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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1184**

In the Matter of:
Kari Dale Hickey, petitioner,
Respondent,

vs.

Dirk Anthony Hummel,
Appellant.

**Filed June 25, 2018
Affirmed
Peterson, Judge**

Washington County District Court
File No. 82-FA-16-2676

Jevon C. Bindman, Maslon LLP, Minneapolis, Minnesota; and

Richard R. Caldecott, Caldecott & Forro, P.L.C., White Bear Lake, Minnesota (for
respondent)

Michael A. Feist, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Worke,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this domestic-abuse dispute, appellant argues that the district court (1) lacked
subject-matter jurisdiction to distribute real and personal property, (2) was biased against

appellant, and (3) erred in awarding respondent cleaning costs and attorney fees to be paid from appellant's share of the proceeds from the sale of the parties' real property. We affirm.

FACTS

Respondent Kari Dale Hickey obtained an ex parte order for protection (OFP) against appellant Dirk Anthony Hummel, and Hummel requested a hearing. At the hearing, the parties agreed to resolve issues outside the scope of the domestic-abuse act, including disposing of personal property and having their jointly owned house listed for sale with a real-estate agent. Hummel was given an option to buy the property after a broker price opinion was obtained, provided that he did so expeditiously.

The terms of the parties' agreement were stated on the record and incorporated into the district court's August 23, 2016 order. The order gave Hummel ten days to exercise his option to buy. During the hearing and in the order, the district court cautioned the parties that delay or refusal to sign the listing agreement with the agreed-upon real-estate agent would result in sanctions being imposed. Hummel did not exercise his option to buy, and on October 14, 2016, a hearing was held due to Hummel's refusal to sign the listing agreement. The court ordered both parties to immediately meet with the real-estate agent to sign the listing agreement, and they did so.

After the parties signed the listing agreement, the real-estate agent received multiple offers for the property, the highest of which was a cash offer that exceeded the listing price. Hickey signed the purchase agreement and was ready to close on the sale, but Hummel refused to sign. On November 18, 2016, the district court issued an order to show cause

why Hickey's motion to require Hummel to sign the purchase agreement should not be granted, and on December 6, 2016, the district court held a hearing on the motion.

Neither Hummel nor his attorney appeared at the hearing, and neither of them requested a continuance or informed the court that they would not appear. On December 12, 2016, the district court issued an order finding that Hummel's "conduct in this matter is contemptuous of this court and its authority at a minimum by his willful and deliberate frustration of the homestead sales process after signing a listing agreement that by its terms required [him] to cooperate with the marketing and sale of the property." The district court ordered that Hickey was allowed to sell the property with only her signature on the deed and awarded Hickey \$5,000 in conduct-based attorney fees as a lien against Hummel's share of the sale proceeds.

Due to Hummel filing for personal bankruptcy, the December 12, 2016 order was automatically stayed. Because Hummel refused to voluntarily agree to have the stay lifted, Hickey brought a motion in bankruptcy court to lift the stay and allow the sale of the house to proceed. The day before the motion hearing, after Hickey had incurred \$5,210.75 in attorney fees and court costs, Hummel agreed to have the stay lifted.

On May 19, 2017, the district court held a hearing on Hickey's motion for an award of attorney fees and distribution of the sale proceeds. Following the hearing, Hummel submitted a proposed order stating only that the matter was commenced pursuant to Minn. Stat. ch. 518B, the district court lacked subject-matter jurisdiction, and, consequently, Hickey's motions are denied. In a written order filed May 30, 2017, the district court found "[t]hat in light of [Hummel's] ongoing contemptuous and obstructionist behavior

throughout these proceedings, it is reasonable and appropriate that [Hummel] pay for the costs [Hickey] incurred in resolving the matter and obtaining the highest possible sale price on the homestead” and “[t]hat the attorney’s fees requested . . . are reasonable.” The district court ordered that the sale proceeds be distributed equally to the parties after the following deductions from Hummel’s share: \$1,195.52 for cleaning costs incurred by Hickey when a cleaning company helped prepare the house for sale; \$5,710.75 for attorney fees incurred by Hickey; and \$750 to Hickey “for house cleaning work performed by her and her friend to get five thousand dollars (\$5,000.00) escrowed at closing restored to the net sum to be distributed between the parties.”

Hummel appealed to this court, seeking to challenge the August 23, October 14, November 18, and December 12, 2016, and the May 30, 2017 orders. This court dismissed the appeal from the August 23 and October 14, 2016 orders as untimely and ordered that the balance of the appeal shall proceed.

D E C I S I O N

I.

Hummel argues that the district court lacked subject-matter jurisdiction to dispose of personal and real property in a domestic-abuse proceeding, and, therefore, the November 18, and December 12, 2016, and the May 30, 2017 orders are void. Once the time to appeal a district court order expires, the order becomes final even if it is wrong. *Johnson v. Johnson*, 902 N.W.2d 79, 83 (Minn. App. 2017) (citing *Dieseth v. Calder Mfg. Co.*, 275 Minn. 365, 370-71, 147 N.W.2d 100, 103 (1966) (stating that “[e]ven though the decision of the [district] court in the first order may have been wrong, if it is an appealable order it

is still final after the time for appeal has expired”); see *Hanson v. Hanson*, 379 N.W.2d 230, 232 (Minn. App. 1985) (stating that a property division in a dissolution action becomes final and cannot be modified once the time to appeal expires). As this court explained in its September 19, 2017 order, the district court’s August 23, 2016 order granting Hickey’s petition for a restraining order and incorporating the parties’ stipulation to dispose of their real and personal property was a final order, and the appeal from that order was untimely because it was filed more than 60 days after the service of written notice of its filing.

The November 18 and December 12, 2016, and the May 30, 2017 orders relate to enforcement of the August 23 order. A district court has the authority to enforce its own order. *Ladwig v. Chatters*, 623 N.W.2d 266, 268 (Minn. App. 2001). And an order may not be collaterally attacked as unenforceable for lack of subject-matter jurisdiction unless the absence of jurisdiction is clear on the face of the record. *Davis v. Danielson*, 558 N.W.2d 286, 287 (Minn. App. 1997), *review denied* (Minn. Mar. 18, 1997). Because no lack of jurisdiction is clear on the face of this record, Hummel’s argument that the three enforcement orders are void because the district court did not have jurisdiction to dispose of personal and real property in the August 23 order is an impermissible collateral attack on the August 23 order.

II.

Hummel argues that the district court was biased against him. In reviewing claims of judicial bias, an appellate court considers whether the district court “considered arguments and motions made by both sides, ruled in favor of a complaining [party] on any

issue, and took actions to minimize prejudice to the defendant.” *Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008).

Hummel quotes a statement by the district court from the July 5, 2016 transcript, claiming that the district court admonished the parties, “particularly” him. The quotation, however, does not include the complete exchange between the parties and the district court; it omits Hickey’s response to the district court’s question. After Hickey responded, the court asked Hummel for his response. The full quotation shows that the district court’s admonishment was equally addressed to both parties. The complete exchange was as follows:

THE COURT: Okay. They both have to cooperate in the signing of any listing agreements if they’re both on title.

I’m not going to look favorably on anybody that says, I’m not signing it, or we have to struggle to get it signed. Whoever is not signing is going to get sanctioned by the Court. Okay? Everybody understand that one?

HICKEY: Yes.

THE COURT: All right. Sir?

HUMMEL: Yes.

Hummel also complains that the district court adopted Hickey’s proposed orders. Neither Hummel nor his attorney appeared at the December 6, 2016 hearing. At the May 19, 2017 hearing, Hummel’s attorney appeared and, after the district court noted that Hummel had not submitted a written objection to Hickey’s motion, Hummel’s attorney only requested that the district court “rely on Minnesota law.” Finally, the only time that Hummel provided the court with a proposed order was after the May 19, 2017 hearing when Hummel provided a proposed order stating that the court lacked subject-matter

jurisdiction. Under these circumstances, the district court's adoption of Hickey's proposed orders does not indicate bias.

Hummel also argues that the one-sided outcome demonstrates bias by the district court. But the August 23 order incorporated the parties' stipulation to evenly divide the equity in the home, and it was only Hummel's failure to abide by the stipulated order that caused any differences between how the parties were treated.

III.

Hummel argues that the district court's findings on the home's condition are erroneous because the court's findings incorporated Hickey's proposed findings. "The verbatim adoption of a party's proposed findings and conclusions of law is not reversible error per se." *County of Dakota v. Blackwell*, 809 N.W.2d 226, 230 (Minn. App. 2011) (quotation omitted). This court will not reverse the district court's findings of facts unless they are clearly erroneous. *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). Record evidence supports the district court's findings on the home's condition. Also, the record shows that the \$750 awarded to respondent was for work that she and a friend performed so that \$5,000 that had been escrowed at closing could be released to be distributed to the parties, which demonstrates that the work was beneficial to both parties. The district court did not err in awarding Hickey cleaning costs.

Motions for attorney-fees sanctions are collateral to the merits of the underlying action. *Kellar v. Von Holtum*, 605 N.W.2d 696, 700 (Minn. 2000). The goal of sanctions "is not to punish the offender or to shift fees, but to deter bad faith litigation." *Id.* at 701.

Hummel repeatedly refused to cooperate with selling the house. Initially, he did not sign the listing agreement, and then he refused to sign the purchase agreement. He refused to voluntarily lift the bankruptcy court's stay until after Hickey incurred more than \$5,000 in attorney fees and costs to have it lifted.

Hummel argues that the district court's attorney-fee award did not comply with Minn. R. Gen. Pract. 119.02, which requires that a motion for attorney fees be accompanied by an affidavit of an attorney of record. Hickey's motion for attorney fees was accompanied by Hickey's affidavit, in which she stated that she incurred (1) \$5,210.75 for bankruptcy court attorney fees and had only been able to pay \$1,000 of that amount and (2) \$1,500 for attorney fees to bring the motion. The district court determined that the attorney fees requested were reasonable and awarded the bankruptcy attorney \$4,210.75 and the attorney who brought the motion \$1,500. The court stated that it was exercising its "authority to sanction those who frivolously obstructed proceedings and breached a settlement agreement."

Even if rule 119.02 applies to attorney fees awarded as a sanction, the supreme court has stated that rule 119.02 "is not intended to limit the court's discretion, but is intended to encourage streamlined handling of fee applications and to facilitate filing of appropriate support to permit consideration of this issue." *Gully v. Gully*, 599 N.W.2d 814, 826 (Minn. 1999) (quotation omitted). When the district court is "familiar with the history of the case and has access to the parties' financial information, it may waive the requirements of Rule 119." *Id.* The district court did not abuse its discretion in awarding attorney fees.

Affirmed.