STATE OF MICHIGAN

COURT OF APPEALS

DIANE LYNN FISHER,

Plaintiff-Appellee,

v

DONALD IVAN FISHER,

Defendant-Appellant.

UNPUBLISHED
February 2, 2010

No. 288233
Kent Circuit Court
LC No. 06-005033-DO

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Defendant appeals by right from the trial court's order denying his motion for reconsideration of the August 15, 2008 judgment of divorce. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The parties divorced after a ten-year marriage. Defendant owned the marital home before the marriage, which the parties stipulated was worth $160,000 in 2008. The parties placed on the record before trial an agreement regarding the division of the marital assets. The only issue for the trial court to decide was the value of the marital home at the time of the parties' marriage.

Defendant presented the testimony of a real estate appraiser who performed a retrospective appraisal of the marital home. The appraiser opined the home was worth $130,000 in 1998 on the basis of comparable sales in the area during that time period. The appraiser testified there was no correlation between the state equalized value (SEV) of a property and its true market value. But, the appraiser acknowledged receiving all information regarding the condition of the house in 1998 from defendant and that he did not speak with plaintiff.

Plaintiff testified that the house was incomplete when she moved into it and disputed many of the items of finish relied on by the appraiser in establishing its 1998 value. Defendant disagreed with plaintiff's recollection of the condition of the home and asserted that plaintiff did almost none of the remodeling or finish work in the house over the years.

Following a review of the evidence, the trial court rejected the appraiser's retrospective valuation. The court determined that the values asserted by defendant were illogical given the property's SEV in 1998 and 2008, as well as when compared with the 1992 value of the home, which had been asserted in a bankruptcy filing.

Plaintiff moved for entry of the judgment of divorce, which the trial court signed on August 15, 2008. Defense counsel failed to appear at the hearing for entry of judgment, but subsequently filed a motion for reconsideration of the judgment. The trial court denied the motion for reconsideration by order dated September 18, 2008.

Defendant argues on appeal that the trial court abused its discretion when it denied his motion for reconsideration. He claims the court's findings of fact regarding the retrospective valuation of the marital home mandates reversal. We disagree.

This Court reviews a trial court's denial of a motion for reconsideration for an abuse of discretion. *Corporan v Henton*, 282 Mich App 599; 605, 766 NW2d 903 (2009). An abuse of discretion occurs when the trial court chooses an outcome falling outside the principled range of outcomes. *Id*. at 605-606.

The trial court did not abuse its discretion when it denied defendant's motion for reconsideration as being untimely. The judgment of divorce was entered on August 15, 2008, while defendant's motion for reconsideration was filed on September 5, 2008. At the time of entry of judgment, MCR 2.119(F)(1) required that a motion for reconsideration must be served and filed not later than 14 days after entry of an order deciding the motion.[1] Because defendant's motion for reconsideration was filed past the required 14-day deadline, the trial court properly found the motion untimely. MCR 2.119(F)(1). It is not an abuse of discretion to follow the court rule when making such a determination.

Even if the motion were timely, the trial court did not abuse its discretion when it determined the 1998 value of the marital home was $74,600. If the value of an asset is in dispute, the court must specifically determine its value. *Olson v Olson*, 256 Mich App 619, 627; 671 NW2d 64 (2003). A motion for reconsideration that merely presents the same issues ruled on by the court will not be granted. "The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." MCR 2.119(F)(3).

In this action, defendant presented testimony from an appraiser who opined the marital home was worth $130,000 in 1998. While plaintiff did not hire her own appraiser, she did testify regarding the condition of the home and post-marriage improvements made to it, which the appraiser mistakenly believed had been made as of the date of valuation. In addition, contrary to defendant's claim, a page from defendant's 1992 bankruptcy petition listing the value of the home at $47,800 was admitted into evidence. While defendant's attorney originally stated that she had no objection to its admission, but she believed plaintiff would have to move for its admission, both parties later stipulated to it as exhibit 3A on the record. Defendant had the opportunity to explain this valuation at the trial and cannot now complain about the trial court's considering the 1992 valuation when arriving at a value for the marital home in 1998.

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[1] Effective September 1, 2008, the time limit for filing a motion for reconsideration was increased to a 21-day limit.

Furthermore, the trial court was not required to blindly follow the appraiser's valuation. A trial judge may ignore an expert's opinion of value, and there is no clear error when a court arrives at a value in the range between two experts' valuations. *Rickel v Rickel*, 177 Mich App 647, 650; 442 NW2d 735 (1989). Here, the court reviewed all of the testimony, found the appraiser's explanation of the interplay between SEV and value unconvincing, determined plaintiff's list of improvements present in 1998 was more credible, and ultimately believed the valuation of $130,000 was a targeted price calculated solely at depriving plaintiff of any share in the appreciation of the house. The court's finding that the home's 1998 value was $74,600 was supported by its 1998 SEV of $37,300 and was not clearly erroneous. *Id*. The arguments defendant raised in his motion for reconsideration failed to present any palpable error in the entry of the judgment of divorce, MCR 2.119(F)(3), so the court did not abuse its discretion by denying it. *Corporan*, *supra* at 605-606.

Defendant next argues the trial court erred by entering the judgment of divorce because it did not comport with the parties' agreement placed on the record. This claim is without merit.

A court may not modify a property division reached by the consent of the parties and finalized in writing or on the record. The court must uphold such a settlement and cannot set it aside absent fraud, duress, mutual mistake, or severe stress. *Lentz v Lentz*, 271 Mich App 465, 474-475; 721 NW2d 861 (2006); *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990). Before the start of trial, the parties stipulated that plaintiff would have a lien against the house as collateral for the payment of her share of the appreciation of the house between when the parties were married and when they were divorced. Defendant explicitly agreed on the record with this stipulation. The language in the divorce judgment properly recognized plaintiff's judgment lien and the remedy (foreclosure of the mortgage by advertisement) if defendant failed to pay plaintiff her share of the appreciation of the marital home during the marriage. A lien is a security interest for money owed by one party to another. *Walworth v Wimmer*, 200 Mich App 562, 564; 504 NW2d 708 (1993). A court has the authority to enforce its own directives, including by forced sale. *Id*. The language in the divorce judgment comported with the parties' property settlement placed on the record before trial. There was no palpable error on the record on which the trial court could have granted the motion for reconsideration. MCR 2.110(F)(3). Accordingly, the trial court did not abuse its discretion by denying defendant's motion for reconsideration. *Corporan*, *supra* at 605-606.

We affirm. As the prevailing party, plaintiff may tax costs pursuant to MCR 7.219.

/s/ Jane M. Beckering
/s/ Jane E. Markey
/s/ Stephen L. Borrello