

IN THE SUPREME COURT OF GUAM

DORIS LEON GUERRERO

Plaintiff-Appellee

vs.

DOUGLAS B. MOYLAN

Defendant-Appellant

OPINION

Filed: September 19, 2000

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Supreme Court Case No. CVA99-034

Superior Court Case No. DM0457-97

Appeal from the Superior Court of Guam

Argued and submitted on March 11, 2000

Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, Chief Justice (Acting)¹, JOHN A. MANGLONA, Designated Justice, and RICHARD L. JOHNSON, Justice *Pro Tempore*.

SIGUENZA, C. J.:

INTRODUCTION

[1] This case presents two issues of community property. The first concerns disposition; the second, reimbursement. For the reasons below, we hold that the trial court erred when it determined that the Appellant-husband was obligated to pay to the Appellee-wife the full amount of her contribution even where the proceeds from the sale of the community property asset were insufficient to fully reimburse her separate contribution. Therefore, we reverse the trial court's decision and remand the matter for further proceedings with instructions to determine the fair market value of the residence and order its sale pursuant to the Final Decree of Divorce.

BACKGROUND

[2] On July 7, 1990, Doris Leon Guerrero (hereinafter "Appellee") and Douglas Moylan (hereinafter "Appellant") were married. On November 16, 1993, the couple purchased their family residence, located in Dededo, Guam. The purchase was accomplished by a contribution of \$69,663.82 from Appellee towards the down payment. The parties agree that this was her separate property. Financing for the remainder of the purchase price was obtained through a loan from Citizens Security Bank in the amount

¹The Chief Justice recused himself from deciding this matter. Justice Siguenza, as the senior member of the panel, was designated as the Acting Chief Justice.

of \$278,655.18 which was evidenced by a promissory note. The obligations of the Appellant and Appellee under the note were secured by mortgage on the residence.

[3] On May 30, 1997, the Appellee filed a verified complaint for divorce on the grounds of extreme cruelty and grievous mental suffering. On June 13, 1997, the parties reached a settlement on certain issues and were granted an Interlocutory Judgment of Divorce. The Interlocutory Judgment of Divorce was executed and approved by the court below on October 3, 1997. The decree purports to memorialize, *inter alia*, the property settlement agreement of the parties reached on June 13, 1997. Of relevance to this dispute, the decree provided:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the family residence will be immediately, following receipt of this order, listed for sale by defendant [Appellant] with Century 21 Realty for sale at the last appraised value of three hundred eighty thousand dollars (\$380,000.00), and if no sale occurs in three months from the date of the listing of the residence, the parties will meet and confer with the Realtor to confer over the three highest offers received to set the price for sale of family residence, if possible, and if the parties cannot agree the matter may be brought to the attention of the court to establish the price for sale. Until the house is sold, defendant shall have possession of the family residence and be responsible to pay the mortgage thereon, and utilities and other normal expenses associated with the residence incurred during his sole possession. Upon sale of the residence, the proceeds shall first be applied to the existing mortgages, expenses of sale, Realtor's fees, and escrow fees occasioned by the seller in the sale, the remaining proceeds shall be divided among the parties by next paying to plaintiff [Appellee] up to the sum of sixty-nine thousand dollars (\$69,000.00), of the proceeds, to represent her separate property interest in the residence, and any proceeds existing thereafter shall be divided equally between the parties.

See Leon Guerrero v. Moylan, DM0457-97 (Super. Ct. Guam Oct. 3, 1997)(Interlocutory Judgment of Divorce).

[4] In addition, the Interlocutory Judgment for Divorce provided: “**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that a Final Judgment of Divorce shall be issued forthwith without delay.” *Id.* Neither party has made a motion to otherwise seek relief from the Judgment.

[5] On April 20, 1999, the Appellant brought a Motion to Compel Sale or Transfer. The motion was heard before the trial judge on May 11, 1999. The Appellant sought to compel the sale of the residence to him for \$265,273.84. In the alternative, he requested that the court order that the property be transferred to the Appellee and that she assume the entire mortgage on the property. The trial court, in its Decision and Order dated May 12, 1999, denied the motion. The court determined that Appellee would not receive reimbursement of her separate property contribution towards the purchase of the residence if the Appellant’s motion was granted. The court noted that the Appellee did not want to reside in the house nor did she have the resources to assume the monthly mortgage payments. The Appellee had presented an alternative solution wherein she would forego approximately \$31,000.00 of her separate property reimbursement if the Appellant would purchase the residence at the then-appraised value of \$304,000.00 and, in turn, she would receive the difference between the purchase price and the outstanding mortgage balance as reimbursement of her separate property contribution. The court found that the Appellee’s proposal was reasonable and equitable to both parties and ordered that the Appellant had ninety days within which to purchase the property at issue for \$304,000.00 and if he should, then the amount of \$38,726.16 would be paid to the Appellee to serve as reimbursement of her separate property contribution. Additionally, the Order provided that should the Appellant wish to pursue the argument that the fair market value of the residence was less than \$304,000.00 he could obtain another appraisal of the

property.

[6] Subsequently, the Appellant retained the services of an appraiser and thereafter filed a Motion to Set Fair Market Value which was heard by the court on July 29, 1999. The court below issued a Decision and Order on this motion on August 18, 1999. It held that the value of the residence is not the critical issue in the matter and further noted that the Appellant was trying to avoid paying to the Appellee the separate property contribution and that such was not equitable. Thus, the lower court concluded that the Appellant is obligated to repay the Appellee her separate property contribution towards the purchase of the residence. It ruled that the Appellant may purchase the property for the price which reflects its current value; however, the Appellant must still reimburse the Appellee. It is this order that the Appellant appeals.

DISCUSSION

[7] Jurisdiction of the court is found pursuant to Title 7 GCA §§ 3107 and 3108(a) (1994). Appellant presents, as an additional basis for this court's jurisdiction over the matter, Title 19 GCA § 8414 (1994) which provides: "The disposition of the community property and of the homestead, as above provided, is subject to revision on appeal in all particulars including those which are stated to be in the discretion of the court." 19 GCA § 8414.²

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As a preliminary matter, the Appellant timely filed his notice of appeal and submitted his Opening Brief; however, the Appellee failed to file a responsive brief. Pursuant to Rule 17 of the Guam Rules of Appellate Procedure, this court denied Appellee's Motion for Extension of Time for Filing Brief. *See Leon Guerrero v. Moylan*, CVA99-034 (Order Jan. 18, 2000). On January 19, 2000, the Appellee filed a Motion for Reconsideration Re: Request for Extension for Filing Appellee's Brief. The court similarly denied the motion. *See Leon Guerrero v. Moylan*, CVA99-034 (Order Jan. 21, 2000). The Appellee was advised that pursuant to Rule 17(d)(2) of the GRAP, she was deemed to have waived oral argument; however, that should the appeal proceed to oral argument, the court maintained its

[8] A divorce decree incorporating a settlement agreement is simply a consent decree. *Richardson v. Edwards*, 127 F. 3d 97, 101 (C.A.D.C. 1997). Decisions interpreting a consent decree and the agreements underlying them are reviewed *de novo*. *Id.* A consent decree is a form of contract. *Id.* “It is approved on its face by a court presumably not privy to the details of the negotiation, or the parties’ subjective intentions; it is then incorporated in a judicial order; and it is ultimately backed up by the court’s power of contempt.” *Id.* This court has previously ruled that contract principles apply to the interpretation of settlement agreements. *See Camacho v. Camacho*, 1997 Guam 5, ¶ 32. In the interpretation of contracts, effect must be given to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful. *See Title 18 GCA § 87102* (1992). Thus, when a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible. *Camacho*, 1997 Guam 5 at ¶ 32 (citing to Title 18 GCA § 87105 (1992)); *see also Boyett v. Boyett*, 799 S.W. 2d 360, 362 (Tex. Ct. App. 1990)(ruling that marital property agreements, even if incorporated into a final divorce decree, are treated as contracts and the law of contracts then governs interpretation of the decree’s legal force and meaning).

[9] However, it is within the inherent power of the court to set aside consent decrees for fraud, mistake, or absence of real consent. *See Hafner v. Hafner*, 54 N.W. 2d 854, 857-858 (Minn. 1952) (citation omitted). Where a party to a divorce action, represented by counsel, voluntarily executes a property settlement agreement which is approved by the court and incorporated into a divorce decree, such

discretion to question her counsel, if it so desired. *Id.* At oral argument, the Appellee was allowed to address the court and respond to the various contentions of the Appellant.

a decree may not be vacated or modified as to such property provisions in the absence of fraud or gross inequity. *See Hoshor v. Hoshor*, 580 N.W. 2d 516, 522 (Neb. 1998) (citations omitted).

[10] It was not disputed by the parties, either in the Appellant's brief or at oral argument, that the court's Interlocutory Judgment of Divorce reflects the agreement of the parties. The parties may not, by contract with each other, alter their legal relations; however, they may enter into an agreement respecting property. *See* Title 19 GCA § 6111 (1993).³ The particular provision at issue, the disposition of the marital residence and the concomitant reimbursement of the Appellee's separate property contribution, is such an agreement.

[11] When we examine the provision at issue in this case, it is clear that the mutual intent of the parties was the immediate listing for sale of the residence at the last appraised value of \$380,000.00; however, in the event that no sale at that price occurred within three months of listing, the parties, together with the realtor, would consider amongst themselves the three highest offers received and agree on a price for sale. If no agreement could be reached, then the parties were to come before the court to establish the price. It is equally clear that until the house was sold, the Appellant was to have sole possession of the residence and be responsible for paying the mortgage, utilities and other expenses associated with the resi-

³ The statute provides:

(a) Either husband or wife may enter into any engagement or transaction with the other, respecting property subject, in transaction between themselves, to the general rules which control the actions of persons occupying confidential relations with each other. (b) A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during such separation. (c) The mutual consent of the parties is a sufficient consideration for such an agreement. Title 19 GCA § 6111 (1993).

dence.

[12] Moreover, the parties unequivocally intended that upon the sale of the residence, the proceeds were to first, pay off the existing mortgage, then the associated expenses of sale. Any residual proceeds were then to be divided among the parties, in priority, to the Appellee up to the sum of \$69,000.00 to represent her separate property interest in the residence then to equally divide whatever remained between the parties. However, as the record here reveals, the parties were unable to sell the residence at the original price of \$380,000.00. It was not until close to two and a half years after the date of the Final Judgment that any party sought the assistance of the court in determining the sale price for the residence.

[13] In its resolution, the trial court concluded that the separate property debt and the settlement agreement were two distinct and independent obligations. This was error.

[14] We find that it was the intent of the respective parties that only the proceeds of the sale were to be used to reimburse the Appellee. The parties were represented by counsel and understood the terms of the agreement. *See, e.g., In re Woodford*, 839 P.2d 574 (Mont. 1992). Moreover, our conclusion rests not only with the plain language of the agreement but is further supported by the fact that the Appellee herself agreed to forego approximately \$31,000.00 of her separate property reimbursement if the Appellant would purchase the residence at the then-appraised value of \$304,000.

[15] Parties to a divorce are free to bargain away their separate property in settlement agreements. *See* 19 GCA § 6111 (1993); *and Boyett*, 799 S.W. 2d at 363 (citations omitted). This holds true even where the price the parties might be able to obtain for the sale of the marital residence may not be sufficient to reimburse the Appellee's contribution. Thus, pursuant to the parties' agreement and its October 3, 1997

memorialization, the lower court should have established the price for sale of the residence. If, after payment of the mortgage and associated expenses proceeds from the sale remain, then the balance will be used to reimburse the Appellee up to \$69,000.00 before any division between the parties will occur.

CONCLUSION

[16] Therefore, we hold that, as a matter of contract interpretation, the parties intended that the Appellee would receive reimbursement of her separate property interest in the residence exclusively from the proceeds of the sale of the residence and thus **REVERSE** the order of the court below. Furthermore, we **REMAND** the matter for determination of the sale price for the residence and for further proceedings consistent with this opinion.

JOHN A. MANGLONA
Designated Justice

RICHARD L. JOHNSON
Justice Pro Tempore

PETER C. SIGUENZA
Chief Justice