

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                         |   |                                 |
|-------------------------|---|---------------------------------|
| SHAWN J. HARRIS,        | § |                                 |
|                         | § | No. 511, 2013                   |
| Respondent Below-       | § |                                 |
| Appellant,              | § | Court Below: Family Court       |
|                         | § | of the State of Delaware in and |
| v.                      | § | for Sussex County               |
|                         | § |                                 |
| STEPHANIE FRANK-HARRIS, | § | No. CS02-04115                  |
|                         | § |                                 |
| Petitioner Below-       | § |                                 |
| Appellee.               | § |                                 |

Submitted: February 3, 2014

Decided: March 7, 2014

Before **HOLLAND, JACOBS, and RIDGELY**, Justices.

***ORDER***

On this 7<sup>th</sup> day of March 2014, it appears to the Court that:

(1) Respondent-Below/Appellant Shawn J. Harris<sup>1</sup> (“Husband”) appeals from a Family Court order granting the petition of Stephanie Frank-Harris (“Wife”) requesting specific performance of a marital property agreement requiring Husband to sell their marital home. Husband raises two claims on appeal. First, Husband contends that the Family Court erred when it found that he was in contempt of the separation agreement. Second, Husband argues that Family Court disregarded the terms of the parties’ marital property agreement. We find no merit to Husband’s appeal. Accordingly, we affirm.

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<sup>1</sup> This Court assigned pseudonyms for the parties pursuant to Supreme Court Rule 7(d).

(2) Husband and Wife were married in 1998. They separated in July 2002 and were divorced by final decree of the Family Court on March 5, 2003. In January 2004, the couple executed an agreement to divide the marital property (the “Marital Property Agreement”). The Marital Property Agreement provided a method to dispose of the marital property, including the marital home located in Georgetown. Under the agreement,

Husband shall become sole and exclusive owner of the marital real estate and mobile home located [in Georgetown]. Wife shall waive her interest in the marital residence and the equity therein, and shall convey her interest in the same to him for value by execution of a good and sufficient deed, to be prepared and recorded at Husband’s expense, and to be executed upon completion of the terms of this Agreement. Within 45 days of the signing of this agreement, Husband shall (1) pay Wife the sum of Seventy Thousand Dollars (\$70,000.00) and (2) shall either (a) pay off the balance of the [mortgage] debt or (b) refinance the [mortgage] debt to remove Wife’s name. Husband shall indemnify and hold harmless Wife for any and all liabilities of whatsoever kind, type or nature, which may arise as a result of ownership of the residence and real estate.

Should Husband fail to pay [W]ife and remove Wife’s name from the debt on the mobile home within 45 days, the property shall be listed For Sale with a realtor of Wife’s choice. Upon its sale, Wife shall be entitled to \$70,000 or 50% of the proceeds, whichever is greater.

(3) In 2005, the Family Court granted Wife’s Petition for Specific Performance because Husband had failed to provide Wife with the \$70,000 or put the residence on the market. This eventually led to the property being listed with a

realtor in 2007 for \$349,000. The price was reduced multiple times. In 2013, the listing price was \$199,000.

(4) In March 2013, Husband and Wife received an offer to purchase the property for \$150,000. The two counter-offered with \$175,000, and the bidders countered with \$165,000. Wife agreed to sell the property for \$165,000, but Husband refused, claiming that the price is too low. Instead, Husband offered to buy out Wife for \$78,000. Wife filed a Petition for Specific Performance in the Family Court seeking, *inter alia*, to order Husband to sell the marital property. After hearing arguments on the matter, the court granted Wife's petition and ordered Husband to sign the contract selling the home for \$165,000. If Husband refused to sign the sales agreement, the court authorized the Clerk of the Family Court to sign on behalf of Husband. This appeal followed.

(5) "This Court's standard and scope of review of an appeal from the Family Court extends to a review of the facts and law as well as to a review of the inferences and deductions made by the Trial Judge."<sup>2</sup> Questions of law, including the interpretation of statutes are reviewed *de novo*.<sup>3</sup> When the Family Court orders specific performance, "the standard of review is whether that [c]ourt abused its

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<sup>2</sup> *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983) (citing *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979)).

<sup>3</sup> *Clark v. Clark*, 47 A.3d 513, 517 (Del. 2012).

discretion in entering the order.”<sup>4</sup> “Findings of fact will be upheld unless clearly erroneous.”<sup>5</sup> “The judgment of the Family Court must be affirmed when the inferences and deductions upon which it is based are supported by the record and are the product of an orderly and logical deductive process.”<sup>6</sup>

(6) Husband first argues that the trial court abused its discretion in determining that Husband was in contempt of the separation agreement when he refused to accept the offer to sell the marital home. According to Husband, the trial court was required to consider the three criteria delineated in the Family Court’s decision in *Watson v. Givens*<sup>7</sup> before finding him in contempt. But Husband misinterprets the trial court’s order. The trial court did not find Husband in contempt. Rather, the trial court merely ordered specific performance in accordance with the parties’ Marital Property Agreement. Nor will Husband be in contempt unless he fails to comply with the Family Court’s order and a court finds him in contempt. This is unlikely because the Clerk of the Family Court is authorized to sign the real estate contract on behalf of Husband should he refuse to

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<sup>4</sup> *Husband J.E.T. v. Wife E.M.T.*, 407 A.2d 532, 533 (Del. 1979).

<sup>5</sup> *Clark*, 47 A.3d at 516–17 (citing *Ross v. Ross*, 992 A.2d 1237 (Del. 2010)).

<sup>6</sup> *Mundy v. Devon*, 906 A.2d 750, 752–53 (Del. 2006).

<sup>7</sup> See *Watson v. Givens*, 758 A.2d 510, 512 (Del. Fam. Ct. 1999) (“Three criteria must be met to support a finding of contempt: 1) there must exist a valid mandate, judgment or order; 2) the alleged contemtor must have had the ability to abide by the valid mandate, judgment or order; and, 3) the alleged contemtor must have, in fact, disobeyed the valid mandate, judgment or order.”).

do so. Thus, Husband's first claim is not ripe and will not be considered by this Court.<sup>8</sup>

(7) Husband's second claim is that the trial court abused its discretion when it interpreted the parties' Marital Property Agreement to include an implied duty of good faith and fair dealing. Under Delaware law, a valid separation agreement is a type of contract.<sup>9</sup> "Delaware follows the well-established principle that in construing a contract a court cannot in effect rewrite it or supply omitted provisions."<sup>10</sup> But every contract includes an implied duty of good faith and fair dealing between the parties.<sup>11</sup>

(8) Where a valid separation agreement fails to specify a time for performance, the Family Court has found that a reasonable time can be implied.<sup>12</sup> In *E.F.L. v. J.M.D.*, the Family Court ordered specific performance involving a marital home where an unincorporated separation agreement did not specify a time of performance so the court held that a reasonable time period was implied in the

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<sup>8</sup> See *Stabler v. Ramsay*, 88 A.2d 546, 550 (Del. 1952) (holding that a case will not be decided "before mere differences ripen into actual injuries").

<sup>9</sup> *Myers v. Myers*, 408 A.2d 279, 280 (Del. 1979).

<sup>10</sup> *Gertrude L.Q. v. Stephen P.Q.*, 466 A.2d 1213, 1217 (Del. 1983) (citing *Conner v. Phoenix Steel Corp.*, 249 A.2d 866, 868 (Del. 1969)).

<sup>11</sup> See 23 *Williston on Contracts* § 63:22 (4th ed. 2000) ("Every contract imposes an obligation of good faith and fair dealing between the parties in its performance and its enforcement, and if the promise of the defendant is not expressed by its terms in the contract, it will be implied." (footnote omitted)).

<sup>12</sup> *E.F.L. v. J.M.D.*, 2002 WL 1929538, at \*5 (Del. Fam. Ct. Jan. 8, 2002) (quoting *Howard v. Howard*, 1990 WL 143876, at \*3 (Del. Super. Ct. Jan. 31, 1990)).

agreement.<sup>13</sup> The court also held that “implying a time of performance is not supplying a missing term or rewriting an agreement.”<sup>14</sup>

(9) In this case, Husband’s claim that the trial court misinterpreted the Marital Property Agreement lacks merit. Husband has maintained possession of the Marital Home for nearly ten years since the divorce. The Marital Property Agreement gave Husband the option to buy out Wife within forty-five days or to put the property up for sale. But the agreement did not specify a time period for which Husband was required to sell the home. There is no indication that the parties intended for Husband to own the property indefinitely. Thus, the trial court found that the implied duty of good faith and fair dealing required Husband to sell the house in a reasonable time period. Like the decision in *E.F.L. v. J.M.D.*, the interpretation of an implied time of performance was not supplying a missing term.

(10) Husband also argues that in order for the trial court to imply a reasonable time frame for performance under the Marital Property Agreement, it was required to conduct the analysis prescribed in the Superior Court’s decision in *Howard v. Howard*.<sup>15</sup> The court in *Howard* held that “[t]o determine what constitutes a reasonable period of time, one must examine the subject matter,

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<sup>13</sup> *Id.* at \*5–6.

<sup>14</sup> *Id.* at \*6.

<sup>15</sup> *Howard v. Howard*, 1990 WL 143876 (Del. Super. Ct. Jan. 31, 1990).

situation of the parties, their intentions and what was contemplated when the agreement was signed.”<sup>16</sup>

(11) Husband’s claim that the trial court erred as a matter of law is without merit. First, Husband has failed to provide any authority suggesting that trial court was *required* to conduct the *Howard* test. Second, the trial court nevertheless considered each of the factors provided in *Howard*. The trial court recognized that the Marital Property Agreement governed the property distribution from the marriage. The court also noted that the parties negotiated a two-step process for the sale of the marital home where Husband could either buy out Wife or put the property on the market. Further, as the trial court explained, there is nothing to suggest that Husband and Wife intended to own the Georgetown property indefinitely. Because these considerations fulfill all of the *Howard* factors, Husband’s claim must fail. Accordingly, the trial court did not abuse its discretion.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>16</sup> *Id.* at \*3 (citing 17 Am. Jur. 2d *Contracts* § 330 (1964)).