STATE OF MICHIGAN

COURT OF APPEALS

NORMAN A. GROSS,

Plaintiff–Appellee,

v

LINDA A. GROSS,

Defendant–Appellant.

UNPUBLISHED
October 18, 1996

No. 169932
LC No. 88-344846-DM

Before: Hoekstra, P.J., and Michael J. Kelly and J.M. Graves, Jr.,* JJ.

PER CURIAM.

Defendant appeals as of right from the circuit court's order directing her to pay plaintiff a share of expenses related to her son's bar mitzvah celebration pursuant to the terms of the parties' divorce judgment.

The pertinent portion of the divorce judgment reads as follows:

> Plaintiff and Defendant shall share equally in the planning of the minor children's Bar Mitzvahs, shall share equally the cost of Bar Mitzvah clothes for the minor children and shall share equally the cost of the guests of the minor children. Each of the parties shall be solely responsible for the per person cost of his and her own guests and shall share in the miscellaneous overhead expenses, including but not limited to kiddush, invitations, decorations, Rabbi, etc. by [plaintiff] paying 70% and [defendant] paying 30% of Jason's expenses; and by [defendant] paying 70% and [plaintiff] paying 30% of Mark's expenses. In the event that the miscellaneous expenses for Mark's Bar Mitzvah are greater than those incurred for Jason's Bar Mitzvah, then Plaintiff and Defendant shall each pay one-half (1/2) of the cost of the difference of those miscellaneous overhead expenses.

While the parties followed this provision for the older son's bar mitzvah, it is undisputed that the parties did not share equally in the planning of the younger son Mark's bar mitzvah. In fact, defendant asserts

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* Circuit judge, sitting on the Court of Appeals by assignment.

that, pursuant to an agreement between the parties, both she and plaintiff held their own receptions. Upon plaintiff's motion, the lower court purported to enforce the specific terms of the divorce judgment by ordering defendant to pay a share of the expenses of the reception planned by plaintiff. From that order defendant appeals as of right.

Defendant argues that the lower court erred in ordering her to pay a share of the expenses under the specific circumstances of this case.

Divorce actions are equitable in nature, and when acting in divorce cases, circuit courts have the authority to make any order to enforce their judgments. MCL 600.611; MSA 27A.611; *Cohen* v *Cohen*, 125 Mich App 206, 211; 335 NW2d 661 (1983). In so doing, the court should use its equitable powers to fashion its relief according to the character of the case and act as is "necessary to accord complete equity and to conclude the controversy." *Cohen, supra*, 125 Mich App 211.

It is undisputed that the parties did not comply with the divorce judgment in the first instance with respect to shared planning. Therefore, the language of the divorce judgment could not be strictly applied as a routine enforcement of a legal matter. The lower court was bound to use its equitable powers to fashion a remedy according to the specific facts as was necessary to accord complete equity and conclude the controversy. *Cohen, supra*, 125 Mich App 211.

As this court held when reviewing a child support order modification matter, all relevant factors must be considered in determining if there has been a sufficient change in circumstances. The modification is in the trial courts' discretion and its decision will not be disturbed absent a clear abuse of discretion. Appellate review is de novo, but this court gives "grave consideration" to the trial courts' findings and will not reverse unless it is convinced it would have reached a different result had it been in the trial courts position. *Wells v Wells* 144 Mich App 722, 733, 734, & 375 NW2d 800 (1985) (citing *Jacobs v Jacobs* 118 Mich App 16, 20 324 NW2d 519 (1982)) We are not convinced that the trial court abused its discretion.

With respect to defendant's specific assertion that shared planning was a condition precedent to the enforcement of the provision in the divorce judgment, the application of this contract law principle is misplaced in the present context. The circuit court has the power to enforce its judgments. *Cohen, supra*, 125 Mich App 211. The fact that the parties did not abide by the provisions of the court's judgment simply required the court to fashion an appropriate remedy. *Id*. Therefore, the failure to plan the reception mutually would not automatically relieve defendant of all liability under the judgment.

Defendant's next contention, that the parties' oral agreement to hold separate receptions was a valid modification of the divorce judgment, is without merit. Property settlement provisions of a divorce judgment are final and, as a general rule, cannot be modified. *Norman* v *Norman*, 201 Mich App 182, 189; 506 NW2d 254 (1993). Therefore, the lower court did not err in determining that the oral agreement did not modify the divorce judgment.

Defendant further asserts that plaintiff should be barred from receiving any equitable relief due to his unclean hands. The clean hands doctrine closes the doors of equitable relief to a person who is

tainted with bad faith relative to the matter in which he seeks relief. *Stachnik* v *Winkel*, 394 Mich 375, 382; 230 NW2d 529 (1975). Relative to the allegation of unclean hands as a result of the alleged misstatement of income by plaintiff, defendant has failed to provide this Court with the requested documentation of the Friend of the Court's findings on that matter. Therefore, defendant has effectively waived this issue. MCR 7.210; *Kingston* v *Markward & Karafilis, Inc*, 134 Mich App 164, 176; 350 NW2d 842 (1984).

Defendant next argues that the lower court erred in granting plaintiff attorney fees in conjunction with the order to share expenses. We agree.

In a divorce action, attorney fees are authorized where the requesting party has been forced to incur legal expenses due to unreasonable conduct by the other party in the course of the litigation. *Stackhouse* v *Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992). A lower court has discretion to award such fees in that situation, and such an award will not be disturbed absent an abuse of that discretion. *Id*. When making an award of attorney fees, the trial court is required to make findings regarding the necessity of imposing the fees to facilitate appellate review. *Id*., 446. Furthermore, the moving party with respect to a petition for attorney fees is under an affirmative duty to call the lower court's attention to the necessity for such findings. *Id*. As in the present case, where no such findings have been made, we will uphold the award only where the record clearly evidences the necessity of the award such that the absence of the record could be deemed harmless. *Id*. We conclude that based on the facts alleged, defendant was not unreasonable in refusing to pay a portion of plaintiff's reception expenses under the terms of the divorce judgment. Therefore, there was no basis for the court to determine that attorney fees were necessary. *Id*., p 445.

Finally, defendant failed to object to plaintiff's use of the term "doctor" in describing defendant. Therefore, that issue has not been preserved for review. *Adam* v *Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992).

Affirmed.

/s/ Michael J. Kelly
/s/ Joel P. Hoekstra
/s/ James M Graves