

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 15, 2015 Session

SIMA ARYAN v. NICOLAS ARYAN

**Appeal from the Circuit Court for Davidson County
No. 11D2422 Phillip R. Robinson, Judge**

No. M2014-02302-COA-R3-CV – January 21, 2016

Former husband filed a post-divorce petition seeking to hold former wife in contempt for her failure to pay and hold former husband harmless for indebtedness on the marital residence as required by the parties' marital dissolution agreement. The trial court held former wife in contempt for her failure to pay, granted former husband a judgment of \$2010.00 for the amount he paid in an attempt to keep the debt current, ordered former wife to sell the marital residence, and awarded former husband attorney's fees. We hold the trial court's ruling on contempt was in error because the trial court failed to make a threshold finding that former wife's conduct was willful. On appeal, former wife asserts the trial court erred in requiring her to sell the former marital home. In support of its decision to require former wife to sell the home, the trial court reasoned that principles of equity demanded the result since former husband had no other remedy at law. We reverse the trial court, finding former husband was not without a remedy because he can file an action for breach of contract. The finding of contempt, judgment of \$2010.00, and related award of attorney's fees are vacated, and the portion of the order requiring former wife to sell the home is reversed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Vacated in Part and Reversed in Part

ANDY D. BENNETT, J., delivered the opinion of the court, in which THOMAS R. FRIERSON, II, and W. NEAL MCBRAYER, JJ., joined.

D. Scott Parsley, Michael K. Parsley, and Joshua G. Strickland, Nashville, Tennessee, for the appellant, Sima Aryan.

Raquel A. Abel, Franklin, Tennessee, for the appellee, Nicolas Aryan.

OPINION

Sima Aryan (“Wife”) and Nicolas Aryan (“Husband”) were divorced by final decree on April 10, 2012. The divorce decree approved and incorporated a marital dissolution agreement (“MDA”) and parenting plan signed by the parties on April 5, 2012. The marital dissolution agreement included the following relevant provisions:

IV. REAL PROPERTY:

A. The real property of the parties, located at 328 Fountainbrooke Drive, Brentwood, Tennessee, shall be awarded to Wife and Wife shall hold Husband harmless from all indebtedness, if any, thereon. Husband shall execute a quit claim [sic] of any interest he has in the property at or before the final hearing on this divorce action. Wife shall be responsible for all taxes and regular maintenance on this property.

...

IX. GENERAL TERMS:

A. Should either party institute legal proceedings to seek enforcement of any provision of this Agreement by contempt action, breach of contract or other legal action, the prevailing party shall be awarded a judgment for reasonable expenses, including attorney’s fees and Court costs incurred in such action.

This appeal arises from an Amended Petition for Civil Contempt and Request for Judgment filed by Husband on May 8, 2014. Husband alleged that Wife failed to pay the debts on the property located at 328 Fountainbrooke Drive, Brentwood, Tennessee (“the Fountainbrooke property”) in violation of the MDA. In his petition, Husband stated that a home equity line of credit owed to US Bank was delinquent in the amount of \$84,256.76 and was due in full. In addition, Husband averred that the mortgage, owed to Seterus, was delinquent. Husband stated that, as a result of Wife’s failure to pay the debt to US Bank, he paid a portion of the debt following the parties’ divorce. Husband asked the court, *inter alia*, to hold Wife in contempt for her failure to pay the encumbrances on the Fountainbrooke property as required by the MDA, enter a judgment in the amount that he paid on the US Bank debt, and order Wife to bring the delinquent accounts current or order the sale of the home.

Wife responded on July 1, 2014, by filing a Rule 60 Motion requesting the trial court to alter or amend the final decree of divorce. Wife asserted that the MDA was inequitable because she was awarded property which was encumbered, and Husband was awarded real estate that was free and clear of any mortgage.

The trial court held a hearing on July 3 and August 7, 2014, at which the parties testified. Wife testified that at the time the parties signed the MDA they privately agreed that Husband would be responsible for the home equity line of credit on the Fountainbrooke property. However, that alleged private agreement was not memorialized in the MDA. Wife denied the existence of a side agreement.

In its order entered September 24, 2014, the trial court ruled that there is “no ambiguity” in the terms of the MDA and that the court would not consider parole evidence in order to determine the intent of the parties.¹ The court denied Wife’s Rule 60 motion.² With respect to Husband’s petition for contempt, the trial court held:

The Court finds that the Wife is in willful civil contempt of the Orders of this Court for failing to pay the home equity line and holding the Husband harmless on this debt on the [Fountainbrooke] property awarded to her under the terms of the Final Decree of Divorce. The Court finds, however, that there is no proof before it that the Wife can purge herself on Count I of civil contempt by paying off the outstanding indebtedness on the home equity line. The Wife has further testified that she is unable to refinance this indebtedness and no evidence was introduced to the contrary; therefore, the Court cannot incarcerate the Wife because she has no ability to purge herself of this contempt. The Husband shall, however, be awarded a judgment against the Wife in the amount of \$2,010 representing the payments made by the Husband toward the home equity line after the entry of the Final Decree of Divorce.

Regarding the Fountainbrooke property, the court stated:

The Court next considers the Husband’s request that the real property in question be ordered sold. The Court notes that as part of the parties’ negotiated settlement, there was no provision requiring the Wife to refinance the debts associated with the Fountainbrook[e] property, nor was there any provision that provided that the property would be sold in the event that the Wife failed to timely pay the indebtedness. However, the terms of the parties’ Agreement and subsequently [sic] Order of the Court were that she was to hold the husband harmless on the debt, a provision of the Agreement and Order with which she is now unable to comply. The Court notes that divorce actions and related litigation are tried in the nature of equity cases. As such, the divorce

¹ Wife does not appeal this finding.

² Wife does not appeal the trial court’s ruling on her Rule 60 motion.

and all subsequent proceedings thereunder are inherently equitable in nature. [Jones v. Jones, 486 S.W.2d 927 (Tenn. Ct. App. 1972).]

In the instant case, despite her agreement and an Order of the Court, the Wife has not and cannot pay the full monthly payment owed on this indebtedness nor can she pay off the debt. Because of the Wife's inability to purge, the law provides no remedy for the Husband. However, equity will not suffer a wrong to be without a remedy and, therefore, the Court finds that the Wife shall have sixty (60) days from the date of this Order within which to refinance the home equity line removing the Husband as a responsible party or the property shall immediately be placed on the market for sale. In that event, upon motion of the Husband, the Court will appoint a listing agent and set the sales price with the proceeds, after paying off the indebtedness against the property, to be awarded to the Wife subject to liens in favor of the Husband in the amount of the judgments awarded him below.

The court also awarded Husband attorney's fees. Wife appeals.

ANALYSIS

The order from which Wife appeals was entered to resolve issues in Husband's Amended Petition for Civil Contempt and Request for Judgment. The trial court held Wife in civil contempt for her failure to pay the outstanding debts on the marital residence, but stated that Wife "has no ability to purge herself of this contempt"; granted Husband a judgment for the amount he paid to keep the US Bank debt current; ordered Wife to refinance or sell the marital home; and awarded Husband his attorney's fees "in his efforts to enforce the parties' agreements and the Court Order." Wife does not appeal the finding of contempt, the entry of a \$2010.00 judgment against her, or the award of attorney's fees. Although not raised as a separate issue on appeal, we find it necessary to address the trial court's finding of civil contempt and imposition of a \$2010.00 judgment against Wife as well as the trial court's award of attorney's fees.

A. *Civil Contempt*

A claim of civil contempt based upon alleged disobedience of a court order, requires four essential elements:

(1) the order alleged to have been violated must be "lawful"; (2) the order alleged to have been violated must be clear, specific, and unambiguous; (3) the person alleged to have violated the order must have actually disobeyed or

otherwise resisted the order; and (4) the violation of the order must have been “willful.”

Lovlace v. Copley, 418 S.W.3d 1, 34 (Tenn. 2013) (citing *Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 249 S.W.3d 346, 354-55 (Tenn. 2008)). The order at issue is lawful, and there is no dispute regarding the clarity of the order or whether Wife violated the order; thus, we focus our analysis on the fourth element, whether Wife’s violation was “willful.” When reviewing a trial court’s findings of civil contempt, the factual issue of whether “a particular violation was willful, [is] reviewed de novo, with a presumption of correctness afforded to the trial court’s findings.” *Id.* at 17 (citing *Konvalinka*, 249 S.W.3d at 356-57).

In the context of civil contempt, conduct is deemed willful if it “‘is the product of free will rather than coercion. Thus, a person acts “willfully” if he or she is a free agent, knows what he or she is doing, and intends to do what he or she is doing.’” *Konvalinka*, 249 S.W.3d at 357 (quoting *State ex rel. Flowers v. Tenn. Trucking Ass’n Self Ins. Group Trust*, 209 S.W.3d 602, 612 (Tenn. Ct. App. 2006)). Stated another way, “[h]olding an individual in contempt is an available remedy ‘only when the individual has the ability to comply with the order at the time of the contempt hearing.’” *Moore v. Moore*, No. M2004-00394-COA-R3-CV, 2007 WL 2456694, at *3 (Tenn. Ct. App. Aug. 29, 2007) (quoting *Ahern v. Ahern*, 15 S.W.3d 73, 79 (Tenn. 2000)). Regarding Wife’s ability to pay the debt as required by the MDA, the trial court stated:

[T]here is no proof before [the court] that the Wife can purge herself of Count I of civil contempt by paying off the outstanding indebtedness on the home equity line. The Wife has further testified that she is unable to refinance this indebtedness and no evidence was introduced to the contrary; therefore, the Court cannot incarcerate the Wife because she has no ability to purge herself of this contempt. The Husband shall, however, be awarded a judgment against the Wife in the amount of \$2,010 representing the payments made by the Husband toward the home equity line after the entry of the Final Decree of Divorce.

The trial court found that Wife was not financially able to comply with the terms of the MDA. Therefore, Wife’s failure to pay the debt was not willful. Without a threshold finding of willfulness, it was error for the trial court to hold Wife in contempt and impose a judgment of \$2010.00 against her. *Ahern*, 15 S.W.3d at 79; *see also Law v. Law*, No. M2006-00433-COA-R3-CV, 2007 WL 3132932, at *6 (Tenn. Ct. App. Oct. 26, 2007) (noting that compensatory damages are not available in cases of civil contempt involving a party’s failure

to perform a required act). Therefore, we vacate the trial court's holding Wife in contempt and vacate the judgment of \$2010.00 against her.

B. *Trial Court's Authority to Order Fountainbrooke Property Sold*

Next, we turn to the issue Wife raises in her brief. She argues that the trial court's order requiring her to either refinance or sell her home constituted an impermissible modification of the MDA and should be reversed. Husband asserts the trial court's actions were merely an enforcement of the agreement, not a modification. We frame the issue differently: we must determine whether the trial court had the authority to order the former marital residence to be refinanced or sold.

To resolve this issue, we must interpret the parties' MDA, which was incorporated into their final decree of divorce. An MDA is a contract and is binding between the parties; therefore, interpretation of the MDA is "subject to the rules governing construction of contracts." *Barnes v. Barnes*, 193 S.W.3d 495, 498 (Tenn. 2006); see *Minor v. Nichols*, No. W2012-01720-COA-R3-CV, 2014 WL 356508, at *5 (Tenn. Ct. App. Jan. 31, 2014). Because "the interpretation of a contract is a matter of law, our review is de novo on the record with no presumption of correctness in the trial court's conclusions of law." *Honeycutt v. Honeycutt*, 152 S.W.3d 556, 561 (Tenn. Ct. App. 2003) (quoting *Witham v. Witham*, No. W2000-00732-COA-R3-CV, 2001 WL 846067, at *3 (Tenn. Ct. App. July 24, 2001)). The trial court's factual findings are accorded a presumption of correctness, and we will not disturb them unless the evidence preponderates against them. TENN. R. APP. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001).

As reasoning for its decision, the court relied on principles of equity. Specifically, the court stated:

In the instant case, despite her agreement and an Order of the Court, the Wife has not and cannot pay the full monthly payment owed on this indebtedness nor can she pay off the debt. *Because of the Wife's inability to purge, the law provides no remedy for the Husband.* However, equity will not suffer a wrong to be without a remedy and, therefore, the Court finds that the Wife shall have sixty (60) days from the date of this Order within which to refinance the home equity line removing the Husband as a responsible party or the property shall immediately be placed on the market for sale. In that event, upon motion of the Husband, the Court will appoint a listing agent and set the sales price with the proceeds, after paying off the indebtedness against the property, to be awarded to the Wife subject to liens in favor of the Husband in the amount of the judgments awarded him below.

(Emphasis added). We disagree with the trial court's statement that "the law provides no remedy for husband." As this Court explained in *Long v. McAllister-Long*, 221 S.W.3d 1, 9-11 (Tenn. Ct. App. 2006), the enforcement of a hold harmless agreement in an MDA can be accomplished through an action for contempt or by a breach of contract action. *Long*, 221 S.W.3d at 9-11 (holding that both contempt and breach of contract are proper remedies for breach of provisions of an MDA that have been approved and incorporated but not merged into the final decree of divorce, such as a hold harmless agreement). Here, Husband chose to pursue an action for civil contempt. The purpose of civil contempt, however, is to coerce compliance with a court's order. See *Doe v. Bd. of Prof'l Responsibility of Sup. Ct. of Tenn.*, 104 S.W.3d 465, 473 (Tenn. 2003). As previously explained, the trial court determined that Wife was unable to comply with the terms of the MDA; therefore, an action for civil contempt was futile since Wife could not be "coerced" to pay the debt on the former marital residence.

Husband did have the option, on the other hand, of filing a breach of contract action and then executing on any judgment he might have received. Once an MDA is approved by a court, it becomes a "legally binding obligation on the parties." *Long*, 221 S.W.3d at 8-9. As an enforceable contractual obligation, an MDA "contains an implied covenant of good faith and fair dealing both in the performance and in the interpretation of the contract." *Id.* at 9. The covenant of good faith and fair dealing protects the parties' rights to receive the benefits of their agreement. *Id.*; see *Elliott v. Elliott*, 149 S.W.3d 77, 84-85 (Tenn. Ct. App. 2004) (noting that the duty of good faith "requires a contracting party to do nothing that will have the effect of impairing or destroying the rights of the other party to receive the benefits of the contract").

We conclude that the trial court was mistaken in ruling that Husband did not have a remedy under the facts presented. Although his petition for civil contempt did not provide the remedy he sought, Husband could have pursued an action for breach of contract to achieve the result he desired. Therefore, we reverse the trial court's order requiring Wife to refinance or sell the former marital residence. Husband is not precluded from filing a breach of contract action and executing on any judgment that may arise therefrom.

C. Attorney's Fees

Given that we have vacated the finding of contempt and the \$2010.00 judgment to Husband and have reversed the portion of the trial court's order requiring Wife to sell the marital home, we also vacate the portion of the trial court's award of attorney's fees relating to these issues.

CONCLUSION

The portions of the trial court's judgment holding Wife in contempt for her failure to pay the home equity line of credit and awarding \$2010.00 to Husband are vacated. The trial court's order requiring Wife to sell the Fountainbrooke property is reversed and the award of attorney's fees relating to the finding of contempt, judgment and order requiring Wife to sell the former marital home is vacated. Costs of the appeal are assessed against Husband, for which execution may issue if necessary.

ANDY D. BENNETT, JUDGE