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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0353**

In re the Marriage of: Thomas W. Krabbenhoft, petitioner,
Respondent

vs.

Norma A. Krabbenhoft, n/k/a Norma A. Flores,
Appellant.

**Filed March 9, 2020
Reversed
Florey, Judge**

Clay County District Court
File No. 14-FA-14-1153

Robert Schultz, Conmy Feste, Ltd., Fargo, North Dakota (for respondent)

Heidi H. Uecker, Legal Services of Northwest Minnesota, Moorhead, Minnesota (for
appellant)

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

UNPUBLISHED OPINION

FLOREY, Judge

In a motion to amend a judgment and decree, respondent sought reimbursement for
child support paid to appellant over the three years following their stipulated divorce
decree. The district court denied the motion to amend, but used its equitable powers to

issue a money judgment against appellant in favor of respondent to compensate the latter for the claimed overpayments. We reverse.

FACTS

The facts of this case are not in dispute. Thomas Krabbenhoft and Norma Flores divorced in 2014. They negotiated and signed a marital-termination agreement (MTA), the terms of which were incorporated into a judgment and decree entered in November 2014. Among the terms of the MTA was Krabbenhoft's obligation to pay Flores \$307 per month in child support. This state of affairs continued for over three years, until Krabbenhoft sought review of his child-support obligation by a child-support magistrate. Upon reviewing the MTA and judgment, the magistrate found a mistake in the calculations. Specifically, on the child-support worksheet, counsel erroneously recorded the children's derivative benefits from Krabbenhoft's social security/veterans benefits as coming from Flores. Had the \$780 payment been placed in Krabbenhoft's column, as it should have been, he would have had no child-support obligation.

The magistrate, having limited authority to retroactively modify child support, issued an order that prospectively corrected Krabbenhoft's obligation to \$0 per month. Minn. Stat. § 519A.39, subd. 2(f) (2018) (limiting retroactive modifications to periods during which petitions to modify were pending). The parties do not dispute that Krabbenhoft's overpayments were the result of a mistake, and therefore neither party challenges the magistrate's order correcting it going forward.

Krabbenhoft brought a motion in district court to amend the 2014 judgment to recover the \$11,666 he overpaid to Flores. After a contested hearing, the district court

denied Krabbenhoft’s motion to amend, but also entered a money judgment against Flores in favor of Krabbenhoft for the total amount of overpayments. The district court’s rationale was that neither amendment of the judgment nor retroactive modification of the MTA were necessary to grant Krabbenhoft the relief to which equity entitled him. Rather, the district court reasoned, it need only exercise its “inherent power to grant equitable relief.” Flores brought, and the district court denied, a motion to amend the findings of the order awarding the money judgment. Flores now seeks review of that denial.

D E C I S I O N

In its order, the district court found that the usual mechanism for recovering overpaid child support—Minn. Stat. § 518A.52 (2018)—was of no help in this matter, and we agree. Section 518A.52 states that a party who has overpaid child support is entitled to a return thereof in the form of a reduction of future child support payments, not more than 20 percent of any given payment, until the total amount is recouped. Here, as the district court recognized, Krabbenhoft has no future child-support obligations. But a more fundamental problem with section 518A.52 here is that it applies only in the context of public authorities. *Id.*

Rather than apply section 518A.52, the district court cited our decision in *Bauerly v. Bauerly* for the idea that “section 518A.52 reflects a policy in favor of compensation where overpayment has occurred, but . . . [it] does not limit a district court’s inherent power to grant equitable relief.” 765 N.W.2d 108, 111 (Minn. App. 2009). Finding then that (1) Flores had been unjustly enriched; (2) “the interests of justice and equity entitle [Krabbenhoft] to a refund”; and (3) modification of the judgment or MTA is unnecessary;

the district court awarded Krabbenhoft the money judgment against Flores. It denied Krabbenhoft's motion to amend, did not reopen or amend the 2014 judgment and decree, or otherwise address the actual error therein.

On appeal, Flores levies several arguments against the district court's order. First, she argues that Krabbenhoft was required to prove a statutory basis for the relief he sought, and the district court's granting him relief in the absence of such a showing constituted reversible error. Second, she argues that the district court erred in allowing Krabbenhoft's motion to modify when that motion was untimely. Third, Flores argues that the district court's "retroactive modification" of the child support order—three years prior to when Krabbenhoft served and filed the motion to modify—was erroneous. Finally, she contends that the district court abused its discretion by ordering a money judgment against her on equitable grounds. We agree with Flores' final argument, as well as isolated portions of the first three. But most of the legal principles on which Flores bases her analysis apply to motions to amend—such as when those motions may be brought, what is required to succeed, and the effects such a motion can and cannot have. However, the district court was clear that it denied Krabbenhoft's motion to amend. Contrary to Flores' assertions, the district court did not retroactively modify the child support order, amend the judgment, or allow Krabbenhoft's motion. The applicable parts of Flores's arguments will be addressed below.

Krabbenhoft contends that the district court did have legal authority to correct the overpayments under Minn. R. Civ. P. 60.01, which provides that clerical mistakes may be corrected at any time. In response to Flores's assertion that Krabbenhoft's motion was

untimely, Krabbenhoft again cites rule 60.01 as allowing corrections “at any time.” However, Krabbenhoft did not cite rule 60.01 in his original motion, and the district court did not mention it in its order.¹ Finally, Krabbenhoft argues that the district court did not err by “correcting the child support error as of the date of divorce.” However, as stated, the district court did not “correct” the mistake—it entered a money judgment against Flores in attempt to compensate Krabbenhoft for the *effect* of that mistake. The error remains to date.

Even if it is appropriate to address Krabbenhoft’s rule 60.01 argument, we disagree with the characterization of the error involved here as “clerical.” In *Egge v. Egge*, we held that a clerical error is one of form; one that keeps the document from saying what the parties agreed it should say—not one that makes the document express something contrary to what it should have said but the parties agree to it nonetheless. 361 N.W.2d 485, 488 (Minn. App. 1985) (“Thus, a motion under [rule 60.01] can only be used to make the judgment or record speak the truth and cannot be used to make it say something other than what originally was pronounced.” (quotation omitted)). The error in *Egge*—deemed to be non-clerical—was a “formulaic” one. *Id.* One party argued that the parties intended that they would divide the proceeds from a sale of the homestead evenly. *Id.* However, the terms of the agreement governing exactly how the division would be calculated resulted in one party receiving more of the proceeds than the other. *Id.* Nevertheless, because the parties agreed to the terms, including the calculations, *as written* and *as read* into the

¹ Krabbenhoft also cited Minnesota General Rules of Practice 375.01, which also states that clerical errors may be corrected at any time. However, this rule is inapplicable here.

record, the error was not clerical; and to correct the alleged error would be to change the substantive terms to which the parties agreed. *Id.* The error was not at odds with the parties' intentions, but was "an error of the parties in expressing their basic intent." *Id.*

Egge can be contrasted with *Johnson v. Johnson*, wherein we held that the drafting party's mistaken substitution of the word "respondent" for the word "petitioner" was a clerical error. 379 N.W. 215, 218 (Minn. App. 1985). The provision at issue concerned a former husband's alimony payments to his former wife. *Id.* at 217. The husband was the respondent, and the agreement provided that he "shall pay to the petitioner [(wife)] the sum of \$800 per month . . . until the respondent dies or is remarried." *Id.* The husband was remarried three years later and stopped making the alimony payments. *Id.* We held that the error was caused by the drafter's oversight and that the parties actually intended for the husband to make alimony payments until the *petitioner*, his ex-wife, died or remarried. *Id.* at 218. The parties' actual intent was evidenced by, inter alia, the husband's statement that he expected to make alimony payments "forever;" the fact that it is normal procedure for the alimony payer to make such payments until the payee, not the payer, dies or remarries; and that terminating that obligation upon the payer's death or remarriage would be contrary to statute, caselaw, and the purpose of alimony generally. *Id.*

Here, the mistake was that a certain benefit was placed in Flores' column on the child-support worksheet when it should have been in Krabbenhoft's. This was a mistake not because the parties originally intended for Krabbenhoft to have no child-support obligation. Rather, it was a mistake because it was a misattribution of a source of funds. The effect of the mistake was to oblige Krabbenhoft to \$307 per month when, under a

proper application of the child-support worksheet and guidelines, he should have had no child-support obligation; the mistake did not have the effect of making the document say something different from that which the parties thought they were agreeing. Regardless of how the figure should have been counted, the parties agreed to all of the terms of the MTA—including Krabbenhoft’s monthly child-support payments. When the parties stipulated to the MTA and it was incorporated into the judgment, they were aware and expected that Krabbenhoft would be obligated to the child-support payments. That obligation was not an unanticipated and unintended effect of a mere drafting oversight as in *Johnson*. *Id.*

Moreover, as Flores correctly points out, the parties negotiated the terms of the MTA, and she agreed to the terms that she did on the condition that, inter alia, Krabbenhoft would pay her \$307 per month in child support. *See Solberg v. Solberg*, 382 N.W.2d 859, 861 (Minn. App. 1986) (“It is not clear how the parties reached a stipulated agreement Had appellant correctly requested \$871.12 instead of \$4711.12, perhaps a different credit amount or final judgment amount would have been negotiated.”). We cannot equitably revoke, especially retroactively, one party’s entitlement under an agreement because there was a mistake in the drafting, the practical effect of which—Krabbenhoft’s child-support obligation—the parties knowingly agreed to anyway.

Because this is not a clerical error, Krabbenhoft’s only other avenue for relief is Minn. Stat. § 518.145, subd. 2 (2018). *Shirk v. Shirk*, 561 N.W.2d 519, 522 (Minn. 1997) (“The sole relief from the judgment and decree lies in meeting the requirements of Minn. Stat. § 518.145, subd. 2.”). That statute allows, on “motion and upon terms as are just,”

the court to “relieve a party from a judgment and decree, order, or proceeding” under five enumerated circumstances. Minn. Stat. § 518.145, subd. 2. The applicable one here is the first: “mistake, inadvertence, surprise, or excusable neglect.” *Id.* However, as Flores argues, a motion under this subsection must be brought “not more than one year after the judgment and decree, order, or proceeding was entered or taken.” *Id.* Krabbenhoft’s motion was filed well past the one-year limit, and as such is time barred.

Finally, we address whether the district court erred in entering the judgment on the bases of unjust enrichment and equity. “The district court . . . has inherent power to grant equitable relief as the facts in each particular case and the ends of justice may require.” *DeLa Rosa v. DeLa Rosa*, 309 N.W.2d 755, 758 (Minn. 1981) (quotation omitted). We review such discretionary decisions under an abuse-of-discretion standard. *See id.* at 757. “In order to establish a claim for unjust enrichment, the claimant must show that another party knowingly received something of value to which he was not entitled, and that the circumstances are such that it would be unjust for that person to retain the benefit.” *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. App. 2001). Additionally, “it must be shown that a party was unjustly enriched in the sense that the term ‘unjustly’ could mean illegally or unlawfully,” which has since “been extended to also apply where . . . the defendant’s conduct in retaining the benefit is morally wrong.” *Id.*

Here, other than concluding that Flores was not entitled to the child-support payments she received, the district court’s order is devoid of any findings that Flores’s receipt of the payments was unjust in the sense that it was illegal or unlawful, or that her retention of them is somehow “morally wrong.” *Id.* Tellingly, Krabbenhoft also makes no

such arguments, and our review of the record has failed to reveal any evidence that would support such findings had they been made. Therefore, to the extent that the district court's order was based on unjust enrichment, it is reversed.

With respect to equity, “[a] party may not have equitable relief where there is an adequate remedy at law available. Equitable relief is available only upon a showing that no adequate legal remedy exists.” *Stocke v. Berryman*, 632 N.W.2d 242, 245-46 (Minn. App. 2001) (citation omitted), *review denied* (Minn. Sept. 25, 201). We agree that no remedy at law exists for Krabbenhoft, but this is not because he is in a highly unique situation unanticipated by the legislature or unconsidered in caselaw. Rather, it is because his sole avenue for relief—section 518.145—is time-barred.

Moreover, while district courts have broad discretion in using their equitable powers, they must make and include for the record sufficient findings to support their rationale for doing so. *See Nelson v. Nelson*, 384 N.W.2d 468, 472-74 (Minn. App. 1986) (remanding in part because “the record is devoid of any findings to support the trial court’s equitable restitution awards to respondent”). Here, the district court found that it would be inequitable to prevent Krabbenhoft from recovering the money he overpaid; but “[e]quity cuts both ways,” and there are no findings to support the necessarily implied conclusion that it would be less inequitable to burden Flores with a judgment of \$11,666 when her receipt of that money was pursuant to the agreed-upon terms of the MTA. *Anderson v. DeLisle*, 352 N.W.2d 794, 796 (Minn. App. 1984).

It is true that Krabbenhoft committed no wrongdoing and that it may appear unfair to preclude recovery of money he overpaid; but it is also the case that Flores committed no

wrongdoing. The error here was in the negotiation and drafting of the MTA to which both parties, who were represented by counsel, consented and agreed was a full and final settlement of all issues related to the dissolution of their marriage. This was not a clerical error.

By failing to address Minn. Stat. § 518.145 and using its equitable powers to grant a money judgment for Krabbenhoft, the district court has created a situation in which the judgment of \$11,666 in favor of Krabbenhoft—which is based on a magistrate’s order that has prospective application only—coexists with the 2014 judgment and incorporated MTA, which still reflects that Krabbenhoft had a child support obligation of \$307 per month for the period between the judgment and the magistrate’s order—the period for which this money judgment purports to reimburse him. Such a result is untenable and unsupported by the law.

Because Krabbenhoft’s only potential remedy at law is time-barred, and because the district court lacked an adequate basis for using its equitable powers, we reverse the district court’s judgment.

Reversed.