

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2452

September Term, 2015

MELISSA ANN BEARDEN

v.

STEVEN WAYNE BEARDEN

Meredith,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: January 18, 2017

This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In this appeal, Melissa Ann Bearden (“Wife”), appellant, contends that the Circuit Court for Charles County erred when it refused to permit her to repudiate an agreement she had reached with Steven Wayne Bearden (“Husband”), appellee, regarding child support. Wife presents one question for our review which we have rephrased: Did the circuit court err in granting Husband’s motion to enforce the settlement agreement regarding child support?¹

For the reasons stated herein, we shall affirm the judgment of the circuit court.

FACTS AND PROCEDURAL HISTORY

The parties to this case were married on June 6, 1987, and separated on March 23, 2014. Three sons were born of the marriage: Son 1, who was emancipated at the time of the proceedings herein; Son 2, whom the parties stipulated was an adult destitute child; and Son 3, who was born in 2003. Although wife had trained as a nurse, she did not work outside the home during the marriage. Husband was part-owner of a printing company and had substantial business interests.

On February 2, 2015, Wife (through counsel) filed a complaint for absolute divorce on the grounds of adultery and desertion. Husband filed an answer on March 23, 2015, and a counterclaim for absolute divorce on March 26, 2015. On June 5, 2015, a scheduling

¹ In her Brief, Wife frames the issue before this Court as an assertion that:

“The Circuit Court erred by not taking testimony on appellee’s additional income and granting appellee’s motion to enforce parties’ marital settlement agreement without analyzing the Maryland Child Support Guidelines and the children’s actual expenses.”

order was issued, setting the close of discovery as November 13, 2015, and scheduling a weeklong hearing to begin on December 7, 2015, on the divorce merits. On June 22, 2015, a hearing was held, after which a *pendente lite* order was entered setting forth Husband's visitation with Son 3. The *pendente lite* order further provided that, "financially, [Husband] shall maintain the status quo, depositing at least his payroll check into the parties' joint bank account[.]"

On September 18, 2015, the parties (both represented by legal counsel) completed ten hours of mediation with a retired judge of the Circuit Court for St. Mary's County. During the mediation session, the parties negotiated a Marital Settlement Agreement ("the Agreement"), the enforceability of which is at issue in this appeal. As relevant to our review, the written Agreement was dated September 18, 2015. It was signed by both parties, and provided as follows.

First, as part of the "Explanatory Statement" set forth at the beginning of the Agreement, the parties noted:

It is the mutual desires [sic] of the parties [to] this Agreement to formalize their separation and to settle all questions of maintenance and support, alimony, counsel fees, their respective rights in the property or estate of the other, and in property owned by them jointly or as tenants by the entireties and in marital property, and all other matters of every kind and character whether arising from their marital relationship or otherwise. The parties acknowledge that the issues of custody and visitation remain unresolved at this time.

It is the intention of the parties that the following shall be effective from the date hereof, regardless of whether or not any Judgment of Divorce is obtained by either party.

NOW, THEREFORE, in consideration of the promises and mutual covenants and understandings of each of the parties, the parties hereby covenant and agree as follows, all as of the effective date hereof.

* * *

5. CHILD SUPPORT

(a) Child Support - Direct Payments

Commencing 1st day of October, 2015 Husband shall pay directly to Wife, for the support of [Son 3] and [Son 2], the sum of Three Thousand Dollars and No Cents Dollars [sic] (\$3,000.00) per month, payable on the first day of each month. Support for [Son 3] shall be designated as \$2,000.00 per month and support for [Son 2] shall be designated as \$1,000.00 per month. Husband's child support payments shall terminate in accordance with the Maryland Child Support Guidelines upon the first to occur of any one of the following events with respect to either Child: (1) death of the Child (2) marriage of the Child (3) the Child's becoming self-supporting or (4) [Son 3]'s arrival at the age of eighteen (18) years except that if [Son 3] shall not have completed high school at such time, Husband's child support payments shall continue until the completion of high school or the occurrence of any other terminating event, but not longer than [] [Son 3]'s arrival at the age of 19 years. The parties acknowledge that [Son 2] has Pervasive Developmental Disorder not otherwise specified and Husband will contribute to [Son 2]'s support past the age of 19 and until otherwise modified by court order. **The parties have agreed to the amount of child support payments set forth above in consideration of each party's rights and benefits under this Agreement, and with due regard for the child support guidelines currently in effect in Maryland. This child support agreement was considered in conjunction with the agreement for alimony herein.**

* * *

9. ALIMONY AND SUPPORT

(a) Alimony Waiver by One Party

In consideration of the terms of this Agreement, the provisions contained herein for the respective benefit of the parties, and for other good and valuable consideration, Husband hereby releases and discharges Wife,

absolutely and forever for the rest of his life, from any claim or right to receive from Wife temporary, definite, or indefinite alimony, support, or maintenance for the past, present, or future. Husband acknowledges that this Paragraph has been explained to him and he understands and recognizes that, by his execution of this Agreement, he cannot at any time in the future make any claim against Wife for alimony, support, or maintenance of any kind whatsoever for himself.

(b) Alimony Payments - Tax Deductible

Husband shall pay directly to Wife, as alimony and for her support and maintenance, the fixed and non-modifiable sum of Five Thousand Dollars (\$5,000.00) per month, accounting from and with the first payment being due and payable on the 5th day of October, 2015 and on the fifth day of each month thereafter. Husband's alimony payments shall be payable by cash, check, or money order payable on demand. Husband's alimony and support obligations as set forth in this Paragraph shall continue to be payable only so long as the parties live separate and apart from each other and shall terminate upon the first to occur of any one of the following events: (1) death of Wife; (2) death of Husband; or (3) payment by Husband of alimony for twelve (12) years from the date of the first alimony payment. In the event of Wife's remarriage, alimony shall terminate twenty-four (24) months after Wife's remarriage. In no event shall Husband have any liability to make any alimony payments or any payment as a substitute for such payments after the death of Wife. The alimony payments shall be taxable to Wife and tax deductible from Husband's income.

(c) Non-Modifiability of Alimony Payments

The parties agree that the provisions of this Paragraph with respect to alimony, Spousal support, and/or maintenance are not and shall not be subject to any court modification. Wife accepts the terms of this Paragraph in lieu of any other provision or allowance of her support. The parties agree that the terms of this Paragraph shall not be subject to any court modification, and the parties waive the right to ever request any court to change or make a different provision for the support and maintenance of either Husband or Wife, temporary or permanent, past, present or future. The parties further expressly covenant and agree that under no circumstances whatsoever shall either of them hereafter apply to any court for an increase or decrease in the amount of, the duration of, or a modification of the terms of such alimony, support, and maintenance as herein provided.

* * *

18. IRA TRANSFER

Husband has the following individual retirement accounts: (1) Merrill Lynch Individual Retirement account [account number redacted], which had an approximate value [of] \$152,401.00 as of September 18, 2015; and (2) CDM 401(k) account. Immediately upon the entry of a Judgment of Absolute Divorce, **the parties agree that the entire sum of the Merrill Lynch IRA shall be transferred and assigned from Husband's individual retirement account to an individual retirement account for the benefit of Wife. The parties agree that immediately upon the entry of a Judgment of Absolute Divorce, the sum of \$833,830.00 shall be transferred and assigned from Husband's CDM 401(k) account to an account for the benefit of Wife. [. . .]**

19. MARITAL HOME

(a) Transfer of One Party's Interest in Home

The parties own, as tenants by the entirety, improved premises in Charles County known as [redacted] Drive, LaPlata, Maryland 20646 (the "Home"). **The Home is not subject to a lien of a mortgage. Simultaneously with the execution of this Agreement, and upon presentation to Husband of the appropriate deed, Husband shall convey to Wife all of his right, title, and interest in and to the Home, and shall execute any deed, assignment, or other documents which may be reasonably [sic] for the conveyance of such right, title, and interest, to the end that Wife shall be the sole owner of good and merchantable title to the Home. [. . .]**

* * *

22. FINANCIAL DISCLOSURE

(a) Complete Financial Disclosure

Each party acknowledges that he or she has been informed of the income, assets, liabilities, and financial circumstances of the other party. **Each party is satisfied with the nature and extent of the financial disclosure, and each has had the benefit of the advice of counsel of his or her own selection.** Each party has previously served upon the other Answers to Interrogatories and Response to Request for Production of Documents[.]

The provisions of this Agreement and their legal and practical effect have been fully explained to each party by their respective counsel. The parties have been advised by their respective counsel of their right to compel discovery and inspection of the other party's financial books and records, both business and personal, and of their right to have accountants, appraisers or others investigate, appraise or evaluate the other party's business and property. Each party has waived these rights and instructed his or her respective counsel not to take any further steps, themselves or through others, in connection with discovery, inspection, investigation, appraisal or evaluation of the other party's business or property.

(b) Waiver of Right to Relief from the Court Except for Custody and Visitation Issues

Each party is entering into this Agreement freely and voluntarily, and each party regards the terms of this Agreement as fair and reasonable. Wife accepts the benefits of this Agreement as consideration for her waiver of her right to seek a court-ordered monetary award. This includes Wife's waiver of her right to ask a court to consider the value of Husband's business interests, investments, income and all other assets which Husband now has or may later acquire. Husband accepts the benefits of this Agreement as consideration for his waiver of his right to seek a court-ordered monetary award. This includes Husband's waiver of his right to ask a court to consider the value of Wife's business interests, investments, income and all other assets which Wife now has or may later acquire.

* * *

27. NON-MODIFICATION

Except for the terms and provisions regarding child custody and monthly child support payments, it is expressly understood and agreed by the parties that all promises set forth in this Agreement are not subject to any Court modification.

* * *

29. FURTHER ACTS TO EFFECTUATE AGREEMENT

Each party shall execute such other and further instruments and perform such acts as may be reasonably required to effectuate the purpose of this Agreement.

30. AGREEMENT NOT THE RESULT OF FRAUD OR DURESS

The parties mutually agree that in entering into this Agreement, **each party signs this Agreement freely and voluntarily** for the purpose and with the intent of fully settling and determining all of their respective rights and obligations growing out of or incident to their marriage. **Each party was represented by independent counsel of his or her own selection in the negotiation and execution of this Agreement. Husband and Wife acknowledge that this Agreement is a fair and reasonable agreement, and that it is not the result of any fraud, duress or undue influence exercised by either party upon the other, or by any person or persons upon either party.**

(Emphasis added.)

To recap, under the Agreement, Wife was to receive the marital home, unencumbered by a mortgage; two M & T Bank accounts; a 2013 Lexus RX 350 and a 2003 Acura MDX, free of any car payment; sole ownership of “certain investment, and retirement accounts” with Merrill Lynch, T. Rowe Price, and Fidelity that had been jointly held by the couple; \$152,401.00 from Husband’s Merrill Lynch IRA to be transferred to an IRA for her benefit; \$833,830.00 from Husband’s CDM 401(k); \$3,000.00 per month in child support; and \$5,000.00 per month in non-modifiable alimony for up to twelve years. Wife warranted in the Agreement that she had had the assistance of her attorney in negotiating the agreement, had been fully informed of Husband’s finances, and that she was satisfied with Husband’s financial disclosures. She expressly disclaimed any need to further investigate or have experts analyze Husband’s finances. She also expressly waived “her right to ask a court to consider the value of Husband’s business interests, investments, income and all other assets which Husband now has or may later acquire.”

On November 3, 2015, forty-six days after entering into the Agreement, Wife filed an Amended and/or Supplemental Complaint for Absolute Divorce, in which she asked the court to increase Husband's child support obligation from \$3,000 per month (as agreed on September 18, 2015) to \$7,500 per month. Wife asserted that "an increase would be in the best interest" of Son 2 and Son 3, and that Husband could afford to pay more than \$3,000 per month.

On November 9, 2015, Husband filed a Motion to Enforce Agreement and Motion to Dismiss, or in the Alternative Motion for Summary Judgment. He pointed out that Wife failed to allege that there was any defect in the Agreement, or that a material change in circumstances had taken place in the intervening 46 days. He averred that "all of the facts alleged in the Amended Complaint were known to" Wife at the time she, with the assistance of counsel, negotiated and entered into the Agreement; that Wife's knowledge was based on "thousands of pages of discovery" provided to her pursuant to subpoenas she had served on Husband's business partner; and that Wife expressly waived, in the Agreement, further court intervention relative to Husband's "business interests, investments, income and all other assets which Husband now has or may later acquire." Accordingly, Husband asked the court to enforce the Agreement and dismiss Wife's request to increase his child-support obligation. Husband also moved for the court to postpone the trial date until after the pending motions had been ruled upon.

On November 13, 2015, Wife filed an opposition to Husband's motion. She asserted that summary judgment could not be granted because there was a dispute of

material fact, namely, that she felt Husband should pay more in child support and Husband did not agree. She recited that it was in the children's best interest for her to receive an increase in child support, citing financial information regarding Husband's 2014 and 2015 income and bonus (which she did not disclaim having had at the time of entering into the Agreement). She asserted that, on or about October 22, 2015, she "indicated [presumably to her counsel] that she could not sufficiently provide for the children with only \$3,000 per month in child support," whereupon her counsel "then computed the Guidelines." Wife alleged that the amount of Husband's child support obligation under the "Guidelines is [at least] \$7,593 per month."² Wife asserted in her opposition that "[t]he court is required by law to start with the Child Support Guidelines when reviewing any [child support] agreement. The Court then determines if a deviation is in the best interest of the child."

By order dated November 13, 2015, the court denied Husband's request to continue the trial date, and ordered that Husband's motion to enforce the agreement and motion to dismiss the amended complaint "will be addressed on December 7, 2015."

At a hearing in open court on December 7, 2015, the court heard argument on the motion to enforce, including extensive proffers from Wife's counsel regarding the evidence he would present to avoid enforcement, and the court received numerous exhibits from the parties, including financial statements and guidelines worksheets.

² Section 5(a) of the Agreement included the following representation relative to child support guidelines: "The parties have agreed to the amount of child support payments set forth above in consideration of each party's rights and benefits under this Agreement, and with due regard for the child support guidelines currently in effect in Maryland."

Immediately after meeting with counsel in chambers, the court granted Husband's motion to enforce the Agreement, explaining:

[THE COURT]: After hearing testimony and reviewing the file and the various Exhibits, the Court feels that, you know, the parties entered into a Separation Agreement on September the 18th, 2015. They did that after lots of discovery and back and forth and, for what I heard in the argument, ten hours of negotiations in [Husband's counsel]'s office. And, the Agreement was, you know, done as a whole. **Granted, child support is always subject to modification by the Court, and . . . but forty-one³ days after an Agreement is signed to then want to modify the child support, you . . . you have to view the whole thing as a package deal. Plus, in an above the guidelines case even with these others, this Court would be satisfied that the thirty-six thousand dollars a year in child support is more than adequate to support two children** because that's tax free money, you know, it's the equivalent of probably fifty thousand or more of money. And, so I will grant the . . . Motion to Enforce the Agreement.

(Emphasis added.)

Thereafter, the court took testimony on the divorce merits, and granted Husband's Counterclaim for Absolute Divorce. Later that day (*i.e.*, on December 7, 2015), the court signed a written Judgment of Absolute Divorce which included the following statements pertinent to child support:

The Defendant's Counterclaim for Absolute Divorce and the Plaintiff's Amended and/or Supplemental Complaint for Absolute Divorce having come before the Court on the 7th day of December, 2015, the Court having considered the arguments, proffers and evidence of the parties, IT IS, this 7 day of December, 2015, by the Circuit Court for Charles County, Maryland,

ORDERED, that the Defendant/Counter-Plaintiff ("Mr. Bearden") is hereby granted an absolute divorce from the Plaintiff/Counter-Defendant ("Mrs. Bearden"); and, it is further,

³ *Sic*. It was actually 46 days.

ORDERED, that the Marital Settlement Agreement between the parties dated 18th day of September, 2015, (the “Agreement”) be and the same hereby is approved and made part of and incorporated in this Judgment, but not merged therein, having the same force and effect as if fully set forth herein; and, it is further

ORDERED, that the Plaintiff/Counter-Defendant’s request to modify the child support set forth in the Agreement is DENIED; and, it is further

ORDERED, that the Court has considered the arguments, proffers and evidence of the parties, considered the parties’ respective financial circumstances including their income, the income imputed to the Plaintiff/Counter-Defendant by Stipulation, the parties’ respective assets as divided pursuant to the Marital Settlement Agreement, and the parties’ expenses as set forth in the Financial Statements filed with the Court and hereby finds that the child support set forth in the Agreement is in the children’s best interest;

On December 21, 2015, the court docketed the Judgment of Absolute Divorce (dated December 7, 2015). Wife thereafter noted a timely appeal.

DISCUSSION

In CYNTHIA CALLAHAN & THOMAS C. RIES, FADER’S MARYLAND FAMILY LAW (6th ed. 2016), the authors summarize Maryland law governing parents’ agreements relative to child support as follows:

Agreements between a father and mother for the benefit of their children are the subject of many separation agreements. Agreements providing for the support of the minor children by a mother and father may always be modified in accordance with the best interest of the child.

Md. Code Ann. Fam. Law § 8-103 is a codification of the case law:

- (a) Provision concerning children. The court may modify any provision of a deed, agreement, or settlement with respect to the care, custody, education, or support of any minor child of the

spouses, if the modification would be in the best interests of the child.

This does not mean that agreements between parents are meaningless or are to be casually disregarded as the court searches elsewhere for what is in the best interests of the child. Absent some defect that would make the agreement invalid or unenforceable, it ordinarily will be approved and given effect. In the absence of compelling evidence to the contrary, the trial court should presume that the decision or resolution which the parents have agreed upon is in the best interests of the child. That presumption is reasonable given the fact that while parents, like all humans, often make mistakes, they will not ordinarily agree in writing to act in a manner detrimental to their children.

Id. at § 14-4[b][1] (citing *Ruppert v. Fish*, 84 Md. App. 665, 674-75 (1990)).

Wife's asserted rationale for seeking an increase in the agreed amount of child support was contained in ¶ 9 of her amended complaint, in which she alleged: "The Defendant is capable of paying more than Three Thousand Dollars (\$3,000) per month in child support. It is in the best interest of [Son 2] . . . and [Son 3] . . . that the Defendant pay more than Three Thousand Dollars (\$3,000) per month in child support to the Plaintiff." At the merits hearing on December 7, 2015, Wife's counsel argued, *inter alia*:

I understand that eight thousand dollars a month . . . ninety-six thousand dollars a year . . . is a good chunk of change, but if [Husband] makes as much as I think the evidence is going to show . . . at least six hundred and sixty-one thousand dollars per year . . . well, Your Honor, my client, as I set forth in the pleadings or the Memorandum, is that she tried this. She tried this.^[4] And, expenses came along because up until September 18, 2015, [Husband] was depositing about twelve thousand five hundred dollars per month into the joint account. Then after September 18, 2015, that stopped immediately. And, so she had these expenses to take care of and to pay. And, so she tried it as far as eight thousand dollar[s] a month, and it's not working.

⁴ Representing that, during the 46 days between signing the Agreement and filing a pleading on November 3 requesting a modification, Wife had tried to make do with only \$8,000 per month (*i.e.*, \$3,000 in child support and \$5,000 in alimony).

Wife did not contend that the agreement contained a defect. She merely asserted that it would be in the children’s best interest for the court to disregard the agreed-upon support provisions in the parties’ Agreement because Husband could, she argued, afford to pay more than she had recently agreed to accept.

Wife urges us to rule that the trial court erred in enforcing the Agreement because “the Maryland Child Support Guidelines do not support the \$3,000.00 per month figure the parties agreed to” We are not persuaded. The trial court correctly recognized that this is an above-guidelines case. As we said in *Malin v. Mininberg*, 153 Md. App. 358, 410 (2003): “An award of child support in an above Guidelines case will not be disturbed unless there is a ‘clear abuse of discretion.’” (Quoting *Voishan v. Palma*, 327 Md. 318, 331 (1992)).⁵

Given the information that was presented to the court in this case, it was not an abuse of discretion for the court to grant Husband’s motion to enforce the Agreement.

**JUDGMENT OF THE CIRCUIT
COURT FOR CHARLES COUNTY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**

⁵ We note that, in *Voishan*, 327 Md. at 331-32, the Court of Appeals observed that, in above Guidelines cases, there is a rebuttable presumption that the “maximum support award under the schedule is the minimum which should be awarded.” *Accord Otley v. Otley*, 147 Md. App. 540, 56-62 (2002). Here, the agreed support meets this threshold for two children, but it will not be adequate to satisfy this presumption if it becomes payable only for Son 2. In the event that occurs, the court will need to revisit the amount of child support payable by Husband.