

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0108**

In re the Marriage of: Matthew Durand Dornquast, petitioner,
Appellant,

vs.

Dianne Yanovick Dornquast, n/k/a Diana Yanovick Dornquast,
Respondent.

**Filed March 5, 2018
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-FA-13-7749

Ben M. Henschel, Susan A. Daudelin, Henschel Moberg Goff, P.A., Minneapolis,
Minnesota (for appellant)

Kay Nord Hunt, Lommen Abdo, P.A., Minneapolis, Minnesota; and

Brian L. Sobol, McGrann Shea Carnival Straughn & Lamb, Chartered, Minneapolis,
Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant-husband challenges the district court's order requiring him to pay taxes on the transfer of his ownership interest in a New York condominium to respondent-wife. The transfer is required under the terms of the parties' stipulated marital-dissolution judgment and decree. Husband argues that wife is required to pay the transfer taxes under an indemnification provision in the judgment and decree. We affirm.

FACTS

Appellant-husband Matthew Durand Dornquast and respondent-wife Diana Yanovick Dornquast were married in 2004. Their marriage was dissolved by a stipulated judgment and decree in 2015. The judgment and decree awarded wife "all right, title and interest in and to" the parties' New York condominium, which was valued at \$8,450,000. The judgment and decree provided that "[husband] shall execute a quit claim deed transferring to [wife] all right, title and interest in and to said condominium within ten days of entry of the Judgment and Decree" and that "[wife's] attorney shall be responsible for preparing the quit claim deed." It further provided that "[a]ll encumbrances against said property shall be paid and satisfied by [wife] and she shall indemnify, defend and hold [husband] harmless from all liability in connection with the condominium, including, but not limited to, the principal and interest monthly mortgage payments, real estate taxes, insurance and utility charges."

New York state law imposes a tax on "each conveyance of real property or interest therein when the consideration exceeds five hundred dollars." N.Y. Tax Law § 1402(a)

(McKinney 2016). New York state law requires payment of that transfer tax by the grantor prior to the recording of a conveyance. N.Y. Tax Law §§ 1404(a), 1410(b) (McKinney 2016). If the consideration for the real property exceeds \$25,000, New York City imposes its own transfer tax on the deed at the time of delivery. N.Y.C. Admin. Code § 11-2102(a) (2017). New York City law requires payment of its transfer tax by the grantor. N.Y.C. Admin. Code § 11-2104 (2017). Depending on certain residency requirements, a grantor may also be subject to estimated New York state income tax at the time of transfer. *See* N.Y. Tax Law § 663 (McKinney 2016).

In September 2016, wife moved the district court to order husband to (1) sign a quit-claim deed and other documents necessary to transfer title of the New York condominium to wife, (2) determine whether he must pay New York state income tax stemming from the transfer, (3) pay New York state and New York City taxes on the transfer of his interest in the condominium, and (4) pay conduct-based attorney fees. Husband moved the district court to order wife to pay any taxes stemming from the transfer, arguing that wife is solely responsible for the taxes under the indemnification provision in the judgment and decree. Husband also moved for conduct-based attorney fees.

The district court held a hearing on the motions. Husband and wife made legal arguments regarding liability for the transfer taxes under the stipulated judgment and decree, but they did not present extrinsic evidence regarding the parties' relevant intent at the time of the stipulation. The district court ordered husband to sign a quit-claim deed for the condominium, as well as other documents related to the transfer, to pay any New York state and city transfer taxes, and to pay any estimated New York state income tax stemming

from the transfer. The district court denied the parties' motions for attorney fees. Husband appeals.

DECISION

Husband contends that the district court's order constitutes "an impermissible modification of a final property settlement" because it is inconsistent with the indemnification provision in the judgment and decree, which establishes wife's "liability in connection with the condominium."

A district court "may not modify a division of property after the original judgment has been entered and the time for appeal has expired." *Erickson v. Erickson*, 452 N.W.2d 253, 255 (Minn. App. 1990). However, a district court "may issue appropriate orders implementing or enforcing the provisions of a dissolution decree" and "clarify and construe a divorce judgment so long as it does not change the parties' substantive rights." *Potter v. Potter*, 471 N.W.2d 113, 114 (Minn. App. 1991).

When the terms in a stipulated dissolution judgment and decree are unambiguous, this court must give them their plain and ordinary meaning. See *Starr v. Starr*, 312 Minn. 561, 562-63, 251 N.W.2d 341, 342 (1977) (applying general rule for construction of contracts to dissolution). A stipulated judgment and decree is ambiguous if "judged by its language alone and without resort to parol evidence, it is reasonably susceptible of more than one meaning." *Landwehr v. Landwehr*, 380 N.W.2d 136, 138 (Minn. App. 1985). "[T]he court must consider the stipulation as a whole to determine whether an ambiguity exists." *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001), review denied (Minn. Mar. 13, 2001).

When a stipulated judgment and decree is ambiguous, its interpretation is a question of law subject to de novo review; “we do not defer to the district court’s interpretation of a stipulated provision in a dissolution decree.” *Ertl v. Ertl*, 871 N.W.2d 410, 414 (Minn. App. 2015); *see also Grachek v. Grachek*, 750 N.W.2d 328, 331 (Minn. App. 2008) (“[T]he interpretation of . . . stipulations in dissolution judgments [is a] question[] of law, which we review de novo.”), *review denied* (Minn. Aug. 19, 2008); *Anderson v. Archer*, 510 N.W.2d 1, 3 (Minn. App. 1993) (“Because the interpretation of a written document is a question of law, we do not defer to the district court’s interpretation of a stipulated provision in a dissolution decree.”). Whether a judgment and decree is ambiguous is a question of law reviewed de novo. *Ertl*, 871 N.W.2d at 415.

This court generally construes stipulations using the ordinary rules of contract interpretation. *Grachek*, 750 N.W.2d at 333. “The primary goal of contract interpretation is to determine and enforce the intent of the contracting parties.” *Dorsey & Whitney LLP v. Grossman*, 749 N.W.2d 409, 418 (Minn. App. 2008).

The indemnification provision provides: “All encumbrances against said property shall be paid and satisfied by [wife] and she shall indemnify, defend and hold [husband] harmless from all liability in connection with the condominium, including, but not limited to, the principal and interest monthly mortgage payments, real estate taxes, insurance and utility charges.” On one hand, the parties assert that the language of the provision is unambiguous. On the other hand, the parties propose two different interpretations of that language. Husband argues that the provision applies to the transfer taxes because the language is broad and “[t]here is no provision in the decree that suggests that the parties

intended to exclude the payment of taxes associated with the transfer of title to Wife from the condominium expenses that Wife was required to pay and from which she was required to indemnify Husband.” Wife counters, in part, that the provision does not apply to transfer taxes because they are not the type of expense listed as examples in the indemnification provision.

Judged by its language alone, the indemnification provision is reasonably susceptible to more than one meaning. The provision’s broad language, particularly the phrase “all liability in connection with the condominium,” reasonably suggests that it applies to any liability related to the condominium. However, the specific types of liabilities listed as examples are expenses related to ongoing ownership of the property. The list of examples is therefore reasonably read as limiting “all liability in connection with the condominium” to such expenses. Because the indemnification provision is reasonably susceptible to more than one meaning, we conclude that it is ambiguous and interpret it *de novo*.

In interpreting the provision, we attempt to determine the parties’ intent when they stipulated that wife would indemnify husband “from all liability in connection with the condominium.” Because the parties did not offer extrinsic evidence to aid in the court’s resolution of this issue, our determination is limited to the language of the judgment and decree. *Anderson*, 510 N.W.2d at 4 (“If a writing is ambiguous, extrinsic evidence may be admitted to resolve the ambiguity. When extrinsic evidence is admitted, the meaning of ambiguous language is a question of fact.” (citation omitted)).

We are guided by the general principles of *ejusdem generis* and *noscitur a sociis*. See *Emp’rs Liab. Assurance Corp. v. Morse*, 261 Minn. 259, 264-65, 111 N.W.2d 620, 624-25 (1961) (applying *ejusdem generis* principle in construing ambiguous contract); *Mienes v. Lucker Sales Co.*, 188 Minn. 162, 165, 246 N.W.2d 667, 668 (1933) (applying *noscitur a sociis* principle in construing contract); *Brookdale Pontiac-GMC v. Federated Ins.*, 630 N.W.2d 5, 10 (Minn. App. 2001), *review denied* (Minn. Aug. 22, 2001) (“In interpreting contracts, we apply the principle of *ejusdem generis*”). Under the principle of *ejusdem generis*, the general wording of a provision “must be interpreted to include only matters of the same kind or class as those specifically enumerated.” *In re Custody of A.L.R.*, 830 N.W.2d 163, 170-71 (Minn. App. 2013) (quotation omitted). Under the principle of *noscitur a sociis*, “a word is given more precise content by the neighboring words with which it is associated.” *County of Dakota v. Cameron*, 839 N.W.2d 700, 709 (Minn. 2013) (quotation omitted).

Although the indemnification provision refers to “all liability in connection with the condominium,” it includes a nonexclusive list of examples of expenses that are subject to the provision. If the parties had intended wife to indemnify husband for every liability in any way related to the condominium, it would have been unnecessary to include examples in the provision. But the parties chose to list examples. And although the list is nonexclusive, all of the examples—“principal and interest monthly mortgage payments, real estate taxes, insurance and utility charges”—are costs associated with ongoing ownership of property. The parties’ inclusion of that list strongly suggests that the parties intended to limit wife’s indemnification obligation to expenses related to ongoing

ownership. We therefore conclude that the list limits the expenses that are subject to indemnification in that manner.

The liabilities at issue here—taxes imposed on husband based on his transfer of his ownership interest in the condominium—are not the type of expenses described in the indemnification provision. Indeed, they are not costs associated with ongoing ownership of the condominium. Instead, they are expenses incurred to transfer husband’s ownership interest in the condominium. The expenses therefore are not subject to the indemnification provision in the parties’ stipulated judgment and decree.

In sum, because the language in the indemnification provision is ambiguous and the parties did not offer extrinsic evidence to establish the parties’ intent, we interpret the provision de novo. Based on the list of examples in the provision, we conclude that the parties intended to limit wife’s indemnification obligation to expenses related to ongoing ownership of the condominium. Because husband’s tax obligations stem from the transfer of his ownership interest, they are not subject to the indemnification provision. We therefore affirm the district court’s order requiring husband to transfer title to the condominium to wife under the terms of the stipulated judgment and decree and to pay any taxes assessed against him that are necessary to effectuate the transfer.

Affirmed.