MacLENNAN V. MacLENNAN

SCOTT MacLENNAN,
Petitioner-Appellant,
v.
MARIA MacLENNAN,
n/k/a MARIA MICHELS,
Respondent-Appellee.

No. 31,026

COURT OF APPEALS OF NEW MEXICO

December 4, 2013

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Elizabeth E. Whitefield, District Judge

COUNSEL

Barbara S. Arbuckle, Attorney at Law, Barbara S. Arbuckle, Albuquerque, NM, Law Offices of Robert P. McNeill, Robert P. McNeill, Albuquerque, NM, L. Helen Bennett, P.C., L. Helen Bennett, Albuquerque, NM, for Appellant

Law Offices of Lynda Latta, LLC, Lynda M. Latta, Linda L. Ellison, Albuquerque, NM, for Appellee

JUDGES

RODERICK T. KENNEDY, Chief Judge. WE CONCUR: JAMES J. WECHSLER, Judge, MICHAEL E. VIGIL, Judge

AUTHOR: RODERICK T. KENNEDY

MEMORANDUM OPINION

KENNEDY, Chief Judge.

{1} In this divorce case between Maria MacLennan (Wife) and Scott MacLennan (Husband), we must determine whether the district court's findings, at a hearing regarding Husband's motion for an order to show cause and to enforce the Marital Settlement Agreement, were improper and conflict with Wife's undisputed admissions. Because we conclude that the findings do not conflict with the admissions, were supported by evidence, and properly interpret the Marital Settlement Agreement, we affirm.

I. BACKGROUND

{2} As this is a memorandum opinion, we provide only a brief sketch of the background with other necessary facts included when relevant throughout the discussion. Husband and Wife divorced. As part of the divorce proceedings, they executed a Marital Settlement Agreement (MSA) that divided assets and debts between the parties. Among other matters, the MSA provided that Husband would "buy out" the couple's joint business, MacManagement, and assume all business debts, and Wife would "assume all community debt."

{3} A year after the divorce was finalized, Husband moved the court for an order to show cause, claiming that Wife had failed to abide by the MSA in several respects, primarily that she failed to pay the community debt that she was assigned. Wife denied the allegations and countered with her own against Husband. Subsequently, Husband's attorney sent Wife's attorney interrogatories and request for production of documents, and a request for admissions. The request for admissions was never answered and, at an eventual hearing, the district court deemed them admitted under Rule 1-036 NMRA. The admissions dealt with Wife's belated bookkeeping and tax filing for MacManagement that Husband alleged created debt in the form of "Loans to Shareholders." Husband claimed the loans were community debt under the MSA and therefore Wife's responsibility.

{4} After the hearing, the court issued an order finding that the disputed debt was Husband's responsibility under the terms of the MSA. Husband appeals, claiming that the district court's order contains findings that impermissibly conflict with Wife's admissions, modify the MSA, and are not supported by evidence.

II. DISCUSSION

{5} Nothing in the record shows that Wife sought to withdraw or amend the admissions, and they were read into the record. Wife's admissions were therefore conclusively established. Pursuant to Rule 1-036(B), any matter admitted under the rule "is conclusively established unless the court on motion permits withdrawal or amendment of the admission." Husband bases his appeal on an assertion that Wife's admissions, once deemed admitted by the court, are conclusive and preclude the admission of other related evidence. Husband is thus asking that the admissions be the only material considered by the district court. Such an approach fails in several respects. First, the admissions themselves may be among a number of facts required to

decide a matter. Second, nothing precludes the presentation of additional facts beyond the admissions. Third and last, the contextual framework within which admissions exist remains relevant. However, nothing precludes additional evidence from being presented when it does not contradict the admission. Accordingly, we examine individually each finding that Husband contests by comparing it to the admissions that he claims it conflicts with.

{6} Husband argues not only that the district court's findings and conclusions impermissibly conflicted with the established admissions, but also that any evidence contrary to or explaining the context of Wife's admissions was irrelevant and therefore inadmissible. We first note that any challenge to admissibility of additional evidence at the hearing was not preserved, as Husband does not point us to anywhere in the record where he objected to evidence that was contrary to Wife's admissions, and we have found none ourselves. *In re Norwest Bank of N.M., N.A.*, 2003-NMCA-128, ¶ 30, 134 N.M. 516, 80 P.3d 98 (stating that this Court will not search the record for evidence of preservation); *Crutchfield v. N.M. Dep't of Taxation & Revenue*, 2005-NMCA-022, ¶ 14, 137 N.M. 26, 106 P.3d 1273 ("[O]n appeal, the party must specifically point out where, in the record, the party invoked the court's ruling on the issue. Absent that citation to the record or any obvious preservation, we will not consider the issue."). In Husband's brief, his only more specific citation to an objection at the hearing had to do with lack of foundation. We therefore consider his appeal to primarily dispute the district court's decision based on a lack of substantial evidence for its findings.

{7} "In reviewing a sufficiency of the evidence claim, this Court views the evidence in a light most favorable to the prevailing party and disregards any inferences and evidence to the contrary." *Weidler v. Big J Enters., Inc.*, 1998-NMCA-021, ¶ 30, 124 N.M. 591, 953 P.2d 1089 (alteration, internal quotation marks, and citation omitted). We address the standard for reviewing the district court's interpretation of the MSA in greater detail below. Although Husband argues that we should apply a de novo standard for interpreting Rule 1-036 dealing with admissions, we reject that position because we are not reviewing the admissions themselves or how they were established, but whether the admissions were sufficiently conclusive as to preclude other considerations in the district court's decision. We conclude that the admissions at issue, while binding, were not solely conclusive of the issues, and the district court could consider other evidence in supporting its conclusions. Hence, the findings do not impermissibly conflict with the admissions. We address each of the findings Husband challenges in turn.

{8} Finding 8 found that "[Wife] fully met her court-ordered obligation in the [MSA] filed on August 27, 2008 to assume all community debt and pay that debt with the proceeds of the Troxel residence." In order to find that Wife paid all of the community debt that she assumed, the district court implicitly determined that the remaining debt—loans to shareholders—was not part of the community debt as described by the MSA. In so doing, it interpreted the contract, which interpretation we review de novo. *Mark V, Inc. v. Mellekas*, 1993-NMSC-001, ¶ 12, 114 N.M. 778, 845 P.2d 1232. In order to determine whether a contract is ambiguous, a court may consider "collateral evidence of

the circumstances surrounding the execution of the agreement" to determine whether the language is ambiguous. *Id.* Peter Johnstone, the Special Master who worked with the parties in making the MSA, testified that Husband agreed to take the business debt, and Wife would take community personal debt. Wife testified that Husband understood that the MSA allocated the loans to shareholders as part of his business community debt. Wife also testified to the distinction between business community debt and personal community debt that had been contemplated during the creation of the MSA and introduced exhibits, including spreadsheets, showing the division and Husband's assumption of business community debt.

{9} Collateral evidence regarding a distinction between business and personal community debt may properly be considered in determining whether an agreement is ambiguous. *Id.* We conclude that the evidence in this case did reveal an ambiguity in the MSA regarding the term "community debt" as applied to Wife. If an agreement is found to be ambiguous, "the meaning to be assigned the unclear terms is a question of fact." *Id.* ¶ 13. The factual issues in this case were properly explored at the hearing, and the district court could consider extrinsic evidence regarding the circumstances of the MSA. *Id.* The district court then found as a matter of fact that Wife met her obligation to assume community debt and pay it with the proceeds of a residence as required by the MSA. We regard that finding as supported by evidence and reached through a proper interpretation of the contract. The admission was not the only fact the district court could consider given the ambiguity between business and personal community debt, but rather one of a number of related, necessary pieces of the full picture.

{10} Finding 9 states that "[t]he alleged 'Loan to Shareholders' by the business[,] MacManagement . . . , was not contemplated in the [MSA] filed on August 27, 2008 to be a community debt to be paid by [Wife]." Husband contends that the findings impermissibly conflict with Wife's Admissions 18 and 19, which respectively state that "[a]s of August 31, 2008, the shareholders owed the [b]usiness $219,000[,]" and "[a]ll monies owed by the shareholders to the [b]usiness are community debt." Again, the admission is only part of a picture. Husband states in his brief-in-chief that "[t]he evidence at trial was that the amounts of the loans to shareholders were not contemplated by the parties at the settlement conference that led to the creation of the MSA[, and] Johnstone confirmed that the debts were not discussed in settlement negotiations." Husband appears to echo nearly verbatim the findings of the district court when he considers the debts to not have been contemplated by the MSA. However, he now argues that, due to Wife's admission, they should be classified as community debt under the MSA, for which she should be held responsible. These positions are inconsistent. As above, evidence supports two kinds of community debt, of which the loans are but one. If the debt was not contemplated at the time of the MSA, it is not covered by its provisions. *See C.R. Anthony Co. v. Loretto Mall Partners*, 1991-NMSC-070, ¶ 10, 112 N.M. 504, 817 P.2d 238 ("[T]he [district] court must decide what missing terms either are necessarily implied by the contract's express terms or were not contemplated by the agreement at all."). Whether the shareholders owed the corporation a sum of money, and how the debt would be classified and structured, are

separate matters that the admissions alone do not resolve. We find no error in the district court's conclusion.

{11} Finding 10 states that "[t]he alleged 'Loan to Shareholders' is a debt that [Husband] assumed when he received all of the assets and all of the debts of MacManagement . . . and the assets and liability of the business[,] Mountain Fund[,] as contained within the Articles VII and VIII of the [MSA]." Husband again contends that the finding impermissibly conflicts with Wife's Admissions 18 and 19, which respectively state that "[a]s of August 31, 2008, the shareholders owed the [b]usiness $219,000[,]" and "[a]ll monies owed by the shareholders to the [b]usiness are community debt." As we stated above, this is a matter of contract interpretation that the district court acceptably resolved based on the totality of available facts. The district court was permitted to hear collateral evidence regarding the terms of the MSA, and its factual findings that Husband's obligation included these particular debts were supported by substantial evidence.

{12} Finding 13 states that "[t]here was no failure to disclose on the part of [Wife] that would warrant [the district c]ourt finding her responsible for any portion of the alleged 'Loan to Shareholders.'" Husband again contends that the finding also impermissibly conflicts with Wife's Admissions 18 and 19, which respectively say that "[a]s of August 31, 2008, the shareholders owed the [b]usiness $219,000[,]" and "[a]ll monies owed by the shareholders to the [b]usiness are community debt." However, none of the admissions directly claim that Wife is responsible for any failure to disclose the debt. The admissions as to the amount and classification of the debt do not conflict with the finding because Wife does not admit that she failed to disclose anything that would make her responsible for the debt, or address the topic of how the debt was disclosed.

{13} Finding 15 states that "[t]here is not sufficient evidence to prove that 'Loans to Shareholders' exist to the extent alleged by [Husband]. [Husband] has failed to prove damages." Husband argues that this impermissibly conflicts with Wife's Admissions 8, 10, and 11, which state the amounts for salaries and loans to shareholders for 2007-2008 and Admissions 18 and 19. Although the admissions include amounts of money the couple was advanced from the business, Wife's admissions neither state that those amounts were the total sum of all debts owed and were never repaid, nor do they include any admission by her that she is responsible for them. They also do not account for the entire amount alleged by Husband. We agree that there is not sufficient evidence based on the admissions alone to support Husband's allegations of the extent of the loans. "When the [district] court's findings of fact are supported by substantial evidence, . . . refusal to make contrary findings is not error." *Griffin v. Guadalupe Med. Ctr., Inc.*, 1997-NMCA-012, ¶ 22, 123 N.M. 60, 933 P.2d 859.

{14} Finding 16 states that "[Husband] assumed all the 'Loans to Shareholders.' [Husband] got the benefit of the bargain when he received all assets and assumed all debts of MacManagement . . . and [t]he Mountain Fund." Husband states that this conflicts with Wife's Admissions 18 and 19, as well as 12 and 15, which state that "[t]he bookkeeping records for the [b]usiness for the year 2007 were not supplied to Husband

until May 31, 2009, eight months after the extended due date for the 2007 taxes," and "[f]rom January 2008 until August [2008], amounts of money were put in holding accounts and not assigned to appropriate accounts." The admissions provide no information as to why delays existed or that there was anything untoward or improper about any delay. While these admissions described some bookkeeping delays and rearrangement of money, they do not conflict with the finding that Husband assumed the debts of the business. The admissions simply show a delay, not a reason for a delay, or any effect on the accuracy or quality of the bookkeeping. They do not establish anything regarding the assets or liabilities of the business Husband took over, such that he did not receive what he bargained for. To the extent that Husband asserts otherwise, facts beyond the admissions would have been required to support his position. Here, again, the district court's use of both the admissions and other evidence for its fact finding was well within the district court's discretion. Husband's assertion that the admissions end the matter necessarily fails. None of Wife's admissions state that she assumed responsibility for paying any of the late business taxes.

{15} Finding 18 states that "[Husband] is clearly responsible for and assumed all debts of the business of MacManagement . . . including[,] but not limited to[,] any and all gross receipts taxes owed by MacManagement[.]" Husband argues that this finding impermissibly conflicts with Wife's admissions that she failed to pay gross receipts taxes for the time period of January 2008 to September 2008, when Husband took over the business and that amount was $48,000. There is no conflict between the finding that Husband assumed the business debts and what was included in those debts, and Wife's admission that she had not filed certain taxes before Husband took it over. Payment and the obligation to pay are separate concerns. The district court determined that the gross receipt taxes described in Wife's admission were the responsibility of Husband. Wife never admitted that she was liable for the gross receipt taxes, merely that she had not paid them. The district court could classify them as Husband's responsibility due to his assumption of the business debts. The admission is not conclusive of the matter.

{16} Finding 19 states that "[Husband] released [Wife] from any future claims or causes of action, including Loans to Shareholders, relative to the divorce proceedings, or prior business relationships in Paragraph A of Article IX of the [MSA] and in the General Provisions, Paragraph 5 of Article XII of the [MSA]." Husband claims that this finding impermissibly conflicts with Wife's admissions that (1) her duties at the business until September 2008 included preparing or overseeing the preparation of all state and federal taxes, both corporate and personal; (2) she did not file her personal 2005 tax return until August 31, 2008; (3) she did not inform Husband of this omission; (4) she failed to pay gross receipts taxes in 2008; (5) she did not supply the 2007 bookkeeping records for the business to Husband until May 31, 2009; and (6) the bookkeeping records she eventually submitted were not done contemporaneously. Any shortcomings in Wife's bookkeeping are separate from and irrelevant to the question of whether the parties released each other from future claims. As the district court properly noted, "[e]ach party releases each other from any future claims or causes of action, relative to the divorce proceedings, or prior business relationships." Merely restating what the

parties contracted to in the MSA does not conflict with the admissions about when Wife completed her bookkeeping for the business.

{17} Overall, Husband's argument is based on the premise that the district court's findings wrongly allowed distinction between personal and business community debt, and the MSA unambiguously does not contemplate the loans to shareholders. As discussed above, we reject these arguments and conclude that the district court's interpretation of the contract was both correct as a matter of law, and its factual findings were supported by substantial evidence. To the extent that Husband argues that the district court should have classified the loans to shareholders as "undivided community debt" not contemplated at settlement conference and divided them evenly between the parties, we again note that the district court's decision determining that the loans were contemplated and assigned to Husband was proper.

III. CONCLUSION

{18} Because the district court's findings do not conflict with Wife's admissions, are supported by evidence, and are a proper interpretation of the MSA, we affirm, and thus reject Husband's request to reverse the attorney fees awarded below to Wife.

{19} IT IS SO ORDERED.

RODERICK T. KENNEDY, Chief Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

MICHAEL E. VIGIL, Judge