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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0554**

In re the Marriage of: Susan Lee Wood, petitioner,
Respondent,

vs.

Brad Wesley Wood,
Appellant.

**Filed December 16, 2019
Affirmed
Hooten, Judge**

Dakota County District Court
File No. 19AV-FA-16-2345

Susan Lee Wood, Burnsville, Minnesota (pro se respondent)

Jacob M. Birkholz, Michelle K. Olsen, Birkholz & Associates, LLC, Mankato, Minnesota
(for appellant)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and
Kalitowski, Judge.*

UNPUBLISHED OPINION

HOOTEN, Judge

In this marital dissolution dispute, appellant husband argues that the district court
(1) lacked authority to amend the property division to address gains and losses in a 401(k)

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

account; (2) modified an otherwise final property division; and (3) should have awarded appellant husband conduct-based attorney fees. We affirm.

FACTS

Appellant Brad Wesley Wood and respondent Susan Lee Wood married in 1981. After 35 years of marriage, wife filed a petition for dissolution of marriage in 2016. The district court held a bench trial over two days in August 2017. The parties agreed to a valuation date of November 2, 2016, for the division of property. In November 2017, the district court entered a judgment and decree.

The next month, husband moved to amend the district court's findings, among other requests. The district court granted husband's motion in part and denied it in part. Husband appealed the district court's amended judgment, challenging the district court's award of spousal maintenance and arguing that the district court abused its discretion in awarding wife spousal maintenance based on the parties' gross income rather than net income. *Wood v. Wood*, No. A18-0722, 2019 WL 1591767, at *1 (Minn. App. Apr. 15, 2019). This court agreed and released its opinion in *Wood I* on April 15, 2019, reversing and remanding to the district court for further findings on net income. *Id.* at *3.

Prior to the release of *Wood I*, the parties began discussing the disbursement of husband's Alliant pension and 401(k) account. The judgment and decree provides:

[Husband]'s Alliant Pension Defined Benefit Plan. The parties shall prepare a Qualified Domestic Relations Order for the Alliant Pension Defined Benefit Plan account, valued at \$332,718.14, which shall be equally divided;

[Husband]'s Alliant 401(k). [Husband] is awarded all right, title and interest in the Alliant 401(k) and valued on the date of

valuation at \$308,185.00, free and clear of any claim by [wife]
after the payment of \$154,092.50 from the account to [wife];

. . . .

The Court shall retain jurisdiction to effectuate these paragraphs until the division of the accounts is completed. The division of [husband's] Alliant Pension Defined Benefit Plan as set forth above shall be by a Qualified Domestic Relations Order (QDRO) drafted by [husband's] attorney, with cost shared equally by the parties. The proposed QDRO shall be drafted within 30 days of this Order and counsel for [husband] shall send a copy to [wife's] counsel and the Plan Administrator for approval, and then to the Court for entry.

In October 2018, more than six months after the district court issued its amended order, wife moved for the district court to enforce the above provisions. At that time, husband had neither completed the pension QDRO nor paid wife any of her share in the 401(k). Wife requested that the district court order husband to complete a QDRO for the Alliant pension and to sign the pre-approved Alliant 401(k) QDRO that wife's counsel prepared. The pre-approved proposed QDRO awarded wife her share of his 401(k) and any gains or losses earned since the date of valuation.

Husband filed a responsive motion, arguing that wife's requests were moot as the matter was pending on appeal at this court. He also moved to deny wife's request because she failed to initiate a settlement conference to resolve the issues identified in her motion and moved for conduct-based attorney fees. At the motion hearing, husband argued that the district court no longer had authority to amend the judgment and decree to add language to allow for gains and losses on the 401(k) because the time for appeal had passed.

The district court issued an order that stayed wife's motion to enforce the Alliant pension and 401(k) QDROs pending the outcome of husband's first appeal. But the district court granted wife's motion to clarify the 401(k) account distribution to include the language, "subject to gains and losses from the valuation date," and amended the parties' judgment and decree "to reflect this equitable division of the 401(k) account." The district court denied wife's request for attorney fees and husband's requests for sanctions against wife.

Husband's appeal follows.

D E C I S I O N

Husband challenges the district court's amended judgment and decree. He argues that the district court: (1) no longer had authority to amend the judgment and decree; (2) erred by modifying the final property division; and (3) abused its discretion when it failed to award him conduct-based attorney fees. We address each argument in turn.

I. The district court was not precluded from addressing the 401(k) account.

Generally, after its entry, a dissolution judgment and decree is final subject to the right of appeal. Minn. Stat. § 518.145, subd. 1 (2018). In this case, husband argues that the district court lacked "jurisdiction" to award wife part of the increase in value of the 401(k) account because the time to appeal expired before wife sought this relief from the district court. The judgment, however, states both that husband would retain his 401(k) account "free and clear of any claim by [wife] *after* the payment [to wife,]" and that the district court "shall retain jurisdiction to effectuate [the divisions of the 401(k) account and

the pension] until the division of the accounts is completed.”¹ (Emphasis added.) Thus, husband’s failure to make the payment preserved both wife’s ability to make a claim regarding the 401(k) account and the district court’s “jurisdiction” to address that claim.

Nor was the district court precluded from addressing wife’s claim regarding the 401(k) account by the pendency of the first appeal. While a timely and proper appeal suspends the district court’s authority to make any order that affects the ruling from which the appeal is taken, the district court “retains jurisdiction as to matters independent of, supplemental to, or collateral to” the ruling being appealed. Minn. R. Civ. App. P. 108.01, subd. 2. Collateral matters over which a district court retains jurisdiction pending appeal include whether to enforce the judgment. *David N. Volkmann Const., Inc. v. Isaacs*, 428 N.W.2d 875, 876–77 (Minn. App. 1988) (citing *Spaeth v. City of Plymouth*, 344 N.W.2d 815, 824 (Minn. 1984)). Thus, absent an order of the district court granting a stay pending appeal, a party may seek to enforce a judgment while an appeal of that judgment is pending. Minn. R. Civ. App. P. 108.01, subd. 1. Here, husband did not obtain from the district court a stay pending the first appeal. Therefore, the pendency of the first appeal did not preclude the district court from addressing wife’s claim to enforce the property division of the 401(k) account while husband’s appeal of the judgment was pending in this court.

¹ Because the judgment explicitly states that the district court retains jurisdiction to effectuate the division of the 401(k) account, it is unclear whether husband’s assertion that the district court lacks “jurisdiction” uses the term “jurisdiction” in its technical sense. Cf. *Moore v. Moore*, 734 N.W.2d 285, 287 & n.1 (Minn. App. 2007) (noting that “courts and parties often use concepts and language associated with ‘jurisdiction’ imprecisely to refer to, among other things, nonjurisdictional claims-processing rules or nonjurisdictional limits on a court’s authority to address a question”), *review denied* (Minn. Sept. 18, 2007).

II. The district court did not err by clarifying the property division in the judgment and decree.

Husband argues that the district court improperly modified the property division by awarding wife half of the post-valuation-date change in the value of the 401(k) account.

When the terms of a judgment are ambiguous or indefinite, the district court may clarify or interpret its order. *Stieler v. Stieler*, 70 N.W.2d 127, 131 (Minn. 1955).

[A] document is ambiguous if it is reasonably susceptible to more than one meaning. Whether a provision in a dissolution judgment and decree is clear or ambiguous is a legal question. A district court's determination of the meaning of an ambiguous judgment and decree provision is a fact question, which appellate courts review for clear error.

Suleski v. Rupe, 855 N.W.2d 330, 339 (Minn. App. 2014) (quotations and citations omitted). "Such clarification does not constitute an amendment to the judgment." *Hanson v. Hanson*, 379 N.W.2d 230, 232 (Minn. App. 1985). "[A] clarification does not result in a judgment different from that originally ordered, but serves only to express accurately the thoughts which the original judgment intended to convey." *Id.*

A. The district court did not err in treating the judgment as ambiguous.

The dissolution judgment states that the value of the 401(k) account on the 2016 valuation date was \$308,185 and awards that account to husband "free and clear of any claim by [wife] after the payment of \$154,092.50 from the account to [wife]." The judgment, however, does not directly address the disposition of post-valuation-date changes in the value of the 401(k) account. Nor does the judgment indirectly address the disposition of those changes in the value of the account. Unlike its directive that husband provide a QDRO to divide the pension within 30 days of the court's order, the judgment

addresses neither the vehicle to use to divide the 401(k) account nor when to divide that account. Thus, the judgment awards wife a dollar amount from the 401(k) account equal to half of that account's value on the valuation date without addressing when or how the account is to be divided, and without addressing whether the division must account for changes in the value of the account between the 2016 valuation date and the unspecified but now-much-later division date. This judgment could be reasonably read to award or not to award wife a share of the post-valuation-date changes in the valuation of the 401(k) account. Therefore, the district court did not modify the property division, and the district court did not err in treating the judgment as ambiguous regarding the disposition of the post-valuation-date changes in the value of the 401(k) account and clarifying that aspect of the judgment.

B. The district court did not err in construing the meaning of the ambiguous provision.

The district court judge construing the dissolution judgment was the same judge who previously issued that judgment. Therefore, his reading of his own judgment “is entitled to great weight.” *Suleski*, 855 N.W.2d at 339 (quotation omitted). In clarifying that the judgment should be read to include an award to wife of half of the post-valuation-date change in the value of the 401(k) account, the district court stated:

Awarding [wife] one-half the gains and/or losses simply clarifies Paragraph 10 of the Amended Judgment and Decree and does not change the substantive rights of the parties in that original property division. Certainly, [husband] cannot expect to be awarded the gains on [wife]'s portion of the account from November 3, 2016 to present, especially when the Judgment and Decree required [husband]'s attorney to draft the QDRO

within 30 days of the Order filed November 29, 2017 which has not yet been completed nearly a year and a half later.

Regarding post-judgment dealings with the property division in a dissolution judgment, this court stated:

While a district court may not modify a final property division, it may issue orders to implement, enforce, or clarify the provisions of a decree, so long as it does not change the parties' substantive rights. An order implementing or enforcing a dissolution decree does not affect the parties' substantive rights when it does not increase or decrease the original division of marital property. This court will not disturb an appropriate order to clarify, implement, or enforce terms of a decree, absent an abuse of discretion.

Nelson v. Nelson, 806 N.W.2d 870, 871 (Minn. App. 2011) (quotations and citations omitted).

In this case, the district court's reading of the judgment to award wife half of the post-valuation-date change in the value of the 401(k) account is within the scope of the possible interpretations of the provisions in question, and husband has not shown that interpretation to be clearly erroneous. We also affirm the award to wife of half of that post-valuation-date change in the value of the 401(k) account as not changing the parties' substantive rights set out by the originally ambiguous judgment. In doing so, we note that the district court's decision is consistent with both caselaw and the relevant statute. Specifically, when a dissolution judgment delays a party's receipt of a property award, the district court is to award interest on the award or make findings explaining why it did not award that interest. *Thomas v. Thomas*, 407 N.W.2d 124, 127 (Minn. App. 1987). In this case, the district court's reading of its judgment to award wife half of the post-valuation-

date change in the value of the 401(k) account is consistent with the interest the district court could have awarded under *Thomas*. Additionally, if, as here, “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. 1 (2018).²

Therefore, the district court did not err by clarifying the ambiguous property division provision in the judgment and decree.

III. The district court did not abuse its discretion when it refused to award husband conduct-based attorney fees.

Husband argues that the district court abused its discretion when it refused to award him conduct-based attorney fees based on wife’s motion to clarify the amended order.

“A refusal to award attorney fees will not be reversed absent a clear abuse of discretion.” *Kitchar v. Kitchar*, 553 N.W.2d 97, 104 (Minn. App. 1996), *review denied* (Minn. Oct. 29, 1996). Conduct-based attorney fees may be imposed “against a party who

² Husband cites *McGowan v. McGowan*, 532 N.W.2d 258 (Minn. App. 1995) for the idea that, because the dissolution judgment awarded wife a lump sum from the 401(k) account, it cannot now alter that award. *McGowan* is distinguishable. There, years after entry of the dissolution judgment, the husband’s early retirement changed the value of the lump-sum pension benefits previously awarded to the wife in the dissolution judgment. This, in turn, required a change in the value of the pension benefits awarded to the wife to accomplish the equal division of marital property thought to have been made in the dissolution judgment. See 532 N.W.2d at 260. Thus, the question in *McGowan* was *how* to accomplish the otherwise unambiguous property division previously made in the dissolution judgment. Here, however, as set out above, the question was to identify *what* the ambiguous property division previously made in the dissolution judgment actually was. Because the award to wife here originally, albeit ambiguously, included half of the post-valuation-date change in value of the 401(k) account, this district court did not run afoul of *McGowan*.

unreasonably contributes to the length or expense of the proceeding.” Minn. Stat. § 518.14, subd. 1 (2018).³ Conduct-based fees may be based on the impact of a party’s behavior on the costs of the litigation regardless of the relative financial resources of the parties. *Dabrowski v. Dabrowski*, 477 N.W.2d 761, 766 (Minn. App. 1991). “While bad faith could unnecessarily increase the length or expense of a proceeding, it is *not* required for an award of conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1.” *Geske v. Marcolina*, 624 N.W.2d 813, 818–19 (Minn. App. 2001). The requesting party bears the burden of establishing that the other party’s conduct unreasonably contributed to the length or expense of the proceeding. *Id.* at 818.

The district court denied husband’s motion for conduct-based attorney fees. The district court did not explain its reasoning in doing so. But, presumably, the district court concluded that wife did not unreasonably contribute to the length or expense of the proceeding, as the district court granted her motion to clarify the order. Furthermore, other issues were raised at the motion hearing, and the parties were subsequently able to resolve those issues before the hearing and to present their agreements to the district court. Because wife’s motion did not unreasonably contribute to the length or expense of the proceeding, and if anything, husband’s conduct caused the need for further proceedings, we see no

³ See *Anderson v. Anderson*, No. A16-2006 (Minn. Aug. 6, 2018) (order) (questioning whether Minn. Stat. § 518.14 creates a substantive basis for an award of conduct-based attorney fees). For purposes of this appeal, we assume, without deciding, that the statute does so. See *Madden v. Madden*, 923 N.W.2d 688, 702 (Minn. App. 2019) (“For purposes of this appeal, we will assume without deciding that the statute [provides a substantive basis for an award of conduct-based fees].”).

reason to conclude that the district court abused its discretion in denying husband's request for conduct-based attorney fees.

Affirmed.