IN THE COURT OF APPEALS OF IOWA

No. 0-182 / 09-1265
Filed April 21, 2010

IN RE THE MARRIAGE OF TRANG NHA NGUYEN-WEAR AND LUCAS ALAN WEAR

Upon the Petition of
TRANG NHA NGUYEN-WEAR, n/k/a TRANG NHA NGUYEN,
Petitioner-Appellee,

And Concerning
LUCAS ALAN WEAR,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Leo Oxberger, Judge.

Lucas Wear appeals from a declaratory judgment interpreting a dissolution decree provision regarding the sale of the marital residence. **AFFIRMED IN PART AND REVERSED IN PART.**

David J. Hellstern and Meggan Guns of Kreamer Law Firm, P.C., West Des Moines, for appellant.

Jon Garner and J.D. Hartung of Hartung & Schroeder, L.L.P., Des Moines, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Potterfield, JJ.

POTTERFIELD, J.

Lucas Wear ("Lucas") appeals a district court's declaratory judgment interpreting a provision of the decree dissolving his marriage to Trang Nha Nguyen ("Mimi"). The provision requires the parties to list the former marital residence for sale and provides for certain steps to be taken if one party wants to accept an offer from a third party and the other does not. In this case, Lucas wanted to accept such an offer and Mimi did not. The net sale price would not have covered the outstanding mortgage balance, so each party would have had to contribute a certain amount of cash at closing. This circumstance—a proposed sale that would require the parties to contribute cash rather than generate net proceeds—was not expressly covered in the dissolution decree, and the parties disagreed as to how it should be handled. For the reasons that follow, we uphold the district court's resolution of this dispute.

I. BACKGROUND FACTS AND PROCEEDINGS.

The parties were married in 2005 and divorced in 2008. The dissolution decree, approved by both parties, provided as follows concerning the former marital residence:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the marital residence of the parties . . . shall be listed for sale and sold in a commercially reasonable fashion. Until such time the house is sold, Mimi shall enjoy exclusive possession thereof and be solely responsible for the utilities and routine maintenance thereon. Lucas shall contribute the sum of $428 per month towards the mortgage payment—payable directly to Mimi on or before the first of each month until such time the house is sold. Any extraordinary and necessary maintenance items costing $100 or more shall be shared equally by the parties upon mutual agreement that the expense should be incurred. The proceeds from the sale of the home shall be used first to satisfy the following debts:
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> 1) first mortgage; and

> 2) unpaid property taxes or other expenses of sale.
>
> The remaining proceeds, if any, shall be divided equally between the parties. *If an offer acceptable to one of the parties is received it shall either be accepted by both parties OR the party who does not want to accept said offer shall be awarded possession of the residence and further be required to refinance the residence within sixty (60) days of said offer and pay to the other party one-half of net proceeds that would have resulted from the declined offer*.

(Emphasis added.)

In May 2009, after the home had been on the market for nine months, the parties were presented with an offer to purchase it for $117,000. This offer would not have covered the outstanding mortgage debt and would have resulted in an estimated deficit of sale proceeds of $16,411, or $8025.50 per party. Lucas nonetheless indicated his willingness to accept the offer. Mimi refused and asked for Lucas to pay her $8025.50, whereupon she would refinance the house and release Lucas from the mortgage. Lucas took the position that since there were going to be no "net proceeds" from the sale, Mimi should simply refinance the house and remove him from the mortgage, without his being obligated to pay her anything. The dispute was presented to the district court.

The district court agreed with Mimi's position, reasoning as follows:

> Given the fact that [Lucas] was willing to sell the property to a third party and lose $8025.50—the clear intent of the stipulated Decree (to allow either party to accept a bona-fide offer from a third party without requiring agreement of the ex-spouse) will be accomplished by [Lucas] paying said amount directly to [Mimi] which will in turn obligate [Mimi] to refinance the property to remove [Lucas's] name from any further obligation thereon.

The court thus ordered Lucas to pay Mimi $8025.40 and execute a quitclaim deed, whereupon Mimi would have sixty days to refinance the property and

remove Lucas's name from any further obligation thereon. The court also ordered Lucas to pay Mimi $500 toward her attorney fees.

Lucas appeals.

II. SCOPE AND STANDARD OF REVIEW.

Lucas appeals from a trial court declaratory judgment ruling construing the dissolution decree, and our review is thus de novo. *See In re Marriage of Sylvester*, 412 N.W.2d 624, 626 (Iowa 1987).

A decree for dissolution of marriage is susceptible to interpretation in the same manner as other instruments. *In re Marriage of Russell*, 559 N.W.2d 636, 637 (Iowa Ct. App. 1996). The determinative factor is the intent of the court as disclosed by the language of the decree as well as its content. *Id.* Every word should have force and effect, and be given a consistent, effective, and reasonable meaning. *Id*.; *see also In re Marriage of Lawson*, 409 N.W.2d 181, 182-83 (Iowa 1987).

III. DISCUSSION.

This case requires us to interpret the following language in the circumstance where only one party wants to accept a third-party offer for the former marital home and the proposed sale would result in a deficit rather than positive "net proceeds":

> If an offer acceptable to one of the parties is received it shall either be accepted by both parties OR the party who does not want to accept said offer shall be awarded possession of the residence and further be required to refinance the residence within sixty (60) days of said offer and pay to the other party one-half of net proceeds that would have resulted from the declined offer.

Lucas argues that under these circumstances, Mimi should keep the residence and refinance it in her name alone and neither party should pay anything to the other. Lucas points out that the decree makes "no mention of an obligation imposed on the party wishing to accept the offer" (i.e., him) and that it would be inequitable to require him to pay $8025.50, or half the projected deficit if the sale had gone through, to Mimi. He notes that the current mortgage balance is $119,000 and that the offer (presumably an indicator of market value) was for $117,000. Thus, if Lucas pays Mimi $8025.50, he will have that much less money, while Mimi will receive $8025.50 plus a home that is presumably worth $117,000 or only $2000 less than the mortgage balance. Moreover, Lucas points out that Mimi must think the home is worth more than $117,000 or she would have accepted the offer.

Mimi, on the other hand, echoes the district court's view of the matter. She argues that the intent of the decree was to place the party who wanted to accept the offer in the same position that he or she would have taken if the offer had been accepted. That will happen if Lucas pays $8025.50. Mimi also maintains that this outcome is equitable. While Mimi will receive the house, she will also be responsible for all expenses associated with the refinancing and for all future house-related expenses, while Lucas will be discharged from those obligations.

Upon our review, we agree with Mimi's arguments and with the district court's resolution of this dispute. As already noted, in interpreting a dissolution decree, the determinative factor is the intention of the court as gathered from all parts of the judgment. *Lawson*, 409 N.W.2d at 182. "Effect must be given to that

which is clearly implied as well as that which is expressed." *Id*.; *see also In re Marriage of Brown*, 776 N.W.2d 644, 651 (Iowa 2009) (same). Here the clear implication of the original decree was to give a party who wanted to accept a third-party offer the same deal that the offer would have provided, and conversely to require the party who declined the offer to put the accepting party in the same position which otherwise would have resulted from his or her acceptance. Those objectives are fulfilled here.

Moreover, we disagree with Lucas's fairness arguments and believe, rather, that his interpretation of the decree would lead to potentially unfair results. It is worth noting what Lucas does not argue. Lucas does not contend that Mimi has to join with him in accepting the "underwater" outside offer. Nor does he contend that the house must stay on the market unless both parties voluntarily agree to accept an "underwater" offer. Lucas insists, rather, that since he wants to accept an underwater offer and Mimi does not, Mimi has to refinance and relieve him of further obligation, but he has to pay her nothing. If this interpretation of the decree were correct, Lucas would have to pay nothing even if the offer had come in at an even lower price, a clearly unfair result.[1]

We also note our disagreement with another aspect of Lucas's argument. Lucas contends that requiring him to pay $8025.50 would violate the basic

[1]Lucas could argue that in that case, Mimi should agree to sell the property, to insure that he would share in the obligation to cover the shortfall between the value of the home and the mortgage balance. However, his interpretation puts a thumb on the scales in favor of a "sell" decision. If one of the parties thinks the price is too low and the other does not, the property will still be sold. Lucas, who is required to share in the house expenses until it is sold but does not get to live there, has an incentive to favor a quick sale even if it might not achieve full value. Thus, under Lucas's interpretation, a carefully equilibrated provision becomes a provision that is weighted in favor of a sale.

requirement that there be an "equitable" property division. *See* Iowa Code § 598.21(5) (2009). But this argument is misplaced. A property division, once made, is final and not subject to modification. *See id*. § 598.21(7); *In re Marriage of Knott*, 331 N.W.2d 135, 136 (Iowa 1983). Lucas did not appeal the original dissolution decree, and, indeed stipulated to its entry. Thus, while he has the right to argue that the district court's declaratory judgment misinterpreted that decree, he cannot argue that the declaratory judgment leads to an inequitable property division (except to the extent he is simply urging that as a reason why the interpretation is incorrect).

For the foregoing reasons, we affirm the district court's interpretation of the decree. We do note one additional point that the parties have not expressly raised. Under the decree, if the parties disagreed on whether to accept an offer and the projected "net proceeds" thereunder were going to be positive, half that amount would be paid to the party favoring sale *after* the refinancing. The district court's declaratory judgment, however, requires Lucas to pay Mimi $8025.50 *before* Mimi obtains a refinancing. If Mimi is unable to refinance, she will in fairness be required to return the $8025.50 to Lucas, since his obligation to pay the deficit under the decree and the court's interpretation is contingent on the refinancing.

IV. ATTORNEY FEES.

Lastly, we confront the question of attorney fees. Lucas requests that we set aside the district court's award of $500 in attorney fees to Mimi. Mimi, by contrast, asks us to affirm that award and to grant her attorney fees on appeal.

There is no statutory authority for an award of attorney fees in this declaratory judgment action. *See In re Marriage of McGinley*, 724 N.W.2d 458, 464 (Iowa Ct. App. 2006) (noting that Iowa Code chapter 598 "contains no provision . . . allowing [ ] an award [of attorney fees] in a post-decree action seeking a declaratory judgment concerning the parties' rights and responsibilities under the decree"). The district court erred in making an award of attorney fees in the absence of statutory authority to do so. We reverse the district court's award of attorney fees.

For the same reason, we deny Mimi's request for an award of appellate attorney fees, finding it to be without basis in law or fact. *Id.*

Costs on appeal are taxed against Lucas.

AFFIRMED IN PART AND REVERSED IN PART.