

Motions to Enforce Settlement Agreements

By Dodie Sachs, Esq.

Due to the fact that the negotiations in a family law case are frequently protracted, there is often a dispute as to the specific terms of settlement at the end of the negotiations. In many situations, complex determinations regarding the parties' children or division of assets are described simply in negotiations and in the memorialization of settlement. For example at mediation or during settlement discussions, the parties may agree that Mom has custody of the children without further discussion of specific terms. When the parties attempt to transform the simple statement regarding custody of the children into fully developed settlement agreement language, disputes often arise as the full language typically covers several pages. When disputes over specific language arise, the legal standard as to what is an enforceable settlement agreement and what is not can be unclear.

The first step in determining whether there is an enforceable settlement agreement is determining whether there is an agreement at all. When parties do not execute a memorialization of settlement, but only state the agreed upon terms into the record of the court, or have an informal agreement that is not reduced to writing at the end of settlement negotiations, the question arises if an oral agreement is sufficient to resolve a family law case. "The parties to a [divorce case] may by oral agreement compromise and settle the same, which will bind them although not reduced to writing." *Mathes v. Mathes*, 267 Ga. 845, 483 S.E.2d 573 (1997) citing *Herndon v. Herndon*, 227 Ga. 781, 783-784, 183 S.E.2d 386 (1971).

The seminal case on enforceability of oral agreements is *Reichard v. Reichard*, 262 Ga. 561, 564(2), 423 S.E.2d 241 (1992). If there is any disagreement as to whether there is an oral agreement, the agreement can only be established by writing. *In re Estate of Huff*, 287 Ga.App. 614, 652 S.E.2d 203 (2007) citing *Reichard v. Reichard*, 262 Ga. 561, 564(2), 423 S.E.2d 241 (1992). In *Reichard v. Reichard*,¹ after a recess during the interlocutory hearing, Mrs. Reichard’s attorney informed the trial court that the parties had entered into a settlement agreement. Mrs. Reichard’s attorney announced the terms of the settlement to the court orally, and recorded the settlement into his personal tape recorder, and Mr. Reichard’s attorney clarified a term of the announced agreement. *Id.* The court stated that the agreement was acceptable, and Mrs. Reichard’s attorney stated he would prepare an order and submit it to the court. *Id.* Mr. Reichard’s attorney drafted and submitted an agreement to the court that contained additional terms and revised some of the terms of the settlement agreement announced to the court. *Id.* At a hearing on a motion to enforce, the attorneys stated that the prepared settlement agreement did not match the terms of the announced agreement. *Id.* The Court ruled that the terms of the announced agreement would be incorporated into the final decree; however, the trial court adopted and incorporated the proposed agreement that had additional and revised terms. *Id.* The Supreme Court reversed the trial court’s Order, finding that although the Supreme Court did not have the recording of the oral announcement to consider, the Court assumed that the terms present in the proposed revision presented to the court but that were not present in the oral announcement were essential and substantive. *Id.* “The failure to agree to even one essential terms means there is no agreement to be enforced.” *Reichard v. Reichard*, 262 Ga. 561, 564(2), 423 S.E.2d 241 (1992).

¹ 262 Ga. 561, 564(2), 423 S.E.2d 241 (1992).

The next step is determining whether the written terms encompass a complete agreement. Even in cases where there is a written memorialization of settlement terms, disputes frequently arise due to the concise nature of these documents, because “[a] trial court errs when it seeks to enforce what amounts to a settlement containing incomplete terms of a divorce.” *Rasheed v. Sarwat*, 300 Ga. 639, 640, 797 S.E.2d 454 (2017).

If the terms missing from the settlement agreement are non-material procedural matters, and “not the substance of the parties’ rights and obligations,” then the agreement is enforceable. *Steele v. Steele*, 298 Ga. 548, 549, 782 S.E.2d 433 (2016). Even if the agreement left substantive terms for future resolution, the agreement is still enforceable if the terms were not material to the parties’ rights and obligations. *Id.* In contrast, it is longstanding Georgia law, that there is no enforceable settlement agreement unless the parties have agreed to all essential terms. *Id.* The distinction between what is an essential term, and what is a substantive but a non-material procedural matter can be examined in the relevant case law.

In *Moss v. Moss*,² the parties and their attorneys reached agreement at mediation, which was memorialized in a written settlement agreement. The parties agreed that the method of appraising the marital real estate would be agreed upon by the attorneys subsequent to the mediation. *Id.* After the mediation, Mr. Moss discovered he did not favor the tax implications of the division of property, and sought to repudiate the agreement as an agreement to agree. *Id.* Mrs. Moss filed a motion to enforce the agreement. *Id.* The trial court enforced the agreement, but the Supreme Court reversed the trial court, holding that the provision regarding the method of appraisal is a

² 265 Ga. 802, 463 S.E.2d 9, (1995).

substantive term of the agreement, and therefore, the agreement was incomplete and unenforceable. *Id.*

In *DeGarmo v. DeGarmo*,³ the parties reached settlement at mediation, and signed a draft settlement agreement, but Mrs. DeGarmo renounced it shortly after. Mr. DeGarmo filed a Motion to Enforce, which the trial court initially denied, but later reconsidered, and granted it. *Id.* Mrs. DeGarmo stated the agreement was unenforceable because it specified certain issues for future resolution; however, she relied on a statement in the settlement agreement that disputes concerning the final language would be determined by the mediator. *Id.* The Supreme Court stated that this language is not sufficient to render the agreement incomplete, as it related only to the wording of the agreement, and not to substantive matters. *Id.* However, the trial court incorporated a version of the settlement agreement that included several provisions that were new provisions to the agreement or were different than the original terms. *Id.* The Supreme Court stated that “those changes and additions to the parties’ agreement render the trial court’s adoption of the subsequently drafted final version error.” *Id.* at 481. The Supreme Court held no agreement was reached in an enforceable form, and therefore, the judgment of the trial court enforcing the agreement must be reversed.

Of note is the dissent in *DeGarmo*. *Id.* The dissent disagreed with the reversal of the trial court’s decision, and states that the correct remedy should have been to remand the case back to the trial court to enter a judgment that matches the mediation agreement, not to hold the agreement was not enforceable. The dissent relies on the holding in *Reichard v. Reichard*,⁴ and stated as the parties reached agreement on all essential terms,

³ 269 Ga. 480, 499 S.E.2d 317 (1998).

⁴ 262 Ga. 561, 564, 423 S.E.2d 241 (1992).

the settlement agreement is enforceable. “It is clear from a reading of the agreement that all essential terms are incorporated. Contrary to the majority’s view, the only item left for future resolution is the exact language of the decree. This agreement was reached after a long process aided by a skilled mediator, attended by both parties and counsel. If this agreement is not enforceable, then almost no agreement will be enforceable.” *Id.* at 482.

In *Steele v. Steele*,⁵ the parties with counsel negotiated and executed a Memorandum of Settlement that was both typewritten and handwritten. *Id.* Mrs. Steele’s attorney presented a fully typed version of the Memorandum of Settlement to Mr. Steele’s attorney, and Mr. Steele refused to execute it. *Id.* Mrs. Steele filed a motion to enforce, which was granted by the trial court. *Id.* Mr. Steele contended in his appeal that the Memorandum of Settlement “lacked essential terms and was therefore unenforceable.” *Id.* at 548. The Supreme Court held that “[n]one of these omitted items, however, was essential to the formation of a binding agreement.” *Id.* at 549. These terms included the time frame for execution of the written agreement, the method of presentation of the agreement to the court, and the omission of a legal description or address for a piece of real estate when Mr. Steele only owned one property in the city referenced. *Id.* The Court held that these items related to non-material procedural matters or items that were not essential terms and affirmed the judgment of the trial court. *Id.*

Therefore, if the terms of the settlement agreement are not complete and the missing terms are essential, there is no agreement. The “trial court is not authorized to adopt and incorporate into the final decree and judgment of divorce a purported memorialization of the settlement that contains more substantive terms than the

⁵ 298 Ga. 548, 782 S.E.2d 433 (2016).

settlement.” *Reichard v. Reichard*, 262 Ga. 561, 564(2), 423 S.E.2d 241 (1992) citing *Robinson v. Robinson*, 261 Ga. 330, 331, 404 S.E.2d 435 (1991). See also, *Moss v. Moss*, 265 Ga. 802, 803, 463 S.E.2d 9 (1995). In contrast, the trial court can adopt the terms of the settlement agreement and add additional language that is not an essential term. “The mere fact that the divorce decree sets forth certain terms more artfully and with greater specificity than the Memorandum does not render it inaccurate or improper.” *Steele v. Steele*, 298 Ga. 548, 550, 782 S.E.2d 433 (2016).

If the agreement contains the essential terms required to be a complete agreement, the courts must then analyze whether the submitted terms fairly and accurately represent the agreement of the parties, as “[i]t is well established that ‘[s]ettlement agreements in divorce cases are construed in the same manner as all other contractual agreements.’” *Steele v. Steele*, 298 Ga. 548 (2016), citing *Buckner v. Buckner*, 294 Ga. 705, 708(1), 755 S.E.2d 722 (2014). The meaning and effect of a divorce settlement agreement “should be determined according to the usual rules for the construction of contracts, the cardinal rule being to ascertain the intention of the parties.” *Hart v. Hart*, 297 Ga. 709, 777 S.E.2d 431 (2015) citing *Cousins v. Cousins*, 253 Ga. 30, 31(1), 315 S.E.2d 420 (1984).

If the agreement omits a specific item of property to be divided, it can still be a complete agreement. In *Hart v. Hart*,⁶ the settlement terms were read into the record of the trial court after a mid-day recess during the divorce trial. The parties and their counsel were instructed to question the purported agreement as it was read into the record. *Id.* At the conclusion of the reading, the parties agreed to the terms announced. *Id.* The announced settlement did not discuss the division of a specific retirement account in Husband’s name; however, the settlement announcement was that the terms

⁶ 297 Ga. 709, 777 S.E.2d 431 (2015).

were complete. *Id.* The parties exchanged several written settlement agreements, none of which discussed the specific account, but all of which divided retirement accounts and said that the parties would waive rights in accounts not mentioned in the agreement. *Id.* Mrs. Hart refused to sign the final version as it did not address the specific account. *Id.* Mr. Hart filed a Motion to Enforce, which the trial court granted and the Supreme Court confirmed. *Id.* The Supreme Court found that “[t]he terms of the announced settlement and the conduct and statements of the parties and their counsel, both at the time the settlement was announced and during the drafting of the written agreement, all support the finding that a responsible person in husband’s position would ascribe to wife her assent to waive any claims she may have had against husband’s civil service retirement.” *Id.* at 713.

In determining whether a specific term was agreed upon by both parties, what is present in disputed versions of the settlement agreement can be as crucial as what is omitted. Where separate settlement agreements drafted by opposing parties or their counsel both have the same term, a reasonable person could interpret that the parties both agree to that term. *Tillman v. Vinings Bank*, 324 Ga.App. 469, 473(1), 751 S.E.2d 117 (2013).

Another key factor to remember is that an attorney is deemed to have plenary authority to act on behalf of their client and to enter into settlement on their behalf, unless the limitations to the attorney’s settlement authority is made clear to the opposing party at the beginning of the representation. *Stokey v. Stokey*, 274 Ga. 472, 554 S.E.2d 472 (2001). In *Stokey*, the parties participated in mediation where no agreement was reached, but settlement was reached during subsequent telephonic negotiations. *Id.* Mrs.

Stookey's attorney reported to the trial court that settlement had been reached. *Id.* Mr. Stookey's attorney drafted the formal settlement document, which Mrs. Stookey refused to sign and then obtained new counsel. *Id.* Mrs. Stookey's original attorney testified via affidavit that she had authority from Mrs. Stookey to enter into the agreement, and that the written settlement agreement prepared by Mr. Stookey's attorney matched the terms of the agreed upon settlement. *Id.* The trial court did not grant the motion to enforce the settlement, because there was no meeting of the minds between the parties, but the Supreme Court overturned the ruling of the trial court and held that an agreement was reached, as there was no evidence presented that Mrs. Stookey's attorney did not have full authority to enter into settlement on her behalf. *Id.* The Court remanded for determination whether the agreement should be enforced. *Stookey v. Stookey*, 274 Ga. 472, 554 S.E.2d 472 (2001).

Finally, “[w]hen incorporating a settlement agreement into a final judgment of divorce, thereby making the settlement agreement the judgment of the court, the trial court has the discretion to approve or reject the settlement, in whole or in part.” *Bridges v. Bridges*, 256 Ga. 348(1), 349 S.E.2d 172 (1986). If a trial court determines that a divorce settlement agreement is enforceable, then it must make a determination whether the terms of the agreement are “within the bounds of the law.” *Steele* at 550, citing *Buckner v. Buckner*, 294 Ga. 705, 708(1), 755 S.E.2d 722 (2014). Once determining that the terms are within the bounds of the law, “the court must ensure that the resulting divorce decree accurately reflects the terms of the settlement.” *Steele*, citing *DeGarmo v. DeGarmo*, 269 Ga. 480, 499 S.E.2d 317 (1998).

However, the trial court does not have to make a determination as to whether the agreement is conscionable. Agreements incident to divorce, such as an antenuptial agreement or a reconciliation agreement, must be reviewed for unconscionability. *Gravley v. Gravley*, 278 Ga. 897, 898, 608 S.E.2d 225 (2005). Divorce settlement agreements do not need to be reviewed for unconscionability; however “it remains within the trial court’s discretion whether a separation agreement reached by the parties should be approved and incorporated into the final judgment and decree of divorce. *Gravley v. Gravley*, 278 Ga. 897, 608 S.E.2d 225 (2005).

In conclusion, oral agreements are enforceable, but a writing is required if the parties disagree as to the contents of the oral agreement. Written agreements must be complete and contain all essential terms; however, the omission of non-material procedural matters or terms that are not essential does not render an agreement unenforceable. Disputes over the contents of the agreement are governed by the intent of the parties, the interpretation a reasonable person would make, and the contractual rules of interpretation. Remember, even with a complete agreement, the trial court retains the ability to reject a settlement agreement if it is not within the bounds of law and does not comply with the relevant statutes.