

NEW YORK COURT OF APPEALS

Farkas v. Farkas

11 N.Y.3d 300 (2008) · Decided October 23, 2008

OPINION

READ, J.

OPINION OF THE COURT Read, J. These appeals stem from an action for divorce commenced 17 years ago by Arlene C. Farkas (the wife) against her then-husband of 32 years, Bruce R. Farkas (the husband). The wife's divorce action alleged cruel and inhuman treatment and abandonment and requested equitable distribution of property and spousal support, that all remaining property be distributed to her, and that her husband be penalized for dissipation of marital property and egregious conduct.

In a decision after trial dated July 17, 1996 (the 1996 decision)—at which time the husband was incarcerated for contempt of court because of his failure to pay pendente lite support—Supreme Court granted the wife a divorce on the ground of cruel and inhuman treatment.

The 1996 decision, which contained numerous findings and conclusions, recounted the husband's claims that he could not find employment, that he relied on his mother for financial support, and that he possessed few assets other than the marital *304apartment. Supreme Court found that the wife, who did not work during the parties' marriage, enhanced the husband's business with her social connections, and enabled him to pursue his career by taking care of the household and the couple's two children; that the husband seriously dissipated marital assets; and that, although the wife was entitled to \$100,000 per year in lifetime spousal maintenance, the husband would likely never pay, condemning her to "the role of sleuth and detective, always in court." Supreme Court sought to forestall this unpleasant outcome by granting the wife the exclusive right, title and interest in and to, and possession of, the parties' \$3.2 million cooperative apartment in Manhattan; all furniture, furnishings, antiques and works of art; all jewelry, collectibles and personal property she owned or had in her possession including stocks, bonds, equities, cash accounts and funds of any description; 50% of any interest or shares the husband might own in Alexander's department store, the family business; and 100% of any remaining IRA, Keogh or other retirement plan or annuity of which the husband was the owner or beneficiary.

The 1996 decision also addressed a debt the parties owed to Chemical Bank, which is central to the wife's appeal here. In 1994, Chemical Bank had commenced a foreclosure action against the husband and wife to recover a debt based on an equity line of credit that the husband had obtained by pledging as security the cooperative shares assigned to the marital apartment.

Supreme Court required the husband either to pay all sums due to Chemical Bank and deliver to the wife a satisfaction of the debt and stipulation of discontinuance with prejudice of the foreclosure action; or, alternatively, to pay one half of the sums due to Chemical Bank and deliver to the wife a stipulation of discontinuance with prejudice of a replevin action that the husband's mother had commenced against the wife.¹ "In the event that [the husband] fails to comply with one of these alternatives within 45 days," the court opined, "[the wife] may enter a money judgment against [the husband] for the total amount due and owing to Chemical Bank" (emphasis added).

Supreme Court further specified that "[o]n condition that [the husband] within 45 days from the date hereof complies with the condition above and pays all outstanding pendente lite support^{*305} due and owing to [the wife] pursuant to all money judgments which were heretofore entered and remain unpaid along with any interest thereon to date, he is relieved of all obligations to pay spousal maintenance, both retroactive and future[,] and the current order of contempt under which he remains incarcerated will be vacated. "The distribution of property set forth above, if it is promptly paid[,] is meant to be in lieu of ongoing spousal maintenance....

However, if the Chemical Bank debt and outstanding money judgments for spousal maintenance are not paid in full within 45 days of the date hereof[,] this decision may be modified to include additional retroactive spousal maintenance and appropriate ongoing spousal maintenance." The Court ended its 1996 decision with the instruction to ' ' [s]ettle judgment. ' ' Supreme Court's subsequent judgment dated October 28 and filed December 10, 1996 (the 1996 judgment, which is captioned "COUNTER-JUDGMENT OF DIVORCE") granted the divorce and recited the distribution of property set out in the 1996 decision.

Since the husband had not complied with either alternative for discharging his obligation with respect to the Chemical Bank debt, Supreme Court included the following decretal paragraph in the 1996 judgment: "ORDERED, ADJUDGED and DECREED, [the husband] is directed to pay in full all sums due to Chemical Bank, including interest, penalties, legal fees and other costs and to deliver to [the wife] or her attorneys... evidence of satisfaction of the debt and a stipulation of discontinuance with prejudice of the action brought by Chemical Bank.

In lieu thereof, at his option [the husband] may pay one-half of all sums due to Chemical Bank and deliver a discontinuance with prejudice of the action for replevin brought by [the husband's mother] against [the wife].

In the event that [the husband] fails to comply with either option within 30 days from the date hereof, [the wife] shall be entitled to enter a money judgment against [the husband] for the total^{*306} amount due and owing to Chemical Bank without further order"² (third and fourth emphases added).

The husband appealed. The Appellate Division affirmed, concluding that “[t]he trial court’s distribution of all of the known marital assets to [the wife], as well as award of maintenance and counsel fees to [the wife], is amply supported by the record, including proof that [the husband] had repeatedly and willfully disobeyed interim support orders and dissipated marital property” (Farkas v Farkas, 251 AD2d 4 [1st Dept 1998]).

An amended judgment of divorce, dated April 14 and filed April 30, 1999 (the 1999 amended judgment), repeated the 1996 judgment’s provision regarding the debt to Chemical Bank. Specifically, the 1999 amended judgment reiterated that “[i]n the event that [the husband] fails to comply with either option within thirty (30) days from [the] date hereof, [the wife] shall be entitled to enter a money judgment against [the husband] for the total amount due and owing to Chemical Bank without further order” (emphasis added).

By order to show cause granted June 8, 2000, the wife sought an “Order... [p]ursuant to the Order [sic] of this Court dated July 17, 1996, entering a Final Judgment against [the husband] for the sum of \$984,401.17, representing the principal sum due Chemical Bank, with interest and penalties.” Supreme Court consolidated this motion with an already-pending motion made by the husband and the wife’s cross motion, and disposed of all these matters in a decision and order dated October 13 and filed October 17, 2000 (the 2000 decision and order).

In the 2000 decision and order, Supreme Court granted the wife’s application “for a money judgment in her favor against [the husband] in the sum of \$984,401.17 in respect of the Chemical Bank foreclosure action.” In so doing, Supreme Court restated, in its entirety, the relevant decretal paragraph from the 1999 amended judgment, italicizing the final sentence, presumably for emphasis.³ Immediately thereafter, the court stated that “[t]here [was] no question that [the husband] ha[d] not complied with [this provision of] the Judgment and according to *307the unequivocal terms thereof, [the wife] is entitled to the judgment she seeks” (emphasis added).

At the very end of the 2000 decision and order, Supreme Court set out six paragraphs disposing of the motions and the cross motion. The fifth paragraph provided as follows: “ORDERED that [the wife’s] application... for a money judgment in her favor against [the husband] in the sum of \$984,401.17 in respect of the Chemical Bank foreclosure action, in addition to the bank’s attorneys’ fees, is granted and [the wife] may settle the judgment thereon.

Upon [the wife’s] suggestion, such judgment shall contain language staying execution thereon pending determination or other disposition of the Chemical Bank foreclosure action” (emphasis added). In May 2005—4½ years after Supreme Court’s 2000 decision and order—the wife served the husband with a notice of settlement and proposed judgment regarding the monies owed Chemical Bank.

The proposed judgment stated that the wife and Chemical Bank had settled the foreclosure action for \$750,000 in August 2003; accordingly, the proposed judgment against the husband was in the principal amount of \$750,000.

The husband opposed entry, citing 22 NYCRR 202.48 (Rule 202.48). Subdivision (a) states that “[p]roposed orders or judgments, with proof of service on all parties where the order is directed to be settled or submitted on notice, must be submitted for signature, unless otherwise directed by the court, within 60 days after the signing and filing of the decision directing that the order be settled or submitted.” Subdivision (b) specifies that failure to submit the order or judgment as directed within the 60-day time frame constitutes an abandonment of the motion or action except upon “good cause shown” (see 22 NYCRR 202.48 [b]).

Supreme Court thereafter signed a paper captioned “ORDER/ JUDGMENT,” dated June 20 and filed June 23, 2005 (the 2005 judgment), which stated that the wife had “duly moved this Court by Order to Show Cause... for a money judgment against [the husband] in the amount of \$984,401.17, representing the principal sum due Chemical bank [sic] with interest and penalties, “AND, as to [the wife’s] application... for a money judgment in her favor and against [the husband] in the amount of \$984,401.17, in respect to the Chemical Bank foreclosure action, in addition to the bank’s attorney’s fees, was granted.

Furthermore, the Chemical Bank foreclosure action was resolved by Stipulation of Settlement between [the wife] and Chemical Bank for [\$750,000] on or about August 6, 2003, “NOW, after reading said Cross-Motion and Order to Show Cause and the [2000 order],... “IT IS HEREBY ORDERED, that [the wife’s] application... is granted in that a Money Judgment is hereby granted in favor of [the wife]... against [the husband]... in the amount of \$750,000.00 with interest from August 6, 2003, and that [the wife] shall have execution therefor[].” After the husband appealed, the Appellate Division, with two Justices dissenting, reversed the judgment on the law, vacated it, and dismissed the underlying claim as abandoned pursuant to Rule 202.48.

Citing our decisions in *Brill v City of New York* (2 NY3d 648 [2004]) and *Miceli v State Farm Mut. Auto. Ins. Co.* (3 NY3d 725, 726 [2004]), the majority considered itself “constrained to reverse and vacate” because the wife failed to provide any explanation for her untimely submission of the proposed judgment other than “law office failure” (*Farkas v Farkas*, 40 AD3d 207, 207, 211 [2007]).

While acknowledging “that there was arguably good cause for delaying settlement of the judgment until after the Chemical Bank foreclosure action was settled in August 2003,” the majority concluded that “the record reveals no justification for [the wife’s] failure to submit a judgment for an additional year and nine months thereafter” (*id.* at 209).

The dissenting Justices acknowledged that Rule 202.48 required the wife to show good cause for not timely settling judgment. They asserted, however, that “the complex matrix of litigation between and involving these former spouses is the framework in which... a satisfactory explanation” for the delay could be found (*id.* at 214).

Because Supreme Court “was intimately familiar with the parties’ litigation history,” the dissenting Justices would have deferred to the trial court’s discretionary determination that good cause existed (*id.*). Crucially, they also pointed out that both the 1996 judgment and the 1999 amended judgment “authorized [the wife] to enter a money judgment against [the husband] for the total amount due and owing to Chemical Bank without further order” (*id.* at 215).

The wife appealed the Appellate Division’s May 2007 order to us as of right, based on the dual dissent (see CPLR 5601 [a]). The husband sought leave to appeal from the same order, which we granted. His appeal brings up for review the Appellate Division’s June 1998 order affirming the 1996 judgment (see CPLR 5501 [a] [1]).

We now reverse the Appellate Division’s May 2007 order, and uphold its June 1998 order. The 1996 judgment and the 1999 amended judgment unquestionably were not subject to Rule 202.48’s 60-day requirement. These judgments carried out the 1996 decision, which directed the parties to “[s]ettle judgment.” Moreover, the decretal paragraph specifically addressing the Chemical Bank monies provided that the wife was “entitled to enter a money judgment against [the husband] for the total amount due and owing to Chemical Bank without further order” (emphasis added).

That is, this paragraph set out a “simple judgment for a sum of money which speaks for itself,” and therefore falls outside the ambit of Rule 202.48 (*Funk v Barry*, 89 NY2d 364, 367 [1996]). As we emphasized in *Funk*, the “settle” or “submit” trigger for the 60-day limitation of Rule 202.48 (a) “does not purport to govern the flow of the entry process, which is a ministerial recording function that is separate and distinct from the procedure of obtaining the court’s signature on a proposed judgment” (89 NY2d at 368 [citations omitted]).

And to further drive home the point that no further court action was, in fact, contemplated or required with respect to the monies owed Chemical Bank, Supreme Court added the phrase “without further order” to the typewritten text of the proposed counterjudgment submitted in 1996. Nonetheless, the wife’s attorney moved for an order to show cause allowing the wife to enter a judgment against the husband for the Chemical Bank monies, even though she was already entitled to this relief—without a limitations period—under the plain terms of the 1999 amended judgment and *Funk* (see 89 NY2d at 368 [“Significantly, the Legislature has chosen not to place a time restriction on the completion of entry” (emphasis added)]).

This unnecessary motion led to the discussion in the 2000 decision and order in which Supreme Court stated—for the third time—that the wife was entitled to the monies owed Chemical Bank

without further order, and then unaccountably ordered the wife to “settle... judgment” for this very relief. Rule 202.48 cannot deprive a party of a judgment where it has been improperly or unnecessarily invoked in the first place.

Finally, the husband argues in his appeal that Supreme Court punished him for his infidelity and did not make sufficient findings of economic fault to warrant distributing all the marital assets to the wife. We cannot say, however, that Supreme Court abused its discretion as a matter of law when distributing the marital property. Indeed, the record fully supports Supreme Court’s affirmed findings and conclusions of law.

Accordingly, on the appeal of Arlene C. Farkas, the order of the Appellate Division should be reversed, and the order and judgment of Supreme Court reinstated, and on the appeal of Bruce R. Farkas, the order of the Appellate Division, insofar as it brings up for review a prior order of that court, should be affirmed, with one bill of costs to Arlene Farkas..

This lawsuit subsequently went to trial, where the wife obtained a jury verdict in her favor (see *Farkas v Farkas*, 168 F3d 638 [2d Cir 1999]).. The phrase “without further order” was added to the typewritten text in handwriting initialed by the Justice.. This is the sentence providing that “[i]n the event that [the husband] fails to comply with either option within thirty (30) days from [the] date hereof, [the wife] shall be entitled to enter a money judgment against [the husband] for the total amount due and owing to Chemical Bank without further order” (emphasis added).