

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

RUTH C. MEES,	:	APPEAL NO. C-210187
	:	TRIAL NO. DR-1001597
Plaintiff-Appellee,	:	
	:	
vs.	:	
	:	<i>OPINION.</i>
HOWARD L. MEES,	:	
	:	
Defendant-Appellant.	:	

Appeal From: Hamilton County Court of Common Pleas, Domestic Relations
Division

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: December 22, 2021

Buechner Haffer Meyers and Robert J. Meyers, for Plaintiff-Appellee,

Robert G. Kelly, for Defendant-Appellant.

BOCK, Judge.

{¶1} Defendant-appellant Howard L. Mees appeals the Hamilton County Court of Common Pleas, Domestic Relations Division’s judgment allocating marital assets. We affirm the trial court’s judgment.

Relevant Facts and Procedural History

{¶2} Ruth and Howard Mees¹ were divorced in June 2012. The divorce decree (“Decree”) incorporated an “Agreed Entry Property Issues” (“Property Agreement”) detailing a property settlement that was reached by the parties.

The Property Agreement

{¶3} Under the Property Agreement, the parties were required to dispose of certain assets, including their interest in two closely-held companies—Mees Distributors, Inc., (“Mees Distributors”) and HLH, L.L.C., (“HLH”)—and all commercial real estate properties, which were located in Dayton and Columbus and on Elmore Place in Cincinnati (“the Properties”).

{¶4} Howard controlled the operation of Mees Distributors. Ruth and Howard jointly owned the Properties. Mees Distributors paid rent to Ruth and Howard for use of the Properties. Mees Distributors treated these payments as rental payments for tax purposes. Under the Property Agreement, Ruth and Howard were to divide the rental income from the Properties equally and claim half of the rental income and half of the expenses on their respective tax returns.

{¶5} The trial court appointed David Kamp to handle the parties’ assets, first as special master and then as receiver. The Decree and Property Agreement both

¹ As the parties share a surname, they are referred to by their first names.

state that the receiver is “the appointed person to manage the sale and disposition of the [marital] assets.” It also provides that the receiver:

* * * [i]s responsible for obtaining information necessary to make a decision for the sales, price, terms, expenses of sale, and the like for the assets identified * * * If the parties cannot agree on these terms and conditions, prices, etc. then David Kamp shall try and resolve the dispute between the parties. If he cannot resolve the dispute between the parties, then he shall make the decision which is needed.

{¶6} The Property Agreement authorized the receiver to sign documents on the parties’ behalf and consult with independent experts on the assets’ value and conditions of sale.

The Receiver’s Recommendation

{¶7} More than eight years later, and despite the Decree requiring that the assets be sold and distributed, four items remained to be allocated in 2020: the Elmore property, HLH, a life insurance policy, and Mees Distributors.

{¶8} In December 2020, the receiver filed recommendations. It discussed the difficulty that he had due to the parties’ lack of mutual cooperation and stated that “Howard’s hostile attitude towards the unwinding of his marriage and the liquidation of marital property stymied all of my efforts to facilitate sale of the marital assets.” The receiver provided the trial court with recommendations as to how the parties’ remaining assets should be allocated.

{¶9} **Elmore Property:** The receiver recommended that by March 31, 2021, Ruth should quitclaim her interest in the Elmore Avenue property to Howard, who would pay her \$125,000 for her interest and agree to indemnify her against any

liabilities associated with her previous ownership. Ruth's share of the rental income would be paid directly to her. Howard was to assume all outstanding loans, mortgages, liens, and liabilities associated with the Elmore property, including paying back a \$178,000 loan from Mees Distributors.

{¶10} **HLH:** The receiver recommended that by March 31, 2021, Ruth quitclaim her interest in HLH to Howard, who would pay her \$295,000. Howard would assume and indemnify Ruth against any liability arising out of her previous ownership, membership, or equitable interest in HLH.

{¶11} **Officer Life Insurance Policy:** Howard was to transfer the policy to Ruth, who would assume responsibility for the premium.

{¶12} **Mees Distributors:** The receiver found that Mees Distributors' value was its inventory, but he had encountered problems valuating the inventory. The receiver recommended that Ruth should retain her 21.9 percent shareholder interest, which would be converted to a nonvoting interest. Howard would retain his pre-marital and marital shares as voting shares. A loan that Mees Distributors had made to Ruth would remain on the books, continuing to accrue interest at the lowest IRS interest rate, with no maturity date. Howard would represent and warrant that Mees Distributors would not collect on the loan. Howard would ensure that Mees Distributors paid a \$27,500 promissory note to Ruth by December 31, 2021.

Trial Court Adopted Receiver's Recommendations

{¶13} The parties provided written responses to the receiver's recommendations. In February 2021, the trial court ordered that the remaining marital assets be distributed as the receiver had recommended. Howard appealed.

Law and Analysis

A. Standard of Review

{¶14} A trial court retains full power to enforce a divorce decree’s provisions. See *Evans v. Evans*, 4th Dist. Scioto No. 02CA2869, 2003-Ohio-4674, ¶ 8; *Cherry v. Figart*, 86 Ohio App.3d 123, 126, 620 N.E.2d 174 (12th Dist.1993). “A trial court has broad discretion when dividing marital property.” *Johnson v. Johnson*, 2d Dist. Greene No. 2018-CA-36, 2019-Ohio-1024, ¶ 7, quoting *Williams v. Williams*, 2018-Ohio-611, 106 N.E.3d 317, ¶ 7 (2d Dist.). A reviewing court may reverse or modify a trial court’s property division if it finds that the trial court abused its discretion. *Thompson v. Thompson*, 1st Dist. Hamilton No. C-050578, 2006-Ohio-2623, ¶ 13. A trial court abuses its discretion when its decision is unreasonable, arbitrary, or unconscionable. *Id.*

{¶15} If the parties dispute a decree provision’s meaning, or if the provision is ambiguous, the trial court has the power to hear the matter, to resolve the dispute, and to enforce the decree. *Evans* at ¶ 8. In interpreting a divorce decree that incorporates the parties’ agreement, the normal rules of contract interpretation generally apply to ascertain the meaning of ambiguous language. *Id.* at ¶ 9. Because the interpretation of a written contract is a question of law, an appellate court reviews de novo a trial court’s interpretation of the parties’ written agreement. *Id.*

B. Evidentiary Hearing

{¶16} In Howard’s first assignment of error, he argues that the trial court erred by accepting the receiver’s recommendations without holding an evidentiary hearing.

{¶17} “Where the ‘protracted litigation and the evidence [are] already before the court as to the parties, the property, and the unsatisfied judgments[,]’ the necessity for a hearing is obviated.” *Ratliff v. Ratliff*, 10th Dist. Franklin No. 97APF10-1294, 1998 WL 514039, *5 (Aug. 6, 1998), quoting *Golick v. Golick*, 9 Ohio App.3d 106, 107-108, 458 N.E.2d 459 (8th Dist.1983). A trial court has the discretion to adopt a receiver’s report without a hearing. *Shareholders of Paul-Ann Corp. v. Paul-Ann*, 10th Dist. Franklin No. 99AP-828, 2000 WL 726790, *4 (June 6, 2000).

{¶18} Receivers are court-appointed officers tasked with carrying out duties assigned by the court. Here, the trial court appointed the receiver to effectuate the Property Agreement by managing the sale and disposition of the assets. The entry appointing the receiver, the Property Agreement, and the Decree gave the receiver broad powers to review the assets and determine what actions to take.

{¶19} Nothing required the trial court to hold a hearing on the current value of the assets. Neither party objected to the appointment of the receiver, the Decree, or the Property Agreement. These court entries provided the receiver broad powers to decide how to distribute the assets. Therefore, we cannot find that the trial court abused its discretion by not holding an evidentiary hearing before adopting the receiver’s report. Howard’s first assignment of error is overruled.

C. Disposition of Property

{¶20} Howard’s second assignment of error argues that the trial court abused its discretion by not requiring the receiver to dispose of the Elmore property according to the Decree’s terms.

{¶21} The Property Agreement stated that the Elmore property would be

sold. But, as the receiver was unable to sell the Elmore property, the disposition of it was necessarily different from what the parties had anticipated in the Property Agreement. The Property Agreement unequivocally gave the receiver the authority to make decisions involving the sale and distribution of the parties' assets if the parties could not agree. After more than eight years, it was clear that the parties could not agree.

{¶22} In her response to the receiver's recommendation, Ruth asserted that the Elmore property had been purchased for \$750,000 and attributed any loss in value to Howard and Mees Distributors' failure to maintain the property and pay taxes. The receiver stated that the property had been valued at \$250,000, less a \$178,000 loan for its purchase, noted that Mees Distributors had never paid Ruth rent for its use of the property, and stated that, other than providing rent-free warehouse space to store inventory for Mees Distributors, the property was worthless.

{¶23} Although Howard insists that the trial court erred because the receiver did not dispose of the Elmore property in accordance with the Decree, nothing in the Property Agreement or the Decree described what actions to take should the Elmore property be left unsold. The Property Agreement specifically states that the \$178,000 loan was to be paid to Mees Distributors *from the proceeds of the sale* of the Elmore property. Since the sale never occurred, the receiver resorted to his court-ordered authority to allocate the interest of the *value* of the property to the parties—which he determined was \$250,000. Because the receiver had the authority to manage the disposition of the assets, we hold that the trial court did not abuse its discretion in accepting this recommendation.

{¶24} Howard further contends that he was entitled to notice of any sale and that the receiver violated his obligation to dispose of the property according to the Decree. The record reflects that the receiver could not secure any prospective buyers for the property. Because the Elmore property was never sold, there was no requirement to provide Howard notice.

{¶25} Finally, Howard argues that the Decree did not provide deadlines for him to pay Ruth. But the trial court's imposition of a deadline to make the payment was not unreasonable, arbitrary, or unconscionable considering that the assets remained unsold and undivided more than eight years after the trial court had entered the Decree and Property Agreement into the record.

{¶26} Howard's second assignment of error is overruled.

D. The Final Entry Did Not Modify the Divorce Decree

{¶27} In Howard's third assignment of error, he argues that the trial court modified the parties' Decree by accepting the receiver's recommendations.

{¶28} "A division or disbursement of [marital] property or a distributive award made under this section is not subject to future modification by the court except upon the express written consent or agreement to the modification by both spouses." R.C. 3105.171(I).

{¶29} The Decree states that the parties voluntarily entered into the Property Agreement, which was incorporated into the Decree, and that the parties agreed that the Property Agreement was fair. The Property Agreement clearly and unambiguously gave the receiver the power to manage the sale and distribution of the assets, including making a decision should the parties disagree. The parties could not agree, so the receiver made a decision.

{¶30} Howard contends that the receiver failed to list the cost of maintenance expenses on the Elmore property, which he solely paid. He asserts that the division was inconsistent with the Property Agreement. The Property Agreement provided that the “routine and ordinary costs of sale shall be divided equally between the parties.” It also allows the parties to claim half of the expenses associated with the Elmore property on their tax returns. But the Property Agreement is silent as to who bore the cost of expenses while assets remained unsold. Going beyond expenses unrelated to the costs of selling the property would be contrary to the Decree.

{¶31} Howard also asserts that the receiver ignored HLH’s financial records and provided Ruth with one-sixth of the value of HLH without considering HLH’s debt. The receiver’s recommendation specifies that HLH owns real property worth \$1,770,000. Mees Distributors’ accounting records reflect an account payable from HLH to Mees Distributors of approximately \$450,000 in 2009 or earlier, with interest. The receiver, however, could not substantiate the debt because there were only handwritten notes. Moreover, the Property Agreement did not mention HLH’s payback obligation. Based on his investigation, the receiver found that the marital value of HLH was one-third of \$1,770,000 (\$590,000). Based on the Property Agreement, the trial court properly accepted this valuation because there was nothing in the Decree obligating the trial court to independently value any of the assets.

{¶32} Howard further argues that Mees Distributors owes him more than \$1,673,169.19 for uncashed paychecks, unpaid rent, personal loans, and interest. But Howard’s “documentation” of that debt stumped even a forensic accountant. Absent reliable records, the receiver was entitled to ignore Howard’s assertion that Mees

Distributors owed him anything.

{¶33} The trial court did not abuse its discretion in adopting the receiver's recommendations. Howard's third assignment of error is overruled.

Conclusion

{¶34} The terms of the Decree and Property Agreement are not ambiguous. The receiver was appointed by the court to make recommendations and advise the court accordingly. As an extension of the court, he had wide latitude to divide the assets equitably. *See* R.C. 2735.04(B). Considering the lack of reliable documents and cooperation from the parties on dividing the assets, the receiver worked with what he had.

{¶35} The trial court had broad discretion to enforce the terms of the Decree and Property Agreement after the assets remained unallocated nearly a decade post-decree. The court's decision to adopt the receiver's recommendations did not alter the Decree or the Property Agreement and its decision was not unreasonable, arbitrary, or unconscionable. We therefore affirm the trial court's judgment.

Judgment affirmed.

CROUSE, P.J., and WINKLER, J., concur.

Please note:

The court has recorded its entry on the date of the release of this opinion