

20CA1090 Marriage of Kuchta 05-20-2021

COLORADO COURT OF APPEALS

DATE FILED: May 20, 2021
CASE NUMBER: 2020CA1090

Court of Appeals No. 20CA1090
El Paso County District Court No. 18DR31335
Honorable William B. Bain, Judge

In re the Marriage of

Steven Fred Kuchta, Jr.,

Appellee,

and

Danielle Kuchta,

Appellant.

ORDER VACATED

Division VI
Opinion by JUDGE BERGER
Richman and Welling, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced May 20, 2021

Steven Fred Kuchta, Jr., Pro Se

Messner Reeves LLP, Kendra N. Beckwith, Kristina M. Wright, Denver,
Colorado, for Appellant

¶ 1 Danielle Kuchta (wife) appeals the district court’s order granting Steven Fred Kuchta (husband) postjudgment relief from the permanent orders entered on the dissolution of the parties’ marriage. Because we conclude that the court lacked jurisdiction, we vacate the order.

I. Background

¶ 2 The parties’ ten-year marriage ended in 2019. The district court entered permanent orders allocating parenting time, ordering child support and maintenance for wife, and dividing the marital property and debt.

¶ 3 In relevant part, the court awarded the former marital home in Texas to wife as she had requested because she was living there with the parties’ children, and the court ordered that she would be responsible for the mortgage payments beginning the month following the permanent orders hearing. The court further ordered, however, that husband could elect to have the home appraised within sixty days, and if it appraised for more than \$235,000, it would instead be sold and the equity applied to pay off the parties’ credit card debt. Husband did not comply with the provision for

obtaining an appraisal to sell the home, and neither party appealed from the permanent orders.

¶ 4 Two months after the permanent orders were entered, however, husband moved for contempt sanctions against wife, alleging that she had failed to make the first mortgage payment on the home following the permanent orders. He also filed the first of what would be three postjudgment motions. He requested “reconsideration and clarification” but cited no legal authority for such relief. He asked that his maintenance and child support payments go toward the mortgage payments first and then any remaining amount to wife and that the home be sold on ninety days’ notice to wife.

¶ 5 The district court denied the motion because husband had not filed it within fourteen days as C.R.C.P. 59(a) requires, and therefore, the court lacked jurisdiction to consider it. The court later also denied husband’s motion for contempt, finding, contrary to his allegation, that wife had paid the mortgage payment on the home.

¶ 6 Husband then filed a second motion again for “reconsideration and clarification” and again without supporting legal authority. He

asserted that he had not understood that the permanent orders allowed him only sixty days to obtain an appraisal of the former marital home and had therefore missed the deadline. He further alleged that the home had appreciated and was now worth significantly more than the \$235,000 referenced in the permanent orders. He asked for an extension to obtain an appraisal and sell the home, and to divide the equity equally with wife.

¶ 7 The district court again denied the motion, finding that the permanent orders were clear regarding the time frame for husband to appraise the home and noting that, if the home were to be sold, the orders required that the equity be applied to the parties' debt.

¶ 8 Husband then filed — more than seven months after the permanent orders were entered — his third motion for postjudgment relief entitled “opposed motion for clarified and additional orders.” He again cited no legal authority, stating only that “several disagreements ha[d] arisen” as a basis for granting him the relief he sought. He requested in relevant part that the court give wife ninety days to refinance the former marital home and, if she is unable to do so, that the home be sold. He submitted

a proposed order and asked the court to rule without an evidentiary hearing.

¶ 9 The district court entered husband’s proposed order with no amendments, noting that “[n]o objection was filed to the motion.” In addition to ordering the home sold and the proceeds equally divided if wife could not refinance within ninety days, the order allowed husband to deduct the amount of any mortgage payments he makes on the home from his support payments to wife.

¶ 10 Thirteen days later, wife moved for relief from the order. Because she also appealed, however, the district court did not rule on her motion.

II. Order Granting Husband Relief from the Permanent Orders

¶ 11 Wife contends that the district court erred in granting husband’s third motion for postjudgment relief. We agree.

A. Legal Standards

¶ 12 Once a final judgment is entered in a dissolution of marriage case, the only means by which the district court can alter that judgment is by appropriate motion under C.R.C.P. 59 or C.R.C.P. 60. *Koch v. Dist. Ct.*, 948 P.2d 4, 6-7 (Colo. 1997); *In re Marriage of McKendry*, 735 P.2d 908, 909 (Colo. App. 1986). Additionally, the

property provisions of a dissolution decree may not be modified “unless the court finds the existence of conditions that justify the reopening of a judgment.” § 14-10-122(1)(a), C.R.S. 2020; *see In re Marriage of Connell*, 831 P.2d 913, 916 (Colo. App. 1992) (holding that the court erred by modifying the decree’s terms for paying the marital home sale proceeds without first finding conditions that justified reopening the judgment).

¶ 13 We review de novo the legal standards applicable to husband’s motion, *see In re Marriage of Vittetoe*, 2016 COA 71, ¶ 17, as well as whether the district court had jurisdiction to rule on it. *See Arapahoe Cnty. Dep’t of Hum. Servs. v. Velarde*, 2021 COA 25, ¶ 6.

B. Analysis

¶ 14 As in his two previous postjudgment motions, husband cited no legal authority in his third motion that would entitle him to relief from the final permanent orders more than seven months after they were entered. Nor did the district court cite legal authority or make findings as to its basis for granting husband such relief.

¶ 15 Contrary to husband’s argument, the court does not have “inherent authority” to alter property division orders post-decree. Rather such orders are modifiable only on conditions allowing a

final judgment to be reopened, meaning under C.R.C.P. 59 or C.R.C.P. 60. See § 14-10-122(1)(a); *McKendry*, 735 P.2d at 909; see also *Koch*, 948 P.2d at 6-7.

¶ 16 Based on the allegations made, we agree with wife that husband’s third postjudgment motion is substantively a motion under C.R.C.P. 59(a)(4) in that it asks to amend the permanent orders. See *Spiremedia Inc. v. Wozniak*, 2020 COA 10, ¶ 18 (noting that party’s motion seeking to amend a prior judgment and findings “fits squarely within Rule 59(a)(3) and (4)”). Specifically, husband asked to change the property division orders relating to the marital home, which is essentially the same relief he sought in his two prior motions — the first of which the court denied as an untimely Rule 59 motion. Rather than wife being awarded the marital home unless he obtained an appraisal within sixty days, husband asked that the home be sold unless wife can refinance it within ninety days. These are unquestionably very different terms and thus husband’s motion constitutes a request to amend the permanent orders terms under Rule 59(a)(4). See *Spiremedia*, ¶ 18.

¶ 17 A motion to amend a judgment under Rule 59 must be filed within fourteen days of entry of the judgment. C.R.C.P. 59(a).

Strict compliance with the fourteen-day deadline is required, and a court exceeds its jurisdiction if it attempts to grant relief outside of the rule's timeline. *See Beavers v. Archstone Comtys. Ltd. P'ship II*, 64 P.3d 855, 857 (Colo. 2003); *Koch*, 948 P.2d at 8. It is undisputed that husband did not meet the fourteen-day deadline as to any of his three postjudgment motions, nor did he request an extension within that time. *See* C.R.C.P. 59(a). Thus, the district court lacked jurisdiction to consider his third postjudgment motion. *See Schuster v. Zwicker*, 659 P.2d 687, 689 (Colo. 1983); *see also Beavers*, 64 P.3d at 857; *Koch*, 948 P.2d at 8.

¶ 18 In addition, husband's third postjudgment motion did not allege a basis for relief under C.R.C.P. 60, nor did the court make the necessary findings to grant him relief under that rule. *See In re Marriage of Mattson*, 694 P.2d 1285, 1286 (Colo. App. 1984) (holding that the court had no authority to change the parties' property rights under the decree without making findings under C.R.C.P. 60(b)).

¶ 19 A movant under Rule 60 bears the burden to establish grounds for relief by clear, strong, and satisfactory proof. *In re Marriage of Roddy*, 2014 COA 96, ¶ 21; *Centennial Bank of the W. v.*

Taylor, 143 P.3d 1140, 1141 (Colo. App. 2006). But husband did not even cite the rule in his motion, much less allege a specific ground for relief under one of its provisions. See C.R.C.P. 60(a), (b)(1)-(5); see also *In re Marriage of Anderson*, 711 P.2d 699, 701 (Colo. App. 1985) (affirming an order denying a motion to modify the property division terms of a decree when the movant made “[n]o attempt . . . to establish the existence of . . . conditions” justifying reopening a judgment).

¶ 20 Rule 60 is not a substitute for appeal, and therefore a movant must allege a specific basis for relief under the rule. See *Centennial Bank of the W.*, 143 P.3d at 1142 (concluding that a motion was not properly brought under C.R.C.P. 60(b) when it did not allege specific grounds for relief under the rule but rather merely attacked the merits of the judgment). Selling the home and dividing any equity equally between the parties was specifically rejected by the district court in the permanent orders, which husband did not appeal, in favor of wife’s request to keep the home. Thus, the district court could not grant husband such relief post-decree under Rule 60(b) without finding specific grounds under the rule for doing so. See

Centennial Bank of the W., 143 P.3d at 1142; *see also* § 14-10-122(1)(a); *Mattson*, 694 P.2d at 1286.

¶ 21 Husband's argument that the court's order merely effectuates and enforces the permanent orders property division terms is unpersuasive. Enforcing the property terms would have meant that wife would own the marital home because husband undisputedly failed to obtain an appraisal of it within sixty days. And, as wife points out, the proposed order husband prepared, and the court entered, contained other provisions — beyond selling the home — that are inconsistent with or not addressed in the permanent orders. For example, the order provides that wife will pay all repair costs on the home pending its sale, husband may deduct any mortgage payments he makes from his support payments to her, and that the parties will equally divide the sale proceeds.

¶ 22 Thus, in granting husband's proposed order, the district court did not enforce but rather substantially modified the permanent orders property division terms. *Cf. Mulei v. Jet Courier Serv., Inc.*, 860 P.2d 569, 571 (Colo. App. 1993) (upholding postjudgment order that did not affect the substantive rights of the parties thereunder).

In doing so, the court acted in excess of its jurisdiction. Therefore, we vacate the order.

¶ 23 In light of our disposition that husband's third postjudgment motion was untimely under Rule 59(a) and therefore the district court lacked jurisdiction to rule on it, we need not address wife's alternative arguments that the motion was also untimely under Rule 60(b) or that even if timely under that rule, the court abused its discretion in granting it.

III. Conclusion

¶ 24 The order is vacated.

JUDGE RICHMAN and JUDGE WELLING concur.

Court of Appeals

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PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Steven L. Bernard
Chief Judge

DATED: March 5, 2020

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