

STATE OF MICHIGAN  
COURT OF APPEALS

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KEVIN HADLEY,

Plaintiff-Appellant,

v

KATHRYN H. HUANG, f/k/a KATHRYN H.  
HADLEY,

Defendant-Appellee.

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UNPUBLISHED

January 11, 2011

No. 293472

Oakland Circuit Court

Family Division

LC No. 2005-715335-DO

Before: SHAPIRO, P.J., and SAAD and KELLY, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting, in part, defendant's motion to compel payment of expenses for the marital property and attorney fees. We affirm the trial court's ruling compelling plaintiff to pay for the marital property expenses, but vacate the trial court's award of attorney fees and remand to the trial to determine the reasonableness of the amount of attorney fees.

I. TERMS OF THE JUDGMENT OF ANNULMENT

Plaintiff argues that the judgment of annulment is ambiguous regarding the length of time that he is required to pay the mortgage, insurance, utilities and ordinary maintenance on the marital home. We disagree. Judgments entered pursuant to the agreement of parties are contractual in nature. *Holmes v Holmes*, 281 Mich App 575, 587; 760 NW2d 300 (2008). More specifically, a divorce judgment "entered upon the settlement of the parties . . . represents a contract, which, if unambiguous, is to be interpreted as a question of law." *In re Estate of Lobaina*, 267 Mich App 415, 417-418; 705 NW2d 34 (2005). However, "[w]here the contract language is unclear or susceptible to multiple meanings, interpretation becomes a question of fact." *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996). Question of fact are reviewed for clear error. *Ross v Auto Club Group*, 481 Mich 1, 7; 748 NW2d 552 (2008). Whether a contract is ambiguous is reviewed de novo. *DaimlerChrysler Corp v G-Tech Prof Staffing, Inc*, 260 Mich App 183, 184-185; 678 NW2d 647 (2003). Additionally, the trial court's decision to grant equitable relief is reviewed de novo, "but we will not reverse or modify the judgment unless convinced that we would have reached a different result had we occupied the position of the trial court." *Casey v Auto Owners Ins Co*, 273 Mich App 388, 394; 729 NW2d 277 (2006).

The primary goal of contract interpretation, including a settlement agreement, is “to determine and enforce the parties' intent by reading the agreement as a whole and applying the plain language used by the parties to reach their agreement.” *Dobbelaere v Auto Owners Ins Co*, 275 Mich App 527, 529; 740 NW2d 503 (2007). “If the contractual language is unambiguous, courts must interpret and enforce the contract as written, because an unambiguous contract reflects the parties' intent as a matter of law.” *In re Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008). Thus, absent a showing of fraud, duress, or similar factors, courts act properly when they enforce such agreements. *Lobaina*, 267 Mich App at 418. A contract is ambiguous if it allows two or more reasonable interpretations, or if the provisions cannot be reconciled with each other. *Meagher v Wayne State Univ*, 222 Mich App 700, 722; 565 NW2d 401 (1997).

The disputed language within the judgment of annulment provides,

[t]he parties' home . . . is awarded to Defendant, Kathryn H. Hadley . . . . This property shall be immediately placed on the market for sale, with a licensed realtor of Defendant's choosing. Pending sale [of the marital home], the Plaintiff/Counter-Defendant husband shall pay the mortgage, insurance, utilities and ordinary maintenance, until the sale of the home or until further order of the Court.

The term regarding the length of plaintiff's monetary obligations towards the marital home is not open to more than one reasonable interpretation. The judgment provides that, pending the sale of the marital home, plaintiff is to continue paying the mortgage, insurance, utilities, and ordinary maintenance of the marital home, until its sale or by further order of the court. The marital home is still listed for sale. Thus, plaintiff is obligated to continue paying for the mortgage, insurance, utilities, and ordinary maintenance until the sale of the home or by further order of the trial court. The marital home has not been sold and the trial court has three times declined to order that the marital home is free from the terms of the judgment. As a result, plaintiff remains obligated to pay for the mortgage, insurance, utilities, and ordinary maintenance of the marital home.

Plaintiff asserts that the parties intended that he be responsible for the marital home expenses only while he resided in the home after the parties' annulment. He asks this Court to remand to the trial court for an evidentiary hearing to assess the parties' true intent. However, as previously noted, “an unambiguous contract reflects the parties' intent as a matter of law.” *Smith Trust*, 480 Mich at 24. The language of the judgment is clear and unambiguous regarding the length that plaintiff is obligated to pay the marital home expenses. As long as the marital home is for sale, plaintiff is required to pay the listed expenses until the home is sold or the trial court orders otherwise. Because the length of time plaintiff is obligated to pay the marital home expenses is clear from the judgment, the parties' intent is reflected in the terms of the judgment, and an evidentiary hearing is not warranted.

Additionally, plaintiff contends that equity requires his name be removed from the mortgage to the marital home because defendant was awarded sole legal ownership of it. But, the judiciary lacks authority to “modify unambiguous contracts or rebalance the contractual equities struck by the contracting parties because fundamental principles of contract law preclude such subjective post hoc judicial determinations of ‘reasonableness’ as a basis upon which courts may refuse to enforce unambiguous contractual provisions.” *Rory v Continental Ins Co*, 473

Mich 457, 461; 703 NW2d 23 (2005). Because the terms of the judgment are clear and unambiguous, plaintiff is not entitled to an equitable remedy.

## II. EXPENSES AWARD

Plaintiff argues the trial court erred in ruling on defendant's motion to compel payment of expenses for the marital property and attorney fees without making findings of fact or conclusions of law. We disagree. "A trial court's decision concerning equitable issues is reviewed de novo, although its findings of fact supporting the decision are reviewed for clear error." *Eller v Metro Industrial Contracting, Inc.*, 261 Mich App 569, 571; 683 NW2d 242 (2004). "A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002).

Divorce proceedings are equitable in nature. *Draggoo v Draggoo*, 223 Mich App 415, 428; 566 NW2d 642 (1997). "[A] court of equity molds its relief according to the character of the case; once a court of equity acquires jurisdiction, it will do what is necessary to accord complete equity and to conclude the controversy." *Id.*, quoting *Wiand v Wiand*, 178 Mich App 137, 144; 443 NW2d 464 (1989). However, a trial court may not modify a property division reached by the consent of the parties and finalized in writing or on the record. *Lentz v Lentz*, 271 Mich App 465, 474; 721 NW2d 861 (2006). The court must uphold such a settlement and cannot set it aside absent fraud, duress, or mutual mistake. *Id.* 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." MCR 3.210(D)(1) reads, "[t]he court must make findings of fact as provided in MCR 2.517, except that (1) findings of fact and conclusions of law are required on contested postjudgment motions to modify a final judgment or order."

MCR 2.517(A)(4) applies to the instant situation because the trial court's order did not modify the judgment of annulment, but rather, merely sought to enforce the terms of the judgment of annulment. The trial court's order requires plaintiff to continue paying his share of expenses on the marital property, after making an adjustment for the current rental income being received. This order ensures that plaintiff continues to follow the terms of the judgment of annulment. Thus, the trial court was not required under MCR 3.210(D)(1) to provide findings of fact and conclusions of law. Furthermore, even if the trial court erred by failing to state findings of fact and conclusions of law, reversal would not be warranted because an error by the trial court in a ruling or order is not a ground for granting a new hearing or disturbing an order unless refusal to take action appears to be inconsistent with substantial justice. *Zdrojewski v Murphy*, 254 Mich App 50, 64; 657 NW2d 721 (2002); MCR 2.613(A)<sup>1</sup>. The ruling of the trial court accepts the uncontested figures provided by defendant regarding the costs associated with the

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<sup>1</sup> MCR 2.613(A) provides, "[a]n error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice."

maintenance of the marital home. Because plaintiff failed to object or provide evidence rebutting defendant's claim, it was not inconsistent with substantial justice for the trial court to accept defendant's figures.

### III. ATTORNEY FEES

Finally, plaintiff argues the trial court erred in determining plaintiff's motions were frivolous and awarding attorney fees. "We review a trial court's ruling on a request for attorney fees for an abuse of discretion." *Smith v Smith*, 278 Mich App 198, 207; 748 NW2d 258 (2008). The trial court abuses its discretion when a decision falls outside the range of reasonable and principled outcomes. *Id.* We review a trial court's determination that a pleading is frivolous for clear error. *Kitchen*, 465 Mich at 661. "A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.* at 661-662.

MCR 2.114<sup>2</sup> and MCR 2.625(A)(2)<sup>3</sup> allow the trial court to award attorney fees to the prevailing party pursuant to MCL 600.2591 for frivolous suits. See *BJ's & Sons Constr Co, Inc v Van Sickle*, 266 Mich App 400, 404; 700 NW2d 432 (2005) ("Under Michigan law, a party that maintains a frivolous suit ... is subject to sanctions under applicable statutes and court rules.").

MCL 600.2591 provides:

(1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.

(2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.

MCL 600.2591(3)(a) further reads:

[f]rivolous' means that at least 1 of the following conditions is met: (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party. (ii) The party had no reasonable

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<sup>2</sup> MCR 2.114(F) provides, "[i]n addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages."

<sup>3</sup> MCR 2.625(A)(2) provides, "[i]n an action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591."

basis to believe that the facts underlying that party's legal position were in fact true. (iii) The party's legal position was devoid of arguable legal merit.

The claims or defenses at issue must be evaluated at the time they were made in order to determine if sanctions are appropriate pursuant to MCL 600.2591. *In re Costs & Attorney Fees*, 250 Mich App 89, 94; 645 NW2d 697 (2002). The court must examine “the particular facts and circumstances of the claim involved.” *Id.* at 95. Sanctions are imposed against frivolous claims “to deter parties and attorneys from filing documents or asserting claims and defenses that have not been sufficiently investigated and researched or that are intended to serve an improper purpose.” *Van Sickle*, 266 Mich App at 405, quoting *FMB-First Michigan Bank v Bailey*, 232 Mich App 711, 722-723; 591 NW2d 676 (1998).

Here, the language of the judgment of annulment itself clearly states that plaintiff is obligated to pay expenses towards the marital home as long as the marital home is for sale, and until the marital property is either sold or pursuant to further court order. Plaintiff repeatedly tried to avoid this obligation by filing motions with the trial court. Even after defendant’s motions were denied, he filed additional motions. As a result, plaintiff’s request for relief from the trial court was without legal merit and was, therefore, frivolous.

Plaintiff also asserts for the first time on appeal that an unreasonable amount of attorney fees was awarded to defendant. Plaintiff forfeited this issue by not objecting below. This Court reviews unpreserved issues for plain error affecting substantial rights. *Veltman v Detroit Edison Co*, 261 Mich App 685, 690; 683 NW2d 707 (2004).

We are unable to determine whether it was plain error for the trial court to award \$5,000 in attorney fees. A trial court should hold an evidentiary hearing when a party is challenging the reasonableness of the attorney fees claimed. *Miller v Meijer, Inc*, 219 Mich App 476, 479; 556 NW2d 890 (1996). A trial court is not required to hold a hearing to determine the reasonableness of fees if the court has sufficient evidence to determine the amount of attorney fees and costs. *John J Fannon Co v Fannon Products, LLC*, 269 Mich App 162, 171; 712 NW2d 731 (2005). It is the burden of the party requesting attorney fees to prove they were incurred and that they are reasonable. *Reed v Reed*, 265 Mich App 131, 165-166; 693 NW2d 825 (2005). Defendant failed to produce any evidence detailing how \$5,000 was a reasonable fee. Defendant’s counsel simply stated during oral argument that she wanted \$5,000 in attorney fees, without explaining how she came to that figure. The trial court merely adopted that figure. Thus, plain error occurred when the trial court ordered plaintiff to pay defendant’s counsel \$5,000 in attorney fees without determining whether the fees were reasonable. We vacate the order with regard to attorney fees and remand to the trial court to determine the reasonableness of the amount of attorney fees.

Affirmed in part, and vacated and remanded in part. We do not retain jurisdiction.

/s/ Douglas B. Shapiro  
/s/ Henry William Saad  
/s/ Kirsten Frank Kelly