

STATE OF MICHIGAN
COURT OF APPEALS

PORIOT R. DYE,

Plaintiff-Appellant,

v

CHRISTAL P. DYE,

Defendant-Appellee.

UNPUBLISHED

May 20, 2021

No. 352458

Genesee Circuit Court

Family Division

LC No. 2019-328749-DM

Before: SAWYER, P.J., and STEPHENS and RICK, JJ.

PER CURIAM.

Plaintiff appeals by leave granted¹ the trial court's order denying his motions to enforce the consent judgment of divorce. Plaintiff argues on appeal that the trial court erred by failing to enforce an unambiguous provision of the consent judgment of divorce which required defendant to refinance or sell the former marital home. Plaintiff also argues that the trial court erred by failing to address an incomplete and ambiguous provision contained in the consent judgment of divorce and erred by failing to conduct an evidentiary hearing regarding a purported second mortgage on the former marital home. We vacate in part and remand.

I. FACTUAL BACKGROUND

Plaintiff and defendant divorced pursuant to a consent judgment of divorce. The consent judgment of divorce provided, in relevant part, that defendant was to receive the former marital home and plaintiff was to receive his share of the equity in the home less half of any outstanding debts or liens on the home and other specified debts which plaintiff owed defendant. The real property provision of the judgment of divorce provides, in relevant part, the following:

¹ This Court granted plaintiff's application for leave to appeal on May 6, 2020. *Dye v Dye*, unpublished order of the Court of Appeals, entered May 6, 2020 (Docket No. 352458).

IT IS FURTHER ORDERED that the Plaintiff shall receive Fifty Thousand Five Hundred and no/100 (\$50,500.00) Dollars if there are no additional liens on the real property.

IT IS FURTHER ORDERED if there are additional legitimate debts/liens on the real property the parties shall equally divide the debts/liens from the equity in the real property with Plaintiff receiving less than the above stated amount. The amount Plaintiff is to receive takes into consideration payments he was to have made for mortgage payment, his 401k and the loan for the Home Owner's association fees paid for by the Defendant.

IT IS FURTHER ORDERED that the Defendant shall refinance the real property within Ninety (90) days of September 11, 2019 [sic-and?] if Defendant is unable to refinance the real property the real property shall be sold and the proceeds shall be equally (50/50) divided with the exception that out of the Plaintiff's half, Plaintiff shall pay Four Thousand Eight Hundred and no/100 (\$4,800.00) Dollars for the back payments on the mortgage, One Thousand Nine Hundred Fifty and no/100 (\$1,950.00) for the Defendant's one half of the Plaintiff's 401k that Plaintiff kept and Five Thousand Five Hundred and no/100 (\$5,500.00) for his half of the Home Owner's fees that the Defendant is paying.

After the entry of the consent judgment of divorce, plaintiff filed two motions to enforce the judgment of divorce. Plaintiff argued, in relevant part, that defendant failed to refinance the home within 90 days of September 11, 2019, or sell the home, and pay plaintiff his share of the equity. In response, defendant argued that there was no equity in the home because there was a second mortgage on the home.

At the hearing on plaintiff's motions, plaintiff argued that defendant should be ordered to sell the home because she failed to refinance it within 90 days of September 11, 2019, and that he only learned of the second mortgage after the judgment of divorce was entered. Defendant argued she should not be ordered to sell the home because there was no equity in the home and a forced sale would be futile. Defendant argued that, before plaintiff could take any equity in the home, he had to pay half of the outstanding mortgages, plus \$5,500 in Home Owner's association fees which defendant paid for plaintiff during the pendency of this case, \$1,950 for her half of his 401(k), and \$4,800 in unpaid mortgage payments. In total, defendant asserted that plaintiff owed her approximately \$54,750, which was more than the \$50,500 share of equity which he sought. The trial judge made no findings with regard to plaintiff's requests to enforce the real property provisions of the judgment of divorce, took the issue under advisement, and indicated that he would issue a written order after reviewing the record, including information regarding the outstanding mortgages on the home. On January 8, 2020, the trial court denied plaintiff's motions to enforce the real property provisions of the judgment of divorce without explanation.

II. UNAMBIGUOUS TERMS

Plaintiff argues that the trial court erred by denying his motions to enforce the consent judgment of divorce and by failing to enforce its unambiguous terms. Plaintiff argues that the real property provision of the judgment of divorce unambiguously requires defendant to refinance the

former marital home within 90 days of September 11, 2019, or sell the home, and the trial court erred by failing to order defendant to act in accordance with this requirement. We agree.

A consent judgment of divorce is to be construed as a contract and to be applied as such. *Andrusz v Andrusz*, 320 Mich App 445, 452; 904 NW2d 636 (2017). The interpretation of unambiguous contract language is a question of law which this Court reviews de novo. *Id.* The interpretation of ambiguous terms in a consent judgment of divorce raises a question of fact. *Id.* at 453. This Court reviews a trial court's factual findings for clear error. *Id.* "A finding is clearly erroneous if, after a review of the record, we are left with a definite and firm conviction that the trial court made a mistake." *Lueck v Lueck*, 328 Mich App 399, 404; 937 NW2d 729 (2019). However, this Court is not limited to review a trial court's factual finding for clear error "when a trial court's finding is 'derived from an erroneous application of laws to facts . . .'" *Id.*, quoting *Beason v Beason*, 435 Mich 791, 804-805; 460 NW2d 207 (1990).

"A consent judgment is in the nature of a contract, and is to be construed and applied as such." *Lueck*, 328 Mich App at 404 (quotation marks and citations omitted). Likewise, a property settlement agreement in a divorce is construed as a contract. *MacInnes v MacInnes*, 260 Mich App 280, 283; 677 NW2d 889 (2004). Absent a finding of fraud, mutual mistake, or duress, the court must uphold divorce property settlements reached through negotiation and agreement of the parties. *In re Estate of Lobaina*, 267 Mich App 415, 418; 705 NW2d 34 (2005) (citations and quotation marks omitted). This is because an unambiguous contract, such as a property settlement agreement, is to be enforced according to its terms. *Lueck*, 328 Mich App at 404.

Plaintiff and defendant divorced on October 28, 2019, pursuant to a consent judgment of divorce. The consent judgment of divorce includes a property settlement agreement which provides, in relevant part, that defendant was to receive the former marital home, but had to refinance the home within 90 days of September 11, 2019, or sell the home. Specifically, the provision at issue provides the following:

IT IS FURTHER ORDERED that the Defendant shall refinance the real property within Ninety (90) days of September 11, 2019 [sic-and?] if Defendant is unable to refinance the real property the real property shall be sold and the proceeds shall be equally (50/50) divided with the exception that out of the Plaintiff's half, Plaintiff shall pay Four Thousand Eight Hundred and no/100 (\$4,800.00) Dollars for the back payments on the mortgage, One Thousand Nine Hundred Fifty and no/100 (\$1,950.00) for the Defendant's one half of the Plaintiff's 401k that Plaintiff kept and Five Thousand Five Hundred and no/100 (\$5,500.00) for his half of the Home Owner's fees that the Defendant is paying.

When considering the plain language of the provision, defendant was clearly and unambiguously required to refinance the home within 90 days of September 11, 2019, or sell the home. Despite this clear obligation, the record reflects that defendant did not refinance the home by December 11, 2019, and did not sell the home. Without explanation, the trial court did not order defendant to sell the home despite not refinancing the home by December 11, 2019, and denied plaintiff's motions to enforce the consent judgment of divorce. The trial court made no finding of fraud, mutual mistake, or duress. As previously discussed, "[a] fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be

enforced as written.” *Kendzierski v Macomb Co*, 503 Mich 296, 312; 931 NW2d 604 (2019). Therefore, the trial court erred by failing to enforce the unambiguous terms of the consent judgment of divorce and require defendant to sell the home because she failed to refinance within 90 days of September 11, 2019. Accordingly, we vacate the trial court’s order denying plaintiff’s motions to enforce the judgment of divorce with regard to defendant’s obligation to sell the property and remand the matter for the trial court to enforce the unambiguous terms of the consent judgment of divorce.

III. INCOMPLETE AND AMBIGUOUS PROVISION

Plaintiff argues that the provision of the consent judgment of divorce regarding the division of equity in the home, which provides that plaintiff shall receive \$50,500 “if there are no additional liens” on the property, is ambiguous and incomplete. Plaintiff asserts that the trial court erred by failing to address what constitutes an additional lien or how an additional lien would be applied to plaintiff’s share of the equity in the home and by failing to conduct an evidentiary hearing to determine if the second mortgage constituted an additional lien. We agree.

A consent judgment of divorce is to be construed and applied as a contract. *Andrusz*, 320 Mich App at 452. The trial court’s determination whether contract language is ambiguous considers the proper interpretation of a contract, which is a question of law that this Court reviews de novo. *Id.* The interpretation of unambiguous contract language is a question of law which this Court reviews de novo. *Id.* The interpretation of ambiguous language in a consent judgment raises a question of fact. *Id.* at 453. This Court reviews a trial court’s factual findings for clear error. *Id.* “A finding is clearly erroneous if, after a review of the record, we are left with a definite and firm conviction that the trial court made a mistake.” *Lueck*, 328 Mich App at 404. However, this Court is not limited to review a trial court’s factual finding for clear error “when a trial court’s finding is ‘derived from an erroneous application of laws to facts’ ” *Id.*, quoting *Beason*, 435 Mich at 804-805.

Absent fraud, mutual mistake, illegality, or unconscionability, the trial court must uphold a divorce property settlement reached through negotiation and agreement of the parties. *Andrusz*, 320 Mich App at 453; See *Vittiglio v Vittiglio*, 297 Mich App 391, 399; 824 NW2d 591 (2012) (stating that “[c]ourts must uphold divorce property settlements reached through negotiation and agreement of the parties because modifications of property settlements in divorce judgments are disfavored.”). However, the trial court may fill a void in an incomplete provision of a consent judgment of divorce. *Andrusz*, 320 Mich App at 453. When addressing an incomplete provision of a consent judgment of divorce, the trial court “must balance the equities insofar as is possible under the circumstances.” *Id.* A provision of a consent judgment of divorce is ambiguous if the provision irreconcilably conflicts with other provisions contained therein or could be reasonably understood as meaning different things. *Id.* In the event of an ambiguity, courts may consider extrinsic evidence to resolve the ambiguity in a way that maintains the parties’ intent. *Id.*

The consent judgment of divorce provides, in relevant part, the following:

IT IS FURTHER ORDERED that the Plaintiff shall receive Fifty Thousand Five Hundred and no/100 (\$50,500.00) Dollars if there are no additional liens on the real property.

At the hearing on plaintiff's motions to enforce the judgment of divorce, defendant argued that the forced sale of the home was unnecessary because there was a second mortgage on the home and plaintiff's \$50,500 share of the equity which he sought was less than the total amount which he owed in mortgage payments and other debts. Plaintiff argued that he did not know about the second mortgage until after the judgment of divorce was entered and was never provided any documentation of the second mortgage. Defendant argued, in opposition, that plaintiff signed the second mortgage and was aware of the second mortgage at the mediation when the judgment of divorce was drafted. Without addressing the second mortgage or making a record of the liens contemplated in the judgment of divorce, the trial court denied plaintiff's motions to enforce the judgment of divorce, did not order defendant to sell the home, and, in effect, determined that plaintiff was not entitled to any equity in the home.

On the basis of this record, the provision which provides that plaintiff shall receive \$50,500 "if there are no additional liens" on the property is ambiguous and incomplete. The judgment of divorce does not identify what liens are contemplated by its terms. Without identifying what liens are contemplated by the terms of the judgment of divorce, it is unclear what liens would constitute an additional lien and if the second mortgage would constitute an additional lien. For example, if the second mortgage existed at the time of the mediation and was contemplated by the parties in drafting the judgment of divorce, the second mortgage would likely not be considered an additional lien that precludes plaintiff from receiving his \$50,500 share of the equity in the home. However, if the second mortgage did not exist at the time of mediation or was not contemplated by the parties when drafting the judgment of divorce, the second mortgage may constitute an additional lien.

Absent any findings of fact or record evidence regarding the liens contemplated by the judgment of divorce or the second mortgage, the accuracy of the trial court's decision to deny plaintiff's motion is not apparent. The lower court record is void of information regarding when the second mortgage was taken out, whether plaintiff signed the second mortgage, the amount owed on the mortgages on the property, the existence of any other liens, or the fair market value of the home. Moreover, when considering the intent of the parties as evidenced by the terms of the real property provisions in the consent judgment of divorce, plaintiff and defendant intended to split the equity of the home, less any outstanding liens on the home and debts which plaintiff owed defendant. The trial court's rationale for denying plaintiff's motions to enforce is also not apparent because the trial court did not make any findings on the record or in its written order or provide any explanation for its decision. The trial court's order denying plaintiff's motions to enforce the judgment of divorce runs contrary to that intent because it precludes plaintiff from receiving any amount of equity which he may have in the home without explanation. Accordingly, the proper effect of the second mortgage on plaintiff's right to receive his \$50,500 share of the equity in the house is unclear and the trial court erred by failing to address what constituted an additional lien and whether the second mortgage constitutes an additional lien. Accordingly, we remand this matter for the trial court to address what constitutes an additional lien and the effect

of an additional lien on the amount of equity in the house owed to plaintiff,² if any, and to conduct an evidentiary hearing on the second mortgage, if necessary.

Vacated in part and remanded for the trial court to enforce the unambiguous terms of the judgment of divorce, address what constitutes an additional lien and the effect of any additional lien on the amount of equity owed to plaintiff, and, if necessary, conduct an evidentiary hearing on the second mortgage. We do not retain jurisdiction. Plaintiff may tax costs.

/s/ David H. Sawyer
/s/ Cynthia Diane Stephens
/s/ Michelle M. Rick

² Presumably, even if plaintiff is not owed any equity, he would still want the house sold or refinanced, as agreed upon, in order to have his name removed from any mortgage or lien.