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2011 IL App (3d) 100916-U

Order filed December 7, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

IN RE THE MARRIAGE OF)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
NANCY MCCARRIN,)	Will County, Illinois,
)	
Petitioner-Appellee,)	
)	Appeal No. 3-10-0916
v.)	Circuit No. 04-D-184
)	
DANIEL MCCARRIN,)	Honorable
)	Robert J. Baron,
Respondent-Appellant.)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Carter and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court was within its authority to require respondent husband to comply with the terms of the marital settlement agreement incorporated into the judgment of dissolution and reimburse petitioner wife for one half of back real estate taxes she paid but was without jurisdiction to hold husband in contempt for his failure to comply with the terms of a separate agreement executed by the parties or to modify the terms of the parties' marital settlement agreement.

¶ 2 Petitioner Nancy McCarrin filed a petition for rule to show cause based on respondent Daniel McCarrin's failure to reimburse her for real estate taxes she paid to facilitate the sale of

property jointly owned by the couple, to pay her \$11,500 as provided in the parties' marital settlement agreement, and to submit information necessary to jointly file the couple's 2001 tax returns. The trial court ordered Daniel to reimburse Nancy for the back real estate taxes and pay the remaining \$11,000 owed per the parties' marital settlement agreement, and modified the marital settlement agreement to release Nancy from the obligation to file joint 2001 tax returns and to require Daniel to solely pay any tax liability. We affirm in part, vacate in part, and remand.

¶ 3

FACTS

¶ 4 Petitioner Nancy McCarrin and respondent Daniel McCarrin were married in November 1984. A judgment for dissolution of marriage was entered in June 2002. The dissolution judgment incorporated a written marital settlement agreement (MSA), which, in part, divided the couple's assets. Per the MSA, the parties were to sell a 12-acre parcel of land they owned in Lemont, where Daniel maintained a trailer that he used as an office for his construction business. He also stored the business's vehicles, equipment and salvage materials on the Lemont acreage. The agreement provided that \$300,000 from the sale of the property be placed in an escrow account from which Nancy and Daniel were required to pay all tax obligations from a prior condemnation, the sale of the property, and their jointly filed 1998 to 2001 tax returns. Also per the MSA, any remaining assets from the sale of the Lemont property would be divided equally, with the caveat that Nancy would receive an additional \$11,500 from Daniel's share of the proceeds. If the couple's tax liabilities were greater than the remaining funds in the escrow account, the parties would be required to equally pay the tax expenses. The agreement also required the parties to jointly file their 1998 to 2001 tax returns and ordered Daniel to provide the necessary information to their accountant to complete the tax returns. If Daniel failed to supply the information, Nancy was to be given access to the construction

trailer on the Lemont property to obtain the needed information. Per its terms, the trial court retained jurisdiction to enforce the marital settlement agreement.

¶ 5 In September 2002, Nancy and Daniel executed a written contract providing that Daniel would remove all his vehicles, debris, scrap, garbage, and an old barn from the Lemont property by October 31, 2002; that a reasonable cost to clear the property was \$22,000, less any salvage proceeds; and that both parties would pay 50% of the cleanup costs from their share of the sale proceeds. Daniel was to undertake the project. The agreement stated that an estimated 20 dumpsters would be needed to clear the property at a cost of \$300 per dumpster, and that “if less than that number are needed, then the savings will be credited - half to Daniel and half to Nancy[] (thus reducing the cost of the clean-up)[.]” The agreement further stated:

“3. Fair compensation for the performance of this task will be \$22,000, less salvage money netted from the disposal of items of value, such as, but not limited to, steel brought to scrap yards and less savings from dumpsters not needed ****. As stated in the divorce decree, the cost of the clean up is to be shared equally between the two parties, and paid from the proceeds of the sale of the property. So, half of \$22,000 (less salvage return and dumpster savings) will come from Daniel’s proceeds, and half of \$22,000 (less salvage return and dumpster savings) will come from Nancy’s proceeds.”

¶ 6 The Lemont property was sold in April 2004. Nancy filed petitions for rule to show cause in May and December 2004, and in April 2007, Nancy filed a second amended petition for rule to show cause, arguing that she paid \$6,332 in real estate taxes in order to sell the Lemont property and

that Daniel refused to reimburse her for his share of the taxes, or pay her \$11,500, contrary to the terms of the MSA. Nancy also argued that Daniel did not provide the necessary information for the completion of the parties' 2001 tax returns. She further argued that Daniel failed to comply with the terms of the September 2002 agreement in that he did not clean up the property by October 31 or provide her with an accounting of the cleanup costs or any offsets resulting from the sale of scrap. Nancy maintained that Daniel's failure to comply with the terms of the contract required the trial court to declare the September 2002 agreement null and void.

¶ 7 In an April 2007 order, the trial court determined that Daniel's failure to pay 50% of the Lemont property real estate taxes, to comply with the terms of the September 2002 contract, and to provide the necessary information for 2001 tax returns was not contemptuous. The trial court found that Daniel owed \$3,198 to Nancy for his portion of the real estate taxes, allowed him 60 days to provide an accounting of the cleanup costs for the Lemont property, and released Nancy from the obligation of filing joint 2001 tax returns. The trial court ordered that Daniel file separate 2001 returns and be solely responsible for any tax liability thereon. Any refund Daniel was issued was ordered to be split equally with Nancy. The trial court determined that Daniel's testimony concerning salvage expenses was not credible and ordered him to pay \$500 to Nancy as a portion of the \$11,500 he owed her per the MSA, pending the accounting of the cleanup and salvage costs.

¶ 8 In November 2007, Nancy filed another petition for rule to show cause, seeking the trial court hold Daniel in contempt for failing to provide her an accounting of the cleanup and salvage costs for the Lemont property. She again sought that the September 2002 agreement be held null and void due to Daniel's non-compliance with its terms. In a May 2008 order, the trial court held Daniel in indirect civil contempt for his failure to provide "an accounting pursuant to the written agreement

dated 9/22/01.” It ordered Daniel to pay \$11,000 to Nancy to purge himself of contempt and sentenced him to an indeterminate term in the Will County jail. The trial court stayed the mittimus until June 2008. Daniel filed a motion to vacate the April 2007 order and all subsequent orders. In his motion, Daniel argued that the April order was void due to the trial court’s lack of jurisdiction to enforce the September 2002 agreement, which was not part of the judgment of dissolution. Daniel also argued, in part, that there was no salvage to be credited because there was no scrap that constituted marital property, that any scrap on the Lemont property belonged to Daniel’s construction business or to him personally, and that the scrap yielded no more than \$2,000 in salvage. He further maintained that because each party was responsible for \$11,000 in cleanup costs, he satisfied the \$11,500 payment he was to make per the MSA by undertaking the cleanup project. Daniel also argued the September 2002 contract was too vague to be enforced regarding the accounting.

¶ 9 Daniel filed another motion to vacate in November 2009, asking the trial court to vacate the April 2007 order and all subsequent orders. He argued that the trial court was without authority to modify the judgment of dissolution with the terms of the subsequent contract and to modify the terms of the MSA regarding the 2001 taxes. At a September 2010 hearing, the trial court stated that it had found the September 2002 contract valid and tried to enforce it, but because Daniel failed to comply with its terms, it expired and the original MSA stood. The trial court ordered that Daniel could purge the earlier contempt finding by paying \$11,000 to Nancy. In an October 29, 2010 order, the trial court denied Daniel's November 2009 motion to vacate, finding that Daniel did not fulfill the parties' September 2002 agreement, and that his original obligation to pay \$11,500 per the marital settlement agreement, less the \$500 already paid, was enforceable. Daniel appealed.

¶ 10

ANALYSIS

¶ 11 The issue on appeal is whether the court lacked authority and/or jurisdiction to enforce the September 2002 agreement and to modify the marital settlement agreement.

¶ 12 We first address the September 2002 agreement. Daniel argues that the trial court improperly ordered him to comply with the terms of the September 2002 agreement and held him in contempt for failing to comply with it. Daniel argues that because the agreement was not incorporated into the judgment of dissolution, the trial court lacked authority to hold him to its terms. Daniel maintains that Nancy should have brought a separate breach of contract action to enforce the terms of the September 2002 agreement.

¶ 13 The Illinois Marriage and Dissolution of Marriage Act (Marriage Act) allows parties to a dissolution action to enter into “an agreement regarding property disposition, which terms are binding on the court, “and unless the agreement provides to the contrary, its terms shall be set forth in the judgment.” 750 ILCS 5/502 (West 2006). After judgment in a nonjury case, a party must move to modify or vacate the judgment within 30 days after its entry. 735 ILCS 5/2-1203 (West 2006). After 30 days, any provisions regarding property distribution “may not be revoked or modified unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this State.” 750 ILCS 5/510(b) (West 2006). A party may seek relief from a final judgment more than 30 days after its entry upon petition. 735 ILCS 5/2-1401(a) (West 2006). A trial court retains jurisdiction to determine whether the parties have complied with its orders. *Anderson Dundee 53 L.L.C. v. Terzakis*, 363 Ill. App. 3d 145, 157 (2005). A trial court also retains jurisdiction to enforce the terms of a judgment of dissolution. *IRMO Hendry*, 409 Ill. App. 3d 1012, 1016 (2011). However, a trial court does not have jurisdiction to introduce new obligations onto a dissolution judgment or to make other equitable modifications. *In re Marriage of Hubbard*, 215 Ill.

App. 3d 113, 117 (1991). We review issues of jurisdiction *de novo*. *In re Marriage of Allen*, 343 Ill. App. 3d 410, 412 (2003).

¶ 14 We begin with an examination of the trial court’s requirement that Daniel reimburse Nancy in the amount of \$3,168 for outstanding real estate taxes she paid on the Lemont property prior to its sale. He maintains that he was not required to pay them under the marital settlement agreement and that trial court lacked authority to modify the MSA to order him to pay them.

¶ 15 The MSA provided that various expenses be paid from the amount the parties were to set aside in an escrow account from the sale of the Lemont property. The expenses included “all tax obligations *** from the sale of the property.” The trial court determined that payment of the outstanding real estate taxes was “to facilitate the closing of the sale of [the Lemont property]” and that Daniel was responsible for his share under the MSA. Its determination was a reasonable interpretation of the MSA. Contrary to Daniel’s contention, the trial court did not modify the terms of the MSA. It merely required him to comply with its terms. We find that the trial court retained jurisdiction to enforce its order, and in ordering Daniel to reimburse Nancy for the real estate taxes, it sought to enforce the judgment of dissolution, not modify it. The trial court did not exceed its authority.

¶ 16 We now examine the trial court’s order that Daniel pay \$11,000 to Nancy. Daniel again maintains that the trial court was without jurisdiction and exceeded its authority when it required him to pay \$11,000 to Nancy.

¶ 17 The trial court found Daniel in contempt for his failure to provide an accounting pursuant to the September 2002 agreement between the parties. We agree with Daniel that the trial court was without authority to enforce the terms of the September 2002 agreement executed between the

parties as it was not incorporated into the MSA or judgment of dissolution. Rather, the agreement constituted a separate agreement. We therefore vacate the contempt finding. The record reflects that the trial court anticipated using an accounting submitted by Daniel to calculate the cost of the Lemont property cleanup, and to determine whether either party was entitled to an offset based on the final cleanup costs. The trial court found that the September 2002 agreement expired by its terms and explicitly found that Daniel's obligation to pay \$11,500, less the \$500 already paid to Nancy, was based on the terms of the MSA, which it retained jurisdiction to enforce. Accordingly, we find that the trial court's order that Daniel pay \$11,000 to Nancy was made within its authority.

¶ 18 We lastly consider the trial court's determination that Daniel be required to file a separate 2001 tax return, be solely responsible for any tax liabilities, and split any refund equally with Nancy. Daniel again maintains that the trial court's order amounted to a modification of the parties' judgment of dissolution and was outside its authority.

¶ 19 The trial court stated in its order that the MSA "is hereby modified to release [Nancy] from the obligation of filing joint 2001 income tax returns with [Daniel]. We find that it was without authority to so order. The MSA provided that the parties would file joint returns, and if Daniel did not provide the necessary information to complete the returns, Nancy could access his construction trailer to obtain the needed information. The record is silent on Nancy's attempts to obtain the information but it appears she was unsuccessful because the 2001 returns remained unfiled. While we acknowledge the efficacy of the trial court's reasoning to allow Nancy to file a separate 2011 return, its order constituted a modification of the MSA, which it was without authority to do. The trial court further modified the MSA in making Daniel solely responsible for any 2001 tax obligation. The trial court may enforce the terms of the MSA through its contempt power. However,

it was without jurisdiction to modify the terms of the MSA, and we thus vacate that portion of the order modifying it regarding the obligation to file joint 2001 tax returns and share equally in any tax liability or refund.

¶ 20 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed in part, vacated in part, and remanded.

¶ 21 Affirmed in part, vacated in part, and remanded.