STATE OF MICHIGAN

COURT OF APPEALS

WAYNE A. CUNY, Plaintiff-Appellant,	UNPUBLISHED July 31, 2012
v	No. 303995 Genesee Circuit Court
SHERRY J. CUNY, Defendant-Appellee.	LC No. 07-278573-DM

Before: TALBOT, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff Wayne A. Cuny appeals by right the trial court's judgment of divorce and the trial court's orders requiring him to pay child support and spousal support to defendant Sherry J. Cuny. On appeal, he argues that the trial court erred when it determined that it had to convert the parties' stipulated judgment for separate maintenance into a judgment for divorce without any modifications. He also argues that the trial court had inadequate evidence upon which to base its orders to pay child and spousal support. Because we conclude that there were no errors warranting relief, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Wayne and Sherry Cuny married in 1992 and eventually had three children. Wayne sued Sherry for a divorce in November 2007.

In December 2007, Sherry Cuny petitioned the trial court for custody of the children, parenting time, child support, spousal support and other relief. The trial court signed a stipulated order maintaining the status quo in February 2008. Under the terms of that order, Wayne Cuny had to continue to pay all the marital debts and expenses. Wayne and Sherry Cuny shared temporary legal custody of the children, but Sherry had physical custody.

The parties appeared for trial in June 2008 and told the trial court that they had reached a settlement on some issues. However, rather than enter a judgment of divorce, the parties asked the trial court to enter a judgment of separate maintenance which they anticipated would last for six months. After the six month period, the parties believed that they would be able to convert the judgment for separate maintenance into a judgment of divorce. The trial court expressed some concern at this procedure. It noted that it did not want a "temporary order": "I'm simply

interested in a Judgment, terms and conditions of which will simply transfer" to the judgment of divorce.

Wayne Cuny's lawyer stated that the parties' current situation made it preferable to have a period of maintenance. He explained that Wayne Cuny had since moved to Milwaukee, Wisconsin and that Sherry Cuny was contemplating moving to the state of Washington, where she anticipated finding work as a nursing assistant. He noted that the parties also needed to sell their home in Michigan, which they hoped to do after negotiating a short sale with their lender. He concluded by stating that the parties only intended to use the separate maintenance to give them time to see how things would settle.

The trial court ultimately agreed to sign a stipulated judgment for separate maintenance given the parties' circumstances. However, before doing so, the trial court had Wayne and Sherry Cuny state on the record that they both understood the nature of the judgment for separate maintenance. In addition, Wayne Cuny specifically stated that he understood that the judgment of separate maintenance would eventually be converted to a judgment of divorce. The parties also agreed the judgment for separate maintenance would require Wayne to pay Sherry $900 per week. Of that $900, $450 would be for child support and the remaining $450 would be to maintain the status quo. In a handwritten agreement, the parties memorialized this provision as well as several other provisions, which were summarized at the hearing.

In August 2008, an investigator with the Friend of the Court completed a child support recommendation on the basis of Wayne Cuny's income and an imputed income for Sherry Cuny. The investigator recommended that Wayne Cuny pay $1595 per month in support for the three minor children, which was less than the $450 per week that the parties had attributed to child support in their agreement on separate maintenance.

The trial court signed the judgment for separate maintenance in November 2008. The judgment for separate maintenance provided that it would last "at least six (6) months" from the date of entry and that after that time either party could seek the conversion of the judgment of separate maintenance into a judgment of divorce. In relevant part, the judgment for separate maintenance required Wayne Cuny to pay Sherry Cuny $900 per week with $450 per week for child support and the balance to maintain the status quo. This payment, moreover, could not be modified until February 2009.[1] The judgment provided for interim parenting time and child support, as noted, but referred the issues of parenting time, child support and spousal support to the Genesee County Friend of the Court.

In April 2009, Wayne Cuny moved to have the judgment of separate maintenance converted into a judgment of divorce. After hearing arguments on the motion, the trial court signed a September 2009 order referring the matter to the Friend of the court for an investigation and written report on child support, parenting time, travel expenses, and spousal support. Wayne, however, objected to the referee's recommendations in January 2010. Specifically, he

[1] Wayne Cuny later apparently took the position that the judgment for separate maintenance only required him to pay *until* February 2009.

argued that the referee's recommendation that he pay $1,912 per month in child support and $1301 in spousal support was premised on an erroneous understanding of his income and without taking into consideration his support obligation for another child by a different woman.

Sherry Cuny, in contrast, moved to have the trial court implement the Friend of the Court's recommendations in March 2010.

In December 2010, Wayne Cuny again moved to have the judgment for separate maintenance converted into a judgment of divorce. In his motion, he stated that his proposed judgment of divorce incorporated the applicable terms from the judgment of separate maintenance, but also disposed of those items left open in the judgment for separate maintenance.

At the hearing on Wayne's motion, the trial court expressed exasperation over how long it had taken to convert the judgment of separate maintenance into a judgment of divorce. To apparently expedite the matter, the trial court determined that the judgment of divorce should be the same as the judgment of separate maintenance: "The only thing that changes is their divorce. The document remains the same. Any modifications that need to be made are unrelated to the attempt to transfer it." As for the items within the judgment for separate maintenance that were no longer relevant, the court opined that they were "self-effectuated" and, "obviously they can't be enforced and they can't be violated . . . ." Finally, the trial court rejected the notion that it had to resolve the items left open in the judgment of separate maintenance within the proposed judgment of divorce: "I'll enter the Judgment, grant the divorce; then postjudgment you guys can do what you need to do, period. That's it, end of story."

In January 2011, the trial court entered a judgment of divorce that incorporated all the provisions of the judgment of separate maintenance with an additional provision divorcing the parties.

The trial court entered an order in April 2011 ordering Wayne Cuny to continue to pay the $450 in child support provided in the judgment of separate maintenance until entry of a uniform child support order under the judgment of divorce. It then entered orders—also in April 2011—compelling Wayne to pay $1912 per month in child support and $1301 in spousal support, effective January 1, 2011.

This appeal followed.

II. ANALYSIS

On appeal, Wayne Cuny argues that the trial court committed three errors: it erroneously determined that "no modification can be made" to a judgment of separate maintenance when converting it to a judgment of divorce; and it erred when it ordered him to pay child and spousal support because it did not "have any evidence upon which to properly decide" those issues. These arguments are woefully deficient—indeed, these three arguments take up a total of four double-spaced pages, which includes the recitation of facts, the standard of review, the prayer for relief, and the signature line.

With regard to his first issue, he argues that the trial court clearly misstated the law with its "pronouncement that the Judgment of Divorce must be identical to the Judgment of Separate Maintenance . . . ." But he fails to meaningfully cite or discuss the trial court's rationale for requiring the parties to submit a judgment of divorce that substantially mirrored the judgment of separate maintenance. He does cite *Engemann v Engemann*, 53 Mich App 588; 219 NW2d 777 (1974), for the proposition that a judgment of divorce *may* contain different terms from an earlier judgment of separate maintenance, but we cannot determine whether he means that the trial court erred by failing to recognize that it had the authority to enter a judgment of divorce that modified various aspects of the judgment of separate maintenance, or simply erred by choosing not to exercise that authority. Wayne Cuny also fails to state how the trial court's decision to convert the judgment of separate maintenance into a judgment of divorce prejudiced him. And, given that he agreed to the terms and admitted that some of the terms were no longer applicable, it is difficult to see how entry of a judgment of divorce that copied the judgment of separate maintenance prejudiced him. Moreover, although he states that the decision to convert the judgment of separate maintenance in this way was "contrary to the original intention of the parties", a careful review of the June 2008 hearing and the judgment itself belies this claim.

Wayne Cuny's claims with regard to the trial court's decision to order child and spousal support are similarly deficient. He argues that there was no evidence on the record that would permit the trial court to make the necessary findings to order him to pay spousal or child support. But he fails to acknowledge—let alone discuss—the import of his agreement that the issues of parenting time, child support, transportation for parenting time, and spousal support would be referred to the Genesee County Friend of the Court "for review and recommendation." That is, he fails to discuss whether this agreement, which was included in the judgment of separate maintenance, gave the trial court the authority to enter orders consistent with the recommendations. He also—again—fails to meaningfully discuss how the trial court's decision to enter child and spousal support orders on the basis of the referee's recommendations prejudiced him except to note that the recommendation was made 15 months earlier; he does not cite any record evidence that the circumstances had dramatically changed from the time of the recommendation to the time the trial court entered the orders, and does not discuss the import of the trial court's decision to make the support orders effective January 1, 2011, and to permit him to move to modify the orders—which he did.[2]

[2] The trial court subsequently granted Wayne Cuny's motions to reduce his spousal and child support obligations. In July 2011, the trial court reduced Wayne's child support obligation to $1172 per month and reduced his spousal support obligation to $400 per month, both effective May 1, 2011. In September 2011, the trial court reduced Wayne's child support obligation to $529 per month and eliminated his spousal support obligation, both effective August 1, 2011. Thus, Wayne Cuny only paid support under the original orders for a few months.

As Justice Voelker once explained, the appellant has a duty to present his or her issues to this Court in a manner that makes it possible for this Court to meaningfully review the claim; it is not sufficient for the appellant to merely announce his or her position:

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow. [*Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

On appeal, Wayne Cuny has claimed several errors, but has not meaningfully discussed the lower court proceedings, the rationale for the trial court's decisions, or the applicable law. For that reason, in order to properly review these claims of error, we would have to assume the role of an appellate advocate and "discover and rationalize the basis for his claims", "unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Id.* This we will not do. By failing to properly address his claims of error, Wayne Cuny has abandoned them on appeal. See *Hamade v Sunoco, Inc (R&M)*, 271 Mich App 145, 173; 721 NW2d 233 (2006).

There were no errors warranting relief.

Affirmed. As the prevailing party, Sherry Cuny may tax her costs. MCR 7.219(A).

/s/ Michael J. Talbot
/s/ Deborah A. Servitto
/s/ Michael J. Kelly