IN THE SUPREME COURT OF THE STATE OF NEVADA

HELEN P. MONEY-SENIOR,
Appellant,
vs.
JASON SENIOR,
Respondent.

No. 54001

FILED

JUL 20 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

This is an appeal from a district court divorce decree entered pursuant to the parties' settlement agreement and orders awarding attorney fees. Eighth Judicial District Court, Family Court Division, Clark County; Sandra L. Pomrenze, Judge.

On appeal, appellant challenges (1) the decree's provision and subsequent court order that requires her to sign a quitclaim deed for the marital residence to respondent; (2) the fact that there is no deadline for when respondent must satisfy the outstanding mortgage on the marital residence, which purportedly renders her right to seek modification of spousal support illusory; and (3) the decree's definition of a default that would trigger the modification of spousal support, as the decree's definition is allegedly different from what the parties agreed to. Appellant also challenges the district court's April and September 2009 orders awarding attorney fees.

We review a district court's decision concerning divorce proceedings for an abuse of discretion, and we will affirm the court's rulings that are supported by substantial evidence. Shydler v. Shydler, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998). Substantial evidence is that which a sensible person may accept as adequate to sustain a judgment. See Schmanski v. Schmanski, 115 Nev. 247, 251, 984 P.2d 752, 755 (1999).

Having considered the parties' arguments on appeal and the appellate record, we conclude that the district court has the authority to require appellant to execute a quitclaim deed to transfer the marital home to respondent as his sole and separate property. See Todkill v. Todkill, 88 Nev. 231, 495 P.2d 629 (1972) (providing that when the district court awards property as one's sole and separate property, the district court may require the execution of a quitclaim deed). The appellate record demonstrates that the parties agreed that respondent would be awarded the marital home as his sole and separate property and that respondent would be responsible for all of its payments and encumbrances. The decree also provides that respondent will indemnify and hold appellant harmless with respect to any liability for the marital residence. The parties also agreed that respondent's spousal support obligation would be modifiable if he defaulted on a mortgage payment. Thus, appellant's argument that she did not intend to be divested of an ownership interest in the marital home because her only protection is the ownership interest in the residence lacks merit.

Concerning appellant's argument that the decree fails to establish a deadline for respondent to satisfy the outstanding mortgage on the marital residence, we determine that this argument does not warrant reversing the district court order. The record contains no indication that this was a term that the parties negotiated in their settlement discussions. Thus, the term is not properly part of the decree.

Regarding the decree's definition of a default as it relates to when a modification of spousal support may be sought by appellant, we conclude that the decree does not clearly reflect the parties' settlement and remand the decree for modification. The appellate record demonstrates that the parties agreed that spousal support would be modifiable if either party defaults on the notes associated with their

respective properties. The parties agreed that a default would occur if either party made a payment after the grace period. On page 11, in the second paragraph, when discussing what events will trigger a modification of spousal support, the decree provides that modification may be sought if either party obtains a discharge of the debt associated with the residences or if the property is lost to a foreclosure. Although the last paragraph on page 11 appears to provide a default definition, it is not clear from the decree's language that a default in a mortgage payment would similarly allow for a modification of spousal support, despite the parties' agreement to so provide. Thus, we conclude that the decree should be modified to properly reflect the parties' agreement as to what events may trigger a modification of spousal support.

As for the attorney fees orders, this court reviews a district court's awards of attorney fees for an abuse of discretion. Miller v. Wilfong, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). Here, we conclude that the district court abused its discretion when it awarded $1,000 in fees to respondent on April 6, 2009, because it failed to state a basis for awarding the fees. Id. at 623, 119 P.3d at 730. We therefore reverse the district court's April 6, 2009, order regarding the award of attorney fees.

Concerning the district court's September 30, 2009, order awarding $3,000 in attorney fees to respondent, we conclude that the district court abused its discretion because it does not appear from the appellate record that the district court considered the Brunzell factors in determining the fee's reasonableness. Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969); Miller, 121 Nev. at 623, 119 P.3d at 730. Moreover, respondent never provided an itemized billing of the attorney fees incurred, or any other evidence on this issue, so that the district court could determine the reasonableness of the fees. See Miller, 121 Nev. at 623-24, 119 P.3d at 730. Thus, we reverse the district

court's September 30, 2009, order as it relates to the award of attorney fees and remand this matter to the district court to determine whether the fees awarded were reasonable.

Accordingly, as we have determined that the district court did not abuse its discretion in requiring appellant to sign a quitclaim deed to transfer the marital residence to respondent and its decision not to include a deadline for respondent to satisfy the mortgage obligation, that the decree should be modified to accurately reflect the parties' agreement as to the definition of default, and that the district court abused its discretion in awarding fees in its April 6 and September 30, 2009, orders, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[1]

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Sandra L. Pomrenze, District Judge, Family Court Division
Janet Trost, Settlement Judge
Goodman Law Group
Kunin & Carman
Eighth District Court Clerk

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[1]In light of this order, we vacate our June 18, 2009, order granting a temporary stay and deny as moot appellant's request to stay enforcement of the attorney fees awards.