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Giarrusso v. Giarrusso, 204 A.3d 1102 (R.I. 2019)

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Family Law. *Giarrusso v. Giarrusso*, 204 A.3d 1102 (R.I. 2019). The Rhode Island Supreme Court affirmed the Family Court’s decision and order enforcing a property settlement agreement that the parties had agreed to as a part of their dissolution of marriage.¹

FACTS AND TRAVEL

Plaintiff Diane Giarrusso (Diane)² and Defendant Paul Giarrusso (Paul) divorced after twenty-three years of marriage.³ During their marriage, the parties acquired two dogs: a greyhound named Marox and a Chihuahua named Winnie.⁴ In October 2016, the parties “entered into a Marital Settlement Agreement (MSA), formalizing the terms of dissolution of their marriage.”⁵ The MSA awarded Diane “all right title and interest in and to” the two dogs, but Paul was “permitted to take the dogs for visits from Tuesday morning at 8 a.m. through Thursday morning at 8:00 a.m.”⁶

From October 2016 until the end of March 2017, Diane abided by the MSA, allowing Paul’s weekly visitation with the dogs.⁷ By the end of March 2017, however, “Diane unilaterally ceased allowing the weekly visits.”⁸ In May 2017, Paul filed a motion for post-final judgment relief with the Providence County Family Court.⁹ In his motion, Paul claimed that “Diane had denied his visitation time with the dogs for several weeks.”¹⁰ Paul asked the

1. *Giarrusso v. Giarrusso*, 204 A.3d 1102 (R.I. 2019).

2. Consistent with the Court’s opinion, Diane Giarrusso and Paul Giarrusso are referred to by their first names.

3. *Id.* at 1104.

4. *Id.*

5. *Id.*

6. *Id.* In January 2017, the Providence County Family Court entered a final judgment officially dissolving the marriage. *Id.* The judgment “incorporated the MSA without merging it.” *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

Family Court to “enforce the MSA by ordering Diane to comply with the visitation schedule, provide makeup visits for the weeks denied to him, and award his attorney’s fees for his pursuit of the court-enforcement order.”¹¹ Diane opposed the motion and filed her own motion for relief in July of 2017.¹² Diane looked “to enjoin and restrain Paul from having any time with the dogs[,]” claiming that “Paul had not properly cared for the dogs when they were with him and had attempted to keep the dogs away from her, thereby breaching the MSA.”¹³

On December 4, 2017, a Family Court justice held a hearing on the matter where both parties testified.¹⁴ The hearing justice also reviewed text messages and emails exchanged between the parties, as well as veterinary bills and records.¹⁵ In her testimony, Diane gave examples of Paul’s alleged mistreatment of the dogs.¹⁶ Diane attested that “Marox returned from one visit with one of his claws damaged, hanging and bleeding,” and that “Marox returned from another visit with a ‘huge bubble on his lip.’”¹⁷ After both instances, Diane “took Marox to the vet.”¹⁸ Paul, however, refuted Diane’s allegations, arguing that “he heard about the damaged claw for the first time while in court and that the bubble on Marox’s lip had appeared while he was away for a two-week work-related trip.”¹⁹ Additionally, Paul pointed out that “the MSA gave Diane complete control over the care of the dogs, such that he could not take them to the vet or make any decisions about their care.”²⁰

Paul’s last visitation with the dogs occurred on March 29, 2017.²¹ That afternoon, Paul called Diane to tell her that “the dogs were acting strangely and [that] Winnie was whimpering.”²² When

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 1104–05.

16. *Id.* at 1105.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* Through text messages, the parties “argued . . . whether Diane would pick up only Winnie to take him to the vet or whether she would pick up both dogs because, according to Diane, the dogs became anxious when they

Diane arrived at Paul's residence, however, she received the unfortunate news that Marox was nowhere to be found.²³ Paul testified that after his telephone conversation with Diane, "he had let the dogs out to relieve themselves and he thought both dogs had returned inside the house, but then he could not find Marox."²⁴ Friends, family, and neighbors of the parties joined them in the search for the greyhound.²⁵ After an hour and a half search, "Paul found Marox, who had apparently been in his house the entire time, stuck in a closet."²⁶ Paul attested that he was distressed over Marox's disappearance and assured that the incident was not a malicious attempt to upset Diane.²⁷

Following the incident on March 29, Paul attempted to visit the dogs but stated that "Diane had not responded to his communications."²⁸ In her own motion for relief, Diane asked the hearing justice to "withdraw the court's approval of the MSA because, in light of the incidents described during the testimony, the MSA provision allowing Paul weekly visitations was inequitable."²⁹ In response, Paul argued that "Diane had breached the terms of the MSA, which she had effectively admitted when she stated that she had not allowed him to see the dogs since March 29."³⁰

After hearing both parties' arguments, the hearing justice held in favor of Paul.³¹ The hearing justice found that the MSA "unambiguously gave Paul the right to visitation with the dogs every week from Tuesday to Thursday and did not provide for splitting the costs of the care and maintenance of the dogs."³² The

were separated." *Id.* The parties "eventually agreed that Diane would pick up both dogs so she could take Winnie to the vet." *Id.*

23. *Id.*

24. *Id.*

25. *Id.* "Diane testified that she 'was so upset and hysterical' during the search effort that she 'was puking on the side of the road.'" *Id.* Similarly, Paul testified that he was emotional and crying "both before Diane arrived and throughout the search for Marox." *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 1106. The Court noted that, "[d]uring his testimony, Paul's distress about the litigation over the dogs was palpable." *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

hearing justice also noted how “Paul always acted in good faith with respect to the dogs.”³³ Accordingly, the hearing justice ordered that Paul “ha[ve] the dogs Tuesdays through Thursdays as provided in [the MSA]” and awarded attorney’s fees to Paul in the amount of \$5,248.70.³⁴ Further, “[t]he hearing justice denied Diane’s request relief.”³⁵ Diane timely appealed to the Rhode Island Supreme Court (the Court).³⁶

ANALYSIS AND HOLDING

The Court sought to determine two issues: (1) whether the hearing justice erred by not reforming the MSA and (2) whether the hearing justice erred in finding that “there was no inequity in enforcing [the terms of] the MSA as written.”³⁷ The Court limned the standard of review, stating that it “will not disturb findings of fact made by a trial justice or magistrate in a divorce action unless he or she has misconceived the relevant evidence or was otherwise clearly wrong.”³⁸

The Court first rejected Diane’s argument that “the hearing justice erred by not reforming the MSA.”³⁹ The Court pointed out that a property settlement agreement is a contract for all legal purposes.⁴⁰ Accordingly, the Court reiterated that before a contract is subjected to judicial reformation, the court must first find a mutual mistake between the parties.⁴¹ The court defined a mutual mistake as “one that is common to both parties wherein each labors under a misconception respecting the *same terms* of the written

33. *Id.*

34. *Id.* (internal quotations omitted).

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* (quoting *Bober v. Bober*, 92 A.3d 152, 157 (R.I. 2014)).

39. *Id.* at 1107.

40. *Id.* “It is well settled that a property settlement agreement that has been ‘incorporated by reference, but not merged into the final divorce decree, retains the characteristics of a contract.’” *Id.* (quoting *Esposito v. Esposito*, 38 A.3d 1, 5 (R.I. 2012)). “Consequently, unless it is shown that the trial justice either improperly exercised his or her discretion or that there was an abuse thereof, [the] Court [said it] will not disturb the trial justice’s findings.” *Id.* at 1106 (quoting *Palin v. Palin*, 41 A.3d 248, 253 (R.I. 2012)).

41. *Id.* at 1107 (citing *Esposito*, 38 A.3d at 5).

agreement sought to be reformed,”⁴² and explained that “[w]hen a mutual mistake is manifest in the agreement at the time it is entered into, the agreement fails in a material respect correctly to reflect the understanding of both parties.”⁴³

Here, the Court first recognized that the MSA is a contract and that dogs are personal property.⁴⁴ The Court noted that the hearing justice “explicitly found that Diane understood the contract and concluded there was no mistake in the contract.”⁴⁵ As the Court explained, “[b]oth parties testified that, at the time they entered into the MSA, they intended for Diane to have all rights to the dogs, with weekly visitation for Paul.”⁴⁶ Accordingly, the Court held that there was “no mutual mistake in the MSA’s visitation term and no indication that the hearing justice misconceived the evidence when she concluded that the MSA need not be reformed.”⁴⁷

The Court then addressed Diane’s argument that the MSA was “inequitable” and that Paul “acted in bad faith.”⁴⁸ The Court acknowledged “the Family Court’s important role in monitoring property settlement agreements between spouses and ensuring an equitable division of assets.”⁴⁹ The Court explained that while the Family Court does have the authority to review and reform a property settlement agreement if it determines that the agreement is inequitable, “[i]t is not the function of [the Supreme] Court, or the Family Court, to set aside a property settlement agreement simply because a party no longer wishes to be bound by its terms or is unhappy with the result.”⁵⁰ Consequently, the Court affirmed the Family Court justice’s decision and order.⁵¹ The Court held

42. *Id.* (quoting *Esposito*, 38 A.3d at 5).

43. *Id.* (quoting *Esposito*, 38 A.3d at 5).

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* (citing *Bober v. Bober*, 92 A.3d 152, 157 (R.I. 2014) and *Gorman v. Gorman*, 883 A.2d 732, 740-41 (R.I. 2005)).

48. *Id.*

49. *Id.* (citing *Gorman*, 883 A.2d at 737).

50. *Id.* at 1108 (quoting *O’Donnell v. O’Donnell*, 79 A.3d 815, 822 (R.I. 2013)) (internal quotations omitted).

51. *Id.* “After reviewing the entire record in this case, [the Court found] that the hearing justice’s findings and conclusions were well supported by the

that “it is not inequitable to enforce the visitation term in the MSA as written.”⁵² The Court ordered Diane to comply with the MSA and to pay \$5248.70 in attorney’s fees.⁵³

COMMENTARY

The Court found that the hearing justice did not err in (1) not reforming the MSA and (2) not finding that the MSA was inequitable.⁵⁴ In doing so, the Court emphasized how it is neither the Court’s nor the Family Court’s function to tear up or reform a contract simply because one of the parties is no longer content with it.⁵⁵ Here, the Court is directly referring to Diane, who breached the contract by not permitting Paul to see the dogs after March 29.⁵⁶ As a result of this breach, Diane must not only comply with the MSA, but must also pay attorney’s fees in the amount of \$5248.70.⁵⁷

While the Court made it clear that Diane would not have been able to get a judicial remedy for what she sought—retaining full ownership of the dogs without any visitation arrangement—the Court did indicate that it nevertheless might have reviewed her objection to paying Paul’s attorney fees.⁵⁸ The Court concluded, however, that any such argument was waived.⁵⁹ Even though Diane “briefly mention[ed] that the hearing justice erred by awarding attorney’s fees to Paul” during her pre-briefing statement, Diane’s argument was waived because she failed to preserve the issue when “she did not object to the court’s order memorializing both the award and her consent thereto.”⁶⁰ Even if Diane had objected to the court’s order of the award, however, Diane nonetheless waived appellate review of the attorney’s fee because she did not meaningfully discuss this argument, but rather

testimony and evidence before her and that she neither misconceived the evidence nor was clearly wrong in her findings of fact.” *Id.*

52. *Id.*

53. *See id.* at 1106.

54. *Id.* at 1007–08.

55. *Id.* at 1008.

56. *Id.* at 1106.

57. *See id.* at 1007–08.

58. *See id.* at 1107 n.8.

59. *Id.*

60. *Id.*

simply mentioned the issue in her pre-briefing statement.⁶¹ Thus, while the Court made it clear that Diane would not be able to have exclusive rights to the dogs, the Court would have reviewed her objection to paying Paul's attorney fees if she had preserved the issue below and argued the issue on appeal.⁶²

CONCLUSION

The Rhode Island Supreme Court held that the hearing justice did not err when she did not reform the MSA and when she did not find the MSA inequitable.⁶³ Pursuant to contract law, the Court found that the Family Court did not err in enforcing the property settlement agreement the parties had agreed upon as a part of their dissolution of marriage.⁶⁴

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61. *Id.* (citing *Terzian v. Lombardi*, 180 A.3d 555, 558 (R.I. 2018)).

62. *Id.*

63. *Id.* at 1102.

64. *Id.*