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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1610**

In re the Marriage of:
Robert David Stoffey, petitioner,
Respondent,

vs.

Mari Lou Stoffey,
Appellant.

**Filed July 24, 2017
Affirmed
Toussaint, Judge***

Mower County District Court
File No. 50-FA-13-2102

Scott Cody, Tarshish Cody, PLC, Richfield, Minnesota (for respondent)

Thomas C. Baudler, Baudler, Maus, Forman & King, LLP, Austin, Minnesota (for
appellant)

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and
Toussaint, Judge.

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

UNPUBLISHED OPINION

TOUSSAINT, Judge

In this contempt dispute arising out of a dissolution-of-marriage judgment, appellant-wife Mari Lou Stoffey argues that the district court (1) erred in concluding that a \$1.1 million cash payment respondent-husband Robert David Stoffey agreed to pay wife was a property division and (2) erred in determining that contempt was not an available remedy to enforce the cash payment. Because we conclude that the cash payment was a property division for which contempt is not an available remedy for enforcement, we affirm the district court's decision to deny wife's contempt motion.

DECISION

I.

Wife argues that the district court erred in concluding that the cash payment was a property division, rather than spousal maintenance, because this conclusion was not supported by findings or the evidence.

This court reviews questions of law related to spousal maintenance de novo. *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009). Spousal maintenance is an award “from the future income or earnings of one spouse for the support and maintenance of the other.” Minn. Stat. § 518.003, subd. 3a (2016). Maintenance is awarded based on a showing of need. *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (reversing award of maintenance where wife's annual income from her share of marital property met her need). Marital property includes real or personal property acquired by parties to a dissolution proceeding at any time during the marriage. Minn. Stat. § 518.003, subd. 3b (2016). To

determine whether an award is maintenance or a property division, courts look to the parties' intent and the true nature of the award. *Ruud v. Ruud*, 380 N.W.2d 765, 766 (Minn. 1986).

Citing *Bormann v. Bormann*, 644 N.W.2d 478, 481 (Minn. App. 2002), husband asserts that this court's review is limited to determining whether the district court's findings support its conclusions of law because wife did not obtain a transcript of the hearing on the contempt motion. However, the record includes sufficient information to allow this court to conduct a meaningful review of the district court's conclusion. For example, the record includes wife's motion for contempt, husband's responsive motion, and affidavits containing the parties' arguments in support of and against the motion. See *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995) ("While a transcript would be helpful in discerning exactly what arguments were made before the trial court, the record is not so inadequate that the appeal must be dismissed. The issues on appeal are legal. The motions, memoranda, and affidavits of the parties, together with the decisions of the trial court, provide an adequate record upon which this court can make its decision.").

Neither party asserts that the judgment and decree that dissolved their marriage was ambiguous. The judgment and decree clearly states that husband is to make reasonable efforts to pay wife \$1.1 million within 60 days of the parties' stipulation and that the cash payment was included in the consideration for wife's waiver of spousal maintenance.

Based on the record presented, the district court did not err in concluding that the cash payment was part of the property division. Although the cash payment is included under its own heading in the judgment and decree, separate from "spousal maintenance"

and “property settlement,” the judgment and decree identifies multiple forms of consideration for the parties’ waiver of spousal maintenance, including “the parties’ income per year from employment, income-producing assets, their ability to provide fully for his and her own support, and the property division contained” in the stipulation. Moreover, under the judgment and decree, husband is to receive “[a]ll retirement accounts, investment accounts, and cash accounts in his name once [he] has made the required cash payment,” which evidences an understanding that the source of the cash payment would be husband’s current accounts rather than his future income. This is contrary to the statutory definition of maintenance. Finally, wife admits in her affidavit that she can purchase a house without the additional \$600,000 from husband and does not argue that she is unable to support herself based on her income-producing assets and the property she has received.

Wife also argues that the district court should have held an evidentiary hearing prior to concluding that the cash payment was part of the property division. Wife does not cite to any authority holding that a hearing was required prior to the district court’s conclusion. Moreover, contrary to wife’s assertion that her affidavit in support of the contempt motion was the only evidence bearing on the characterization of the cash payment, the record also includes husband’s affidavit and responsive motion as well as documents filed in the district court since husband filed a petition for dissolution in 2014. The evidence in the record supports the district court’s conclusion without need for supplementation. Further, wife’s contention that the district court did not make appropriate findings lacks merit

because “there is no requirement for findings when a contempt motion is denied.” *Tatro v. Tatro*, 390 N.W.2d 461, 464 (Minn. App. 1986).

II.

After receiving \$500,000 from husband, wife argues that the district court erroneously concluded that contempt was not an available remedy to enforce the remaining \$600,000 payment because contempt is allowed under Minn. Stat. § 550.02 (2016) where husband failed to act as directed by the court when he did not make all reasonable efforts to pay wife within 60 days.

Generally, we review a district court’s decision to invoke its contempt powers for an abuse of discretion. *Mower Cty. Human Servs. Ex. Rel. Swancutt v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996). But “[t]he interpretation of a statute or case law is . . . reviewed de novo.” *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011). Under Minn. Stat. § 550.02:

Where a judgment requires the *payment of money*, . . . it may be enforced in those respects by *execution*. Where it requires the *performance of any other act*, a certified copy of the judgment may be served upon the party against whom it is given, or the person or officer who is required thereby or by law to obey the same. A person so served who refuses may be punished by the court as for *contempt*, and the individual’s obedience thereto enforced.

(Emphasis added.) In Minnesota, property settlements are generally treated as ordinary debts enforceable by execution. Minn. Stat. § 550.02; *Nelson v. Quade*, 413 N.W.2d 824, 827 (Minn. App. 1987), *review denied* (Minn. Dec. 22, 1987).

In *Burgardt v. Burgardt*, this court “decline[d] to permit the use of contempt to enforce a property settlement that require[d] the payment of money in the absence of express statutory authority to do so.” 474 N.W.2d 235, 237 (Minn. App. 1991). Wife attempts to distinguish *Burgardt* on the basis that she moved to hold husband in contempt for failure to perform the act of “mak[ing] all reasonable efforts to make the payment in 60 days,” while in *Burgardt*, the purpose of the contempt motion was to enforce a property settlement that required the payment of money. However, under both scenarios, wife seeks to hold husband in contempt for his failure to pay the full \$1.1 million. Therefore, the district court did not err in determining that contempt was not a remedy available to wife to enforce the cash payment because the district court appropriately concluded that the cash payment was a property division.

Moreover, wife’s reliance on *Burt v. Minneapolis Stock-Yards & Packing Co.*, 56 Minn. 397, 57 N.W. 940 (1894), is misguided because this case is distinguishable. In *Burt*, the availability of the contempt remedy was undisputed, and the district court granted a contempt motion. Accordingly, the issue on appeal in *Burt* was not whether the district court could properly use its contempt power, but whether the district court abused its discretion in granting the contempt motion. Finally, wife’s citation to unpublished opinions in support of her argument is unpersuasive. Unpublished opinions are not binding precedent. Minn. Stat. § 480A.08, subd. 3.

Affirmed.