IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:	)	
	)	
PAUL HENRI MONGAUZY,	)	No. 64499-8-I
	)	
Appellant,	)	DIVISION ONE
	)	
and	)	
	)	
KATHLEEN DIANE MONGAUZY,	)	UNPUBLISHED OPINION
	)	
Respondent.	)	FILED: May 9, 2011
	)	

Dwyer, C.J. — The superior court has the authority to enforce the provisions of a property disposition in a dissolution decree so long as the court does not modify the decree. Here, because the superior court neither extended nor reduced the scope of either party's rights as set forth in the decree, the court did not impermissibly modify the decree. Accordingly, we affirm.

I

This case involves the enforcement of a dissolution decree entered by default where one party to the decree, the former husband, chose not to participate in the dissolution proceeding. After a two-year period in which the former husband refused to comply with the decree, and during which time allegations of domestic violence resulted in the entry of an order of protection

protecting the former wife and five children, the former wife sought an order from the superior court enforcing the dissolution decree.

In early 2007, Kathleen Diane Mongauzy (Diane) filed for dissolution of her marriage to Paul Henri Mongauzy (Paul). Paul did not appear or participate in the dissolution proceeding, and, in May 2007, the superior court entered a decree of dissolution by default dissolving the parties' marriage.

The property distribution set forth in the decree awarded to each party one-half of the value of the family residence in Issaquah. The real property judgment in the decree provides: "Property to be sold and equity/profit split equally 50/50 between petitioner [Diane] and respondent [Paul]." Clerk's Papers (CP) at 1. The provision awarding one-half of the value of the residence to Diane states, in its entirety, that she is to be awarded: "50% of final equity/profit from sale of primary residence. Parcel #390492-0990-02. Home to be listed for sale immediately." CP at 3.

Additionally, the decree awarded to Diane one-half of the value of a 20-acre property in Chelan County (the Chelan property) and one-half of the value of certain Canadian savings and investment accounts (the Canadian accounts). The decree sets forth the value of the Chelan property as $70,000 and the value of the Canadian accounts as $50,000. Thus, the decree awarded to Diane $35,000 for the Chelan property and $25,000 for the Canadian accounts, both amounts to be paid in cash to Diane "upon sale of [the] primary residence." CP

at 3.

The Issaquah residence was listed for sale for $729,900 in June 2007. The listing was cancelled two months later. There is no evidence in the record that the residence has been listed for sale since the initial listing was cancelled in August 2007.

In July 2009, Diane filed a motion for enforcement of the decree of dissolution.[1] The motion requested that the superior court enforce the decree "with respect to the payment of funds/division of property." CP at 18.

A superior court commissioner granted the motion for enforcement of the decree in an order dated September 17, 2009. The commissioner ordered Paul to pay to Diane $178,000, which the commissioner determined was one-half of the parties' net equity in the Issaquah residence. The commissioner also ordered Paul to pay to Diane, upon the sale of the Issaquah residence, $35,000 for one-half of the value of the Chelan property and $25,000 for one-half of the value of the Canadian accounts.[2] The commissioner further ordered that the judgments be entered as liens against the residential property.

Paul thereafter filed a motion for revision of the commissioner's order. In

[1] The motion additionally requested that the superior court enter a new order of protection to replace a previously entered order of protection prohibiting Paul from contacting Diane or the five children. The prior order of protection was set to expire in September of that year. The superior court reissued the order of protection. Because Paul does not appeal from that portion of the trial court's order, we do not further address it.

[2] The commissioner's order mistakenly stated the value of the Chelan property to be $50,000 and the value of the Canadian accounts to be $70,000. However, the total amount owed to Diane is the same in the decree and in the commissioner's order; thus, neither party is prejudiced by the commissioner's transposition of the values of these assets.

October 2009, the superior court denied the motion for revision, finding that there was no error in the commissioner's decision.[3]

Paul appeals.

II

Paul contends that the superior court, by determining the value of Diane's interest in the Issaquah residence based upon its value at the time that the decree was entered and by ordering that the judgments be entered as liens against the residential property, impermissibly modified the dissolution decree. We disagree.

The superior court has broad equitable authority to enforce a property disposition set forth in a dissolution decree:

> It is inconceivable that a court in a divorce proceeding can divide the property between the parties and yet have no power to make that division effective if the parties are recalcitrant.
> . . .
> "To the extent that the court has the power to adjust the property rights of the parties, it can require that its mandates be carried out, either by act of the party or by directing the making of a conveyance by a representative of the court if the party fails or refuses to make it. This is a generally recognized power of a court invested with authority to deal with property rights and interests. It is commonly exercised to effectuate transfer of interests if the parties are recalcitrant; hence there is nothing peculiar to divorce litigation in its application, where necessary, to carry out what the court is empowered to do by way of adjustment of rights and

[3] Where the superior court has made a decision on revision, the appeal is from the superior court's decision, not from the commissioner's decision. State v. Ramer, 151 Wn.2d 106, 113, 86 P.3d 132 (2004). Thus, we review the superior court's ruling, not the commissioner's. Ramer, 151 Wn.2d at 113. Here, the superior court, in denying Paul's motion for revision, found that "[t]here was no error in the decision below," CP at 294, thus implicitly adopting the commissioner's findings of fact and conclusions of law. For this reason, we herein refer to the findings and conclusions set forth in the commissioner's decision, notwithstanding that we review the decision of the superior court.

interests."

Robinson v. Robinson, 37 Wn.2d 511, 516, 225 P.2d 411 (1950) (quoting Nelson on Divorce and Annulment Vol. II, 285, § 16.01 (2d ed.)). Incident to this broad authority, the superior court can enforce a decree of dissolution so long as it does not modify the decree.[4] See, e.g., In re Marriage of Thompson, 97 Wn. App. 873, 878-79, 988 P.2d 499 (1999). A decree is modified when the rights given to one party are either extended beyond or reduced from the scope originally intended by the decree. Rivard v. Rivard, 75 Wn.2d 415, 418, 451 P.2d 677 (1969); Thompson, 97 Wn. App. at 878.

Paul first asserts that the dissolution decree required only that he list the property for sale, not that he was required to sell it. This argument is unavailing, however, given that the decree explicitly provides that the property is "to be sold." Moreover, given that the purpose of listing a property for sale is to sell it, even if the decree did not contain this explicit language, it is clear that the decree's intent ("[h]ome to be listed for sale immediately") was that the Issaquah residence be sold.

Paul further asserts that the superior court modified the decree by determining the value of Diane's interest in the Issaquah residence based upon the $729,900 purchase offer that the parties received when the home was initially listed for sale. He contends that the decree awarded to Diane one-half

[4] Modification of a dissolution decree, in the absence of conditions that justify reopening of the judgment, violates RCW 26.09.170(1), which provides: "The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state."

of the net equity in the residence at the time that the property is sold, rather than one-half of the net equity at the time that the decree was entered. Relatedly, Paul assigns error to the superior court's finding of fact that the value of the residence was $729,900. The superior court found: "The parties' residence was listed for sale and the parties received a full price offer at $729,900. The court finds this to be accurate and compelling evidence as proof of the value." CP at 273.

Contrary to Paul's contention, the superior court's valuation of the Issaquah residence did not effect an improper modification of the decree. First, the superior court's finding that the value of the residence is $729,900 is supported by substantial evidence, as the court was entitled to believe Diane's declaration stating that she and Paul had received a full-price offer of $729,900 during the two-month period in which the house was listed for sale. Moreover, as evidenced by the provision of the decree providing that the residence was "to be listed for sale immediately," the court clearly intended that the value of the residence would be determined at that time—not years later after one party to the dissolution failed to comply with the decree and the other was compelled to request that the court enforce its order.

Paul contends that the prospective buyers who initially offered $729,900 for the home were unwilling to pay that amount after inspecting the home and discovering rodent problems.[5] It is true that market value is generally

[5] Although Paul provided exhibits to the superior court that purportedly showed that the

established as the price that a willing seller will accept and a willing buyer will pay for a particular property. However, such market value evidence was unavailable to the superior court because, here, Paul was not a willing seller. As the superior court found, Paul had failed to comply with the dissolution decree by taking the house off the market, thus precluding its sale.[6] Thus, because he was frustrating the sale of the home, Paul could hardly be considered a willing seller with an incentive to put the home in a presentable, salable condition. Here, the superior court's determination of the value of the residence, although not necessarily based upon evidence of a consummated transaction between a willing seller and a willing buyer, is within the range of evidence that was presented to the court. Thus, the superior court properly exercised its equitable authority to effectuate the decree when it determined that the value of the residence was $729,900. Moreover, because the decree evidences an intent by the parties that the residence be sold immediately, the superior court did not modify the decree by basing Diane's interest in the residence upon evidence of its value at a time near the time that the decree was entered.[7]

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initial full-price offer was reduced after the prospective buyers inspected the home, the exhibits were distorted beyond legibility. Moreover, the superior court has the authority to decline to give weight to such evidence.

Paul additionally assigns error to the superior court's finding that "[t]he full-price offer was rejected and the court cannot find a reason for such rejection." CP at 273. Because the superior court was entitled to determine that any evidence with regard to the rejection of the offer was not credible, the superior court did not err in making this finding.

[6] The superior court found: "Respondent has not followed through on listing the house, selling it in order to distribute the proceeds." CP at 274. Paul additionally assigns error to this finding; however, he misstates the finding in so doing, contending that the superior court found only that he had failed to follow through with listing the house for sale. Because the record contains evidence that the home was listed for sale for only two months and then withdrawn from the market and never sold, substantial evidence supports this finding.

Paul next contends that the superior court modified the decree by ordering that the judgments against him be entered as liens against the residential property. However, the superior court modifies a decree only where its order extends or reduces the scope of a party's rights as set forth in the decree. Thompson, 97 Wn. App. at 878. By ordering that the judgments be entered as liens against the residential property, the superior court neither extended nor reduced the scope of either party's rights; rather, the court provided a means through which Diane could obtain the judgment proceeds to which she was rightfully entitled pursuant to the dissolution decree.

In addition, Paul's assertion that the decree was modified due to the court's order permitting liens to be entered against the residential property is premised upon a misunderstanding of the law. Paul asserts that the superior court awarded to the parties the residence as tenants in common, and, thus, that the court's order impermissibly converted a tenancy in common distribution to a lien on the property. It is true that "[c]ommunity property *not disposed of* in a dissolution is owned thereafter by the former spouses as tenants in common." Yeats v. Estate of Yeats, 90 Wn.2d 201, 203, 580 P.2d 617 (1978) (emphasis added); see also Pittman v. Pittman, 64 Wn.2d 735, 737, 393 P.2d 957 (1964). However, the property at issue here clearly *was* disposed of by the decree. The principle that property not disposed of in a decree is thereafter owned by the

[7] Paul also asserts that the superior court erred by finding that $178,000 is one-half of the parties' net equity in the Issaquah residence. Because Paul bases this contention on his argument that the valuation of the residence was improper, which is incorrect, the superior court did not err by making this finding.

parties as tenants in common is not applicable where a decree actually distributes the property.[8]

Diane requested in her motion to enforce the decree only that the superior court "enforce provisions of the Decree of Dissolution between the parties with respect to the payment of funds [and] division of property." CP at 18. Thus, she did not seek anything that was not already awarded to her by the decree; rather, Diane simply requested that the superior court enforce its own order awarding to her specific property. Because the superior court did just that, the court did not impermissibly modify the decree.[9]

III

Paul next contends that the superior court improperly imposed upon him an obligation that was not included in the decree of dissolution. We disagree.

In interpreting a decree of dissolution, the appellate court "may not add to the terms of the agreement or impose obligations that did not previously exist."

[8] Indeed, the superior court did not have the authority to distribute the Issaquah residence to the parties as tenants in common. See Shaffer v. Shaffer, 43 Wn.2d 629, 630-31, 262 P.2d 763 (1953) (holding that a dissolution court fails to perform its statutory duty to distribute property in a dissolution action where the court awards property to the parties as tenants in common).

[9] Paul asserts that the superior court erred by hearing Diane's motion pursuant to the 14-day motion procedure for family law motions set forth in King County's Local Family Law Rules. He contends that the 14-day motion procedure is improper where the relief requested requires more than simply enforcing the dissolution decree. Because, here, Diane requested only that the superior court enforce the decree—and the court did just that—the court did not err by hearing Diane's motion pursuant to the 14-day motion procedure.

Paul additionally asserts that the superior court erred by not requiring an evidentiary hearing prior to entering its findings of fact and conclusions of law. However, the case upon which Paul relies, In re Marriage of Maddix, 41 Wn. App. 248, 703 P.2d 1062 (1985), is inapposite in that it involved vacation, rather than enforcement, of a decree. An evidentiary hearing was required therein because, pursuant to CR 60(b)(4), the decree could be vacated only if the superior court made a finding of fraud, misrepresentation, or other misconduct. Maddix, 41 Wn. App. at 252. No such evidentiary hearing was required here.

Byrne v. Ackerlund, 108 Wn.2d 445, 455, 739 P.2d 1138 (1987). Paul relies upon our Supreme Court's decision in Byrne in asserting that the superior court imposed upon him an obligation that was not part of the decree. In that case, the decree of dissolution awarded to Ackerlund, the former husband, a parcel of real property. Byrne, 108 Wn.2d at 446. The decree awarded to Byrne, the former wife, a money judgment of $2,500 and one-half of the excess of the net proceeds from the sale of the parcel of real property over $16,500. Byrne, 108 Wn.2d at 446. Both the money judgment and net proceeds from the real property's sale were awarded to Byrne as a lien against the parcel of real property, payable upon its sale. Byrne, 108 Wn.2d at 446.

Byrne sought a declaratory judgment that the decree required the sale of the property and satisfaction of the lien within a reasonable time. Byrne, 108 Wn.2d at 447. The Court of Appeals determined that the property settlement agreement, which did not set forth a date by which the real property needed to be sold, "violated the requirement that property be disposed of in a manner that finally and definitely determines the interests of the parties." Byrne, 108 Wn.2d at 447. Thus, the Court of Appeals held that a reasonable time for sale would be implied into the decree. Byrne, 108 Wn.2d at 447.

Our Supreme Court reversed, holding that the Court of Appeals impermissibly modified the terms of the parties' agreement. Byrne, 108 Wn.2d at 455-56. The court noted that "a reasonable time for performance of an

obligation may only be implied where the contract imposes a definite obligation but fails to provide a time for its performance." Byrne, 108 Wn.2d at 455. Because Ackerlund had "no obligation whatsoever to sell the property," imposing such a time limit impermissibly modified the decree. Byrne, 108 Wn.2d at 456.

Byrne is inapposite. As explained above, the challenged order herein simply enforced, rather than modified, the decree. Whereas the decree at issue in Byrne imposed no obligation upon Ackerlund to sell the property, the decree at issue herein explicitly provides both that the Issaquah residence is "to be sold," and that it is to be "listed for sale immediately." Thus, unlike in Byrne, both the obligation to sell the property and the time for performance were explicitly set forth in the decree.

The decree of dissolution, not the superior court's order enforcing that decree, imposed upon Paul the obligation to sell the Issaquah residence. Thus, the superior court did not err by ordering Paul to do so.

IV

Paul additionally contends that the superior court erred by concluding that a quitclaim deed signed by Diane did not extinguish her rights pursuant to the dissolution decree. We disagree.

In April 2008, Diane signed a quitclaim deed conveying the Issaquah residence to Paul. The superior court found that Diane's "signing of a quitclaim deed does not extinguish her interest in the property." CP at 274.

Paul essentially asserts that the quitclaim deed signed by Diane modified the terms of the decree of dissolution, relieving him of his obligation pursuant to the decree to sell the Issaquah residence and to pay to Diane one-half of the value of the parties' net equity in the residence. Paul fails to explain, however, how Diane's signing of the quitclaim deed was necessarily inconsistent with Diane's exercise of her rights pursuant to the decree. Indeed, in order to sell the residence, as required by the decree itself, Diane would have to convey her interest in the home, either to Paul (such that he could convey a 100% interest in the residence to the buyers) or to the buyers of the home (to convey her interest to them). Diane's signing of the quitclaim deed is, thus, completely consistent with the exercise of her rights as set forth in the decree. The superior court did not err by determining that Diane's interest in the Issaquah residence, as set forth in the dissolution decree, was not extinguished by the existence of the quitclaim deed.

V

Paul finally contends that the superior court erred by determining that any encumbrances against the Issaquah residence established subsequent to the entry of the decree are Paul's sole responsibility. We disagree.

Diane presented evidence to the superior court that Paul had obtained an additional line of credit secured by an interest in the Issaquah residence subsequent to the entry of the dissolution decree. The superior court found that

"[a]ny encumbrances against the residence since the date of the decree are [Paul]'s alone." CP at 275.

In contending that the superior court erred by making this finding, Paul essentially asserts that the court should have altered the parties' obligations by requiring Diane to share responsibility for the postdissolution debts. Indeed, Paul asserts that this would be the equitable result because, he claims, the proceeds from the additional encumbrances on the residence were used to pay community debts owed by both parties.

However, Paul had no obligation to pay any debts assigned to Diane in the decree. More importantly, were the court to have ordered that Diane was responsible for the additional encumbrances, the court would have effectively modified the parties' obligations pursuant to the decree—a result that is prohibited by RCW 26.09.170. If Paul sought to alter the parties' obligations pursuant to the decree to take account of the additional encumbrances on the residence, he could properly have done so only by moving to vacate the decree pursuant to CR 60 or by appealing from the decree. 20 Kenneth W. Weber, Washington Practice: Family & Community Property Law, § 32.40, at 225 (1997).

The superior court did not err by ruling that Paul is solely responsible for the postdissolution encumbrances on the Issaquah residence.

VI

Diane requests an award of attorney fees on appeal based upon her need

for contribution from Paul and his ability to contribute to her fees. However, there are no financial declarations within the record that would enable us to grant such an award. See RAP 18.1(c). Moreover, we note that the superior court declined to award attorney fees to Diane. Similarly, we decline to make such an award on appeal.

Affirmed.

Dwyer, C. J.

We concur:

Cox, J.

Grosse, J.