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2012 IL App (3d) 110756-U

Order filed September 5, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

<i>In re</i> MARRIAGE OF ABIR MAAMARI,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Petitioner-Appellee,	)	Will County, Illinois,
	)	
and	)	Appeal Nos. 3-11-0756 and 3-11-0820
	)	Circuit No. 05-D-1648
	)	
FRED MAAMARI,	)	Honorable
	)	Robert P. Brumund,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justices Carter and McDade concurred in the judgment.

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**ORDER**

- ¶ 1       *Held:* (1) The trial court did not abuse its discretion in granting petitioner's request for contribution of attorney fees where the record demonstrated respondent's financial ability to pay and petitioner's financial inability to pay.
- (2) The trial court did not err in distributing the proceeds from the sale of the marital home after notice of appeal was filed where the lower court retained jurisdiction to enforce the judgment.
- (3) The trial court did not err in awarding petitioner 53% of the net equity of the home or \$114,082.50 where the court adopted the parties' agreed valuation of the net equity of the marital home and respondent did not appeal that issue.
- (4) The trial court did not abuse its discretion in awarding petitioner interest on the

net equity of the marital home and attorney fees from the date the dissolution judgment was entered.

¶ 2 The trial court entered judgment dissolving the marriage of Abir and Fred Maamari. Fred appeals from the circuit court's dismissal of his motion to vacate the distribution of the net equity of the marital home. We affirm.

¶ 3 Abir and Fred were married on April 11, 1993. They had three children during their marriage and owned a home in Plainfield. On September 30, 2005, Abir filed a petition seeking to dissolve the marriage. According to the 2011 financial affidavits submitted by the parties, Fred works for the Chicago Transit Authority and earns a monthly net income of \$3,620.05. His monthly expenses are \$3,822.13. Abir is employed by the United State Postal Service and earns a monthly net income of \$4,582.46. Her monthly expenses total \$5,568.98.

¶ 4 On January 28, 2009, the trial court entered judgment dissolving the marriage. In the dissolution judgment, the trial court ordered Fred to pay Abir's former attorney \$20,000 in attorney fees. The trial court also ordered the sale of the marital home. Based on the parties' agreement, the court stated that the fair market value of the home was \$215,250 and awarded Abir "fifty-three percent (53%) of the net equity or the amount of one hundred fourteen thousand eighty-two and 50/100 dollars (\$114,082.50)." The court, in turn, awarded Fred "forty-seven percent (47%) of the net equity or the amount of one hundred one thousand one hundred sixty-seven and 50/100 dollars (\$101,167.50).

¶ 5 Fred filed a *pro se* appeal, raising various objections to the trial court's order. We affirmed, ruling that there was no evidence, based on the record, that the amount of \$215,250

was not the fair market value of the equity in the home. *In re Marriage of Maamari*, No. 3-09-0411 (March 1, 2011) (unpublished order under Supreme Court Rule 23). We further stated that the issue of a scrivener's error as to the date of payment of Abir's portion of the equity in the marital home may be moot and remanded that issue to the trial court for further determination. *Id.*

¶ 6 On remand, Abir's former attorney petitioned the court for attorney fees and costs associated with defending the appeal. He requested a total of \$11,328,91 in fees. Following a hearing, the trial court granted the petition and ordered Fred to pay a portion of Abir's fees in the amount of \$5,700.

¶ 7 On March 24, 2011, three weeks after our decision was issued, the marital home was contracted for sale, and on May 31, 2011, the trial court ordered Fred to execute the contract for sale for \$160,000.

¶ 8 In response to the sale, Fred filed a motion to vacate the portion of the judgment of dissolution of marriage awarding Abir 53% or \$114,082.50 of the net equity of the marital home. Abir filed a motion to dismiss under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)), which the trial court granted.

¶ 9 On September 1, 2011, Abir moved to enforce the dissolution judgment, asking the trial court to enforce its 2009 order and distribute the escrowed proceeds from the sale of the marital home. Fred filed a response to the motion but did not file a motion to stay enforcement of the judgment. The trial court granted Abir's motion and ordered distribution of the funds in accordance with the judgment of dissolution entered on January 28, 2009.

¶ 10

## I. Attorney Fees

¶ 11

Fred first argues that the trial court abused its discretion in granting Abir's petition for contribution of attorney fees resulting from the defense of his first appeal.

¶ 12

Generally, it is the responsibility of the party who incurred attorney fees to pay those fees. *In re Marriage of Nesbitt*, 377 Ill. App. 3d 649 (2007). However, section 508(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/101 *et seq.* (West 2010)) allows for an award of attorney fees where one party lacks the financial resources and the other party has the ability to pay. 750 ILCS 5/508(a) (West 2010). When determining an award of attorney fees, the allocation of assets and liabilities, maintenance and the relative earning abilities of the parties should be considered. *In re Marriage of Suriano*, 324 Ill. App. 3d 839 (2001). The party seeking an award of attorney fees must establish an inability to pay and the other spouse's ability to do so. *In re Marriage of Schneider*, 214 Ill.2d 152 (2005). Financial inability exists where requiring payment of fees would strip that party of his means of support or undermine his financial stability. *Id.* at 174. The allowance of attorney fees and the amount awarded are matters within the sound discretion of the circuit court and will not be reversed on appeal absent an abuse of discretion. *Id.*

¶ 13

Section 508(a) of the Act addresses the types of proceedings in which an award of attorney fees may be made, stating that:

"Awards may be made in connection with the following:

- (1) The maintenance or defense of any proceeding under this Act.
- (2) The enforcement or modification of any order or judgment under this Act.
- (3) The defense of an appeal of any order or judgment under this Act, including



appeal may file a motion to stay execution of the judgment entered by the trial court. 735 ILCS 5/2-1305 (West 2010). Whether the trial court retains jurisdiction to enter an amended order is a question of law we review *de novo*. *Id.* at 412.

¶ 18 In the judgment of dissolution, Abir was awarded \$114,082.50 and Fred was awarded \$101,167.50 from the division of the couple's home as a marital asset. In order to effectuate the distribution, the trial court ordered the escrowed funds that had accrued from the sale of the marital home be paid accordingly. Fred did not move to stay the enforcement of judgment to the trial court or this court while the appeal was pending. See 735 ILCS 5/2-1305 (West 2010).

¶ 19 In this case, the escrowed proceeds were distributed as a means of enforcing the trial court's January 2009 judgment. Since respondent failed to make a motion to stay the enforcement of the judgment, the trial court retained jurisdiction to order the distribution of the escrowed funds.

¶ 20 III. Calculation of Net Equity

¶ 21 Next, Fred argues that the net equity of the home, as calculated in the judgment of dissolution, should be recalculated using the sale price of the home when the contract for sale was signed in March of 2011.

¶ 22 A trial court's distribution of marital property should not be reversed absent a showing that the trial court abused its discretion. *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641 (2009). "A trial court abuses its discretion only where its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court." *In re A.W., Jr.*, 397 Ill. App. 3d 868, 873 (2010).

¶ 23 Under the Act, a court must classify the property as either marital or nonmarital before it may dispose of property upon a dissolution of marriage. 750 ILCS 5/503(c) (West 2010). After classifying the property, the trial court divides the marital property into "just proportions." 750 ILCS 5/503(d) (West 2010). To divide the marital property in just proportions, the trial court must first establish the value of the parties' marital assets. *In re Marriage of Cutler*, 334 Ill. App. 3d 731 (2002). Generally, the proper date for valuation of marital property is the date of the dissolution of marriage. *In re Marriage of Stone*, 155 Ill. App. 3d 62 (1987).

¶ 24 In this case, Abir's monetary award of \$114,082.50 in the judgment of dissolution was based upon the agreed net equity value of the marital home. In agreeing to the net equity value, the parties eliminated the need for a hearing on the issue. The trial court adopted the parties' agreed valuation of the marital home as of the date of dissolution. Thus, the judgment correctly provided that Abir was to receive \$114,082.50 as the equity value of the marital home in the division of marital assets as of January 28, 2009. The record fails to support Fred's claim that the monetary award or the division of marital assets was an abuse of discretion.

¶ 25 Further, the doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent action by the same parties on the same cause of action. *Hudson v. City of Chicago*, 228 Ill. 2d 462 (2008). *Res judicata* bars not only what was actually decided in the first action but also whatever could have been decided. *Law Offices of Nye & Associates, Ltd. v. Boado*, 2012 IL App (2d) 110804.

¶ 26 Here, Fred filed a previous appeal from the 2009 dissolution judgment. In that

appeal, he raised numerous errors involving the award of child support and the determination of equity in the marital home. However, he failed to raise any issue regarding the court's division of the marital home or the specific equity value awarded to Abir. It is clear that basic principles of *res judicata* apply. There was a final judgment on the merits, that final judgment was appealed, the issues that are raised in this appeal could have been raised in the first appeal and the parties were identical.

¶ 27

#### IV. Accrued Interest

¶ 28

In a related argument, Fred asserts that he should not be liable for the accrual of interest on the net equity of the marital home or the \$20,000 award of attorney fees in the dissolution judgment. Fred acknowledges that accrued interest may be assessed, but maintains that such interest cannot be assessed if the order appealed from is found to be erroneous. He argues that, since we found certain issues moot and remanded for further determination, the 2009 judgment was erroneous and, therefore, no interest should apply. We disagree for two reasons.

¶ 29

First, we find nothing in the language of our previous order that would indicate that the written dissolution of judgment was substantively erroneous. In the first appeal, Fred argued that the order instructing him to pay a portion of the equity in the home to Abir had to be vacated based on a scrivener's error. We stated:

"Second, in an apparent scrivener's error in the written judgment order, Fred was to pay a portion of the equity in the home to Abir on the previous January 16, twelve days before the order. This issue may also be moot. Nonetheless, if it is determined not to be moot, we must remand for the setting of a different date, if appropriate."

*In re Marriage of Maamari*, No. 3-09-0411 (March 1, 2011) (unpublished order under Supreme Court Rule 23). The portion of the order instructing Fred to pay a percentage of the equity in the home to Abir and ordering him to \$20,000 in attorney fees was not vacated, not does our order indicate the award was inappropriate.

¶ 30 Second, section 2-1303 of the Code of Civil Procedure provides that a judgment recovered in any court shall draw interest at a rate of 9% from the date of judgment until it is satisfied. 735 ILCS 5/2-1303 (West 2010)). The interest provision of section 2-1303 is mandatory and is not within the discretion of the trial court. *In re Marriage of Morris*, 190 Ill. App. 3d 293 (1989). Additionally, it is well settled that a trial court has the authority to award interest on a judgment for support payments and property division. See *In re Marriage of Scafuri*, 203 Ill. App. 3d 385 (1990).

¶ 31 Fred has not provided this court with any authority, nor are we aware of any, that would allow us to vacate the award of interest on the judgment in this case. We find the trial court did not abuse its discretion in ordering Fred to pay the accrual of interest. See 735 ILCS 5/2-1303 (West 2010).

¶ 32 CONCLUSION

¶ 33 The judgment of the circuit court of Will County is affirmed.

¶ 34 Affirmed.