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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0664**

In re the Marriage of: Peggy Ann Doheny, petitioner,
Appellant,

vs.

Joseph Robert Doheny,
Respondent.

**Filed July 2, 2018
Reversed
Connolly, Judge**

Dakota County District Court
File No. 19-F9-07-007307

Shelly D. Rohr, Wolf, Rohr, McKenzie & Gemberling, P.A., St. Paul, Minnesota (for
appellant)

Joseph R. Doheny, River Falls, Wisconsin (pro se respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and
Kirk, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

In this post-dissolution matter, appellant challenges the district court's denial of her
motion for amended findings or for reconsideration of the determination that, contrary to

the terms of a 2007 qualified domestic relations order (QDRO), she alone bears the cost of the reduction in respondent's monthly Public Employees Retirement Association (PERA) benefit resulting from the QDRO requirement that he elect a joint-and-survivor benefit rather than a single-life benefit. Because we see no basis for altering the terms of the QDRO, we reverse.¹

FACTS

The marriage of appellant Peggy Doheny and respondent Joseph Doheny was dissolved in September 2007, when appellant was represented by an attorney and respondent proceeded pro se. As part of the property settlement, appellant was awarded “a one-half interest in [r]espondent's PERA account from the date of marriage to July 31, 2007.” The decree did not specify whether appellant's half-interest was in a single-life annuity or in a joint-and-survivor benefit, i.e., whether appellant would continue to receive the benefit after respondent's death. The decree did provide that the benefit was “to be divided pursuant to a [QDRO] to be entered separately,” that the parties would hire an attorney to draft the QDRO, and that respondent would pay the attorney.

The QDRO, filed in December 2007, required respondent to “elect the 50 percent joint and survivor option” and provided that “[t]he difference in monthly benefit attributable to the exercise of the 50 percent survivor option payment as compared to the

¹ Respondent takes no part in this appeal, which has proceeded pursuant to Minn. R. Civ. App. P. 142.03 (providing that, if respondent fails to file a brief, the case shall be determined on the merits).

single-life benefit shall be borne proportionately by [him] and [appellant].” Respondent was sent a copy of the QDRO filed with the district court and made no objection to it.

Nine years later, in 2016, respondent retired and each party began to receive monthly PERA benefits from which half the cost of the joint-and-survivor benefit had been deducted. Respondent, then represented by an attorney, moved to abrogate the 50% joint-and-survivor-benefit option.

His motion was heard in March 2017. Following the hearing, the district court denied the motion to abrogate the joint-and-survivor benefit but altered the QDRO provision that the cost of that benefit be “borne proportionately by [the parties]” by ordering that “[appellant] may benefit from [respondent’s] election of the joint and survivor benefit option only if the resulting reduction in [respondent’s] benefits during [his] lifetime is deducted entirely from [appellant’s] monthly share.”

Appellant moved by letter for the district court to amend the findings and order pertaining to the PERA benefit or alternatively to grant reconsideration on the ground that the findings were erroneous and the district court had failed to comply with Minn. Stat. § 518.145 (2016). The district court denied the motion.

Appellant challenges that denial and the order altering the QDRO directive for joint payment of the cost of the joint-and-survivor benefit, arguing that the district court erred in its application of Minn. Stat. § 518.145, subd. 2.

D E C I S I O N

“The application of statutes . . . to undisputed facts is a legal conclusion and is reviewed de novo.” *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 5 (Minn. 2008).

Minn. Stat. § 518.145, subd. 2, provides:

On motion and upon terms as are just, the court may relieve a party from a judgment and decree, order, or proceeding under this chapter . . . and may order a new trial or grant other relief as may be just for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence . . . ;
- (3) fraud, . . . , misrepresentation, or other misconduct of an adverse party;
- (4) the judgment and decree or order is void; or
- (5) the judgment has been satisfied, released, or discharged

. . . .

A motion must be made within a reasonable time, and for a reason under clause (1), (2) or (3), not more than one year after the judgment and decree, order, or proceeding was entered or taken.

At the hearing on respondent's motion, his attorney moved to abrogate the judgment provision addressing the PERA joint-and-survivor benefit. Counsel challenged the provision on the ground that it was void because it had not been included in the stipulation based on which the dissolution court entered the stipulated dissolution judgment. Because the parties' arguments lack citation to authority,² we decline to further address it. *See Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal). *But see Toughill v. Toughill*, 609 N.W.2d 634, 638-39 n.1 (Minn. App. 2000) (indicating that, in a stipulated

² We note, however, that such a law does exist elsewhere. *See, e.g., Van Orden v. Van Orden*, 32 N.Y.S.3d 730, 732 (App. Div. 2016) (quoting *McCoy v. Feinman*, 755 N.Y.S.2d 693, 785 N.E.2d 714, 721 (N.Y. 2002)); *see also Kraus v. Kraus*, 14 N.Y.S.3d 55, 60 (App. Div. 2015) ("If a [DRO] is inconsistent with the provisions of a stipulation or judgment of divorce, courts possess the authority to amend the [DRO] to accurately reflect the provisions of the stipulation pertaining to . . . pension benefits.").

dissolution judgment, district courts “cannot, by judicial fiat, impose conditions on the parties to which they did not stipulate and thereby deprive the parties of their ‘day in court’”).

But even if respondent correctly describes Minnesota law, his motion would still need to be brought “within a reasonable time,” and nine years after notification that an order has been filed with the court is not a reasonable time to wait before challenging that order. *See Maranda v. Maranda*, 449 N.W.2d 158, 166 (Minn. 1989) (concluding that six-year delay was “the outer limits of reasonableness” of time for moving to reopen a dissolution judgment for fraud on the court).³

Reversed.

³ Although the motion to reopen in *Maranda* was brought before Minn. Stat. § 518.145, subd. 2 was enacted, Minn. Stat. § 518.145, subd. 2, governs reopening dissolutions and the relevant part of that statute is “virtually identical to Minn. R. Civ. P. 60.02.” *Maranda*, 449 N.W.2d at 164 n.1.