

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

<b>In re the Marriage of:</b>	)	<b>No. 27646-5-III</b>
	)	
<b>STEVEN ALAN HAGEN,</b>	)	
	)	
<b>Appellant,</b>	)	<b>Division Three</b>
	)	
<b>and</b>	)	
	)	
<b>DEANNA MARIE HAGEN,</b>	)	
	)	
<b>Respondent.</b>	)	<b>UNPUBLISHED OPINION</b>

Korsmo, J. — Steven Hagen appeals the Lincoln County Superior Court’s order on show cause requiring him to pay monthly support to his ex-wife, Deanna Hagen. We affirm and award Deanna Hagen her attorney fees on appeal.

**FACTS**

The Hagens, proceeding *pro se*, dissolved their 30-year marriage in Lincoln County by decree entered April 30, 2007. The couple owned four houses; the family home on Iroquois Drive in Spokane was awarded to Deanna Hagen. The decree provided

that “the husband shall pay \$450.00 maintenance . . . monthly.” The provision, paragraph 3.7, went on to state:

Other: The parties agree that the Husband is to pay the Wife the sum of \$450.00 per month as support for assistance with new house payment and loan. The parties also agree that said support shall run through the life of the original home loan, until the wife remarries or refinances the home loan. The obligation to pay future maintenance if the Petitioner dies will be paid by his estate as outlined in the Petitioner’s will.

Clerk’s Papers (CP) 42.<sup>1</sup>

A month before the decree entered, the Hagens refinanced the Iroquois Drive property. Each received \$30,000 as part of the refinance. The refinanced property carried a monthly mortgage of \$2,168.91. The home was listed for sale. Ms. Hagen entered into an agreement to purchase another home, with a monthly mortgage of \$1,600.00, contingent on sale of the Iroquois property. That house, however, did not sell.

Mr. Hagen never paid any maintenance and Ms. Hagen filed a *pro se* motion for contempt on August 27, 2008. She requested a total of \$7,650 for unpaid maintenance between May 1, 2007, and August 2008. Both parties eventually hired counsel. Mr. Hagen responded to the motion by arguing that there was no start date for the support payment and that his payment was contingent on Ms. Hagen obtaining a new home loan or refinancing the loan on the Iroquois Drive property.

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<sup>1</sup> Identical language was used in the separation and property settlement agreement which was incorporated into the decree of dissolution. CP 23-26, 38-44.

The trial court heard argument and declined to find Mr. Hagen in contempt. The court did find that the obligation to pay support commenced with the entry of the decree and that there was no condition precedent that Ms. Hagen refinance or sell her home. The trial court ordered Mr. Hagen to pay \$8,100.00. He then timely appealed to this court.

#### ANALYSIS

Mr. Hagen argues that there was no commencement date in the decree because his obligation to pay maintenance did not arise until Ms. Hagen had obtained a new house. Ms. Hagen argues that the decree was ambiguous and should be construed against the drafter, Mr. Hagen. She also seeks attorney fees for this appeal.

*Interpretation of the Decree.* The interpretation of a dissolution decree presents a question of law that is reviewed *de novo*. *In re Marriage of Thompson*, 97 Wn. App. 873, 877, 988 P.2d 499 (1999). If a decree is ambiguous, the reviewing court applies general rules of construction to ascertain the intent of the court that entered the decree. *Id.* at 878. Unambiguous decrees do not require interpretation. *In re Marriage of Bocanegra*, 58 Wn. App. 271, 275, 792 P.2d 1263 (1990), *review denied*, 116 Wn.2d 1008 (1991). A trial court may clarify a decree, but may not modify it unless the standards for reopening a judgment are satisfied. *Thompson*, 97 Wn. App. at 878.

We agree with the trial court that in the absence of a specific starting date, Mr. Hagen's obligation to pay support commenced with the entry of the decree.<sup>2</sup> A dissolution decree is a judgment and is effective when entered. *Bank of America, N.A. v. Owens*, 153 Wn App. 115, \_\_\_ P.3d \_\_\_ (2009). The other obligations created by the decree, such as the transfer of the four houses to their respective new owners, likewise took effect upon entry of the decree. The remaining question is whether paragraph 3.7 created a different effective date for the maintenance obligation.

Mr. Hagen contends that the obligation to pay did not yet exist due to paragraph 3.7. We do not agree that the descriptive language used there constituted a condition precedent to his payment obligation. Mr. Hagen's interpretation is at odds with the stated purpose of the provision.

The language of paragraph 3.7 sets the conditions for termination of the support obligation: when Ms. Hagen remarried or refinanced the loan. It does not state an alternative starting date for the payments. The first sentence indicates that the purpose for the maintenance is "assistance with the new house payment and loan." When the decree entered, the "new house payment and loan" was presumably the new loan

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<sup>2</sup> The separation agreement had also called for maintenance. In his January 2007 financial declaration, Mr. Hagen listed his \$450 monthly support obligation as a deduction from gross income. CP 12. Ms. Hagen's corresponding declaration did not report receipt of any support. CP 18.

obligation created by the recent refinancing. If it was intended for some future other “new” loan, then, presumably the agreement (and decree) would have required Ms. Hagen to sell the Iroquois Drive property and would have noted the expectation that she would buy (and finance) a new home. However, nothing in the decree obligated Ms. Hagen to sell the Iroquois Drive property. Under Mr. Hagen’s interpretation, his obligation to pay might not arise for many years, if at all.

The second sentence of paragraph 3.7 provides that the “support shall run through the life of the original home loan, until the wife remarries or refinances the home loan.” Mr. Hagen argues that this provision applies to the initial loan Ms. Hagen would obtain when she purchased a new home. As previously noted, there was no obligation to purchase a new home, so this argument is not persuasive. It also makes little sense that support would be given for the anticipated \$1,600 mortgage Ms. Hagen soon would be paying, but denied on the current mortgage of nearly \$2,200. Since she needed assistance with the lesser payment, she also would need assistance with the greater payment.

If the purpose for the support payment was truly to assist Ms. Hagen with obtaining a new loan, then the payment would be most beneficial if it existed at the time of the loan application so that a lender could factor that in to Ms. Hagen’s ability to repay. The stated purpose for the support is frustrated, rather than furthered, by not

paying the support until after the new home had been purchased. Up-front assistance would be more beneficial than after-the-fact assistance.

We also note that Mr. Hagen indicated in his January 2007 financial statement that he had a present obligation to pay support because he listed that payment as a deduction from his income. If he truly believed he had no obligation to pay before Ms. Hagen purchased a new residence, he certainly would not have listed the support as a current obligation. There also would be no reason for Mr. Hagen to make support payments before the decree, but then suspend the obligation until a new home was purchased.

Paragraph 3.7 does not clearly state an alternative date for commencement of the payment obligation that Mr. Hagen previously told the court already existed. Rather, this paragraph merely sets forth the conditions under which the payment obligation would be terminated. It does not state when that obligation began.

The trial court correctly determined that the decree created a current support obligation. The court did not err by awarding Ms. Hagen the back payments.

*Attorney Fees.* Ms. Hagen requests that this court award her attorney fees for the appeal. Mr. Hagen did not respond to the request.

RCW 26.18.160 states:

In any action to enforce a support or maintenance order under this chapter, the prevailing party is entitled to a recovery of costs, including an award for reasonable attorney fees. An obligor may not be considered a prevailing

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party under this section unless the obligee has acted in bad faith in connection with the proceeding in question.

Whenever a statute authorizes attorney fees in the trial court, appellate courts have authority to also award attorney fees for the appeal. *Hwang v. McMahill*, 103 Wn. App. 945, 954, 15 P.3d 172 (2000), *review denied*, 144 Wn.2d 1011 (2001).

Ms. Hagen is the prevailing party in this action to enforce her maintenance award. She is entitled to reasonable attorney fees under the statute for this appeal subject to her compliance with RAP 18.1(d).

Affirmed.

A majority of the panel has determined 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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Korsmo, J.

WE CONCUR:

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Kulik, C.J.

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Brown, J.