IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:		**No. 29235-5-III**
	)	**(consolidated with**
FRANCES J. BOGART,	**)**	**No. 29332-7-III)**
	)	
Respondent,	**)**	
	)	**Division Three**
and	**)**	
	)	
WARREN G. BOGART,	**)**	
	)	
Appellant.	**)**	**UNPUBLISHED OPINION**
	)	
	)	

Sweeney, J. — This appeal follows proceedings collateral to a dissolution decree. The court originally awarded the family home to the husband. Later the court modified the decree, ordered the husband to sell the home, and held him in contempt when he did not. The husband did not appeal the order or the contempt citation. He did move to vacate and argued that the court did not have jurisdiction to order the sale of his property. The court concluded that it did have jurisdiction and denied his motion to vacate. We conclude that the trial judge had tenable grounds to deny his motion and we affirm that

order.

FACTS

Warren G. Bogart and Frances J. Bogart[1] divorced in 2009 after 13 years of marriage. Both are in their 80s and have significant health problems.

Mr. Bogart was a contractor and developer, and he owned a number of corporations at the time of the dissolution proceedings. He or his corporations owned a number of parcels of real property including two houses in Grandview, Washington, and a duplex, four lots, and a home in Prosser, Washington, and approximately 25 acres of farmland. The dissolution action proceeded to trial in early 2009. The court found that all of Mr. Bogart's separate property was so intertwined with community property that it lost any identity as separate property. The court valued the Prosser home at $422,957 and the remaining community property, including the business assets, at $511,382. The court concluded that Mr. Bogart had monthly income from his business interests and social security payments in excess of $7,200.

The court awarded Mr. Bogart almost all of the real and personal property, including businesses, the associated assets, and the Prosser home. The court equalized that award with a judgment in favor of Ms. Bogart for $250,000. The judgment was

[1] Ms. Bogart has since changed her last name to "Bristow." We use Bogart, her last name at the time she filed the dissolution petition at issue here, for clarity.

secured by the real and personal property awarded to Mr. Bogart and accrued interest at the rate of 12 percent per annum. The court ordered Mr. Bogart to sign mortgages in favor of Ms. Bogart on the several properties. The court also awarded Ms. Bogart spousal maintenance in the amount of $1,250 per month until the equalization award was paid. The mortgages were never prepared.

In January 2010, Ms. Bogart moved for an order requiring Mr. Bogart to sell real property to satisfy the equalization award. She wanted the court to order Mr. Bogart to market the Prosser home through a neutral realtor. Mr. Bogart responded pro se with a declaration that he had already listed the home for sale. Ms. Bogart countered that the listing was simply a ploy to keep the court from getting involved as the current agent, Colleen Ackerblade, was her "ex-husband's puppet." Clerk's Papers (CP) at 40.

The court held a hearing. Mr. Bogart did not appear in person or by counsel. The court expressed reservations: "[I]t's the rule in Washington that the trial court does not have jurisdiction to order the sale of a party's assets without their consent." Report of Proceedings (RP) at 4 (referring to *In re Marriage of Bobbitt*, 135 Wn. App. 8, 144 P.3d 306 (2006)). The court requested additional authority from Ms. Bogart's lawyer. At a later hearing, the lawyer urged that the court did have authority to order the sale based primarily on *In re Marriage of Sedlock*, 69 Wn. App. 484, 849 P.2d 1243 (1993). The court agreed and ordered Mr. Bogart to sell the property. Pro se Mr. Bogart filed a

written objection on February 8, 2010. He urged that the property had already been listed for sale with an experienced realtor. The court concluded that Ms. Bogart was entitled to her equitable share of the property "within a reasonable time" and ordered the property sold. CP at 50-52. This order was entered on February 12, 2010, and no appeal was taken from the order.

Ms. Bogart moved to have Mr. Bogart held in contempt in March 2010 because Mr. Bogart failed to comply with the court's order and list the property with a neutral realtor. Mr. Bogart responded with a motion for relief from the court's February 10, 2010, order pursuant to CR 60 (relief from judgment based on mistake). He argued that the earlier final decree of dissolution vested title of the Prosser residence in him and the court therefore could not order a sale absent foreclosure proceedings. And he argued that listing the property with a new realtor would subject him to double commissions.

In April 2010, the court held a hearing on both his motion to vacate and her motion to find him in contempt. The court first noted that the mortgages ordered in the original decree to secure the judgment were never completed. The court then found that it was unclear whether Mr. Bogart had signed a listing agreement with a neutral realtor named Tina Sheperd. The court ordered that the mortgages be delivered and continued the hearing until further information was submitted about Ms. Sheperd.

The parties provided the requested information and the mortgages were delivered.

The court held a second hearing in May 2010. The court found that Ms. Sheperd was not a neutral realtor because she worked for Colleen Ackerblade. The court found that Mr. Bogart had improperly sold several lots before and after trial without disclosing it or applying the proceeds to the judgment and the court held Mr. Bogart in contempt. The court later denied Mr. Bogart's motion for relief from the February 12, 2010, order and also awarded attorney fees.

In June 2010, Ms. Bogart moved to have Mr. Bogart held in contempt because he had failed to pay spousal maintenance for the months of May and June 2010. The court found Mr. Bogart in contempt and awarded attorney fees.

Ms. Bogart then moved that Mr. Bogart be ordered to sign the new listing agreement and pay attorney fees on appeal. Mr. Bogart objected on the grounds that the listing price was 20 percent below the original valuation. Mr. Bogart later filed a supplemental memorandum and for the first time asserted that the court did not have jurisdiction based on authority of *Bobbitt*, 135 Wn. App. 8. The court ordered Mr. Bogart to sign the listing agreement for the Prosser home at a price of $509,500, and awarded $500 in attorney fees at the trial level and provisional attorney fees on appeal of $2,500.

Mr. Bogart appeals the denial of his motion for relief from the February 12 order and the related contempt citation.

DISCUSSION

Mr. Bogart contends that the February 2010 order to sell real property is void because the trial court lacked subject matter jurisdiction, and specifically characterizes the question before us as "whether the trial court can order, post-decree, a sale of real property awarded to one of the parties." Appellant's Reply Br. at 2. Whether or not the court had subject matter jurisdiction is a question that can be raised for the first time on appeal. *Bour v. Johnson*, 80 Wn. App. 643, 646-47, 910 P.2d 548 (1996).

Subject matter jurisdiction is the authority of the court to hear and determine the type of action before it. *In re Marriage of Thurston*, 92 Wn. App. 494, 498, 963 P.2d 947 (1998). Superior courts enjoy a broad constitutional and statutory grant of subject matter jurisdiction to hear and determine all dissolution matters. *Thurston*, 92 Wn. App. at 498; Wash. Const. art. IV, § 6; RCW 26.12.010(1). Mr. Bogart contends, nonetheless, that RCW 26.09.170(1) limits that jurisdiction. He is mistaken. RCW 26.09.170(1) provides in part:

> The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of the conditions that justify the reopening of a judgment under the laws of this state.

The statute does not limit the constitutionally proscribed subject matter jurisdiction of superior courts. It simply spells out the court's authority to revoke or modify a dissolution decree. *Thurston*, 92 Wn. App. at 498-99. Mr. Bogart relies on *Bobbitt* for

his contention that the court did not have authority to modify this judgment. 135 Wn. App. 8. But that case is not helpful because we are not reviewing the propriety of the original order to sell the property. We are instead reviewing the court's denial of his later motion for relief from the original February 12, 2010, order. And it is this later ruling that dictates our standard of review.

Mr. Bogart does not appeal the court's order to sell the property or the order that Mr. Bogart was in contempt for failing to follow the court's order. Those orders, then, are not before us for review. *Bjurstrom v. Campbell*, 27 Wn. App. 449, 451-52, 618 P.2d 533 (1980) ("An appeal from denial of a CR 60(b) motion is limited to the propriety of the denial not the impropriety of the underlying judgment."). Instead, Mr. Bogart appeals the court's refusal to vacate its order. He claims that the court lacked jurisdiction to require him to sell the property and therefore the order that required the sale was void. Appellate review of a motion for relief pursuant to CR 60 implicates a different standard of review than would a review of the original order and, of course, different considerations.

We review a trial judge's refusal to vacate (CR 60) an order for abuse of discretion. *In re Marriage of Scanlon*, 110 Wn. App. 682, 686, 42 P.3d 447 (2002). We then look at whether there was something about the way in which the court entered the order or the way in which counsel secured the order that was essentially untoward in a

way that prejudiced the nonmoving party, here Mr. Bogart. That is whether there is some mistake or neglect or omission or irregularity in obtaining the order in the first place. *In re Ellern*, 23 Wn.2d 219, 222, 160 P.2d 639 (1945).

Mr. Bogart simply submits that the court did not have jurisdiction to enter an order requiring sale of his property and, necessarily, to then find him in contempt. Even if he was correct, and we have already concluded that he is not, we would not pass on the propriety of the original order. It is not before us. "'If the court merely wrongly decides a point of law, that is not inadvertence, surprise, or excusable neglect.'" *Bjurstrom*, 27 Wn. App. at 452 (internal quotation marks omitted) (quoting *Silk v. Sandoval*, 435 F.2d 1266, 1267 (1st Cir. 1971)).

A trial judge must, however, articulate reasons for his discretionary decisions. *Scanlon*, 110 Wn. App. at 686. Here, the claim was that the court did not have subject matter jurisdiction to enter an order requiring sale of the property. The judge concluded that he did have jurisdiction and refused to reconsider the order. The question then is whether those were tenable grounds to deny Mr. Bogart's motion for relief from that order. And, of course, they were.

We affirm the decision of the trial judge.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to

RCW 2.06.040.

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Sweeney, J.

WE CONCUR:

_____ _____
Brown, J. Siddoway, J.