

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT R. RAMM REVOCABLE TRUST, by
DAVID R. RAMM as Successor Trustee,

UNPUBLISHED
March 18, 2021

Plaintiff-Appellant/Cross-Appellee,

v

CINDY ROYER,

No. 352545
Macomb Circuit Court
LC No. 2015-002300-DO

Defendant-Appellee/Cross-Appellant.

Before: O'BRIEN, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

Plaintiff¹ appeals as of right the trial court's order partially denying plaintiff's request for attorney fees permitted under the parties' Judgment of Divorce.² We affirm.

The parties' Judgment of Divorce awarded defendant exclusive rights to the former marital home beginning December 1, 2015. The Judgment further provided:

On entry of Judgment, Defendant/Wife shall attempt to refinance the marital home to remove [Robert Ramm]/Husband on the underlying mortgage. Should she be unable to refinance same immediately on entry of Judgment of Divorce, she shall take all steps necessary to remove [Robert] from liability on the underlying mortgage within one (1) year of entry of Judgment. Pending the refinance, Defendant/Wife will timely make all payments so there is no adverse impact on [Robert's] credit rating. Should Defendant/Wife fail to refinance the

¹ This action was originally filed by Robert Ramm, but he passed away before entry of the order appealed in this case. A revocable trust with Robert Ramm's son, David R. Ramm, as successor trustee continued the case below and on appeal. No party challenges plaintiff's identity or standing on appeal.

² Although defendant filed a cross-appeal, she does not raise separate issues or seek any additional relief beyond affirmance of the trial court order.

home within one (1) year and/or fail to pay two (2) consecutive mortgage payments, the marital home shall be immediately listed for sale. Defendant/Wife shall be awarded any and all proceeds relative to the sale or assume any deficiency thereon in the event of a sale.

Despite the Judgment's requirements, Robert continued to reside in the marital home after December 1, 2015, and defendant failed to refinance the home and have Robert removed from the underlying mortgage. Robert also made the mortgage payments and paid for other upkeep for the marital home, despite the Judgment assigning those responsibilities to defendant. Eventually, due to defendant's failures to meet her obligations under the Judgment, plaintiff successfully petitioned the trial court to order sale of the home. After further efforts by plaintiff, the home was sold, and the trial court ordered the proceeds escrowed with the title company.

Plaintiff then moved for distribution of the sale proceeds, requesting reimbursement for payments Robert made for the mortgage and various other expenses related to the home after it was awarded to defendant. Plaintiff also requested that defendant pay his attorney fees, which he contended was required under the Judgment of Divorce.

With respect to plaintiff's request for reimbursement from the sale proceeds, the trial court awarded plaintiff half of the payments made by Robert for the mortgage, gas, electricity, and water bills, but did not award reimbursement for any other expense. The trial court explained that, although defendant was responsible for all the expenses paid by Robert, it would be inequitable to fully reimburse plaintiff because Robert continued to reside in the home when he paid the expenses. As for attorney fees, the court awarded plaintiff only those attorney fees incurred "in obtaining the sale of the former marital home."

On appeal, plaintiff argues that the trial court wrongly limited plaintiff's attorney fees, and that, under the terms of the Judgment of Divorce, the trial court should have awarded plaintiff all the attorney fees he incurred.³ We disagree.

A trial court's decision to award on attorney fees is reviewed for an abuse of discretion. See *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). To the extent that the question on appeal requires this Court to interpret the parties' Judgment of Divorce, our review of that consent judgment's language is de novo. *Lueck v Lueck*, 328 Mich App 399, 404-405; 937 NW2d 729 (2019).

Plaintiff contends that he is entitled to attorney fees under what will be referred to as "the enforcement provision" of the Judgment of Divorce. The enforcement provision states, "Should either party or their attorney take steps to enforce this Judgment in the event of a default by either party, the non-prevailing party shall pay the actual costs and actual attorney fees incurred by the prevailing party in enforcing this judgment."

³ Plaintiff's appeal was partially dismissed for lack of jurisdiction insofar as the appeal attempted to challenge the distribution of funds from the sale of the former marital home. *Ramm v Royer*, unpublished order of the Court of Appeals, entered February 4, 2020 (Docket No. 352545).

Under the Judgment of Divorce, defendant was responsible for paying the mortgage for the former marital home and refinancing the home to have Robert removed from the underlying mortgage. If defendant failed to either refinance the home within one year or to make two consecutive mortgage payments, defendant was required to “immediately” list the home for sale.

Despite failing both to refinance the home and to make two consecutive mortgage payments, defendant did not list the former marital home for sale. This forced plaintiff to take steps to enforce the Judgment of Divorce—plaintiff successfully petitioned the trial court to order the sale of the former marital home. Pursuant to the enforcement provision, plaintiff was entitled to attorney fees for this effort. The trial court recognized as much and properly awarded plaintiff attorney fees incurred “in obtaining the sale of the former marital home.”

After the home was sold, plaintiff sought a portion of the sale proceeds as reimbursement for payments Robert made for the former marital home that, pursuant to the Judgment of Divorce, were defendant’s obligations. The trial court partially granted plaintiff’s request, allowing part of the proceeds from the sale of the former marital home to go towards reimbursing Robert. On appeal, plaintiff contends that, based on the enforcement provision, he is entitled to attorney fees related to this effort.

The enforcement provision, by its terms, only permits the recovery of attorney fees incurred “in enforcing” the Judgment of Divorce. Plaintiff’s request for reimbursement from the sale proceeds did not seek to enforce the Judgment; it was a request to *not* enforce the Judgment. The Judgment of Divorce provided, “Defendant/Wife *shall* be awarded *any and all proceeds* relative to the sale [of the former marital home] or assume any deficiency thereon in the event of a sale.” (Emphasis added.) Plaintiff’s request that some or all of the proceeds from the sale of the former marital home not be awarded to defendant was therefore not a request to enforce the Judgment of Divorce. As such, the enforcement provision did not entitle plaintiff to attorney fees related to that effort.

Plaintiff claims that he is entitled to attorney fees under the enforcement provision because he was “enforcing [defendant’s] obligations under the [J]udgment,” but this is not true. While the Judgment of Divorce obligated defendant to pay the expenses for the former marital home, plaintiff never sought to have defendant actually pay those expenses. Instead, plaintiff sought to have defendant reimburse the amount that Robert paid covering the expenses that were defendant’s responsibility. No provision in the Judgment of Divorce obligated defendant to repay Robert for expenses that he voluntarily covered. By asking defendant to do so, plaintiff was not seeking to enforce obligations imposed on defendant by the Judgment of Divorce.

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Colleen A. O’Brien
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher