

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 2428

JAMES WESLEY LEE, JR.

VERSUS

TANYA WIEDMER LEE

DATE OF JUDGMENT: June 12, 2009

ON APPEAL FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT
NUMBER 14661, DIV. C, PARISH OF ST. HELENA
STATE OF LOUISIANA

HONORABLE ROBERT H. MORRISON, III, JUDGE

* * * * *

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Greensburg, Louisiana

Counsel for Defendant-Appellant
James Wesley Lee, Jr.

R. Chris Oetjens
Baton Rouge, Louisiana

Counsel for Plaintiff-Appellee
Tanya Wiedmer Lee

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BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

Disposition: AFFIRMED.

Kuhn, J.

Defendant-appellant, Tanya Wiedmer Lee, challenges the trial court's January 24, 2008 judgment in favor of plaintiff-appellee, James Wesley Lee, Jr., which: 1) ordered Ms. Lee to execute all documents necessary to convey a one-acre tract "formerly containing and comprising the area around the parties' house" to Mr. Lee; 2) decreed that Mr. Lee is the owner and entitled to the excess or remaining balance of fire insurance policy proceeds after the balance of the mortgage indebtedness on the property was satisfied; and 3) further ordered Ms. Lee to pay to Mr. Lee the amount of \$3,500.00 in attorney's fees. We affirm.

At the time of the parties' marriage, Ms. Lee owned nine acres of land as her separate property. During the marriage, the parties moved a house onto a portion of this property. At some point the Lees borrowed money from the Bank of Greensburg, which secured a mortgage on the community home and Ms. Lee's nine-acre tract of land. In January 1996, the parties divorced and executed a community property settlement, whereby the parties agreed in pertinent part, as follows:

III.

[Mr. Lee] does hereby assume and hold [Ms. Lee] harmless and does hereby indemnify her with respect to the certain promissory note and mortgage, Bank of Greensburg mortgage loan number [***], with the appropriate current outstanding balance of \$29,652.00; said mortgage being on the community home and separate immovable property of [Ms. Lee], located on State Highway 38

IV.

[Mr. Lee] agrees to pay the monthly installment payments to the Bank of Greensburg for mortgage loan number [***] until said principal balance and interest, including arrearages (outstanding balance) are extinguished. In the event [Mr. Lee] extinguished said mortgage to the satisfaction of the Bank of Greensburg, [Ms. Lee]

agrees to execute the appropriate documents to transfer to [Mr. Lee] one-half interest in the community home located on State Highway 38 in Greensburg, Louisiana, including the house and improvements thereon, plus her full interest in one (1) acre of her separate immovable property immediately surrounding the house; [Ms. Lee] would retain the remaining eight (8) acres of her separate immovable property in the event the mortgage is extinguished and the house, improvements and one (1) acre are transferred to [Mr. Lee].

XVI.

Each party agrees that all of the terms and conditions of this agreement shall be subject to specific performance, and that if a party is in default of the performance of any obligations assumed or incurred by each party hereto, and if it shall be necessary for the other party to secure the services of an attorney at law to enforce specific performance of any term or condition of this agreement, that the party in default shall pay unto the other party a reasonable attorney fee incurred in securing specific performance of this agreement, as well as all court costs incurred in connection therewith.

The parties do not dispute that Mr. Lee paid the monthly mortgage payments that were referenced in the settlement agreement until August 19, 2007, when a fire destroyed the property. According to Mr. Lee's petition, National Security Fire & Casualty Company, which insured the property in question, issued a check to the parties in the amount of \$30,000, with the Bank of Greensburg named as an additional payee. It is further undisputed that Mr. Lee had paid the insurance premiums and was the named insured on the National Security policy. When Ms. Lee failed to endorse the check and further refused to transfer her interest in the acre of land referenced in the settlement agreement, Mr. Lee filed a petition to enforce the community property settlement and sought to recover attorney's fees and court costs.

By order dated December 7, 2007, the trial court ordered Ms. Lee to endorse the National Security check that represented “the proceeds of the fire insurance policy,” and further ordered that the proceeds be “utilized to pay off the property mortgage to the Bank of Greensburg, with any surplus funds to be deposited into the clients trust account of [Mr. Lee’s attorney] and held therein until further orders from this Court.”

The parties agreed there were no contested factual issues and that the matter could be submitted for a decision on the basis of the settlement agreement and their written memoranda. At this juncture, the outstanding issues were whether Ms. Lee was obliged to transfer the one-acre tract to Mr. Lee, whether Ms. Lee was entitled to one-half of the remaining insurance proceeds, and whether Mr. Lee was entitled to recover attorney’s fees and court costs. Ms. Lee now appeals the trial court’s January 24, 2008 judgment, which disposed of these issues, urging the trial court erred: 1) in finding Ms. Lee was obligated by the terms of the settlement agreement to convey the one-acre tract to Mr. Lee; 2) in finding that Mr. Lee was entitled to the balance of the insurance proceeds after the mortgage obligation was satisfied; and 3) in awarding attorney’s fees to Mr. Lee. Ms. Lee alternatively urges the award of attorney’s fees is excessive.

Initially, Ms. Lee contends the specific cause for entering into the community property agreement was destroyed, and therefore, she is no longer obligated to comply with the provisions of the agreement. In other words, she asserts she would not have entered into the agreement had the community property house not existed on her separate property. She further argues that the complete destruction of the house by fire was not contemplated in the partition agreement.

We reject these arguments as the trial court did. The cause for the community property agreement was the adjustment of the parties' claims as they related to the community property assets and obligations as they existed in 1996. A transaction and compromise requires no other *cause* than an adjustment of differences and avoidance of litigation, the *cause* prescribed by La. C.C. art. 3071. ***Dornier v. Live Oak Arabians, Inc.***, 602 So.2d 743, 749 (La. App. 1st Cir.), *writ denied*, 608 So.2d 177 (La. 1992). When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. La. C.C. art. 2046.

As part of the terms of the settlement, Mr. Lee assumed the obligation of paying the monthly installment payments associated with the mortgage loan that encumbered both the community house and Ms. Lee's separate property. While every future event could not be contemplated, the parties fully contemplated Ms. Lee's obligations in the event that he fully extinguished the mortgage debt. Under the clear terms of the agreement, Ms. Lee was obligated to execute the appropriate documents to transfer her full interest in the one acre of her separate immovable property in question to Mr. Lee. Although Ms. Lee has benefitted from this agreement, she is now trying to renegotiate the terms of the agreement on the facts as they exist nearly ten years later. We find no merit in her contention that the agreement falls due to failure of cause or error of cause.

Regarding the insurance proceeds that remained after the mortgage loan was fully extinguished, Ms. Lee claims she is entitled to one-half of the proceeds because they were paid to reimburse the loss of the former community home. We disagree, because we find that Ms. Lee has not established any ownership interest

in these funds. The parties do not dispute that Mr. Lee paid the insurance premiums for the policy, and the record establishes that Ms. Lee was not a named insured under the policy.¹ As such, the trial court properly determined that Mr. Lee was entitled to the full balance of these funds.

We also find no merit in Ms. Lee's contention that she was not "in default" under the terms of the settlement agreement and not responsible for attorney's fees. Under Louisiana law, an award of attorney fees is not permitted except where authorized by statute or by contract. *Gore v. Gore*, 03-0491, pp. 3-4 (La. App. 1st Cir. 12/31/03), 868 So.2d 758, 760. Here, the settlement expressly authorized the award of attorney's fees to Mr. Lee, as the party who had "to secure the services of an attorney at law" to enforce the terms of the settlement agreement. As the party "in default," Ms. Lee is obligated to pay the reasonable attorney fees Mr. Lee incurred in securing specific performance of the agreement. The trial court awarded only a portion of the attorney's fees sought by Mr. Lee, and we likewise conclude the award was reasonable for the services provided by Mr. Lee's attorney. The trial court has much discretion in fixing an award of attorney fees, and its award will not be modified on appeal absent a showing of an abuse of discretion. *Regions Bank v. Automax USA, L.L.C.*, 02-1755, p. 4 (La. App. 1st Cir. 6/27/03), 858 So.2d 593, 595, *writ denied*, 03-2131 (La. 11/7/03), 857 So.2d 503. In the instant case, we find no abuse of discretion in the trial court's award.

Accordingly, the trial court's judgment is affirmed. Appeal costs are assessed to Ms. Lee.

AFFIRMED.

¹ We note the policy was effective from March 15, 2007, to August 15, 2008.