

STATE OF MICHIGAN
COURT OF APPEALS

LEE M. TERPSTRA,

Plaintiff-Appellant,

v

NANCY JUNE TERPSTRA,

Defendant-Appellee.

UNPUBLISHED

July 9, 2002

No. 229339

Kent Circuit Court

LC No. 97-004817-DM

Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

MEMORANDUM.

Plaintiff appeals by delayed leave granted the order enforcing the judgment of divorce. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties settled their divorce action, and defendant was awarded the marital home. Defendant was owed \$135,300 to equalize the property settlement, and plaintiff was allowed to pay off the debt by paying the first and second mortgages on their current terms. A dispute arose as to whether defendant was required to make escrow payments on the mortgages. The trial court found that the clear language of the divorce judgment required defendant to make the payments.

A property division reached by the consent of the parties and finalized on the record cannot be modified by the trial court. *Quade v Quade*, 238 Mich App 222, 226; 604 NW2d 778 (1999). The court can clarify ambiguous language provided that it does not change the substantive rights of the parties. *Bers v Bers*, 161 Mich App 457, 464; 411 NW2d 732 (1987).

In *Vigil v Vigil*, 118 Mich App 194; 324 NW2d 571 (1982), this Court found language stating that a party required to make mortgage payments was ambiguous, and left open the question whether payments included property taxes and insurance. The terms of the judgment of divorce are similarly ambiguous in this case. Where the terms are ambiguous, the court is required to determine the intent of the parties. *Id.*

The terms of the judgment do not show that the parties intended for plaintiff to pay for insurance and property taxes on the home. The mortgage payments were not for support, they were part of the property settlement. Plaintiff was allowed to discharge his debt to defendant by paying the mortgage. Taxes and insurance are unrelated to that debt. Plaintiff complied with the

terms of the judgment by making payments based on the amount due on the mortgage note, exclusive of escrow.

Reversed.

/s/ E. Thomas Fitzgerald

/s/ Donald E. Holbrook, Jr.

/s/ Martin M. Doctoroff