IN THE UTAH COURT OF APPEALS

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Ina Marie Johnson, Petitioner and Appellee, v. Neldon Paul Johnson, Respondent and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20060290-CA F I L E D (July 12, 2007) 2007 UT App 246

Fourth District, Provo Department, 004401468
The Honorable Fred D. Howard

Attorneys: Denver C. Snuffer Jr., Sandy, for Appellant
Rosemond G. Blakelock, Provo, for Appellee

Before Judges Bench, McHugh, and Thorne.

BENCH, Presiding Judge:

Neldon Paul Johnson and Ina Marie Johnson were divorced on June 6, 2001, and the terms of their stipulated property settlement were included in an Amended Decree of Divorce entered on June 27, 2001. Mr. Johnson now attempts to appeal a variety of the trial court's decisions related to the stipulated property settlement.

The only final order associated with the stipulated property settlement that was entered within thirty days of Mr. Johnson's March 23, 2006 notice of appeal was the order entitled "Order, In Re: January 23, 2006 Hearing." Mr. Johnson did not specifically designate this order on his notice of appeal, but instead designated a document entitled "Order on Ruling Re: Respondent's Objection to Order Regarding the January 23, 2006 Hearing signed February 27, 2006." No such document bears that precise caption. Although not ideal, Mr. Johnson's description was sufficient to give notice of the order Mr. Johnson intended to appeal as it generally describes the order and it accurately bears the date of the order. See In re B.B., 2002 UT App 82,¶10, 45 P.3d 527 (holding that a notice of appeal designating only one of two orders intended to be appealed, while not "ideal," was sufficient

to notify the opposing party "particularly where the orders bore the same date").

The Order In Re: January 23, 2006 Hearing presents three issues for appeal: (1) whether the trial court erred in using contempt proceedings in response to Mr. Johnson's failure to make payments required under the Amended Decree of Divorce; (2) whether the trial court erred in refusing to set off a judgment for past-due payments by the value of "additional" properties deeded to Ms. Johnson; and (3) whether the trial court clearly abused its discretion by awarding attorney fees to Ms. Johnson in a particular amount.

I. Failure to Make Payments

Mr. Johnson claims that the trial court erred by using contempt proceedings as the mechanism for ensuring his compliance in making payments required under the Amended Decree of Divorce, which payments were secured by a trust deed. Mr. Johnson argues that, in the event of his failure to pay, the "one-action rule" requires Ms. Johnson, the secured party under the trust deed, to foreclose on the trust deed prior to pursuing a judgment against him or subsequently pursuing contempt proceedings to prompt compliance with such judgment. "The issue is one of law, which this court reviews under a correction-of-error standard, without deference to the trial court's legal conclusions." Sanders v. Ovard, 838 P.2d 1134, 1135 (Utah 1992).

The one-action rule "prevent[s] a creditor from 'suing the debtor personally on [a trust deed] note until it first forecloses against the real property.'" Machock v. Fink, 2006 UT 30,¶12, 137 P.3d 779 (quoting City Consumer Servs. v. Peters, 815 P.2d 234, 236 (Utah 1991)). However, "'[w]here the security has been lost through no fault of the [creditor], an action may be maintained directly upon the personal obligation evidenced by the note without going through the idle and fruitless procedure of foreclosure.'" City Consumer Servs., 815 P.2d at 236 (quoting Cache Valley Banking Co. v. Logan Lodge No. 1453, 88 Utah 577, 56 P.2d 1046, 1049 (1936)). Where such is the case, "the one-action rule does not apply," id. at 237, and creditors "are . . . not limited in pursuing their full claim against [the debtor] personally," Sanders, 838 P.2d at 1136.

Given the trial court's finding that the property pledged as security under the trust deed had been "pillaged" by Mr. Johnson, it did not err in concluding that the one-action rule did not apply and that Ms. Johnson was free to pursue a judgment against Mr. Johnson personally for past-due payments. Furthermore, when Mr. Johnson refused to comply with the judgment for past-due payments, it was well within the trial court's discretion to use

contempt proceedings as a means of effectuating compliance with its judgment and orders. See Utah Code Ann. § 78-32-1(5) (2002) ("Disobedience of any lawful judgment, order or process of the court . . . [is] contempt[] of the authority of the court . . . ."); Shipman v. Evans, 2004 UT 44,¶39, 100 P.3d 1151 (noting that "a trial court's exercise of its contempt power" is reviewed under an abuse-of-discretion standard).

II. Set-off for "Additional" Properties

Mr. Johnson claims that the trial court erred in denying him a set-off against the judgment for late payments in the amount representing the value of two "additional" parcels he "inadvertently" deeded to Ms. Johnson. In reviewing the record, it is evident that the trial court denied Mr. Johnson's request for a set-off based on a factual finding that Mr. Johnson had not given Ms. Johnson any additional property, but instead, had given her exactly what the Amended Decree of Divorce had ordered him to give.

On appeal, Mr. Johnson fails to marshal the evidence supporting the trial court's factual finding, see Utah R. App. P. 24(a)(9), and likewise fails to "ferret out a fatal flaw in the evidence." West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1315 (Utah 1991). In light of this failure, "'we assume[] that the record supports the finding[]' . . . and conclude the finding was not clearly erroneous." Harris v. IES Assocs., 2003 UT App 112,¶32, 69 P.3d 297 (alterations in original) (quoting Heber City Corp. v. Simpson, 942 P.2d 307, 312 (Utah 1997)).

III. Attorney Fees for January 2006 Hearing

Mr. Johnson contends that the award of attorney fees for the January 23, 2006 hearing was unreasonable, asserting that the award was excessive in amount and included fees for work unrelated to that specific hearing. "[A] trial court has 'broad discretion in determining what constitutes a reasonable fee, and we will consider that determination against an abuse-of-discretion standard.'" Jensen v. Sawyers, 2005 UT 81,¶127, 130 P.3d 325 (quoting Dixie State Bank v. Bracken, 764 P.2d 985, 991 (Utah 1988)). Thus, "'[t]he standard of review on appeal of [the amount of] a trial court's award of attorney fees is patent error or clear abuse of discretion.'" Id. (second alteration in original) (quoting Valcarce v. Fitzgerald, 961 P.2d 305, 316 (Utah 1998)).

We conclude that the trial court did not commit patent error or clearly abuse its discretion in determining the amount of the award for attorney fees associated with the January 23, 2006

hearing. Mr. Johnson provides no specific explanation as to why the court clearly erred in finding fees incurred in prior years related to the January 2006 hearing. The post-decree enforcement issues resolved in the January 2006 hearing appear to have been continuously litigated over the course of several years. It was therefore not unreasonable for the trial court to determine that fees listed in Ms. Johnson's counsel's affidavit, even those from prior years, were necessary to prepare for the January 2006 hearing.

We therefore affirm the trial court's decisions regarding the hearing on January 23, 2006. Because Ms. Johnson was awarded attorney fees below, and because she has prevailed on appeal, she is entitled to recover her fees on appeal. See Utah Code Ann. § 30-3-3(2) (Supp. 2006) ("In any action to enforce an order of . . . division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense."); Lyngle v. Lyngle, 831 P.2d 1027, 1031 (Utah Ct. App. 1992) ("Generally, when the trial court awards fees in a domestic action to the party who then substantially prevails on appeal, fees will also be awarded to that party on appeal."); Maughan v. Maughan, 770 P.2d 156, 162 (Utah Ct. App. 1989) (acknowledging that Utah Code section 30-3-3 creates a statutory basis for awarding attorney fees to a prevailing party in a domestic case on appeal). Accordingly, we remand for a determination of those attorney fees that Ms. Johnson reasonably incurred on appeal.

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Russell W. Bench,
Presiding Judge

WE CONCUR:

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Carolyn B. McHugh, Judge

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William A. Thorne, Judge