

STATE OF MICHIGAN
COURT OF APPEALS

CARRIE SNYDER,

Plaintiff/Counter Defendant-
Appellee,

v

KIM SNYDER,

Defendant/Counter Plaintiff-
Appellant.

UNPUBLISHED
February 11, 2014

No. 313409
Otsego Circuit Court
Family Division
LC No. 08-012716-DM

Before: BOONSTRA, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order of the trial court denying defendant's motion for child support. We reverse and remand for further proceedings.

On January 14, 2010, the parties divorced after 14 years of marriage. Defendant received physical custody of the parties' six children and the parties shared joint legal custody. Defendant agreed to waive a claim to child support for five years unless a significant change in the circumstances of the custodial arrangement occurred. The consent judgment of divorce provided that "Child support shall be waived as outlined in the attached Uniform Child Support order for a term of five (5) years unless there becomes a significant change in the custodial arraignment [sic]." The judgment further provided that "The reason for the deviation from the child support guidelines is that Defendant's potential spousal support obligation would meet or exceed Plaintiff's proposed child support obligation." Additionally, the judgment provided that

Defendant's spousal support shall be waived as outlined in the attached Uniform Child Support Order for a minimum term of five (5) years unless there becomes a substantial change in the custodial arraignment [sic]. The reason for the five (5) year waiver is that Plaintiff's child support obligation is equal to or less than Defendant's potential spousal support obligation.

The trial court concurrently entered a uniform child support order that stated, "Child support set to 0 for the next 5 years, as Defendant's spousal support obligation would exceed Plaintiff's child support obligatio [sic]." A modification to the order also provided as follows:

The parties stipulate that Plaintiff's child support obligation will be set to 0 for the next 5 year [sic], as Defendant's potential spousal support obligation would exceed Plaintiff's child support obligation, and in turn, Defendant's potential spousal support is set at 0 for the next 5 years for the same reason.

A few months after the divorce was final, plaintiff remarried. In January 2012 defendant moved for child support on the ground that plaintiff's remarriage was "a significant change of circumstances in the custodial arrangement." Defendant asserted that plaintiff would not have been entitled to further spousal support as a result of her remarriage and, consequently, he was entitled to child support from her. Defendant also argued that the provisions regarding child support were void as against public policy. Plaintiff, on the other hand, argued that the parties merely agreed to a deviation from the child support manual and urged the court to enforce the parties' agreement. The trial court denied the motion.

The question whether the parties' waiver of child support in their consent judgment of divorce is enforceable is a question of law that this Court reviews de novo. *Laffin v Laffin*, 280 Mich App 513, 517; 760 NW2d 738 (2008). "A consent judgment is in the nature of a contract," and "[i]n general, consent judgments are final and binding upon the court and the parties, and cannot be modified absent fraud, mistake, or unconscionable advantage." *Id.* Courts respect the freedom of individuals freely to arrange their affairs by contract, and enforce unambiguous contracts as written. *Bloomfield Estates Improvement Ass'n, Inc v Birmingham*, 479 Mich 206, 212; 737 NW2d 670 (2007). However, contracts that violate public policy may not be enforced. *Laffin*, 280 Mich App at 521, citing *Rory v Continental Ins Co*, 473 Mich 457, 491; 703 NW2d 23 (2005) (unambiguous contracts are enforced as written unless a provision violates law or public policy).

"It is well settled that children have the right to receive financial support from their parents and that trial courts may enforce that right by ordering parents to pay child support." *Borowsky v Borowsky*, 273 Mich App 666, 672-673; 733 NW2d 71 (2007). "An agreement by the parties regarding support will not suspend the authority of the court to enter a support order." *Laffin*, 280 Mich App at 518, quoting *Johns v Johns*, 178 Mich App 101, 106; 443 NW2d 446 (1989). A parent cannot waive a child's right to support. See *Tuer v Niedoliwka*, 92 Mich App 694, 699-700; 285 NW2d 424 (1979) (noting that paternity proceedings are for the benefit of children born out of wedlock and that a mother cannot waive her child's right to support). Nor can parents bargain away their children's right to receive financial support from their parents. *Laffin*, 280 Mich App at 517-518.

In *Laffin*, the parties' consent judgment of divorce contained a reciprocal alimony provision. The judgment ordered: "[I]n the event Defendant should ever seek and obtain child support from Plaintiff that a sum in the exact amount of the child support awarded shall be paid by Defendant to Plaintiff as alimony." *Id.* That is, any future child support obligation imposed on the plaintiff would result in a reciprocal alimony obligation imposed on the defendant in the same amount. *Id.* at 516. Later, when the plaintiff's wages were garnished to satisfy a child support order that the defendant obtained, the plaintiff moved to require the defendant to pay him alimony in an equal amount. *Laffin*, 280 Mich App at 516. The defendant argued that the reciprocal alimony provision was an unenforceable agreement to bargain away the children's right to financial support. *Id.* The trial court ruled in favor of the plaintiff, and enforced the

reciprocal alimony provision. The court ordered the plaintiff to pay child support to the defendant, and ordered the defendant to pay the plaintiff an equal amount of alimony. *Id.*¹

This Court reversed, holding that the reciprocal alimony provision was void because it violated public policy. *Laffin*, 280 Mich App at 517. The parties' agreement "had the practical effect of relieving [the] plaintiff of his future child support obligation." *Id.* at 518. This Court held:

Although the reciprocal alimony provision is distinct in form from a provision totally precluding child support, it is a distinction without a difference. The purpose and effect of the reciprocal alimony provision are to ensure that the parties and the children remain in the same position financially, regardless of plaintiff's child support obligations. Thus, any amount that plaintiff might be required to remit to defendant and the children as child support is automatically offset by the payment of a like amount from defendant to plaintiff as alimony.

We conclude that enforcement of this arrangement would deprive the parties' children of the child support they are entitled to by law, and, therefore, the reciprocal alimony provision is void as against public policy, because parties cannot bargain away their children's right to support. [*Laffin*, 280 Mich App at 518-519, citing *Macomb Co Dep't of Social Services*, 250 Mich App 372, 377; 645 NW2d 710 (2002).]

This Court also found the provision to be inconsistent with the purpose of spousal support:

Additionally, an alimony obligation that is triggered only by an order of child support, and in an amount equal to the amount of child support, is inconsistent with the purpose of alimony. The main purpose of awarding spousal support is to balance the incomes and needs of the parties, without impoverishing either party. Spousal support is to be based on what is just and reasonable under the circumstances of the case. Periodic spousal support is subject to modification, on a showing of changed circumstances. Any modification of spousal support must be based on new facts or changed circumstances arising after the judgment of divorce, and requires an evaluation of the circumstances as they exist at the time the modification is sought. By definition, changed circumstances cannot involve

¹ In *Laffin*, the plaintiff father initially received a credit of \$62,500.00 against his future child support obligation, because the defendant mother did not have the funds to pay him for his share of equity in the marital home, which she received in the divorce. *Laffin*, 280 Mich App at 515. The judgment set specific child support amounts depending on the number of minor children living with the defendant, and then stated "that Plaintiff has paid in advance to Defendant \$62,500.00 for child support, and that accordingly child support is fully prepaid for as long as same would be payable under Michigan law." *Laffin*, 280 Mich App at 515. After the \$62,500.00 credit was exhausted the plaintiff obtained an order of garnishment against the defendant's wages.

facts and circumstances that existed at the time the court originally entered a judgment.

A prearranged reciprocal alimony provision that becomes effective automatically with the imposition of a child support obligation, without any regard to the parties' current circumstances or need for spousal support, is inconsistent with the purpose of spousal support and violates the mandate that spousal support may be modified only on the basis of new facts or changed circumstances. Here, the reciprocal alimony obligation is not really alimony, but a refund or reimbursement of plaintiff's child support obligation that, both in form and effect, eliminate his child support obligation. [*Laffin*, 280 Mich App at 519-520 (citations omitted).]

The child support agreement at issue here is not reciprocal in nature and contains no triggering mechanism, as in *Laffin*. The nature of the agreements is different. In *Laffin*, the parties' agreed to offset one parent's child support obligation completely, and in the instant case, the parties recognized that any child support owed by plaintiff would be offset to some, likely minor, extent by plaintiff's entitlement to spousal support. But to the extent that the parties attempted to waive the noncustodial parent's obligation to pay child support, albeit in exchange for her agreement to forego spousal support, the principles articulated in *Laffin* apply.

Plaintiff argues that the waiver of child support was a proper deviation from the child support manual. MCL 552.605(1) and (2) provide that "[i]f a court orders the payment of child support . . . the court shall order child support in an amount determined by application of the child support formula developed by the state friend of the court bureau as required in section 19 of the friend of the court act, MCL 552.519." However, MCL 552.605(2) also provides:

The court may enter an order that deviates from the formula if the court determines from the facts of the case that application of the child support formula would be unjust or inappropriate and sets forth in writing or on the record all of the following:

- (a) The child support amount determined by application of the child support formula.
- (b) How the child support order deviates from the child support formula.
- (c) The value of property or other support awarded instead of the payment of child support, if applicable.
- (d) The reasons why application of the child support formula would be unjust or inappropriate in the case.

Plaintiff argued before the trial court that the requirements of MCL 552.605(2)(a)-(d) were fulfilled "at that day that the proofs were taken." Plaintiff argues here that the requirements to deviate from the guidelines were met, placed upon the record, and accepted by the trial court. However, it is evident that the trial court declined to order child support not because it found that the children did not require it, but because "Defendant's spousal support

obligation would exceed Plaintiff's child support obligatio [sic]." Child support is not imposed for the benefit of the custodial parent, but rather to satisfy the needs of the child, and defendant was not entitled to bargain away his children's right to support. Thus, even if the trial court did comply with MCL 552.605(2)(a)-(d), it deviated from the child support formula for an improper reason. Where a trial court relies "on a legally improper reason for departing from the amount determined by application of the child support formula, its decision amount[s] to an abuse of discretion." *Burba v Burba*, 461 Mich 637, 649; 610 NW2d 873, 879 (2000). Consequently, reversal is still warranted.

Defendant is entitled to relief extending back to January 14, 2010, the date that the consent judgment of divorce and accompanying orders were entered. *Laffin*, 280 Mich App at 522.

Laffin also concluded that the reciprocal alimony provision was also "inconsistent with the purpose of alimony," which is "to balance the incomes and needs of the parties, without impoverishing either party." *Id.* at 519. Here, it is clear that the trial court declined to award spousal support to plaintiff not out of consideration of the incomes and needs of the parties but, rather, because it had declined to award child support to defendant. Thus, the provisions in the judgment and orders declining to award spousal support are likewise void. Consequently, plaintiff is free on remand to petition the trial court for spousal support retroactive to January 14, 2010. Whether the trial court ultimately awards spousal support to plaintiff is within its discretion. *Loutts v Loutts*, 298 Mich App 21, 25; 826 NW2d 152 (2012).

Reversed and remanded for proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Mark T. Boonstra
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald