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NO. COA11-743
NORTH CAROLINA COURT OF APPEALS

Filed: 17 January 2012

BRENT JEFFREY NIX,
Plaintiff,

v.

New Hanover County
No. 10 CVD 5646

MONICA LEE DEMPSEY NIX,
Defendant.

Appeal by Plaintiff from order entered 7 April 2011 by the Honorable Melinda H. Crouch in New Hanover County District Court. Heard in the Court of Appeals 16 November 2011.

Rice Law, PLLC, by Mark Spencer Williams, Richard Forrest Kern, and Stephen G. Domer, for Plaintiff-appellant.

Monica Lee Dempsey Nix, pro se, for Defendant-appellee.

HUNTER, JR., Robert N., Judge.

Brent Jeffrey Nix ("Plaintiff") filed a complaint on 7 December 2010 alleging several contract claims and appeals from an order denying those claims. On appeal, Plaintiff argues the District Court erred in denying his claims for indemnification, breach of contract, specific performance, and attorney's fees. After careful review, we affirm the trial court's denial of the

indemnification claim. We reverse the trial court's denial of Plaintiff's claim for breach of contract and remand for further proceedings consistent with this opinion. Having reversed this order, we need not reach Plaintiff's appeal of the denial of his claims for specific performance and attorney's fees.

I. Factual & Procedural Background

Brent and Monica Nix married on 22 June 2002. During the marriage, Brent and Monica purchased a Lexus automobile titled in both their names with a loan from Corning Federal Credit Union ("Corning"), on which Brent and Monica co-signed. During the marriage, Corning initiated a breach of contract claim against Brent and Monica for non-payment of the loan under the following caption: *Corning Federal Credit Union v. Brent Jeffrey Nix and Monica Lee Dempsey Nix*, 10 CVD 003030. The parties separated on 26 November 2009. On 12 August 2010, Corning obtained a default judgment against Brent and Monica for \$7,679.93 plus interest for the loan. Neither Brent nor Monica appealed the judgment. The car was subsequently repossessed and sold at an auction.

On 26 October 2010, Brent and Monica executed a Separation Agreement and Property Settlement (the "SAPS"), which provided that Monica would pay, free from contribution, "[t]he lien on [Monica's] 2003 Lexus 15300 automobile with Corning Credit Union currently subject to litigation in that certain civil action

styled Corning Federal Credit Union v. Brent Jeffrey Nix and Monica Lee Dempsey Nix, 10 CVD 003030." The SAPS further provided that "[t]he parties stipulate and agree that each will hereafter hold the other free and harmless and indemnify, defend and hold the other harmless from any and all subsequent claims advanced against him/her for the above debts."

After Brent and Monica signed and executed the SAPS, Monica did not make any payments on the debt owed to Corning. After receiving a writ of execution of the default judgment regarding the Lexus debt, Brent filed a Complaint on 7 December 2010 for: (1) absolute divorce; (2) breach of contract; (3) specific performance; (4) indemnification; and (5) attorney's fees. The complaint and summons were filed 10 December 2010. Monica never filed an answer to the complaint. Her answer was due on 10 January 2011. On 6 January 2011, Brent served Monica with Requests for Admissions via the U.S. Postal Service. Monica did not respond, despite acknowledging receipt of the requests. On 14 February 2011, Brent filed an Amended Notice of Requests for Admissions Deemed Admitted.

This matter was heard by the trial court on 17 February 2011. While it is unclear when Brent's attorney drafted the SAPS, Monica testified that she had been in possession of the SAPS for "a few months" prior to signing it. Monica read the agreement prior to signing it but claimed she did not understand

what it entailed. She never consulted an attorney to interpret the agreement or discuss her rights with regard to the agreement. Monica claimed she did not intend to take over the payments for the Lexus and that she thought the agreement stated that she and Brent would split the amount of the Corning judgment. As of the date of the trial, Monica had not made any payments on the loan. Monica testified that Brent paid \$250.00 in child support every two weeks pursuant to the SAPS.

At trial, Brent moved for judgment on the pleadings on the grounds that the allegations in the complaint and request for admissions had been admitted as a matter of law due to Defendant's failure to file an answer. On 7 April 2011, the trial court entered a judgment denying all contract claims, stating that "[t]he Plaintiff in this matter has not presented this Court with any '*subsequent claims*,' but rather submitted a claim that had been fully adjudicated prior to the parties entering into the [SAPS]." The court did not issue an order on Plaintiff's Motion for Judgment on the Pleadings. Plaintiff filed and served a timely Notice of Appeal on 11 April 2011. On 27 May 2011, district court judge Jeffrey Evan Moecker entered an order granting Plaintiff and Defendant an absolute divorce.

II. Jurisdiction & Standard of Review

As Defendant appeals from the final judgments of a district court, an appeal lies of right with this court pursuant to N.C.

Gen. Stat § 7A-27(c) (2009). The standard of review is whether there is competent evidence to support the trial court's findings of fact and whether those findings of fact support the court's conclusions of law. *Shear v. Stevens Building Co.*, 107 N.C. App. 154, 160, 418 S.E.2d 841, 845 (1992). The court's conclusions of law are reviewed *de novo*. *Wright v. T&B Auto Sales, Inc.*, 72 N.C. App. 449, 452, 325 S.E.2d 493, 495 (1985).

III. Analysis

A marital separation agreement is a legally enforceable contract and is generally subject to the same rules of law with respect to its enforcement as any other contract. *Moore v. Moore*, 297 N.C. 14, 16, 252 S.E.2d 735, 737 (1979). Here, we find the SAPS constitutes a legally enforceable contract.

First, we affirm the trial court's order denying Plaintiff's claim for indemnification in the action brought by Corning. The portion of the SAPS providing for indemnification pertains only to subsequent claims. However, Corning obtained its default judgment prior to the execution of the agreement, and the judgment is thus not a subsequent claim. Second, we reverse the trial court's order denying Plaintiff's claim for breach of contract, as the SAPS clearly places responsibility for payment of the lien on the Lexus on Monica, who refuses to pay Corning pursuant to its default judgment against her and

Brent. Accordingly, we remand this matter to the trial court for further proceedings consistent with this opinion.

A. Indemnification Claim

Plaintiff contends the trial court erred by denying his claim for indemnification. Plaintiff argues that, because the plain language of the SAPS requires Monica to pay the debt on the Lexus and Corning obtained the judgment after Brent's counsel drafted the SAPS and provided it to Monica, Plaintiff is entitled to indemnification. We disagree.

"If the plain language of a contract is clear, the intention of the parties is inferred from the words of the contract." *Walton v. City of Raleigh*, 342 N.C. 879, 881, 467 S.E.2d 410, 411 (1996). The trial court correctly identified the pertinent language in Article II, Section B, Paragraph 19 of the SAPS, which states that "[t]he parties stipulate and agree that each will hereafter hold the other free and harmless and indemnify, defend and hold the other harmless from any and all subsequent claims advanced against him/her for the above debts." The trial court correctly interpreted this provision, based on its plain language, as applicable only to claims arising *subsequent* to the execution of the SAPS. The proceeding for which Plaintiff seeks indemnification—*Corning Federal Credit Union v. Brent Jeffrey Nix and Monica Lee Dempsey Nix*, 10 CVD 003030—was fully adjudicated on 12 August 2010 when Corning

obtained a default judgment against the parties for \$7,679.93. The SAPS did not take effect until both Brent and Monica signed it before a notary. *See Wade v. Wade*, 252 N.C. 330, 13 S.E.2d 424 (1960) (holding that a separation agreement must be acknowledged before a certifying officer to take effect). Regardless of how long Monica was in possession of the SAPS prior to signing it, it did not take effect until she signed it on 26 October 2010, after Corning's judgment was entered 12 August 2010, and Corning's judgment is therefore not a subsequent claim. Therefore, we affirm the trial court's denial of Plaintiff's claim for indemnification because the Corning judgment does not fall under the umbrella of the indemnification provision based on an objective reading of the plain language of the SAPS.

B. Breach of Contract Claim

Plaintiff next contends the trial court erred by denying his breach of contract claim because Monica admitted that she failed to abide by the contract's specific terms. We agree.

A person signing a separation agreement is under a duty to read it for her own protection and is ordinarily charged with knowledge of its contents and the legal effect of its terms. *Biesecker v. Biesecker*, 62 N.C. App. 282, 285, 302 S.E.2d 826, 828-29 (1983). Where the intent of an agreement is clearly expressed in a separation agreement, the agreement will be

enforced even if one of the parties later claims she did not intend for it to be a final settlement. *Blount v. Blount*, 72 N.C. App. 193, 196, 323 S.E.2d 738, 740 (1984); *Hagler v. Hagler*, 319 N.C. 287, 295, 354 S.E.2d 228, 235 (1987). A separation agreement will not be invalidated based on a party's failure to read it or obtain legal advice prior to signing it, nor will a separation agreement be invalidated based on a party's ignorance of the relevant law. *Biesecker*, 62 N.C. App. at 285, 302 S.E.2d at 829.

In *Hill v. Hill*, 94 N.C. App. 474, 481-82, 380 S.E.2d 540, 546 (1989), this Court rejected the plaintiff's request to invalidate a SAPS because the wife had failed to read it and obtain legal advice prior to signing it. In its opinion, this Court noted that "the wife had ample opportunity in the ensuing twelve days before she signed the . . . agreement to read [it] and to talk to her lawyer about it." *Id.* The Court further noted the wife had not claimed she was denied an opportunity to read the agreement or consult her attorney. *Id.*

Article II, Section B, Paragraph 18(B) of the SAPS states, "WIFE shall pay, free from contribution by or from HUSBAND: . . . [t]he lien on WIFE'S 2003 Lexus 15300 automobile with Corning Credit Union currently subject to litigation in that certain civil action styled Corning Federal Credit Union v. Brent Jeffrey Nix and Monica Lee Dempsey Nix, 10 CVD 003030 (New

Hanover County).” At trial, Monica admitted to reading and signing the SAPS and an informed waiver of counsel form on 26 October 2010 after holding onto them for “a few months.” She did not retain counsel to discuss her rights with regard to the divorce or the SAPS, nor did she have anyone else read the SAPS. Brent testified that he suggested to Monica that she retain counsel and told her she had options to obtain legal services free of charge.

Since the SAPS sets out in plain, unambiguous language that Monica would take on full responsibility for the Lexus debt, and Monica read and signed the SAPS, her failure to pay the debt owed on the Lexus constitutes a breach of the agreement. Regardless of any purported failure to understand the agreement’s terms or ignorance of her rights with regard to the separation generally, Monica had a duty to read and understand the contract prior to signing it. She had ample time to do so during the “few months” when she held onto the SAPS and was never unduly coerced or compelled to sign the agreement against her will. Furthermore, Monica testified that Brent paid \$250.00 in child support every two weeks pursuant to the SAPS. See Article I, Section D, Paragraph 14(A) (requiring a payment of \$500 monthly from Brent to Monica in child support). Her acceptance of child support payments pursuant to the SAPS

constitutes an implicit acknowledgement that she considered the agreement binding and legally enforceable.

The trial court denied Plaintiff's claim for breach of contract based on the language of Article II, Section B, Paragraph 19 of the SAPS which states, "[t]he parties stipulate and agree that each will hereafter hold the other free and harmless and indemnify, defend and hold the other harmless from any and all subsequent claims advanced against him/her for the above debts." Because Corning obtained a default judgment prior to the execution of the contract, the court found the judgment did not constitute a subsequent claim and therefore was not subject to the SAPS. This provision, however, plainly pertains solely to Defendant's right to indemnification, not to the terms of the SAPS generally. No provision in the SAPS specifies that a breach of contract may only be found with regard to subsequent claims. Thus, a failure to abide by the specific terms of the SAPS constitutes a breach even if the breach relates to a debt that became delinquent prior to the execution of the SAPS. We hold, therefore, the trial court erred in finding that Monica's failure to pay the Corning debt did not constitute a breach of the SAPS. We reverse the trial court's order dismissing Plaintiff's claim for breach of contract and remand this case for proceedings to determine the amount owed to Plaintiff by Defendant for breaching the SAPS.

IV. Conclusion

For the foregoing reasons, the order of the trial court is Affirmed in part, reversed in part, and remanded.

Judges HUNTER, Robert C., and GEER concur.

Report per Rule 30(e).