STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0536

In re the Marriage of:
Pamela J. Atkinson n/k/a Pamela J. Kraker, petitioner,
Appellant,

vs.

Thomas E. Atkinson,
Respondent.

Filed May 22, 2017
Affirmed in part, reversed in part, and remanded
Toussaint, Judge*

Stearns County District Court
File No. 73-FA-07-7869

Ronald B. Sieloff, Sieloff and Associates, P.A., Eagan, Minnesota (for appellant)

Timothy R. Reuter, Kelm & Reuter, P.A., Sauk Rapids, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Stauber, Judge; and Toussaint, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D   O P I N I O N

TOUSSAINT, Judge

Appellant-wife challenges the denial of her motion requesting the district court to enforce a 2008 marriage-dissolution judgment, grant her equitable relief, and award her need-based attorney fees. Because the district court did not err in denying wife's requests for equitable relief, we affirm in part. But because the district court erred in interpreting the marriage-dissolution judgment and failed to make adequate findings on wife's request for attorney fees, we reverse in part and remand.

D E C I S I O N

I. The district court erred in interpreting the marriage-dissolution judgment.

The division of property in a marital-dissolution judgment is final and cannot be revoked or modified unless the standards that justify reopening a judgment exist. *Redmond v. Redmond*, 594 N.W.2d 272, 275 (Minn. App. 1999). But if the terms of a judgment are ambiguous, a district court may issue orders interpreting the judgment. *Stieler v. Stieler*, 244 Minn. 312, 319, 70 N.W.2d 127, 131 (1955). Such orders may not change the parties' substantive rights. *Redmond*, 594 N.W.2d at 275. "An order implementing or enforcing a dissolution decree does not affect the parties' substantive rights when it does not increase or decrease the original division of marital property." *Nelson v. Nelson*, 806 N.W.2d 870, 871 (Minn. App. 2011). We will not disturb an appropriate order to clarify or enforce the terms of a dissolution judgment and decree absent an abuse of discretion. *Id.* But the interpretation of a judgment and decree is a question of law that we review de novo. *Stewart v. Stewart*, 400 N.W.2d 157, 158 (Minn. App. 1987).

The district court determined that "both parties violated the terms of the [marriage-dissolution judgment], rendering the monetary transfer provision unenforceable." Under the terms of the marriage-dissolution judgment, respondent-husband was to pay a $250,000 equalization payment to wife. Husband failed to do so. The district court determined that husband had plainly violated the terms of the judgment by failing to make the equalization payment. Husband argued that wife violated the terms of the judgment by failing to cooperate in the preparation and filing of their 2007 tax return. He argued that he could not apply for a loan to finance the equalization payment until the parties' 2007 tax return was completed, and therefore wife violated the terms of the judgment by failing to execute the documents necessary to effectuate the terms of the judgment and decree. The district court agreed and concluded that the parties' failure to comply with the terms of the judgment rendered the monetary-transfer provision unenforceable.

Wife argues that the district court erred in determining that under the terms of the judgment the filing of the parties' 2007 tax return was a condition precedent to husband paying the $250,000 equalization payment. We agree. The relevant provision states, "At the exchange of the foregoing, [wife] is to receive $250,000 from [husband], which a portion therefrom shall be first used to satisfy the liabilities identified as her responsibility in the previous section V(a)." The provision explicitly states that once the parties exchanged their interests in the businesses, husband was to pay wife $250,000. There are no other conditions attached. The directive to file the 2007 return jointly is in an entirely different section titled "Claiming the Children on Taxes," which established a schedule for when the parties would claim the then-dependent children on their tax returns. The judgment and decree does not indicate that the filing of the 2007 tax return was a condition precedent to the $250,000 equalization payment.

Moreover, the provision cited by the district court concerning the parties' duty to "execute any and all documents and transfers necessary" within 30 days does not support the determination that wife's failure to file the 2007 tax return within 30 days rendered the monetary-transfer provision unenforceable. The provision goes on to state, "In the event either party fails to execute the necessary documents, a certified copy of the final Judgment and Decree will serve to transfer ownership." Thus, the provision specifies the consequences for failure to execute the necessary documents and does not state that the failure to execute any necessary documents renders provisions of the judgment and decree unenforceable.

Husband cites to an unpublished opinion to support his argument that the judgment and decree is ambiguous and should be interpreted to make the filing of the 2007 tax return a condition precedent to the equalization payment. This opinion is both unpublished, and therefore not precedential, and distinguishable.

Finally, the district court's determination has the practical effect of decreasing the original division of marital property. The judgment and decree plainly states that "[t]o ensure the marital estate is equal" between wife and husband, three things needed to occur: husband needed to transfer his interests in the Well Saloon, Inc. to wife, wife needed to transfer her interest in Albany Well, Inc. to husband, and husband needed to provide wife with a $250,000 payment, a portion of which would be used to satisfy existing liabilities. Accordingly, the $250,000 equalization payment was part of the initial property division.

Thus, the district court's determination that the monetary-transfer provision was unenforceable decreased the initial property award to wife. The district court may not clarify or interpret an order in a way that affects the parties' substantive rights, including decreasing the original division of marital property. *Nelson*, 806 N.W.2d at 871.

On this record, we conclude the district court erred in determining that the monetary-transfer provision was unenforceable. The district court's determination modified the initial property division, which is only permissible if circumstances justifying the reopening of the judgment and decree exist. *Redmond*, 594 N.W.2d at 275. The district court did not determine that such circumstances exist. But we note the parties submitted extensive documentation of their financial difficulties following the entry of the marriage-dissolution judgment, including the fact that wife filed for bankruptcy. Because the district court based its determination that the monetary-transfer provision was enforceable on its erroneous interpretation of the judgment and decree, we conclude that whether the documentation of the subsequent financial difficulty of the parties affects the enforcement of the judgment and decree is an open question. Accordingly, we reverse in part and remand to the district court for further consideration.

II. The district court did not err in denying wife's requests for additional relief.

A. Wife is not entitled to relief because husband did not commit fraud.

Wife challenges the district court's denial of her requests for equitable relief based on her assertion that husband committed fraud following the dissolution of the parties' marriage. Under the terms of the marriage-dissolution judgment, wife was awarded a commercial property, the Wells property, and husband was awarded a residential, farmstead property. Wife was responsible for the loan on the Wells property, which was secured by both the Wells property and farmstead property. The judgment specified that wife was to use a portion of the $250,000 equalization payment to pay off the loan. Husband did not make the equalization payment, and wife was unable to make the loan payments. Stearns Bank, N.A., subsequently initiated foreclosure proceedings on both the Wells property and husband's farmstead property. Husband successfully redeemed the farmstead property, but did not redeem the Wells property.

Wife argues that husband's conduct in redeeming his property but not the Wells property constitutes fraud. She argues that his fraudulent conduct warrants that his property should be placed in a constructive trust because he was unjustly enriched and that he breached his fiduciary duty to her.[1] We are not persuaded. Wife cites no legal authority to support her contention that husband had a duty to redeem her property when he redeemed his. Rather, she cites Minn. Stat. § 518.58, subd. 1a (2016), which provides, in part, that parties owe a fiduciary duty to one another "[d]uring the pendency of a marriage dissolution." The challenged conduct occurred after the final judgment and decree was entered, and therefore husband did not owe wife a fiduciary duty.

Moreover, wife does not cite any caselaw to support her assertion that husband's actions constituted fraud. The elements of fraud are:

> (1) a false representation of a past or existing material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made without knowing whether

[1] Wife also argues that the judgment should be reopened on the basis of fraud. *See* Minn. Stat. § 518.145, subd. 2(3) (2016). But a motion to reopen under Minn. Stat. § 518.145, subd. 2(3), must be brought no more than one year after judgment is entered. *Id.*

> it was true or false; (3) with the intention to induce action in reliance thereon; (4) that the representation caused action in reliance thereon; and (5) pecuniary damages as a result of the reliance.

U.S. Bank N.A. v. Cold Spring Granite Co., 802 N.W.2d 363, 373 (Minn. 2011). Husband's conduct does not establish these elements. Wife acknowledges she was unaware husband redeemed the farm property, and thus he did not induce action or reliance on her part. She appears to argue that his actions in not notifying her and obtaining her consent, or redeeming her property as well, were fraudulent. But she does not provide legal support for this assertion. On this record, we conclude that the district court did not err in denying wife's claims for equitable relief because she failed to establish he committed fraud.[2]

B. The district court did not err in construing wife's motion for amended findings as a motion for reconsideration.

Wife argues that the district court erred in construing her motion for amended findings as a motion to reconsider. A motion for amended findings must "address the record evidence, explain why the record does not support the district court's findings, and explain why the proposed findings are appropriate." *Lewis v. Lewis*, 572 N.W.2d 313, 316 (Minn. App. 1997), *review denied* (Minn. Feb. 19, 1998); *see also State by Fort Snelling Park Ass'n v. Minneapolis Park & Recreation Bd.*, 673 N.W.2d 169, 178 n.1 (Minn. App. 2003) (noting that *Lewis* has been overruled in part, but remains good law as far as

[2] Wife also challenges the district court's application of the doctrine of unclean hands. Wife suggests that the district court applied the doctrine in denying her motion to enforce the judgment and decree, but our review of the record persuades us that the district court applied the doctrine in denying her requests for equitable relief. Because we conclude that wife is not otherwise entitled to equitable relief, we need not address this argument.

establishing the necessary components for a motion for amended findings), *review denied* (Minn. Mar. 16, 2004). A motion for amended findings that merely reargues a prior motion is properly considered a motion to reconsider. *Lewis*, 572 N.W.2d at 315. Whether a motion is properly brought as a motion for amended findings concerns the interpretation of procedural rules, which this court reviews de novo. *Huntsman v. Huntsman*, 633 N.W.2d 852, 854 (Minn. 2001).

The district court determined that wife's motion was functionally a motion to reconsider, and therefore improper as wife did not request leave to bring such a motion. We agree with the district court. Wife's motion largely repeats the arguments already made and asks the district court to change its ultimate conclusion with respect to every legal conclusion in the initial order. And the explanations as to why the record does not support the district court's findings are very general. For example, the motion indicates that the finding that the 2007 tax return was necessary to obtain financing to pay the $250,000 payment is contradicted by the Stearns Bank file. But the Stearns Bank file is over 100 pages long, and wife does not actually cite to anything in the file, but rather asks the district court to draw conclusions based on what is not in the file. Other sections of the motion lack any citations to the record. The motion largely repeats the arguments advanced during the motion hearing with only cursory references to the record; it does not directly discuss the record evidence and why it does not support the district court's findings and does support wife's proposed findings. On this record, we conclude the district court did not err in construing wife's motion for amended findings as a motion for reconsideration.

III. The district court did not make adequate findings on wife's request for attorney fees.

Finally, wife argues that the district court erred in denying her motion for attorney fees. A district court shall award need-based conduct fees if the court finds that the fees are necessary for a good-faith assertion of the rights of the parties, that the party from whom the fees are sought has the means to pay them, and the party seeking the fees does not have the means to pay them. Minn. Stat. § 518.14, subd. 1 (2016). The district court denied wife's motion without making specific findings on the issue. We have observed that because the statutory language mandates awards of need-based attorney fees when appropriate, the district court must make specific findings and errs when it fails to do so. *In re Marriage of Richards*, 472 N.W.2d 162, 166 (Minn. App. 1991). In such cases, remand on the issue of attorney fees is appropriate. *Id.* Accordingly, we remand to the district court to make findings on wife's motion for attorney fees.

Affirmed in part, reversed in part, and remanded.