

STATE OF MICHIGAN
COURT OF APPEALS

AMEENA HAMOOD, f/k/a AMEENA
BEYDOUN, JOHN A. HAMOOD, RAMONA
HAMOOD, JAMAL JOHN HAMOOD, and
CHARLENE HAMOOD,

UNPUBLISHED
September 20, 2012

Plaintiffs-Counterdefendants-
Appellees,

v

AL STANOWSKI and JENNY STANOWSKI,

Defendants-Counterplaintiffs-
Appellants.

No. 304559
Wayne Circuit Court
LC No. 99-911949-CH

Before: MURPHY, C.J., and MARKEY and WHITBECK, JJ.

PER CURIAM.

Defendants-counterplaintiffs Al and Jenny Stanowski (“the Stanowskis”) appeal as of right the trial court’s order denying their petition to go forward with a previously-filed counterclaim against plaintiffs-counterdefendants Ameena, John, and Ramona Hamood (“the Hamoods”), which counterclaim had effectively been “dormant” following the entry of a consent judgment. The order also permitted the Stanowskis to proceed with enforcement of the consent judgment against plaintiffs-counterdefendants Jamal and Charlene Hamood, including allowing the Stanowskis to pursue foreclosure on a mortgage relative to property owned by Jamal and Charlene that had secured the consent judgment. That part of the order solely concerning the claims against Jamal and Charlene Hamood is not being appealed; therefore, to that extent, the order remains intact and enforceable and is not affected by this opinion. As to the challenged portion of the order, we reverse and remand for further proceedings.

The dispute between the parties has a lengthy history and involved a land contract, modifications of the land contract, the issuance of a warranty deed, execution of promissory notes, the recording of mortgages on various properties, the initiation of litigation in 1999, a default judgment, motions to set aside the default judgment, a settlement agreement, the filing of a counterclaim, and a breach of the settlement agreement, all culminating in the entry of a consent judgment in February 2005. Pursuant to the consent judgment, Jamal and Charlene Hamood were to pay the Stanowskis \$245,000, which included an immediate payment of \$15,807 for back interest, pursuant to a payment structure outlined in the consent judgment, with

the judgment having to be “fully paid on or before October 1, 2008.” The consent judgment further provided that an existing mortgage held by the Stanowskis on the home of Jamal and Charlene Hamood would remain in full force and effect; however, the Stanowskis were not permitted to foreclose on the mortgage or take any action on the consent judgment so long as no party was in default of the consent judgment. Finally, with respect to the focus of this appeal, the consent judgment stated:

IT IS FURTHER ORDERED that the Court shall retain jurisdiction on said matter and in the event there is a Default on this Consent Judgment, the Counter Plaintiffs [Stanowskis] may petition this Court to go against the remaining Counter Defendants [the Hamoods].

In December 2010, the Stanowskis filed a petition to reopen the case, to amend their counterclaim, and to enforce various mortgages. The petition alleged that Jamal and Charlene Hamood “went into default on th[e] Consent Judgment on or before October of 2005, and have remained continuously in default to the present time.” In ruling on the petition, the trial court entered an order permitting the Stanowskis to enforce the consent judgment and mortgage against Jamal and Charlene Hamood. However, the trial court declined to reopen or resurrect the Stanowskis’ counterclaim against the Hamoods, stating in cursory fashion, “Not after all this time. I’m not doing that.” The court then noted that the Stanowskis had a judgment against Jamal and Charlene Hamood, further indicating, “That’s your remedy; that’s what you agreed to. Your motion is denied.” The Stanowskis’ subsequent motion for reconsideration was also denied.

On appeal, the Stanowskis contend that the trial court erred when it arbitrarily and capriciously “dismissed an unperformed, unbarred, and unreleased contract claim, with no explanation whatsoever.”

This appeal concerns the interpretation of the consent judgment and whether the trial court ruled in accordance with the consent judgment in denying the petition to proceed against the Hamoods. We review for an abuse of discretion a trial court’s decision regarding the enforcement of a consent judgment. See *Trendell v Solomon*, 178 Mich App 365, 370; 443 NW2d 509 (1989). A court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). In *Laffin v Laffin*, 280 Mich App 513, 517; 760 NW2d 738 (2008), this Court observed:

A consent judgment is in the nature of a contract, and is to be construed and applied as such. If no reasonable person could dispute the meaning of ordinary and plain contract language, the Court must accept and enforce contractual language as written, unless the contract is contrary to law or public policy. In general, consent judgments are final and binding upon the court and the parties, and cannot be modified absent fraud, mistake, or unconscionable advantage. [Citations omitted.]

The interpretation of a contract, and therefore a consent judgment, is subject to de novo review on appeal. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

The trial court's ruling suggested that the only remedy and agreement arising out of the consent judgment pertained solely to Jamal and Charlene Hamood. The consent judgment, however, expressly allowed the Stanowskis, upon a default by Jamal and Charlene Hamood, to petition the court to go forward against the Hamoods on the Stanowskis' counterclaim. There is no dispute that there was a default or breach of the consent judgment. Therefore, the trial court erred to the extent that it believed that the consent judgment did not permit the Stanowskis to petition the court in order to proceed and obtain a remedy against the Hamoods.

We note that the consent judgment did not result in the dismissal of claims brought by the Stanowskis against the Hamoods; rather, the counterclaim effectively became dormant during the period of time in which Jamal and Charlene Hamood had the opportunity to make payments under the terms of the consent judgment. This Court, in reinstating the Stanowskis' claim of appeal on a motion for reconsideration, found that the "consent judgment . . . did not dispose of the claims against the [Hamoods]." *Hamood v Stanowski*, unpublished order of the Court of Appeals, entered August 19, 2011 (Docket No. 304559).

The trial court did not clearly articulate why it denied the Stanowskis' petition to reinstate their counterclaim against the Hamoods; the court simply and vaguely ruled that it would not allow the petition "after all this time." Again, it is undisputed that Jamal and Charlene Hamood defaulted on the consent judgment, thereby triggering the Stanowskis' right to petition the trial court to go against the Hamoods. Given this Court's order which provided that the consent judgment did not dispose of the counterclaim against the Hamoods, and considering that the consent judgment unambiguously allowed the Stanowskis to petition the trial court to reinstate or resurrect the counterclaim, it is unclear why exactly the court denied the petition. Accordingly, because the trial court failed to clearly state a proper basis for denying the Stanowskis' petition, effectively dismissing their counterclaim against the Hamoods, we reverse the trial court's order denying the petition to reopen the counterclaim.

Reversed with respect to that portion of the order denying the petition to proceed against the Hamoods, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Having fully prevailed on appeal, the Stanowskis are awarded taxable costs pursuant to MCR 7.219.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ William C. Whitbeck