FRANK J. D'AMICO, JR.

VERSUS

JAMIE LYNN BURNTHORNE, WIFE OF FRANK J. D'AMICO, JR.

NO. 23-CA-80

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 707-665, DIVISION "A"
HONORABLE RAYMOND S. STEIB, JR., JUDGE PRESIDING

December 06, 2023

STEPHEN J. WINDHORST
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Jude G. Gravois, and Stephen J. Windhorst

AFFIRMED

SJW
FHW
JGG

COUNSEL FOR PLAINTIFF/APPELLANT,
FRANK J. D'AMICO, JR.
Charles R. Jones
Michael A. McNulty, Jr.

COUNSEL FOR DEFENDANT/APPELLEE,
JAMIE LYNN BURNTHORNE
Leslie A. Bonin

WINDHORST, J.

Appellant/plaintiff, Frank J. D'Amico ("Frank"), seeks review of the trial court's May 23, 2022 judgment (1) granting Jamie Lynn Burnthorne D'Amico's ("Jamie") rules for contempt and to compel payment, finding Frank in contempt of the consent judgment; (2) rendering judgment in favor of Jamie and against Frank, in the total amount of $232,260.80, consisting of $209,220.79 owed by Frank to Jamie on the credit line borrowing portion of the mortgage indebtedness against Unit 110 pursuant to the consent judgment, less total credits due to Frank by Jamie in the amount of $21,959.99, plus attorney's fees awarded in favor of Jamie and against Frank for Frank's contempt in the amount of $45,000.00, plus legal interest from date of award, with each party to bear their own costs; and (3) denying and dismissing with prejudice Frank's reconventional demands.[1] For the following reasons, we affirm.

PROCEDURAL HISTORY and FACTS

On July 1, 2000, Frank and Jamie were married. Through a prenuptial agreement the parties established a separate property regime. Although under a separate property regime, the parties also had joint assets and liabilities, including jointly owned business enterprises. On October 25, 2011, Frank filed a petition for divorce. On October 25, 2012, the parties were divorced.

On October 25, 2012, the parties entered into a "Consent Judgment of Final Partition of Joint Assets and Liabilities" (the "consent judgment").[2] The consent judgment was signed by both parties, their counsel of record, and the trial court. The parties operated under the terms of the consent judgment for several years without objection. In the consent judgment, the parties declared that they desired to settle all claims regarding jointly and separately owned immovable properties. The

[1] Pursuant to this court's order, the trial court amended the judgment on September 28, 2023.

[2] The same day the parties also entered into a consent judgment regarding custody, visitation, and child and spousal support, which is not at issue in this appeal.

consent judgment is extensive, consisting of eighteen pages, and sets forth with specific detail, the allocation of the joint and separate assets and liabilities between the parties and the rights and obligations of the parties thereto.

The following provisions of the consent judgment are relevant to this appeal:

* * *

> 3.) Jamie Burnthorne D'Amico shall receive one hundred percent (100%) of all rights, title and interest in and to and Frank J. D'Amico, Jr. gifts unto Jamie Burnthorne D'Amico one hundred percent (100%) of all rights, title and interest possessed by him in and to the following immovable property, as well as all movables and contents located therein, receipt of which is hereby acknowledged by Jamie Burnthorne D'Amico. Said immovable property being more particularly described, as follows:
>
> Unit 110, Grand Dunes, a Condominium, according to the Declaration of Condominium thereof recorded in Official Records Book 2746, Page 3006, and as amended in the Official Records Book 2747, Page 327, all of the Public Records of Walton County, Florida, together with an undivided interest in the common elements, if any, appurtenant thereto, subject to and in accordance with the covenants, conditions, restrictions, terms and other provisions of said Declaration. [3]
>
> * * *
>
> Frank J. D'Amico, Jr., shall convey his interests in Unit 110 to Jamie Burnthorne D'Amico by written Warranty Deed and any documentary stamp taxes required for its recordation in Walton County Florida shall be paid by Jamie Burnthorne D'Amico. The deed to this Unit shall be delivered by Frank J. D'Amico, Jr. to Jamie Burnthorne D'Amico, within five days of the date of the entry of this Consent Judgment. This transfer shall be subject to all liens and encumbrances on said Unit including, but not limited to, a certain mortgage indebtedness in favor of Regions Bank and an EssentialLine [*sic*] Home Equity Line of Credit, Account No. ending 9662, and having, as of October 11, 2012, an approximate outstanding principal balance of EIGHT HUNDRED THIRTY NINE THOUSAND EIGHTY ONE AND 68/100 DOLLARS ($839,081.68); which loan is secured by a mortgage encumbering Unit 110 recorded at Official Records Book 2761, Page 3664, of the Public Records of Walton County, Florida (hereinafter the "Unit 110 Mortgage"). The parties hereto expressly acknowledge that the Unit 110 Mortgage is comprised of two separate borrowings, or types of borrowings, which the parties describe as follows:
>
> a. "Credit Line Borrowing" in the current principal balance of FOUR HUNDRED TWENTY EIGHT THOUSAND THIRTY SIX AND 90/100 DOLLARS ($428,036.90); and

[3] The parties had two condominium units in Florida. Under the terms of the consent judgment, Frank received a 100% interest in condominium Unit 730, Grand Dunes and Jamie received a 100% interest in condominium Unit 110, Grand Dunes.

b. “Mortgage Borrowing” in the current principal balance of THREE HUNDRED NINETY EIGHT THOUSAND FOUR HUNDRED EIGHTY FIVE AND 16/100 DOLLARS ($398,485.16)[.]

For as long as the Mortgage Borrowing portion of the Unit 110 Mortgage is outstanding and remains unpaid, Jamie Burnthorne D'Amico hereby covenants to, and shall, pay the Mortgage Borrowing in a timely manner by submitting her payments, which are currently in the amount of FOUR THOUSAND TWO HUNDRED SEVENTY SEVEN AND 24/100 DOLLARS ($4,277.24) per month, directly to Regions Bank on or before the eleventh (11th) day of each month.

For as long as the Credit Line Borrowing portion of the Unit 110 Mortgage is outstanding and remains unpaid, Frank J. D'Amico, Jr., individually and Frank J. D'Amico, Jr., APLC, hereby covenants to and shall pay the Credit Line Borrowing by remitting his/their payment to Regions Bank on or before the eleventh (11th) day of each month, hereinafter, as has been customarily done in the past.

With regard to these reciprocal covenants for the payment of the specified amounts of the Unit 110 Mortgage, the parties agree and stipulate to the following terms and remedies in the event of a default by either of the parties:

a. In the event that Frank J. D'Amico, Jr., individually and/or Frank J. D'Amico, Jr., APLC, defaults in his/their payment obligations of the Credit Line Borrowing, or in the event that Regions Bank accelerates the Unit 110 Mortgage based upon any cause other than Jamie Burnthorne D'Amico’s default in her payment of the Mortgage Borrowing as stated above, Frank J. D'Amico, Jr., individually and/or Frank J. D'Amico, Jr., APLC, shall pay off the Credit Line Borrowing to complete discharge, or cure any default thereunder, prior to the initiation of any foreclosure by Regions Bank of the Credit Line Borrowing Mortgage or other security agreements, and if Frank J. D'Amico, Jr., individually, and/or Frank J. D'Amico, Jr., APLC shall fail to timely do so, Jamie Burnthorne D'Amico may, at her option, pay off the Credit Line Borrowing to complete discharge or cure any default thereunder, and any monies advanced by Jamie Burnthorne D'Amico for such purposes shall be the personal obligation and debt of both Frank J. D'Amico, Jr. and/or Frank J. D'Amico, Jr., APLC owed to Jamie Burnthorne D'Amico; which obligation shall be collectible by suit or other remedy and which obligation shall bear interest until paid at the highest rate allowed under applicable law.

b. In the event Jamie Burnthorne D'Amico defaults on her payment of the Mortgage Borrowing for a period of more than thirty (30) consecutive days following written notice from Frank J. D'Amico, Jr. (the “Notice of Default”) that she is in default of those obligations without curing that default, Jamie Burnthorne D'Amico shall re-convey her interest in Unit 110 to Frank J. D'Amico, Jr. by Warranty Deed upon receipt of payment from Frank J. D'Amico, Jr.’s of an amount equal to the aggregate of all monies that Jamie Burnthorne D'Amico had paid to preserve, operate and maintain Unit 110 including, but not limited to, taxes, insurance, condominium assessments, and all payments she made toward the Mortgage Borrowing during the period of time from the date of September 11,

2010 through the date of her delivery of the Deed re-conveying Unit 110 to Frank J. D'Amico, Jr. That re-conveyance shall occur within thirty (30) days following the opportunity to cure deadline set forth in the Notice of Default. Frank J. D'Amico, Jr. shall be solely responsible to pay all documentary stamp taxes required to record this deed to reconveyance in Walton County Florida.

c. Jamie Burnthorne D'Amico shall be free, at any time, to sell Unit 110 for any purchase price, and upon such terms, as she shall, in her sole discretion, determine are appropriate. **Upon any such sale, the Unit 110 Mortgage shall be paid in full. With regard to the payoff of the Unit 110 Mortgage, Frank J. D'Amico, Jr., individually and/or Frank J. D'Amico, Jr., APLC shall be responsible for paying all monies owed under the Credit Line Borrowing indebtedness**. [Emphasis added.]

d. Each party agrees that the other party shall be entitled to an interest deduction for the pro-rata amount of the total interest paid by each party, respectively. This provision shall be effective with the calendar year, 2011, and each and every year thereinafter, as applicable. The parties further agree and acknowledge that in the event either party is required to enforce this provision against the other by way of legal action, they shall have the right to assert a claim for actual attorney's fees and costs by them in the event the court should grant the amount of relief requested.

* * *

4.) **Jamie Burnthorne D'Amico shall receive one hundred percent (100%) of all rights, title and interest in and to and Frank J. D'Amico, Jr. shall relinquish one hundred percent (100%) of all rights, title and interest in and to the following immovable property**, as well as all content located therein. Said immovable property being more particularly described, as follows: [Emphasis added.]

A CERTAIN PIECE OR PORTION OF GROUND, together with all the buildings and improvements, thereon, and all of the rights, ways, privileges, servitudes, appurtenances and advantages thereunto belonging or in anywise appertaining, situated in the Parish of Jefferson, State of Louisiana, in that part thereof known as the City of Kenner, Chateau Estates South, Section 2, Square 7, bounded by Chateau Haut-Brion Drive, Chateau Margaux Court, Chateau Magdelaine Drive, Chateau Ausone Court, and Chateau Pontet-Canet Drive, designated as Lot 33, and measuring as follows, to-wit: Lot 33 commences 100 feet from the corner of Chateau Haut-Brion Drive and Chateau Margaux Court and measures thence 100 feet front on Chateau Haut-Brion Drive, a width in the rear of 106.06 feet and a depth on both sidelines of 140 feet, all according to survey by J.J. Krebs and Sons, Inc., dated November 25, 1975, and last redated Aug. 23, 1976, a copy of which is annexed to Act No. 770915, improvements bear Municipal No. **33 Chateau Haut-Brion Drive**. [Emphasis added.]

* * *

> Jamie Burnthorne D'Amico shall be solely responsible to assume any and all mortgage indebtedness bearing against said immovable property, including but not limited to Bank One, Home Equity Line of Credit, Account No. ending 8226, with an approximate loan balance as of June 1, 2010, in the sum of TWO HUNDRED FORTY FOUR THOUSAND SEVEN HUNDRED NINETY EIGHT AND 62/100 DOLLARS ($244,798.62) through July 25, 2012 and does hereby relieve and release, and hold harmless, Frank J. D'Amico, Jr. from any and all liability or responsibility in connection therewith, including actual attorney's fees and all costs in the event Frank J. D'Amico, Jr. is called upon to defend himself in any action related thereto. Contemporaneously with the signing of this "**Consent Judgment of Final Partition of Joint Assets and Liabilities**", Frank J. D'Amico, Jr. shall immediately turn over the original promissory note, dated December 2, 1996 in the original principal amount of TWO HUNDRED EIGHTY FOUR THOUSAND AND 0/100 DOLLARS ($284,000.00) marked "**pay to the order of bearer**". Once said note has been received by Jamie Burnthorne D'Amico, she may have said mortgage cancelled, solely at the option and expense of Jamie Burnthorne D'Amico, or alternatively, Jamie Burnthorne D'Amico may keep the mortgage open for estate planning or personal liability purposes. [Emphasis in original.]

On May 13, 2019, Jamie filed a "Rule for Contempt, for Past Due Child Support, to Compel Payment of Funds Owed in Accordance with Consent of Final Partition of Joint Assets and Liabilities, for Legal Interest, Attorney's Fees and Costs" ("rule for contempt and to compel payment") against Frank, alleging that she sold Unit 110 and paid the mortgage indebtedness encumbering or burdening the property in favor of Regions Bank, including the credit line borrowing portion owed by Frank, pursuant to the terms of the consent judgment. She alleged that she made demand upon Frank to reimburse her for the credit line borrowing portion, but Frank willfully failed and/or refused to pay her any sums owed to her pursuant to the specific terms and conditions of the consent judgment. Jamie requested that Frank be held in contempt for willfully failing to abide by the consent judgment and that there be judgment in her favor for the amount owed by Frank for the credit line borrowing portion. She also requested that the amount be made executory.

In response, on September 25, 2019, Frank filed an "Affirmative Defenses and Reconventional Demand" ("reconventional demand"). In his reconventional

demand, Frank asserted that (1) the consent judgment was an absolute nullity; (2) the donations to Jamie in the consent judgment were null and void; (3) he was entitled to revocation of any and all donations contained in the consent judgment on the grounds of Jamie's ingratitude; and (4) he sustained monetary damages as a result of Jamie's actions and failure to act and therefore, he was entitled to damages.

On March 2, 2021, Jamie filed a "Supplemental and Amending Rule for Contempt, for Past Due Child Support,[4] to Compel Payment of Funds Owed in Accordance with Consent Judgment of Final Partition of Joint Assets and Liabilities, for Legal Interest, Attorney's Fees and Costs" ("amended rule for contempt and to compel payment") (collectively hereinafter "rules for contempt and to compel payment"), alleging that she made demand upon Frank in the amount of $219,955.39, being the credit line borrowing portion owed by him. She requested that Frank be found in contempt for his willful failure and refusal to abide by the terms of the consent judgment, and requested the trial court to compel payment from Frank for the credit line borrowing portion he was obligated to pay.

On February 17, 2021, Frank subsequently filed a "First Amended Affirmative Defenses and Reconventional Demand," changing the name of the pleading to "Affirmative Defenses to Rule for Contempt and Petition for Nullity of Judgment; Revocation and Dissolution of Donations; and for Damages" ("amended reconventional demand") (collectively hereinafter "reconventional demands").

On June 22, 2021, a hearing was held on Frank's petition for nullity of the consent judgment, which the trial court denied.[5] Frank appealed and this court affirmed the trial court's judgment denying and dismissing Frank's petition for nullity. D'Amico v. Burnthorne, 21-671 (La. App. 5 Cir. 08/25/22), 362 So.3d 757, 767, writ denied, 22-1459 (La. 11/22/22), 350 So.3d 498. This court found that the

[4] On February 12, 2021, the parties entered into a consent judgment resolving all issues pertaining to child support arrearages.

[5] The trial court signed a written judgment denying and dismissing Frank's petition for nullity on July 13, 2021.

parties signed the consent judgment agreeing to its content and that the consent judgment is "clear, definite, and specific" as to the distribution of joint assets and liabilities and the rights and obligations of the parties. Id. at 767. This court further found that Frank failed to establish that the enforcement of the obligations in the consent judgment would produce a result that is prohibited by law or is against public policy. Id. Accordingly, in its August 25, 2022 opinion, this court held that the consent judgment at issue here is valid and enforceable. Id.

On March 15, 2022, a trial on the merits was held on Jamie's rules for contempt and to compel payment and on Frank's reconventional demands. At the conclusion of the trial, the trial court took the matter under advisement and allowed the parties to submit post-trial memoranda.

On May 23, 2022, the trial court (1) granted Jamie's rules for contempt and to compel payment, finding Frank in contempt of the consent judgment; (2) rendered judgment in favor of Jamie and against Frank, in the total amount of $232,260.80, consisting of $209,220.79 owed by Frank to Jamie on the credit line borrowing portion of the mortgage indebtedness against Unit 110 pursuant to the consent judgment, less total credits due to Frank by Jamie in the amount of $21,959.99,[6] plus attorney's fees awarded in favor of Jamie and against Frank for Frank's contempt in the amount of $45,000.00, plus legal interest from date of award, with each party to bear their own costs; and (3) denied and dismissed with prejudice Frank's reconventional demands. The trial court issued extensive reasons for judgment.

This appeal followed.

LAW and ANALYSIS

In his first assignment of error, Frank contends the trial court committed legal error when it determined that the parties did not orally modify the terms of the

[6] Neither party appealed the trial court's determination of the credits due to Frank. Therefore, this court does not opine as to whether this determination was correct.

consent judgment. Frank argues that the trial court made a legal error when it reasoned that while parties can orally modify a contract, the same cannot be said for a judgment. He avers that La. C.C. art. 3072 does not require that a compromise be reduced to writing in any specific form or in a judgment. He asserts that a valid compromise is not required to be in writing because it can also be "susceptible of being transcribed from the record of the proceedings." Frank claims that because the original compromise agreement is not required to be in writing, a subsequent modification of this agreement is not required to be in writing either.

The October 25, 2012 consent judgment entered into by the parties is a compromise, or a contract whereby the parties, through concessions made by one or more of them, settle a dispute or an uncertainty concerning an obligation or other legal relationship. La. C.C. art. 3071; D'Amico, *supra*. A compromise shall be made in writing or recited in open court, in which case the recitation shall be susceptible of being transcribed from the record of the proceedings. La. C.C. art. 3072. The law does not require that a compromise be reduced to writing in any specific form or in a judgment. La. C.C. arts. 3071 and 3072.

A signed consent judgment is the mutual consent of the parties to the terms of the compromise; its binding force is derived from the voluntary acquiescence of the parties and not from adjudication by the trial court on the merits. Peeler v. Dural, 06-936 (La. App. 5 Cir. 04/11/07), 958 So.2d 31, 35; Billiot v Plambeck, 16-265 (La. App. 5 Cir. 12/21/16), 209 So.3d 379, 382. It has attributes both of contracts and of a judicial decree. Peeler, 958 So.2d at 35. However, to be valid and enforceable, a compromise must be in writing and signed by the parties, or recited in open court capable of being transcribed from the record of the proceeding. La. C.C. arts. 3071 and 3072. Neither a written or transcribed compromise or modification occurred, or was suggested to have occurred in this case.

Frank testified that during a telephone conversation, the parties verbally modified the consent judgment. He testified that he sent Jamie a notice of default due to her delinquent payments on the mortgage borrowing portion of the Regions Bank mortgage indebtedness. He claimed that he agreed to not follow through with the default against Jamie and he would allow Jamie to sell Unit 110. In exchange for foregoing his right to default her, Frank testified that Jamie agreed to pay off the mortgage indebtedness on Unit 110 in favor of Regions Bank, including the credit line borrowing portion he was obligated to pay, with the proceeds from the sale of Unit 110. Frank further asserted that Jamie additionally agreed to pay off her mortgage on the property located at 33 Chateau Haut-Brion in the amount of $250,000.00 owed to Chase Bank, which was still in his name. Frank testified that Jamie did not fulfill her verbal agreement.

Nancy Pavon, the office manager for Frank J. D'Amico, Jr., PLC, testified to Jamie's late/delinquent payments on her mortgage obligation, calls to Jamie concerning her delinquent payments, the calculation of credit and interest due to Frank for his overpayments, and the notice of default Frank sent to Jamie in August 2018. Ms. Pavon further testified that she was present for the telephone conversation between Frank and Jamie and heard the parties orally agree to modify the terms of the consent judgment.

Jamie testified that Frank sent her a notice of default regarding her delinquent payments on her portion of the mortgage indebtedness. She testified that she made a payment to Regions Bank in the amount of $10,463.50 to cure that default and the payment was made by the deadline provided in the notice of default. Jamie asserted that she was current on the mortgage in favor of Chase Bank on her home. Jamie further explicitly testified that she did not orally agree to any modification of the consent judgment as alleged by Frank.

The record clearly establishes that the October 25, 2012 compromise was a written consent judgment. Therefore, any modification thereof, or any further compromise resulting in a modification of the judgment, must be in writing or transcribed for the record. The record does not contain a written compromise or modification of the consent judgment, nor did the parties recite in open court any compromise or modification of the terms of the consent judgment transcribed in the record of the proceeding, as required by La. C.C. art. 3072.

Even prior to the 2007 enactment of La. C.C. art. 3072, Louisiana courts had consistently held under an earlier enactment of La. C.C. art. 3071 that a modification or amendment of a written compromise or settlement, or of a consent judgment, must likewise be in writing or susceptible to transcription to be valid. See Bourgeois v. Franklin, 389 So.2d 358, 359 (La. 1980); Jasmin v. Gafney, Inc., 357 So.2d 539, 540-541 (La. 1978); Abadie v. Metropolitan Life Ins. Co., 97-932 (La. App. 5 Cir. 04/09/98), 712 So.2d 932, 934 writ denied, 98-1268 (La. 06/26/98), 719 So.2d 1059; Wortham v. Fielder, 30,102 (La. App. 2 Cir. 04/08/98), 711 So.2d 399, 401, writ denied, 98-1254 (La. 06/19/98), 721 So.2d 474; Braun Welding Supply, Inc. v. Praxair, Inc., 94-1336 (La. App. 3 Cir. 04/05/95), 654 So.2d 388, 392. Thus, the requirement that any modification or amendment of a consent judgment be in writing or transcribable is longstanding and absolute.

We therefore find that the trial court did not err in finding that the consent judgment was not modified. Accordingly, the remaining issues before this court are viewed under the specific terms of the consent judgment, which this court previously found to be valid and enforceable. D'Amico, *supra*.

In his second, third, and fourth assignments of error, Frank contends (a) that the trial court abused its discretion when it determined that he owed Jamie $209,220.79, despite the trial court having acknowledged that Jamie breached the terms of the consent judgment and did not introduce any evidence of this amount;

(b) the trial court abused its discretion when it determined that he could not revoke the donation of the $248,000 bearer note to Jamie for her failure to perform the condition of the donation in a reasonable time; and (c) the trial court abused its discretion in finding that he was in contempt of court and it abused its discretion when it awarded Jamie attorney's fees and expenses.

Frank initially asserts that the trial court found Jamie breached the terms of the consent judgment but erred in failing to find Jamie in contempt. La. C.C.P. art. 224 defines a constructive contempt as "any contempt other than a direct one," and delineates a number of acts that constitute a constructive contempt, including the following: "wilful [*sic*] disobedience of any lawful judgment, order, mandate, writ, or process of the court." La. C.C.P. art. 224(2). Although a trial court has discretion to determine whether to find a person guilty of constructive contempt of court, a finding that a person willfully disobeyed a court order in violation of La. C.C.P. art. 224(2) must be based on a finding that the accused violated an order of the court "intentionally, knowingly, and purposefully, without justifiable excuse." Lang v. Asten, Inc., 05-1119 (La. 01/13/06), 918 So.2d 453, 454 (*per curiam*), *citing* Brunet v. Magnolia Quarterboats, Inc., 97-187 (La. App. 5 Cir. 03/11/98), 711 So.2d 308, 313, writ denied, 98-990, (La. 05/29/98), 720 So.2d 343. La. C.C.P. art. 225 A provides, in pertinent part:

> a person charged with committing a constructive contempt of court may be found guilty thereof and punished therefor **only after the trial by the judge of a rule against him to show cause why he should not be adjudged guilty of contempt and punished accordingly.** The rule to show cause may issue on the court's own motion or on motion of a party to the action or proceeding and shall state the facts alleged to constitute the contempt.

A review of the record reveals that no rule to show cause, stating the facts alleged to constitute contempt of the consent judgment, was filed against Jamie. Accordingly, the trial court could not, and correctly did not, find Jamie in contempt

for alleged violations of the consent judgment. Therefore, we find this argument is without merit.

With regard to the amount of $209,220.79 that the trial court found he owed to Jamie for the credit line borrowing portion of the mortgage indebtedness upon the sale of Unit 110, Frank asserts that the trial court abused its discretion and it was manifestly erroneous by awarding an amount, "admittedly unsupported by the admissible evidence." He contends that Jamie's initial rule for contempt and to compel payment did not contain an amount he allegedly owed for reimbursement for the credit line borrowing portion of the mortgage indebtedness owed on Unit 110 at the time Unit 110 was sold. Further, he argues that in her amended rule for contempt and to compel payment, Jamie stated the amount he owed was $219,955.39, which is a different amount than the one testified to at trial. He contends that while the trial court has vast discretion in determining facts, the trial court cannot award an amount that is not supported by the evidence at trial. Frank asserts that because the trial court's conclusions are not supported by the evidence, this constitutes an abuse of discretion and manifest error.

At trial, Frank admitted that he was obligated to pay the credit line borrowing portion of the mortgage indebtedness in favor of Regions Bank on Unit 110 pursuant to the consent judgment. He conceded that the consent judgment provided that Jamie was entitled to sell Unit 110 at any time, for any price, and upon such terms as she determined were appropriate, in her sole discretion. "Upon any such sale," Frank acknowledged that he was obligated to immediately pay the credit line borrowing portion. He asserted that he knew that Jamie sold Unit 110 in October 2018. Although he conceded that he was not listed as a seller on the act of sale, he asserted that he "allowed her to sell it," and he executed a Quit Claim Deed to Jamie.[7] Frank

[7] Despite Frank's contention that his signing of the Quit Claim Deed showed that he "allowed" Jamie to sell Unit 110, we find this argument is without merit. Under the clear terms of the consent judgment Jamie was given 100% ownership of Unit 110 and Frank was required to execute the documents necessary to ensure

further conceded that at the time Jamie sold Unit 110 in October 2018, the balance due under the credit line borrowing portion was $209,220.79, as reflected on the Regions Bank statement.[8] However, he stated that was not an accurate amount because it did not reflect the credit he was due from two large payments and for interest.[9]

Despite acknowledging that pursuant to the consent judgment he was obligated to pay the credit line borrowing portion upon the sale of Unit 110, Frank testified that at the time of the sale, he was no longer obligated to pay, and he did not pay, the credit line borrowing portion because Jamie orally agreed to modify the consent judgment. He further testified that as of the date of the trial, he had not paid the credit line borrowing portion pursuant to the terms of the consent judgment.

Jamie testified that at the time Unit 110 was sold, the credit line borrowing portion owed by Frank was approximately "$209,000" and she paid it with the sale proceeds. Jamie testified that Frank has not reimbursed her for the amount paid on the credit line borrowing portion, despite verbally requesting the same from Frank prior to the sale and several times after the sale of Unit 110. As a result, she subsequently filed this lawsuit. She testified that she had sole ownership of Unit 110 at the time of the sale and she did not have any requirement or obligation to speak with Frank about selling Unit 110. She was shown the Quit Claim Deed and she testified that she had never seen the document. She had the warranty deed on the property and paid the "stamps," and then she placed Unit 110 in her name. She further testified that she did not orally modify the terms of the consent judgment as alleged by Frank.

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the transfer of ownership to Jamie, which included a Warranty Deed. The consent judgment further provided that Jamie at her sole discretion had authority to sell Unit 110 for any price and at any time. Thus, we find Frank executed the Quit Claim Deed because the State of Florida required this additional document to correct the Warranty Deed, which he acknowledged was defective.

[8] Regions Bank statements and Frank's notice of default show that $209,220.79 was owed on the credit line borrowing portion of the mortgage indebtedness in favor of Regions Bank at the time of the sale of Unit 110.

[9] He testified that he made two large payments, one in the amount of $25,000 and another in the amount of $200,000 on his credit line borrowing portion. However, because of Jamie's delinquency on her portion, part of the funds were applied first to Jamie's portion to bring it current and thus, he was not given proper credit for the payments on his portion.

Jamie admitted Frank sent her a notice of default prior to the sale. She further admitted that there were some delinquent mortgage payments due when Unit 110 was sold; however, she paid off the entire mortgage indebtedness to Regions Bank at the time of the sale. She testified that despite the terms of the consent judgment, upon the sale of Unit 110, Frank did not pay, or reimburse her, for the credit line borrowing portion of the mortgage indebtedness in favor Regions Bank.

Based on the testimony and other evidence in the record, we find the trial court did not abuse its discretion and was not manifestly erroneous or clearly wrong in determining that the amount Frank owed on the credit line borrowing portion of the mortgage indebtedness in favor of Regions Bank at the time of the sale of Unit 110 was $209,220.79. The Regions Bank statements admitted into evidence are sufficient to show that the amount on the credit line borrowing portion owed by Frank at the time of the sale was $209,220.79. Jamie also testified that Frank owed approximately "$209,000" on his portion at the time of the sale. Moreover, Frank confirmed that he owed $209,220.79 on the credit line borrowing portion at the time of the sale, as shown on the Regions Bank statements. At trial, Frank only disputed whether the amount was accurate, if it was owed, because the amount of $209,220.79 did not take into consideration credit due to him for his overpayments and interest. Accordingly, this assignment of error is without merit.

Frank next contends that the mortgage in favor of Chase Bank in the amount of $250,000 on the property located at 33 Chateau Haut-Brion and allocated to Jamie is still in his name. He asserts that under the consent judgment, Jamie was required to pay mortgage payments to Regions Bank for Unit 110 and was required to pay mortgage payments to Chase Bank on the property located at 33 Chateau Haut-Brion and agreed to "… hereby relieve, release, and hold harmless, [him] from any and all liability or responsibility . . . ." He avers that the evidence showed that Jamie was delinquent on the mortgage payments to Regions Bank and that Jamie has been late

on numerous occasions and she has been over the credit limit as the payments to Chase Bank. He contends that this delinquency hurt his credit and ability to borrow, which subsequently impacted the law firm's ability to operate. Frank avers that the trial court should have found that Jamie's breach of the consent judgment was sufficient to constitute a modification of the consent judgment or a sufficient reason to revoke Frank's donation to Jamie of the $284,000 bearer note. Frank argues that certain assets were clearly his separate property and that in an effort to ensure that his child was financially secure, he "gifted" or "donated" his separate assets to Jamie. He asserts that because of her ingratitude, he is now entitled to revoke those donations in the consent judgment.

As previously stated above, Frank did not file a rule for contempt against Jamie. Whether Jamie breached the relevant terms of the consent judgment as alleged by Frank is irrelevant because that issue was not before the trial court.[10] Moreover, as discussed *supra*, the consent judgment was not modified.

Under the clear, precise, and unambiguous terms of the valid and enforceable October 25, 2012 consent agreement, the parties agreed to settle any disputes they had concerning joint and separately owned assets and liabilities, as shown by the extensively detailed eighteen page consent judgment. As part of that agreement, Jamie received one hundred percent (100%) of all rights, title and interest in Unit 110 and Frank agreed to convey[11] all of his rights, title and interest in Unit 110 to Jamie. The parties also agreed to each pay a portion of the mortgage indebtedness against Unit 110 in favor of Regions Bank and Frank additionally agreed to immediately pay his portion upon the sale of Unit 110 by Jamie. The consent judgment further partitioned "one hundred percent (100%) of all rights, title and

[10] This court does not opine as to whether Jamie breached any of the terms of the consent judgment.

[11] Despite the language used in the consent judgment stating that Frank "gifts" his "one hundred percent (100%) of all rights, title and interest possessed by him in" Unit 110 to Jamie, this was not a "donation." In exchange for Jamie receiving Unit 110, Frank received other assets as shown in the consent judgment.

interest in" the property located at 33 Chateau Haut-Brion Drive to Jamie. Jamie agreed to be solely responsible for all mortgage indebtedness against the property, including the Chase Bank mortgage (previously held by Bank One) in the amount of $244,798.62. She further agreed to "release, and hold harmless, Frank J. D'Amico, Jr. from any and all liability or responsibility in connection therewith, including actual attorney's fees and all costs *in the event Frank J. D'Amico, Jr. is called upon to defend himself in any action related thereto*." [Emphasis added.] Under the terms of the consent judgment, Frank agreed to "relinquish one hundred percent (100%) of all rights, title and interest in" the property located at 33 Chateau Haut-Brion Drive. Thus, Frank agreed to:

> . . . immediately turn over the original promissory note, dated December 2, 1996 in the original principal amount of TWO HUNDRED EIGHTY FOUR THOUSAND AND 0/100 DOLLARS ($284,000.00) marked "**pay to the order of bearer**". Once said note has been received by Jamie Burnthorne D'Amico, she may have said mortgage cancelled, solely at the option and expense of Jamie Burnthorne D'Amico, or alternatively, Jamie Burnthorne D'Amico may keep the mortgage open for estate planning or personal liability purposes." [Emphasis in original.]

The terms set forth in the consent judgment do not constitute a "donation." In confecting the consent judgment, the parties each made concessions to settle their disputes regarding assets and liabilities. Once the parties entered into the consent judgment partitioning assets and liabilities, the classification of those assets and liabilities as separate or joint ceased to exist. Because it is a valid and enforceable consent judgment, not a donation, we find that the trial court did not err in finding that Frank is not entitled to revocation or dissolution of donations of certain assets and/or liabilities, including, but not limited to, the bearer note in the amount of $284,000.00. Accordingly, this assignment is without merit.

As to the trial court's finding that Frank was in contempt for violating the consent judgment, we find the trial court did not abuse its discretion.

A trial court is vested with great discretion in determining whether a party should be held in constructive contempt for willful disobedience of a judgment. La. C.C.P. art. 224; Short v. Short, 12-312 (La. App. 5 Cir. 11/13/12), 105 So.3d 892, 896. However, the predicate factual determinations underlying the finding of civil contempt of court are reviewed under the manifest error standard of review. Donaldson v. Guidry, 21-1569 (La. App. 1 Cir. 07/08/22), 345 So.3d 433, 436-437, writ denied, 22-1208 (La. 11/08/22), 362 So.3d 422. It is well-settled that if the trial court's factual findings are reasonable based on review of the entire record, an appellate court may not reverse those findings. Id. at 437.

A review of the record shows that the consent judgment was not modified. Under the clear and unambiguous terms of the valid and enforceable consent judgment, Frank was obligated to pay the credit line borrowing portion of Unit 110. Upon the sale of Unit 110 by Jamie, Frank was immediately obligated to pay the credit line borrowing portion. Jamie testified that she verbally requested Frank to pay his portion prior to the sale and requested reimbursement from Frank for his portion after the sale of Unit 110. Moreover, Frank unequivocally testified that he did not pay the credit line borrowing portion owed at the time of the sale nor had he reimbursed Jamie for the amount owed at the time of the trial on the merits. Accordingly, we find the trial court did not abuse its discretion and was not manifestly erroneous when it found that Frank was in contempt of court for willfully failing and/or refusing to pay the credit line borrowing portion of the mortgage indebtedness in favor of Regions Bank when Unit 110 was sold pursuant to the terms of the consent judgment.

We further find that the trial court did not abuse its discretion by awarding Jamie attorney's fees. The power to punish for contempt of court is limited by law. La. Const. Art. V, §2. The punishment which a court may impose upon a person

who is found to be in contempt is set forth in R.S. 13:4611. La. C.C.P. art. 227. La. R.S. 13:4611 provides, in pertinent part:

> Except as otherwise provided for by law:
>
> (1) The supreme court, the courts of appeal, the district courts, family courts, juvenile courts and the city courts may punish a person adjudged guilty of a contempt of court therein, as follows:
>
> * * *
>
> (g) The court may award attorney fees to the prevailing party in a contempt of court proceeding provided for in this Section.

Thus, courts are only authorized to award attorney fees "to the prevailing party" to "punish a person adjudged guilty of a contempt of court." Luv N' Care, Ltd. v. Jackel International Limited, 19-749 (La. 01/29/20), 347 So.3d 572, 578. The term "prevailing party" means a party who succeeds in establishing that contempt of court has occurred. Id. Under La. R.S. 13:4611(1)(g), the Legislature chose to authorize awards of attorney fees under this statute only to a party who successfully prosecutes a motion for contempt. Id. at 578-579.

In the instant matter, Jamie successfully prosecuted her rules for contempt and to compel payment against Frank. Therefore, under La. R.S. 13:4611(1)(g), we find the trial court was authorized to award Jamie attorney's fees. At the trial on the merits of Jamie's rules for contempt and to compel payment, Jamie submitted testimony from her attorney, Craig Cabral, regarding his attorney's fees and the work he performed on this case concerning the consent judgment and enforcement of the same.[12] Mr. Cabral testified that his total attorney's fees equaled $84,635 and the total costs equaled $6,388.72, for a grand total of $91,023.72. Mr. Cabral testified that he received payment of the same from Jamie.[13] Counsel for Frank submitted this issue to the trial court, without questioning Mr. Cabral. Accordingly, upon review of the testimony and evidence, we find that the trial court did not abuse its

[12] Mr. Cabral also worked on the consent judgment concerning custody, visitation, and child and spousal support, the charges for which were redacted from the invoices.

[13] An invoice for attorney's fees and costs and a recapitulation of the same were admitted into evidence.

discretion in awarding $45,000 in attorney's fees, being less than half of the total amount of fees and costs claimed, to Jamie as the prevailing party in this contentious contempt proceeding that has been pending since 2019.

DECREE

For the reasons stated herein, we affirm the trial court's judgment.

AFFIRMED

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **DECEMBER 6, 2023** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

23-CA-80

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HON. RAYMOND S. STEIB, JR. (DISTRICT JUDGE)
CHARLES R. JONES (APPELLANT)
LESLIE A. BONIN (APPELLEE)

MAILED
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