

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of:

JAMES GUETTLER,

Respondent,

and

CAROL GUETTLER,

Appellant.

DIVISION ONE

No. 80609-2-1

UNPUBLISHED OPINION

DWYER, J. — This matter involves a dispute regarding the proper amount of a judgment lien awarded to James Guettler more than 10 years ago as part of the dissolution of his marriage to Carol Guettler.¹

The parties herein focused primarily on the fact that the decree of dissolution sets forth two options for how Carol was supposed to pay James the judgment amount, which the parties identify as “Option A” and “Option B.” When James sought to collect on his judgment, Carol filed a motion purporting to seek clarification as to which option applied, arguing that, if Option B applied, James’s lien should be offset by certain debts James allegedly owed Carol. This motion was denied by both a court commissioner and a superior court judge ruling on a motion to revise the commissioner’s decision. The superior court judge disagreed with Carol that Option B applied, instead concluding that the parties

¹ To avoid confusion, we will refer to the parties by their first names.

followed Option A and that James had, therefore, correctly calculated the amount of the judgment lien.

Thereafter, James successfully obtained an order compelling the sale of real property to satisfy his judgment lien. Carol now appeals from both the order denying her motion for clarification and the order compelling the sale of real property to satisfy James's lien.

We conclude that the superior court erred when it ruled that the parties followed Option A. However, the choice between Option A and Option B has no impact on the amount of James's judgment lien, which was plainly set forth in the decree of dissolution independent of the payment option selected by the parties. Therefore, we reverse the superior court's order resolving the motion for clarification of the decree insofar as it concluded that the parties followed Option A. In all other respects, we affirm that order. We also affirm the order compelling the sale of real property to satisfy James's lien.

I

James and Carol Guettler entered into a dissolution of their marriage in 2006. At the time, they owned two properties (a house and an apartment building) which they had purchased together, obtaining the necessary funds by way of a loan from Carol's parents. James and Carol failed to pay off their debt to Carol's parents before dissolving their marriage.

In their dissolution decree, entered in King County Superior Court on March 31, 2006, Carol was awarded both the house and the apartment and James was awarded a \$300,000 judgment lien on both properties, with interest to

accrue at a rate of 6 percent per annum. Exhibit A to the dissolution decree specified that these awards were subject to the following conditions:

- A. If the wife decides not to sell the house and/or apartment building within the next twenty-four months, then
 - a. For the next 8 years, or until the apartment building is sold to a neutral third party, whichever is earlier, the husband shall be allowed to remain in Apartment 4 or Apartment 10 if he choose[s] (when apartment 10 first becomes available; and husband must notify wife that he wishes to move to apartment 10 within 7 days of being notified it will be available), at no rent, though he must sign a standard lease and be bound by the terms of that lease like any other tenant; and
 - b. Husband shall receive a lien on both properties for a total of \$300,000 secured by Deeds of Trust on both properties and payable as follows:
 - a. \$75,000 to be paid as soon as possible; i.e. wife to start refinance, if necessary to obtain the money, of either property within 30 days to pay this amount and husband to cooperate with refinance
 - b. remainder due \$112,500 in 2008 and \$112,500 in 2010 or when either the house or the apartment is sold, with interest at 6% starting April 2006.
- B. If, during the next twenty-four months, the wife decides to sell the apartment building or if the apartment building is foreclosed upon then
 - a. if husband receives a cash payment of at least \$275,000 and a release from any liability toward the wife's parents, then the wife's^[2] judgment lien shall be satisfied in full;
 - b. Otherwise, both properties shall be sold and the proceeds divided as follows:
 - Sales price
 - mortgages at time of separation
 - costs of sale (agent fees, required repairs, unpaid taxes up to the amount owed at the time of separation, unpaid utilities up to the amount owed at the time of separation, and other required fees and costs)
 - estimate capitol [sic] gains taxes from the sale of the apartment building (if taxes are overpaid as shown by the wife's actual tax return then the husband shall be

² This appears to be an error, as the only judgment lien established by the decree is James's lien.

refunded 50% of the overpayment and if the taxes are underpaid then the husband shall pay the wife 50% of the deficit)

= community net sales proceeds

1/2 net comm.net
proceeds to wife
- 2/3 debt to wife's
parents
- 50% of any remaining
community taxes owed
= wife final community
net

1/2 net comm. net
proceeds to husband
- 1/3 debt to wife's
parents
- 50% of any remaining
community taxes owed
= husband final
community net

Any proceeds in excess of the community net is separate property of the wife and shall be her sole property.

Wife shall be in charge of the sale but if husband feels that he will not receive at least the amount of his lien plus interest because the wife is not selling either property for fair market value he may seek court assistance in setting a fair selling price for the properties so that his interest is protected.

C. Husband shall subordinate his lien if the wife wishes to refinance as long as no debt in addition to that already in existence is incurred or, if new debt is incurred, as long as there remains sufficient equity to secure the husband's remaining judgment plus 12% of the then value of the property.

Shortly following the entry of the decree, the superior court entered another order to make a correction to the judgment and decree, adding the following language to the end of Exhibit A:

Husband shall receive a lien on the property in the amount and fashion as set forth above. However, \$75,000 of the lien is to be paid as soon as possible, i.e. wife to start refinance of either property, if necessary, and pay the husband \$75,000 within 30 days or as soon as a refinance can be completed and husband shall cooperate with the refinance. The \$75,000 shall be credited against the amounts owed to the husband under either option A (wife does not sell either property within 24 months) or option B (wife sells either or both property within the next 24 months or a property is foreclosed upon).

Carol sold the apartment building later that year. Then, on December 14, 2006, Carol used some of the proceeds from the sale of the apartment to make a \$75,000 payment on James's judgment lien. She did not make any further payments on the judgment lien, nor did she make any attempt to sell the house.

Approximately 10 years later, on January 8, 2016, James obtained an order extending his judgment lien another 10 years. However, this order set forth an incorrect judgment amount because it did not credit Carol for her \$75,000 payment. On March 26, 2019, James obtained an amended order setting forth the correct remaining judgment amount.

Then, on May 7, 2019, James filed an application for a writ of execution in King County Superior Court's ex parte department, seeking to compel the sale of the house to pay off the remaining amount of his judgment lien. Carol was served with notice of the filing. She subsequently filed a response, requesting a continuance so that she could file a motion seeking clarification of the amount of the lien and of James's right to collect on his judgment under the decree. The court granted Carol's request for a continuance in order to allow her to file a motion in family court seeking clarification of the lien amount and James's right to collect on his judgment.

In Carol's subsequently filed motion for clarification, she sought "an order clarifying the amount of [James]'s judgment lien, and the sale or refinance provisions contained in the Decree." Carol argued (1) that James's calculation of the remaining judgment amount is incorrect and should instead be fixed utilizing

the sale provisions set forth in section III(B)(b) to Exhibit A of the decree (Option B), and (2) that the Decree required James to cease all efforts to collect on his judgment lien to allow Carol to seek refinancing of the house to obtain the funds to pay the lien amount. In support of her motion, Carol filed as an exhibit an unsigned application for a loan secured by the house. In response, James argued that (1) he correctly calculated the remaining judgment amount because the proper method of calculating the remaining judgment amount is to apply the provisions set forth in section III(A)(b)(b) of Exhibit A to the decree (Option A), and (2) although the decree requires James to allow Carol to obtain refinancing under certain conditions, Carol's unsigned loan application contains many false statements and does not support her contention that she is able to obtain a loan to pay the remaining judgment amount.

Following oral argument, a court commissioner denied the motion for clarification. In a June 20, 2019 order, the commissioner agreed with James that Option A applied and that the decree required James to subordinate his lien in certain circumstances to allow Carol to refinance the house so as to obtain funds to pay the judgment amount. However, the commissioner also concluded that the parties had failed to provide sufficient information to determine the correct amount of James's judgment lien or to establish that Carol could obtain the loan money necessary to pay off the judgment. Additionally, the commissioner also noted that the parties disclosed during oral argument that Carol's parents' judgment against James and Carol (arising from the loan default) had expired without renewal.

The commissioner delayed entry of her order “for 30 days after hearing of a motion for revision or reconsideration, if any, or if a notice of appeal is filed, if any, whichever is later.” Carol then filed a motion seeking revision of the commissioner’s order. This motion was denied.

In its August 27, 2019 order affirming the commissioner’s ruling, the superior court judge explicitly noted that:

1. With respect to the Decree of Dissolution entered on March 31, 2006 (the “2006 Order”), under the provision therein entitled “Real Property”, Respondent and Petitioner (the “Parties”) operated under [Option A] of the 2006 Order and not [Option B] of the 2006 Order;
2. Under the provision of the 2006 Order therein entitled “Real Property”, Section III.C shall not be invoked given that insufficient evidence exists of refinancing; and
3. The Petitioner’s request for attorneys’ fees is denied.

Carol then sought reconsideration of the superior court’s order denying the motion for revision. Her motion for reconsideration was denied on September 12, 2019. Thereafter, Carol filed a notice of appeal on October 11, 2019, seeking review of the order denying revision and the order denying reconsideration. Carol did not seek a stay of any of the orders from which she appealed.

Less than a week later, James successfully sought an order to compel the sale of the house. This order did not specify the manner by which proceeds from the sale would be distributed between the parties. However, the order explicitly retained jurisdiction over the parties so that the court could resolve any disputes over the proper distribution of sale proceeds if the parties could not reach an agreement.

Carol then filed an amended notice of appeal to add the sale order to the list of orders from which she now appeals.

II

Carol contends that the remaining amount of the judgment lien must be calculated taking into account the sale proceeds distribution provisions set forth in Option B of Exhibit A to the decree and that because the sale order did not take into account those provisions, it must be reversed. In response, James asserts that the judgment lien amount was correctly calculated under Option A of Exhibit A to the decree and that, therefore, the sale order was proper. Neither party provides an entirely correct analysis.

The superior court reviews a motion to revise a commissioner's ruling de novo based on the record presented before the commissioner. In re Marriage of Williams, 156 Wn. App. 22, 27, 232 P.3d 573 (2010) (citing RCW 26.12.215; RCW 2.24.050; In re Marriage of Moody, 137 Wn.2d 979, 992-93, 976 P.2d 1240 (1999)). When, as is the case herein, "the superior court makes independent findings and conclusions, the order on revision supersedes the commissioner's ruling." In re Guardianship of Knutson, 160 Wn. App. 854, 863, 250 P.3d 1072 (2011). Thus, we review the superior court's ruling, not the commissioner's ruling. State v. Ramer, 151 Wn.2d 106, 113, 86 P.3d 132 (2004). "We review challenged findings of fact for substantial evidence and the conclusions of law de novo." Knutson, 160 Wn. App. at 863 (citing In re Marriage of Dodd, 120 Wn. App. 638, 643, 86 P.3d 801 (2004)).

The interpretation of a dissolution decree presents a legal question that we review de novo. In re Marriage of Thompson, 97 Wn. App. 873, 877, 988 P.2d 499 (1999). When a decree is unambiguous, there is nothing for us to interpret. But if it is ambiguous, we apply the general rules of construction applicable to statutes, contracts, and other writings to determine the intent of the court that entered the decree. Thompson, 97 Wn. App. at 878.

We review a superior court's order on a motion for reconsideration for a manifest abuse of discretion. Sligar v. Odell, 156 Wn. App. 720, 734, 233 P.3d 914 (2010) (citing Drake v. Smersh, 122 Wn. App. 147, 151, 89 P.3d 726 (2004)). A superior court abuses its discretion when "its decision is based on untenable grounds or is manifestly unreasonable or arbitrary." Weyerhaeuser Co. v. Commercial Union Ins. Co., 142 Wn.2d 654, 683, 15 P.3d 115 (2000).

Carol contends that the superior court erred when it concluded that Option A in Exhibit A to the decree, rather than Option B, was followed by the parties and that the judgment amount is correctly calculated utilizing the provisions in Option A. In response, James asserts that the judgment amount was properly calculated under Option A. Both parties are incorrect.

First, we note that Carol is correct that the conditions triggering the application of Option B, rather than those triggering the application of Option A, transpired herein. As the language added to the decree in the correction order specifies, Option B applies to a situation in which the "wife sells either or both property within the next 24 months or a property is foreclosed upon."³ Because

³ By contrast, Option A would have applied had Carol not sold either property within 24 months of the entry of the decree.

Carol sold the apartment within 24 months of the entry of the decree, Option B applied. The superior court's conclusion that Option A applied is therefore incorrect.

However, we conclude that this error was harmless insofar as it concerns the superior court's determination that James had correctly calculated the judgment amount. The judgment amount is plainly set forth on the first page of the decree of dissolution as \$300,000, with interest to accrue at 6 percent per annum, and even a cursory reading of Option B reveals that it does not purport to modify that amount.⁴ Instead, Option B purports to determine the proper distribution of the proceeds from the sale of the apartment and the house between James and Carol. It literally states that "both properties shall be sold and the proceeds divided as follows" prior to listing the amounts that Carol now asserts should be deducted from the judgment lien amount. Nowhere does any language set forth in Option B state that it has any effect on the judgment lien amount.

Indeed, a later provision contained in Option B makes it even plainer that its sale proceeds division provisions have no impact on the judgment lien amount when it states that "[a]ny proceeds in excess of the community net is separate property of the wife and shall be her sole property." Because Option B specifies that half of the community net proceeds from the sale is to be distributed to Carol and half is to be distributed to James, there could not possibly be any excess

⁴ Of course, the remaining amount of the judgment was modified by Carol's \$75,000 payment. But such modification was correctly noted in the amended order extending James's judgment.

amount unless (1) James's collection of the sale proceeds is limited to the amount of his judgment lien, and (2) the lien amount is not determined by calculation of the net proceeds from the sale of the house and apartment. In short, Option B's sale proceeds provisions have no impact on the amount of James's judgment lien.⁵

That the total amount of James's judgment lien is determined independent of whether Option A or Option B applies was further clarified by the court's subsequent correction order, which added the following language to the end of Exhibit A:

Husband shall receive a lien on the property in the amount and fashion as set forth above. However, \$75,000 of the lien is to be paid as soon as possible, i.e. wife to start refinance of either property, if necessary, and pay the husband \$75,000 within 30 days or as soon as a refinance can be completed and husband shall cooperate with the refinance. The \$75,000 shall be credited against the amounts owed to the husband under either option A (wife does not sell either property within 24 months) or option B (wife sells either or both property within the next 24 months or a property is foreclosed upon).

This language plainly explains that James receives a judgment lien, and that Carol must pay \$75,000 of that amount within 30 days of the entry of the

⁵ Furthermore, Carol's contention that she should be able to offset James's alleged debts against his judgment assumes that her claims that James has not paid his debts to her under the decree are equivalent to James's judgment against her. Carol does not cite to any authority to support such a presumption. While it is a longstanding principle of law that, in certain circumstances, judgments, once rendered, may be offset against other judgments, Spokane Sec. Fin. Co. v. Bevan, 172 Wash. 418, 421-22, 20 P.2d 31 (1933), no such similar principle permits a party to offset a mere claim against a judgment. If Carol wishes to offset James's unpaid debts against his judgment, she must first obtain a judgment against him, as "no right of set-off as to judgments can come into existence until both judgments have been rendered." Spokane Sec. Fin. Co., 172 Wash. at 421.

decree, regardless of whether Option A or Option B applies. Thus, the judgment amount is unaffected by the application of either option.⁶

Because we reject Carol's contention that the amount of James's judgment lien must be modified by the sale proceeds provisions set forth in Option B of Exhibit A to the decree, we similarly reject her contention that the order compelling the sale of the house must be reversed for its failure to so modify the lien amount.⁷ We therefore reverse only the portion of the superior

⁶ Even if, arguendo, Option B's sale proceeds division provisions had any effect on the judgment amount, Carol still could not benefit therefrom here because she failed to sell the house as required for Option B's sale proceeds division provisions to apply.

Option B states that

B. If, during the next twenty-four months, the wife decides to sell the apartment building or if the apartment building is foreclosed upon then

a. if husband receives a cash payment of at least \$275,000 and a release from any liability toward the wife's parents, then the wife's judgment lien shall be satisfied in full;

b. Otherwise, **both properties shall be sold** and the proceeds divided as follows[.]

(Emphasis added.)

Here, it is undisputed that, when Carol sold the apartment, she did not provide James with a \$275,000 cash payment and a release of liability from her parents, nor did she proceed to sell the house.

Because Option B's requirement that both properties be sold did not set forth any timelines or deadlines for when the sale was to occur, and such a term would be "essential to a determination" of the rights of the parties were the sale proceed provisions determinative of the judgment amount, it would be our role to supply "a term which is reasonable in the circumstances." RESTATEMENT (SECOND) OF CONTRACTS § 204 (AM. LAW INST. 1981). While we need not decide that which would constitute such a reasonable time to resolve the issues presented herein, it is apparent that it would be shorter than the over 10 years that have passed between the entry of the decree and the present day. Thus, Option B's sale proceeds division provisions never became applicable.

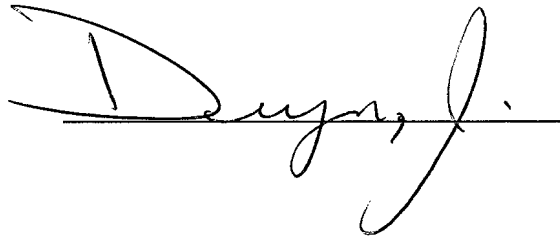
We further note that it would be inequitable for James to be forced to comply with the Option B sale proceeds provisions, and thus face a greater risk that he fail to recover his full lien amount, after Carol financially benefited from her failure to comply with Option B's requirement that the house be sold to satisfy the judgment lien.

Additionally, because we conclude that Option B's sale proceeds provisions do not affect the amount of James's judgment lien, we need not address any of James's other arguments pertaining to this issue.

⁷ Both parties request an award of attorney fees on appeal. We decline to award attorney fees to either party. Carol is not the prevailing party and is therefore not entitled to fees. In re Guardianship of Lamb, 173 Wn.2d 173, 197-98, 265 P.3d 876 (2011) (losing party not entitled to fees). James asserts that he should be awarded fees because he is unable to pay his own attorney fees. While it is true that "in a dissolution or postdissolution proceeding, a court asked to apportion attorney fees must consider the parties' relative need and ability to pay," In re Marriage of Shellenberger, 80 Wn. App. 71, 87, 906 P.2d 968 (1995), James does not establish

court's order on the motion for revision that concludes that the parties followed Option A of Exhibit A to the decree. We otherwise affirm that order and affirm the order compelling the sale of the house.

Affirmed in part, and reversed in part.

A handwritten signature in cursive script, appearing to read "Dwyer, J.", written over a horizontal line.

WE CONCUR:

Two handwritten signatures in cursive script, "Leach, J." and "Appelwick, J.", written over a horizontal line.

that he will be unable to pay his own fees following the collection of the remaining amount of his judgment lien. He offers no other argument or legal authority to support his assertion that he is entitled to fees. Thus, we decline to grant him an award of attorney fees. Wilson Court Ltd. P'ship v. Tony Maroni's, Inc., 134 Wn.2d 692, 710 n.4, 952 P.2d 590 (1998) (declining to award fees when request does not provide argument and citation to authority that supports an award of fees).