STATE OF MICHIGAN

COURT OF APPEALS

HAROLD L. HAMPTON, II,

Plaintiff-Appellant,

v

SHARON E. KETZ f/k/a SHARON E. HAMPTON,

Defendant-Appellee.

UNPUBLISHED
December 13, 2002

No. 227656
Livingston Circuit Court
LC No. 88-015785-DM

Before: Neff, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as on leave granted following a remand from our Supreme Court in lieu of granting leave. *Hampton v Ketz*, 462 Mich 865; 618 NW2d 766 (2000). Plaintiff appeals the grant of interest and attorney fees to defendant, denial of attorney fees to plaintiff, and determination that the parties' consent order did not encompass a previous hold harmless and indemnification agreement. This case arises out of a consent order modifying the parties' 1989 judgment of divorce. We affirm in part and reverse in part.

Plaintiff's first issue on appeal is that the trial court erred in determining that a consent order did not release him from a prior hold harmless and indemnification agreement. We agree. A trial court's factual findings are reviewed for clear error, which occurs when this Court is left with a firm and definite conviction that a mistake was made. *Townsend v Brown Corp of Ionia, Inc*, 206 Mich App 257, 263; 521 NW2d 16 (1994). A trial court's conclusions of law are reviewed de novo. *Omnicom of Michigan v Giannetti Investment Co*, 221 Mich App 341, 348; 561 NW2d 138 (1997).

Contract language is construed according to its plain and ordinary meaning, *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998), and when contract language is clear and unambiguous, the parties' intent must be ascertained from the contract. *Forge v Smith*, 458 Mich 198, 207; 580 NW2d 876 (1998).

Article XXI of the parties' consent order states that defendant releases plaintiff from "*all* claims . . . of any kind or type whatsoever relating to any matters of any kind, whether presently known or unknown, and which arise out of facts, events or occurrences which have transpired up to and including the date of the entry of this Order" (emphasis added). "There cannot be any broader classification than the word [']all,['] and [']all['] leaves room for no exceptions."

Romska v Opper, 234 Mich App 512, 515-516; 594 NW2d 853 (1999) (citation omitted). In addition, the consent order specifically references indemnification related to payroll taxes, the subject of the hold harmless and indemnification agreement. See *Forge*, *supra* (parties' intent must be ascertained from clear contractual language). Further, the consent order has an explicit integration clause. See *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 493-494; 579 NW2d 411 (1998) (integration clause stating that writing is entire agreement is conclusive).

Moreover, Article XX of the consent order releases both parties from monetary obligations under the judgment of divorce. It is illogical that the parties would include Article XXI as only pertaining to the judgment of divorce because Article XX already specifically pertained to the judgment of divorce. Cf. *Hoste v Shanty Creek Management, Inc*, 459 Mich 561, 574; 592 NW2d 360 (1999) (court should avoid statutory construction which would render any part of a statute surplusage). Finally, defendant referred to the hold harmless and indemnification agreement in her verified petition, which the consent order was specifically made to address. Therefore, we hold that the consent order is clear that it encompasses the hold harmless and indemnification agreement, and this determination of the trial court is reversed.

Plaintiff's second issue on appeal is that the trial court erred when it awarded attorney fees to defendant. We disagree. The decision to award attorney fees and the determination of the reasonableness of the fees are within the trial court's discretion and reviewed for abuse of discretion. *Bolt v Lansing (On Remand)*, 238 Mich App 37, 61; 604 NW2d 745 (1999). An abuse of discretion exists where an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling. *Cleary v Turning Point*, 203 Mich App 208, 210-211; 512 NW2d 9 (1994).

An award of attorney fees is for reasonable fees, not actual fees. *Papo v Aglo Restaurants of San Jose, Inc*, 149 Mich App 285, 299; 386 NW2d 177 (1986). Factors to consider when assessing the reasonableness of requested attorney fees include:

> (1) the skill, time, and labor involved, (2) the likelihood, if apparent to the client, that the acceptance of the employment will preclude other employment by the attorney, (3) the fee customarily charged in that locality for similar services, (4) the amount in question and the results obtained, (5) the time limitations imposed by the client or by the circumstances, (6) the nature and length of the professional relationship with the client, (7) the professional standing and experience of the attorney, and (8) whether the fee is fixed or contingent. [*Bolt, supra* at 60.]

However, the trial court does not need to detail its findings about each factor considered. *Michigan Nat'l Bank v Metro Institutional Food Service, Inc*, 198 Mich App 236, 241; 497 NW2d 225 (1993).

In this case, the trial court held an evidentiary hearing and listened to witness testimony, as well as reviewed multiple exhibits. See *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 113; 593 NW2d 595 (1999). Defense counsel testified extensively about his fees and billing invoices and plaintiff admitted that he knowingly violated the consent order. Litigation had been going on for years with no end in sight, so the trial court was familiar with

the parties, their attorneys, and their efforts. Because the trial court's decision to award defendant $10,000 in attorney fees was not an abuse of discretion, we affirm this part of the court's decision. See *Messenger v Ingham Co Prosecutor*, 232 Mich App 633, 648; 591 NW2d 393 (1998).

Plaintiff's third issue on appeal is that the trial court erred in denying plaintiff attorney fees. We disagree. After the parties' consent order was entered, plaintiff filed a motion to enforce the consent order by compelling defendant to execute closing documents. Ultimately, a receiver was appointed for the execution of the closing documents. The trial court had stated that the receiver would apportion costs based on which party was in the wrong; however, the receiver did not specifically apportion costs between the parties. While the receiver did not specifically apportion the costs, the trial court determined that defendant was not in default and, therefore, did not award plaintiff attorney fees.

A trial court's findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law, and where appellate review would not be facilitated by requiring further explanation. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). We conclude that the trial court was familiar with the issues in the case and the law, and appointed a receiver to provide additional information. After the receiver completed his work, the trial court determined that defendant was not in default. The trial court's determination was not clearly erroneous because the trial court had sufficient information to make its determination; thus, the court did not err in denying plaintiff's request for attorney fees.

Plaintiff's fourth issue on appeal is that the trial court improperly awarded interest on payments due under the consent order. We agree.

Plaintiff unilaterally withheld payments he was required to make under the consent order. The trial court used its discretion, pursuant to its equitable powers, to award interest on these overdue payment amounts. However, the parties' consent order addressed interest payments and stated that no interest would accrue unless the requirements of the default and acceleration provision were met.

As a general rule, consent judgments will not be set aside or modified except for fraud or mutual mistake. *Trendell v Solomon*, 178 Mich App 365, 367; 443 NW2d 509 (1989). Courts do have equitable powers to grant interest on divorce judgment awards. *Lawrence v Lawrence*, 150 Mich App 29, 34; 388 NW2d 291 (1986). However, an equitable remedy is neither necessary nor appropriate where a resolution under the law is available. *Everett v Nickola*, 234 Mich App 632, 637; 599 NW2d 732 (1999).

While plaintiff's actions in withholding payments were improper, a remedy existed under the consent order. The parties agreed that interest would accrue only on default *and* acceleration. The legal remedy that existed under the consent order was sufficient to rectify plaintiff's violation of the consent order, and the trial court should not have invoked its equitable authority; therefore, determination of the trial court on this issue is reversed. *Id*.

Affirmed in part and reversed in part. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell