

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102651

HADITHA KHAN

PLAINTIFF-APPELLEE

vs.

DONALD HUGHES, SR.

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CV-13-818730 and CV-14-826149

BEFORE: Blackmon, J., Celebrezze, A.J., and Boyle, J.

RELEASED AND JOURNALIZED: October 29, 2015

ATTORNEY FOR APPELLANT

Geoffrey L. Oglesby
Oglesby & Oglesby
618 West Washington Street
Sandusky, Ohio 44870

ATTORNEY FOR APPELLEE

Susan P. Stauffer
Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, Ohio 44113

PATRICIA ANN BLACKMON, J.:

{¶1} Appellant Donald Hughes, Sr. (“Hughes”) appeals the trial court’s order giving appellee Haditha Khan (“Khan”) possession of the marital home in spite of a divorce decree stating otherwise and assigns the following error for our review:

The trial court erred when it granted sole possession of the marital home to Ms. Khan under the doctrine of res judicata.

{¶2} Having reviewed the record and pertinent law, we affirm the trial court’s judgment. The apposite facts follow.

{¶3} The parties, who are divorced, each filed a civil stalking protection order against each other pursuant to R.C. 2903.214. A hearing on the petitions was conducted on May 22, 2014. Hughes appeared pro se and because he refused to testify in support of his petition for a protection order or offer the testimony of any witnesses, he dismissed his petition.

{¶4} The hearing then proceeded to address Khan’s petition for a civil stalking protection order. Khan testified that she filed her petition for a protection order because of Hughes threatening and harassing her. She stated that she is in a constant state of fear because Hughes has threatened to assault her several times and constantly sends her threatening text messages.

{¶5} She then related an incident that occurred on April 14, 2014, where Hughes followed her into a Walmart store. Khan stated that because of an existing domestic relations order that ordered her to keep away from Hughes, she tried to leave the store with her three sons; however, Hughes continued to follow her to the parking lot. Khan called the police who instructed her to get into her vehicle and lock the doors until they arrived. Upon arriving, the officers escorted Khan into the store to retrieve her purchased items and kept Hughes outside of the store.

{¶6} During the discussion of where each of the respective parties lived, it came to the trial court's attention that Hughes lived in the marital home even though the title and mortgage were in Khan's name. Khan lives in an apartment several blocks from the marital home. Khan explained that she did not attempt to receive possession of the marital home during their divorce proceedings and that the domestic relations court had given Hughes 90 days to refinance and change the title of the home to his name. According to the domestic relations court order, if Hughes failed to comply, the home was to be sold with the proceeds split equally between the parties. Khan told the court that Hughes has failed to comply with the domestic relations court order and has prevented Khan from selling the home.

{¶7} On May 22, 2014, the trial court granted Khan's protection order and along with ordering Hughes to keep away from Khan and the children, the court ordered as follows:

Respondent is to resolve the property issues at 22610 Angela Dr., Warrensville Hts., OH 44128 within 45 days of this hearing in Domestic Relations Court. If not resolved within 45 days by Domestic Relations Court, Respondent is to petition this court for permission to stay in the residence. Visitation is revoked until the matter is decided in Domestic Relations Court.

Journal Entry, May 22, 2014, at ¶ 9. No appeal was taken from this order.

{¶8} On August 14, 2014, Khan filed an "Application for Order Modification," in which she alleged that the property issue had not been resolved and the 45 day time limit had expired. The trial court conducted a hearing on the motion on August 21, 2014. Although Khan appeared, Hughes did not. The trial court continued the matter until September 30, 2014 and warned Hughes that if he failed to appear at the next scheduled hearing, sanctions, including judgment being rendered against him could occur.

{¶9} The hearing was thereafter rescheduled several times by the trial court and eventually rescheduled for December 14, 2014. On January 26, 2015, the trial court issued a judgment granting Khan's application for modification, which stated in pertinent part as follows:

The court hereby orders that the Petitioner Haditha Khan shall have exclusive possession of the premises known as 23610 Angela Drive, Warrensville Heights, OH effective March 2, 2015.

The court further orders that Respondent is to vacate the premises known as 23610 Angela Drive, Warrensville Heights, Ohio, on or before March 2, 2015, and pursuant to ORC § 2903.214(E)(1)(a) is to refrain from entering the said premises thereafter.

Marital Home

{¶10} In his sole assigned error, Hughes argues the trial court did not have the authority to award exclusive possession of the marital home to Khan because the domestic relations court had already issued an order regarding the property; therefore, res judicata applied.

{¶11} The jurisdiction of the court of common pleas is described in Section 4(B), Article IV of the Ohio Constitution:

The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of proceedings of administrative officers and agencies as may be provided by law.

{¶12} According to R.C. 3105.11:

The court of common pleas, including divisions of domestic relations, has full equitable powers and jurisdiction appropriate to the determination of all domestic relations matters. * * *

{¶13} Applying the above principles, this court in *Price v. Price*, 16 Ohio App.3d 93, 474 N.E.2d 662 (8th Dist.1984), held as follows:

[A]fter an action has been fully litigated in the Domestic Relations Court and a judgment entry has been filed granting a divorce and providing for the division of

property, the exclusive jurisdiction is terminated. At that point, there exist[s] concurrent jurisdiction with the Common Pleas Court, General Division. The continuing jurisdiction of the Domestic Relations Court is concurrent with the General Division and not exclusive.

Id. at 95-96. The domestic relations court, however, retains exclusive jurisdiction over matters relating to the custody, care, and support of minor children. *Loetz v. Loetz*, 63 Ohio St.2d 1, 406 N.E.2d 1093 (1980).

{¶14} In the instant case, Hughes’s refusal to transfer the title of the property and the mortgage into his name, and refusal to allow Khan to sell the home, is in violation of the divorce decree. Because the domestic relations court had issued a judgment granting the divorce and providing for the division of the property, the domestic relations court no longer had exclusive jurisdiction over the matter and the common pleas court, which has concurrent jurisdiction, had the power to enforce the order of the domestic relations court. Subsequently, the domestic relations court found Khan’s motion in which she requested the court to order Hughes to vacate the home moot. The domestic relations court held that “the General Division’s order granted plaintiff the specific relief she seeks here, and renders her objections moot.” Domestic Relations Court’s Journal Entry, September 25, 2015.

{¶15} Moreover, because the common pleas court was concerned for Khan’s welfare, it’s issuing an order that would remove an existing controversy between the parties would further prevent unwanted contact between the parties and fulfill the protective order.

{¶16} Also, the stalking protection order statute R.C. 2903.214 (E)(1)(a) provides in pertinent part, as follows:

[T]he court may issue any protection order, * * * that contains terms to ensure the safety and protection of the person to be protected by the protection order, including, but not limited to, a requirement that the respondent refrain from entering the residence of the petitioner, or family or household member.

It is undisputed that Hughes failed to follow the domestic relations court order to change the title and mortgage of the marital home into his name. Thus, the marital home is still Khan's because she has retained the title to the home. Based on the facts of this case and Khan as the title holder of the home, the common pleas court had authority to order Hughes to vacate the home under the above provision. Consequently, Hughes's sole assigned error is overruled.

{¶17} Judgment is affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court 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.

PATRICIA ANN BLACKMON, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
MARY J. BOYLE, J., CONCUR