

[Cite as *Chasko v. Chasko*, 2010-Ohio-3599.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93314

REBECCA CHASKO

PLAINTIFF-APPELLEE

vs.

ROBERT J. CHASKO

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. D-271385

BEFORE: Stewart, P.J., Dyke, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: August 5, 2010

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MELODY J. STEWART, P.J.:

{¶ 1} Defendant-appellant, Robert Chasko, appeals from a domestic relations division order that found plaintiff-appellee, Rebecca Chasko, in contempt of court for failing to satisfy certain marital debts as required by a divorce decree, but that allowed her to purge the contempt matter that he claims improperly modified the terms of the original divorce decree. Robert argues that the court's modification worked to his economic disadvantage because it required him to pay interest that accrued on debts that Rebecca admittedly failed to pay.

{¶ 2} The court made factual findings that are uncontested on appeal. Those findings show that Robert and Rebecca were divorced in 2003. The court found that the parties “spen[t] beyond their means” in providing “expensive educations” for their adult children. This spending left them unable to live within their income and at the time of the divorce, the marital residence and retirement benefits were the parties’ only substantial assets.

{¶ 3} The divorce decree made the following order regarding the marital residence and payment of marital debt:

{¶ 4} **“IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff shall have a period of ninety (90) days from the entry of the final decree in which to refinance the marital home * * *. She may retain the home as her property if she is able to refinance, remove Defendant from the mortgage obligation and obtain funds sufficient to pay, in addition to the first and second mortgages, at least \$65,000 toward the marital debt. The difference between the fair market value of the property (determined for this purpose to be \$127,500) and the refinanced mortgage (including the cost of the refinancing) shall be the equity subject to equal division.

{¶ 5} “The funds from the refinancing shall be applied in the following order:

{¶ 6} “1. The personal credit line with Household Finance (\$15,000);

{¶ 7} “2. The Sallie Mae account (\$40,890);

{¶ 8} “3. \$1,905 to Plaintiff’s Home Depot account:

{¶ 9} “4. \$1,885 to Century Federal Union;

{¶ 10} “5. IRS debt - \$4,000;

{¶ 11} “6. Wachovia account # * * *, \$2,084.39;

{¶ 12} “7. American Express account * * *, \$9967.51;

{¶ 13} “8. Remaining student loans: U.S. Department of Educ. - \$15,867.30; P.L.A.T.O. # * * *- \$1,728.35; P.L.A.T.O. # * * *- \$2,610.42; P.L.A.T.O. # * * *- \$2,177.87; Citibank * * * - \$1,733.90.”

{¶ 14} In June 2004, Robert filed a motion to show cause why Rebecca should not be held in contempt of court for failing to refinance the residence as required by the divorce decree. Rebecca admittedly did not refinance the house within 90 days of the divorce decree, but claimed that she had bank approval for refinancing subject to Robert’s execution of a quitclaim deed on the property. Robert apparently refused to execute a quitclaim deed, prompting Rebecca to seek an emergency order requiring Robert to do so. Robert contested the request for an emergency order, noting that he had multiple outstanding contempt motions based on Rebecca’s failure to abide by the terms of the divorce decree.

{¶ 15} The court adopted a magistrate’s decision that stated: “Plaintiff, by her own admission, states that her complying with the refinancing of the home and/or sale of the home would not only be of no benefit to her, but would

actually be a financial detriment to her.” The magistrate found, however, that Robert had likewise violated the terms of the divorce decree by failing to make certain spousal support payments — Robert admitted that he changed employers to avoid his spousal support obligations to Rebecca. Given fault by both parties, the court decided to hold neither party in contempt.

{¶ 16} On October 6, 2006, the court addressed Rebecca’s motion for an emergency order requiring Robert to execute a quitclaim deed. The court found that Rebecca “demonstrated she has the ability to obtain refinancing of marital residence” and that she was “unable to accomplish refinancing without a quitclaim deed from defendant.” The court ordered Robert to execute a quitclaim deed within five days and ordered Rebecca to “comply with provisions of the Divorce Decree * * * regarding the payment of debt.”¹

{¶ 17} Prior to refinancing, Rebecca paid \$18,721.96 in satisfaction of the first mortgage on the house. She then obtained refinancing on the residence in the amount of \$74,100. The lender received a copy of the final judgment and Rebecca executed a separate document authorizing the lender to pay debts from the proceeds. The lender paid a number of debts with the proceeds from refinancing, but not in the order specified by the divorce decree.

¹Rebecca appealed from other aspects of the court’s ruling that are not at issue in this appeal. We affirmed those rulings in *Chasko v. Chasko*, 8th Dist. No. 88949, 2007-Ohio-5451.

{¶ 18} In June 2008, Robert filed the motion to show cause that is the subject of this appeal. He claimed that Rebecca had paid some debts listed in the divorce decree, but not in the order required by the court. This, he argued, meant that the interest accrued on some debts that would have been extinguished had they been paid as ordered by the court. He claimed that accrued interest on some of the marital debts had essentially doubled the amount owed on those debts

{¶ 19} The court conducted a hearing on Robert's motion and found that Rebecca admitted using proceeds from refinancing not to pay debts as ordered by the court, but to pay her personal debts. The court further found that Rebecca "admitted that she intentionally did not pay debts in Robert's name, including, but not limited to the largest marital debt to Sallie Mae with a balance in 2003 of \$40,890. Rejecting as "not credible" Rebecca's claims she had no control over which debts were repaid, the court found that Rebecca "knew or should have known that the disbursements did not comply with the final judgment of divorce."

{¶ 20} Addressing Robert's claim that Rebecca should be liable for any accrued interest on the debts that were not repaid, the court found that it would be inequitable to hold Rebecca solely liable. The court noted that the divorce decree did not require either party to pay any of the enumerated debt until refinancing or resale, nor did it make provision for the payment of

interest on the debt. The divorce decree likewise made no provision to order Robert to transfer his interest in the house, and the court found that Robert had opposed transferring his interest at a time when further accumulation of interest could have been prevented. Finally, the court noted that Rebecca paid \$30,000 to repair flood damage to the house. It thus concluded that it would be “inequitable” for Rebecca to pay any portion of interest and collection costs accumulated and due on any student loan or other unpaid debt because she had paid significant debt.

{¶ 21} In light of its factual findings, the court found Rebecca guilty of contempt on clear and convincing evidence that she had “failed, refused, or neglected to pay the full amount of \$65,000 in the order specified” by the divorce decree. It imposed a 30-day sentence. When considering an amount that would purge the contempt, the court stated its intent to “put an end to this litigation[.]” It considered that Robert had also failed, refused, or neglected to comply with certain court orders, resulting in a combination of owed attorney fees and support arrears of \$14,441.63. The court ordered that amount offset from any purge amount that Rebecca should pay. It ordered that Rebecca pay Robert \$17,432.83 in full satisfaction of her obligations under the divorce decree. It ordered Robert to pay to Sallie Mae an amount not less than \$40,890; to pay an amount not less than \$967.51 to

American Express; and to pay an amount not less than \$15,867.30 to the United States Department of Education.

II

{¶ 22} Robert's first assignment of error complains that the court erred by crafting a contempt order that essentially modified the prior division of property. He maintains that the court's order for him to pay the Sallie Mae debt directly overruled the divorce decree.

{¶ 23} In *Wolfe v. Wolfe* (1976), 46 Ohio St.2d 399, 417, 350 N.E.2d 413, the Ohio Supreme Court stated that "it is generally recognized that a court does not have the inherent power to modify a true property settlement or a decree incorporating it." That common law principle was later codified in R.C. 3105.171(I), which states: "A division or disbursement of property or a distributive award made under this section is not subject to future modification by the court."

{¶ 24} Nevertheless, "while a trial court does not have continuing jurisdiction to modify a marital property division incident to a divorce or dissolution decree, it has the power to clarify and construe its original property division so as to effectuate its judgment." *Pruitt v. Pruitt*, 8th Dist. No. 84335, 2005-Ohio-4424, at ¶105, citing *DiFrangia v. DiFrangia*, 11th Dist. No. 2003-T-0004, 2003-Ohio-6090, at ¶10.

{¶ 25} The court order allowing Rebecca to purge her contempt by permitting her to deviate from the specified payment order listed in the divorce decree was simply a means of effectuating the division of marital property. That order did not affect the basic division of marital property, only the means by which the payments of marital debt were assessed against the parties. Indeed, Robert makes no argument that the court order somehow deviated from its initial division of the marital assets.

{¶ 26} We also find that the court did not abuse its discretion by altering the terms for the division of marital debts. Rebecca admittedly chose not to comply with the payment order specified in the divorce decree, and the court held that she would be accountable for payment of any of her personal debt. However, there were extenuating circumstances that delayed the sale of the house, some of which were caused by Robert: a default judgment entered against him in 2003 for a personal debt complicated Rebecca's initial attempts to refinance, and then he refused to quitclaim his interest in the house until forced to do so by court order in 2006. The court further noted its alteration of the priority of debts to be paid by Rebecca was an "attempt to put an end to this litigation[.]" Given these circumstances, we cannot say that the court acted unreasonably or arbitrarily by altering the order in which Rebecca was to pay her portion of the marital debt.

{¶ 27} Robert next argues that the court erred by finding him responsible for paying a portion of the interest that accrued on debts that were not paid in the order stated by the divorce decree. He cites to the Sallie Mae debt, which stood at \$40,890 at the time of divorce, but which he claimed carried a principal balance, as of 2008, of \$60,382.27, with interest of \$13,267.34 and collection fees of \$14,557.81, for a total of \$88,207.42. He maintains that Rebecca should be responsible for paying the interest and collection fees as postjudgment interest under R.C. 1343.03.

{¶ 28} R.C. 1343.03(A) states that when money becomes due and payable upon “all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of tortious conduct or a contract or other transaction,” the creditor is entitled to interest at the statutory rate. This statute has been applied to domestic relations proceedings in which the trial court orders a distribution of marital assets. See *Augier v. Augier*, 11th Dist. No. 2009-G-2932, 2010-Ohio-2679, at ¶50; *Curtis v. Rinehart* (Mar. 19, 2001), 4th Dist. No. 00CA019. The court is not, however, required to impose interest on monetary obligations that arise from the division of marital property, although the court may, in its discretion, order interest paid on funds that are payable at a future date but are incapable of being calculated at the present time. *Meeks v. Meeks*, 10th Dist. No. 05AP-315,

2006-Ohio-642, at ¶18, citing *Koegel v. Koegel* (1982), 69 Ohio St.2d 355, 432 N.E.2d 206.

{¶ 29} The terms of the divorce decree did not make Robert a creditor of Rebecca in a way that would invoke the postjudgment interest provisions of R.C. 1343.03(A). The court's findings of fact stated that the divorce decree "does not order payment of interest or other penalties accumulating on the debts after the divorce and prior to refinancing, sale, either party filing objections, or either filing an appeal of the court's judgment." The court found that despite this omission, neither party raised any objection on the issue of interest.

{¶ 30} The court also cited to facts that guided its discretion in refusing to award Robert any interest resulting from Rebecca's failure to pay the Sallie Mae debt in the order specified by the divorce decree. The divorce decree did not order Robert to surrender his interest in the marital house, a condition precedent to refinancing. A default judgment against Robert on a personal matter caused a lien to be placed against the house, delaying Rebecca's ability to obtain refinancing. And while Robert claimed to have no objection to surrendering his interest in the house, he opposed Rebecca's emergency motion to require him to execute a quitclaim deed, further delaying refinancing. Finally, the court noted that Robert claimed that the Sallie Mae loan had accrued nearly \$20,000 in additional principal, but offered no

evidence to support that assertion, particularly since the parties had no children in school at the time. These findings give no reason to find that the court abused its discretion.

Judgment affirmed.

It is ordered that appellee recover of appellant her costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas — Domestic Relations Division to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, PRESIDING JUDGE _____

ANN DYKE, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR