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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

LARISA LEE SEMBOWER, *Petitioner/Appellee*,

v.

GREG LITMAN SEMBOWER, *Respondent/Appellant*.

No. 1 CA-CV 21-0045 FC
FILED 10-26-2021

Appeal from the Superior Court in Maricopa County
No. FN2019-092241
The Honorable Joan M. Sinclair, Judge
The Honorable John L. Blanchard, Judge

AFFIRMED

COUNSEL

Jeffrey M. Zurbriggen PC, Phoenix
By Jeffrey M. Zurbriggen
Counsel for Petitioner/Appellee

The Murray Law Offices PC, Scottsdale
By Stanley D. Murray
Counsel for Respondent/Appellant

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MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the court, in which Judge Brian Y. Furuya and Judge Michael J. Brown joined.

H O W E, Judge:

¶1 Greg Sembower (“Husband”) appeals the trial court’s order requiring that he and Larissa Sembower (“Wife”) sell their Colorado condo to a third party. For the reasons below, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Husband and Wife divorced in February 2020. The dissolution decree required that the parties sell their Colorado condo “within 90 days” and to equally split any equity in the property. The decree also allowed either of them to “refinance” the property within 45 days and to equally split any equity if they wished to buy the condo from the other. The court clarified in a subsequent ruling that if the parties failed to meet the refinancing deadline, either party could “purchase the property as any other buyer.”

¶3 Without input from Husband, Wife contracted with Colorado realtor Heather Lemon to sell the condo. Lemon contacted Husband, who responded that he would interview realtors, including her, in late March. Husband never interviewed Lemon, however, but had the condo appraised. The condo appraised at \$675,000, and Husband offered Wife \$600,000 for it in early May 2020, assuming the \$440,000 mortgage balance and providing \$160,000 in private financing. Wife did not respond.

¶4 Meanwhile, Lemon received one offer within the decree’s 90-day time limit for \$650,000. The sale fell through, however, after Husband talked with the prospective buyers. In August 2020, Husband moved to enforce the dissolution decree under Arizona Rule of Family Law Procedure 91 and requested that the court order the condo be sold to him for \$600,000.

¶5 At the hearing, Lemon testified that Wife cooperated with her to sell the condo while Husband did not. Lemon claimed that Husband changed locks, barred her from showing the condo, did not inform her when he would be using the condo, and thwarted a potential sale by

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directly contacting a potential buyer. She stated that Husband could not assume the joint mortgage and that he would need to refinance the mortgage, which could take months, and that she had not seen any financing information or refinancing information from him for any offer to purchase the condo. She then submitted a \$710,000 purchase offer from the condo's current tenants dated October 2020. She admitted that she had redacted the tenants' names when she sent the offer to Husband, fearing that he would again interfere with the sale. She stated that \$710,000 was a fair price because a similar condo two floors above and with a better view recently sold for \$725,000.

¶6 Husband testified that he wanted to buy the condo. He claimed that he never forwarded the appraisal or his offer to Lemon because he had never agreed to accept her as the real estate agent to sell the condo. He also claimed that he did not intentionally stop the sale of the condo but merely informed the prospective buyers about the parties' ongoing legal disputes. He testified that he did not inappropriately change the lock codes or remove the external locks but did so merely for privacy while staying at the condo. Nor did he know that Wife had leased the condo to tenants and suggested that doing so had interfered with the sale of the condo.

¶7 Wife testified that Husband had routinely and repeatedly upset attempts to sell the condo and that he unilaterally took control of the condo without contacting her. She claimed that she was the only party who had complied with the court's order to sell the condo and that Husband should be held in contempt. At the end of the hearing, Husband asked that he be allowed to buy the condo for any amount between \$600,000 and \$710,000, less his share of the equity. He claimed that allowing him to buy the condo without using the realtor would give Wife more money than selling the condo to a third party with realtor fees.

¶8 In November, the court ordered the sale to the condo's current tenants for \$710,000. It found that although Wife had acted unreasonably by signing the contract with Lemon and by leasing the property to its current tenants without coordinating with Husband, Husband had also acted unreasonably by thwarting a sale to the previous prospective buyers. Under these circumstances, the court found because of "the ongoing conflict between the parties," selling the condo to a third party was the "best course of action."

¶9 The week after the court issued the order, Wife moved to amend it because Husband's previously filed notice of *lis pendens* against

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the condo for community debts caused the tenants to walk away from the sale. She requested that the court appoint Lemon to sell to any other third party for a minimum of \$710,000. Wife then filed a supplemental motion to amend stating that another offer for \$715,000 had been made for the condo and that the court should appoint Lemon as the designated broker to sell the condo to the new buyers. In early December, the court amended its November order to require that Lemon be appointed to sell the condo and deal with any occupancy issues between the current tenants, the buyers, and the parties. It also allowed Lemon to sign in Husband's stead if he did not comply. Husband timely appeals and we have jurisdiction to consider the appeal.¹

DISCUSSION

¶10 Husband argues that the court modified the dissolution decree to require the condo's sale to a third party without making the requisite findings to justify modification under Arizona Rule of Family Law Procedure 85. We review a court's ruling on a post-decree petition and its decision to modify a dissolution decree for an abuse of discretion, *see In re Marriage of Priessman*, 228 Ariz. 336, 338 ¶ 7 (App. 2011); *Strait v. Strait*, 223 Ariz. 500, 502 ¶ 6 (App. 2010), but we review the terms of the dissolution decree and whether a subsequent order modifies the decree de novo, *see Quijada v. Quijada*, 246 Ariz. 217, 219 ¶ 5 (App. 2019).

¶11 The court did not modify the decree in its November and December orders. The orders merely effectuated the decree to sell the condo by appointing Lemon to facilitate the condo's sale. When the sale to the tenants fell through, the court's December order further appointed Lemon to effectuate the sale and did not prohibit Husband from purchasing the

¹ In March 2021, Wife again moved to have Lemon appointed as special commissioner to sell the condo because Lemon had received multiple "very good" offers for the condo. In April, the court ordered that Lemon sell the condo, and in doing so, vacated its December order now on appeal. As a result, Wife moved to dismiss the appeal as moot. This court denied Wife's motion, finding that the April order was void because it vacated an order that was on appeal. *See In re Marriage of Johnson & Gravino*, 231 Ariz. 228, 230 ¶ 6 (App. 2012). It further found the appeal was not moot because the November and December orders had fully resolved the issues "relating to the property sale by appointing a broker, confirming the property must be sold to a third party," and allowing the broker to sign on Husband's behalf.

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condo as “any other buyer” by providing Lemon with a valid offer to purchase.

¶12 Husband nonetheless argues that the court’s orders modified the decree by rejecting his offer to purchase and requiring sale to a third party. But Husband has never made a formal purchase offer to Lemon and has never provided her with evidence of alternative financing or refinancing, despite having been required to refinance the property within 45 days of the dissolution decree. As a result, the court merely reviewed the formal offers to purchase that were of record at the time of the hearing and ordered that Lemon sell the condo to the only formal offer before it, which according to Lemon was a fair offer at the time.

¶13 Both parties request attorneys’ fees and costs under A.R.S. § 25-324. Husband has far more assets available to him than Wife has available to her. But both parties have taken various reasonable and unreasonable positions and neither party appears inclined to settle the matter. After considering the reasonableness of the parties’ positions and assets available to Husband, we exercise our discretion and award Wife her reasonable attorneys’ fees on appeal. Furthermore, as the prevailing party on appeal, we award costs to Wife upon her compliance with Arizona Rules of Civil Appellate Procedure 21.

CONCLUSION

¶14 For the reasons stated, we affirm.



AMY M. WOOD • Clerk of the Court
FILED: JT