2019 IL App (3d) 170679-U

Order filed March 11, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
MARGARET CASEY,	)	Will County, Illinois.
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-17-0679
and	)	Circuit No. 10-D-2281
	)	
BRENDAN J. CASEY, SR.,	)	
	)	The Honorable
Respondent-Appellant.	)	Robert P. Brumund,
	)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Schmidt and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's ruling on the distribution of sale proceeds in the parties' escrow account was not error.

¶ 2 Petitioner filed for dissolution of marriage from respondent. The parties entered into a marital settlement agreement in which both parties agreed that petitioner would have possession of the marital residence and be solely responsible for the mortgage payments, the future real

estate taxes, and all other costs associated with the residence (except for the costs necessary to maintain habitability, which would be shared equally) until the parties' sold the residence when the youngest child turned 18. Eventually, the parties sold the residence and petitioner filed a motion to require the escrow of the sale proceeds, which the trial court granted. Later, petitioner filed a motion to release escrow funds, arguing that she was entitled to a reduction in mortgage principal she paid when she had possession of the residence pursuant to the marital settlement agreement. The trial court determined that, under the agreement, petitioner was entitled to the reduction of mortgage principal from the date of the divorce to the date of the sale of the residence and that both parties would equally divide the remaining proceedings. Brendan appealed. We affirm.

¶ 3 FACTS

¶ 4 In November 2010, Petitioner Margaret J. Casey filed a petition for dissolution of marriage from respondent Brendan J. Casey Sr. In November 2011, a prove-up hearing was held. Relevant to this appeal, Margaret testified that the parties agreed that Margaret would have exclusive possession of their marital residence and that Brendan would vacate the residence by November 20, 2011. They agreed to equally divide the 2011 real estate taxes. Margaret would be solely responsible for the mortgage payments, the future real estate taxes, and all other costs associated with the residence, including repairs and maintenance; however, the parties would equally divide the costs for any maintenance necessary to maintain the property in a habitable condition. The residence would be listed for sale when their youngest child turned 18 and, if the parties could not agree on the selling price of the residence, they would select an appraiser, who would determine that listing price. When the residence was sold, the parties would equally divide the net proceeds. Margaret voluntarily entered into the marital settlement agreement. Brendan

testified that the parties agreed that he would leave the residence by November 20, 2011, and that he voluntarily entered into the marital settlement agreement.

¶ 5 The trial court entered a judgment for dissolution of marriage, which incorporated the marital settlement agreement. The judgment contained a provision concerning the marital residence, which stated:

> "ARTICLE IX – REAL ESTATE
>
> The exclusive possession of the real property commonly known as 615 Western Avenue, Joliet, Illinois is hereby awarded to the Wife. The Husband agrees to vacate 615 Western Avenue Joliet, Illinois, no later than November 20, 2011. The parties shall equally divide the 2011 real estate taxes due and payable in 2012, and shall pay their 50% share when due. Thereafter, the Wife shall timely make future real estate tax payments on said residence, and indemnify and hold harmless the Husband as to the same. Further, the Wife shall be responsible for payment of the mortgage(s), utilities, and hazard insurance on said property due and payable for said property after the entry of Judgment herein, and shall indemnify and hold the Husband harmless as to the same. The residence shall be listed for sale with a mutually agreed upon MLS realtor upon the youngest child turning 18 years of age. If the parties cannot agree on a listing price, the parties shall choose an appraiser, or have one appointed, and divide the cost equally. Consent to acceptance of any offer by a qualified buyer within 5%

> of an appraised value shall not be withheld by the Husband or the Wife unless agreed by both of them. When the house is sold, the Husband and the Wife shall each receive 50% of the net proceeds of the sale. Each party shall have the first right of refusal to purchase the other's interest in said property before it is sold to a third party. Said purchase price shall be at the then-appraised value, less any amounts owed on the property for mortgage, second mortgage, HELOC, real estate taxes or other expenses, and the reduction in principal that the Wife is entitled to pursuant to this paragraph.
>
> Until such time as the property is sold, the Wife shall be responsible for the costs of any repairs or maintenance to the property, except for those which are necessary to maintain the property in habitable condition which shall be divided equally."

¶ 6 The parties' youngest child turned 18 in 2015, and the residence was sold. Margaret filed a motion to require the escrow of the sale proceeds, which the trial court granted. In June 2017, Margaret filed a motion to release escrow funds, arguing that she was entitled to the reduction in mortgage principal she paid on the residence in the amount of $53,777.72 pursuant to Article IX of the marital settlement agreement. Brendan responded, claiming that Margaret was only entitled to 50% of the net proceeds as stated in the marital settlement agreement. The trial court determined that Margaret was entitled to the reduction of principal from the date of the divorce to the date of the sale of the residence, totaling $53,777.72 and that both parties will equally

divide the remaining proceeds. In sum, the court awarded Margaret $98,520.18 and Brendan $44,742.47 of the sale proceeds in the escrow account. Brendan appealed.

¶ 7 ANALYSIS

¶ 8 Brendan argues that the trial court erred in awarding Margaret $53,777.72 for the reduction of principal because it misinterpreted the unambiguous terms in Article IX of the marital settlement agreement. Brendan claims that there was no other provision in the agreement that references the reduction of mortgage principal and, even if such provision existed, the language regarding the reduction of principal only refers to the parties' right to first refusal. Margaret claims that the trial court's ruling was not error because the reduction of principal provision is unambiguous and does not conflict with any other provision in the agreement. She argues that, therefore, she is entitled to the reduction of principal and 50% of the remaining net proceeds.

¶ 9 A marital settlement agreement is construed in the manner of any other contract, and the court must ascertain the parties' intent from the language of the agreement. *Blum v. Koster*, 235 Ill. 2d 21, 33 (2009). For the purpose of interpreting a marital settlement agreement, the best indication of the parties' intent is the language of the contract; that language must prevail when it conflicts with a general rule of construction. *In re Marriage of Wassom*, 352 Ill. App. 3d 327, 331 (2004). "Where the terms are unambiguous, the parties' intent is determined solely from the language of the instrument." (Internal quotation marks omitted.) *Id.* at 330-31. "[L]anguage is not rendered ambiguous simply because the parties do not agree on its meaning." (Internal quotation marks omitted.) *Id.* at 331. The interpretation of a marital settlement agreement is reviewed *de novo*. *Blum*, 235 Ill. 2d at 33.

¶ 10 Margaret cites *In re Marriage of Hall*, 404 Ill. App. 3d 160 (2010), to support her argument that the reduction in principal provision does not exclusively pertain to the right of first refusal provision. In *Hall*, petitioner and respondent entered into a marital settlement agreement. *Id.* at 162. Article 18.1 of the agreement stated that the parties would enter into a Qualified Domestic Relations Order in which they would equally divide 50% of respondent's Anheuser-Busch Saving Plan and Kraft Foods Thrift Plan. *Id.* at 162-63. Section 18.4 of the agreement stated that the parties intended to equally divide "each of [respondent's] retirement plans valued as of the date of the entry of this [judgment of dissolution of marriage]." *Id.* at 163. Petitioner filed a petition to modify or reform the dissolution judgment after she discovered that she was not receiving any benefits from respondent's two pension plans not referenced in the agreement, and the trial court denied the motion. *Id.* at 163-64. On appeal, the parties argued whether the agreement intended for the parties to equally divide respondent's two pension plans that were not addressed in the agreement. *Id.* at 166. The court held that the additional pension plans were included in the agreement, reasoning that the provision concerning the Anheuser-Busch and Kraft Food plans neither addresses nor limits the rights and obligations of the parties regarding any other pension plans. *Id.* at 167. The court further explained that if the parties intended that the petitioner was limited to 50% of the account balance for the two retirement plans listed in the agreement, "the parties could have added specific language to article 18.1 to reflect that intention." *Id.*

¶ 11 Here, the agreement states that "Said purchase price shall be at the then-appraised value, less any amounts owed on the property for mortgage, second mortgage, HELOC, real estate taxes or other expenses, and the reduction in principal that the Wife is entitled to pursuant to this paragraph." The main contention between the parties is whether the "Said purchase" referenced

in Article IX refers to the rights of first refusal purchase or the third-party purchase provisions stated in the same paragraph. The "Said purchase" provision does not elaborate on which purchase it is referencing; however, as Brendan mentions, it immediately follows the provision addressing the parties' rights to first refusal. Similar to *Hall*, if the parties intended to limit the language "Said purchase" to a particular purchase referenced in the same paragraph, they could have added specific language to reflect that intention. However, the parties did not do so and we will not read into the agreement an intent that is not specifically stated. See *Marriage of Hall*, 404 Ill. App. 3d at 167. Because "Said purchase" does not relate to a specific purchase in the agreement, we conclude that the language concerning Margaret's right to reduction in principal applies to both a third-party purchase and a rights to first refusal purchase and is not limited to the exercise of the parties' rights to first refusal.

¶ 12 Next, Brendan asserts that the trial court erred when it awarded $53,777.72 to Margaret because it improperly modified the terms of the parties' agreement. First, Brendan argues that the agreement does not define a reduction in principal and that any undefined term should be treated as surplusage. Second, Brendan alleges that the trial court improperly ruled that Margaret was entitled to reduction in principal from the date of the divorce to the date of the sale because these terms were not specified in the agreement. Margaret asserts that reduction in principal should not be rendered surplusage but given its plain and ordinary meaning. Margaret claims that the unambiguous language of Article IX states that she is entitled to reduction in the principal "pursuant to this paragraph." Margaret argues that, under Article IX, she was responsible for paying the mortgage from the date of the entry of judgment. Margaret alleges that, therefore, the trial court properly interpreted that she was entitled to a reduction in principal from the payments she made on the mortgage from the date of the divorce to the date of the sale.

¶ 13 We reject Brendan's argument that the term "reduction in principal" is surplusage because it is undefined in the agreement. "Meaning and effect should be given, if possible, to every part of a contract including all its terms and provisions." *Home & Auto Insurance v. Scharli*, 10 Ill. App. 3d 133, 136 (1973). The terms of a contract should not be deemed meaningless or surplusage unless absolutely necessary. *Id.* It is not necessary to deem the term "reduction in principal" surplusage because the term is unambiguous. The last sentence in the paragraph states that the purchase of the property should be the then-appraised value minus "the *reduction in principal* that the Wife is entitled *to pursuant to this paragraph*." (Emphasis added.) Within the same paragraph, it states that Margaret is "*responsible for payment of the mortgage(s)*, utilities, and hazard insurance on said property due and payable for said property after the entry of the judgment." (Emphasis added.) It is well-established that a contract must be given its plain and ordinary meaning. *Hunt v. Farmers Insurance Exchange*, 357 Ill. App. 3d 1076, 1078 (2005). An undefined term in a contract does not make the term ambiguous. *Id.* "[I]f an undefined term has a plain, ordinary, and popular meaning, there is no ambiguity and the term should be enforced as written." *Id.* at 1079. We believe the plain and ordinary meaning of principal refers to the mortgage principal payments Margaret paid for the property.

¶ 14 Furthermore, the trial court did not modify the terms of the agreement when it ruled that Margaret was entitled to 100% of the mortgage principal from the date of the divorce to the date of the sale before the parties divided the remaining net proceeds. Article IX of the agreement states that parties were to equally divide the *net proceeds of the sale of the residence*. Article IX later indicates that the phrase "net proceeds of the sale of the residence" is the "then-appraised value, *less* any amounts owed on the property for mortgage, second mortgage, HELOC, real estate taxes or other expenses, and *the reduction in principal that the Wife is entitled to pursuant*

to this paragraph." (Emphases added.) Looking at the language in the agreement, the parties did not specify that Margaret was entitled to a percentage of the reduction in principal and, consequently, we will not read into the agreement an intent that is not specifically stated. See *Marriage of Hall*, 404 Ill. App. 3d at 167. Therefore, the agreement shows that Margaret is entitled to 100% of the reduction in principal. Furthermore, the language in Article IX clearly expresses that the proceeds from the sale do not constitute "net proceeds" until the parties subtract the reduction in principal. At that point, the parties can equally divide the proceeds. Lastly, the trial court calculated the reduction in principal amount in accordance with the terms of the agreement. It is clear from the agreement that Margaret's responsibility to pay the mortgage started upon the entry of the dissolution of marriage judgment and her obligation concluded when the property was sold. Thus, we find that the trial court's ruling was not error.

¶ 15 CONCLUSION

¶ 16 The judgment of the circuit court of Will County is affirmed.

¶ 17 Affirmed.