

PEDER K. KNOTH

v.

JILL BACKMAN KNOTH

Argued September 15, 2008

Decided October 23, 2008

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Jill Backman Knoth appeals from a divorce judgment entered by the District Court (Portland, *Cole, J.*) enforcing a settlement agreement. Jill argues that the settlement agreement is unenforceable because its terms are insufficient, it imposes obligations above and beyond those set forth in the settlement agreement, and it imposes an impermissible on-going economic relationship between the parties. She also argues that the court, in adopting Peder's proposed judgment verbatim, did not exercise its independent judgment. We remand for modification of the judgment to correct one undisputed error and affirm as modified.

Following extensive mediation, which included two failed settlement agreements, and an extended judicial settlement conference, the parties agreed to a detailed and complex settlement. The settlement provided that the parties would establish an education fund for their children, funded through a series of property transactions. The settlement agreement calls for the engagement of a referee to resolve issues that arise regarding the property transactions and the education fund. The divorce judgment incorporated the terms of the settlement agreement, and Jill argues that the judgment also contains additional terms to which she did not agree.

The settlement agreement, including the provisions regarding the education fund, contains sufficient terms, which are enforceable through the divorce judgment. *Compare Ault v. Pakulski*, 520 A.2d 703, 704-05 (Me. 1987) (the terms of an educational trust were not incorporated into the divorce judgment and were vague and unenforceable due to lack of specificity about funding, implementation, and administration of the trust), *with Weiss v. Brown*, 1997 ME 57, ¶¶ 2, 5, 691 A.2d 1208, 1209, 1210 (an agreement for payment of children's college and post-graduate education, the terms of which were set forth in the divorce judgment, may be construed or clarified by the court). There is no reason why the parties should not be held to their agreement. *See Cloutier v. Cloutier*, 2003 ME 4, ¶¶ 9, 11, 814 A.2d 979, 983. The court did not err in permitting the parties to incorporate the education fund into their settlement agreement or in permitting them to arrange for the fund to be paid for through a series of property transactions. *See Weiss*, 1997 ME 57, ¶ 5, 691 A.2d at 1210. The court did not clearly err in interpreting the terms to which the parties agreed, nor did it abuse its discretion in incorporating additional language in the judgment. *See Webb v. Webb*, 2005 ME 91, ¶ 4, 878 A.2d 522, 524. The court exercised its independent judgment throughout the settlement process. The court properly performed its judicial function and did not abuse its discretion in adopting Peder's proposed judgment and Jill's proposed order appointing the referee. *See Jarvis v. Jarvis*, 2003 ME 53, ¶ 15, 832 A.2d 775, 779

The parties agree that the judgment contains one typographical error regarding the award of the property at Turbat's Creek, and they agree that this property should be awarded to Jill.

The entry is:

Judgment remanded for modification to reflect that the property at Turbat's Creek is awarded to Jill Backman Knoth, and affirmed as modified.

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