FILED

NOV 10, 2016
Court of Appeals
Division III
State of Washington

No. 344991

IN THE COURT OF APPEALS FOR
THE STATE OF WASHINGTON
DIVISION III

SAREENA MALHI,

Petitioner/Respondent,

and

ANDY K.R. PRASAD,

Respondent/Appellant.

AMENDED BRIEF OF RESPONDENT

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INTRODUCTION

Appellant Andy Prasad agrees that to avoid paying Respondent Sareena Malhi $15,000 as provided in the decree of dissolution, he had to sell the parties' home within nine months of the entry of the decree. Days before that nine-month period elapsed, Prasad and his lawyer signed a Purchase and Sale Agreement, under which Prasad agreed to sell the home to his lawyer and his lawyer's wife. They acknowledge that the sale did not close until after the nine-month period elapsed.

The trial court, who had entered the underlying decree, awarded Malhi $15,000, ruling that a pending sale was not a sale under the decree's plain language. This decision is undoubtedly correct. There is no sale until title and ownership changes hands.

Prasad now asks this Court to interpret an unambiguous decree to reach a conclusion the trial court rejected. This appeal is frivolous. This Court should affirm and award Malhi fees.

RESTATEMENT OF ISSUES

Where the decree of dissolution plainly provides that a "sale" had to "result" within nine months of the entry of the decree, did the trial court correctly interpret its own decree to mean that a sale had not resulted when a PSA was signed, but the sale had not closed, and neither ownership nor title had transferred?

STATEMENT OF THE CASE

When the parties divorced in May 2015, the trial court awarded Prasad the family home. CP 8-9. Prasad intended to sell the property, representing to the trial court that the sale was "imminent." CP 8. The trial court stated that "[i]f the sale of the real property does not result imminently, [Prasad] shall immediately remit payment to [Malhi] in the amount of $15,000. *Id.* The court defined "Imminent" as "within nine (9) months from the entry of the Decree of Dissolution." CP 8-9.

The trial court entered the dissolution decree on May 18, 2015. CP 4. Thus, under the definition of "imminent" in the decree, a sale had to occur by February 18, 2016. CP 8-9, 15.

On February 11, 2016, Prasad entered a Purchase and Sale Agreement to sell the home to his lawyer Douglas Takasugi, who represented Prasad in the divorce and the underlying motion, and

continues to represent him on appeal. CP 36. Takasugi waived any contingencies on February 17, 2016, at which time he claims, "the sale became binding on both parties." *Id.*

After receiving an email from Prasad indicating that he had "sold" the home, Malhi checked the Douglas County records, finding that the home was still listed in Prasad's name and that there was no recorded sale. CP 15, 32. She conveyed the same to Prasad, asking for proof of sale "via a closing statement or a conveyance Deed." CP 16, 32. After a second request, Prasad sent only a single page showing an escrow account opened on February 18, 2016, listing Takasugi and his wife as the buyers. CP 16, 33-35.

The home was still listed in Prasad's name on March 7, 2016, and Prasad continued to live there. CP 16, 37. The sale did not close until March 15, 2016. CP 37.

On March 10, 2016, Malhi moved for an order enforcing the decree of dissolution, seeking the $15,000 owed under the decree if the home was not sold with nine months. CP 14-35. The trial court granted Malhi's motion, ruling that a pending sale did not satisfy the definition of "imminent" in the decree:

> The sale of the house 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, [Prasad] is required to pay $15,000 to [Malhi].

CP 43-44. Prasad appealed. CP 45-48.

ARGUMENT

A. This Court should review the trial court's order interpreting its own dissolution decree for an abuse of discretion.

Prasad oversimplifies that standard of review. BA 3-4. It is accurate to state that the interpretation of a dissolution decree generally presents a legal question this court reviews *de novo*. ***Stokes v. Polley***, 145 Wn.2d 341, 346, 37 P.3d 1211 (2001). But the cases Prasad relies on do not address situations where, as here, the trial court has ruled on the meaning of its own decree.

When reviewing an ambiguous decree, appellate courts "seek[] to ascertain the intention of the court entering the original decree by using general rules of construction applicable to statutes, contracts and other writings." ***In re Marriage of Sager***, 71 Wn. App. 855, 862, 863 P.2d 106 (1993) (*citations omitted*). The court examines the decree "to resolve issues concerning its intended effect." 71 Wn. App. at 862 (*citations omitted*).

But here, this Court knows exactly what the trial court intended – "imminent" means that the house was sold in nine months. This Court should defer to the trial court's interpretation of its own decree.

B. The trial court was well within its broad discretion in interpreting its own dissolution decree.

The sole question before this Court is whether the trial court correctly found that sale of the home was not "imminent" as defined in the decree. BA 4-5. This matter is resolved by the decree's plain language, providing that a "sale" had to "result" within nine months of the entry of the decree:

> If the sale of the real property does not result imminently, [Prasad] shall immediately remit payment to [Malhi] in the amount of $15,000. *Id.* Imminent shall be defined as within nine (9) months from the entry of the Decree of Dissolution.

CP 8-9. In other words, the sole question before the trial court was whether a "sale . . . result[ed] . . . within nine (9) months"; *i.e.* before February 18, 2016. *Id.*

A "sale" does not occur just because Prasad and his lawyer signed a PSA. BA 4-5. "Sale" is defined as "the act of selling; *specifically*: the transfer of ownership of and title to property from one person to another for a price." http://www.merriam-webster.com/dictionary/sale; ***State v. Gonzalez***, 168 Wn.2d 256, 263, 226 P.3d 131 (2010) (turning to the dictionary to define ordinary

terms). Neither ownership nor title transferred just because a PSA was signed and contingencies waived. BA 4-5. A "sale" had not yet occurred.

A sale did not occur until March 15, 2016, when the sale "closed." CP 37. It was only at that juncture that ownership and title transferred. Thus, this Court should affirm regardless of whether it defers to the trial court of reviews this matter *de novo*.

Prasad acknowledges that the sale did not close until March 15, but argues that the sale "became imminent" when he signed the PSA on February 11, 2016. BA 4, 5; CP 36. This argument misunderstands the decree. The sale cannot "become" imminent. Rather, as defined in the decree, a sale is "imminent" only if it occurs within nine months of the entry of the decree. CP 8-9.

Prasad's remaining argument is indecipherable. BA 4-5. This Court need not consider arguments that are not supported by pertinent authority or meaningful analysis. ***Cowiche Canyon Conservancy v. Bosley***, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

In short, since Prasad did not sell the home until March 2016, the sale was not imminent as defined in the decree. This Court should affirm.

C. This Court should award respondent Sareena Malhi fees on appeal.

This Court should award Malhi fees under RCW 26.09.140, based on her need and Prasad's ability to pay. RAP 18.1. ***In re Marriage of C.M.C.***, 87 Wn. App. 84, 89, 940 P.2d 669 (1997). In exercising its discretion to award fees, this Court considers "the arguable merit of the issues on appeal and the parties' financial resources." ***C.M.C.***, 87 Wn. App. at 89 (citing ***In re Marriage of King***, 66 Wn. App. 134, 139, 831 P.2d 1094 (1992)).

Malhi's monthly expenses exceed her combined net income and child support payment. RAP 18.1(c) declaration in support of attorney fees. Prasad on the other hand has over $14,000 per month untaxable disability income, and over $14,000 per month gross salaried income. *Id.* Just Prasad's untaxed disability income exceeds Malhi's net income by over $2,500. *Id.* Malhi needs her fees paid, and Prasad has the ability to pay. Thus, this Court should award Malhi fees under RCW 26.09.140.

This Court should also award Malhi fees under RAP 18.9, where Prasad's appeal is frivolous. ***Skimming v. Boxer***, 119 Wn. App. 748, 756, 82 P.3d 707 (2004). RCW 4.84.185, which allows an award of fees for a frivolous action, "is designed to discourage

abuses of the legal system by providing for an award of expenses and legal fees to any party forced to defend against meritless claims advanced for harassment, delay, nuisance, or spite." ***Skimming***, 119 Wn. App. at 756 (citing ***Suarez v. Newquist***, 70 Wn. App. 827, 832-33, 855 P.2d 1200 (1993)). "A lawsuit is frivolous when it cannot be supported by any rational argument on the law or facts." ***Skimming***, 119 Wn. App. at 756 (citing ***Tiger Oil Corp. v. Dep't of Licensing***, 88 Wn. App. 925, 937-38, 946 P.2d 1235 (1997)).

No rationale argument supports Prasad's claim. The decree is clear that a "sale" had to result within nine months. Given its plain meaning, a sale did not result in nine months, where neither ownership nor title had transferred. Any possible doubt was put to rest by the trial court, who interpreted its own order consistent with its plain meaning. This appeal is baseless and the Court should award Malhi fees.

CONCLUSION

The trial court correctly awarded Malhi $15,000 under the plain language of the dissolution decree. This Court should affirm and award Malhi fees.

RESPECTFULLY SUBMITTED this 10th day of November, 2016.

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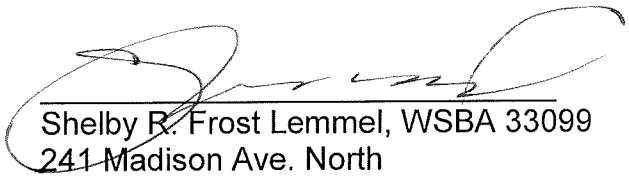

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CERTIFICATE OF SERVICE BY MAIL AND/OR EMAIL

I certify that I caused to be mailed, a copy of the foregoing **AMENDED BRIEF OF RESPONDENT** postage prepaid, via U.S. mail on the 1st day of November 2016, to the following counsel of record at the following addresses:

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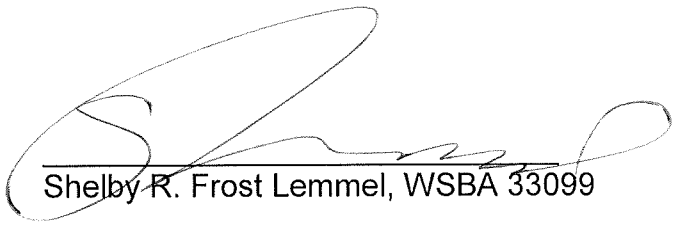

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