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HALINA OSTAPOWICZ v. JERZY WISNIEWSKI
(AC 45889)

Prescott, Cradle and Suarez, Js.*

Syllabus

The plaintiff appealed to this court from the judgment of the trial court rendered on remand, claiming that the court exceeded the scope of this court's remand order. The trial court rendered judgment dissolving the plaintiff's marriage to the defendant and, in its memorandum of decision, ordered the plaintiff to be solely responsible for the payment of the debt on the parties' home equity line of credit and ordered that each party was solely responsible for the payment of his or her respective attorney's fees. The plaintiff appealed, claiming, in part, that the trial court's order regarding the home equity line of credit conflicted with its order regarding attorney's fees because, prior to trial, the defendant had borrowed \$10,000 under the line of credit to pay a portion of his attorney's fees. This court agreed with the plaintiff that the two orders appeared to conflict. It reversed the trial court's judgment only with respect to the order that the plaintiff was solely responsible for the debt on the home equity line of credit and remanded the case with direction to resolve the inconsistency. On remand, the trial court issued an order stating that it was aware of and had taken into account the fact that the defendant had borrowed under the home equity line of credit to pay his attorney's fees and amending the attorney's fees provision of its memorandum of decision to order that each party was solely responsible for the payment of his or her respective attorney's fees in excess of those fees that already had been paid via the home equity line of credit. *Held* that the trial court acted within the scope of this court's remand order because it properly resolved the apparent inconsistency between its order regarding the home equity line of credit and its order regarding the payment of attorney's fees: the plaintiff's unduly narrow interpretation of this court's remand order ignored the portion of the opinion in which this court specifically directed the trial court to resolve the apparent inconsistency between the two provisions; moreover, on remand, the trial court properly resolved the apparent inconsistency, concluding that each party was solely responsible for the payment of his or her respective attorney's fees in excess of the fees that previously had been paid via the home equity line of credit; furthermore, contrary to the plaintiff's contention, the remand order did not require that the trial court order the defendant to pay that portion of debt on the home equity line of credit that was attributed to the fees already paid to his attorney, nor did it require any specific outcome.

Argued September 19—officially released December 19, 2023

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of New Britain, where the defendant filed a counterclaim; thereafter, the case was tried to the court, *Caron, J.*; judgment dismissing the counterclaim, dissolving the marriage and granting certain other relief in accordance with the parties' premarital agreement, from which the plaintiff appealed to this court, *Alexander, Clark and Sheldon, Js.*, which reversed in part the trial court's judgment and remanded the case for further proceedings; subsequently, the court, *Caron, J.*, issued an order clarifying a provision of the dissolution judgment, from which the plaintiff appealed to this court. *Affirmed.*

Keith Yagaloff, for the appellant (plaintiff).

Kevin B. F. Emerson, for the appellee (defendant).

PRESCOTT, J. This marital dissolution matter returns to us following our decision in *Ostapowicz v. Wisniewski*, 210 Conn. App. 401, 270 A.3d 145 (2022). In the prior appeal, this court reversed the judgment of the trial court only as to an order that the plaintiff, Halina Ostapowicz, was solely responsible for the debt on the parties' home equity line of credit and remanded the case to the trial court to resolve a purported inconsistency between that order and an order regarding attorney's fees. *Id.*, 420. The plaintiff now appeals from the judgment of the trial court rendered on remand, claiming that the court exceeded the scope of this court's remand order in *Ostapowicz*. We affirm the judgment of the trial court.

The following facts and procedural history, as set forth in *Ostapowicz*, are relevant to our resolution of this appeal. The plaintiff and the defendant, Jerzy Wisniewski, were married on August 21, 2006. *Id.*, 402. The plaintiff commenced this action against the defendant on October 20, 2017, seeking a dissolution of the parties' marriage. *Id.* On December 30, 2019, following trial, the court issued a memorandum of decision dissolving the marriage on the grounds of an irretrievable breakdown and entering certain financial orders. *Id.*, 403, 409. In its decision, "the court ordered, among other things, that the parties are responsible for their respective health insurance and unreimbursed medical expenses; neither party shall receive alimony; the defendant shall quitclaim the marital home to the plaintiff, who '*shall be solely responsible for payment of the [home equity line of credit], taxes, insurance and maintenance; the plaintiff has no interest in the defendant's family business; the parties shall retain their respective bank and retirement accounts and pay their respective debts; the defendant shall retain his rights in the family business; the parties shall retain their respective automobiles; and '[e]ach party shall be solely responsible for payment of their respective attorney's fees incurred during the course of this case.'*" (Emphasis in original.) *Id.*, 409.

The plaintiff appealed to this court from the judgment of the trial court, arguing, in part, that the trial court had abused its discretion in assigning to her the entire outstanding debt on the parties' home equity line of credit.¹ *Id.*, 418. Specifically, she argued that "the court's order regarding the home equity line of credit conflict[ed] with its order that the parties [were] responsible for the payment of their respective attorney's fees." *Id.*, 419–20. In addressing this claim, this court set forth the following additional relevant facts. "In December, 2015, the parties obtained a home equity line of credit and used some of the funds to pay off the plaintiff's personal line of credit, totaling \$24,271. The parties also drew on the line of credit for their respective attorney's fees in this dissolution matter. The court specifically

found that the defendant borrowed \$10,000 under this line of credit to pay his own attorney's fees in this matter but also ordered, among other things, that the 'plaintiff shall be solely responsible for payment of the [home equity line of credit],' and that '[e]ach party shall be solely responsible for payment of their respective attorney's fees incurred during the course of this case.' " (Footnote omitted.) *Id.*, 419.

This court agreed with the plaintiff that the court's order regarding the home equity line of credit appeared to conflict with the court's order that the parties be responsible for the payment of their respective attorney's fees. *Id.*, 419–20. This court, therefore, "reverse[d] the judgment only with regard to the order that the plaintiff is solely responsible for the debt on the home equity line of credit and remand[ed] the case with direction to resolve the inconsistency." *Id.*, 420. This court's rescript in *Ostapowicz* provided: "The judgment is reversed only as to the order regarding the home equity line of credit and the case is remanded for further proceedings consistent with this opinion; the judgment is affirmed in all other respects." *Id.*

On March 7, 2022, in response to the remand order, the trial court sent a proposed order to the parties clarifying that its intent when issuing the original order was that the parties would pay their respective attorney's fees in excess of what had already been paid to their attorneys via the home equity line of credit and that it had not intended to require the defendant to pay that portion of the home equity line of credit attributed to the \$10,000 already paid to his attorney. The plaintiff filed an objection to the court's proposed order, in which she requested, *inter alia*, that the court order the defendant to be responsible for the \$10,000 of attorney's fees that he borrowed under the home equity line of credit. Thereafter, the matter was scheduled for a hearing, which took place on September 26, 2022.

Following the hearing, the trial court issued an order in which it stated that, when it "ordered the plaintiff to be solely responsible for the payment of the home equity line of credit . . . [it] was aware of and had taken into account the fact that the defendant had borrowed \$10,000 under the [home equity line of credit] to pay his attorney's fees (and that the plaintiff had borrowed \$19,289.50 under the [home equity line of credit] to pay her attorney's fees). These payments to the attorneys were made in advance of trial preparations and trial." The court further stated that, when it "ordered that each party would be solely responsible for the payment of their respective attorney's fees incurred during the course of the case, the intention was that the parties would pay their own attorney's fees above what had already been paid to their attorneys via the [home equity line of credit]. The intention was not to require the defendant to be responsible to pay that

portion of the [home equity line of credit] attributed to the \$10,000 already paid to his attorney. The intention was for the plaintiff to be solely responsible for the [home equity line of credit] payments.” Accordingly, the court amended the attorney’s fees provision of its memorandum of decision, ordering that “ ‘[e]ach party shall be solely responsible for payment of their respective attorney’s fees above those fees that were paid to their attorneys via the [home equity line of credit].’ ” This appeal followed.

On appeal to this court, the plaintiff claims that the trial court failed to comply with this court’s remand order in *Ostapowicz*. According to the plaintiff, the remand order in *Ostapowicz* reversed solely the trial court’s order as to the home equity line of credit and otherwise affirmed the judgment in all other respects. Instead of adjusting the order regarding the home equity line of credit as directed on remand, the plaintiff contends that the trial court improperly modified the order that the parties were responsible for their own attorney’s fees by creating an exception for the defendant’s attorney’s fees paid through the home equity line of credit; in so doing, the plaintiff contends that the trial court shifted responsibility for \$10,000 of the defendant’s attorney’s fees to the plaintiff. In response, the defendant contends that the trial court properly followed this court’s remand order and resolved the purported inconsistency between the order regarding the home equity line of credit and the order regarding attorney’s fees. We agree with the defendant.

“Determining the scope of a remand is a matter of law . . . [over which] our review is plenary. . . . In carrying out a mandate of this court, the trial court is limited to the specific direction of the mandate as interpreted in light of the opinion. . . . This is the guiding principle that the trial court must observe. . . . Compliance means that the direction is not deviated from. The trial court cannot adjudicate rights and duties not within the scope of the remand. . . . It is the duty of the trial court on remand to comply strictly with the mandate of the appellate court according to its true intent and meaning. No judgment other than that directed or permitted by the reviewing court may be rendered, even though it may be one that the appellate court might have directed. The trial court should examine the mandate and the opinion of the reviewing court and proceed in conformity with the views expressed therein.” (Citation omitted; internal quotation marks omitted.) *Fazio v. Fazio*, 199 Conn. App. 282, 287–88, 235 A.3d 687, cert. denied, 335 Conn. 963, 239 A.3d 1213 (2020). “We are mindful, however, that [w]e have rejected efforts to construe our remand orders so narrowly as to prohibit a trial court from considering matters relevant to the issues upon which further proceedings are ordered that may not have been envisioned at the time of the remand. . . . So long as these matters

are not extraneous to the issues and purposes of the remand, they may be brought into the remand hearing.” (Internal quotation marks omitted.) *Marshall v. Marshall*, 200 Conn. App. 688, 703, 241 A.3d 189 (2020).

In applying these principles to the present case, we first review our analysis, remand and mandate in *Ostapowicz v. Wisniewski*, supra, 210 Conn. App. 401. As set forth earlier in this opinion, this court in *Ostapowicz* agreed with the plaintiff that the trial court’s order assigning to her responsibility for the entire outstanding balance on the parties’ home equity line of credit appeared to conflict with its order that the parties were separately responsible for the payment of their respective attorney’s fees. *Id.*, 419–20. This court specifically concluded that the two orders seemed irreconcilable. *Id.*, 420. This court, therefore, “reverse[d] the judgment only with regard to the order that the plaintiff [was] solely responsible for the debt on the home equity line of credit and remand[ed] the case with direction to resolve the inconsistency.” (Emphasis added.) *Id.* This court’s rescript in *Ostapowicz* stated: “The judgment is reversed only as to the order regarding the home equity line of credit and the case is remanded for further proceedings consistent with this opinion; the judgment is affirmed in all other respects.” *Id.*

A thorough examination of this court’s opinion in *Ostapowicz* leads us to reject the plaintiff’s unduly narrow interpretation of this court’s remand order. Although the plaintiff argues that this court’s remand order did not permit the trial court to modify its order regarding attorney’s fees, the plaintiff ignores that portion of the opinion in which this court specifically directed the trial court to resolve the apparent inconsistency between the order regarding the home equity line of credit and the order regarding the payment of attorney’s fees. On remand, the trial court properly resolved this apparent inconsistency, concluding that each party was solely responsible for the payment of their respective attorney’s fees *in excess of those that were paid to their attorneys via the home equity line of credit*. Contrary to the plaintiff’s contention, the remand order did not require that the trial court order the defendant to pay that portion of the debt on the home equity line of credit that was attributed to the \$10,000 already paid to his attorney, nor did it require any specific outcome. Rather, it was left to the trial court to resolve the apparent inconsistency between the arguably conflicting provisions. Because the trial court properly resolved the apparent inconsistency between the two provisions, the trial court acted within the scope of this court’s remand order in *Ostapowicz*.

The judgment is affirmed.

In this opinion the other judges concurred.

* The listing of judges reflects their seniority status on this court as of the date of oral argument.

¹ In *Ostapowicz v. Wisniewski*, supra, 210 Conn. App. 402, the plaintiff also argued that the trial court “(1) lacked subject matter jurisdiction to enforce the parties’ premarital agreement, [and] (2) erroneously found that certain property constituted the defendant’s separate property under the premarital agreement and failed to assign a specific value to that property” This court affirmed the judgment of the trial court as to these issues; see id., 420; and they are not at issue in the present appeal.