

STATE OF MICHIGAN
COURT OF APPEALS

SALWA ADJLOUNY,

Plaintiff-Appellant,

v

LARRY SWYGERT,

Defendant-Appellee.

and

JUDY SWYGERT

Defendant.

UNPUBLISHED

January 15, 2008

No. 275591

Wayne Circuit court

LC No. 06-629300-CZ

Before: Talbot, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right an order of dismissal. We reverse.

I Basic Facts and Proceedings

This case concerns an underlying divorce case between defendants. The divorce judgment in the underlying case provided that plaintiff, defendant Judy Swygert's mother, would quitclaim certain real property to defendants in exchange for a \$32,500 lien to be paid to plaintiff from the proceeds of the property's sale. At a settlement conference conducted on the record plaintiff agreed to the above arrangement, but then filed the instant declaratory action to prevent execution of the divorce judgment against her and to quiet title to the property.

There is no dispute that, around 14 years before their divorce, plaintiff and her husband provided Judy with \$25,000 that was used for a down payment on the subject marital property. According to Larry, the money was a gift to be used as a down payment on the marital home. Accordingly to plaintiff, the money was merely a loan to Judy and Larry. Plaintiff presented a land contract for the property signed only by the grantors, plaintiff and Judy. Larry claimed the land contract was a fake because it was not the original. Larry and Judy had lived in the property and made all the payments. As mentioned, before the settlement hearing, the parties apparently reached a deal where plaintiff would quitclaim her interest in the property to Larry and Judy and in return receive a \$32,500 (\$25,000 plus interest) lien against the property.

II Affect of Divorce Judgment as to Plaintiff

Plaintiff argues that the underlying divorce judgment cannot affect her rights to the subject property.

A. Standard of Review

Whether the trial court had subject-matter jurisdiction over a claim is a question of law that we review de novo. *Ryan v Ryan*, 260 Mich App 315, 331; 677 NW2d 899 (2004).

B. Analysis

We conclude defendants were improperly granted summary disposition. Rather, the circuit court lacked jurisdiction over plaintiff to affect her rights to the property.

Jurisdiction over divorce cases is conferred on the circuit court by MCL 552.6, which provides, in pertinent part:

(1) A complaint for divorce may be filed in the circuit court upon the allegation that there has been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved. In the complaint the plaintiff shall make no other explanation of the grounds for divorce than by the use of the statutory language.

“Marriage is inherently a unique relationship between a man and a woman.” *Ryan, supra* citing MCL 551.1. “It follows that a court only has jurisdiction over the dissolution of a marriage between a man and a woman.” *Id.* This Court has also indicated that, “[a]bsent allegations of fraud, the trial court in a divorce action may only adjudicate the rights of the spouses whose marriage is being dissolved.” *Reed v Reed*, 265 Mich App 131, 138; 693 NW2d 825 (2005), citing *Berg v Berg*, 336 Mich 284, 288; 57 NW2d 889 (1953); *Smela v Smela*, 141 Mich App 602, 605; 367 NW2d 426 (1985). Further, in divorce cases “the trial court lacks the authority to compel a party to convey property or a property interest to a third person, even a child of the parties, or to adjudicate claims of third parties.” *Id.* quoting *Hoffman v Hoffman*, 125 Mich App 488, 490; 336 NW2d 34 (1983), quoting *Krueger v Krueger*, 88 Mich App 722, 725; 278 NW2d 514 (1979).

In regard to the property, the only dispute was whether plaintiff lent Judy \$25,000 to purchase the home or whether plaintiff gifted to Larry and Judy \$25,000 for a down payment on a home. However, Larry does not dispute that the \$25,000 was used to purchase the property, and as evidenced by the settlement hearing record, Larry was amenable to plaintiff receiving \$25,000 plus interest for her interests in the property. Further, the trial court did not mention fraud as a motivation to join plaintiff as a party; rather the trial court joined plaintiff as a party to enable the Larry and Judy to more easily divide their marital assets. Thus, there do not appear to be allegations that Judy is fraudulently concealing assets.

Although the lower court record shows plaintiff unequivocally agreed to quit claim certain real property to defendants in exchange for a \$32,500 lien to be paid to plaintiff from the

proceeds of the property's sale, the trial court nonetheless lacked subject matter jurisdiction over her to make her a party to a divorce case. "When there is a lack of subject-matter jurisdiction, regardless of what formalities the trial court may have taken, its actions are void." *Altman v Nelson*, 197 Mich App 467, 473, 495 NW2d 826 (1992). Here, the parties ought to have reduced the agreement to writing that referenced a relation to the divorce proceedings and executed it independently from the divorce proceedings. The agreement itself could then be used to force plaintiff to quit claim her interest to Larry and Judy.

Further, we agree with plaintiff's claim below that the divorce judgment violates the statute of frauds, which provides in relevant part, that:

Every contract for the leasing for a longer period than 1 year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof be in writing, and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized in writing [MCL 566.108]

The divorce judgment purports that plaintiff agreed to quitclaim her interest in real property to Larry and Judy in exchange for a \$32,500 lien on the property. Essentially, the divorce judgment, in regard to the property, is tantamount to an executory agreement (a contract that has not as yet been fully completed or performed), which have long been held subject to the statute of frauds. *Liddle v Needham*, 39 Mich 147 (1878). Plaintiff did not sign the divorce judgment, and thus it cannot be enforced in regard to plaintiff's interests in the property.

Moreover, although Larry's lawyer apparently filed a motion to add plaintiff as a party, there is no order entered in the lower court record that joins plaintiff to the action. Indeed, there is no document in the divorce case that lists plaintiff as a party to the action. Courts speak through written orders and not through oral decisions. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977); *Hall v Fortino*, 158 Mich App 663, 667; 405 NW2d 106 (1986); see also MCR 2.602(A)(1). Thus, even if the court in the underlying could have exercised jurisdiction over plaintiff, the lower court record does not reflect that plaintiff was properly joined as a party to the divorce action.

Reversed and remanded for further proceedings consistent with the opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Brian K. Zahra
/s/ Patrick M. Meter