

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of	)	
	)	No. 66925-7-I
CASSANDRA LYNNE SAGE,	)	
	)	DIVISION ONE
Respondent,	)	
	)	UNPUBLISHED OPINION
and	)	
	)	
HARVEY PATRICK CHEW,	)	
	)	FILED: July 23, 2012
Appellant.	)	

Grosse, J. — Unpaid real estate taxes are generally considered encumbrances on real property. However, where a dissolution decree specifically provides that the husband is responsible for any liabilities on that real property until the time of the dissolution and that the wife takes the property subject to liabilities incurred subsequent to the decree of dissolution, the husband must pay the taxes imposed for the period before the dissolution and the wife is responsible only for the taxes incurred subsequent to the dissolution. The trial court is affirmed.

Cassandra Sage and Harvey Chew married in 1996 and separated in 2008. Sage and Chew had two sons, born in 1996 and 2001. After a four-day dissolution trial, the trial court entered findings of fact and conclusions of law. In addition to other assets, the trial court found that Chew separately owned three townhouses on North 94th Street in the Greenwood neighborhood of Seattle. The trial court found that since Chew “used community assets to service mortgages and to trade and re-form the recently constructed townhouses,” the community was entitled to compensation for the

use of those assets. As an alternative to maintenance, and because the special needs of one of the children would only allow Sage to work part time, the court awarded the Kirkland home and the three townhomes to Sage. The court further found that if the equity in the three townhomes did not exceed the amount due on the Kirkland home, Sage could seek relief under CR 60(b)(4) for fraud.

The decree of dissolution specifically awarded the three townhouses to Sage “subject to the encumbrances thereon.” In setting forth Chew’s liabilities, however, the decree provided that he was “liable for any expenses associated with . . . the townhouses through January 31, 2010. In the next paragraph, the decree required Sage to pay all liabilities associated with the property awarded to her that were incurred after February 1, 2010. In its findings of fact and conclusions of law, the trial court found that “[a]ny unpaid obligations associated with the 3 Seattle townhomes as of the date of the entry of the Decree” were Chew’s responsibility. The decree of dissolution was entered on February 3, 2010.

Chew did not transfer the townhouses to Sage until April 2010 when the court ordered him to do so. Chew failed to pay back taxes owed on the property from 2009. There was approximately \$14,000 owed in back taxes by the time Chew transferred the properties to Sage. In December 2010, Sage filed a second motion to enforce the decree to require, inter alia, that Chew pay the back taxes. In that motion Sage noted that the sale price of the townhomes would be considerably reduced by the back taxes, which would limit her ability to pay off the mortgage on the Kirkland residence as anticipated by the court in its rulings.

On January 7, 2011, the same trial judge who entered the decree of dissolution entered an order requiring Chew to pay the back taxes. Additionally, the court ordered Chew to pay Sage's attorney fees. The court clearly intended for Chew to be responsible for the expenses associated with the real properties through January 31, 2010. The trial court ordered Chew to pay \$12,373.44 for unpaid real estate taxes and \$1,619 to Sage for her attorney fees. Chew's motion for reconsideration was denied and the trial court clarified the decree stating that Sage "continues to be responsible for paying all encumbrances including real estate taxes, for real estate awarded her in the Dissolution herein from the date of the decree. Taxes and other encumbrances, if any, accrued up to the date of the decree shall be paid by [Chew]."

Chew appeals, contending that the trial court abused its discretion in requiring him to pay back taxes on property awarded to Sage. Chew argues that Sage was awarded the property subject to encumbrances, one of which was the back taxes. Chew contends real estate taxes are an encumbrance and not an expense and, thus, are Sage's responsibility under the decree. Any merit to this argument is belied by the trial court's specific finding that Chew was liable for "[a]ny unpaid obligations associated with the 3 Seattle townhomes as of the date of the entry of the Decree." Clearly past due taxes are an unpaid obligation. Taxes are both an encumbrance and an expense.<sup>1</sup> The general award of the property subject to encumbrances is narrowed by the specific requirement that the liabilities then owing be paid.

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<sup>1</sup> In re Marriage of Griswold, 112 Wn. App. 333, 351-52, 48 P.3d 1018 (2002) (tax liability characterized as expenses where wife found responsible for payment of real estate tax liability for the home because decree awarded bonus pay for wife to pay living expenses). RCW 84.60.010 provides that taxes are a lien on property when assessed.

Chew argues that this was a modification of the decree of dissolution and that therefore the trial court was without authority to do so. A decree is modified when rights given to one party are extended or reduced beyond the scope originally intended.<sup>2</sup> No rights were extended or reduced here. The clarification did not modify the decree; it merely enforced the earlier decree.<sup>3</sup>

Even if we were to accept Chew's arguments, it would only render the decree ambiguous. And any ambiguity was clarified by the trial court in its ruling in response to Chew's motion for reconsideration. There, the trial court specifically provided that Chew was responsible for those back taxes.

#### Attorney Fees

RCW 26.09.140 provides this court with authority to order attorney fees in addition to statutory costs. The trial court awarded Sage attorney fees on January 7, 2011, because of Chew's "refusal to cooperate in effectuating the court's orders, and his continuing intransigence" with regard to this failure to pay the taxes as well as failing to pay the credit card debt as ordered, removing his name from various bank accounts, placing utilities in the Kirkland home in Sage's name, signing title to the automobile, and providing Sage with a copy of the mortgage on the Kirkland home and authorization to the bank to provide Sage with information about the mortgage. The trial court awarded attorney fees at the dissolution because Chew "was intransigent and that his behavior significantly increased the costs." A husband's intransigence in

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<sup>2</sup> In re Marriage of Thompson, 97 Wn. App. 873, 878, 988 P.2d 499 (1999); see also Robinson v. Robinson, 37 Wn.2d 511, 516, 225 P.2d 411 (1950).

<sup>3</sup> In re Marriage of Greenlee, 65 Wn. App. 703, 710, 829 P.2d 1120 (1992).

the trial court also supports an award of attorney fees on appeal.<sup>4</sup> For both reasons, we award Sage attorney fees.

The trial court is affirmed.

Grosse, J.

WE CONCUR:

Demp, J.

Cox, J.

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<sup>4</sup> In re Marriage of Wallace, 111 Wn. App. 697, 710, 45 P.3d 1131 (2002) (quoting In re Marriage of Mattson, 95 Wn. App. 592, 606, 976 P.2d 157 (1999)).