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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001809-MR

STEVIE W. PIERCY — APPELLANT

v.

APPEAL FROM WAYNE CIRCUIT COURT
HONORABLE JENNIFER UPCHURCH CLARK
(NOW EDWARDS), JUDGE
ACTION NO. 08-CI-00063

SHARON K. PIERCY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, STUMBO AND WINE, JUDGES.

STUMBO, JUDGE: Stevie W. Piercy appeals from an order of the Wayne Circuit Court directing him to reimburse Sharon K. Piercy for sums which have been or will be garnished from Sharon's wages by a third party judgment holder. The garnishment began after Stevie defaulted on a truck loan upon which both parties were signatories. Stevie now appeals from the circuit court's determination that a

Decree of Dissolution required him to make the payments on the loan. We conclude that Stevie entered into an agreement either to refinance the loan or return the vehicle to Sharon. Because the agreement was incorporated into the record by way of an order rendered on February 2, 2009 – thus binding Stevie to the agreement – we find no error.

Sharon and Stevie were divorced by way of Findings of Fact, Conclusions of Law and Decree of Dissolution of Marriage rendered on March 16, 2009, in Wayne Circuit Court, Family Division. The Decree provided in relevant part that each party ". . . shall be responsible for their own debts [and] . . . shall be awarded the personal property currently in their possession." No specific findings of fact, conclusions of law or order were rendered as to the parties' 2004 Chevrolet Colorado truck or the bank loan used to finance its purchase.

On July 30, 2008, and prior to the entry of the Decree of Dissolution, the parties were deposed by counsel. During the deposition, Stevie stated that title to the truck was held solely in Sharon's name, and that she was the only signatory on the loan.[1] He further stated that he would be willing to take possession of the truck as part of the division of property, and would attempt to refinance the loan to remove Sharon's name. The record does not reveal whether Stevie was able to obtain the refinanced loan. At the conclusion of the deposition, Sharon's counsel read into the record an "all-inclusive agreement that will allow the parties to be divorced and move forward." That agreement stated that, "[w]ith regard to the

[1] The record reveals that both parties were signatories on the loan, and that title to the truck was held in both parties' names.

vehicles, Stevie will try to refinance the debt to remove her name from the truck and once that refinance is complete, they will take each other's names off the titles." During the deposition, Stevie also stated that if he were not able to refinance the loan, he would return the vehicle to Sharon. On February 2, 2009, the circuit court rendered an order finding that all issues in the case had been resolved on the record.

Stevie took possession of the truck upon dissolution of the marriage. On August 3, 2010, Sharon filed a Motion for Contempt, Reimbursement, & For Attorney Fees. As a basis for the motion, Sharon alleged that without her knowledge or consent, Stevie had ceased making payments on the truck loan resulting in the lender obtaining a judgment against both Stevie and Sharon. According to Sharon, the lender then began garnishment of her wages.

After proof was heard on the motion, the circuit court rendered an Order for Reimbursement & For Attorney Fees on September 1, 2010. It ordered Stevie to pay to Sharon the sum of $692.21 representing the amount which had been garnished from her wages, as well as all future sums garnished by the lender. The court also rendered an award of attorney fees in the amount of $250. In support of the reimbursement order, the court noted its February 2, 2009 order wherein it found that the parties' July 30, 2008 agreement should be given effect. This appeal followed.

Stevie now argues that the circuit court erred in sustaining Sharon's motion for reimbursement. As a basis for this contention, Stevie claims that the

circuit court never ordered him to make the truck payment, and that as such, any order for reimbursement necessarily is erroneous. He directs our attention to the language of the Decree of Dissolution, wherein the court merely ordered in general terms that each party ". . . shall be responsible for their own debts [and] . . . shall be awarded the personal property currently in their possession." He also points to an August 11, 2010 hearing on the matter in which the court stated that "Mr. Gibson's argument [about the truck loan] is technically correct" and that Stevie "knew full well what the order should have said" regarding expressly requiring Stevie to pay the loan. In sum, Stevie maintains that there can be no violation of a court order for what the court "should have said," and that as such he is entitled to a reversal of the order directing him to reimburse Sharon for the garnishment. Sharon has not filed a responsive brief.

We have closely examined the record and the law, and find no error. The dispositive question for our consideration is whether Stevie was obligated either to refinance the truck loan to remove Sharon's name from both the title and the loan, or to return the truck to Sharon. We must answer this question in the affirmative. At the conclusion of the July 30, 2008 deposition, Sharon's counsel read into the record an agreement entered into by the parties. That agreement stated in relevant part that Stevie would attempt to refinance the loan to remove Sharon as a signatory. Previously in the deposition, Stevie stated his agreement to return the vehicle to Sharon if he were unable to refinance the loan.

This agreement was acknowledged and adopted by the court in its February 2, 2009 ruling wherein the court "ordered that all issues in this case have been resolved on the record with both parties represented by counsel and both parties having acknowledged said resolution under oath . . . ." Stevie agreed to either refinance the loan or return the vehicle, and the record reveals that he did neither. While the circuit has acknowledged that its order relating to Stevie's obligation on the truck loan should have been more explicit, the burden rests with Stevie to overcome the strong presumption that the ruling was correct. *City of Jackson v. Terry*, 302 Ky. 132, 194 S.W.2d 77 (1946). Because his agreement to seek refinancing or return the truck is memorialized in the record and was acknowledged and adopted in the circuit court's February 2, 2009 order, and as it is uncontroverted that Stevie defaulted on the loan and that the lender obtained a judgment against Sharon and garnished her wages, we must conclude that Stevie has not overcome this presumption.

Stevie also argues that the award of $250 in attorney fees was not supported by the record and the law. We disagree. The award of attorney fees in a marital dissolution action is committed to the sound discretion of the trial court. *Neidlinger v. Neidlinger*, 52 S.W.3d 513 (Ky. 2001). Accordingly, we find no error.

For the foregoing reasons, we affirm the Order for Reimbursement & For Attorney Fees of the Wayne Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ralph D. Gibson
Somerset, Kentucky

NO BRIEF FILED FOR APPELLEE