

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

In the Matter of the Marriage of	)	No. 65813-1-I
	)	consolidated with
ALI GANJAIE,	)	No. 66410-7-I and
	)	No. 66710-6-I
Appellant,	)	
	)	
and	)	
	)	UNPUBLISHED OPINION
KATHERINE GANJAIE,	)	
	)	FILED: June 11, 2012
Respondent.	)	
	)	

LEACH, C.J. — In this consolidated appeal, Ali Ganjaie challenges multiple postdissolution trial court orders made to enforce the property division between him and his former wife, Katherine Davis.<sup>1</sup> He contends that the trial court lacked the authority to (1) order the sale of the family’s house by special master without his consent; (2) modify its dissolution decree and property division; and (3) enforce its orders while other trial court rulings were under review by this court. We affirm.

FACTS

The decree dissolving the parties’ marriage entered in April, 2009.<sup>2</sup> The

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<sup>1</sup> The dissolution decree established that the former wife changed her surname from Ganjaie to Davis. For the sake of clarity, we refer to her as “Davis,” and the former husband as “Ganjaie” herein.

<sup>2</sup> This court affirmed the decree of dissolution and division of property. The mandate issued April 16, 2010.

decree provided for the sale of the family's residence at an agreed-upon price of \$578,000. Ganjaie was to receive a \$50,000 share of the anticipated proceeds from the sale, with the remainder to be paid to Davis after deducting costs associated with the sale. The decree provided that "any adjustment to the sales price may be made by motion," that "[t]he husband shall pay all costs associated with the home until sale" and that "[i]f the husband damages the home or reduces the value, this may be addressed by motion." The decree also provided that the trial court retained jurisdiction over this matter "for all purposes," and that if the house was not sold within six months, either party could bring a motion before the trial court for further relief.

The trial court granted Davis's motion to appoint a special master to conduct the sale, after Ganjaie was uncooperative in facilitating the sale. Housing prices declined during the delay, and the special master was unable to sell the residence at the contemplated \$578,000 price. On June 22, 2010, Davis asked the trial court to authorize the special master to reduce the price to facilitate sale. Ganjaie opposed the request. The trial court granted it and ordered, in pertinent part:

It is [ordered] that [the special master] has the authority to reduce the sale price of the home as he sees fit . . . .

It is FURTHER ordered that [the special master] is authorized to remove Mr. Ali Ganjaie from the home if he refuses to show the home to potential buyers. . . .

Mr. Ali Ganjaie's share of the net proceeds of the sale of the home (initially [\$]50,000) is ordered to be reduced proportionately with all reductions in the sale price of the home.

Ganjaie continued to interfere with efforts to sell the residence and on

November 10, 2010, the trial court ordered him evicted from the residence. The property's value declined further during the delay, and eventually the residence sold for \$465,000.

After the sale, Davis moved for an order directing distribution of the sale proceeds. The net proceeds of the sale were \$97,106.44, and the costs associated with selling the home were \$19,673.94. Davis explained the basis for her proposed distribution:

Under the original decree the court expected equity of \$278,540 . . . and from that net equity, the court awarded Mr. Ganjaie \$50,000 to equalize the division of property. Under the decree Mr. Ganjaie was awarded 18% of the net proceeds of the sale . . . . Since the sales price was reduced significantly AND the court ordered that Mr. Ganjaie's share of the net proceeds would also be reduced proportionately, 18% of the net proceeds would be \$17,491.27 . . . .

Under the decree Mr. Ganjaie was ordered to pay all costs associated with the house until sold, since he was allowed to live in the house. It was also ordered by this court that the fees for the Special Master were to be paid from the sale proceeds from Mr. Ganjaie's share.

On January 5, 2011, following a hearing, the court ordered the following distribution of the funds: \$2,648.13 to the special master, and the remainder of \$94,525.63 to Davis. The trial court found that the costs Ganjaie was obligated to pay totaled \$19,673.94, exceeding his \$17,491.27 share of the proceeds. Accordingly, Ganjaie received no distribution.

Ganjaie appeals.

### DISCUSSION

#### *Trial Court Jurisdiction To Order Sale Of Home*

Ganjaie first asserts that the trial court lacked jurisdiction to order the sale of the residence without the consent of the parties, citing High v. High,<sup>3</sup> and Arneson v. Arneson.<sup>4</sup> He is incorrect.

In order to achieve an equitable property distribution between the parties, the trial court has the jurisdiction to order the sale of a family's residence.<sup>5</sup> As our Supreme Court held in In re Marriage of Sedlock:

In summary, finding no Washington case law directly addressing whether courts have jurisdiction to order a forced sale of a couple's house in a dissolution action, and in light of the number of cases in which the Washington Supreme Court has affirmed the lower courts' forced sales of property, we now hold that the trial court had jurisdiction to order the sale of the family home.<sup>[6]</sup>

The same conclusion is warranted in the instant case.

As the Sedlock court explained, neither Arneson nor High stand for the proposition that a trial court lacks jurisdiction to order sale of a family residence in a marital dissolution:

Arneson is distinguishable because the trial court ordered a sale of the couple's assets for the benefit of the creditors. The reviewing court found that the order for the benefit of the creditors was improper in a marital dissolution.

High is also distinguishable. In High the couple had bought three separate tracts of land for speculation. The trial court ordered that "(a) the separate tracts of land be sold by private agreement; or, (b) failing this, that the tracts be sold at a public sale." A careful reading of High indicates that the court felt that a forced sale would be inequitable because the property would likely increase in value, not because the court generally lacked jurisdiction to order a forced sale.

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<sup>3</sup> 41 Wn.2d 811, 822-23, 252 P.2d 272 (1953).

<sup>4</sup> 38 Wn.2d 99, 101, 227 P.2d 1016 (1951).

<sup>5</sup> In re Marriage of Foley, 84 Wn. App. 839, 844, 930 P.2d 929 (1997).

<sup>6</sup> 69 Wn. App. 484, 503, 849 P.2d 1243 (1993).

Thus, High is not determinative of the present issue.<sup>[7]</sup>

The trial court had jurisdiction, and authority, to order the sale of the residence.

*Trial Court Authority To Enforce Orders, Distribute Proceeds*

Ganjaie next contends that the trial court lacked authority to order sale of the house by a special master, and to order distribution of the proceeds to Davis and the special master, claiming that these were erroneous modifications of the court's earlier decree. He is incorrect.

As a general rule, the provisions in a dissolution decree 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."<sup>8</sup> However, a trial court has the power to enforce the provisions of its decree as long as it does not modify the decree.<sup>9</sup> Our Supreme Court has held that a trial court in a dissolution proceeding has the same authority as any trial court to enforce its orders:

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. The rule is well stated in Nelson on Divorce and Annulment (2d ed.), Vol. II, 285, § 16.01, where it is said:

"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

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<sup>7</sup> Sedlock, 69 Wn. App. at 502 (quoting High, 41 Wn.2d at 822-23).

<sup>8</sup> RCW 26.09.170(1).

<sup>9</sup> In re Marriage of Greenlee, 65 Wn. App. 703, 710, 829 P.2d 1120 (1992). A decree is modified when rights given to one party are extended or reduced beyond the scope originally intended. In re Marriage of Thompson, 97 Wn. App. 873, 878, 988 P.2d 499 (1999).

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 interests.”<sup>[1]</sup>

We interpret the original decree terms de novo to determine if the court's order was a de facto modification of that decree.<sup>11</sup>

We conclude that the trial court did not modify its earlier decree by ordering the sale of the home by the special master or distributing the proceeds. The trial court simply enforced its decree. It was entirely within the terms of the decree for the trial court to require Ganjaie to pay the costs associated with the home out of his share of the proceeds. The decree expressly ordered him to pay “all costs associated with the home until sale.” And the decree contemplated that he might “damage the home or [reduce] the value,” and provided that the court would address the issue upon motion by the parties. The trial court’s reduction of Ganjaie’s original \$50,000 share to match the proportionate reduction in the home’s sale price was a reasonable “adjustment to the sales price” based on a reduction “in value” caused in part by his delays. These concerns were specifically provided for in the decree.

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<sup>1</sup> Robinson v. Robinson, 37 Wn.2d 511,516, 225 P.2d 411 (1950).

<sup>11</sup> Thompson, 97 Wn. App. at 877-78.

The trial court had the authority to enforce the transfer of interests it ordered in the dissolution decree, and did not modify its earlier orders.<sup>12</sup> There was no error.<sup>13</sup>

*Trial Court Authority Under RAP 7.2(e)*

Ganjaie alleges that on November 10, 2010, and January 5, 2011, the trial court lacked authority to order his eviction from the home and to distribute the proceeds from the home's sale, citing RAP 7.2(e). He fails to establish any basis for appellate relief.

RAP 7.2(e) provides, in pertinent part:

The trial court has authority to hear and determine (1) postjudgment motions authorized by the civil rules, the criminal rules, or statutes, and (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision. . . . If the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision.

Ganjaie fails to demonstrate that RAP 7.2(e) applies to the trial court orders he challenges. He does not explain why the trial court's November 10, 2010 or January 5, 2011 rulings would "change a decision then being reviewed by the appellate court." Moreover, the evidentiary record reveals that none of the rulings "changed" any prior ruling from which the husband appealed. The essential issue remained the same: whether the trial court had the authority to enforce its decree.

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<sup>12</sup> Robinson, 37 Wn.2d at 516.

<sup>13</sup> Although Ganjaie claims that Davis's motion was untimely under CR 60, he does not brief this issue. The issue is abandoned. State v. Motherwell, 114 Wn.2d 353, 788 P.2d 1066 (1990) (assignment of error that not supported by argument will generally be deemed abandoned.)

Thus, the trial court did not violate RAP 7.2(e) when it entered any of the relevant orders.

Ganjaie fails to establish that RAP 7.2(e) deprived the trial court of the authority to act, and fails to demonstrate any trial court error.

Affirmed.<sup>14</sup>

Leach, C. J.

WE CONCUR:

Jaw, J.

Becker, J.

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<sup>14</sup> Ganjaie also claims the trial court made no findings of fact or conclusions of law pertaining to the July 2, 2010 or November 10, 2010 hearings. However, he does not assign error to the trial court's lack of findings or conclusions. An appellate court will not generally consider a claimed error to which no assignment of error has been made. Painting & Decorating Contractors of America Inc. v. Ellensburg School Dist., 96 Wn.2d 806, 638 P.2d 1220 (1982). His failure to assign error to these alleged omissions precludes appellate relief in these circumstances.