

STATE OF MICHIGAN
COURT OF APPEALS

COMMONWEALTH LAND TITLE
INSURANCE COMPANY,

Plaintiff-Appellant,

v

ANTHONY ELLIS,

Defendant,

and

DENEE ELLIS,

Defendant-Appellee.

UNPUBLISHED
May 13, 2008

No. 277479
Ingham Circuit Court
LC No. 02-000694-CZ

Before: Donofrio, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from a circuit court order denying its second motion to set aside an installment payment order. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court in this action issued plaintiff a judgment for \$60,000 against Anthony and Denee Ellis, jointly and severally. It also entered orders allowing the Ellises to make installment payments. The Ellises later divorced, and the divorce court determined that the debt to plaintiff was a marital debt and apportioned it between Anthony and Denee on a 45/55 percent basis. Plaintiff released Anthony from further liability and sought to have the order for installment payments set aside on the ground that Denee had not made any payments. After that motion was denied, the divorce court entered an order requiring Anthony and Denee to each pay plaintiff directly for his or her pro rata share of the monthly installment. Plaintiff again sought to have the order for installment payments set aside on the ground that Denee had not made any payments. The trial court denied the motion and referred any issues relating to payment of the judgment to the divorce court.

Modification of an order for installment payments is within the trial court's discretion, see MCL 600.6107(3); MCL 600.2221, and is thus reviewed for an abuse of discretion. "An abuse of discretion occurs when the decision results in an outcome falling outside the principled

range of outcomes.” *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). A trial court commits error when it does not recognize that it has discretion and therefore fails or refuses to exercise it. *People v Merritt*, 396 Mich 67, 80; 238 NW2d 31 (1976).

Because the trial court’s judgment against the Ellises was joint and several, each defendant is liable for the entire judgment, although plaintiff is entitled to full compensation only once. *Gerling Konzern Allgemeine Versicherungs AG v Lawson*, 472 Mich 44, 49-50; 693 NW2d 149 (2005). Therefore, Denee Ellis can be held liable for the entire judgment, whether payable in installments or not, and plaintiff’s release of Anthony Ellis did not affect Denee Ellis’s liability unless it so provided. MCL 600.2925d(a). The divorce court’s apportionment of the debt between the Ellises did not affect plaintiff’s right to enforce the debt against Denee Ellis. Indeed, it could not have because the divorce court could not adjudicate claims of persons who are not parties to the divorce action. *Smela v Smela*, 141 Mich App 602, 605; 367 NW2d 426 (1985). Rather, the trial court retained authority to enforce the judgment and modify the installment payment order regardless of the proceedings in the divorce court. See MCL 600.6104; MCL 600.6107(3); MCL 600.6221. The divorce court’s authority was limited to determining, once the debt to plaintiff was paid, Anthony or Denee Ellis’s right to reimbursement from the other to the extent that either had paid more than his or her pro rata share as determined by the divorce judgment. Because the trial court failed to exercise its authority to determine whether Denee Ellis had violated the installment payment order and, if so, whether that violation entitled plaintiff to relief from that order, we reverse and remand for consideration of plaintiff’s motion on its merits.

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

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ William B. Murphy