IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-359

No. COA21-528

Filed 17 May 2022

Iredell County, No. 20 CVD 2326

CHRISTINE MARIE McLANE, Plaintiff,

v.

MEGAN ANNE GOODWIN-McLANE and ARTHUR JOSEPH PEACOCK, Defendants.

Appeal by defendant Peacock from order entered 30 March 2021 by Judge Edward L. Hedrick, IV, in Iredell County District Court. Heard in the Court of Appeals 8 March 2022.

Knipp Law Office, PLLC, by M. Brien Bowlin, Jr., for plaintiff-appellee.

Pope McMillan, PA, by Alex Graziano and Christian Kiechel, for defendant-appellee Goodwin-McLane.

Ralston Benton Byerley & Moore, PLLC, by Matthew L. Benton, for defendant-appellant Peacock.

ARROWOOD, Judge.

¶ 1 Arthur Joseph Peacock ("donor") appeals from order finding him in material breach of contract as a result of donor's filing of a legitimation action claiming

parental rights in a child born from his sperm donation. For the following reasons, we affirm the trial court's order.

I. Background

¶ 2 Megan Anne Goodwin-McLane ("recipient") and Christine Marie McLane ("plaintiff") were married on 6 June 2014. The couple wanted to have a child; donor, a friend of recipient, offered to donate his sperm to recipient for artificial insemination. Then, plaintiff, recipient, and donor entered into an informal arrangement in which they all agreed that donor would donate his sperm, recipient would use the donation to attempt to become pregnant, and, if successful, the resulting child would be born to the marriage of plaintiff and recipient. Accordingly, donor donated his sperm to recipient and recipient successfully became pregnant via artificial insemination.

¶ 3 After recipient had become pregnant, plaintiff, recipient, and donor all entered into a formal, written agreement (the "written agreement") on 21 September 2016. The written agreement, which was drafted by donor, provided the following:

> This is an AGREEMENT that is intended to be binding between the parties listed herein. The Agreements shall be by and between Megan Anne Goodwin McLane hereinafter referred to as the RECIPIENT and Arthur Joseph Peacock hereinafter referred to as the DONOR.
>
> FURTHER, it is noted that the Recipient is currently married and that her partner and spouse is named Christine Marie McLane. To the extent any claims arise

as a result of the marriage of Recipient and her spouse, the said spouse shall be said signatory hereto. Each is advised to seek legal representation of her own choosing and each partner should speak with their OWN attorney.

. . . .

Now, therefore each signatory and party hereto agrees and covenants as follows:

1. The Donor has agreed to provide his semen/sperm to the Recipient for the purpose of the Recipient to use in the act of artificial insemination. The donation of semen/sperm shall be given outside a controlled setting and the Donor is not responsible for any issues resulting from any contamination.
2. The Donor is providing the semen/sperm solely for the use and benefit of the Recipient. The Recipient agrees and covenants herein not to transfer, sell, disburse, or otherwise use the sperm/semen from the Donor in any other way or for any other purpose.

. . . .

4. It is explicitly set forth herein that the intention of this Agreement is to allow the Recipient an opportunity to become pregnant, i.e. conceive a child, and to then raise said child with her spouse or as she otherwise sees fit.
5. To that end, each party hereto acknowledged and agrees that the Recipient hereby completely and fully relinquishes any and all rights she might otherwise have to hold the Donor legally, financially, or emotionally responsible for any child that results from such donation, i.e. artificial insemination.
6. The Donor has provided semen/sperm only for the purposes of artificial insemination.
7. The Recipient agrees to hold harmless and indemnify the Donor from any type of support sought at any time for any child resulting from any successful artificial

insemination. This includes but is not limited to any child support, medical support for any such child, financial support for any bills or costs associated with any pregnancy and any and all support that maybe [sic] sought from or by the Recipient or her Spouse.

8. The Recipient further agrees to pay any and all court costs and attorney fees that may be associated with the Donor having to defend himself against any legal action brought by the Recipient, the Recipient[']s heirs or family, assigns, Spouse, acquaintances, or successors . . . .
9. Further, the parties covenant and agree that the Recipient shall have sole authority to name the child and be the sole custodial authority for the child pursuant to any domestic relation laws of the state in which the child may be conceived or born. Exclusive of any claim thereto by the Donor.
10. The Donor agrees and acknowledges that he shall relinquish any and all parental or custodial rights with respect to the child that maybe be conceived through artificial insemination process whatsoever.
11. The [D]onor shall have no legal claim to the child whatsoever and any right he would have to bring suit to establish any legal relationship or paternal relationship with respect to any child resulting from artificial insemination.
12. Each party agrees and acknowledges that there should be no father listed on the birth certificate of any child born of this artificial insemination process.
13. Each party agrees that any legal responsibility between the Donor and the Recipient shall end the moment the Donor makes said donation. The Donor shall not be held financially responsible for any aspects of the pregnancy or the Recipient no matter the costs or the results and that the Recipient agrees to indemnify and hold harmless the Donor with respect to any and all bills or costs associated with any pregnancy.

. . . .

16. Each party reserves the right not to disclose the identity of the Donor to any others.
17. The Recipient agrees not to disclose the Donor[']s identity to any person unless the Donor consents in writing.
18. The Donor agrees not to attempt to have any contact with any child absent the written approval and consent of the Recipient.
19. Each party acknowledges and understands that any future contact the Donor may have with any child that results from successful artificial insemination procedure in no way alters the effect of this agreement. Any such contact would be solely at the discretion of the Recipient and/or any legally appointed guardian for the child and will be consistent with the intent of these parties['] agreement herein to acknowledge that there are no parental rights or responsibilities whatsoever established by or for the Donor by virtue of this donation of semen/sperm made herein.
20. Each party acknowledges that the relinquishment of any and all parental and custodial rights as set forth in this agreement shall be final and irrevocable.
21. Further, the Recipient acknowledges and agrees that any claim to any support of any form or in any nature whatsoever also shall be final and irrevocable.
22. The Donor shall be prohibited from filing any action to establish paternity, custody, or guardianship and shall indemnify and hold harmless the Recipient if such action is pursued. Likewise, the Recipient is prohibited from seeking any action of paternity or action of support and shall hold harmless and indemnify the Donor with respect thereto.
23. Each party acknowledges and understands that there are legal questions raised by the issues involved in this Agreement which have not been settled by statu[t]e or prior court decisions. Notwithstanding

the knowledge that certain of the clauses stated herein may not be enforced in a court of law, the parties choose to enter into this Agreement and clarify that intent existed at the time of the artificial insemination procedure was implemented by them.

24. Each party acknowledges and agrees that she or he signed this Agreement voluntarily and freely, of his or her choice, without any duress of any kind whatsoever. It is further acknowledged that each party has been advised to secure the advice and consent of an attorney of his or her own choosing, and that each party understands the meaning and significance of each provision of this Agreement.
25. Each party acknowledges and agrees that any changes made in the terms and conditions of the Agreement shall be made in writing and signed by both parties.
26. This Agreement contains the entire understanding of the parties. There are no promises, understandings, agreements, or representations between the parties other than those expressly stated in this Agreement.
27. The Recipient is married under the laws of the State of North Carolina and that any rights that may rise therefrom for her spouse shall be dealt with in any further separate agreement and that the spouse is legally bound by all actions of the Recipient and the Spouse signs and acknowledges as the Spouse of the Recipient to also indemnity [sic] and hold harmless the Donor with the respect to each and every paragraph of this Agreement. Further, that any and all legal rights standing between the Recipient and her Spouse shall be dealt with between the two of them and in no way include the Donor. The recipient and her Spouse/Partner agree and acknowledge that each has been advised to seek legal counsel on their own.

¶ 4 All three parties—plaintiff, recipient, and donor—signed the written agreement in the presence of a notary public.

¶ 5 On 6 May 2017, a child (the "child") was born from recipient's pregnancy; plaintiff's and recipient's respective names appeared on the birth certificate as the child's legal parents.

¶ 6 Plaintiff and recipient separated on 3 February 2020. Approximately three months later, on 13 May 2020, donor filed a petition before the Clerk of Superior Court of Iredell County to legitimate the child (the "legitimation action"). By the time the matter *sub judice* came on for trial, donor's legitimation action was still pending.

¶ 7 Plaintiff filed a complaint on 17 September 2020 against recipient and donor for breach of contract. In this complaint, plaintiff alleged the following with regards to donor:

> a. That [Donor] filed a Petition to Legitimate on May 13, 2020 . . . .
>
> b. That Paragraph 11 of the [written] Agreement states, "The Donor shall have no legal claim to the child whatsoever and any right he would have to bring suit to establish any legal relationship or paternal relationship with respect to any child resulting from artificial insemination."
>
> c. That Paragraph 20 of the [written] Agreement states "Each party acknowledges that the relinquishment of any and all parental and custodial rights as set forth in this agreement shall be final and irrevocable."
>
> d. That Paragraph 22 of the [written] Agreement states, "The Donor shall be prohibited from filing any action to

> establish paternity, custody, or guardianship and shall indemnify and hold harmless the Recipient if such action is pursued."

In addition to the breach of contract claim, plaintiff sought specific performance, requesting that the trial court order donor to dismiss his legitimation action with prejudice, as well as attorney's fees.

¶ 8 On 23 February 2021, recipient and donor "signed a written document titled 'Amendment of Agreement for Sperm Donation' wherein they purport to amend the [written] agreement to terminate, void, and release one another from said agreement."

¶ 9 The matter came on for hearing on 3 March 2021 in Iredell County District Court, Judge Hedrick presiding. In a written order filed on 30 March 2021, after making findings of fact consistent with the above facts, the trial court concluded the following:

> 2. The three parties to this action entered into a contract. There was a mutual assent to the same material terms. Although the court is concerned with the lack of consideration in light of the fact that the primary purpose of the contract had been completed prior to its entry, the parties agreed to refrain from doing particular things after the entry of the contract related to events which may have occurred or become known to the parties later during the pregnancy of [recipient] and at or after the birth of the child conceived.
>
> 3. [Donor] breached paragraph 22 of the contract by filing an action to establish paternity.

> 4. Plaintiff failed to prove the actual amount of restitution due from defendant [donor] as a result of his breach and therefore plaintiff's claim for actual damages if any should be denied. Upon finding the material breach in the absence of sufficient proof of actual damages it is the Court's duty to award a nominal sum in recognition of the technical rights of the plaintiff.
>
> 5. Although plaintiff's actual damages are unproven and unclear, they are certainly not trivial.

¶ 10 Then, in pertinent part, the trial court noted that the matter before it strictly related to contract law, as opposed to family law, even though the matter is, by its nature, intrinsically related to family law matters. Specifically, the trial court concluded: "No contract will deprive the court of inherent authority to protect and provide for minor children. . . . N.C.G.S. 1-301.2 provides plaintiff a forum, the Superior Court, to litigate factual disputes and equitable defenses to [donor]'s legitimation action." The trial court continued:

> Specific Performance is a remedy in the sound discretion of the trial court. This court has carefully considered the equities of plaintiff's request. In plaintiff's favor is the fact that she is merely requesting the court to enforce a promise that [donor] made in a written contract that he drafted. Supporting a denial of plaintiff's request is the court's inherent authority to protect and provide for minor children; the number of judicial forums available to plaintiff to litigate equitable defenses and the best interests of the minor child even if this court does not bar the door of the courthouse to [donor]; the limits upon plaintiff's authority and control pursuant to the terms of the written agreement; and a system of justice that favors notice and opportunity to be heard. It would not be

> equitable to grant plaintiff's prayer for specific performance and her request should be denied.

¶ 11 The trial court decreed that donor "materially breached the contract of the parties at the time he filed the legitimation action[,]" ordered that plaintiff should recover "one dollar" from donor, and denied "plaintiff's claim for specific performance and order requiring [donor] to dismiss his pending legitimation action . . . ."

¶ 12 Donor filed notice of appeal on 28 April 2021 and filed his appellant brief on 18 November 2021. Notably, recipient did not file notice of appeal in this matter; nonetheless, she filed a brief in support of donor on 17 February 2022, in which she is denoted as "defendant-appellant." Recipient filed an amended brief as defendant-appellee on 25 February 2022.

II. Discussion

¶ 13 On appeal, donor argues that the trial court erred in its findings of fact, that the trial court erred in its conclusions of law, and that the written agreement is void as against public policy. We disagree.

A. Standard of Review

¶ 14 "We review an order entered by a trial court sitting without a jury to determine whether competent evidence supports the findings, whether the findings support the conclusions, and whether the conclusions support the judgment." *Carolina Mulching Co. LLC v. Raleigh-Wilmington Invs. II, LLC*, 272 N.C. App. 240, 244-45, 846 S.E.2d

540, 544 (2020) (citing *Quick v. Quick,* 305 N.C. 446, 454, 290 S.E.2d 653, 659 (1982)), *aff'd sub nom. Carolina Mulching Co. v. Raleigh-Wilmington Invs. II, LLC*, 378 N.C. 100, 2021-NCSC-79. "Unchallenged findings of fact are presumed correct and are binding on appeal." *Id.* at 245, 846 S.E.2d at 544 (citation and quotation marks omitted). "The trial court's findings of fact, even if challenged, shall not be disturbed if there is evidence to support those findings, but its conclusions of law are reviewable de novo." *Id.* (citation omitted). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *Id.* (quotation marks omitted) (citing *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008)).

B. Recipient's Argument on Appeal

¶ 15 We begin by noting that, although recipient did not file an appeal from the trial court's order, she has filed two appellate briefs. The first brief identifies her as an "appellant" despite the fact that she did not appeal from the trial court's order. The second, amended brief correctly identifies recipient as an appellee. Despite this amendment, both versions of recipient's brief present arguments in support of donor, the appellant, on appeal.

¶ 16 Our Rules of Appellate Procedure hold that:

> A court of the appellate division may, on its own initiative or motion of a party, impose a sanction against a party or attorney or both when the court determines that an appeal

> or any proceeding in an appeal was frivolous because of one or more of the following:
>
> . . . .
>
> a petition, motion, *brief*, record, or other item filed in the appeal was grossly lacking in the requirements of propriety, grossly violated appellate court rules, or grossly disregarded the requirements of a fair presentation of the issues to the appellate court.

N.C.R. App. P. 34(a)(3) (emphasis added). As a result of a frivolous appeal, this Court "may impose one or more of the following sanctions": dismissal of the appeal, monetary damages, or "any other sanction deemed just and proper." N.C.R. App. P. 34(b).

¶ 17 Here, although recipient's position in the matter *sub judice* is aligned with that of donor, the appellant, it is undisputed that recipient did not file an appeal following the trial court's order. Furthermore, it is unclear whether recipient had a right to appeal, because, although she is a named party in plaintiff's complaint, the trial court did not make any orders or decrees with respect to her. Accordingly, to the extent recipient's brief could be interpreted as constituting an appeal, we deem her appeal as frivolous; thus, recipient's arguments, as set out in her amended brief, are not properly before this Court, and we do not consider them. *See* N.C.R. App. P. 34.

C. Findings of Fact

¶ 18 On appeal, donor argues that the trial court erred in its findings of fact, specifically "fact number 11" ("Finding of Fact 11") and "fact number 12" ("Finding of Fact 12"). These findings read as follows:

> 11. Although tempered by the broad discretion granted to [recipient], the written agreement gives rights to the Plaintiff:
>
> A. Paragraph 10 states that Donor relinquishes any and all parental or custodial rights with respect to the child that may be conceived;
>
> B. Paragraph 11 states that the Donor shall have no legal claim to the child or right to bring[ ]suit to establish any legal or paternal relationship with respect to any child resulting from artificial insemination[;]
>
> C. Paragraph 20 states that the relinquishment of parental and custodial rights is final and irrevocable; and
>
> D. Paragraph 22 states that Donor shall be prohibited from filing any action to establish[ ]paternity, custody, or guardianship.
>
> 12. The written agreement also grants many protections to [donor]: a waiver of legal, financial and emotional claims related to any child conceived from the donation; the right to collect attorney fees and costs associated with defending claims related to any pregnancy or birth; and a waiver of any warranty claims related to the quality of the genetic material donated. Pursuant to paragraph 27, plaintiff is also bound by all these waivers and releases.

¶ 19 "Contracts are interpreted according to the intent of the parties." *Brown v. Ginn*, 181 N.C. App. 563, 567, 640 S.E.2d 787, 789 (2007) (citation omitted). "The intent of the parties is determined by examining the plain language of the contract." *Id.* at 567, 640 S.E.2d at 790 (citation omitted).

¶ 20 With respect to Finding of Fact 11, donor contends that "[a] plain reading of the [written] [a]greement does not purport to grant any rights to [plaintiff], but rather is a restriction placed upon what [donor] may do in relation to the minor child[,]" and that "[t]hese restrictions are subject to grant of rights reserved solely to [recipient], namely those paragraphs set out in Finding of Fact 10 of the trial court's order." With respect to Finding of Fact 12, donor argues that "[t]he [written] [a]greement is between [recipient] and [donor]," that "[t]he only person besides [recipient] and [donor] who claim any right of authority under the [written] [a]greement is a legally appointed guardian of [the child]," and that "Paragraph 27 of the Agreement purports to be a contract within a contract between [recipient] and [plaintiff], wherein they promise to do things in the future." We disagree, and particularly disagree as to donor's contention that the written agreement conferred no rights to plaintiff.

¶ 21 The plain language of the written agreement expressly refers to plaintiff in multiple instances in ways that appear neither accidental nor arbitrary. The plain language of the written agreement also discusses plaintiff's role with respect to the

objective of the written agreement—that of impregnating recipient by artificial insemination so that a child could be born of the marriage of recipient *and* plaintiff.

¶ 22 Indeed, plaintiff is introduced in the beginning of the written agreement, immediately following the identification of donor and recipient, as follows:

> FURTHER, it is noted that the Recipient is currently married and that her partner and spouse is named Christine Marie McLane. To the extent any claims arise as a result of the marriage of Recipient and her spouse, the said spouse shall be said signatory hereto. Each is advised to seek legal representation of her own choosing and each partner should speak with their OWN attorney.

This paragraph, in addition to identifying plaintiff, asserts plaintiff's position as a signatory to the written agreement, and also explains how any claims that should arise against recipient and "her spouse" would involve plaintiff, implicating her right to litigate matters arising from the written agreement or the marriage itself.

¶ 23 The plain language of the written agreement then continues to expressly refer to plaintiff, as "spouse" or "signatory," throughout its provisions:

> Now, therefore *each signatory and party hereto agrees and covenants as follows*:
>
> . . . .
>
> 4. It is explicitly set forth herein that the intention of this Agreement is to allow the Recipient an opportunity to become pregnant, i.e. conceive a child, and to then raise said child *with her spouse* or as she otherwise sees fit.
>
> . . . .

> 7. The Recipient agrees to hold harmless and indemnify the Donor from any type of support sought at any time for any child resulting from any successful artificial insemination. This includes but is not limited to any child support, medical support for any such child, financial support for any bills or costs associated with any pregnancy and any and all support that maybe [sic] sought from or by the Recipient or *her Spouse*.
>
> 8. The Recipient further agrees to pay any and all court costs and attorney fees that may be associated with the Donor having to defend himself against any legal action brought by the Recipient, the Recipient[']s heirs or family, assigns, *Spouse*, acquaintances, or successors . . . .

(Emphasis added.)

¶ 24 Most importantly, paragraph 27, the final provision in the written agreement, which donor contends purports to describe merely a "contract within a contract" of sorts between plaintiff and recipient, expressly describes both the role of plaintiff with respect to the written agreement and her relationship with donor arising therefrom:

> 27. The Recipient is married under the laws of the State of North Carolina and that any rights that may rise therefrom for her spouse shall be dealt with in any further separate agreement and that *the spouse is legally bound by all actions of the Recipient and the Spouse signs and acknowledges as the Spouse of the Recipient to also indemni[f]y and hold harmless the Donor with the respect to each and every paragraph of this Agreement*. Further, that any and all legal rights standing between the Recipient and her Spouse shall be dealt with between the two of them and in no way

> include the Donor. The recipient and her Spouse/Partner agree and acknowledge that each has been advised to seek legal counsel on their own.

(Emphasis added.) In fact, paragraph 27 asserts plaintiff's role with respect to the written agreement and her interests with respect to the child, as it plainly states that plaintiff must, just as equally as recipient, hold Donor harmless to each of the provisions in the written agreement, thereby relinquishing any child support from him.

¶ 25 Furthermore, the fact that plaintiff, along with donor and recipient, signed the written agreement before a notary public and that the written agreement provides that plaintiff is advised to seek her own counsel with respect to the contents therein supports finding that the plaintiff's rights were affected by the written agreement, that any reference to her therein is intentional, and that it would be erroneous to read the written agreement being between recipient and donor exclusively.

¶ 26 Lastly, even if we were to assume *arguendo* that the written agreement cannot be interpreted by its plain language, we would have to interpret it against donor as its drafter. *See Gay v. Saber Healthcare Grp., L.L.C.*, 271 N.C. App. 1, 7, 842 S.E.2d 635, 640 (2020) ("Where no other reasonable, nonconflicting interpretation is possible, the court is to construe the ambiguity against the drafter—the party responsible for choosing the questionable language." (citation and quotation marks omitted)), *aff'd,* 376 N.C. 726, 2021-NCSC-8. As such, we would conclude that, if donor had intended

for the written agreement to solely bind recipient and himself, and to wholly exclude plaintiff, he had ample opportunity to do so. *See id.*

¶ 27 Accordingly, the evidence supports Findings of Fact 11 and 12, and thus the trial court did not err in making said findings.

D. Conclusions of Law

¶ 28 Next, donor argues that the trial court erred in making its conclusions of law, specifically "conclusion of law 2" ("Conclusion 2") and "conclusion of law 3" ("Conclusion 3"). These conclusions read as follows:

> 2. The three parties to this action entered into a contract. There was a mutual assent to the same material terms. Although the court is concerned with the lack of consideration in light of the fact that the primary purpose of the contract had been completed prior to its entry, the parties agreed to refrain from doing particular things after the entry of the contract related to events which may have occurred or become known to the parties later during the pregnancy of [recipient] and at or after the birth of the child conceived.
>
> 3. [Donor] breached paragraph 22 of the contract by filing an action to establish paternity.

¶ 29 With respect to Conclusion 2, donor argues it "is not supported by competent facts that [plaintiff] was a party and had standing to enforce the [written] [a]greement" and that plaintiff "lacks standing . . . as she suffers from no invasion of a legally protected interest" because, as donor purports, through paragraph 27 of the

written agreement "she has contracted away her decision-making authority."

¶ 30 With respect to Conclusion 3, donor claims he could not have breached the written agreement because he and recipient "executed a written amendment as is authorized and . . . envisioned by the [written] [a]greement," which only required 'both' of their signatures." Specifically, donor contends this amendment "released [donor] and [recipient] . . . from the obligations created by the [written] [a]greement, allowed [donor] to pursue legitimation of his child, and . . . permitted [recipient] to pursue child support, paternity, or any other legal cause of action available to a parent in North Carolina."

¶ 31 We disagree with both arguments. First, as previously discussed, because we conclude that the trial court did not err in making its findings of fact and that the plain language of the written agreement illustrates plaintiff's right as a party—or, at the very least, a signatory or participant—to the written agreement, we now conclude plaintiff has standing to file a breach of contract claim and has not "contracted away" any right.

¶ 32 In fact, the written agreement set out that, in exchange for donor's sperm donation and pending recipient's successful pregnancy, plaintiff would, as a parent to the child along with recipient, forego any form of child support from donor and indemnify donor from all provisions of the written agreement. Because recipient successfully gave birth to the child, after which both recipient *and* plaintiff were

listed on the birth certificate as the child's parents, plaintiff was bound by the written agreement. Accordingly, the trial court did not err in making its Conclusion 2.

¶ 33 With respect to Conclusion 3, we agree with the trial court that donor committed breach of contract by filing his legitimation action. The written agreement between donor, recipient, and plaintiff unequivocally stated that "the relinquishment of any and all parental and custodial rights as set forth [therein]" and of "any claim to any support of any form or in any nature whatsoever" were "final and irrevocable." The written agreement further held that donor would be "prohibited from filing any action to establish paternity, custody, or guardianship . . . ." When donor filed his legitimation action on 13 May 2020, he went against these exact provisions and thus committed a material breach of the written agreement. *See Long v. Long*, 160 N.C. App. 664, 668, 588 S.E.2d 1, 4 (2003) ("In order for a breach of contract to be actionable it must be a material breach, one that substantially defeats the purpose of the agreement or goes to the very heart of the agreement, or can be characterized as a substantial failure to perform." (citation omitted))

¶ 34 Donor's argument that the amendment he and recipient executed released him from all obligations set forth in the written agreement is of no moment, as donor filed his legitimation action on 13 May 2020 and executed the alleged amendment several months later on 23 February 2021. Furthermore, plaintiff, as an original party to the written agreement, would have had to sign the amendment for it to bind her. *See*

Gay, 271 N.C. App. at 7, 842 S.E.2d at 640.

¶ 35 Accordingly, the trial court did not err in making its conclusions of law in Conclusions 2 and 3.

E. Public Policy

¶ 36 Lastly, donor argues the written agreement was void as against public policy. Specifically, donor argues the written agreement violates N.C. Gen. Stat. § 49A-1, because the statute requires that a couple seeking to get pregnant via artificial insemination execute a consent in writing prior to use of said of artificial insemination. Donor also characterizes the written agreement as a contract for adoption, and thus argues that it violates N.C. Gen. Stat. § 48, controlling adoptions. We disagree.

¶ 37 In its conclusions of law, the trial court stated it was "concerned with the lack of consideration in light of the fact that the primary purpose of the contract"—recipient's pregnancy via artificial insemination of donor's donated sperm—"had been completed prior to its entry[.]" However, the trial court also concluded that "the parties agreed to refrain from doing particular things after the entry of the contract related to events which may have occurred or become known to the parties later during the pregnancy of [recipient] and at or after the birth of the child conceived." Thus, the trial court was persuaded that recipient, donor, and plaintiff had actually

entered into a valid contract via the written agreement despite the timing of recipient's pregnancy.

¶ 38 We too are persuaded by the trial court's reasoning. Indeed, an exchange occurred between donor, recipient, and plaintiff at the time the written agreement was executed. Each party forewent a right to which he or she would have otherwise been entitled absent the agreement—namely, recipient's and plaintiff's ability to receive support from donor in rearing the child, and donor's ability to rear the child himself. *See Elliott v. Enka-Candler Fire & Rescue Dep't, Inc.*, 213 N.C. App. 160, 163, 713 S.E.2d 132, 135 (2011) ("Consideration sufficient to support a contract consists of any benefit, right, or interest bestowed upon the promisor, or any forbearance, detriment, or loss undertaken by the promisee." (citation and quotation marks omitted)). Accordingly, we concluded that the written agreement does not violate N.C. Gen. Stat. § 49A-1.

¶ 39 Finally, donor's characterization of the written agreement as a contract for adoption misapprehends the law. Not only does the written agreement make no mention of adoption or synonyms thereof whatsoever, but N.C. Gen. Stat. § 49A-1, the statute that donor correctly cites as controlling artificial inseminations, instructs that a child born by artificial insemination must be treated under law as "the same as a naturally conceived legitimate child of" the couple in question. N.C. Gen. Stat. § 49A-1 (2021).

¶ 40 Accordingly, the written agreement is not void as public policy.

F. Family Law

¶ 41 As addressed by the trial court in its written order, the matter before this Court is, under law, strictly one of breach of contract. However, the nature of the matter is intrinsically entwined with notions of family law, the merits of which we do not reach here.

¶ 42 It is a fundamental tenet of family law that the legal parents of a child cannot, by way of contract, "enter into an agreement dealing with the custody and support of their children which will deprive the court of its inherent as well as statutory authority to protect the interests and provide for the welfare of minors." *Quets v. Needham*, 198 N.C. App. 241, 254, 682 S.E.2d 214, 222 (2009) (citations and quotation marks omitted). "A natural parent's constitutionally protected paramount interest in the companionship, custody, care, and control of his or her child is a counterpart of the parental responsibilities the parent has assumed and is based on a presumption that he or she will act in the best interest of the child." *Price v. Howard*, 346 N.C. 68, 79, 484 S.E.2d 528, 534 (1997) (citing *Lehr v. Robertson,* 463 U.S. 248, 77 L. Ed. 2d 614 (1983); *In re Hughes,* 254 N.C. 434, 119 S.E.2d 189 (1961)). The same applies to parents whose child is born via artificial insemination. *See* N.C. Gen. Stat. § 49A-1.

¶ 43 Here, it is undisputed that recipient and plaintiff are the legal parents of the child. It thus follows that plaintiff, as the child's parent, enjoys all "constitutionally

protected" interests of "companionship, custody, care, and control of" the child. *See Price*, 346 N.C. at 79, 484 S.E.2d at 528. Accordingly, plaintiff's rights, obligations, and interests as the child's parent cannot be, and have not been, written away via contract.

¶ 44 To the extent that recipient and donor are attempting to leverage the written agreement to manipulate plaintiff's parental interests, any family law action arising therefrom is, as the trial court aptly explained, within the jurisdiction of the Superior Court to litigate.

III. Conclusion

¶ 45 For the foregoing reasons, because the trial court made no errors in its findings of fact or conclusions of law, and because the written agreement is not void as public policy, we affirm the trial court's order.

AFFIRMED.

Judges INMAN and MURPHY concur.

Report per Rule 30(e).