

STATE OF MICHIGAN
COURT OF APPEALS

RONALD ANDREW GREENLEAF, II,

Plaintiff-Appellee,

UNPUBLISHED
September 29, 2011

v

EKATERINA VLADIMIROVNA GREENLEAF,
a/k/a EKATERINA VLADIMIROVNA
PATSYUK,

No. 299131
St. Joseph Circuit Court
LC No. 09-001051-DO

Defendant-Appellant.

Before: GLEICHER, P.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

In this divorce action, defendant appeals as of right the judgment of divorce. We vacate the spousal support provision of the judgment of divorce and remand for further proceedings.

I. BASIC FACTS

Plaintiff met defendant when he visited Russia in June 2007. They decided to marry and that defendant would move to the United States. After plaintiff returned to the United States, he filed for a fiancée visa. Defendant and her daughter arrived in the United States in July 2008, and in September 2008, the parties married.

In November 2008, plaintiff filled out an Affidavit of Support, also known as Form I-864, in which plaintiff agreed to sponsor defendant and her daughter. Pursuant to the terms of the Affidavit of Support, plaintiff created a contract between himself and the United States government. In return for defendant becoming a permanent resident, plaintiff agreed to provide defendant “any support necessary to maintain . . . her at an income that is at least 125 percent of the Federal Poverty Guidelines for . . . her household size[.]” The Affidavit of Support granted defendant the right to sue plaintiff if plaintiff did not provide sufficient support. In addition, if any governmental or private agency provided “means-tested public benefit” to defendant, the agency could seek reimbursement from plaintiff, and if plaintiff failed to provide reimbursement, the agency could sue plaintiff. The Affidavit of Support stated when plaintiff’s obligation to support defendant would end:

Your obligation under a Form I-864 will end if the person who becomes a permanent resident based on a Form I-864 that you signed:

- Becomes a U.S. citizen;
- Has worked, or can be credited with, 40 quarters of coverage under the Social Security Act;
- No longer has lawful permanent resident status, and has departed the United States;
- Becomes subject to removal, but applies for and obtains in removal proceedings a new grant of adjustment of status, based on a new affidavit of support, if one is required; or
- Dies.

Note that divorce **does not** terminate your obligations under this Form I-864.

Your obligations under a Form I-864 also end if you die. . . .

In October 2009, defendant and her daughter moved out of plaintiff's home. The next month plaintiff filed for divorce. Since leaving plaintiff, defendant has lived in a shelter and been staying with friends. She has no income other than \$200 a month in food stamps. She has received no support from plaintiff. In a request for spousal support, defendant requested that the trial court order plaintiff to support her at an income level of 125 percent of the Federal Poverty Guidelines until plaintiff's obligation under the Affidavit of Support terminates.

At the conclusion of the evidentiary hearing, the trial court found that the Affidavit of Support, which allowed defendant to seek financial assistance from plaintiff "up to 125 percent of the poverty level," was a binding agreement and "trump[ed] all the other criteria." But, it found that the Affidavit of Support was "a modifiable order"; it could be modified upon proof that defendant was working or that she was no longer in need of support. It ordered that plaintiff pay defendant \$750 per month for one year. The trial court stated that it did what was fair and equitable under the circumstances.

The judgment of divorce ordered plaintiff to pay defendant \$750 a month for one year, retroactive to the date plaintiff filed for divorce. The spousal support order was modifiable, such that if defendant became employed or received any type of state aid, plaintiff could seek a modification. According to the judgment of divorce, the trial court utilized "the Michigan spousal support factors," and considered the Affidavit of Support as an additional factor, in determining plaintiff's spousal support obligation. The trial court chose to enforce the Affidavit of Support "as weighed against the factors regarding spousal support."

II. ANALYSIS

On appeal, defendant argues that the trial court erred in limiting plaintiff's spousal support obligation to \$750 per month, which was substantially less than 125 percent of the Federal Poverty Guidelines for a two-person household. Defendant also argues that the trial court erred in limiting plaintiff's support obligation to one year when the Affidavit of Support expressly provides the circumstances that would terminate defendant's support obligation.

An award of spousal support is within the trial court's discretion. *Berger v Berger*, 277 Mich App 700, 726; 747 NW2d 336 (2008). If the trial court's factual findings are not clearly erroneous, we must decide whether the dispositional ruling was fair and equitable in light of the facts. *Id.* at 727. We must affirm a trial court's award of spousal support unless we are firmly convinced that the award was inequitable. *Thornton v Thornton*, 277 Mich App 453, 459; 746 NW2d 627 (2007). However, we review de novo questions of law, *Brown v Loveman*, 260 Mich App 576, 591; 680 NW2d 432 (2004), including the interpretation of a contract, *Reed v Reed*, 265 Mich App 131, 141; 693 NW2d 825 (2005).

The object of spousal support is to balance the needs and incomes of the parties so that neither party will be impoverished. *Berger*, 277 Mich App at 726. “[S]pousal support is to be based on what is just and reasonable under the circumstances of the case.” *Id.* Factors that a trial court should consider in awarding spousal support include:

(1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5), the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on a party's financial status, and (14) general principals of equity. [*Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).]

This appeal concerns the interplay of the Affidavit of Support and any award of spousal support. Initially, we note that the trial court found that it had jurisdiction to adjudicate the parties' rights and obligations under the Affidavit on Support. While this finding is not specifically challenged on appeal,¹ we find no error in the trial court's conclusion. A trial court in a divorce action may only adjudicate the rights of the divorcing parties. *Reed*, 265 Mich App at 157-158. “Thus, the trial court's jurisdiction is limited to the dissolution of the marriage, and to matters ancillary to the marriage's dissolution, such as child support, spousal support, an equitable division of marital assets, and the award to one spouse of the other spouse's property in certain circumstances.” *Id.* at 158 (internal citation omitted). A trial court, in a divorce action, may not adjudicate the rights of third parties or order that property be conveyed to a third party. *Id.* Here, in determining the parties' rights and obligations under the Affidavit of Support, the trial court did not adjudicate the rights of any third party, such as a governmental or private agency that provided “means-tested public benefit” to defendant, nor did it order that property be conveyed to a third party. The rights of the parties under the Affidavit of Support were ancillary to the dissolution of the parties' marriage, as the Affidavit of Support obligated plaintiff to provide support to defendant to maintain her at an income of at least 125 percent of the Federal Poverty Guidelines and plaintiff's obligation was not terminated by divorce.

¹ Plaintiff has not filed a brief on appeal.

The trial court also found that the Affidavit of Support constituted a binding contract. Again, while this finding is not specifically challenged on appeal, we find no error in the trial court's conclusion. Numerous courts from other jurisdictions have held that an Affidavit of Support is an enforceable contract by the sponsored immigrant against the sponsor. See, e.g., *Younis v Farooqi*, 597 F Supp 2d 552, 554 (D MD, 2009); *Shumye v Felleke*, 555 F Supp 2d 1020, 1023-1024 (ND CA, 2008); *Naik v Naik*, 399 NJ Super 390, 395-398; 944 A2d 713 (2008); *Moody v Sorokina*, 40 AD3d 14, 18-19; 830 NYS2d 399 (2007). We agree with the reasoning used by these courts, which was generally based on the plain language of the Affidavit of Support and 8 USC 1183a.² Accordingly, we hold that the Affidavit of Support was a contract that could be enforced by defendant against plaintiff.

Plaintiff's obligation under the Affidavit of Support to provide defendant with any support necessary to maintain her at an income that is at least 125 percent of the Federal Poverty Guidelines for her household size is separate and distinct from any obligation to pay spousal support. Plaintiff's obligation under the Affidavit of Support arises from a contract, and exists regardless of whether the parties divorce. His obligation must be determined by reference to the terms of the contract. See *Quality Prod & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003) ("If the language of the contract is unambiguous, we construe and enforce the contract as written. . . . [A]n unambiguous contractual provision is reflective of the parties' intent as a matter of law."). Defendant's obligation to pay spousal support arises only after the parties divorce and is within the discretion of the trial court. MCL 552.23(1); *Berger*, 277 Mich App at 726. After considering numerous factors, including the parties' characters,

² Similar to the Affidavit of Support, 8 USC 1183a(a)(1) provides, in pertinent part:

No affidavit of support may be accepted by the Attorney General or by any consular officer to establish that an alien is not excludable as a public charge under section 1182(a)(4) of this title unless such affidavit is executed by a sponsor of the alien as a contract—

(A) in which the sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable;

(B) that is legally enforceable against the sponsor by the sponsored alien, the Federal Government, any State (or any political subdivision of such State), or by any other entity that provides any means-tested public benefit . . . ; and

(C) in which the sponsor agrees to submit to the jurisdiction of any Federal or State court for the purpose of actions brought under subsection (b)(2) [which concerns actions to compel reimbursement] of this section.

In addition, 8 USC 1183a(e) provides that "[a]n action to enforce an affidavit of support executed under subsection (a) . . . may be brought against the sponsor in any appropriate court" by (1) a sponsored alien or (2) the appropriate governmental or private entity.

situations, and abilities to pay, the trial court awards spousal support in an amount and for a length of time that it considers just and reasonable. MCL 552.23(1); *Berger*, 277 Mich App at 726. Because plaintiff's equitable obligation to pay spousal support under appropriate circumstances is separate and distinct from his contractual obligation imposed by the Affidavit of Support, we conclude that the trial court erred in conflating the two obligations and applying them in a manner that it found equitable.

Accordingly, we vacate the spousal support provision of the judgment of divorce and remand for further proceedings. On remand, the trial court shall first determine plaintiff's obligation under the Affidavit of Support and enforce that obligation. It shall determine plaintiff's obligation in reference to the terms of the Affidavit of Support. *Quality Prod & Concepts Co*, 469 Mich at 375; *Ajax Paving Indus, Inc v Vanopdenbosch Const Co*, 289 Mich App 639, 644; 797 NW2d 704 (2010) (“[A]n unambiguous contract must be enforced according to its terms.”). In this context, we note that the Affidavit of Support provides that plaintiff will provide the necessary support to maintain defendant “at an income that is *at least 125 percent* of the Federal Poverty Guidelines” for her household size,” not “*up to 125 percent* of the poverty level” as stated by the trial court at the evidentiary hearing (emphases added). In addition, because the Affidavit of Support provides the six circumstances when plaintiff's obligation will cease, the trial court may not set its own date for the termination of plaintiff's obligation. Then, after having determined plaintiff's obligation under the Affidavit of Support, the trial court shall make a separate determination whether defendant is entitled to spousal support. In making its spousal support decision, the trial court shall utilize its discretion and may consider plaintiff's obligation under the Affidavit of Support, as that obligation affects plaintiff's ability to pay and the parties' needs and present situations. *Olson*, 256 Mich App at 631.

Vacated in part and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Elizabeth L. Gleicher
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens