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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1042**

In re the Marriage of:

Jill Kathleen Janssen, petitioner,
Appellant,

vs.

Kevin Eric Janssen,
Respondent.

**Filed April 2, 2018
Affirmed
Reilly, Judge**

Dakota County District Court
File No. 19AV-FA-15-3118

John G. Westrick, Westrick & McDowall-Nix, P.L.L.P., St. Paul, Minnesota (for appellant)

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Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and
Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges the district court's grant of an evidentiary hearing on whether to reopen the parties' dissolution judgment. Appellant also challenges the grant of respondent's request to attach appellant's assets, the sufficiency of the bond securing that

attachment, and the requirement that certain questions be submitted to binding arbitration. Because the district court's findings are supported by the record, and because the district court did not misapply the law or otherwise abuse its discretion, we affirm.

FACTS

In February 2015, an order for protection excluded respondent Kevin Janssen from the home he shared with his then wife, appellant Jill Kathleen Janssen. The January 2017 judgment dissolving the parties' marriage awarded respondent the home but let appellant live there until respondent paid appellant \$115,585 for her interest in the home. The judgment also awarded appellant \$1,500 in permanent monthly maintenance. Later, respondent paid appellant for her interest in the home, appellant quitclaimed her interest in the home to respondent, and the order for protection was amended so respondent could take possession of the home.

Respondent claims that when he reentered the home, he found it severely damaged. A police officer who was present when respondent entered the home, reported that the home was "trashed." An appraiser later concluded that the damage to the home reduced its value by \$112,000, from \$350,000 to \$238,000. Appellant denied damaging the home.

Alleging that appellant intentionally damaged, or allowed others to damage, the home, and that it was not equitable to enforce the dissolution judgment, respondent moved the district court, under Minn. Stat. § 518.145, subd. 2(5) (2016), to reopen and amend the judgment to reflect the home's reduced value. Alternatively, respondent sought an evidentiary hearing to determine whether appellant was responsible for the damage to the home. Respondent also requested that appellant's remaining property be attached as

security for a possible judgment against her, and asked the district court to enforce certain stipulated orders from October and November 2016 requiring appellant to return certain items of personal property that he believed she took from the home when she moved out.

The district court reserved the question of whether to reopen the judgment pending an evidentiary hearing on the issue, allowed respondent to attach \$112,000 of appellant's property, and required respondent to post a \$500 attachment bond with the court. The district court also declined to enforce the stipulated orders from October and November 2016, instead directing the parties to arbitrate their personal-property disputes.

This appeal followed.

D E C I S I O N

I. The district court did not abuse its discretion by granting an evidentiary hearing.

Appellant challenges the district court's decision to hold an evidentiary hearing on whether to reopen the dissolution judgment. With exceptions not relevant here, family-court motions are decided without evidentiary hearings, unless the district court determines there is good cause for a hearing. *See Thompson v. Thompson*, 739 N.W.2d 424, 430 (Minn. App. 2007) (citing Minn. R. Gen. Pract. 303.03(d); *Doering v. Doering*, 629 N.W.2d 124, 130 (Minn. App. 2001), *review denied* (Minn. Sept. 11, 2001)). While "[t]he definition of 'good cause' has yet to be articulated[,]" a district court's decision on whether to hold an evidentiary hearing on a family-court motion is reviewed "for an abuse of discretion." *Id.* (citations omitted).

Respondent sought to reopen the judgment under Minn. Stat. § 518.145, subd. 2(5), which allows a district court to relieve a party from a dissolution judgment if it is “no longer equitable” that the judgment “should have prospective application.” Subdivision 2(5) applies “when injustice in the prospective application of a divorce decree is due to the development of circumstances substantially altering the information on a topic that was accepted earlier, when the subject was addressed in a marital-termination agreement and in an ensuing judgment.” *Harding v. Harding*, 620 N.W.2d 920, 924 (Minn. App. 2001), *review denied* (Minn. Apr. 17, 2001).

When analyzing whether good cause exists to hold an evidentiary hearing regarding possible relief under Minn. Stat. § 518.145 subd. 2(5), a district court considers whether, when viewing the evidence in the light most favorable to the nonmoving party, genuine issues of material fact exist, and whether a party is entitled to a ruling as a matter of law. *Thompson*, 739 N.W.2d at 430. Here, the district court ruled that “[t]here is a dispute as to who damaged the property and when such damage occurred.” On this record, the district court is correct: The current record contains conflicting evidence regarding who damaged the home and when that damage occurred. The answers to these questions may bear on whether relief is available under Minn. Stat. § 518.145 subd. 2(5); i.e., whether, per *Harding*, prospective application of the judgment would be unjust because of “the development of circumstances substantially altering the information on [the value of the

home] that was accepted [when the judgment was entered.]” 620 N.W.2d at 924.¹ Thus, the district court did not abuse its discretion by ordering an evidentiary hearing.

Appellant argues that *Thompson* limits application of Minn. Stat. § 518.145, subd. 2(5), to circumstances beyond the parties’ control. We do not read *Thompson* so narrowly. First, *Thompson* states that the district court should have considered whether the alleged inequity in the prospective application of that judgment arose “as a result of the development of circumstances beyond the parties’ control[.]” 739 N.W.2d at 431. To support this statement, *Thompson* cites *Harding*. *Id.* at 430 (citing *Harding*, 620 N.W.2d at 924). And that part of *Harding* states that Minn. Stat. § 518.145, subd. 2(5), “*must be employed* when injustice in the prospective application of a divorce decree is due to the development of circumstances substantially altering the information on a topic that was accepted earlier[.]” 620 N.W.2d at 924 (emphasis added). That Minn. Stat. § 518.145, subd. 2(5), “must be employed” in some circumstances does not automatically preclude it from being employed in other circumstances.

Second, *Thompson* involved a dissolution in which the husband declined to participate in the proceedings but later challenged the resulting judgment. 739 N.W.2d at

¹ Who damaged the home and when the damage occurred may also bear on whether relief is available under authorities other than Minn. Stat. § 518.145, subd. 5(2). *See, e.g.*, Minn. Stat. § 518.58, subd. 1 (2016) (stating that “[i]f there is a substantial change in value of an asset between the date of valuation and the final distribution, the court may adjust the valuation of that asset as necessary to effect an equitable distribution”); Minn. Stat. § 518.58, subd. 1a (2016) (noting that each party, during the pendency of a dissolution or in contemplation of a dissolution proceeding, “owes a fiduciary duty to the other for . . . any use by the party of the marital assets[.]” and that if the district court finds that this fiduciary duty has been violated, it “shall compensate the other party. . .”).

427. That district court declined to reopen the judgment, noting that the only change in circumstances was the husband's (i.e., the moving party's) willingness to participate in the proceedings, a circumstance within his control at the time of the original proceedings. *Id.* at 431. Here, respondent is seeking relief, and appellant is the one who was allegedly in control of the changed circumstance—the condition of the home. On this record, we decline to rule that appellant, (the nonmoving party and the one who is alleged to have caused the damage), may benefit from the *Thompson* standard.

II. The district court did not err by allowing respondent to attach appellant's assets.

Appellant challenges the district court's decision to let respondent attach appellant's assets. Attachment may be granted if the moving party shows a probability of success on the merits, and the existence of at least one of the statutory grounds for attachment. *See* Minn. Stat. § 570.026, subd. 3 (2016); *see also* Minn. Stat. § 570.02 (2016) (outlining statutory criteria for attachment). Appellate courts will affirm an attachment order if the district court's findings "adequately explain the basis for its conclusions and are supported by sufficient competent evidence in the record." *Coleman v. Mertes*, 408 N.W.2d 662, 666 (Minn. App. 1987). Here, the district court cited the statutory ground for attachment that appellant "has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of, any of [appellant's] nonexempt property, with intent to delay or defraud [appellant's] creditors[.]" Minn. Stat. § 570.02, subd. 1(1).

a. Success on the Merits

Appellant does not contest the district court's finding that respondent showed a probability of success on the merits. Therefore we do not address this point beyond noting that (1) the district court's determination is supported by competent evidence in this record; and (2) our ruling that the record supports the district court's determination on this point is *not* an expression of opinion on the actual merits of respondent's claim.

b. Disposing of Property with Intent to Delay or Defraud

An attachment may be granted if the nonmoving party "has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of, any of [that party's] nonexempt property, with intent to delay or defraud [that party's] creditors." Minn. Stat. § 570.02, subd. 1(1). Here, appellant argues that respondent neither alleged fraud nor made the prima facie showing of fraud required by the statute. We disagree.

The district court found that appellant had disposed of, and was about to dispose of, her nonexempt property in an attempt to render herself judgment-proof, noting that, in just three weeks, appellant had spent \$289,000 of the \$364,244 she received under the dissolution judgment. Appellant claimed she needed to spend a large portion of this money on a house. While it is undisputed that appellant must live somewhere, appellant failed to prove, document, or otherwise support her assertion that almost 80% of her funds *had* to be used to procure an asset that might be (at least partially) exempt from collection efforts. Further, appellant has no other funds to satisfy a possible judgment against her. The swiftness with which appellant spent her funds after learning of respondent's claim, the lack of documentary or other support for the necessity of the extent of the spending, and

the absence of any other assets with which to pay a potential judgment all support the district court's attachment order. The district court's inference that appellant's behavior indicated an intent to frustrate possible collection efforts can be supported by this record. Therefore, the district court's finding is not clearly erroneous.

Citing Minn. Stat. § 550.37 (2016), appellant argues that the property attached by the district court is exempt from attachment as proceeds of a home. But that statute does not exempt the proceeds of a home from attachment. Moreover, if respondent shows that appellant is responsible for the damage to the home, it is unclear whether the funds he paid for the damaged portion of the home would actually be proceeds of the home.

Appellant next argues that property attached by the district court is exempt because it is needed for pension or retirement purposes. While Minn. Stat. § 550.37 exempts certain employee benefits from attachment, the district court found that appellant failed to show that the attached funds were, in fact, used to fund a pension or retirement account, and failed to show that the funds would be needed in the future to meet appellant's needs after she retires. Indeed, the record shows that appellant withdrew \$200,000 *from* a retirement account she received in the dissolution, which suggests that she was actively converting assets from retirement funds to liquid assets. Appellant provided no documentation showing that this money was used for pension or retirement purposes after it was withdrawn. On this record, the district court's finding is not clearly erroneous.

Appellant also argues that there was no exemption notice provided as required by Minn. Stat. § 570.02. That provision, however, does not require an exemption notice. Appellant further argues that attachment does not occur until after the sheriff executes the

attachment, and that the district court erred by hearing arguments on attachment before the sheriff executed the attachment order. We find this argument unclear. If appellant is arguing that, at the April 6, 2017 hearing, she was unprepared to address the question of exemptions from attachment because she did not receive notice that the court would consider exemptions at this hearing, we reject her argument. The record shows that, no later than February 3, 2017, appellant was on notice that respondent was seeking attachment. It also shows that the district court provided her with specific notice of the attachment issues. Despite this notice, appellant did not offer adequate evidence to support her claimed exemptions at either the February 6th or the April 6th hearing. On this record, appellant had notice of, and was given an opportunity to address, the exemption question but failed to make a convincing argument on the point. Thus, appellant has not shown that she is entitled to relief from the district court's attachment of her assets.

III. The district court did not abuse its discretion by setting respondent's attachment bond at \$500.

Noting that the district court allowed respondent to attach \$112,000 of appellant's property, appellant challenges the adequacy of the \$500 attachment bond set by the district court. Before allowing attachment, the district court "shall require the claimant to post a bond in the penal sum of at least \$500[.]" Minn. Stat. § 570.041, subd. 1 (2016). When setting the amount of the bond, the district court "shall consider the value and nature of the property attached, the method of retention or storage of the property, the potential harm to the [party owning the attached property] or any party, and other factors that the court deems appropriate." *Id.* A district court's decision to set a pretrial bond is reviewed for an abuse

of discretion. See *Webb Golden Valley, LLC v. State*, 865 N.W.2d 689, 694 (Minn. 2015) (surety bond); *Carlson v. Mixell*, 412 N.W.2d 771, 773 (Minn. App. 1987) (injunction bond); *Howe v. Howe*, 384 N.W.2d 541, 546 (Minn. App. 1986) (court's waiver of a bond).

Here, the district court considered the bond amount necessary to protect appellant's interests, the harm to appellant of attachment, and the risk of harm to respondent if attachment is denied. In setting the amount of the bond, the district court found that appellant received \$350,000 under the dissolution judgment, provided no documentation of her (alleged) expenditure of \$250,000 on a new house, and is deemed capable of working full time but works only part time earning \$11 per hour. The district court also noted that the dissolution judgment awards appellant permanent maintenance of \$1,500 per month but that, as of June 2017, respondent was already two months in arrears on those payments. The district court further considered the \$112,000 amount of the attachment, that respondent suffered a significant loss to his primary asset (the home) which he attests he is financially unable to rehabilitate, and that, given appellant's finances, there is a substantial risk that respondent may never recover that loss.

Appellant asserts that a \$500 bond will not protect her interests but she cites no authority to support this assertion. 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). Appellant claims the \$500 bond is insufficient to cover her filing fees, but the record shows that her filing fees total only \$315. Appellant also claims the bond will not cover the loss of use of the money for the duration of the attachment but cites no

record evidence addressing how she would use the funds if they were available. Appellant refers to what she asserts is a six percent statutory interest rate but does not cite the statute setting that rate. Appellant then claims that respondent's unpaid spousal maintenance supports her claim that \$500 is an insufficient bond. But on this record respondent's inability to pay maintenance could suggest that it would be improper to require him to post a larger bond.

On this record, the district court considered the value of the attachment, the nature of that property, and the possibility for hardship to both parties. Further, appellant's arguments challenging the amount of the bond are unsupported legally or factually or both. Therefore, appellant has not shown that the district court abused its discretion by setting a \$500 attachment bond.

IV. The district court did not err by ordering the parties to binding arbitration.

Appellant challenges the district court's referral of the parties' disputes regarding personal property to arbitration. She argues that prejudgment stipulations should have been enforced, and that the parties did not agree to postjudgment arbitration of property disputes. Appellate courts review de novo a district court's decision regarding whether a question is subject to arbitration. *Indep. Sch. Dist. No. 88 v. Sch. Serv. Emps. Union Local 284*, 503 N.W.2d 104, 106 (Minn. 1993).

In October 2016, while the dissolution was pending in district court, the parties submitted a stipulation to the district court under which they would divide certain marital personal property in binding arbitration. In the resulting arbitration, the parties resolved some of their property disputes. Then, in November, the parties submitted another

stipulation to the district court in which they agreed to a division of marital personal property, and that they would forego further arbitration. The dissolution judgment states that “[e]xcept as set forth herein, the parties shall submit the issue of division of personal property to binding arbitration with [the arbitrator] to make a final decision concerning the distribution of the personal property.” In other words, the dissolution judgment incorporated neither of the parties’ stipulations, the order directing the parties to arbitration notes that neither party’s posttrial motions sought to amend the judgment, and that judgment is now final because the time to appeal has expired. *See Johnson v. Johnson*, 902 N.W.2d 79, 83 (Minn. App. 2017) (noting that “[o]nce the time to appeal a decision of the district court expires, that ruling is final, even if it is wrong”) (citations omitted). Because the stipulations were not incorporated by the judgment, they became unenforceable upon entry of the judgment. *See Trutnau v. Trutnau*, 221 Minn. 462, 464, 22 N.W.2d 321, 322 (1946). As a result, the operative language is that which is in the judgment, and that language directs the parties to arbitration. Therefore, we conclude that the district court did not err by directing the parties’ personal-property disputes to arbitration.

Affirmed.