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SEP 06 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 344991

COURT OF APPEALS, Division III
OF THE STATE OF WASHINGTON

In re the Marriage of:

SAREENA MALHI, Respondent,

and

ANDY K.R. PRASAD, Appellant.

BRIEF OF APPELLANT ANDY K.R. PRASAD

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A. INTRODUCTION

Dr. Malhi and Dr. Prasad were divorced on May 18, 2015. (Both parties are physicians.) They agreed that Dr. Prasad would be awarded the family home. Further, they agreed that if the sale of the family home did not result imminently, imminent being defined as within 9 months from the entry of the Decree of Dissolution, then Dr. Prasad would pay Dr. Malhi \$15,000. Dr. Prasad believes that the sale of the family home did result imminently, as defined by the parties, and that he does not owe \$15,000 to Dr. Malhi.

B. ASSIGNMENT OF ERROR

1. Assignment of Error

The trial court erred in requiring Dr. Prasad to pay \$15,000 to Dr. Malhi in its Order: Enforcing Decree entered on May 12, 2016.

2. Issue Pertaining to Assignment of Error

When Dr. Prasad signed the Purchase and Sale Agreement to sell the family home on February 11, 2016, and the sale of the family home became imminent, as defined by the parties in their Decree of Dissolution, how is it just and equitable for Dr. Prasad

to then have to pay \$15,000 to Dr. Malhi as if the family home was never going to be sold?

C. STATEMENT OF THE CASE

The Decree of Dissolution entered on May 18, 2015, in relevant part, provides:

“Property Awarded to Respondent. The Respondent shall be awarded as his sole and separate property, free and clear of any liens, claims, interests, or encumbrances of the Petitioner the following: . . . D. The real property located at 930 Briarwood Drive in East Wenatchee, Washington. Respondent shall be responsible for all debts and obligations associated with the property including, but not limited to, the first/second mortgage(s) and/or line of credit obligations, and shall hold Petitioner harmless therefrom. Respondent intends to sell the property and represents that a sale is imminent. The value of the home, for purposes of allocating assets/debts in these proceedings, was calculated based on the real estate appraisal of \$585,000; less the mortgage balance at separation (\$267,907); less the current balance on the HELOC (\$142,875); less anticipated costs of sale of \$30,000. If the sale of the real property does not result imminently, Respondent shall immediately remit payment to Petitioner in the amount of \$15,000. Imminent shall be defined as within nine (9) months from the entry of the Decree of Dissolution. Petitioner shall immediately prepare, execute and deliver to Respondent a Quit Claim Deed in favor of the Respondent.” CP 1-13 at 8 and 9.

Dr. Prasad signed the Purchase and Sale Agreement to sell the family home on February 11, 2016, and when the buyer waived any contingencies regarding the purchase of the family home on February 17, 2016, the sale became final and binding on

both parties. The sale closed on March 15, 2016. CP 36-37.

Dr. Malhi filed the Petitioner's Motion for Order Enforcing Decree on March 10, 2016. CP 14-35. The trial court's Order: Enforcing Decree was entered on May 12, 2016. The trial court's order was based solely on written submissions. CP 43-44. The trial court found:

"The sale of the home did not occur within nine months of the entry of the decree of dissolution, which was filed on May 18, 2015. The fact that a sale was pending as of February 18, 2016, did not constitute an "imminent" sale within the meaning of paragraph 2(D) of Exhibit A to the decree of dissolution, as the sale had not been completed. As a result, respondent is required to pay \$15,000 to petitioner." CP 43-44.

Dr. Prasad filed his Notice of Appeal to this Court on June 6, 2016. CP 45-48.

D. ARGUMENT

1. Standard of Review

This Court's review should be de novo. Appellate courts are in as good a position as trial courts to review written submissions. *In re Marriage of Roorda*, 25 Wn. App. 849, 853, 611 P.2d 794 (1980). Moreover, the issue on this appeal involves only the interpretation of a decree of dissolution. The interpretation of a dissolution decree is a question of law. *Chavez v. Chavez*, 80 Wn. App. 432, 435, 909 P.2d 314 (1996).

Questions of law are subject to de novo review by the appellate court. *McDonald v. State Farm Fire and Casualty Co.*, 119 Wn.2d 724, 730-31, 837 P.2d 1000 (1992). In *Stokes v. Polley*, 145 Wn.2d 341, 346, 37 P.3d 1211 (2001), the Court stated:

“Interpreting a dissolution decree involves a question of law reviewed de novo. *In re Marriage of Thompson*, 97 Wn.App. 873, 877, 988 P.2d 499 (1999). Because this case involves interpreting a dissolution decree on review of a summary judgement order, we apply de novo review.”

2. When Dr. Prasad signed the Purchase and Sale Agreement to sell the family home on February 11, 2016, the sale of the family home became imminent as defined by the parties in their Decree of Dissolution

In order to deduct selling costs from the value of the home, there needs to be evidence that the home is going to be sold. In *In re Marriage of Berg*, 47 Wn. App. 754, 759-60, 737 P.2d 680 (1987), the Court stated:

“In *In re Marriage of Martin*, 32 Wn. App. 92, 645 P.2d 1148 (1982), this court reversed a trial court’s decision in a dissolution action to deduct the costs of sale from the value of the home. The court stated that the deduction was “improper in this instance. There was no evidence that the property was going to be sold; indeed, the evidence suggested a strong desire to keep the land in the family.” *Martin*, at 97.

We take this opportunity to reaffirm our holding in *Martin*. In order to justify a deduction for costs of sale, there must be evidence in the record (1) showing that the party who will receive the asset

intends an imminent sale, and (2) supporting the estimated costs of sale. See, e.g., *In re Marriage of Kopplin*, 74 Or. App. 368, 703 P.2d 251 (1985); *Aaron v. Aaron*, 281 N.W.2d 150 (Minn. 1979).”

In the instant case, the parties agreed that Dr. Prasad would be awarded the family home and selling costs were deducted from the value of the family home based on Dr. Prasad’s stated intention to sell the family home and that a sale was imminent. CP 1-13 at 8 and 9. “Imminent” was defined by the parties in their Decree of Dissolution as: “Imminent shall be defined as within nine (9) months from the entry of the Decree of Dissolution.” CP 1-13 at 8 and 9. The parties also agreed that Dr. Prasad could sell the family home for whatever price he wanted and there was no requirement that Dr. Prasad list the family home for sale with a real estate agent. CP 36-37.

When Dr. Prasad signed the Purchase and Sale Agreement to sell the family home on February 11, 2016, the sale of the family home became imminent, as defined by the parties in their Decree of Dissolution. Moreover, the sale of the family home became binding on both parties, the buyer and the seller, when the buyer waived any contingencies regarding the purchase of the family home on February 17, 2016. CP 36-37.

E. CONCLUSION

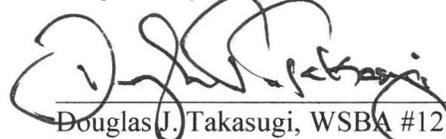
Dr. Prasad sold the family home pursuant to a Purchase and Sale Agreement accepted and signed by him on February 11, 2016. For Dr. Prasad, he had been able to sell the family home within nine (9) months of the entry of the Decree of Dissolution and was just waiting for the sale to close so that he could move to California to be closer to his children.

To take the word “sale” and change it by adding the word “pending” or the word “closed” so there is no longer any “sale” is to rewrite the decree. “A trial court does not have the authority to modify even its own decree in the absence of conditions justifying the reopening of the judgment.” *In re the Marriage of Thompson*, 97 Wn. App. 873, 878, 988 P.2d 499 (1999).

The family home was sold by Dr. Prasad and the trial court’s Order: Enforcing Decree entered on May 12, 2016, requiring Dr. Prasad to pay \$15,000 to Dr. Malhi, should be set aside.

DATED this 2nd day of September, 2016.

Respectfully submitted,



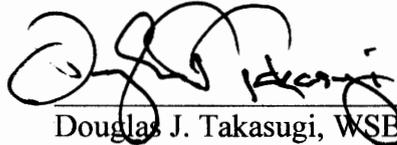
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COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

In re Marriage of:)
)
Sareena Malhi,) No. 344991
Respondent,)
) Declaration of Service
v.)
)
Andy K.R. Prasad,)
Appellant.)

Pursuant to RCW 9A.72.085, the undersigned hereby declares under penalty of perjury under the laws of the state of Washington, that on the 2nd day of September, 2016, a copy of the Brief of Appellant Andy K.R. Prasad was taken to the United States Postal Service in Wenatchee, Washington, and mailed to Sareena Malhi, the respondent, at the following address: 1325 Arena Drive, Davis, California 95618.

Dated: September 2, 2016.
Signed at Wenatchee, Washington.



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