**[Cite as *Niepsuj v. Niepsuj*, 2010-Ohio-638.]**

| | |
|---|---|
| STATE OF OHIO )<br>)ss:<br>COUNTY OF SUMMIT ) | IN THE COURT OF APPEALS<br>NINTH JUDICIAL DISTRICT |
| BARBARA NIEPSUJ nka LUNDIN<br><br>Appellee<br><br>v.<br><br>VINCENT NIEPSUJ<br><br>Appellant | C. A. No. 24791<br><br><br><br>APPEAL FROM JUDGMENT<br>ENTERED IN THE<br>COURT OF COMMON PLEAS<br>COUNTY OF SUMMIT, OHIO<br>CASE No. 2002-02-0687 |

DECISION AND JOURNAL ENTRY

Dated: February 24, 2010

---

WHITMORE, Judge.

**{¶1}** Defendant-Appellant, Vincent Niepsuj ("Husband"), appeals from the judgment of the Summit County Court of Common Pleas, Domestic Relations Division, overruling his objection to the magistrate's decision. This Court affirms.

I

**{¶2}** Husband and Barbara Lundin, FKA Barbara Niepsuj ("Wife"), married in August of 1991 and had three children during their marriage. On February 19, 2002, Wife filed a complaint for divorce.[1] The trial court entered a mutual restraining order and temporary orders,

---

[1] Husband and Wife also have had several other cases in the Domestic Relations Division. Prior to filing for divorce, Wife filed a petition for a civil protection order ("CPO") against Husband based on an incident of domestic violence. See Summit County Court of Common Pleas, Domestic Relations Division, Case No. 2001-10-3960. Subsequent to Wife's divorce filing, Husband filed his own petition for a CPO against Wife. See Summit County Court of Common Pleas, Domestic Relations Division, Case No. 2003-09-3539. The CPOs led to exhaustive litigation and separate appeals. This appeal only concerns Summit County Court of Common Pleas, Domestic Relations Division, Case No. 2002-02-0687, which stems from Wife's complaint for divorce.

designating Wife as the residential parent and legal custodian of the children and providing Husband with a supervised visitation schedule. On July 15, 2002, Husband filed a "motion to modify CPO," apparently challenging the CPO that the court had entered in Case No. 2001-10-3960. On October 9, 2002, a magistrate issued a provisional order, requiring both parties to submit to psychological evaluations.

**{¶3}** On November 27, 2002, Husband filed a "motion for relief from consent agreement and domestic violence civil protection order," once again apparently challenging filings from Case No. 2001-10-3960. On March 28, 2003, Husband filed a motion for summary judgment as to his previously filed motion to modify CPO and motion for relief from consent agreement and domestic violence CPO. The court denied Husband's motion because it was "filed in the wrong case" and did not contain an "issue appropriate for consideration under Civ.R. 56."

**{¶4}** On April 28, 2003, the magistrate held a hearing on Wife's divorce complaint. On July 29, 2003, the court granted Wife's divorce, designating Wife as the residential parent and legal custodian of the children. The court's judgment entry noted that "the parties have entered into [this] agreement that was read into the record and accepted by each party[.]" Only Wife signed the judgment entry. Husband's signature line indicated "submitted May 7, 2003 but not approved."

**{¶5}** On September 11, 2003, Husband filed a "post-decree motion for shared parenting plan." The magistrate held a hearing on September 23, 2003 on Husband's motion. The court denied Husband's motion on October 9, 2003 because he failed to demonstrate any change in circumstances that might justify a departure from the divorce decree. On October 23,

2003, Husband filed "objections to 10-9-2003 judgment entry." The court overruled Husband's objections on January 8, 2004.

**{¶6}** On January 31, 2006, Husband filed a motion to modify and enforce his visitation rights. The magistrate held a hearing on April 13, 2006 and denied Husband's motion on September 22, 2006. The magistrate also suspended Husband's visitation because Husband violated a CPO, incurred criminal charges, and was incarcerated. The court ordered Husband to "engage in consistent treatment for his mental health issues."

**{¶7}** On July 19, 2007, Husband filed a "notice as to quit claim and promissory note requests" in which he notified the court that he needed Wife to execute a promissory note to secure his $81,500 in equity interest awarded under the divorce decree before he would sign a quit-claim deed for the parties' property on Green Meadow Drive. In response, Wife filed a motion to enforce the divorce decree, moving the court to order Husband to immediately quit-claim his interest in the property. The court ordered the property to be quit-claimed. On September 12, 2008, Husband filed a motion to show cause, arguing that Wife was in contempt for failing to pay him his equitable share of the marital residence. The magistrate held a hearing on Husband's motion on November 12, 2008. During the hearing, Husband once again raised visitation issues, and the magistrate permitted argument. On December 10, 2008, the court denied Husband's motion and oral request for reunification with his children.

**{¶8}** On December 23, 2008, Husband filed a motion to set aside the magistrate's decision. Inexplicably, Husband filed another motion to set aside the magistrate's decision on April 20, 2009. The trial court treated Husband's motions to vacate as objections to the magistrate's decision and denied them on their merits.

**{¶9}** Husband now appeals from the trial court's judgment and raises three assignments of error for our review.

II

Assignment of Error Number One

> "THE LOWER COURT ABUSED ITS DISCRETION IN FINDING THAT THE 'DEFENDANT ALSO RAISED COMPANIONSHIP ISSUES AT THE TIME OF THE HEARING REGARDLESS OF THE FACT THAT NO MOTION WAS FILED TO THAT EFFECT[.]'"

**{¶10}** In his first assignment of error, Husband argues that the court abused its discretion by finding that he did not raise the issue of companionship with his children in a filed motion. Specifically, Husband argues that he raised the issue of reunification in his September 12, 2008 motion.

**{¶11}** Initially, we note that Husband appears pro se on appeal. With respect to pro se litigants, this Court has held as follows:

> "[A] pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound. He is not given greater rights than represented parties, and must bear the consequences of his mistakes. This Court, therefore, must hold [pro se appellants] to the same standard as any represented party." (Internal citations omitted.) *Sherlock v. Myers*, 9th Dist. No. 22071, 2004-Ohio-5178, at ¶3.

With this standard in mind, we turn to Husband's argument.

**{¶12}** Husband argues that the magistrate incorrectly determined that he did not ask for reunification with his children in a motion filed prior to the November 12, 2008 hearing. Regardless of whether one of Husband's written motions contained a request for reunification, he made an oral request for reunification at the November 12, 2008 hearing and the court considered his request on the merits. Accordingly, it is irrelevant whether one of Husband's

written motions also contained a request for reunification. Husband's first assignment of error is overruled.

Assignment of Error Number Two

> "THE LOWER COURT ABUSED ITS DISCRETION IN RELYING ON EVIDENCE THAT WAS NOT INTRODUCED AT THE HEARING BUT RELYING ON EVIDENCE FROM PREVIOUS HEARINGS, IF AT ALL, TO DETERMINE WHETHER THE CHILDREN WOULD BENEFIT FROM ANY REUNIFICATION."

**{¶13}** In his second assignment of error, Husband argues that the court abused its discretion by relying on evidence from a previous hearing to determine the matter of reunification. The record reflects that the court ordered Husband to "engage in consistent treatment for his mental health issues." When the magistrate asked Husband at the November 12, 2008 hearing if Husband was receiving treatment, he replied that he was not. The court denied Husband's request for reunification on the basis that he was not receiving treatment. As such, the court did not rely on evidence from previous hearings to deny Husband's motion. Husband's second assignment of error is overruled.

Assignment of Error Number Three

> "THE LOWER COURT ABUSED ITS DISCRETION IN FINDING THAT THERE WAS NO CLEAR AND CONVINCING EVIDENCE OF CONTEMPT WHEN PLAINTIFF HAD NOT, AS ORDERED, SECURED DEFENDANT'S INTEREST IN THE MARITAL RESIDENCE BY EXECUTING A MORTGAGE DEED."

**{¶14}** In his third assignment of error, Husband argues that the court abused its discretion by not holding Wife in contempt. Specifically, Husband argues that Wife should have been held in contempt because she did not secure his equitable interest in the marital residence by executing a mortgage deed. We disagree.

**{¶15}** Generally, this Court reviews a trial court's action with respect to a magistrate's decision for an abuse of discretion. *Fields v. Cloyd*, 9th Dist. No. 24150, 2008-Ohio-5232, at ¶9. "In so doing, [however,] we consider the trial court's action with reference to the nature of the underlying matter." *Tabatabai v. Tabatabai*, 9th Dist. No. 08CA0049-M, 2009-Ohio-3139, at ¶18. "This [C]ourt will not overturn a lower court's determination in a contempt proceeding absent an abuse of discretion." *Malson v. Berger*, 9th Dist. No. 22800, 2005-Ohio-6987, at ¶6. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

**{¶16}** With regard to the parties' marital residence, their divorce decree provided the following:

> "Wife shall retain the [parties' marital residence]. The parties agree that the fair market value of said real estate is $163,000, and that said real estate is free of any mortgage indebtedness. The parties also agree that Husband's equitable interest in said residence is $81,500. Wife shall have a period of up to 48 months to pay Husband for his equity in said residence, less any offsets specifically addressed in other provisions of this Judgment Entry. *Husband shall immediately quit claim his interest in said real estate to Wife.* Wife shall execute a mortgage deed securing Husband's interest in said residence. In the event Wife chooses to sell said residence prior to the expiration of 48 months, Husband shall be paid for his equitable interest therein at the time of sale. In the event Wife is unable to pay Husband for his equity with in 48 months, said residence shall be listed for sale and Husband shall receive his equitable interest from the proceeds of sale." (Emphasis added.)

The record reflects that Husband filed a "notice as to quit claim and promissory note requests" on July 19, 2007. In the notice, Husband informed the court that he would not quit-claim his interest in the marital residence until Wife gave him a promissory note for his $81,500 equity interest. Husband's notice led Wife to file a motion to enforce the divorce decree, asking the

court to order Husband to immediately quit-claim his interest in accordance with the decree. On September 11, 2007, the court ordered the property to be quit-claimed.

**{¶17}** At the hearing on Husband's show cause motion, Wife explained that she needed to sell the marital residence in order to pay Husband his equitable interest. Husband's refusal to quit-claim his interest led to a delay in the sale of the home, and consequently, to a delay in Wife being able to pay Husband his $81,500 equitable interest. There is no evidence that Wife failed to comply with the decree so as to give rise to contempt charges. Wife was not the cause of the delay that occurred. Moreover, there was no requirement in the decree that Wife was obligated to take any action before Husband quit-claimed his interest. The parties' divorce decree specifically ordered Husband to "immediately quit claim his interest." Husband did not do so, and Wife had to file a motion to enforce in order to have the residence quit-claimed. Based on our review of the record, the court did not abuse its discretion by refusing to hold Wife in contempt. Consequently, Husband's third assignment of error lacks merit.

III

**{¶18}** Husband's three assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

---

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

CARR, P. J.
MOORE, J.
CONCUR

APPEARANCES:

VINCENT M. NIEPSUJ, pro se, Appellant.