

STATE OF MICHIGAN  
COURT OF APPEALS

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RANDY SITZLER,

Plaintiff-Appellee,

v

CYNTHIA LALONE-SITZLER,

Defendant-Appellant.

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UNPUBLISHED  
December 12, 2017

No. 335339  
Wayne Circuit Court  
LC No. 05-503045-DO

Before: JANSEN, P.J., and CAVANAGH and CAMERON, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted<sup>1</sup> a trial court order denying her motion for reconsideration of an order granting plaintiff's motion to enforce a judgment of divorce and extinguishing defendant's equity in the marital home. We reverse.

The parties were divorced on October 5, 2005. The judgment of divorce awarded the marital home to both parties as tenants in common, with each holding 50% of the home's equity. The judgment of divorce further ordered that plaintiff would be responsible for all property taxes and outstanding mortgage payments until the home was sold or plaintiff purchased defendant's equity in the home. Plaintiff was permitted to reside in the marital home until it was sold, and defendant was permitted to reside in the marital home without making mortgage payments until January 31, 2006. Pursuant to the judgment of divorce, defendant was to pay rent to plaintiff in the amount of 50% of the mortgage payment thereafter, if she chose to continue residing in the marital home.

Subsequently, for about 11 years, defendant failed to make rental payments and refused to sign documents necessary for the sale of the home. Plaintiff brought an eviction action and several motions to enforce the judgment of divorce. In February and August 2006, the trial court granted plaintiff's first and second motions to enforce the divorce judgment, respectively, and ordered defendant to vacate the home and immediately execute a listing agreement. The August 2006 order also directed that plaintiff "is entitled to a credit for the payment of principal and

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<sup>1</sup> *Sitzler v Lalone-Sitzler*, unpublished order of the Court of Appeals, entered February 6, 2017 (Docket No. 335339).

interest on the house mortgage from May 2006 until the house is sold. Said credit shall be deducted from [defendant's] proceeds and added to [plaintiff's] proceeds from the sale of the home." Thereafter, defendant continually refused to execute a listing agreement for the sale of the home, make repairs to the home, and make mortgage payments as directed.

Then, in June 2007, the trial court granted plaintiff's third motion to enforce the judgment by setting-off and extinguishing defendant's award of 50% equity in the marital home. However, on reconsideration, the trial court ruled that extinguishing defendant's equity in the marital home would improperly modify the property settlement contained in the judgment of divorce. Thereafter, plaintiff continued to pay the mortgage, taxes, and other expenses related to the home, and leased the property for several years to cover mortgage payments.

Although defendant remained noncompliant, no further action was taken in the case until 2016. In March 2016, defendant was released from prison after serving several years for an embezzlement conviction she sustained during the pendency of these civil proceedings. Shortly after defendant's release, plaintiff again moved to enforce the divorce judgment, asking the trial court to award him the marital home so that he could sell it free from interference. Plaintiff also requested attorney fees and sanctions.

In July 2016, the trial court partially granted plaintiff's motion, concluding that it would be inequitable if defendant were to benefit from the sale of the home given her "blatant disregard and violation of court orders." Relying on its broad power under MCL 600.611 to effectuate the terms of the divorce judgment, the trial court ordered defendant's right to equity in the marital home extinguished. The trial court ordered defendant to execute all documents and surrender all rights to the home within 30 days. The trial court denied plaintiff's request for fees and sanctions. Defendant subsequently moved for reconsideration, but her motion was denied.

On appeal, defendant first argues that the trial court erred when it entered its July 2016 order extinguishing her right to equity in the marital home because the order improperly modified the property settlement provisions of the judgment of divorce. We agree.

The extent of a court's authority is a question of law we review de novo. See *Harvey v Harvey*, 470 Mich 186, 191; 680 NW2d 835 (2004). We also review de novo a trial court's equitable decisions. *Eller v Metro Indus Contracting, Inc*, 261 Mich App 569, 571; 683 NW2d 242 (2004). In cases of divorce, "[t]his Court reviews for clear error the factual findings underlying the trial court's rulings." *Berger v Berger*, 277 Mich App 700, 702; 747 NW2d 336 (2008). "A finding is clearly erroneous if, on all the evidence, the Court is left with the definite and firm conviction that a mistake has been made." *Id.*

Plaintiff suggests that in divorce cases, the trial court maintains the equitable power to modify the judgment of divorce in the interest of fairness. Divorce actions are equitable in nature, and trial courts maintain broad authority to make any order necessary to enforce divorce judgments. MCL 600.611; *Draggoo v Draggoo*, 223 Mich App 415, 428; 566 NW2d 642 (1997). But a court's equity powers are not unlimited. Our Supreme Court has explained that "[a]lthough courts undoubtedly possess equitable power . . . [a] court's equitable power is not an unrestricted license for the court to engage in wholesale policymaking." *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 590; 702 NW2d 539 (2005).

“Judgments entered pursuant to the agreement of the parties are of the nature of a contract, rather than a judicial order entered against one party.” *Massachusetts Indemnity and Life Ins Co v Thomas*, 206 Mich App 265, 268; 520 NW2d 708 (1994). Property settlements are construed and applied as contracts, and are generally final. *Smith v Smith*, 292 Mich App 699, 702; 823 NW2d 114 (2011). Once parties have executed a settlement agreement and that agreement is incorporated into the judgment of divorce, it can only be modified after a demonstration of fraud, duress, or mutual mistake. *Id.*; *Marshall v Marshall*, 135 Mich App 702, 708; 355 NW2d 661 (1984).

As previously discussed, a trial court “possesses inherent authority to enforce its own directives,” *Walworth v Wimmer*, 200 Mich App 562, 564; 504 NW2d 708 (1993), and “has considerable discretion in choosing the means to be employed,” *Weathervane Window, Inc v White Lake Constr Co*, 192 Mich App 316, 322; 480 NW2d 337 (1991). See also MCL 600.611 (“Circuit courts have jurisdiction and power to make any order proper to fully effectuate the circuit courts’ jurisdiction and judgments.”). But plaintiff’s suggestion that a trial court retains unfettered discretion to remedy perceived inequities is directly contradicted by our case law. We have made clear that property settlement agreements cannot be modified absent specific exceptions—none of which is applicable here. See *Marshall*, 135 Mich at 708.

Neither party has alleged fraud, duress, or mutual mistake. Plaintiff sought an order enforcing the judgment of divorce after defendant repeatedly failed to abide by its terms. Finding that equity favored plaintiff, the trial court entered an order to “enforce” the judgement of divorce that accomplished two things: (1) it ordered defendant to execute all documents necessary for the sale of the home, and (2) it extinguished defendant’s right to any equity in the home and directed defendant to surrender all rights to the home within 30 days. Although the order to execute sale papers fell squarely within the trial court’s broad power to enter orders necessary to enforce the terms of the divorce judgment,<sup>2</sup> the order extinguishing defendant’s right to equity in the home clearly violated the prohibition against property settlement agreement modification. Contrary to plaintiff’s assertion, the trial court’s July 2016 order was not simply an order to enforce the judgment of divorce. The trial court’s order actually changed the rights to property accorded to the parties in the property settlement.

The trial court’s frustration with defendant’s “repeated and blatant disregard for and violation of court orders,” is understandable. But it was simply not for the trial court to revisit the equities of the more than 10-year-old divorce judgment. The trial court had the opportunity and the authority to fashion an appropriate remedy. Instead of penalizing defendant for her failure to cooperate with the terms of the divorce judgment, the trial court impermissibly altered the property settlement agreement and changed the substantive rights of the parties. The trial court’s error requires reversal. See *Marshall*, 135 Mich App at 713. However, we would note that our decision does not preclude the trial court from entering an appropriate order on remand

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<sup>2</sup> The judgment of divorce specifically requires the parties to execute all documents necessary to give the judgment full force and effect.

offsetting defendant's equity in the marital home consistent with the terms of the parties' judgment of divorce.

Because we conclude that the trial court's erroneous modification of the property settlement requires reversal, it is unnecessary for this Court to address defendant's remaining claims.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen  
/s/ Mark J. Cavanagh  
/s/ Thomas C. Cameron