
The “officially released” date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the “officially released” date appearing in the opinion. In no event will any such motions be accepted before the “officially released” date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears on the Commission on Official Legal Publications Electronic Bulletin Board Service and in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

RUTH F. PERRY *v.* STEPHEN C. PERRY
(AC 36673)

Lavine, Keller and Harper, Js.

Argued February 10—officially released April 14, 2015

(Appeal from Superior Court, judicial district of
Stamford-Norwalk, Gordon, J. [dissolution judgment];
S. Richards, J. [motion to open evidence, motion for
order].)

Barbara M. Schellenberg, with whom were Richard

L. Albrecht and, on the brief, *Bruce L. Levin*, for the appellant (defendant).

Leslie I. Jennings-Lax, with whom, on the brief, was *Louise T. Truax*, for the appellee (plaintiff).

Opinion

KELLER, J. The defendant, Stephen C. Perry, appeals from the judgment rendered by the trial court denying his postdissolution motion for order regarding the parties' marital home. He claims that the court erred by (1) concluding that the judgment of dissolution prohibited him from paying the plaintiff, Ruth F. Perry, the value of her equitable interest in the marital home in exchange for receiving exclusive possession of the marital home, (2) determining that his written offer to pay the plaintiff the value of her equitable interest in the marital home in exchange for receiving exclusive possession of the marital home was inadmissible as evidence, and (3) denying his motion to open evidence following the post-judgment hearing. We affirm the judgment of the court.

The following facts, as found by the court or as apparent in the record, and procedural history are relevant here. "The parties were married on August 22, 1992, in Los Angeles, California. There are two minor children who are the issue of the parties' marriage The parties' marriage was dissolved [by the court, *Gordon, J.*] on November 26, 2008 In its memorandum of decision, the court ordered, inter alia, that the marital home [of which the defendant was the sole titleholder and mortgagor] be sold, that it be immediately listed for sale with a mutually agreed upon listing broker and price, that the parties shall accept any offer which is in an amount equivalent to or greater than 95% of the then listing price, provided all other terms of sale are reasonable, and that the net proceeds of the sale be divided equally between the parties. Additionally, the court awarded exclusive possession of the marital home to the plaintiff until such time as the marital home is sold."

After four years, the marital home remained unsold. On December 13, 2012, the court, *Emons, J.*, held a status conference and ordered the parties to conduct a walk-through of the marital home and contact a broker to discuss the value of the home. "On January 23, 2013, [the] court, *Emons, J.*, [held another status conference and] ordered the parties to list the marital home for sale 'as is' . . . to use Coldwell Banker, their agreed upon listing agent, to market the marital home for sale and [to advise] both parties . . . of all offers. On February 20, 2013, Laurie Balestrino, a Coldwell [Banker] realtor, prepared a listing contract that was executed by the defendant on that same day [which listed the marital home for a price of \$1,550,000]. . . . Balestrino received six [third party] offers [contingent on] the defendant's removal of the marital home's underground oil tank . . . and [an offer] made by the defendant.¹ Balestrino notified the parties' attorneys and the defendant separately whenever she received an offer. The [third party] offers made were in the following denominations . . . : \$1.1, \$1.2, \$1.35, \$1.375, and \$1.4 (up to

\$1.45) million dollars. . . . According to Balestrino, the defendant responded to only three of the six offers and would not always rapidly respond to said offers within a twenty-four hour window.² . . .” (Emphasis omitted; footnotes altered.)

In July, 2013, the plaintiff filed a postdissolution motion for order. She alleged, inter alia, that the defendant had failed, or delayed, in responding to offers submitted by third parties to purchase the marital home. She requested that the court enter orders requiring the defendant to respond in writing to any offer for sale within forty-eight hours of the offer’s conveyance, considering any failure by the defendant to respond to an offer as acceptance of the offer, and requiring the defendant to execute another listing agreement following the expiration of the active listing agreement on August 20, 2013.

In August, 2013, the defendant filed an amended post-dissolution motion for order. He alleged that the plaintiff interfered with the sale of the marital home and failed to pay homeowner’s insurance. He further alleged that the parties had not received an offer that comported with the requirements of the sale mandated by the judgment of dissolution. He requested that the court enter orders granting him exclusive possession of the marital home, requiring him to pay the plaintiff for her share of the equity in the marital home on the basis of his offer to Balestrino, and requiring him to pay the full costs of the mortgage encumbering the marital home and homeowner’s insurance. On August 20, 2013, the listing contract expired and the marital home was no longer listed for sale. The plaintiff then rejected a formal written offer to purchase her equitable interest in the home from the defendant.

The court, *S. Richards, J.*, held proceedings on the matter over the course of two days in September, 2013. During the proceedings, the defendant’s attorney attempted to introduce into evidence a written offer wherein the defendant offered to pay the plaintiff a sum for her equitable interest in the marital home in return for receiving exclusive possession of the marital home. The court excluded the written offer as inadmissible on the ground that it was a settlement offer. On the same ground, the court also excluded testimony that the defendant’s counsel tried to elicit concerning the offer.

In February, 2014, before the court had ruled on the defendant’s motion for order, he filed a motion to open evidence. He alleged that the plaintiff intended to leave the marital home and reside in a new home that she had recently purchased. As a result, he requested that the court open the evidence to permit new evidence on that development, which he claimed the court should consider in determining whether to permit him to purchase the plaintiff’s equitable share in the marital home. The plaintiff filed an objection to the motion. The court

sustained the plaintiff's objection and denied the motion.

In March, 2014, the court issued a memorandum of decision denying the defendant's motion for order.³ The court concluded that the defendant, rather than the plaintiff, hindered the process of marketing and selling the marital home. In addition, the court rejected the defendant's request to pay the plaintiff the value of her equitable interest in the marital home in exchange for receiving exclusive possession. The court stated that the judgment of dissolution ordered the "sale" of the marital home, and it concluded that "[o]ur case law interprets the word 'sale' in the context of an equitable distribution of the marital estate in a dissolution action to mean the sale should be consummated with a third party and that neither the plaintiff nor the defendant should acquire the interest of the other in contravention of the court's distribution order." For those reasons, the court denied the defendant's motion.⁴ This appeal followed. Additional facts will be set forth as necessary.

The defendant claims that the court erred by concluding that the judgment of dissolution prohibited him from paying the plaintiff for her equitable interest in the marital home in exchange for receiving exclusive possession. We disagree.⁵

We begin by setting forth the relevant standard of review. "Because [t]he construction of a judgment is a question of law for the court . . . our review of the . . . claim is plenary. As a general rule, judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the judgment. . . . The interpretation of a judgment may involve the circumstances surrounding the making of the judgment. . . . Effect must be given to that which is clearly implied as well as to that which is expressed. . . . The judgment should admit of a consistent construction as a whole." (Internal quotation marks omitted.) *Hinde v. Specialized Education of Connecticut, Inc.*, 147 Conn. App. 730, 737–38, 84 A.3d 895 (2014).

The following additional facts are relevant here. The judgment of dissolution contained the following orders concerning the parties' marital home: "The marital residence . . . is ordered sold. The parties shall immediately list the premises for sale with a mutually agreed upon listing broker and a mutually agreed upon listing price. The parties shall accept any offer which is an amount equivalent to or greater than 95% of the then listing price, provided all other terms of the sale are reasonable. . . . The [plaintiff] shall have exclusive use and possession of the premises until it is sold."

The defendant asserts that the court erroneously construed the judgment of dissolution to prohibit him from paying the plaintiff the value of her equitable share in

the marital home in exchange for exclusive possession of the marital home. According to the defendant, the plaintiff had a property interest based on her right to the exclusive use and possession of the marital home, and the purchase of that interest would constitute a “sale” under the judgment. Furthermore, he contends that the judgment contained no language expressly prohibiting such a transaction, or requiring the sale of the marital home to a third party. We are not persuaded.

The resolution of this issue requires us to construe the language in the judgment of dissolution. The judgment calls for the “sale” of the marital home. The plain meaning of the word “sale” indicates that a “sale” involves the transfer of ownership of and title to property from one person to another. See Merriam-Webster’s Collegiate Dictionary (11th Ed. 2003) (defining “sale” as “the act of selling; *specifically*: the transfer of ownership of and title to property from one person to another for a price” [emphasis in original]). Here, the plaintiff has no legal interest in the marital home because the title to the marital home is solely in the defendant’s name. Therefore, pursuant to the judgment, the marital home cannot be sold to the defendant because he is the titleholder of the property and, logically, he cannot purchase property that he already owns. In light of our careful review of the judgment as a whole, the only rational interpretation of the judgment indicates that ownership of and title to the marital home must be transferred, for value, to someone other than the defendant. Cf. *Martin v. Martin*, 99 Conn. App. 145, 149, 153 n.5, 913 A.2d 451 (2007) (noting that order to sell marital home on open market did not prevent plaintiff from purchasing defendant’s *legal interest* in home).

In addition, we are not persuaded that the judgment of dissolution permitted the defendant to purchase the plaintiff’s equitable interest in the marital home. The judgment refers to the sale of the “marital residence,” and orders the parties to “list the premises for sale.” After a careful review of the judgment as a whole, it is evident that the court contemplated the sale of the legal title to the marital home, not the purchase by one party of the other’s equitable interest in the marital home.

Last, we recognize that “[a]lthough [a] court does not have the authority to modify a property assignment, [the] court, after distributing property, which includes assigning the debts and liabilities of the parties, does have the authority to issue postjudgment orders effectuating its judgment.” (Internal quotation marks omitted.) *O’Halpin v. O’Halpin*, 144 Conn. App. 671, 677–78, 74 A.3d 465, cert. denied, 310 Conn. 952, 81 A.3d 1180 (2013). “A modification is [a] change; an alteration or amendment which introduces new elements into the details, or cancels some of them, but leaves the general purpose and effect of the subject-matter intact. . . . In contrast, an order effectuating an existing judgment

allows the court to protect the integrity of its original ruling by ensuring the parties' timely compliance therewith." (Internal quotation marks omitted.) *Id.*, 677; see *id.*, 678 (order reducing property's listing price constituted effectuation of judgment); *Simes v. Simes*, 95 Conn. App. 39, 41, 44–45, 895 A.2d 852 (2006) (order requiring plaintiff to pay portion of monthly unallocated pendente lite alimony and support from escrow account constituted effectuation of judgment); *Fewtrell v. Fewtrell*, 87 Conn. App. 526, 532, 865 A.2d 1240 (2005) (order requiring plaintiff to pay debt owed directly to defendant constituted effectuation of judgment); *Roos v. Roos*, 84 Conn. App. 415, 423, 853 A.2d 642 (ruling on motion for contempt to enforce order constituted effectuation of judgment), cert. denied, 271 Conn. 936, 861 A.2d 510 (2004); *Santoro v. Santoro*, 70 Conn. App. 212, 218, 797 A.2d 592 (2002) (order setting new schedule for payment of debt constituted effectuation of judgment where strict adherence to judgment deemed impossible); *Clement v. Clement*, 34 Conn. App. 641, 646, 643 A.2d 874 (1994) (order requiring plaintiff to pay defendant value of loss of property caused by plaintiff's failure to pay mortgage constituted effectuation of judgment); *Roberts v. Roberts*, 32 Conn. App. 465, 471–72, 629 A.2d 1160 (1993) (order to auction property when judgment required sale of property constituted effectuation of judgment); cf. *Stechel v. Foster*, 125 Conn. App. 441, 448–49, 8 A.3d 545 (2010) (order changing amount owed to plaintiff from qualified domestic relations order constituted improper modification of judgment), cert. denied, 300 Conn. 904, 12 A.3d 572 (2011). In light of the foregoing case law, a postdissolution order entered by the court transferring exclusive possession of the marital home from the plaintiff to the defendant and ordering the defendant to pay the plaintiff the value of her equitable interest in the marital home would have constituted an impermissible modification of the judgment of dissolution. Such an order would have altered the judgment's unequivocal requirement that the marital home be sold, as we discussed previously in this opinion.

For the foregoing reasons, the court did not err in determining that the judgment of dissolution prohibited the defendant from paying the plaintiff the value of her equitable interest in the marital home in exchange for exclusive possession of the marital home.

The judgment is affirmed.

In this opinion the other judges concurred.

¹ On the basis of the condition affixed to the third party offers, we note that the continued existence of the underground oil tank, coupled with the order that the property be sold "as is," may be impairing the likelihood of any sale.

² The record does not indicate that the defendant had an obligation to respond to offers within twenty-four hours of receiving them. Balestrino testified, however, that at least one of the offers expired within twenty-four hours of its receipt and that the defendant failed to respond to that offer.

³ The memorandum of decision did not reference the plaintiff's motion

for order.

⁴ In addition, the court noted that “despite two court orders, the marital home languishes as the last remaining vestige of the equitable distribution of the former marital estate.” The court proceeded to enter the following new orders, in relevant part, concerning the sale of the marital home, “with the protection of the integrity of the original equitable distribution order in mind”:

“The former marital home shall be sold ‘as is,’ in its present physical condition inclusive of, but not limited to, the presence of the [underground oil tank], with an initial selling price of \$1,550,000 Neither party shall undertake any repairs to or demolish the marital home strictly for the purpose of maximizing its sale potential. . . . All offers shall be communicated to the plaintiff, the defendant and their respective attorneys in writing. Each such offer shall be replied to by the plaintiff, defendant and their respective attorneys as the needs may dictate, as determined by counsel. Each party and, as the case may be, their attorneys’ reply on their behalf . . . shall be in writing, directed to the listing agent . . . and said reply [shall] be dispatched within the time frame designed by the listing agent The initial listing price of \$1,550,000 shall be reduced by three percent each month until the marital home is sold.

“In the event the listing agreement expires prior to the marital home being sold, then the marital home shall be sold by auction.” (Emphasis omitted; footnote omitted.)

⁵ The defendant’s other two claims are contingent on the success of his first claim. Because we conclude that the court did not err by determining that the judgment of dissolution prohibited him from paying the plaintiff the value of her equitable interest in the marital home in exchange for exclusive possession, we need not reach his remaining claims.
