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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 06/14/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:) No. 1 CA-CV 11-0589
)
KANWALJIT GADHOK,) DEPARTMENT E
)
Petitioner/Appellant,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
VINOD K. NANGIA,)
)
Respondent/Appellee.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FN2006-001513

The Honorable Pamela S. Gates, Judge

AFFIRMED

Kanwaljit Gadhok
Petitioner/Appellant *In Propria Persona*

Phoenix

Vinod K. Nangia
Respondent/Appellee *In Propria Persona*

Phoenix

B R O W N, Judge

¶1 Kanwaljit Gadhok ("Wife") appeals the trial court's order allowing Vinod Nangia ("Husband") to purchase the parties' marital residence. For the following reasons, we affirm.

BACKGROUND

¶12 In April 2006, Wife petitioned for dissolution of the marriage. At a settlement conference with a mediator held in November 2007, the parties reached an agreement pursuant to Arizona Rule of Family Law Procedure 69, dividing the parties' community assets and debts (the "Agreement"). The terms of the Agreement are reflected in the settlement conference transcript. See Ariz. R. Fam. L. P. 69.

¶13 Among the assets addressed in the Agreement is the parties' marital residence, located in Scottsdale. The parties agreed the house was worth \$1.2 million and that each of them would have fifteen days to decide whether to purchase it for that price. After the fifteen-day period, the house would be listed for sale on the market at \$1.2 million. The parties further agreed that if the house did not sell at that price within a reasonable time, they would either agree to list it at a lower price or allow a court-appointed real estate commissioner to choose a price based on a market analysis or appraisal.

¶14 On November 21, 2008, the trial court entered a decree of dissolution (the "Decree"). The Decree approved the Agreement and ordered that the house "shall be sold and the net proceeds, after payment [of certain obligations], divided equally between the parties." The same day, in response to a

prior motion filed by Husband, the court ordered the appointment of a special real estate commissioner to sell the house (the "REC Order"). The REC Order directed the commissioner to obtain a market analysis and list the house for sale "in a commercially reasonable manner at the value estimated by the market analysis." The order further stated the parties were to "consider all written offers" and that approval of an offer was not to be "unreasonably withheld." The order also provided that an offer made by either of the parties was not to be rejected unless the party rejecting the offer could "make a factual showing as to the reasonable basis for the rejection."

¶15 In November 2008, Wife filed a motion for new trial, which the court granted. In April 2009, Husband filed a motion asking the court to set deadlines for the parties to exercise their respective options to purchase the house. The motion included a stipulation between the parties agreeing to refrain from listing the house and that its fair market value was \$1,020,000. The court then held a trial "solely on the issue of ownership" of certain stock accounts and subsequently entered an amended decree in April 2009 (the "Amended Decree").

¶16 In addition to affirming the Decree, the trial court noted: "In their Rule 69 agreement, the parties agreed to the sale of the marital residence for the sale price of \$1,020,000.00. Both parties have the option to purchase the

home, with Wife having the first option." The court also amended the Agreement to add deadlines for exercising the option to purchase. The court further ordered that if "neither party exercises the option to purchase, the appointed real estate commissioner shall immediately place the marital [residence] on the market for sale pursuant to the terms agreed upon by the parties and the proceeds of the sale [shall be] equally divided by the parties."

¶17 In June 2009, Husband filed a notice of his intent to purchase the house. He asserted the property had been appraised for \$800,000 and that he should be allowed to purchase the house by paying to Wife \$132,254, which he argued was the net sum Wife would be entitled to after the payment of amounts she owed to Husband pursuant to prior court orders. In July 2009, the court granted Husband's request to purchase the house, noting that Wife had not exercised her option. Husband then filed a "motion to implement [his] purchase of [the] marital residence." Several months later, Wife objected, arguing that under the Agreement Husband had the option to purchase the house for \$1,020,000, not \$800,000. Wife further argued that if the court modified the Agreement to change the option purchase price, then she should be allowed to "propose her suggested changes to [the Agreement]."

¶18 In February 2011, the court ruled in relevant part that Husband had the option to purchase the house "for the purchase price of \$1,020,000, pursuant to the parties' Agreement." The court set a new deadline for exercising the option, ordering that Husband must file his intent to purchase by March 25, 2011. The court further ordered that if Husband declined to purchase the house at \$1,020,000, the special commissioner was to sell it under the terms of the REC Order.

¶19 On March 3, 2011, Husband filed a "notification of intent not to purchase family residence at \$1,020,000." Later that month, the special commissioner obtained a market evaluation and the parties authorized a real estate agent to list the house for its estimated value of \$800,000. The listing agreement provided that if either Husband or Wife purchased the house, the listing and associated fees would be cancelled. In April 2011, Husband filed a motion requesting the court to approve his offer to purchase the house for \$740,000. Husband asserted that his offer was fair because if a third party were to purchase the house at \$800,000, \$64,000 would go toward commission and closing costs, leaving the parties with net sale proceeds of \$736,000.

¶10 Wife objected, asserting that "this court has ruled that if [Husband] wishes to purchase the martial home he must do so for the price he agreed to pay at the Rule 69 settlement

conference: \$1,020,000." Wife further argued that if the court were to permit Husband to purchase the house for less than that price it would modify the Agreement and should therefore allow Wife to "reopen this case to allow her to vacate, litigate and modify" other issues addressed in the Agreement.

¶11 The court held an evidentiary hearing on May 5, 2011, at which both Husband and Wife testified. On July 5, 2011, the court ruled that Husband "may purchase the marital residence for the net cash purchase price of \$740,000," reasoning in part as follows:

Of note, throughout the proceedings the REC Order has remained an Order of the Court. The Court finds that the parties' December 1, 2008 agreement simply acted to stay the REC's ability to market the marital residence during the right of refusal period, which the Court subsequently determined expired on June 15, 2009. The Court has not amended, revised, clarified or reconsidered Paragraph 12 of the REC Order, which establishes the specific procedure for a party to purchase the marital residence while the residence is listed for sale in a commercially reasonable manner.

Specifically, Paragraph 12 of the REC Order states if either party wishes to purchase the subject real property, the purchasing party shall submit an offer to the other party in writing and provide a copy for the REC. The Court finds that Paragraph 12 of the REC Order did not obligate the parties to submit an offer at the value of \$1,020,000.00 or higher. To the contrary, Paragraph 12 stated that no party shall reject an offer unless that party can make a

factual showing as the reasonable basis for the rejection.

The court therefore concluded that Husband was not required to offer at least \$1,020,000 and that Wife had failed to make a factual showing that Husband's offer was unreasonable. Wife timely appealed.¹

DISCUSSION

¶12 Wife argues that the trial court erred in allowing Husband to purchase the property for \$740,000 because the court "lacked jurisdiction to modify the parties' Rule 69 settlement agreement absent a motion to reform that agreement." The trial court's ruling, however, did not change the terms of the Agreement. Although the parties initially agreed that they believed the house was worth \$1.2 million, they did not agree that either party would be required to purchase the house at that price. Instead, the Agreement stated there would be an option period in which either party could purchase the house at the stipulated price. The Agreement also provided the parties

¹ Wife filed a "Supplemental Legal Authority" in this court on May 18, 2012. Rule 17 of the Arizona Rules of Civil Appellate Procedure allows a filing of supplemental legal authority when "pertinent and significant authorities come to the attention of a party after the party's brief has been filed[.]" Wife's submission contains no new citations to any pertinent legal authority, but is merely a restatement and expansion of the arguments she made in her brief. Accordingly, we strike Wife's submission of "Supplemental Legal Authority." We also received Wife's letter filed with this court on May 31, 2012. We likewise strike this document, as it is not permitted under our rules and is unsupported by any legal authority.

could agree to sell the house at a lower price and that either party could request appointment of a commissioner to sell the house at market value.

¶13 The court's ruling permitting Husband to purchase the house conforms to the prior orders in this extensive litigation, including the Decree, the REC order, and the Amended Decree. Prior to the court issuing the Decree, Husband requested that the court appoint a commissioner; Wife filed a response expressly assenting to the appointment. The court then appointed the commissioner and authorized him to sell the property "in a commercially reasonable manner at the value estimated by the market analysis." After the commissioner's appointment, the parties nonetheless agreed not to list the property on the market because they apparently desired to handle the sale between them at \$1,020,000. Months later, both parties declined to purchase the house for that price and signed an agreement listing the house for \$800,000. All of these proceedings were consistent with the terms of the Agreement and the REC Order. Further, the REC Order and the listing agreement, which both parties signed, each provided for the possibility that one of the parties could purchase the property after it was listed on the market; neither of these documents provided that Husband would have to pay the price of \$1,020,000. Furthermore, we are not persuaded by Wife's argument that the

court "lacked authority to appoint a commissioner to sell the residence at a price different than that which was set by the parties' agreement," as the parties' own Agreement provided for this authority.

¶14 We also reject Wife's assertion that "there was no basis for the court to rely" on the REC Order because the Amended Decree had "modified the earlier rulings." The Amended Decree did not purport to modify the court's earlier rulings regarding the terms of the sale of the house. To the contrary, the Amended Decree expressly affirmed the terms of the Decree and the Agreement. And, as the trial court explained, neither the Amended Decree nor any other ruling canceled or modified the authority of the special commissioner to sell the house as outlined in the REC Order.

¶15 We likewise reject Wife's argument that Husband received a "\$60,000 windfall for expenses he did not pay." The court found that Husband's offer of \$740,000 was a reasonable price for the property and Wife did not provide any evidence to the contrary at the evidentiary hearing.

¶16 Wife next asserts that if "Husband [is permitted to] modify final rulings regarding the property issues, Wife [has] the right to introduce evidence regarding those issues." Because we conclude the trial court did not modify the terms of the parties' Agreement in granting Husband's request to purchase

the property, we need not address whether Wife should have been permitted to submit her own proposed modifications to the Agreement. Likewise, we need not address Wife's argument that she is entitled to relief from the terms of the Agreement under Arizona Rule of Family Law Procedure 85(C) and Arizona Rule of Civil Procedure 60(c).

¶17 Husband requests an award of attorneys' fees and costs on appeal pursuant to Arizona Rule of Civil Appellate Procedure 21. Because Rule 21 does not provide a substantive basis for awarding attorneys' fees, we deny his request. See *Ezell v. Quon*, 224 Ariz. 532, 539, ¶ 31, 233 P.3d 645, 652 (App. 2010). However, as the prevailing party on appeal, Husband is entitled to costs upon compliance with Rule 21.

¶18 Husband also filed a motion in this court requesting sanctions on appeal, but cited no authority that would permit such a request after the filing of his answering brief. We therefore deny his request.

CONCLUSION

¶19 For the foregoing reasons, we affirm the trial court's order permitting Husband to purchase the parties' marital residence for \$740,000.

/s/

MICHAEL J. BROWN, Judge

CONCURRING:

/s/

MAURICE PORTLEY, Presiding Judge

/s/

PHILIP HALL, Judge