

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

LH,		:	NO. 12-20,387
	Plaintiff	:	
		:	
	vs.	:	
		:	
JH,		:	
	Defendant	:	IN DIVORCE

OPINION & ORDER

AND NOW, this 9th day of July, 2014, this order is entered after a hearing held on July 7, 2014 regarding Wife’s Motion to Enforce Agreement filed May 20, 2014. Present at the hearing was Wife, JH, with her counsel Christina L. Dinges, Esquire and Husband, LH, with his counsel Marc Drier, Esquire. By agreement of both parties and their counsel, counsel made oral statements on the record of the facts each party would present.

Background

After a hearing on Wife’s praecipe for alimony pendent lite, Husband and Wife became subject to a support order dated June 25, 2012 requiring Husband to contribute 64% to Wife’s unreimbursed medical expenses. Wife incurred unreimbursed medical expenses in the amount of \$6,356.54 and requested husbands 64%, which is \$3,908.16. A hearing on that matter was scheduled through the office of Domestic Relations for May 12, 2014 at 9:00 a.m. Counsel for Husband faxed to Attorney Dinges on May 5, 2014 a proposed offer that in lieu of a hearing he would pay the requested medical expenses to be paid in monthly payments and additionally to pay a lump sum payment for support arrearages. The proposal stated, “[h]e offers this if it is accepted prior to hearing.”

Although Attorney Drier asserts that the fax was sent May 5, 2014 with an “OK” message, the fax was not received by Attorney Dinges. Attorney Dinges and Attorney Drier saw each other on May 9, 2014, both at the courthouse on unrelated matters, and Attorney Drier asked Attorney Dinges about the proposal. Attorney Dinges stated that she had not received a fax, to which Attorney Drier stated that he would resend it. Attorney Drier did resend the proposal via fax to Attorney Dinges on May 9, 2014 at 3:41 p.m. However, Attorney Dinges had a 2:30 p.m. hearing and a 3:30 p.m. meeting with a client that day and was not able to review the proposal until over the weekend. Attorney Dinges discussed the proposal with Wife on Monday morning, May 12, 2014 and Wife found the proposal to be acceptable. Attorney Dinges then relayed to Attorney Drier acceptance of the offer at the courthouse before the start of the hearing, to which Attorney Drier stated that the offer was no longer valid because Husband had already had to take off work to attend the hearing and pay Attorney Drier for traveling to the courthouse. Accordingly, Wife filed the instant Motion to Enforce Agreement.

Analysis

Wife argues that she accepted the offer before the hearing as the offer stated, forming a contract. However, Husband argues that waiting until both parties were in the courthouse prepared to begin the hearing to accept the offer was unreasonable. A contract is formed when (1) there is an offer and acceptance; i.e. a mutual understanding manifesting an intent by the parties to be bound by the terms of the agreement, (2) the terms of their bargain are shown with sufficient clarity and (3) there is an exchange of consideration. *Weaverton Transp. Leasing v. Moran*, 2003 PA Super 385, 834 A.2d 1169, 1172 (Pa. Super. 2003). In this case, Husband sent to Wife an offer, with the consideration being the foregoing of the hearing, as stated in the

proposal by the exact words “in lieu of a hearing.” The terms of the agreement were clear and unambiguous. Relying on the terms stated by Husband in his proposal, the only condition of the offer was that it be accepted “prior to hearing”. The offer was in fact accepted by Wife prior to the hearing on May 12, 2014 at 9:00 a.m.

First, the Court must give plain meaning to a clear and unambiguous contract provision unless doing so would be contrary to a clearly expressed public policy. Prudential Prop. & Cas. Ins. Co. v. Colbert, 572 Pa. 82, 87 (Pa. 2002). The intent of the parties to a written contract is to be regarded as being embodied within the writing itself; furthermore, when the words are clear and unambiguous, the intent is to be discovered only from the express language of the agreement. Willison v. Consolidation Coal Co., 536 Pa. 49, 54 (Pa. 1994). This concept emphasizes just how narrow the court’s role is as interpreter of a contract: “Courts in interpreting a contract do not assume that its language was chosen carelessly.” Stewart, 498 Pa. at 51, 444 A.2d at 662 (quoting Moore v. Stevens Coal Co., 315 Pa. 564, 568, 173 A. 661, 662 (1934)). Furthermore, it is not the function of the court to rewrite the parties own contract, “or give it a construction in conflict with the accepted and plain meaning of the language used.” Hagarty v. Williams Akers, Jr. Co., 342 Pa. 236, 20 A.2d 317 (1941). Where an offer does not specify a date and time of expiration or otherwise limit the allowable time for acceptance, it is well established in Pennsylvania that the offer is deemed to be outstanding for a reasonable period of time. Vaskie v. Vaskie., 383 Pa. Super. 76, 81 (Pa. 1989). Attorney Drier asks the court to add terms to his proposal to include language that the offer must be accepted prior to arrival at the courthouse, his client having to miss work, and incurring fees. The writing itself is clear. This Court cannot and should not rewrite the terms. In the alternative Attorney Drier asks us to consider the reasonableness in timing. The offer was received by

Attorney Dinges Friday at 3:41 p.m. and accepted prior to 9:00 a.m. the following Monday. This timing is more than reasonable, although this is unnecessary consideration. The offer in this case did specify an allowable time for acceptance and the Court will not determine the reasonableness of the time for acceptance in the offer.

Conclusion

The Court finds that Wife did accept the offer proposed by Husband according to its condition of acceptance before the scheduled hearing. The Court finds that the contract terms were clear and unambiguous and accordingly the Court will not look further than the plain meaning of the words used. Therefore, Wife's Motion to Enforce Agreement is **GRANTED**.

It is ORDERED and DIRECTED that the Agreement as outlined in the fax sent to Attorney Dinges on May 9, 2014 be enforced.

BY THE COURT,

Joy Reynolds McCoy, Judge