Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-247

APRIL TERM, 2007

Lindy (Bettis) Hatcher	}	APPEALED FROM:
	}	
v.	}	Addison Family Court
	}	
Alan Paul Bettis	}	
	}	DOCKET NO. 48-3-01 Andm
		Trial Judge: Matthew I. Katz

In the above-entitled cause, the Clerk will enter:

Wife Lindy Hatcher appeals from the trial court's order, which decided various motions related to the distribution of the equity in the parties' former marital residence. She argues that the court erred in concluding that she was entitled only to the buyout price established by a prior court order. We affirm.

The procedural history of this case is somewhat complicated. The parties were married in 1998 and divorced in 2001. They have no children together. They entered into a stipulation for the disposition of their assets, including the marital home, which was incorporated in their final divorce decree. In relevant part, they agreed to place the home on the market for one year with an initial listing price of $240,000. If the property was sold during this period, the parties would share the net proceeds after paying certain debts and obligations.

If the parties did not sell the residence within one year for $200,000 or more, husband had the right to buy out wife's interest in the home. Wife's interest was defined as "one half the equity in the house," after payment of certain specified debts and obligations. The parties agreed that for purposes of the buyout, the home was "valued at $192,000 and pending Country Wide's updated appraisal." The agreement provided that husband must notify wife of his intent to buy out her interest in writing within one year of the date of the parties' stipulation. If husband decided not to buy out wife's half-interest, the property would remain on the market. If this occurred, the agreement provided for a reduction of the asking price over time, and stated that neither party should decline to accept any reasonable offer for the property.

The home did not sell within a year and husband notified wife in writing of his intent to buy out her interest within the required time period. The parties disagreed over what amounts should be deducted from the buyout price, and they filed a variety of motions with the court. A hearing was held on husband's motion to enforce, and in November 2003, the family court ordered husband to pay wife $4782 to buy out her interest in the residence. The court calculated this amount by relying on the agreed-upon value of $192,000 for the home and deducting the outstanding mortgage

obligation, home equity loan, and other debts that the parties agreed would be paid out of the equity. No party appealed from this order.

In April 2004, wife filed a motion to enforce and/or modify, asserting that husband had not yet paid her the court-ordered sum, and he had recently received an offer of $270,000 for the house. She argued that she was entitled to her share of the increased equity. The family court ruled on this motion in May 2004, ordering husband to accept the offer made for the house, pay the $4782 owed wife, and place the remaining funds in an escrow account until further order of the court. Husband moved to vacate the court's decision, asserting that he was not properly served with wife's motion. In September 2004, wife filed a motion for contempt based on husband's failure to accept the outstanding offer for the house. This motion was stayed in June 2005.

The family court subsequently addressed all of these issues and outstanding motions in its May 2006 decision, which is the order wife challenges in this appeal. As an initial matter, the court vacated the court's May 2004 ruling, finding that husband was not properly served. As to the buyout provision, the court found as follows. Both parties sought different resolutions of the matter. Husband was willing to pay wife $4782 plus interest as a final settlement of the dispute. Husband argued that the court lacked the ability to modify the previous property settlement. Wife argued that the court should either enforce the sale and distribution provision of the decree and craft a remedy for husband's breach of the court's May 2004 order to sell the residence to a willing buyer, or modify the final divorce order to account for the increase in the value of the residence during the intervening years.

The court rejected wife's arguments. As it explained, it was well-settled that the court could not modify a divorce property-settlement decree absent evidence of fraud, coercion, impossibility, or unconscionable advantage, and none of those circumstances appeared here. The record showed that the parties mutually agreed to set the buyout price of the house at $192,000, and wife provided no evidence that the parties' agreement to this price was tainted by unfair dealings. Thus, the court held, the parties were bound by the plain language of the 2001 final divorce order. The court rejected wife's assertion that husband had not validly triggered the buyout provision because he had not yet paid her the amount owed. The court found that the provision was triggered when husband notified wife of his intent to buy out her interest, and concluded that husband's failure to pay wife did not render the buyout provision inapplicable. The court explained that wife was entitled to payment of the buyout price but she could not now assert that the court should revert to another provision of the final divorce order for the disposition of the marital residence. Moreover, the court added, absent evidence of unconscionability, coercion or mutual mistake, wife could not seek to modify the final order simply because the house appreciated in value.

The court rejected wife's assertion that it had authority under V.R.F.P. 4(j)(1) to modify the fairly negotiated settlement decree. It found that, although the rule set forth the procedure for post-judgment motions in family proceedings, it did not enhance the court's power to modify final divorce orders, and a procedural rule could not be used to enlarge a substantive right. The court also rejected wife's alternative proposition that V.R.C.P. 60(b)(5) vested it with authority to modify the final order. The court explained that, although it lacked authority to modify the divorce decree, it did have the authority to enforce its terms, and in its November 2003 order, it interpreted the final order to

require husband to pay wife $4782 for her interest in the marital home. Husband failed to do so, and he thereby failed to comply with the court's order and the terms of the final divorce order. The court thus ordered husband to pay wife this sum plus interest from November 2003. Wife appealed.

Wife argues that the court erred in reaching its conclusion. She maintains that the court should have considered the entire stipulated final divorce order in determining the meaning of the buyout provision and in reaching its conclusion that husband had exercised his right to buy out wife's interest. According to wife, the essence of the parties' stipulation was an equal division of the equity in the home, and she asserts that the buyout provision unambiguously requires not just notice of intent but also a timely payment. Absent such steps, she argues that another provision of the divorce decree remained operative, which required the parties to keep the home on the market and split the proceeds from the sale. Alternatively, wife argues that the court was not required to accept Judge Toor's earlier decision that husband must pay her $4782 to buy out her interest because the court did not consider what would happen if husband provided written notice to buy out her interest but never tendered payment. She further argues that the court was authorized to construct a remedy for husband's behavior, which should not be characterized as a "modification" of the final divorce decree. Finally, wife asserts that the court had the power to modify the decision under V.R.F.P. 4(j)(1).

We find all of these arguments without merit. The family court properly construed the plain language of the parties' stipulation, and it did not err in denying wife's request to modify its express terms. First, there is no support for wife's assertion that the court erred in construing the parties' stipulation. The agreement plainly provided that husband could buy out wife's share of the marital home and the parties agreed that, for purposes of the buy out, the house would be valued at $192,000. Consistent with the terms of the agreement, husband notified wife in writing of his intent to buy out her interest in the home. While husband obviously is obligated to pay wife the amount owed at the time of actual conveyance, his written notice of intent to buy out her share was all that was required under the agreement to trigger the option. See J.R. Kemper, Annotation, Necessity for Payment or Tender of Purchase Money within Option Period in Order to Exercise Option, in Absence of Specific Time Requirement for Payment, 71 A.L.R.3d 1201, § 2 (2007) (explaining that, consistent with general contract principles, requirements for exercising option are determined by language of agreement, and where agreement does not provide for payment of the purchase price at time of, or coincident with, optionee's exercise of option, or where contract is silent as to the time of payment, general rule is that payment is not a necessary requisite to exercise of option). Consideration of the whole agreement, as urged by wife, does not compel a contrary conclusion. Where, as here, "the language of the decree is unambiguous, we apply it according to its terms." Sumner v. Sumner, 2004 VT 45, ¶ 9, 176 Vt. 452. There is no support for wife's assertion that husband waived his right to buy out her share, or that his failure to pay her triggered a different part of the parties' agreement.

Upon husband's noncompliance with the terms of the divorce order, and the family court's subsequent order that he pay wife $4782 to buy out her interest, wife "had the full range of remedies available under an order holding defendant in contempt." Viskup v. Viskup, 149 Vt. 89, 91 (1987). This did not include, however, the right to amend the parties' underlying agreement absent the circumstance recited in V.R.C.P. 60(b). Id. As we have repeatedly stated, "[i]t is well settled in

Vermont that a divorce decree relative to property is final and not generally subject to modification, absent evidence of fraud or coercion." Id. at 90. As the trial court found, none of these circumstances was present, and thus, the parties were properly held to the terms of their agreement.

Wife's reliance on V.R.F.P. 4(j)(1) is misplaced. That rule does not confer authority on the family court to modify the terms of the parties' final agreement absent the circumstances discussed above. See Boisselle v. Boisselle, 162 Vt. 240, 243 n.1 (1994) (concluding that family court lacked authority to modify final divorce order under V.R.C.P. 60(b)(5) and noting that result would be the same under V.R.F.P. 4(a), which provides that the Vermont Rules of Civil Procedure apply to family court proceedings except as otherwise provided); see also Reporter's Notes, V.R.F.P. 4(j)(1) (rule, as amended, makes clear that motions for new trial or other relief from judgment under V.R.C.P. 59 or 60 are not covered by V.R.F.P. 4(j)(1), but are instead governed by the applicable provisions of the civil rules). As we recently reiterated, after the family court rules went into effect, the family court is not free to modify a property disposition in a divorce decree absent grounds under V.R.C.P. 60. Sumner, 2004 VT 45, ¶ 13.

We similarly reject wife's assertion that she was not actually requesting a modification of the underlying divorce order but rather seeking an order, in connection with her contempt motion, that fashioned a remedy consistent with the provisions of that agreement. In making these assertions, wife appears to rely on rulings made by the family court in its May 2004 order, which was vacated by the court in May 2006. These assertions are without merit. Wife's requested relief is not consistent with the parties' agreement; rather, she seeks an impermissible modification of its express terms. Cf. id. (where family court issued supplementary order to enforce provision of divorce decree, order was not a modification of the underlying judgment). The provision in the parties' agreement on which wife relies became irrelevant when husband exercised his right to buy out wife's interest. We find no basis to disturb the family court's decision.

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice