2017 IL App (2d) 160817-U
No. 2-16-0817
Order filed July 24, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re THE MARRIAGE OF CHERYL I. ARONSON, Petitioner-Appellant, and JEFF R. ARONSON, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 15-D-135 Honorable Gwyn Gulley, Judge , Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Birkett and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not abuse its discretion in vacating a default judgment against respondent, as respondent had a valid excuse for missing court, the penalty to respondent from the default was severe, and petitioner was not subjected to a particular hardship by having to go to trial; (2) the trial court properly enforced the parties' marital settlement agreement: the agreement was not procedurally unconscionable, as petitioner had shown that, despite her stress, she was capable of rejecting respondent's proposals; it was not substantively unconscionable, as the judgment's other provisions compensated for the agreement's low provision of maintenance; and the parties' brief attempt at reconciliation did not evince an intent to abandon the agreement.

¶ 2 Petitioner, Cheryl I. Aronson, appeals the trial court's order dissolving her marriage to respondent, Jeff R. Aronson. She contends that the court erred by (1) vacating a default

judgment against respondent and (2) finding that a marital settlement agreement (MSA) was not unconscionable. We affirm.

¶ 3 On February 10, 2015, petitioner filed a petition to dissolve the parties' marriage. She also sought temporary maintenance. The court awarded her temporary maintenance of $1,335.42 per month. Respondent moved to vacate the order. He also filed a petition alleging that the parties had executed an agreement that barred petitioner from receiving maintenance. The court vacated the earlier order and awarded petitioner temporary maintenance of $450 per month.

¶ 4 Petitioner sought to increase maintenance due to health issues and medical bills. Respondent's attorney withdrew on February 16, 2016. The matter was set for status of counsel on March 15. On February 26, respondent filed a *pro se* appearance and a motion to finalize the dissolution. He set the motion for hearing on March 22.

¶ 5 Respondent failed to appear for either hearing and, on April 26, 2016, the court entered a dissolution judgment by default, awarding petitioner monthly maintenance of $2,214.50 for 15 years and 9 months.

¶ 6 Respondent moved to vacate the default judgment. In the motion and at the hearing, he explained that he had been in the hospital for a heart condition the week of March 10 and was subject to "travel restrictions." The court vacated the default judgment.

¶ 7 On July 1, 2016, the court conducted a hearing on all remaining issues. The following facts are taken from the parties' testimony and financial documents.

¶ 8 The parties were married in 1995. Petitioner was unemployed. She had "significant issues" with her legs and was on hydrocodone for a considerable time. Finally, she had a knee replacement in 2015 and a second one in 2016. She had also been treated for depression. She

received $613 in social security each month, her only source of income. Respondent worked for Home Depot, from which he received approximately $5,700 per month.

¶ 9 Sometime after the separation, both parties left the marital residence in South Beloit. Petitioner quitclaimed her interest to respondent. He rented out the home for a time, but, according to his testimony, the rent he received did not meet the expenses he incurred. He later sold the home, making a profit of $3,000.

¶ 10 In 2012, the parties discussed their pending separation. At the time, petitioner was extremely stressed and undergoing treatment for depression. At petitioner's suggestion, respondent drafted a proposed agreement. Petitioner rejected this proposal. Respondent redrafted the agreement, providing that petitioner would receive $400 maintenance monthly for 60 months. According to petitioner, respondent said that if she did not sign it, she " 'would receive no money at all per month.' " Petitioner did not find these terms agreeable, but felt that she had no choice but to sign the agreement because respondent was angry and had threatened her. Petitioner did not seek an order of protection against respondent, because she feared "repercussions" if she did so.

¶ 11 The agreement further provided that respondent would receive the marital residence and any equity in it. Petitioner would pay her own medical expenses incurred to date.

¶ 12 Later in 2012, the parties attempted a reconciliation. Their efforts were unsuccessful, however, and they separated again after about three months.

¶ 13 The court found that the MSA was not unconscionable. Accordingly, the dissolution judgment provided that petitioner receive $400 maintenance for 60 months. The judgment also awarded petitioner personal property and 60% of respondent's individual retirement account and required respondent to pay the majority of petitioner's attorney fees. Petitioner timely appeals.

¶ 14 Petitioner first contends that the trial court erred by vacating the default judgment against respondent. We note that respondent has not filed a brief in this court. However, as the issues are relatively simple, we may decide the merits of those issues. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 15 A default judgment is a drastic measure, to be employed only as a last resort. *Biscan v. Village of Melrose Park Board of Fire & Police Commissioners*, 277 Ill. App. 3d 844, 848 (1996). Once the court does enter a default judgment, it may exercise its discretion to set aside the default "upon any terms and conditions that shall be reasonable." 735 ILCS 5/2-1301(e) (West 2014). We review the trial court's ruling on a motion to vacate a default judgment to see whether substantial justice was done or for an abuse of discretion. *Venzor v. Carmen's Pizza Corp.*, 235 Ill. App. 3d 1053, 1056-57 (1992) (whether a default order accomplishes substantial justice depends upon, *inter alia*, the severity of the penalty to the defendant and the attendant hardship on the plaintiff if it is forced to proceed to trial).

¶ 16 Here, the court defaulted respondent after he missed two court appearances. It is undisputed that respondent was in the hospital for a heart problem during the first hearing. Although he had been released by the second hearing, he claimed that he was still subject to "travel restrictions" that prevented him from making the lengthy drive to court. Moreover, respondent was without counsel at the time, his attorney having withdrawn the previous month. The penalty to respondent from the default, having to pay nearly three times as much maintenance as the MSA called for, was severe, while petitioner suffered no particular hardship by having to go to trial. Under those circumstances, the court did not abuse its discretion by vacating the default.

¶ 17 Petitioner next contends that the court erred by upholding the validity of the MSA. She contends that it was both procedurally and substantively unconscionable.

¶ 18 The Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/101 *et seq.* (West 2014)) encourages parties to settle their disputes amicably. To further that end, the Act provides that, except for provisions relating to the support, custody, and visitation of children, a marital settlement agreement is binding on the court unless the court finds that it is unconscionable. 750 ILCS 5/502(b) (West 2014).

¶ 19 Unconscionability can be either procedural or substantive. Procedural unconscionability consists of " 'some impropriety during the process of forming the contract' " that deprives a party of a meaningful choice. *Kinkel v. Cingular Wireless, LLC*, 223 Ill. 2d 1, 23 (2006) (quoting *Frank's Maintenance & Engineering, Inc. v. C.A. Roberts Co.*, 86 Ill. App. 3d 980, 989 (1980)). When a party seeks to set aside an MSA, all presumptions are in favor of the agreement's validity. *In re Marriage of Gorman*, 284 Ill. App. 3d 171, 180 (1996).

¶ 20 Petitioner contends that she was extremely stressed by the breakup of the marriage and, further, that respondent yelled at her and threatened that she would receive nothing if she did not sign the agreement he prepared. We note that stress is common in dissolution proceedings and that "stress alone does not coercion make." *In re Marriage of. Flynn*, 232 Ill. App. 3d 394, 401 (1992).

¶ 21 Petitioner insists that she was suffering more stress than is typical in a marriage dissolution given that she was undergoing treatment for depression. The trial court found that defendant's treatment for depression apparently predated the dissolution proceedings and, in any event, she was not under any more stress than is typical in a dissolution proceeding. The court noted that it was petitioner who filed for dissolution and apparently initiated the settlement

discussions. Further, the fact that she rejected one proposal before agreeing to the second showed that she was not stressed to the point of being dysfunctional and, in fact, had a meaningful choice.

¶ 22 Petitioner also argues that the agreement was substantively unconscionable. She contends that the agreement provided her with far less than the statutory maintenance to which she would have been entitled (see 750 ILCS 5/ 504(b-1)(1) (West 2016)) and that, as a result, her income is only 10% of respondent's. That an agreement favors one party over another does not make it unconscionable. To rise to that level, an agreement must be improvident, totally one-sided, or oppressive. *Gorman*, 284 Ill. App. 3d at 182.

¶ 23 Petitioner focuses narrowly on the income disparity created by the maintenance provision. But that is not the only relevant provision. The dissolution judgment, which included the MSA, contained other provisions relevant to the parties' financial circumstances. The MSA provided that respondent would maintain petitioner's health insurance. Moreover, the judgment awarded petitioner approximately 90% of the household furnishings, awarded her 60% of respondent's individual retirement account, and required respondent to contribute substantially to petitioner's attorney fees. Yet petitioner's argument does not account for the potential effect of these other provisions on the parties' circumstances. It may be that respondent will take in more money per month than petitioner, but the other factors noted might more than make up for this.

¶ 24 We note that the Act expresses a preference for making the division of marital property, rather than maintenance, the primary means of providing for the future financial needs of the parties. *In re Marriage of Brackett*, 309 Ill. App. 3d 329, 338 (1999). Thus, petitioner's focus on maintenance as the only relevant consideration in determining the parties' relative financial status runs counter to the Act.

¶ 25 Petitioner also ignores that the trial court credited evidence that she was receiving unreported cash income when she signed the agreement. Thus, at least when the agreement was signed, petitioner's actual income was higher than the calculations in her brief would indicate. This factor supports the trial court's conclusion that the agreement was not substantively unconscionable.

¶ 26 We acknowledge petitioner's argument that respondent received the marital home as well. Apparently, neither party occupied the home at that time. Respondent testified that he rented it out at a net loss for a time, then sold it for a modest profit of $3,000. Thus, the fact that respondent received the marital home does not show that the MSA overwhelmingly favored respondent.

¶ 27 Finally, petitioner argues that the parties' reconciliation vitiated the agreement. She cites *In re Marriage of Vella*, 237 Ill. App. 3d 194, 200 (1992), for the proposition that the parties to an MSA may by their conduct evince an intent to abandon the agreement. The trial court found that the parties' brief attempt at a reconciliation did not do so. In fact, respondent continued to pay, and petitioner continued to accept, monthly maintenance as provided in the agreement for more than 2½ years until the time of trial. See *id.* Thus, the parties continued to abide by the agreement after the attempted reconciliation, and petitioner points to no evidence that the parties intended to abandon the agreement.

¶ 28 The judgment of the circuit court of Winnebago County is affirmed.

¶ 29 Affirmed.