Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2020-185

JANUARY TERM, 2021

Geri Barrows* v. Corey Barrows	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	
	}	DOCKET NO. 75-2-19 Cndm
		Trial Judge: Thomas Carlson

In the above-entitled cause, the Clerk will enter:

Wife appeals the decision of the family division denying her motion to enforce a provision of the parties' stipulated divorce decree that, she claims, requires husband to transfer additional assets to her to satisfy an award of property in lieu of spousal maintenance. We affirm.

Wife and husband married in 2001. Wife filed for divorce in February 2019. In December 2019, the parties, who were both represented by counsel, filed a stipulation with the court. The stipulation waived final hearing by the court and stated that it was intended to be a full and complete settlement of all property and other rights between the parties. A section of the stipulation entitled "Real Property" stated that wife would be awarded the marital residence in Colchester, Vermont. Wife was required to refinance the mortgage within ninety days to remove husband from the mortgage. If she was unable to refinance, she had to place the property on the market for sale by July 2020. Upon closing of the refinanced mortgage or sale, wife was required to pay $75,000 to husband for his remaining interest in the property. All remaining proceeds would belong to wife. The stipulation did not assign a value to the marital property, nor to any of the other various assets and debts allocated through the stipulation. The stipulation also provided that the parties agreed to an award of property in lieu of spousal maintenance. A handwritten note next to this provision stated: "(The amount of the spousal maintenance buyout is $140,000.)"[1] The court approved the stipulation and entered it as a final order in December 2019.

In January 2020, wife moved to alter or amend the divorce order because it failed to dispose of husband's real property in Island Pond. Draft language in the parties' stipulation had provided that husband was to be awarded "his interest in the property in Island Pond, Vermont free and clear of any further claim by [wife]." However, before executing the stipulation, the parties had crossed out this provision, along with language requiring wife to execute a promissory note and mortgage to husband to secure his interest in the marital property. Through handwritten additions, the parties had substituted alternate language relating to disposition of the marital residence. Husband argued

[1] The agreement does not specify which party was to receive property in lieu of spousal maintenance, but the parties agree that wife was to be the beneficiary of this award of property in lieu of spousal maintenance.

that the cross-out through the provision regarding his property in Island Pond was a scrivener's error and that the court should amend the order to restore the award to him without reopening the rest of the agreement. Wife responded that she did not want the Island Pond property. She argued, however, that the court ought to amend the order to reduce the $75,000 amount she was to pay husband for his interest in the marital property. She stated that she had agreed to the final stipulation with the understanding that she would receive $140,000 in lieu of spousal maintenance, but "[t]he math at the hearing was incorrect." She provided a spreadsheet reflecting an otherwise equal division of the marital property then adjusted to award wife more property in lieu of spousal maintenance, as she argued the parties intended. The spreadsheet reflected that if wife had to pay husband $75,000 for his interest in the marital home, she would receive only $121,750 in additional property in lieu of spousal maintenance, which was $18,250 less than the $140,000 specified as the amount of husband's spousal maintenance buy-out. Wife argued that the court should amend the order to require her to pay $56,750 instead of $75,000 so that she would net the full $140,000 worth of property in lieu of spousal maintenance to which she was entitled.

The court granted wife's motion in part by amending the order to restore the language awarding the Island Pond property to husband. However, it declined to otherwise alter the final order. The court noted that neither the spreadsheet nor its calculations were included or referred to in the stipulation and final order. The court explained that it understood the amounts in the stipulation to be the result of compromise, and "[h]ow each party got comfortable enough with them by way of their own calculations was not expressed in the agreement." The court concluded that wife's apparent mistake in her own calculations was not an error of the court justifying alteration of the final order.

In March 2020, wife filed a motion to enforce in which she claimed that the parties had intended for wife to receive property worth $140,000 as a buy-out of spousal maintenance, that she had effectively received only $121,750, and that husband should therefore pay her $18,250 to fulfill his obligation. The court denied the motion for the same reasons that it denied the motion to alter or amend. The court stated that the stipulation and order "set forth a compromise property division that also resolved a spousal maintenance claim that the parties' parenthetical recognized as being $140,000." The court noted that wife did not allege mutual mistake or seek relief from judgment. Wife appealed.

On appeal, wife argues that the court erred in denying her motion to enforce because the plain language of the spousal maintenance provision requires husband to transfer property worth $140,000 to her and he has failed to do so. This Court uses contract principles to interpret divorce decrees based on stipulations. Sumner v. Sumner, 2004 VT 45, ¶ 9, 176 Vt. 452. As with any other contract, our review of the trial court's interpretation of the divorce decree "is nondeferential and plenary." Flanagan v. duMont, 2016 VT 115, ¶ 19, 203 Vt. 503. "To determine the meaning of a specific provision of a contract, we consider the whole instrument and construe it in harmony if possible." John A. Russell Corp. v. Bohlig, 170 Vt. 12, 17 (1999).

The plain language of the spousal maintenance provision does not support wife's claim. The provision simply states that the parties agree to an award of property in lieu of maintenance and sets the value of this award at $140,000. The provision does not state that a specific asset is to be used to satisfy the award. It does not include any calculations indicating how the parties reached this amount. The stipulation nowhere states any intention that the baseline property division prior to application of the "spousal maintenance buyout" be equal and contains no valuations of the various assets divided pursuant to the stipulation, including the marital residence. It is clear from reviewing the stipulation as a whole that the parties negotiated a division of their marital property, agreed that wife would pay husband $75,000 for his interest in the marital

residence, and intended that the award of property in lieu of spousal maintenance in the amount of $140,000 would be satisfied by the property division outlined in their stipulation. See John A. Russell Corp., 170 Vt. at 17 (stating particular provision must be construed in harmony with rest of contract).

Wife argues that her interpretation of the provision is supported by our nonprecedential decision in Hatcher v. Bettis, No. 2006-247, 2007 WL 5313297 (Vt. April 25, 2007) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo06-247.pdf [https://perma.cc/S6CV-LHVP]. In that case, the parties' stipulated divorce order gave the husband the right to purchase the wife's half-interest in the marital home and set the home's value at $192,000 for that purpose. After the husband exercised his right to purchase the wife's interest, he received an offer of $270,000 for the house. The wife moved to enforce, arguing that she was entitled to half of the increased equity. We held that the wife was bound by the value she agreed to in the stipulation, and in the absence of fraud or coercion, was not entitled to modify the final order simply because the house later appreciated in value. Id. at *3-4. Hatcher offers no persuasive support for wife's position. The stipulation and order here contemplate that the parties' property division, as described in the stipulation and order, has taken into account the award of property in lieu of spousal maintenance, which the parties valued at $140,000. Wife is essentially seeking to modify the stipulated order to create an obligation that is inconsistent with the plain terms of the agreement. As we explained in Hatcher, in the absence of fraud or coercion, wife is not entitled to modify the stipulation and final order simply because the value of the house allegedly changed. Id.; see also Viskup v. Viskup, 149 Vt. 89, 90 (1987) ("It is well settled in Vermont that a divorce decree relative to property is final and not generally subject to modification, absent evidence of fraud or coercion."). The family court therefore did not err in denying wife's motion to enforce.[2]

Affirmed.

BY THE COURT:

_____

Paul L. Reiber, Chief Justice

_____

Beth Robinson, Associate Justice

_____

Harold E. Eaton, Jr., Associate Justice

[2] Because we affirm the decision on the merits, we do not address husband's argument that wife's motion to enforce was precluded by the family court's unappealed denial of her motion to alter or amend.