

not invalidate the agreement. *K4 Enterprises, Inc.*, 394 Ill. App. 3d at 317-18 (noting that the defendants failed to place the settlement discussions on the record *either* by asking that a court reporter be present during the discussions *or* that the terms of the agreement be placed on the record). Moreover, *Baecker* and *Haller* merely show that reading the terms of the out-of-court settlement agreement is *a* factor the court can consider in determining whether the parties reached an agreement. *Baecker*, 2012 IL App (3d) 110660, ¶ 31; *Haller*, 2012 IL App (4th) 110478, ¶ 30 (additionally considering that the parties were represented by counsel when the settlement agreements were formed and that the parties demonstrated their understanding and acceptance of said agreements).

¶31 In this case, the trial court entered an order incorporating the transcript of the October 20, 2015, settlement conference into its October 20, 2015, order without respondent's objection. Then, on October 28, 2015, in denying respondent's motion to strike the prove-up date, to extend discovery, and to set the case for trial, the trial court stated in its order that it found "the oral settlement agreement agreed on 10-20-15 is a binding agreement." Therefore, the trial court was made aware of the terms of the oral settlement agreement *vis a vis* the transcript submitted by petitioner with her memorandum of law in lieu of an answer to respondent's motions. Respondent has never objected to the substance of the October 20, 2015, transcript, denied its accuracy, or asserted that it contained mistakes of fact. Notably, respondent's attorney conceded that the transcript was made a part of the court record. At the November 2, 2015, hearing, respondent's counsel was given the opportunity to provide objections to the oral settlement agreement and failed to do so. Instead, respondent himself acknowledged that he entered the agreement, but posited that he did not understand the agreement. The trial court expressly found respondent not to be credible. Moreover, when asked by petitioner's counsel whether he

participated in the negotiations, understood the terms of the agreement, and wished to be bound thereto, respondent assented to all. Simply stated, we find the trial court properly concluded that the parties' entered into a binding settlement contract.

¶32 Respondent additionally contends the dissolution judgment is unenforceable where: (1) the trial court conducted a prove-up hearing without the parties having executed an "uncontested cause stipulation form;" (2) the trial court refused to allow respondent to make an offer of proof; and (3) the trial judge should have disqualified himself after having read the transcript of the private conversation between the parties at the settlement conference. We address each argument in turn.

¶33 Cook County Local Rule 13.5(a)(ii) provides, in relevant part, that:

> "The following procedure shall be used with regard to all uncontested final matters (prove-ups):
>
> a. ***
>
> b. An uncontested cause may be heard when an Uncontested Cause Stipulation is signed by the parties and their attorneys." Ill. R. Cir. Ct. Cook Co., R. 13.5(a)(ii).

The supreme court has provided the following instructions regarding local court rules:

> "Like supreme court rules, local court rules are meant to be followed, as written, and are not mere suggestions or guidelines from which deviations may be made by the litigants. As such, this court has recognized that a trial court has the discretion to impose sanctions on a party for an abuse of procedural rules. [Citation.] In acknowledging this authority, we have emphasized the trial court's inherent authority to control matters before it as necessary to prevent undue delays or disruption in the disposition of cases on

> its docket. [Citation.] We have further explained that the purpose of imposing sanctions by the trial court is to coerce compliance with court rules and orders, and not to punish the dilatory party." *VC & M, Ltd., d/b/a Re/Max Elite v. Andrews*, 2013 IL 114445, ¶ 26.

¶34 We recognize that, pursuant to Cook County Local Rule 13.5(a)(ii), the parties were required to submit a signed uncontested cause stipulation form prior to scheduling the prove-up. We, however, acknowledge that under the circumstances of this case such a form was inconsequential where the parties submitted to the trial court that they had entered an oral settlement agreement and the court *sua sponte* scheduled the matter for prove-up as a result. As the supreme court instructed, the local court rules provide the trial courts with the inherent authority to control their dockets. Here, the trial court was in control of its docket when it scheduled the prove-up. There is no authority cited by respondent, or uncovered by this court, demonstrating that the lack of an uncontested cause stipulation form under the circumstances in this case would invalidate the subsequent dissolution judgment.

¶35 Respondent next argues the trial court abused its discretion in refusing to allow him to make an offer of proof.

> "Generally, when a trial court refuses evidence, no appealable issues remain unless a formal offer of proof is made. [Citation.] The purpose of an offer of proof is to inform the trial court, opposing counsel, and a reviewing court of the nature and substance of the evidence sought to be introduced. [Citation.]" *K4 Enterprises, Inc.*, 394 Ill. App. 3d at 318.

The transcript from the November 2, 2015, hearing confirms that the trial court refused to allow respondent to make an offer of proof on 30 exhibits. On appeal, however, respondent fails to make a cognizable argument regarding the substance of the attempted offer of proof. As a result,

this court has no method to assess whether the trial court abused its discretion. Moreover, respondent simply claims the trial court's refusal to allow the offer of proof denied him the opportunity to preserve issues for appeal. The limited statement, without more, fails to demonstrate any resulting prejudice. "A reviewing court is entitled to have the issues clearly defined and supported by pertinent authority and cohesive arguments; it is not merely a repository into which an appellant may 'dump the burden of argument research,' nor is it the obligation of this court to act as an advocate or seek error in the record." *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009). We, therefore, find respondent has forfeited his argument. See Ill. S. Ct. R. 341(h)(7).

¶36 Finally, respondent argues that the trial judge should have disqualified himself after "inadvertently" reading the October 20, 2015, settlement conference transcript.

¶37 Illinois Supreme Court Rule 63(C)(1)(a) provides that a "judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has *** personal knowledge of disputed evidentiary facts concerning the proceeding." Ill. S. Ct. R. 63(C)(1)(a) (eff. July 1, 2013).

¶38 Respondent fails to offer any case law that would require a judge to recuse himself simply because he read a transcript from a settlement conference. Rather, in *K4 Enterprises, Inc.*, this court concluded there was no basis to question the impartiality of a judge that had been present during the settlement negotiations. 394 Ill. App. 3d at 322. Here, the trial judge did not observe the settlement negotiations and could have no preconceived notions stemming therefrom. The mere fact that the trial judge read the transcript does not establish a basis for respondent's assertion that he was denied an impartial hearing as a result or that a reasonable

person, not knowing whether or not the judge was actually impartial, might reasonably question the judge's impartiality. See *id*. We, therefore, find there was no basis for the trial judge to recuse himself.

¶39 CONCLUSION

¶40 In conclusion, we affirm the trial court's finding that the parties' entered into a binding oral settlement agreement and affirm the trial court's dissolution judgment.

¶41 Affirmed.