5/30/24 - mailed to all parties of record - Atty Ac

DOCKET NO.: KNO -FA17-5104188-S **SUPERIOR COURT**

KEEGAN M. FITZGERALD **J.D. OF NEW LONDON**

V. **AT NORWICH**

CYNTHIA B. FITZGERALD **MAY 30, 2024**

MEMORANDUM OF DECISION REGARDING DEFENDANT'S MOTION TO RE-OPEN (120.00)

A judgment of dissolution entered in this matter on February 6, 2017. Thereafter, the defendant filed a post judgment motion for modification dated October 1, 2023, which was heard on November 8, 2023. At that time, the parties presented the court with a signed agreement stating, in pertinent part that "the existing support order [of zero] shall continue unchanged" and "in addition, the father shall contribute $40 per month for the child's gymnastics as long as she participates in the program."

Now comes the defendant who filed a "motion to open judgment" dated March 25, 2024. Notwithstanding the motion's caption, the court will construe said motion as a motion to vacate the agreement of November 8, 2023, as it is clear that the judgment entered in 2017. Notwithstanding the fact that said motion is styled as a "motion to open judgment," it is clear that the defendant is not seeking to open the judgment of dissolution from 2017 but rather, seeking to vacate the agreement of November 8, 2023 which reiterated that no child support would be paid.

The parties appeared before the undersigned on May 29, 2024 to argue the motion and the defendant presented testimony.

The defendant argued that the agreement which she entered into on November 8, 2023 was the subject of duress and mistake. During oral argument, counsel for the defendant conceded that there was no "mutual mistake" but rather, a mistake on the defendant's part that this order entered on November 8, 2023 would be binding upon her and that she was agreeing that there would be no child support paid.

The defendant testified credibly that she suffers from panic attacks, depression and anxiety and that her trip to court was accompanied by her crying and sobbing. She further testified credibly that she felt unprepared and intimidated as she was self-represented and her ex-husband was represented by counsel. Nonetheless, the defendant conceded that no one threatened or intimidated her into giving up child support.

During the proceeding before the court on November 8, 2023, the parties were canvassed as to their understanding of their agreement. The Court was careful to ask the self-represented defendant "Did you sign it freely and voluntarily? Do you understand that you don't have to do this? You could have had a hearing if you wanted to. You seem a little reluctant." She responded "Yes I understand.... I am a little reluctant but I don't want to fight and lose out on more time." She was further asked "Well, did you feel rushed, pressured or bullied into signing this agreement?" She replied "I didn't feel rushed or bullied, but I did feel that it was unfair to the fact that Keegan has given up his visitation for six years and now when I filed all this stuff is asking for this time back even though our daughter has been on the schedule for six years and now once all this extra time after six years of not wanting it. Besides

that, I feel like it is fair and I feel like we did negotiate to the best of our ability, but I do feel like this might have a negative impact but....On my daughter"

During the canvas, there was further discussion between the Court and the defendant exclusively on the subject of access and whether the access schedule is fair and, in the child's, best interest.

In fact, the Court advised the defendant that it did not want to approve an agreement that she might later regret and advised the parties that the Court would pass the case and give them 10 minutes or so to consider their options. The Court further inquired as to age of the child who is eight. At that point the Court observed "It's not going to be the last custody order. At eight, it's definitely going to change because I do this all the time, and I just know it will.... Because things happen in life and so this is not going to be the last word- this is a word." After further discussion as to whether this access schedule was or was not in the child's best interest the Court stated "How about this: how about you take this agreement for a test drive? And live it and do it and with the opportunity to come back to court in say ...I don't know, four or six weeks, something like that and tell me how things are going." At no court time did the Court suggest or did the defendant argue that the child support order should be readdressed or was in any way problematic. The discussion was focused on the access schedule.

LEGAL DISCUSSION

Opening a judgment within 4 months is discretionary. See *Brehm v. Brehm*, 65 Conn. App. 698 (2001), wherein the court held that the trial court did not abuse its discretion in denying the defendant's motion to open the dissolution judgment pursuant to General Statutes

§ 52-212a because the defendant, who did not appear at his dissolution hearing because of a mandatory work-related meeting, had sufficient time prior to trial to seek a continuance. After 4 months, "absent waiver, consent or other submission to jurisdiction, a court lacks the power to modify or correct a judgment other than for clerical reasons. . . . A judgment rendered may be opened after the four month limitation if it is shown that the judgment was obtained by fraud, in the absence of actual consent, or because of mutual mistake." (Citations omitted.) *Hill v. Hill*, 25 Conn. App. 452, 454-55, cert. denied, 220 Conn. 917 (1991).

"[I]f the judgment conforms to the stipulation it cannot be altered or set aside without the consent of all the parties, unless it is shown that the stipulation was obtained by fraud, accident or mistake." (Internal quotation marks omitted.) *Magowan v. Magowan*, 73 Conn. App. 733, 737 (2002), cert. denied, 262 Conn. 934 (2003) (the fact that a third party, in this case a trustee, is not going to satisfy the intentions expressed by the parties in a stipulated agreement that was incorporated in a dissolution judgment is not a mutual mistake that can be a basis for opening the judgment).

"To conclude that a stipulated judgment resulted from duress, the finder of fact must determine that the misconduct of one party induced the party seeking to avoid the stipulated judgment to manifest assent thereto, not as an exercise of that party's free will but because that party had no reasonable alternative in light of the circumstances as that party perceived them to be." *Jenks v. Jenks*, 232 Conn. 750, 753 (1995) (duress finding upheld despite the dissolution court's canvass of defendant concerning the agreement).

In the present case, the defendant is not seeking to open the judgment but rather, seeking to vacate an agreement which she made in open court. Her remedy to vacate an agreement would have been to reargue, appeal or modify that agreement. Even if the same standards to open a judgment applied to vacating an agreement, the Court finds that there was no mutual mistake, fraud or duress.

CONCLUSION

The motion to open is denied.

Shluger, J.