SUPREME COURT OF GEORGIA

Knott v. Knott, 277 Ga. 380

589 S.E.2d 99 (2003) · No. S03F1027 · Decided November 17, 2003

SUMMARY

The Supreme Court of Georgia reviewed a contempt order arising from a divorce and property settlement agreement concerning a Hawaii condominium. The court held that the husband did not willfully violate the divorce judgment by failing to disclose a tax lien of which neither party had actual knowledge, and therefore reversed the contempt finding and attorney-fee award. It also held that pre-divorce tax liens were to be deducted from the property's sale proceeds and shared equally, while the husband remained responsible for taxes accruing after the divorce agreement.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Fletcher, Chief Justice
JURISDICTION	Georgia
DECIDED	November 17, 2003
DOCKET	S03F1027
DISPOSITION	reversed
PROCEDURAL POSTURE	Husband appealed a superior court order finding him in contempt of the parties' final judgment of divorce, requiring him to pay accrued taxes on Hawaii property from his share of the sale proceeds, and awarding Wife attorney fees.
STANDARD OF REVIEW	Questions of contractual interpretation are reviewed de novo as matters of law. A contempt finding requires willful disobedience of the court's decree or judgment.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Georgia
PARTIES	Kenneth Knott v. Kathryn Knott

TOPICS

family law procedure · divorce · contract interpretation · tax liens · appellate procedure

PRACTICE AREAS

family law | contracts | tax | appellate procedure | remedies

QUESTIONS PRESENTED

1. Whether Husband willfully violated the divorce judgment by failing to disclose the recorded Hawaii tax lien in the divorce agreement.
2. Whether the pre-divorce tax lien on the Hawaii property was to be paid solely from Husband's share of the sale proceeds or deducted from the sales price and shared equally by the parties.

HOLDINGS

1. Husband did not willfully violate the divorce judgment because the record showed no intentional avoidance of investigation, prevention of Wife's access to information, or other willful failure to disclose the lien. The contempt finding and the attorney-fee award based on that finding were therefore improper.
2. The divorce agreement required the pre-divorce tax lien and accrued interest to be deducted from the sale price of the Hawaii property, with the remaining proceeds divided equally between the parties. Husband was not required to bear the entire burden from his share.

KEY QUOTATIONS

> *"In order for one to be held in contempt, there must be a willful disobedience of the court's decree or judgment."* (*100)

> *"The cardinal rule of contractual construction is to ascertain the intent of the parties."* (*101)

FACTUAL BACKGROUND

The parties' divorce agreement addressed responsibility for payments, taxes, liens, and sale expenses concerning a Hawaii condominium. Before the divorce, both parties knew of an existing tax claim involving the property, but neither had actual knowledge that the claim had been reduced to or recorded as a state tax lien. The agreement required Husband to make property payments until sale and provided that sale expenses, including liens, would be deducted from the sales price before the remaining proceeds were divided equally.

PROCEDURAL HISTORY

The parties entered into a separation and property settlement agreement in September 1999, which was incorporated into a final divorce judgment. After a dispute over the sale of a Hawaii condominium, Husband and Wife filed competing contempt motions. The superior court ruled against Husband, ordered him to bear the accrued tax burden from his share of the proceeds, and awarded Wife attorney fees. The Supreme Court of Georgia reversed.

DISPOSITION

reversed

CASES CITED

- Gallit v. Buckley, 240 Ga. 621, 626, 242 S.E.2d 89 (1978)
- Cummings v. Johnson, 218 Ga. 559, 560-561, 129 S.E.2d 762 (1963)
- Irvin v. Laxmi, Inc., 266 Ga. 204, 205, 467 S.E.2d 510 (1996)
- Northen v. Tobin, 262 Ga. App. 339, 342, 585 S.E.2d 681 (2003)
- McVay v. Anderson, 221 Ga. 381, 385, 144 S.E.2d 741 (1965)
- Hull v. Lewis, 180 Ga. 721, 724, 180 S.E. 599 (1935)
- Paul v. Paul, 235 Ga. 382, 384, 219 S.E.2d 736 (1975)
- McCann v. Glynn Lumber Co., 199 Ga. 669, 674, 34 S.E.2d 839 (1945)

OPINION

FLETCHER, J.

589 S.E.2d 99 (2003) 277 Ga. 380 KNOTT v. KNOTT. No. S03F1027. Supreme Court of Georgia. November 17, 2003. *100 Banks, Stubbs, Neville, & Cunat, Robert S. Stubbs, III, Cumming, for appellant. Dupree, Poole, & King, Russell D. King, Marietta, for appellee. FLETCHER, Chief Justice.

In September 1999, Kenneth and Kathryn Knott entered into a separation and property settlement agreement that was incorporated into a final judgment of divorce. The agreement provided for the disposition of certain property acquired during the marriage, including a condominium in Hawaii. When a dispute arose concerning the sale of that property, both parties asked the Superior Court to hold the other in contempt of the final judgment of divorce.

Kenneth Knott appeals the order of the trial court finding him in contempt of that judgment and ordering him to pay all accrued taxes on the Hawaii property out of his share of the proceeds from the sale of that property.

Because the divorce agreement evidences an intent by the parties to evenly share the burden of taxes that accrued on the Hawaii property before the divorce, we reverse. In 2002, Husband filed a motion for contempt against Wife, alleging that Wife was violating the parties' divorce agreement by interfering with Husband's attempts to sell the Hawaii property.

Wife counterclaimed against Husband, claiming that the settlement agreement requires Husband to pay all accrued taxes on the Hawaii property out of his share of the sale proceeds, and that Husband had violated the divorce agreement by failing to disclose the existence of a tax lien filed by the State of Hawaii in February, 1999.

The Superior Court agreed with Wife and ordered Husband to pay all accrued taxes on the Hawaii property out of his share of the sale proceeds. Husband was also ordered *101 to pay Wife's attorney fees as a sanction for being in contempt of the final judgment of divorce. 1.

The first issue is whether the trial court correctly concluded that Husband violated the divorce agreement by failing to disclose in the agreement the existence of the tax lien filed by the State of Hawaii. The tax lien was filed by Hawaii for unpaid general excise and transient accommodation taxes between 1988 and 1996.

The divorce agreement states that "each party represents and warrants that he or she has made a full and fair disclosure to the other of all of his or her property interests... and that such property is subject to no... lien... except those which are disclosed herein."

The trial court concluded that Husband violated this provision by failing to disclose the existence of the 1999 tax lien on the Hawaii property at the time the divorce agreement was entered. "In order for one to be held in contempt, there must be a willful disobedience of the court's decree or judgment."[1] The undisputed evidence in the record shows that both Husband and Wife knew before the divorce that there was an existing tax claim attached to the Hawaii property.

There is no evidence that either party had actual knowledge that the tax claim had been reduced to a certificate of state tax lien or recorded as a lien on the property at the time the divorce agreement was entered, and both parties are charged equally with constructive knowledge of the recorded lien.[2] Since there is no evidence that Husband intentionally avoided any investigation into the tax claim, precluded Wife from learning about the tax lien, or otherwise willfully violated the final judgment of divorce, the trial court erred by holding Husband in contempt.

Accordingly, the trial court's order holding Husband in contempt for violating the divorce agreement is reversed. Because the trial court's decision to award attorney fees to Wife was based on its erroneous finding that the Husband had willfully violated the divorce agreement, that decision is also reversed. 2.

The next issue is whether the tax lien should be satisfied from Husband's portion of the sale proceeds from the Hawaii property, or if Husband and Wife should share the tax burden equally. Contractual interpretation is generally a matter of law to be decided by the court,[3] and this Court subjects a lower court's conclusions with respect to matters of law to de novo review.[4] The cardinal rule of contractual construction is to ascertain the intent of the parties.[5] This Court agrees with Husband that the divorce agreement evidences an intent to share the burden equally, because requiring Husband to bear the entire burden of the tax lien would render certain provisions of the divorce agreement meaningless.[6] The divorce agreement states that "until the property mentioned herein [including the Hawaii property] is sold, it is the responsibility of Husband to continue all payment associated with these property [sic], including payment of any... taxes."

The same section of the divorce agreement also declares that "as [the Hawaii] property is sold, all expenses of sale, including without limitation... liens... shall be deducted from the sales price" and that the remainder of the sales price would be split equally between *102 the parties. These two aspects of the divorce agreement must be read in conjunction with one another.[7] Read together, these two sections clearly impose upon Husband the obligation to pay all taxes that accrue on the Hawaii property from the date of the divorce agreement forward, but contemplate that all pre-existing liens on the property will be satisfied from the sale proceeds and borne equally by the parties.

Wife's claim that Husband should be required to pay all pre-existing tax liens on marital property would render meaningless the section of the divorce agreement that contemplates deducting liens from the sales price, and such an interpretation is not favored.[8] Accordingly, the trial court erred in ordering Husband to bear the entire burden of the pre-existing tax lien from his share of the proceeds.

Those taxes accrued while Husband and Wife were still married, and it is the clear intent of the divorce agreement that both parties should share the burden of those taxes equally. The agreement thus provides that when the property is sold, the parties shall deduct from the sales price the amount of the tax lien for pre-divorce taxes, and any accrued interest.

The remaining proceeds shall be divided equally between the parties. Judgment reversed. All the Justices concur. NOTES [1] Gallit v. Buckley, 240 Ga. 621, 626, 242 S.E.2d 89 (1978). [2] Cummings v. Johnson, 218 Ga. 559, 560-561, 129 S.E.2d 762 (1963) ("[a] duly filed and recorded deed to secure debt is notice... to the world").

[3] OCGA § 13-2-1. [4] Irvin v. Laxmi, Inc., 266 Ga. 204, 205, 467 S.E.2d 510 (1996); Northen v. Tobin, 262 Ga. App. 339, 342, 585 S.E.2d 681 (2003). [5] OCGA § 13-2-3; McVay v. Anderson, 221 Ga. 381, 385, 144 S.E.2d 741 (1965); Hull v. Lewis, 180 Ga. 721, 724, 180 S.E. 599 (1935).

[6] See Paul v. Paul, 235 Ga. 382, 384, 219 S.E.2d 736 (1975) ("that construction will be favored which gives meaning and effect to all of the terms of the contract over that which nullifies and renders meaningless a part of the language therein contained").

[7] See OCGA § 13-2-2(4) ("construction which will uphold a contract in whole and in every part is to be preferred, and the whole contract should be looked to in arriving at the construction of any part"); McCann v. Glynn Lumber Co., 199 Ga. 669, 674, 34 S.E.2d 839 (1945) ("intention of the parties is determined from a consideration of entire contract; and, if possible, all of its provisions should be interpreted... to harmonize with each other").

[8] Paul, 235 Ga. at 384, 219 S.E.2d 736.