STATE OF MICHIGAN

COURT OF APPEALS

KATHLEEN K. HOFER,

Plaintiff-Appellant,

v

DAVID C. HOFER,

Defendant-Appellee.

UNPUBLISHED
August 25, 2009

No. 284032
Oakland Circuit Court
Family Division
LC No. 2005-713956-DM

Before: Cavanagh, P.J., and Markey and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting in part and denying in part her motion for defendant to sign the sale contract for the parties' marital home and pay the entire shortfall from the sale of this home. We affirm.

Plaintiff first argues that Judge Leo Bowman misinterpreted a stipulated order from November 29, 2006, entered by Judge Daniel Patrick O'Brien, when Judge Bowman failed to hold defendant entirely responsible for the shortfall from the sale of the parties' marital home. We disagree. A trial court's decision on a motion for postjudgment relief is reviewed for an abuse of discretion. *Hadfield v Oakland Co Drain Comm'r*, 218 Mich App 351, 354; 554 NW2d 43 (1996). However, interpreting the meaning of a court order involves questions of law that this Court reviews de novo on appeal. *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 460; 750 NW2d 615 (2008).

Stipulations, like contracts, are agreements reached by and between the parties. *Phillips v Jordan*, 241 Mich App 17, 21; 614 NW2d 183 (2000). These orders are construed under the same rules of construction as contracts. *Id.* "Absent an ambiguity or internal inconsistency, contractual interpretation begins and ends with the actual words of a written agreement." *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; 628 NW2d 491 (2001). To determine if a contract is ambiguous, the language used is given its ordinary and plain meaning to see if "'its words may reasonably be understood in different ways."' *Rossow v Brentwood Farms Dev, Inc*, 251 Mich App 652, 658; 651 NW2d 458 (2002), quoting *Trierweiler v Frankenmuth Mut Ins Co*, 216 Mich App 653, 656-657; 550 NW2d 577 (1996).

In support of her argument, plaintiff points to the part of the November 29, 2006, stipulated order, which provides:

> It is further ordered that def[endant] shall continue to be responsible for all status quo obligations of his per various court orders and shall be 100% responsible for any and all status quo obligations that pl[aintiff] was or is responsible for as to all marital obligations and shall hold pl[aintiff] harmless and indemnify her from any such debts and shall pay back to pl[aintiff] any debts that she pay [sic] or are not discharged in bankruptcy when he [defendant] obtains employment.

Judge Bowman concluded that this order did not address responsibility for payment of the shortfall, rather he relied on a section in the judgment of divorce that directly addressed the possibility of a shortfall from the sale of the marital property. That section provides:

> The parties[’] marital home shall remain listed with a reputable realtor for sale until sold. The price of the home shall be immediately dropped to $595,000. The Defendant agrees to absorb up to a $10,000 loss if the home sells below $595,000. After the first $10,000 loss, the parties shall equally divide any losses or proceeds on the sale of the marital home.

By its plain language, the shortfall is not addressed by the stipulated order because the shortfall does not constitute a status quo obligation. The status quo obligations were enumerated in the judgment of divorce. Although the monthly mortgage payments were included as part of the status quo obligations, the shortfall was not included as a part of these obligations. Rather, the responsibility for covering the shortfall was expressly addressed in a separate section within the judgment of divorce. Further, the reference to “any such debt” in the stipulated order refers back to the previous phrase regarding the status quo obligations. Therefore, based on the plain language of the stipulated order, we conclude that the responsibility for the shortfall described in the judgment of divorce was not amended by the subsequent stipulated order.

Plaintiff also contends that the trial court erred by not making sufficient factual findings. However, as defendant argues, MCR 2.517(A)(4) provides, “[f]indings of fact and conclusions of law are unnecessary in decisions on motions unless findings are required by a particular rule.” Plaintiff does not cite to a particular rule requiring factual findings. Nevertheless, the trial court articulated, on the record, its basis for why it viewed the judgment of divorce to be applicable in assigning responsibility of the shortfall. Therefore, plaintiff’s argument must fail.

Next, plaintiff argues that the trial court violated the law of the case doctrine because it failed to follow the order from November 29, 2006, which plaintiff alleges modified the judgment of divorce. We disagree. The application of the law of the case doctrine presents a question of law subject to de novo review. *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 522; 730 NW2d 481 (2007). However, because this issue is unpreserved, we review for plain error. *Kloian v Schwartz*, 272 Mich App 232, 242; 725 NW2d 671 (2006).

"The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue." *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001). Under this doctrine, the "previous decision of an appellate court should be followed, even if the decision was erroneous, in order to 'maintain consistency and avoid reconsideration of matters once decided.'" *Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 52; 698 NW2d 900 (2005), quoting *Bennett v Bennett*, 197 Mich App 497, 499-500; 496 NW2d 353 (1992). In this case, the law of the case doctrine is entirely inapplicable because there has been no prior appellate decision. Therefore, plaintiff's argument is without merit.

Next, plaintiff argues that the decision to reassign this case from Judge O'Brien to Judge Bowman was error requiring reversal under MCR 8.111(D), which requires a subsequent action arising out of the same transaction or occurrence to be assigned to that same judge. We disagree.

The interpretation and application of a court rule involves a question of law that this Court reviews de novo. *Associated Builders & Contractors v Dep't of Consumer & Industry Services Director*, 472 Mich 117, 123-124; 693 NW2d 374 (2005). Issues of statutory construction present questions of law that are also reviewed de novo. *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002). This Court reviews for an abuse of discretion the decision to reassign the case. *Nat'l Waterworks, Inc v Int'l Fidelity & Surety, Ltd*, 275 Mich App 256, 258; 739 NW2d 121 (2007). However, because this issue is unpreserved, we review for plain error. See *Kloian*, *supra* at 242.

The chief judge of the circuit court entered an order reassigning this case from Judge O'Brien to Judge Bowman, pursuant to MCR 8.110(C)(3)(A), and for the purposes of balancing the docket and the efficient administration of justice. Plaintiff claims this was error under MCR 8.111(D)(1), which provides, "if one of two or more actions arising out of the same transaction or occurrence has been assigned to a judge, the other action or actions must be assigned to that judge." However, this court rule is inapplicable to the instant case because this case does not involve separate actions. This case is all part of the same action in which further proceedings have taken place after the judgment of divorce was entered. A new action was never filed. Rather, the motions and orders that followed the judgment of divorce were attempts to enforce and augment the obligations outlined by the judgment of divorce.

Lastly, plaintiff argues that the decision to reassign this case from Judge O'Brien to Judge Bowman was error requiring reversal under MCL 600.1023. We disagree.

MCL 600.1023 instructs that:

> When 2 or more matters within the jurisdiction of the family division of circuit court involving members of the same family are pending in the same judicial circuit, those matters, whenever practicable, shall be assigned to the judge to whom the first such case was assigned.

This provision was intended to better serve families who faced multiple matters before different judges, encompassing the concept of one judge, one family. *In re AP*, 283 Mich App 574; __ NW2d __ (Docket No. 286431, issued 5/5/2009), slip op at 2 (internal quotation omitted). However, this statute is inapplicable to the instant case because this case does not involve multiple matters. Again, it is merely a single case where additional proceedings have taken place.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Jane E. Markey
/s/ Alton T. Davis