

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CHAMPAIGN COUNTY**

JAMES McCONNELL	:	
	:	Appellate Case No. 09-CA-43
Plaintiff-Appellant	:	
	:	Trial Court Case No. 06-DR-10
v.	:	
	:	
SERIA PAUSAL McCONNELL	:	(Civil Appeal from Common Pleas Court, Domestic Relations Division)
	:	
Defendant-Appellee	:	

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OPINION

Rendered on the 1st day of October, 2010.

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FAIN, J.

{¶ 1} Plaintiff-appellant James McConnell appeals from an entry dismissing his motion to modify an agreed judgment entered into by James and defendant-appellee Seria McConnell.¹ James contends that the trial court erred in

¹For convenience, the parties will be referred to as James and Seria.

concluding that it lacked jurisdiction over real estate matters that were part of the judgment entry. James also contends that the court erred in concluding that it did not retain jurisdiction over monthly rental payments being made to Seria. And finally, James contends that the trial court erred in classifying the rental payments as spousal support.

{¶ 2} We conclude that the trial court did not err in rejecting James's motion to modify the agreed judgment. The terms of the agreed magistrate's recommendations and divorce decree are unambiguous, and allow further review only of the issue of James's bona fide efforts to sell property that is the subject of the parties' property division. Under R.C. 3105.171(I), the trial court did not have the ability to modify the property division agreed to by the parties and incorporated into the decree.

{¶ 3} We further conclude that the trial court did not have the ability to modify rental payments being made to Seria pending the sale of the property. The decree specifies that spousal support will not be paid by either party, and the decree also specifies that the issue of spousal support is not subject to the court's continuing jurisdiction under R.C. 3105.18(E). Finally, although the trial court stated that the rental payments are in the nature of spousal support, because they assist Seria pending her receipt of the property settlement, the description of the payments is irrelevant. The prior agreed order specifically provides that the trial court shall not have continuing jurisdiction to modify support.

{¶ 4} In short, if the rental payments that James is required by the divorce decree to pay are deemed to be a part of property division, then that requirement is not

modifiable as a result of the application of R.C. 3105.171(I), and if they are deemed to be in the nature of support payments, then that requirement is not modifiable as a result of the application of the provision of the decree, itself, that the issue of support is not modifiable.

{¶ 5} The judgment of the trial court is Affirmed.

I

{¶ 6} In August 2008, a magistrate filed recommendations disposing of all issues pertaining to custody, child support, visitation, spousal support, and the disposition of the marital assets and liabilities. The magistrate noted that the parties had agreed to the disposition of these matters. The magistrate's recommendations were also signed by the parties and their attorneys. Custody of the parties' three minor children was awarded to Seria, and James was given visitation privileges. James agreed to pay \$872.45 per month in child support.

{¶ 7} The magistrate's decision also contained the following provisions regarding real estate and spousal support, with interlineation inserted by the trial court and magistrate. The provisions in question read as follows:

{¶ 8} "IT IS FURTHER RECOMMENDED that the Plaintiff shall pay the Defendant the sum of \$75,000 as and for a partial property settlement upon the sale by the Plaintiff of his interest in the Highlander Laundromat *located at 760 Scioto St. Urbana, Oh, PBP*, legally owned by JSPT, LLC, a limited liability company under the Plaintiff's sole direction, ownership and control. *Both the business and the real estate are being sold. Both are owned by JSPT, LLC. RBW. Plaintiff shall make a bona*

vide effort to sell Highlander Laundromat, and the court retains jurisdiction over this issue. The parties own no other interest in real property. PBP.

{¶ 9} “ * * *

{¶ 10} “IT IS FURTHER RECOMMENDED that, until said Laundromat is sold and the Defendant is paid the aforesaid cash settlement, the Plaintiff shall pay the Defendant’s rent for the residence occupied by her and the parties’ minor children, which rent is currently \$835.00 per month.

{¶ 11} “ * * *

{¶ 12} “*It is further recommended that neither party pay spousal support to the other and the court shall not retain jurisdiction over this issue. PBP.*” Magistrate’s Recommendations, p. 9.²

{¶ 13} James filed *pro se* objections to the magistrate’s decision, but the trial court overruled his objections and adopted the report of the magistrate. The court noted that the magistrate’s recommendations were made by agreement of the parties, and that both parties and their attorneys had signed the recommendations. No appeal was taken from the final judgment of divorce, which was filed in October 2008.

{¶ 14} In June 2009, James filed a *pro se* petition with the court, seeking to modify the divorce decree. James noted that he had been unable to sell the property known as the Highlander Laundry. James asked the court to modify or remove the \$75,000 payment requirement, because he believed the property would not sell for a sufficient amount to meet this obligation. James also asked the court to impose a

²The parts inserted by interlineation are italicized. The initials are those of Magistrate Phillips (PBP) and Judge Wilson (RBW).

reasonable time frame for ending the monthly rent payments, because the parties had originally contemplated that rent payments would cease when the laundromat was sold.

{¶ 15} After receiving briefs from the parties, the trial court concluded that the language in the final decree was intended to reserve jurisdiction only for purposes of oversight of James's bona fide efforts to sell the laundromat. The court held that as a result of R.C. 3105.171(I), it lacked jurisdiction to modify the property award. The court did agree with James that the rent payments are a form of spousal support, in that they provide sustenance and support of Seria. However, the court held that as a result of R.C. 3105.18(E), it lacked jurisdiction to modify the provision for rent payments. Accordingly, the court dismissed James's motion to modify.

{¶ 16} James appeals from the order dismissing his motion to modify.

II

{¶ 17} James has consolidated his discussion of the First and Second Assignments of Error. We will do the same.

{¶ 18} James's First Assignment of Error is as follows:

{¶ 19} "THE TRIAL COURT ERRED IN RULING THAT THE COURT FAILED TO RETAIN JURISDICTION OVER THE ISSUE OF REAL ESTATE MATTERS."

{¶ 20} James's Second Assignment of Error is as follows:

{¶ 21} "THE TRIAL COURT ERRED IN FINDING THAT THE COURT FAILED TO RETAIN JURISDICTION OVER MONTHLY RENTAL PAYMENTS."

{¶ 22} Under these assignments of error, James contends that the retention of jurisdiction in the magistrate's recommendations extends to all issues pertaining to the

real estate, including the rental payments, and the sale and distribution of proceeds. James argues that the paragraph retaining jurisdiction contains a group of closely-related sentences, which develop a central idea, and that all these items are intertwined. James also contends that because the monthly payments were to terminate on the sale and payment of the proceeds of the sale, the trial court retained jurisdiction under R.C. 3105.18(E), which relates to modification of spousal support.

{¶ 23} R.C. 3105.171(I) provides that “A division or disbursement of property or a distributive award made under this section is not subject to future modification by the court.”³ We have held that this prohibition is jurisdictional. See, e.g., *McKinney v. McKinney* (2001), 142 Ohio App.3d 604, 608.

{¶ 24} If a property division order is ambiguous, however, the trial court may properly clarify its meaning without violating R.C. 3105.171(I). Id. “An ambiguity exists when a provision in an order or decree is reasonably susceptible of more than one meaning.” Id. at 609.

{¶ 25} The provision in question states that:

{¶ 26} “Plaintiff shall pay the Defendant the sum of \$75,000 as and for a partial property settlement upon the sale by the Plaintiff of his interest in the Highlander Laundromat located at 760 Scioto St. Urbana, Oh, PBP, legally owned by JSPT, LLC, a limited liability company under the Plaintiff’s sole direction, ownership and control. *Both the business and the real estate are being sold. Both are owned by JSPT, LLC.*

³Effective July 8, 2010, this provision has been amended to permit modification “upon the express written consent or agreement to the modification by both spouses.” This provision was not in effect at the time that the trial court entered the order from which this appeal was taken. Furthermore, both parties have not agreed to the

RBW. Plaintiff shall make a bona fide effort to sell Highlander Laundromat, and the court retains jurisdiction over this issue. The parties own no other interest in real property. PBP.”

{¶ 27} The only ambiguity James asserts concerning this provision is the scope of the retention-of-jurisdiction recited in the penultimate sentence. But it makes no difference how the retention-of-jurisdiction clause is interpreted. By virtue of R.C. 3105.171(I), the trial court lacked jurisdiction to modify provisions pertaining to the division of property, and the parties could not agree to enlarge the trial court’s jurisdiction in this regard, even if they wished, and purported, to do so.

{¶ 28} R.C. 3105.18(E) also does not provide a basis for modifying the order. R.C. 3105.18(E) states that:

{¶ 29} “If a continuing order for periodic payments of money as alimony is entered in a divorce or dissolution of marriage action that is determined on or after May 2, 1986, and before January 1, 1991, or if a continuing order for periodic payments of money as spousal support is entered in a divorce or dissolution of marriage action that is determined on or after January 1, 1991, the court that enters the decree of divorce or dissolution of marriage does not have jurisdiction to modify the amount or terms of the alimony or spousal support unless the court determines that the circumstances of either party have changed and unless one of the following applies:

{¶ 30} “(1) In the case of a divorce, the decree or a separation agreement of the parties to the divorce that is incorporated into the decree contains a provision

modification requested by James.

specifically authorizing the court to modify the amount or terms of alimony or spousal support. * * *

{¶ 31} The agreed recommendations signed by the parties specifically state that:

{¶ 32} “It is further recommended that neither party pay spousal support to the other and the court shall not retain jurisdiction over this issue.”

{¶ 33} Accordingly, even if the rental payments James is required to pay are properly deemed to be spousal support, the trial court could not subsequently modify the decree to change the manner in which the rental payments are being paid.

{¶ 34} To recapitulate, if the provision requiring James to pay Seria’s rental payments is deemed to constitute a provision for property division, R.C. 3105.171(I) provides that the trial court lacks jurisdiction to modify it; but if the provision requiring James to pay Seria’s rental payments is deemed to constitute a provision for spousal support, then the decree itself provides that it cannot be modified, which is in accord with R.C. 3105.18(E).

{¶ 35} James’s First and Second Assignments of Error are overruled.

II

{¶ 36} James’s Third Assignment of Error is as follows:

{¶ 37} “THE TRIAL COURT ERRED IN FINDING THE MONTHLY RENTAL PAYMENTS WERE SPOUSAL SUPPORT.”

{¶ 38} Under this assignment of error, James contends that the trial court erred in finding that the rental payments are spousal support, because the prior order

precludes the payment of spousal support by either party.

{¶ 39} As noted in Part II, above, it is immaterial whether the rental payments James is required to make under the decree are properly deemed to be in the nature of property division or whether they are more properly deemed to constitute spousal support. Either way, the trial court lacks continuing jurisdiction to modify this requirement.

{¶ 40} James’s Third Assignment of Error is overruled.

IV

{¶ 41} All of James’s assignments of error having been overruled, the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and FROELICH, J., concur.

Copies mailed to:

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Stacey Robert Pavlatos
Hon. Lori L. Reisinger