STATE OF MICHIGAN

COURT OF APPEALS

VIRGINIA MARY BUNTING, a/k/a VIRGINIA MARY KOZLOWSKI,

Plaintiff-Appellee,

v

EDWIN HAROLD BUNTING,

Defendant-Appellant,

and

RANDALL L. FRANK, Chapter 7 Trustee,

Intervening Appellant.

UNPUBLISHED
May 13, 2008

No. 272975
Washtenaw Circuit Court
LC No. 00-002853-DO

Before: Wilder, P.J., and O'Connell and Whitbeck, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order determining the amount that he owes plaintiff pursuant to the parties' consent judgment of divorce. We affirm.

In this third appeal before this Court in a long and contentious divorce proceeding, defendant challenges the trial court's determination that he owes plaintiff $956,802.83, which he deems the "starting amount," plus statutory interest. He maintains that this amount is incorrect because certain items should not have been added as additional items to Special Master Caterina Fox's $401,974.68 equalizer, inasmuch as those items had already been accounted for in Fox's equalizer calculation. Defendant also argues that he should have received a $1,092.32 credit representing 50 percent of the balance of a money market account. He argues that this amount should have been included in Fox's equalizer calculation or plaintiff's items added to Fox's calculation. We find that defendant has waived appellate review of most of these issues. With respect to defendant's arguments that are not waived, we review a trial court's dispositional rulings to determine if they are fair and equitable in light of the circumstances. *Baker v Baker*, 268 Mich App 578, 582; 710 NW2d 555 (2005). We will affirm a dispositional ruling unless we are left with the firm conviction that the division was inequitable. *Id.*

On December 27, 2002, the trial court entered an order adopting Fox's equalizer reconciliation of $401,974.68. Thereafter, on April 11, 2003, the trial court entered an order

adopting plaintiff's equalizer, which consisted of Fox's original $401,974.68 equalizer, plus additional enumerated items, totaling $1,034,287.34. Three days later, on April 14, 2003, defense counsel approved "as to form and accuracy" the April 14, 2003, disbursement summary pursuant to the April 11, 2003, amended order adopting plaintiff's equalizer calculation, thereby stipulating that there remained an outstanding balance of $956,802.83 owed to plaintiff.

Defendant contends that his attorney's approval of the disbursement summary "as to form and accuracy" did not constitute a stipulation. A stipulation is not required to follow any particular form but must be assented to by the parties or their counsel. *Whitley v Chrysler Corp*, 373 Mich 469, 474; 130 NW2d 26 (1964). Our review of the subject matter, the record, and the circumstances surrounding the agreement, leads us to conclude that the disbursement summary constitutes a stipulation. *Id.* Because defendant stipulated to the amount owed to plaintiff, he may not now argue on appeal that the amount is incorrect. *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001).

Defendant's claim that the stipulation is invalid because it was obtained through the fraud of both his attorney and plaintiff's attorney is without merit. Defendant theorizes that his attorney may have signed the disbursement summary in exchange for money that plaintiff's attorney disbursed to him from defendant's funds, but provides no evidence supporting this theory. The letter on which he relies does not show that the parties' attorneys were perpetrating a fraud on the court or that defense counsel's stipulation was obtained through fraudulent conduct. "An appellant may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim." *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 650; 662 NW2d 424 (2003). Accordingly, defendant has abandoned this claim. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

Even without the stipulation, most of defendant's claims are barred by res judicata. Defendant filed his second appeal in this case on February 9, 2005, appealing a January 21, 2005, final order of the trial court. *Kozlowski v Bunting*, unpublished opinion per curiam of the Court of Appeals, issued December 28, 2006 (Docket No. 260869) ("*Bunting II*"). In that appeal, he did not raise the issues he now asserts pertaining to the equalizer and whether certain items were "double counted," and he did not argue that Fox's original equalizer or plaintiff's equalizer should have accounted for $1,092.32, representing 50 percent of the balance of a money market account. "[T]he principles of res judicata require that a party bring in the initial appeal all issues which were then present and could have and should have been raised." *VanderWall v Midkiff*, 186 Mich App 191, 201; 463 NW2d 219 (1990). If defendant sought to challenge the "starting amount" of $956,802.83, whether certain items were counted twice against him or whether he was entitled to a $1,092.32 credit, he could and should have raised these issues in *Bunting II*. See *id.* Because he failed to do so, res judicata bars his challenge to these issues in the present appeal.

Defendant's claim regarding the $422,457 credit for a cash advance made to plaintiff in October 2002 from defendant's Merrill Lynch accounts is similarly barred. The October 4, 2002, order giving plaintiff a $422,457 cash advance from defendant's Merrill Lynch accounts directed defendant to verify the current cash values of all of his life insurance and annuity policies and stated that if the $422,457 exceeded plaintiff's share of the equalized value, plaintiff must return the excess funds to the marital estate. On November 1, 2002, defendant filed a motion for reconciliation of the parties' life insurance policies, asking the trial court to reconcile

the policies and award him "any and all lost income and/or diminution of valuation incurred by Defendant based on the improper usurpation of his Merrill Lynch monies." The trial court denied defendant's motion on December 5, 2002, and defendant did not challenge that denial of his motion in his first appeal to this Court in *Bunting v Bunting*, unpublished opinion per curiam of the Court of Appeals, issued July 27, 2004 (Docket No. 246087) ("*Bunting I*"). Moreover, on remand, defendant stipulated that he owed plaintiff $956,802.83 and did not assert a $422,457 credit as he now contends, and also failed to raise this issue in *Bunting II*. Accordingly, this issue is waived. *VanderWall, supra* at 203.

Defendant next argues that the trial court erred by denying him a credit for 50 percent of the amounts paid in property taxes and insurance for the parties' jointly held properties. He similarly argues that he is entitled to a 50 percent credit for the amount that he spent to clean up and maintain the Rose City and Cape Coral properties and for attorney fees expended regarding the sale of the Poinciana and Citrus Springs properties. Having cited no legal authority supporting his argument, defendant has abandoned his claim. *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005). Further, defendant has identified no previous order of the trial court entitling him to the credits he now claims and has failed to provide evidence of any property taxes, insurance, or maintenance payments that he made. We will not search the record for factual support for a party's claims. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 388; 689 NW2d 145 (2004).

Defendant also claims he is entitled to a $1,118.25 credit representing his share of monies from the Cape Coral property. The document on which defendant relies is dated April 15, 2003, predating *Bunting II*, yet, as with previous claims, he did not raise the issue of whether Fox's original equalizer or plaintiff's equalizer should have accounted for this amount in the previous appeal, thereby waiving the issue. *VanderWall, supra* at 203. Even if we were to consider this issue was not waived, it is clear from the record that defendant has needlessly continued to draw out these proceedings and advocate meritless positions. Based on the record, the failure to credit defendant with $1,118.25 does not leave us with the firm conviction that the division was inequitable. *Baker, supra* at 582.

Defendant's assertion that he is entitled to a $4,104.96 credit representing his share of certain rents and garnishments, based on a computer-generated, undated, unsigned document, is similarly insufficient to require remand. As plaintiff represented to the trial court, the document "proves nothing. It is not dated. Plaintiff cannot determine that it is authentic or at all relevant." The trial court's July 2006 order, although not specifically addressing this claim, held that "[a]s to the other claims of Defendant, those issues have been previously accounted for and/or are without merit in their argument." As before, nothing in the record indicates that this decision was inequitable. *Id.*

Defendant's argument that he is entitled to a $21,150 income tax credit that plaintiff fraudulently applied toward her separately filed income tax return is meritless because the evidence shows that both parties received a $21,150 tax credit because of a previous overpayment of taxes, as reflected in the copy of defendant's 2000 federal income tax return and IRS records that reveal defendant received a $21,150 credit.

We find defendant's remaining claims of credits for a $250,000 payment made to plaintiff by the receiver, a $281,117.76 credit for the sale of the Islandia property, an $8,000

credit for the sale of the Rolls Royce, and a $139,358.19 credit that plaintiff's counsel received from defendant's Merrill Lynch account moot because defendant acknowledged that the trial court ultimately credited him with these amounts in its April 30, 2007, order. *In re Contempt of Dudzinski*, 257 Mich App 96, 112; 667 NW2d 68 (2003).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ William C. Whitbeck