

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-374

MARCH TERM, 2004

	} APPEALED FROM:
	}
	} Chittenden Family Court
Debra L. Kobus	}
	}
v.	} DOCKET NO. 625-7-94 Cndm
	}
Kevin D. Crown	} Trial Judge: Linda Levitt
	}
	}

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

Husband appeals from a family court judgment amending the parties= final divorce decree and ordering that the marital home be granted solely to wife. Husband contends: (1) the court lacked authority to amend the property division of the divorce decree; and (2) a post-dissolution general release signed by the parties did not demonstrate the parties= intent to permanently modify the decree. We affirm.

The facts may be summarized as follows. The parties were divorced in June 1995. The divorce judgment awarded physical and legal rights and responsibilities for the parties= three minor children to wife. The judgment awarded the marital home and responsibility for the mortgage, taxes, and other expenses to husband, providing further that husband was to refinance the property in his name only within five years of the final divorce hearing, and that if husband failed to refinance within the five-year period the property was to be sold and the proceeds divided between the parties.

In March 1996, husband received a job offer that required a move to California. As a result, he contacted wife, who was living in a rental unit, and asked her to take over the house and related payments. Although wife was reluctant to assume financial responsibility for both the house and her rental unit, she agreed to husband= s request and drafted a document entitled A general release@ that provided, among other things, that husband A hereby release[s] any claims both known or unknown that have arisen or may arise@ from certain provisions of the parties= final order and decree of divorce, including husband= s A claim on home and property located at Lot 7, St. George Estates, St. George, Vermont along with any claim on profits from sale of real estate located at Lot 7, St. George Estates, St. George, Vermont,@ and wife agreed to assume all responsibility for the mortgage and tax payments. The release additionally provided that the releasor (husband) A intends to bind his or her spouse, heirs, legal representatives, assigns and anyone else claiming under him or her.@ Husband executed the release, as well as a promissory note to wife for \$1500, payable in installments, to provide temporary assistance to wife for the mortgage and rental payments.

Wife gave up her rental unit and moved into the home. She then assumed responsibility for all mortgage payments, taxes, and other expenses. The court found that, at the time of hearing in 2003, wife had paid over \$90,000 in mortgage payments and over \$34,000 in maintenance and repairs. In February 2003, apparently in response to wife= s action for child support arrearage in California, husband executed a document purporting to revoke the general release. In response, wife moved to amend the divorce judgment to incorporate the parties= agreement and assign sole ownership of the house to wife. Husband opposed the motion, claiming that the release was merely temporary, and moved to enforce the divorce decree by forcing a sale of the property and dividing the proceeds. Following a hearing in which

both husband and wife testified, the court found that the release was not temporary, and entered a judgment granting wife= s motion to amend the divorce decree and ordering that the property be granted solely to wife. This appeal followed.

Husband contends the court lacked authority to amend the divorce decree. Although we have held that courts are generally not free to modify the property division of a divorce decree, Boisselle v. Boisselle, 162 Vt. 240, 242 (1994), we have never applied this rule to preclude a court from modifying a decree to incorporate a post-dissolution agreement between the parties. We note, however, that other courts have permitted such modifications. See, e.g., Nelson v. Quade, 413 N.W.2d 824, 828 (Minn. Ct. App. 1987) (holding that A the parties were competent to enter into agreements concerning solely matters of property division@ after divorce judgment, and court would enforce agreement assuming that A all necessary elements of a contract are satisfied@). Where the modification merely incorporates an agreement between the parties, we discern no threat to the policy of finality underlying the general rule. See Viskup v. Viskup, 149 Vt. 89, 90-91 (1987) (divorce decree relative to property is final and therefore not subject to modification). Accordingly, we conclude that the court had the authority to modify the judgment to incorporate husband= s specific release of his claim, under the decree, to the house and any proceeds from the sale thereof.

Husband also contends the release was intended merely to memorialize a temporary arrangement, and was not a proper document to waive his interest in the property. The court concluded otherwise, noting that the release unambiguously waived any claim to the house, and purported to bind husband= s heirs and assigns. Husband cites nothing in the language of the release to suggest that it was intended merely to be temporary, nor any legal authority to suggest that it was ineffective to waive his interest in the property. Accordingly, we discern no basis to disturb the judgment.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Paul L. Reiber, Associate Justice

