

SUPREME COURT OF VERMONT

Towslee v. Callanan

190 Vt. 622 (2011) · Decided September 8, 2011

SUMMARY

The Vermont Supreme Court affirmed a family court’s interpretation of a divorce decree provision allowing the wife to deduct both principal and interest payments on specified mortgages before dividing sale proceeds from the marital home. The Court held that the phrase “capital contributions (mortgage)” was ambiguous and that the family court’s construction of the provision was reasonable and not clearly erroneous.

OPINION

PER CURIAM.

¶ 1. Husband appeals from a post-divorce ruling by the family court. The court held that, in determining what husband was owed from the sale of the marital home, wife could deduct the principal and interest components of mortgage payments she had made.

We affirm. V 2. The parties were divorced in 1997. By stipulation, which was incorporated into the final divorce order, wife was awarded the marital home (purchased three years earlier) until the parties’ youngest child turned eighteen. Wife was responsible for all costs and expenses associated with the home, including “the current mortgage,” of which there were *623two, totaling \$87,600, a value near the property’s purchase price.

The stipulation provided that the proceeds from the sale of the property would be divided equally after deducting the usual and customary expenses associated with the sale of the property, the remaining balance of the current mortgage, the cost of the appraisal, and “the cost of all capital improvements and capital contributions (mortgage).” ¶ 3.

The phrase — “capital contributions (mortgage)” — is at the heart of this case. When wife attempted to sell the property in 2008 for \$140,000, the bank required husband to sign off on the sale. Husband refused to do so, claiming that wife owed him money under the terms of the final divorce order. Eventually, each party filed a motion to enforce.

The dispute turned on whether wife was entitled to deduct not only the principal component of the mortgage payments she made, but also the interest component of those payments. Following a hearing, the court found the phrase “capital contributions (mortgage)” ambiguous, and it examined extrinsic evidence to discern the parties’ intent.

After hearing testimony from husband's attorney, who drafted the language in question, as well as from wife, the court concluded that the more reasonable interpretation, given the use of the word "mortgage," was that wife could deduct the entirety of the payments made on the debt secured by the original two mortgages.¹ The court then requested briefing on the amount owed to husband from the sale of property.

It appears undisputed that after wife's deductions for capital improvements, which are permitted under the divorce order, and after deducting all of her payments in the amounts of principal and interest called for in the original mortgages, there is little or no equity left to split between the parties. ¶ 4.

On appeal, husband argues that the phrase "capital contributions (mortgage)" plainly denotes only the mortgage payments to principal. Even if the phrase is ambiguous, he asserts that the court should have relied on the undisputed testimony of the attorney who drafted the phrase and testified that it was intended to refer only to principal payments as opposed to the entire mortgage payment.

Conversely, wife maintains that the language supports her interpretation, but if the language is ambiguous, this Court should find the family court's construction reasonable. Because the language does not plainly support either interpretation to the exclusion of the other, the family court correctly found the phrase ambiguous, and its construction of the ambiguous language was reasonable in light of the circumstances. ¶ 5.

We interpret divorce decrees according to contract principles. *Sumner v. Sumner*, 2004 VT 45, ¶ 9, 176 Vt. 452, 852 A.2d 611. Thus, we look first to the explicit terms of the decree and decide de novo if they are ambiguous. *John A. Russell Corp. v. Bohlig*, 170 Vt. 12, 16, 739 A.2d 1212, 1216 (1999). If an agreement, even if "inartfully worded or clumsily arranged, fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear." *Isbrandtsen v. N. Branch Corp.*, 150 Vt. 575, 580-81, 556 A.2d 81, 85 (1988) (quotation omitted).

If unambiguous, the language of the decree controls and the Court does not look to external evidence. *Sumner*, 2004 VT 45, ¶ 9; *O'Brien Bros.' P'ship v. Plociennik*, 2007 VT 105, ¶ 9, 182 Vt. 409, 940 A.2d 692. But if "reasonable people could differ as to its interpretation," a provision is ambiguous and the court should look beyond the plain language to discern the parties' intent.

O'Brien Bros.' P'ship, 2007 VT 105, ¶ 9 (quotation omitted). This is "a question of fact to be determined based on all of the evidence — not only the language of the written instrument, but also evidence concerning its subject matter, its purpose at the time it was executed, and the situations of the parties." *Main St. Landing, LLC v. Lake St. Ass'n*, 2006 VT 13, ¶ 7, 179 Vt. 583, 892 A.2d 931 (mem.).

We defer to the court’s factual findings so long as not clearly erroneous, meaning that we will affirm if they are supported by the evidence as seen in the light most favorable to the prevailing party. *Willey v. Willey*, 2006 VT 106, ¶ 11, 180 Vt. 421, 912 A.2d 441. ¶ 6. Husband argues that “capital contributions (mortgage)” applies to payments toward principal, but not toward interest.

The family court correctly noted that the phrase “capital contribution” does not ordinarily apply to any mortgage payments. Technically, “capital contribution” is a business term of art defined as “[c]ash, property, or services contributed by partners to a partnership,” or “[f]unds made available by a shareholder, usu[ally] without an increase in stock holdings.” *Black’s Law Dictionary* 222 (8th ed.

2004). The only case in Vermont that uses the term in a divorce context applies it to supplying funds for a home purchase rather than making mortgage payments. See *Ward v. Ward*, 155 Vt. 242, 249-50, 583 A.2d 577, 582-83 (1990). Nor do there appear to be cases from other jurisdictions that address capital contributions specifically in a mortgage payment context.

On the other hand, and as also explained by the court, a “mortgage” is commonly understood to mean payments of principal and interest unless specified to the contrary. Assuming then, for argument’s sake, that the phrase “capital contributions” could reasonably refer to payments to mortgage principal only, the parenthetical addition of the explanatory, but contradictory, term “mortgage” within the same reference muddies the meaning of “capital contribution.”² Not insignificantly to the court, the term “mortgage” was also used earlier in the same subsection of the parties’ stipulation to have wife assume, and hold husband harmless from, the mortgage payments — again commonly understood and clearly intended by the parties to mean principal and interest, so that husband would be relieved of that obligation.

This is another reason why husband’s construction of “capital contributions (mortgage)” is not the only plausible reading of the language, and that the court’s construction is not unfounded. ¶ 7. The parties’ mutual invocation of the interpretive canon against surplusage underscores the ambiguity of the phrase. See *N. Sec. Ins. Co. v. Mitec Elecs., Ltd.*, 2008 VT 96, ¶ 24, 184 Vt. 303, 965 A.2d 447 (noting that the Court strives to avoid an interpretation that renders any contract language surplusage).

Both husband’s and wife’s readings of the three words in question must result in a superfluous term. Wife posits that “mortgage” clarifies that she is due credit for payments to both mortgage principal and interest, but this necessarily renders the preceding phrase, “capital contributions,” superfluous. Husband argues that “mortgage” is merely descriptive of wife’s “capital contributions” based on her payments of mortgage principal.

This renders the same term superfluous if, as husband argues, “capital contributions” could only mean principal paid on the mortgage since other capital investment would appear to fall within the

decree's credit for her "capital improvements."³ Unlike Isbrandtsen, the language here arguably supports both parties' interpretations and so is ambiguous. See Isbrandtsen, 150 Vt. at 581, 556 A.2d at 85.

¶ 8. The remaining question is whether the family court's construction of this ambiguous phrase is clearly erroneous. See Willey, 2006 VT 106, ¶ 11. We hold that it is not. Faced with two less-than-compelling interpretations, the family court noted greater deficiencies in husband's construction, especially his failure to craft the stipulation to explicitly limit wife's reimbursement to principal payments if that was the parties' intent.

That wife's reading was not flawless did not foreclose the court from adopting her version if supported by conventions of contract construction. ¶ 9. There are ample reasons to support the court's judgment. One is that a "mortgage" payment, as recited by the court, ordinarily consists of principal and interest payments. Another is that the preceding phrase, "capital contributions," does not necessarily contradict the later parenthetical, as opposed to informing the court that what the parties meant by "capital contributions" was "(mortgage)" payments.

Yet another, as mentioned above, is that the term "mortgage" is used twice in the same stipulation without distinction, the first referring to mortgage payments — principal and interest. The family court was not irrational in giving identical terms in the same document the same meaning.

Finally, though the parties' attorneys apparently traded drafts back and forth, husband's attorney recalled drafting the specific provision in question, and the court found him to be the author of the stipulation. "[W]here a contract is ambiguous, it will be construed against the party who drafted it." State v. Spitsyn, 174 Vt. 545, 547, 811 A.2d 201, 204 (2002) (mem.).

Accordingly, the family court was not clearly wrong to construe the ambiguous provision against husband. ¶ 10. The family court's construction was not unfair or unreasonable. See Trustees of Net Realty Holding Trust v. AVCO Fin. Servs. of Barre, Inc., 147 Vt. 472, 475-76, 520 A.2d 981, 983 (1986) (preferring fair and reasonable resolution of ambiguous terms against the drafter).

While husband's divorce lawyer testified to the effect that there was "little equity" in the house at the time of the divorce, the court made no finding as to value. Nor, so far as we can discern, did husband introduce evidence of significant equity in the house at the time of purchase or divorce.

The dissent suggests that husband was inequitably denied an accrued stake in the predivorce marital estate, but without evidence of some actual beginning value, the dissent's equitable arguments are largely, if not entirely, speculative. Even if theoretically unfair, the actual record does not support husband's, and the dissent's, argument that the family court's construction of the stipulation was clearly erroneous.

Thus, husband's ongoing interest in relinquishing the marital home to wife, in return for wife assuming the whole mortgage payments, was to share in any accrued appreciation at the time of a later sale.⁵ It was not clearly inequitable to credit wife for her entire mortgage payments, when husband's interpretation would impose upon her, at no cost to him, the entire interest-carrying cost for his prospective appreciation.⁶ V 11.

Unsupported by the record, the dissent contends that husband's child support subsidized wife's mortgage in proportion to her payments, so that return on his contributions to equity were denied by the court's construction. Using the dissent's calculation of \$860 per month in child support and \$550 per month in mortgage payments, it is still speculative that husband's support payments fully covered one half of wife's actual child rearing expenses, and that some portion of his child support should be fairly credited toward wife's mortgage payments.

In any event, this argument was not presented below or on appeal, and it is not properly considered now. And again, any theoretical merit to this argument does not render the family court's fact-based construction untenable. Affirmed. There was subsequent refinancing by wife that increased the mortgage debt, but the court limited her reimbursement to an amount based on payments equivalent only to the mortgage obligations "current" at the time of the divorce decree.

The dissent suggests that husband's attorney's testimony deserves greater weight, post, ¶ 18 n.14, but the record reflects no reason to credit the attorney's evidence over wife's testimony to the contrary. The dissent states, implausibly, that the word "mortgage" could clarify that "capital contributions" refers only to the 1994 mortgage, or that the phrase "capital contributions" does not apply to nonmortgage expenditures that are also not capital improvements.

Post, ¶ 22. The first theory is not reasonable because the word "mortgage" does nothing to specify whether "capital contributions" refers to all mortgages or just the 1994 mortgage. The second explanation seems equally unlikely since the dissent would rely on "mortgage" to exclude expenditures no one would reasonably consider capital contributions in the first place.

We note that neither explanation was advanced by husband or by his attorney who drafted the document. Nor are we persuaded otherwise by the dissent's emphasis that wife must pay husband "half of the equity" at the time of sale under subsection (c) of the divorce decree. Post, ¶ 17. It is true this is a clear order that wife is to pay husband half of the equity at the time of sale.

Superficially, this recommends husband's interpretation, since house "equity" is commonly understood to be the difference between the sale price and mortgage lien, and would ordinarily suggest no credit to wife for her mortgage interest payments. And yet, under neither spouse's interpretation is husband entitled to half of that equity so defined.

As the dissent acknowledges, subsection (c) incorporates by reference subsection (b), which allows wife to deduct certain costs, including "capital contributions (mortgage)." There is no

question that under subsection (b) wife was also entitled to deduct for capital improvements as well as payments to principal, meaning she is entitled to more than half the equity if “equity” is given its standard meaning, so we know the standard meaning does not govern.

The dissent’s reiteration that husband is entitled to half the equity merely begs the question as to what is “the equity.” Such unavoidable circuitry confirms the trial court’s conclusion that the stipulation is ambiguous.

The family court’s construction of the clause does not, as claimed by the dissent, necessarily defeat husband’s share in any appreciation in the home. By the dissent’s own calculations, if the value of the house had increased an additional one quarter of one percent per year, husband would have been entitled to some payment under the family court’s order. Failure of husband to realize appreciation in the home, after ostensibly contributing nothing to the principal and interest for eleven years, was a function of the market as well as the court’s construction of the parties’ stipulation.

That husband remained legally liable on the original mortgage is no basis, by itself and as the dissent would have it, for disallowing wife’s interest payments or crediting them to husband’s account. This claim seems especially unfounded where, as here, the parties expressly intended wife to hold husband harmless on the debt and husband proffered no evidence of contributing to the payment of interest.

The dissent would, incongruently, credit husband for wife’s interest payments even after her 2007 refinancing removed him from the debt.