

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Ratiba Abdouni,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-425
Abdo Abdouni,	:	(C.P.C. No. 07DR-04-1756)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on November 19, 2009

DeSanto & McNichols, and *Debra J. DeSanto*, for appellee.

Paul R. Panico, for appellant.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations

TYACK, J.

{¶1} Abdo Abdouni is appealing from the terms of his final decree of divorce. He assigns a single error for our consideration:

The trial court abused its discretion and erred as a matter of law in awarding Appellee a cash property settlement of \$21,864.36.

{¶2} The funds in dispute are the equity in the marital residence as computed by the trial court and as ordered to be divided.

{¶3} In 2003, Abdo and Ratiba Abdouni purchased 3016 Carleton Court in Columbus, Ohio. In 2005, they took out a second mortgage for \$59,000 and provided those funds to Abdo's sister to help her with her restaurant business.

{¶4} While their divorce was pending, Ratiba quit claimed her interest in the marital residence to Abdo in order to allow him to refinance the first and second mortgage in his name only.

{¶5} The trial court found the value of the real estate to be \$177,500. The judge found the first mortgage balance to be \$106,281.44 and the payoff of the second mortgage to be \$44,888 at the time of the refinancing. The closing costs for the refinancing were found to be \$2,321.84. Ratiba received \$12,584 at the time of the closing and Abdo received the balance generated by the refinancing.

{¶6} The trial court found that Ratiba benefited from the refinancing to get her name off the loans. As a result, the court reduced the equity by the \$2,321.84 figure. However, the trial court also viewed the funds provided to Abdo's sister as being solely Abdo's funds and the debt related to those funds as being solely Abdo's debt. As a result, the trial court found the overall equity to be \$71,218.56 and the net equity, after removing the cost of refinancing to be \$68,896.72. The trial court awarded each party one-half of the net equity or \$34,448.36. From those figures, the trial court deducted the \$12,584 already paid to Ratiba, leaving \$21,864.36 due to Ratiba.

{¶7} At the time the second mortgage was taken out to benefit Abdo's sister, the parties expected the sister to pay the mortgage by providing the funds to pay the mortgage to Abdo shortly before the payments were due. Abdo and Ratiba did not receive a note or other legal document to allow a court remedy if the sister did not pay. The debt apparently was a matter of honor and nothing else was required to assure its payment.

{¶8} Unfortunately, the sister became unable to pay. The trial court was informed that after the sister stopped paying, she was killed in an automobile accident. The trial court was presented with no proof as to the estate or the recoverability of any party responsible for the death.

{¶9} The trial court made the most reasonable order possible under the circumstances. The risk one takes when providing funds to a family member is that the family member will not return the funds. A trial court is well within its discretion to burden the person who provided the funds to a family member with the responsibility for those funds. Certainly a trial court does not abuse its discretion by doing so.

{¶10} "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶11} An abuse of discretion connotes more than an error of judgment; it implies a decision that is arbitrary or capricious, one that is without a reasonable basis or clearly wrong. *Pembaur v. Leis* (1982), 1 Ohio St.3d 89; *Wise v. Ohio Motor Vehicle Dealers Bd.* (1995), 106 Ohio App.3d 562, 565; and *In re Ghali* (1992), 83 Ohio App.3d 460, 466.

{¶12} As a result, the sole assignment of error is overruled. The judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed.

Judgment affirmed.

SADLER and KLINE, JJ., concur.

KLINE, J., of the Fourth Appellate District, sitting by assignment in the Tenth Appellate District.
