

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0861, In the Matter of Michelle Hill and James Edward Hill, Jr., the court on October 10, 2007, issued the following order:

The respondent, James Edward Hill, Jr. (Husband), appeals an order of the trial court addressing post-divorce enforcement of the parties' divorce decree. He argues that the trial court impermissibly modified the parties' final property settlement and erred in failing to find the petitioner, Michelle Hill (Wife), in contempt. We reverse and remand.

The trial court found that the parties' divorce decree contained the following provision:

#14 Marital Home The marital homestead located at 16 Pigeott Hill Road is awarded to the petitioner, Michelle Hill. Within six months from the date of this agreement, Michelle Hill shall pay to James Hill the sum of \$20,000.00 for a portion of his share of the equity in that property. Michelle Hill shall pay the balance of the respondent's share of the equity within a period of five years from the date of this agreement. The equity shall be determined as follows: The parties shall agree to the increase or decrease in market value as of the time the petitioner pays the balance of the equity due which shall in any event not be longer than five years. The petitioner shall, at that time (when the second portion of the equity is due) pay one half the increase or deduct one half of any decrease in market value from the equity due.

It is undisputed that Wife did not make either payment contemplated under the divorce decree.

When a dispute arises concerning the nature of provisions within a stipulation approved in a divorce proceeding, we must consider the intent of the parties. *Miller v. Miller*, 133 N.H. 587, 590 (1990). Absent fraud, duress, mutual mistake or ambiguity, the parties' intentions will be gleaned from the face of the agreement. *Id.* While the intent of the parties is to be resolved by the trier of fact, the meaning of the language of the agreement is a matter of law for this court to decide. *Id.*

In this case, the trial court established a valuation date for the marital home as of the date Wife filed a petition to enforce the stipulation, and adjusted the value downward to reflect improvements that Wife had made to the property. Neither of these actions is supported by the parties' stipulation. The stipulation provided that the equity was to be determined as of the date Wife paid the balance due to Husband, "which in any event shall not be longer than five years." The stipulation also does not provide for any adjustment in the amount due to Husband to reflect any improvements that Wife may have made during that five-year period.

Finally, we address Husband's argument that the court erred in failing to find Wife in contempt. The contempt power is discretionary and the proper inquiry is not whether we would have found Wife in contempt but whether the trial court unsustainably exercised its discretion. In the Matter of Clark & Clark, 154 N.H. 420, 425 (2006). Even if we assume without deciding that Husband has properly preserved this issue for our review, we cannot conclude that the trial court erred in declining to exercise its contempt power. We note that it was Wife who brought this action forward to obtain the assistance of the court to satisfy her obligations.

For the foregoing reasons, we vacate the order of the trial court and remand for such further proceedings as it deems necessary to enforce the stipulation. If the parties cannot agree on the value of Husband's equity, the trial court can appoint a commissioner to sell the marital home, with the costs to be apportioned between the parties as the trial court deems equitable. Because it would appear that there is no dispute that Wife currently owes Husband \$20,000 under the plain language of the stipulation, the court can enter judgment in that amount which would then be subject to post judgment interest.

Reversed and remanded.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**