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No. 3--09--0411

Order filed March 1, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
ABIR MAAMARI,)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Petitioner-Appellee,)	
)	
and)	No. 05--D--1648
)	
FRED MAAMARI,)	Honorable
)	Joseph C. Polito,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Carter and Justice Schmidt concurred in
the judgment.

ORDER

Held: Where the defendant alleged several issues of trial court error, the appellate court affirmed the following issues: (1) deduction for the respondent's mandatory pension withdrawals in calculating his net income for child support purposes; (2) listing the agreed fair market value of the marital home as the equity in the home; (3) respondent to pay the attorney fees directly to the petitioner's attorney; and (4) respondent to pay the household expenses of the home while he resided in it. The appellate court reversed and remanded the following issues: (1) the trial court conflated two loans into one; and (2) respondent's payment of his share of the equity in the marital home to the petitioner on a certain date.

The appellate court vacated the part of the trial court's order that ordered temporary allowances to remain in effect.

Abir Maamari petitioned the trial court to dissolve her marriage with the respondent, Fred Maamari. The trial court made several rulings which Fred objects to. We affirm in part, vacate in part, and reverse and remand in part.

I. FACTS

As a preliminary matter, we note that the report of proceedings supplied to this court consists solely of the transcript of the December 16, 2008, proceeding in which the trial court orally announced the dissolution judgment. The record on appeal does not contain a transcript, a bystander's report, or an agreed statement of facts concerning any other proceeding in this matter. Nonetheless, based on the common law record and the record in the December 16, 2008 proceedings, we have a sufficient record for deciding some of the issues raised by the respondent.

The couple married on April 11, 1993, and three children were born to the marriage. On September 30, 2005, Abir filed her petition for dissolution. The court orally pronounced the dissolution judgment on December 16, 2008. At the conclusion of the December 16 proceeding, the court asked Abir's attorney to draft the written order. The court issued its written dissolution judgment on January 28, 2009. Fred filed an amended motion to

reconsider on March 20, 2009, which the court denied on April 28, 2009.

II. ANALYSIS

Fred contends that the trial court made several errors in its final written judgment order which conflicted with its oral pronouncement of December 16, 2008. Ordinarily, when there is a conflict between the trial court's oral pronouncement and its written judgment, the oral pronouncement prevails. *In re K.L.S-P.*, 383 Ill. App. 3d 287 (2008). However, in dissolution of marriage cases, the written judgment generally prevails over the oral pronouncement. *In re Marriage of Brooks*, 138 Ill. App. 3d 252 (1985). When the trial court has left certain matters undecided at the time of the oral pronouncement, the court may consider additional information in the interim between the oral pronouncement and the written judgment and issue a written order consistent with the additional information. *In re Marriage of Grauer*, 153 Ill. App. 3d 125 (1987). Accordingly, we will view the written judgment order as the final judgment of the trial court.

A. Substantive Claims

1. Net Income for Child Support Purposes

Fred asserts that the trial court failed to apply the statutory deduction for his mandatory pension withdrawals in calculating his net income for child support purposes. Abir had filed a "Trial Memorandum" which showed a deduction for mandatory

premium payments. She also filed an "AFTER-TAX CASH & SUPPORT" form showing no deductions for "Mandatory Pension."

In dissolution of marriage cases, a court is to determine the minimum amount of child support based on the applicable guideline percentage of the parent's net income. 750 ILCS 5/505(a)(1) (West 2008). Net income is to be calculated as gross income minus certain statutory deductions, including a deduction for mandatory pension withholding. 750 ILCS 5/505(a)(3)(d) (West 2008).

In this case, by statute, the trial court was to calculate Fred's net income for child support purposes including any mandatory pension withholding from his gross income. Since we have no record of trial proceedings, we cannot determine whether the deduction for Fred's pension was, in fact, mandatory.

Since we do not have a sufficient record to determine this issue, we must assume the trial court was correct in its decision. See *Haudrich v. Howmedia, Inc.*, 169 Ill. 2d 525 (Ill. 1996) and *In re Marriage of Donovan*, 361 Ill. App 3d 1059 (4th Dist. 2005).

2. Equity in the Marital Home

Fred submits that the trial court erred by incorrectly stating that the equity in the marital home was \$215,250, when that amount actually was the agreed fair market value of the home.

In the present case, the record shows that the parties agreed, and the court ordered, that the fair market value of the marital home was \$215,250. In Abir's "TRIAL MEMORANDUM OF WIFE," she

acknowledged that the equity in the marital home was to be calculated as its fair market value minus the approximately \$38,000 balance on the home equity line of credit loan. Nonetheless, we cannot find from the scant record we have that the court's finding that the equity in the home was \$215,250 was against the manifest weight of the evidence. See *Haudrich*, 169 Ill. 2d 525 (Ill. 1996) and *In re Marriage of Donovan*, 361 Ill. App 3d 1059 (4th Dist. 2005).

3. Chase Bank or Old Second National Bank

Fred contends that the trial court erred in: (1) its written judgment stating that he was to pay the balance of a home equity line of credit loan through "Old Second National Bank, account #*****0012"; and (2) its later order stating that Old Second National Bank is now known as Chase Bank.

Abir took out a personal loan from Old Second National Bank with an account number that ended in 0012. The couple's home equity line of credit loan was from Chase Bank. It appears that the written dissolution judgment conflated the two loans. Although it is clear that Fred was to pay the Chase Bank home equity loan, we can only assume that Abir was to pay the Old Second National Bank loan, but we must remand for the trial court to determine who is liable for the Old Second National Bank loan.

4. Marital Home Expenses

In the present case, the trial court awarded Fred exclusive ownership of the former marital home. In the court's written order, Fred was to pay property insurance, property taxes, repairs, and similar expenses on the marital home.

In a dissolution case, it is not unreasonable for a court to order the party awarded exclusive occupancy of a former marital home to pay the household expenses for the home. *Hellwig v. Hellwig*, 100 Ill. App. 3d 452 (1981). In this case, when viewing the record as a whole, we find that the trial court reasonably ruled that Fred should be responsible for the household expenses for the marital home because he was awarded its exclusive ownership. See *P & A Floor*, 289 Ill. App. 3d 81. The trial court's written judgment was not against the manifest weight of the evidence.

B. Non-Substantive Issues

1. Attorney Fees

Fred asserts that the court erred by stating in its written judgment that he was to pay attorney fees directly to Abir's attorney when it had orally pronounced that he was to pay the attorney fees to Abir.

There is an inconsistency between the court's oral and written statements regarding whether Fred was to pay the attorney fees to Abir or to Abir's attorney. However, construing the court's written order reasonably, we cannot see how payment of the attorney

fees directly to Abir's attorney contradicts the intent of the court that Fred must pay attorney fees. See *P & A Floor*, 289 Ill. App. 3d 81. We affirm the trial court on this issue.

2. Sale of the Marital Home

Fred argues that the court's written order that he was to pay a portion of the equity of the marital home to Abir within 30 days of the judgment conflicted with the court's oral pronouncement that if he did not make such payment to Abir within 30 days, the house was to be sold. Fred also notes that the written judgment, issued on January 28, 2009, incorrectly ordered him to pay Abir on the past date of January 16, 2009.

First, the court's oral pronouncement on December 16, 2008, concerning the sale of the home was mooted by its order, on June 16, 2009, that the home was to be immediately listed for sale. See *In re Marriage of Nienhouse*, 355 Ill. App. 3d 146 (2004). Second, in an apparent scrivener's error in the written judgment order, Fred was to pay a portion of the equity in the home to Abir on the previous January 16, twelve days before the order. This issue may also be moot. Nonetheless, if it is determined not to be moot, we must remand for the setting of a different date, if appropriate.

3. Temporary Allowance

In its order, the court stated that the "temporary allowances" order was to remain in effect. However, the record shows that

during the proceedings prior to trial, the parties withdrew their temporary allowance petitions. Furthermore, in its judgment order, the court stated that both parties were barred from receiving maintenance. Therefore, we vacate the court's order concerning a temporary allowance order.

For the foregoing reasons, we affirm the dissolution judgment of the Will County circuit court in part, vacate in part, and reverse and remand in part.

Affirmed in part, vacated in part, and reversed and remanded in part.