DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Serap Frederick v. Timothy Frederick

257 So. 3d 1105 (Fla. 2d DCA 2018) · No. 2D17-3668 · Decided September 14, 2018

SUMMARY

The Florida Second District Court of Appeal reviewed an amended final judgment dissolving Serap and Timothy Frederick's marriage. The court reversed portions of the equitable distribution ruling, holding that the trial court improperly characterized a mortgage on nonmarital property as a marital debt, failed to support its valuation of the property, and misapplied the law concerning mortgage paydown. The court affirmed in part, reversed in part, and remanded for recalculation of equitable distribution and reconsideration of related alimony and attorney's-fee issues.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Villanti, J.; Kelly, J.; Khouzam, J.
JURISDICTION	Florida
DECIDED	September 14, 2018
DOCKET	2D17-3668
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Wife appealed an amended final judgment dissolving the parties' marriage and establishing equitable distribution, allocation of mortgage debt, treatment of mortgage principal reduction, and attorney's fees and costs.
STANDARD OF REVIEW	Whether a mortgage is a marital debt is reviewed de novo; the factual findings supporting that legal conclusion must be supported by competent, substantial evidence. Equitable-distribution decisions are reviewed for abuse of discretion, while a failure to apply the correct legal rule is reviewed as a matter of law. In the absence of a transcript, the appellate court may review errors of law apparent on the face of the judgment but generally cannot conduct substantive review of evidentiary issues.
PRECEDENTIAL VALUE	published opinion; precedential
PARTIES	Serap Frederick v. Timothy Frederick

TOPICS

equitable distribution · dissolution of marriage · mortgages · appellate procedure · standard of review

PRACTICE AREAS

family law · real estate · appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred by characterizing the mortgage on Husband's nonmarital property as a marital debt.
2. Whether Wife was entitled to a credit for one-half of the marital funds used to reduce the mortgage on Husband's nonmarital property.
3. Whether the trial court abused its discretion in classifying a $23,000 debt as marital.
4. Whether Wife was entitled to attorney's fees and costs.
5. Whether the trial court's unexplained change in the property's value from $45,000 to $0 was legally erroneous.

HOLDINGS

1. A spouse's joinder in a mortgage securing a debt on the other spouse's nonmarital property does not, without evidence that the mortgage proceeds were used for a marital purpose, make the mortgage a marital liability. A spouse who signs the mortgage but not the note cannot be held liable beyond that spouse's interest in the property.
2. The trial court may not change the valuation of property from $45,000 to $0 without findings explaining the change, particularly where the valuation is contradicted by the parties' appraisal evidence.
3. When marital funds are used to reduce the mortgage on nonmarital property, the resulting increase in the owning spouse's equity is a marital asset subject to equitable distribution, even if the property's overall market value declined during the marriage.
4. Because the equitable-distribution scheme required substantial recalculation, the trial court was required to reconsider alimony and the denial of attorney's fees and costs after recalculating the parties' financial resources.

KEY QUOTATIONS

> *“"this court may review the final judgment for an error of law apparent on the face of the judgment,"”* (at 1106)

> *“The mere act of signing the mortgage, and thereby waving any potential spousal claim in the event of foreclosure, does not impute liability under the note.”* (at 1108)

> *“Under this circumstance, joinder in the mortgage is an accommodation only, and as a matter of law cannot ipso facto determine that the mortgage is a marital liability.”* (at 1108)

> *“Kaaa did not affect the general rule that when marital assets are used to reduce the mortgage on nonmarital property, the resulting equity increase is considered a marital asset.”* (at 1109)

> *“That is, the passive depreciation of a nonmarital asset is not a marital liability to be automatically shared equally by the nonowning spouse.”* (at 1109)

FACTUAL BACKGROUND

Husband owned the Mitchell Ranch property before the marriage, and it was unencumbered when the parties married. During the marriage, the parties obtained a $73,339 mortgage on the property, but Wife signed neither the promissory note nor the deed; the mortgage balance was reduced by $7,360.97 during the marriage. The trial court found that approximately $16,000 of the mortgage proceeds was used to remodel the property, but made no findings supporting the use of the remaining proceeds for marital purposes. Although the parties' appraisers valued the property at $63,000 and $71,000 near the final hearing, the trial court later changed its valuation from $45,000 to $0 without additional findings.

PROCEDURAL HISTORY

After a nine-year marriage, Husband filed a petition for dissolution and Wife filed a counterpetition. Following an unreported final hearing, the circuit court entered a final judgment and then an amended final judgment after Wife moved for rehearing. The amended judgment treated a mortgage on Husband's premarital property as a marital debt, denied Wife credit for marital mortgage paydown, changed the property's value from $45,000 to $0, and ordered Wife to make an equalizing payment. The Second District reversed the equitable-distribution determinations and remanded with directions, while affirming the remaining issues subject to reconsideration after recalculation.

DISPOSITION

```
reversed_and_remanded
```

REMAND INSTRUCTIONS

Reverse the characterization of the Mitchell Ranch mortgage as a marital debt; recalculate equitable distribution; include Wife's credit for one-half of the $7,360.97 mortgage paydown; correct the unsupported property valuation; recalculate any equalizing payment and consider new evidence concerning the property's status. Reconsider alimony and attorney's fees and costs after recalculating the parties' financial resources. If an equalizing payment is required, make findings concerning the obligor's ability to pay.

CASES CITED

- Esaw v. Esaw, 965 So. 2d 1261, 1264 (Fla. 2d DCA 2007)
- Mobley v. Mobley, 18 So. 3d 724, 725 (Fla. 2d DCA 2009)
- Silverman v. Silverman, 940 So. 2d 615, 616 (Fla. 2d DCA 2006)
- Dravis v. Dravis, 170 So. 3d 849, 852-53 (Fla. 2d DCA 2015)
- Green v. Green, 788 So. 2d 1083, 1085 (Fla. 1st DCA 2001)

- Canakaris v. Canakaris, 382 So. 2d 1197, 1202 (Fla. 1980)
- Keurst v. Keurst, 202 So. 3d 123, 127 (Fla. 2d DCA 2016)
- Steiner v. Steiner, 746 So. 2d 1149, 1151 (Fla. 2d DCA 1999)
- Flagstar Bank, FSB v. Hochstadt, 405 F. App'x 374, 377 (11th Cir. 2010)
- ROSL, Inc. v. Des Jardins, 756 So. 2d 1078, 1079 (Fla. 4th DCA 2000)
- Sudhoff v. Fed. Nat'l Mortg. Ass'n, 942 So. 2d 425, 427 (Fla. 5th DCA 2006)
- Suk v. Chang, 189 So. 3d 224, 226 (Fla. 2d DCA 2016)
- Heiny v. Heiny, 113 So. 3d 897, 900-01 (Fla. 2d DCA 2013)
- Pinder v. Pinder, 750 So. 2d 651, 653 (Fla. 2d DCA 1999)
- Somasca v. Somasca, 171 So. 3d 780, 781-83 (Fla. 2d DCA 2015)
- Ballard v. Ballard, 158 So. 3d 641, 643 (Fla. 1st DCA 2014)
- Kaaa v. Kaaa, 58 So. 3d 867, 871 (Fla. 2010)
- Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979)
- Betts v. Betts, 235 So. 3d 958, 959 (Fla. 2d DCA 2017)
- Orloff v. Orloff, 67 So. 3d 271, 275 (Fla. 2d DCA 2011)
- Abramovic v. Abramovic, 188 So. 3d 61, 64 (Fla. 4th DCA 2016)