

**Court of Appeals, State of Michigan**

**ORDER**

William E Kasben v Beryl W Hoffman

Docket Nos. 247297; 253201; 254295

LC No. 96-003816-DO

William C. Whitbeck, CJ  
Presiding Judge

Kathleen Jansen

Richard A. Bandstra  
Judges

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The Court orders that plaintiff's motion to file a supplemental brief is GRANTED and the supplemental brief filed with the motion is accepted.

This Court, having retained jurisdiction pending correction or clarification of the trial court's Escrowed Funds Order and Second Amended Judgment, and the matter having been resubmitted after remand, concludes that we must remand this case again for further corrections or clarifications consistent with our opinion after remand.

This Court further orders that these corrections or clarifications are to be completed within 63 days of the release date of this order.

We retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 12 2006

Date

*Sandra Schultz Mengel*  
Chief Clerk

STATE OF MICHIGAN  
COURT OF APPEALS

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WILLIAM E. KASBEN,

Plaintiff-Appellant,

v

BERYL W. HOFFMAN,

Defendant-Appellee.

UNPUBLISHED

January 12, 2006

No. 247297;253201;254295

Leelanau Circuit Court

LC No. 96-003816-DO

AFTER REMAND

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Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

In this Court’s previous opinion remanding to the trial court, we directed that the trial court reconsider “[t]he amount of credit to which [William] Kasben is entitled for the sale of the marital and Boone Farms.”<sup>1</sup> Our review after remand reveals that the trial court may have erred by only taking the amount for the sale of the marital farm into consideration. Thus, on further remand, we again direct the trial court to determine, through additional factual findings if necessary, the amount of credit to which Kasben is entitled for the sale of the marital *and* Boone Farms. The present matter stems from a divorce action between plaintiff William Kasben and defendant Beryl Hoffman. A detailed account of the basic facts and procedural history can be found in our previous decision regarding this matter.<sup>2</sup>

I. Credit For Sale Of Marital And Boone Farms

In this Court’s previous opinion remanding to the trial court, we noted that, “Judge Rodgers . . . found that Kasben was entitled to a credit for the value of the real estate that was sold during Hoffman’s bankruptcy proceeding. Referring to ‘paperwork filed in the bankruptcy

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<sup>1</sup> *Kasben v Hoffman*, unpublished per curiam opinion of the Court of Appeals, issued March 24, 2005 (Docket Nos. 247297; 253201; 254295), slip op pp 16, 18.

<sup>2</sup> *Id.* at slip op pp 1-6.

proceeding,’ Judge Rodgers concluded that the trustee received a total of \$565,881.09 from those sales.’<sup>3</sup> This Court then explained that

our review of the record reveals that confusion remains regarding how much Hoffman’s bankruptcy trustee actually received from the sale of the marital and Boone farms. We are troubled by the apparent reliance on a single document filed with the bankruptcy court to determine the net amount paid to Hoffman’s bankruptcy trustee, particularly in light of the fact that the document in question was a pleading rather than an order, and both parties disputed the \$565,881.09 amount listed in that document.<sup>[4]</sup>

Thus, we directed that the trial court reconsider “[t]he amount of credit to which [William] Kasben is entitled for the sale of the marital and Boone Farms.”<sup>5</sup>

Following the release of our opinion, Kasben again moved in the trial court to amend the escrowed funds order. In that motion, Kasben noted this Court’s stated concerns and then, relying on orders from the bankruptcy court, opined that both farms were in fact sold for a total of \$860,725, less various liens, meaning that he was entitled to a credit in the amount of \$590,000 (an amount presumably rounded up from the previously mentioned amount of \$589,991).

In its opinion on remand, the trial court explained that the value assigned to the marital home was \$383,000. Less \$180,000 for Ed Kasben’s lien, the trial court concluded that Kasben owed Hoffman \$101,500 for her 50% interest in the marital home. The trial court also noted that additional amounts owed to Hoffman included: \$75,000 for separate property; \$30,000 for electrical assets; and \$81,500 for “hidden assets.” According to the trial court, the total amount

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<sup>3</sup> *Kasben, supra* at slip op p 16.

In its October 17, 2003 decision and order regarding Kasben’s motion for release of \$126,000 held in escrow, the trial court stated as follows: “According to paperwork filed in the bankruptcy proceeding, the Trustee received a total of \$565,881.09 from the sale of the real estate.” Kasben then moved for a new trial, arguing that it was unclear what “paperwork” the trial court was relying on. Kasben argued that he actually received \$598,930 total from the sale of the marital and Boone farms. The trial court denied the motion as merely a motion for reconsideration that presented no new issues for review.

Kasben then appealed the October 17 order to this Court, Docket No. 253201, again argued that he actually received \$598,930 total from the sale of the marital and Boone farms. He now opined, however, that the trial court took the \$565,881.09 figure from a bankruptcy file pleading. In that bankruptcy pleading, it was averred that “[t]he Trustee received the full sale proceeds from the sale of the marital farm totaling \$323,866.66. That together with the \$242,014.43 from the sale of various Boone Farm properties, the total amount the Trustee received was \$565,881.09.”

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at slip op pp 16, 18.

owed to Hoffman by Kasben, therefore, equaled \$288,000. In his supplemental brief after remand, Kasben confirms that this \$288,000 finding was correct.

The trial court also found that the Marital and Boone Farms sold for \$510,000, pursuant to a bankruptcy court settlement. Less \$180,000 for Ed Kasben's lien on the marital farm, the trial court concluded that the net payment to the bankruptcy estate was \$330,000. Thus, the trial court concluded that the amount of credit to which Kasben was entitled for the sale of the marital and Boone farms was \$42,000 (\$330,000 minus \$288,000).

But in his supplemental brief, Kasben argues that the trial court overlooked the amount of credit owed for Boone Farm, noting that *only* the marital farm sold for \$510,000. Relying on an August 25, 2003 bankruptcy court order, Kasben asserts that Boone Farm sold for an *additional* \$350,725. Thus, Kasben opines that the Marital *and* Boone Farms sold for a total amount of \$860,725. According to Kasben, taking that \$860,725 amount, less \$180,000 for Ed Kasben's lien on the marital farm, less \$85,000 for a Central Bank lien on Boone Farm, and less \$5,734 for a tax lien on Boone Farm, means that the net payment to the bankruptcy estate was actually \$589,991 not \$330,000, as determined by the trial court. Thus, accepting \$589,991 as the net payment to the bankruptcy estate would mean that the amount of credit to which Kasben is entitled for the sale of the marital and Boone farms would actually be \$301,991 (\$589,991 minus \$288,000), not \$42,000, as determined by the trial court.

Taking the analysis one step further, a finding that \$589,991 was the net payment to the bankruptcy estate would also mean that the trial court erred in concluding that Kasben was overpaid \$6,888.10. In its opinion on remand, the trial court found that Kasben had been overpaid \$6,888.10 because Hoffman was awarded attorney fees in the amount of \$130,423. The trial court deducted from that \$130,423 award the \$42,000 credit for a net fee award to Hoffman of \$88,423. The trial court then subtracted that \$88,423 from the escrowed funds amount of \$125,989.98 and concluded that Kasben was due \$37,566.98. This was a \$6,888.10 departure from the trial court's previous ruling that Hoffman was due \$81,534.90 and Kasben was due \$44,455.08. However, again accepting \$589,991 as the actual net payment to the bankruptcy estate would mean that the trial court should have deducted a \$301,991 credit from the attorney fees award of \$130,423. And that would mean that Kasben was actually entitled to the full escrowed funds amount of \$125,989.98.

Without engaging in speculation, this Court cannot answer the question of how the sale of Boone Farm actually affected the credit owed to Kasben or determine the amount that he was entitled to from the escrowed funds. Therefore, because the matter was last remanded for consideration of, "The amount of credit to which Kasben is entitled for the sale of the marital and Boone Farms<sub>[,]</sub>" yet the trial court apparently failed to take the sale amount of Boone Farm into consideration, it is necessary to remand this matter for factual findings by the trial court regarding how the sale of Boone Farm actually affected the credit owed to Kasben and the amount that he was entitled to from the escrowed funds.

## II. Total Amount Of Canceled Interest

In his supplemental brief, Kasben argues that the total amount of interest actually awarded was \$46,620 on the property award, not merely \$14,383.01 on the attorney fee award, as indicated by the trial court in its opinion on remand. Despite our review of the lower court

record, we have been unable to substantiate Kasben's claim that \$46,620 in interest was awarded on the property award. The only indication we can find of this award is in one of the lower court pleadings where Kasben contended that it "appears" that the trial court awarded \$46,620 in interest. Thus, we remand for the trial court's clarification of whether it is necessary for this alleged \$46,620 in interest to also be cancelled, and if not, for explanation of why charging interest was justified.

### III. Sanctions

In his supplemental brief, Kasben argues that the trial court's imposition of \$3,535.70 in sanctions based on a finding that Kasben's November 4, 2003, motion for new trial was frivolous and contemptuous should be reversed. In that motion, Kasben argued that the trial court had committed some of the errors that the trial court has subsequently corrected on remand and which may yet require correction pending this Court's further remand. While it does appear that some of Kasben's arguments may have had merit, this Court has already concluded:

Even if Kasben's motion was well grounded in fact and warranted by existing law, however, we conclude that there is a separate and independent duty to certify that the document was not filed for an improper purpose, such as to harass the other party.

\* \* \*

Given Hoffman's trial testimony that Kasben had threatened to drive her to bankruptcy, and considering that what should have been a relatively straightforward divorce proceeding has taken nearly nine years and is not yet complete, we simply cannot conclude that Judge Rodgers clearly erred in determining that this motion was chiefly filed to harass Hoffman in violation of MCR 2.114(D)(3), even if his claims met the requirements of MCR 2.114(D)(2).<sup>[6]</sup>

Thus, there is no need for further reconsideration of the sanctions issue.

We remand for further corrections or clarifications consistent with this opinion. We retain jurisdiction.

/s/ William C. Whitbeck  
/s/ Kathleen Jansen  
/s/ Richard A. Bandstra

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<sup>6</sup> *Kasben, supra* at slip op p 19.