

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Lord v. Lord

220 So. 3d 575 (Fla. 4th DCA 2017) · Decided June 21, 2017

SUMMARY

The Florida appellate court held that a trial court must identify, value, classify, and distribute marital and non-marital property under section 61.075, Florida Statutes, even when the parties' marital settlement agreement requires them first to divide personal property amicably or through mediation. The court reversed orders denying the former husband's motions to enforce the agreement, compel mediation, and compel an inventory. On remand, the trial court was directed to conduct the necessary proceedings and make written findings if the dispute was not resolved.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Kuntz, J.; Gross, J.; Conner, J.
JURISDICTION	Florida
DECIDED	June 21, 2017
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Former Husband appealed orders denying his motions to enforce an incorporated marital settlement agreement, compel mediation, and compel an inventory of personal property.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Former Husband v. Former Wife

TOPICS

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PRACTICE AREAS

family law dissolution of marriage equitable distribution appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court could deny the Former Husband's motions concerning unresolved personal-property distribution after the parties' nonjudicial efforts failed.

2. Whether section 61.075, Florida Statutes (2012), required the circuit court to identify, value, classify, and distribute the disputed marital and non-marital personal property.

HOLDINGS

1. Section 61.075, Florida Statutes (2012), required the circuit court to identify and value all marital and non-marital property and distribute the marital property; the parties' agreement to attempt a nonjudicial division did not eliminate that obligation when their efforts failed.
2. The circuit court could compel mediation, but if it declined to do so or mediation failed, it was required to conduct a hearing and make written findings identifying, valuing, and classifying the contested personal property and distributing the marital property.

KEY QUOTATIONS

“the parties’ agreement to attempt to distribute the personal property without court intervention did not eliminate the court’s statutory obligation to do it for them when their efforts at a non-judicial resolution failed.” (576)

“the court shall conduct a hearing and make written findings that sufficiently identifies the contested personal property, values the contested personal property, determines whether the contested personal property is marital or non-marital, and distributes the marital property.” (576)

FACTUAL BACKGROUND

The parties' final judgment of dissolution incorporated an agreement providing that they would amicably divide their personal property, furnishings, and similar items, and mediate any unresolved division. The parties could not resolve the distribution of those items. The circuit court denied the Former Husband's motions after questioning whether mediation would be truthful and whether the court would have to determine which items were marital and non-marital.

PROCEDURAL HISTORY

The circuit court entered a final judgment of dissolution of marriage incorporating the parties' marital settlement agreement. After the parties were unable to amicably divide their personal property and furnishings, the Former Husband moved to enforce the agreement, compel mediation, and compel an inventory. Following a hearing, the circuit court denied the motions, and the Former Husband appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court may compel mediation. If it declines to compel mediation or the parties cannot resolve the dispute through mediation, the court must conduct a hearing and make written findings sufficiently identifying

the contested personal property, valuing it, determining whether it is marital or non-marital, and distributing the marital property.

CASES CITED

- Siegel v. Siegel, Siegel v. Siegel, 967 So. 2d 349, 351 (Fla. 3d DCA 2007)
- Patino v. Patino, 122 So. 3d 961, 963 (Fla. 4th DCA 2013)
- Whelan v. Whelan, 736 So. 2d 732, 733 (Fla. 4th DCA 1999)
- Pierre v. Jonassaint, 212 So. 3d 1131, 1133 (Fla. 3d DCA 2017)

OPINION

KUNTZ, J.

Kuntz, J: The Former Husband appeals the circuit court's orders denying his motions to enforce the marital settlement agreement, compel mediation, and compel an inventory of personal property and similar items. We reverse because section 61.075, Florida Statutes (2012), required the court to identify and value all marital and non-marital property, and distribute the marital property.

Five years ago, the circuit court entered a final judgment of dissolution of marriage and incorporated marital settlement agreement. Within the incorporated marital settlement agreement was a provision which stated that the parties would, "amicably divide all personal property, furnishings, and other like items between themselves" and, if not able to do so, they would mediate the division of any remaining items.

As often occurs, the parties were unable to resolve the distribution of personal property and furnishings. Therefore, the Former Husband filed a motion to enforce the marital settlement agreement, a motion to compel mediation, and a motion to compel inventory.

The circuit court held a hearing on the motions and heard testimony from the Former Husband and Former Wife. After the parties testified, the court expressed concern about mediation and whether the parties would be truthful with the mediator. It also questioned, if it ordered an inventory of the remaining items of personal property, whether the court was "supposed to figure out" the truth regarding which items were marital and non-marital.

After listening to counsel's answers to its questions, the court denied the Former Husband's motions. In a marital dissolution action, section 61.075, Florida Statutes (2012), "expressly requires trial courts" to make specific written findings identifying, valuing, and distributing marital and non-marital property. Siegel v. Siegel, 967 So.2d 349, 351 (Fla.

3d DCA 2007); see also Patino v. Patino, 122 So.3d 961, 963 (Fla. 4th DCA 2013); Whelan v. Whelan, 736 So.2d 732, 733 (Fla. 4th DCA 1999). While the procedural posture of this dissolution action was somewhat unique, the parties' agreement to attempt to distribute the personal property

without court intervention did not eliminate the court's statutory obligation to do it for them when their efforts at a non-judicial resolution failed.

The court's orders are reversed and the case is remanded for further proceedings. On remand, the court may compel mediation. However, if the court declines to compel mediation or the parties are unable to resolve the dispute through mediation, the court shall conduct a hearing and make written findings that sufficiently identifies the contested personal property, values the contested personal property, determines whether the contested personal property is marital or non-marital, and distributes the marital property.

Pierre v. Jonassaint, 212 So.3d 1131, 1133 (Fla. 3d DCA 2017). Reversed and remanded with instructions. Gross and Conner, JJ., concur.