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2018 IL App (3d) 160559

Order filed May 11, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
CARA JEAN JOHNSTON,)	Kankakee County, Illinois.
)	
Petitioner-Appellant,)	
)	Appeal No. 3-16-0559
and)	Circuit No. 09-D-219
)	
BRENT JOHNSTON,)	The Honorable
)	Kenneth A. Leshen,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice Schmidt dissented.

ORDER

¶ 1 *Held:* Trial court erred in determining equity in marital home by using mortgage indebtedness from near time of divorce where dissolution order encompassing marital settlement agreement required court to use mortgage indebtedness five years later and did not prohibit wife from refinancing mortgage.

¶ 2 Petitioner Cara Jean Johnston filed a dissolution of marriage action against respondent Brent Johnston. The trial court entered an order dissolving the marriage, which encompassed the

parties' marital settlement agreement. The order and agreement granted Cara exclusive possession of the marital residence and provided that if she did not sell the home after five years, she was required to pay Brent one half of the home's equity. Six years later, Brent filed a petition to determine the equity in the marital residence. Following a hearing, the trial court determined the equity in the marital residence to be \$33,500. Cara appeals the trial court's equity determination. We reverse and remand.

¶ 3

FACTS

¶ 4

Cara and Brent Johnston were married in July 2000. They had two children during their marriage. In May 2009, Cara filed a petition for dissolution of marriage. In September 2009, the trial court entered a Judgment Order of Dissolution of Marriage that encompassed the parties' marital settlement agreement.

¶ 5

Section 8(d) of the trial court's order stated in pertinent part:

“(d) With regard to the marital real estate located at 2264 Valley View Drive, Kankakee, Illinois, the Plaintiff, Cara Johnston, shall be awarded exclusive possession of the said real estate, with the following stipulations:

(ii) If the Plaintiff, Cara Johnston, does not sell the house after five years, then the house will be reappraised at that time and the cost of the appraisal will be split evenly between the parties. If desired, both the Plaintiff and the Defendant may have the house appraised at their own expense, and the agreed upon value will be the average of the two appraisals. The Plaintiff, Cara Johnston, will then pay the Defendant, Brent Johnston, one-half of the difference of the equity of the house based on the new appraisal value and the outstanding mortgage on the

house, not to exceed half of the equity based upon the appraised value of the house at the time of the divorce, and the outstanding mortgage at the time of the divorce. If the plaintiff, Cara Johnston, cannot pay off the full amount after five years, then she may make \$300 monthly payments to the Defendant, Brent Johnston, for two more years (totaling seven years after the divorce), that will be subtracted from the balance due. After the additional two years have passed, the remaining balance must be paid in full by the Plaintiff, Cara Johnston, to the Defendant, Brent Johnston.

(iii) The Defendant, Brent Johnson, will receive \$6,500 as a minimum value for the house upon its sale, regardless of the selling price.”

¶ 6 The order allocated the parties’ debts, making Cara responsible for paying the balances on six credit cards, as well as four loans on the marital property. Brent was held responsible for the balances on two credit cards and all of his student loan debt. After the dissolution, Cara refinanced the mortgages on the marital property to pay off some of her credit card debt, increasing the mortgage on the marital property to \$223,850.

¶ 7 In December 2015, Brent filed a petition to determine the equity in the marital residence. The trial court held a hearing on the petition. At the hearing, the parties stipulated that the value of the marital home was \$212,500. Cara presented evidence showing that the current mortgage balance on the marital home after her refinancing was \$201,700, and that the balance of the mortgage on the marital home in December 2008 was \$179,012.45. Neither party presented any other evidence about the debt owed on the marital property at any other time, including at the time of their divorce in September 2009.

¶ 8 The trial court ruled that “the increase in the mortgage indebtedness should not be borne by both parties, as its benefit inured solely to plaintiff” because she refinanced the mortgage and increased the debt on the marital property “ostensibly at least in part to pay additional indebtedness assigned to her by the judgment.” The court then determined that “the correct calculation would be to subtract the mortgage balance of \$179,000 as of December, 2008 (rounded down from \$179,012.45) *** from the stipulated value of the home of \$212,500.” The court noted that it had no evidence of the mortgage indebtedness as of the date of the dissolution.

¶ 9 The trial court entered a written judgment finding the equity in the marital residence to be \$33,500 and half of the equity to be \$16,750. After subtracting credits for payments Cara made to Brent, the court determined that Cara still owed Brent \$12,550. The court’s order did not contain language from Illinois Supreme Court Rule 304(a) (eff. March 8, 2016), stating that it was final and appealable.

¶ 10 Cara filed a motion to modify or reconsider the trial court’s order. The court then filed an amended order, finding the equity in the marital residence to be the same as in its previous order but granting Cara additional credits and ordering her to pay Brent \$11,050. The trial court included Rule 304(a) language in its amended order.

¶ 11 ANALYSIS

¶ 12 We are asked to review the trial court’s interpretation of the terms of the marital settlement agreement incorporated into the dissolution order. We review a trial court’s interpretation of a marital settlement agreement *de novo* as a question of law. *In re Estate of Trevino*, 381 Ill. App. 3d 553, 556 (2008).

¶ 13 General rules of contract interpretation apply to marital settlement agreements. *In re Marriage of Sweders*, 296 Ill. App. 3d 919, 922 (1998). The meaning of a settlement agreement

is determined by the language used in the agreement. *Trevino*, 381 Ill. App. 3d at 556. The terms of a marital settlement agreement are interpreted in the same way as a contract. *In re Marriage of Keho*, 2012 IL App (1st) 110644, ¶ 18. “Like a contract, the marital settlement agreement should be given a fair and reasonable interpretation based upon all of its language and provisions.” *Id.* The main objective of the court’s interpretation is to give effect to the intent of the parties when they entered into the agreement. *Id.*

¶ 14 Traditional contract interpretation principles require that an agreement reduced to writing “must be presumed to speak the intention of the parties who signed it.” *Western Illinois Oil Co. v. Thompson*, 26 Ill. 2d 287, 291 (1962). An agreement “speaks for itself, and the intention with which it was executed must be determined from the language used.” *Id.* “[W]here the terms are unambiguous, the parties’ intent is determined solely from the language of the instrument.” *In re Marriage of Mulry*, 314 Ill. App. 3d 756, 759 (2000). Language is not ambiguous simply because the parties do not agree on its meaning. *Id.* When the language of an agreement is clear and unambiguous, a court must enforce it as written and not read limitations or provisions into it to reach a more equitable result. *Tatar v. Maxon Construction Co.*, 54 Ill. 2d 64, 67 (1973); *Henry v. Waller*, 2012 IL App (1st) 102068, ¶ 21.

¶ 15 Cara argues that the trial court erred in its equity determination by ignoring the plain language of the dissolution order. She contends that the trial court should have considered the mortgage balance on the marital home at the time of the hearing, not the balance near the time of the divorce, in determining its equity.

¶ 16 Here, the trial court was called upon to determine the equity in the marital home. In order to do so, it had to interpret the language of the dissolution order, which encompassed the parties’ marital settlement agreement. Section 8(d)(ii) of the order provides in pertinent part: “The

Plaintiff, Cara Johnston, will *** pay the Defendant, Brent Johnston, one-half of the difference of the equity of the house based on the *** appraisal value and the outstanding mortgage on the house, not to exceed half of the equity based upon the appraised value of the house at the time of the divorce, and the outstanding mortgage at the time of the divorce.”

¶ 17 The plain language of this provision defines the term “equity” to mean the difference in the appraised value and the outstanding mortgage indebtedness on the marital property. The dissolution order required the court to determine the equity in the home five years later if Cara chose not to sell. At the hearing, which was held more than five years after the dissolution order was entered, the parties agreed that the appraised value of the marital home was \$212,500, and Cara presented evidence that the outstanding mortgage balance on the home was \$201,700. Thus, the “equity” in the marital home at the time of the hearing was \$10,800.

¶ 18 Instead of making a proper determination of the equity in the home at the time of the hearing, the trial court found that it would be unfair to allow Cara to reduce her personal debts by increasing the mortgage on the property. Thus, the trial court used the mortgage balance on the property from near the time of the divorce, instead of the mortgage balance at the time of the hearing, to determine the home’s equity. By doing so, the trial court read into the dissolution order a provision prohibiting Cara from refinancing the mortgage on the marital home and increasing the mortgage on the property within five years of the divorce. However, the dissolution order contained no such prohibition. The trial court read such a provision into the order to achieve a more equitable result, which was improper. See *Tatar*, 54 Ill. 2d at 67; *Henry*, 2012 IL App (1st) 102068, ¶ 21. The trial court was required to read the language of the order as it was written, which would have led it to conclude that the equity in the marital home at the time of the hearing was \$10,800, half of which is \$5,400.

¶ 19 Cara concedes that since Brent’s half of the equity in the home is less than \$6,500, section 8(d)(iii) of the dissolution order entitles Brent to receive \$6,500. After crediting Cara for the payments she has already made to Brent, totaling \$5,700, Brent is entitled to receive \$800. On remand, the trial court should enter a money judgment of \$800 from Cara to Brent for his share in the equity of the marital home.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Kankakee County is reversed and the cause is remanded.

¶ 22 Reversed and remanded.

¶ 23 JUSTICE SCHMIDT, dissenting:

¶ 24 I respectfully dissent. As the majority notes above, “ ‘[I]ike a contract, the marital settlement agreement should be given a fair and reasonable interpretation based upon all of its language and provisions.’ ” *Supra* ¶ 13 (quoting *In re Marriage of Keho*, 2012 IL App (1st) 110644, ¶ 18). It also seems clear that the trial judge was trying to enforce his judgment order which assigned certain debts to Cara. By refinancing the mortgage to pay those debts, she, in essence, reassigned half of those debts to Brent. I believe that the trial judge’s ruling is based on a fair and reasonable interpretation based upon all of the language and provisions in the marital settlement agreement, as well as the trial judge’s original judgment order. I would note that the marital settlement agreement makes no provision regarding refinancing the mortgage. Agreed, it does not specifically prohibit it, but at the same time, it does not seem to contemplate it either. It is reasonable to assume that throughout the document, the phrase “the outstanding mortgage” refers to the mortgage held at the time of dissolution, not some future refinanced mortgage. It

seems unreasonable to assume that the parties intended to allow Cara to reduce Brent's equity in the house at her whim, by refinancing the mortgage.