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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0560**

In re the Marriage of: Jeffrey Alan Fish, petitioner,
Respondent,

vs.

Kristin Klein Fish,
Appellant.

**Filed February 18, 2020
Affirmed
Johnson, Judge**

Chisago County District Court
File No. 13-FA-17-383

Del A. Blocher, Stillwater, Minnesota (for respondent)

Zachary Smith, Vox Law, LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Florey, Judge; and Kirk,
Judge.*

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

Jeffrey Alan Fish and Kristin Klein Fish were married for seven years before their marriage was dissolved. Three years after the dissolution, Jeffrey moved to reopen the

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

dissolution decree and to vacate the child-support award on the ground that Kristin had committed fraud upon the court. The district court granted Jeffrey's motion and ordered Kristin to reimburse Jeffrey for \$19,646 of child-support payments. We conclude that the district court did not err in its findings of fact or in its decision to grant the motion. Therefore, we affirm.

FACTS

The parties were married in February 2006. They have one minor child, a boy who was born in 2011. Jeffrey is physically disabled and unable to work due to a workplace accident in 2002. He began receiving Social Security disability benefits in 2009. He has two other children from a prior marriage, who live with Jeffrey's first wife. Each of Jeffrey's three children receives derivative disability benefits. Jeffrey was the representative payee of benefits for the parties' child until September 2012, when Kristin became the child's representative payee. The child's benefit at that time was \$261 per month.

The parties separated in March 2013, and Jeffrey petitioned for dissolution of the marriage the following month. The parties engaged in mediation, which resulted in a stipulated decree that resolved all disputed issues. In November 2013, the parties orally entered the agreement into the record at a pre-trial conference. They agreed that, among other things, Jeffrey would pay Kristin \$500 per month in basic child support, with the express understanding that Kristin would continue to receive disability benefits of \$261 per month as their child's representative payee. The parties agreed that Jeffrey's child-support obligation would begin September 1, 2013. The agreement was reduced to writing

and was signed by Kristin on March 19, 2014, and by Jeffrey on March 27, 2014. On April 22, 2014, the stipulation was approved by the district court, and judgment was entered.

Meanwhile, unbeknownst to Jeffrey, his children's derivative disability benefits were increased significantly because of a change in the way the Social Security Administration calculates benefits. At some time in March 2014, the Social Security Administration sent a letter to Kristin, informing her that the parties' child's benefit had increased to \$809 per month, retroactively to September 2012. Later that month, Kristin received a lump-sum payment of more than \$9,000 for retroactive benefits and the first monthly payment of the increased amount.

In March 2017, Jeffrey contacted Kristin to propose a modification of his parenting time. In June 2017, the parties reached a mediated agreement to modify parenting time and child support. In September 2017, the district court approved the agreement and filed an order that increased Jeffrey's parenting time and eliminated his child-support obligation.

During the mediation process in 2017, Kristin did not disclose to Jeffrey the amount of their child's monthly derivative disability benefit, even after Jeffrey's attorney specifically requested it. Jeffrey contacted his first wife and asked her about the amount of benefits that his two other children were receiving, and he learned that they were receiving \$825 per month. Jeffrey's first wife further informed him that she learned of the increase in benefits from \$261 to \$809 per month when she received a letter from the Social Security Administration that was dated March 3, 2014. Jeffrey also learned from his first wife that the increase was retroactive to September 2012. Thereafter Jeffrey visited a

Social Security office four times to obtain information concerning the benefits paid to his and Kristin's child. He eventually received documentation of the benefits paid from October 2011 to December 2016, which matched the benefits described by his first wife. He also learned that Kristin began receiving \$809 per month "on or about" March 3, 2014.

Based on this information, Jeffrey moved to reopen the dissolution judgment and decree and to vacate the basic child-support provision. He argued that Kristin had intentionally misrepresented the amount of their child's derivative disability benefits. Jeffrey asked the district court for retroactive relief. Kristin opposed the motion. The district court held an evidentiary hearing in September 2018. Three months later, the district court filed an order in which it found that Kristin had committed a fraud upon the court by not disclosing the increase in the child's benefits before the dissolution judgment and decree was filed in April 2014. The district court reasoned that Kristin breached "her affirmative duty to disclose that the child's derivative benefit had increased, by not disclosing such information before the Court signed the Decree." The district court granted the motion to reopen and requested supplemental briefing and evidence concerning the amount of child support that would have been due if the increased amount of benefits had been known. Jeffrey filed a memorandum of law in which he argued that he had overpaid child support in the amount of \$19,646, based on a 2017 child-support worksheet.

In March 2019, the district court filed an order in which it reasoned that Jeffrey was entitled to reimbursement of the amount of child-support payments that naturally and proximately resulted from Kristin's fraud on the court. The district court stated that, using a 2019 child-support worksheet, the amount of overpayment appeared to be \$20,868. But

the district court adopted Jeffrey's lesser amount and ordered Kristin to pay him \$19,646. Kristin appeals.

DECISION

Kristin argues that the district court erred by reopening the dissolution decree and vacating the child-support award.

A.

A dissolution judgment and decree is final when entered, unless a party establishes grounds for reopening the judgment and decree. *Thompson v. Thompson*, 739 N.W.2d 424, 428 (Minn. App. 2007). A district court may reopen a judgment and decree for any of the reasons specified in section 518.145 of the Minnesota Statutes. *See* Minn. Stat. § 518.145, subd. 2 (2018). In addition, a district court may “set aside a judgment for fraud upon the court.” *Id.* A party commits fraud upon the court if he or she engages in “an intentional course of material misrepresentation or non-disclosure, having the result of misleading the court and opposing counsel and making the settlement grossly unfair.” *Maranda v. Maranda*, 449 N.W.2d 158, 165 (Minn. 1989).

If a district court must determine an award of child support, the parties to a dissolution action must make disclosures of “all sources of gross income.” Minn. Stat. § 518A.28(a) (2018). The term “gross income” is defined to include “any form of periodic payment to an individual, including, but not limited to, . . . disability payments [and] Social Security or veterans benefits provided for a joint child under section 518A.31.” Minn. Stat. § 518A.29(a) (2018). The confidential relationship between parties to a marital dissolution creates an affirmative duty to fully and accurately disclose all types of financial information

that are relevant to disputed issues. See *Ronkvist v. Ronkvist*, 331 N.W.2d 764, 765-66 (Minn. 1983); *Doering v. Doering*, 629 N.W.2d 124, 131 (Minn. App. 2001), review denied (Minn. Sept. 11, 2001). This affirmative duty to disclose extends until the formal entry of the decree. *Ronkvist*, 331 N.W.2d at 766. “In a stipulated marriage dissolution, if one party defrauds the other, he or she necessarily defrauds the court which sits as a third party to the stipulation.” *Maranda*, 449 N.W.2d at 165.

The party seeking to reopen a dissolution decree bears the burden of establishing fraud upon the court. *Thompson*, 739 N.W.2d at 428. This court applies a clear-error standard of review to a district court’s finding that a party breached the duty to make a full and accurate financial disclosure, *Maranda*, 449 N.W.2d at 164, and an abuse-of-discretion standard of review to a district court’s ultimate decision to reopen a dissolution decree, *Thompson*, 739 N.W.2d at 428 (citing *Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996)).

B.

Kristin makes a series of arguments that challenge the district court’s legal reasoning and conclusions.

First, Kristin argues that there is no precedent for the relief ordered by the district court. She contends that “not a single case exists which allows the fraud-upon-the-court exception to be applied to re-open a decree when a party’s income (or Social Security payment) changes during the period between when an agreement is read into the record and the parties submit their written decree.” As a matter of statute, a child-support award may be set aside pursuant to section 518.145, subd. 2. Minn. Stat. § 518A.38, subd. 6

(2018). Furthermore, this case is quite similar to *Ronnkvist*, in which a husband who had agreed with his wife on a division of marital property failed to disclose that he acquired additional stock before the dissolution decree was entered. 331 N.W.2d at 765. The supreme court held that a party to an oral dissolution stipulation “has a duty to disclose property acquired after the oral stipulation but before the entry of the judgment and decree.” *Id.* at 765-66. The supreme court concluded that the husband breached that affirmative duty by not disclosing the acquisition of additional stock in the interval between the oral agreement and the entry of the dissolution judgment and decree. *Id.* at 766. The supreme court further concluded that the husband’s breach of his duty to disclose such information was fraud upon the court. *Id.* at 766. This case is only slightly different in that Kristin failed to disclose an increase in monthly disability payments, not an increase in assets. But that difference is immaterial. The *Ronnkvist* opinion clearly recognizes a duty to disclose relevant financial information, and its holding has been applied in subsequent cases that were not identical to the facts of that case. *See Maranda*, 449 N.W.2d at 166 (holding that party breached duty of disclosure by not accurately disclosing assets and liabilities, thereby making marital property settlement “grossly unfair”); *Sanborn v. Sanborn*, 503 N.W.2d 499, 503 (Minn. App. 1993) (holding that party breached duty of disclosure by not accurately disclosing actual value of company and negotiations to sell it), *review denied* (Minn. Sept. 21, 1993). The relief ordered by the district court is expressly authorized by statute, and is well supported by the above-described body of caselaw.

Second, Kristin argues that the district court’s application of the fraud-upon-the-court doctrine effectively created an unwarranted exception to the statute governing the

modification of a child-support award, which states that modification “may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party.” See Minn. Stat. § 518A.39, subd. 2(f) (2018). A child-support award may be modified only if there has been a substantial change in circumstances that makes the terms of the child-support award “unreasonable and unfair.” *Id.*, subd. 2(a). A motion to modify is appropriate for substantial changes that occur *after* the entry of the dissolution decree. See *id.*, subds. 1, 2(f). Jeffrey did not move to modify the child-support award based on changes occurring after the entry of the decree; he moved to re-open the dissolution decree based on new information about circumstances that existed *before* the entry of the decree. He brought a motion to reopen pursuant to a different statute, which authorizes a district court to “set aside a judgment for fraud upon the court.” See Minn. Stat. § 518.145, subd. 2. The relief ordered by the district court is not in conflict with the modification statute.

Third, Kristin argues that the district court erred on the ground that “the benefit amount was [Jeffrey’s] own Social Security benefit, to which he had access to the amount of the payment all along, but chose not to look into it.” In response, Jeffrey argues that he lacked “independent, direct access” to information about the amount of the child’s benefits because he was not the representative payee. The record supports Jeffrey’s argument. Kristin testified that she was surprised by the increased amount of benefits in March 2014. She did not testify that Jeffrey had superior knowledge of the increase in benefits. The record shows that Jeffrey diligently sought information about the amount of the parties’

child's benefit and had difficulty obtaining it. He introduced evidence that the Social Security Administration generally does not share such information with a disabled person if someone else is the representative payee. The record is not entirely clear on the means by which Jeffrey eventually obtained information about the amount of the benefits paid to the parties' child. In any event, the record is clear enough to reject Kristin's argument that her non-disclosure of the increase in benefits should be excused on the ground that Jeffrey had independent access to the information that was not disclosed and an independent duty to discover it for himself.

Fourth, Kristin argues that the amount of the reimbursement ordered by the district court is excessive inasmuch as the original child-support award was not based on the child-support guidelines but, rather, was negotiated without any determination of the parties' respective incomes. This argument implicates the scope of the district court's authority to "set aside a judgment for fraud upon the court." Minn. Stat. § 518.145, subd. 2. Kristin does not suggest any particular alternative remedy. In light of the circumstances of this case, it appears that the district court effectively "set aside" the dissolution judgment and decree, in part, by vacating the child-support award and requiring Kristin to reimburse Jeffrey for the amount of child support that he had paid to her during the period for which she received increased disability benefits. The district court's remedy was appropriately tailored to Kristin's fraud upon the court. The district court did not abuse its discretion by ordering such relief.

Fifth, Kristin argues that Jeffrey's "correct remedy" was to move to modify the child-support award when he learned of the increased disability benefits. By that time,

Jeffrey's child-support obligation had been terminated. As stated above, a party may obtain only prospective relief in a motion to modify child support. *See* Minn. Stat. § 518A.39, subd. 2(f). Consequently, Kristin's view of Jeffrey's "correct remedy" would preclude him from obtaining any relief with respect to the 48-month period between September 2013 and September 2017, for which she received, on behalf of the parties' child, disability benefits that were between \$500 and \$600 per month more than the amount that she had disclosed to Jeffrey before the entry of the dissolution decree. The district court did not err by awarding retrospective relief pursuant to the fraud-upon-the-court doctrine.

In sum, the district court did not clearly err in any of its finding of facts and did not abuse its discretion by granting Jeffrey's motion to reopen the dissolution decree, retroactively vacating the original child-support award, and reimbursing Jeffrey for the child-support payments he made based on Kristin's fraud upon the court.

Affirmed.