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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1775**

Eric D. Humphreys, et al.,
Respondents,

Ann Humphreys Sellers,
Respondent,

vs.

Janet Humphreys Krasner,
Appellant.

**Filed November 30, 2020
Affirmed
Smith, Tracy M., Judge**

St. Louis County District Court
File No. 69VI-CV-12-1010

Bryan M. Lindsay, Scott C. Neff, The Trenti Law Firm, Virginia, Minnesota (for
respondents Eric D. Humphreys and Paul Humphreys)

Ann Humphreys Sellers, Reading, Pennsylvania, (pro se respondent)

Janet Humphreys Krasner, Ely, Minnesota (pro se appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Segal, Chief Judge;
and Connolly, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Janet Humphreys Krasner challenges the district court's allocation of property-sale proceeds among her and her respondent-siblings in this partition action involving their family lake property. Krasner argues that the district court abused its discretion by directing reimbursement of her two brothers' attorney fees from the sale proceeds, by refusing to factor into the allocation of the proceeds the value of her improvements to the property, and by deducting \$9,000 from her share of the proceeds and allocating the sum to her siblings because Krasner harmed the value of the property before sale. We affirm.

FACTS

The facts and procedural history of this case are recited at length in previous opinions by this court.¹ In brief, Krasner and her siblings Eric Humphreys, Paul Humphreys, and Ann Humphreys Sellers together owned a recreational cabin on Lake Vermillion in St. Louis County. *Krasner II*, 2019 WL 2415252, at *1. In 2012, Eric, Paul, and Ann commenced a partition action against Krasner. *Id.* Six years of litigation followed, in the partition action and in related actions brought by Krasner. The crux of the litigation turned on Krasner's opposition both to the property's sale to any nonfamily member and

¹ See *Humphreys v. Krasner*, No. A18-1439, 2019 WL 2415252 (Minn. App. June 10, 2019), *review denied* (Minn. Aug. 20, 2019) (*Krasner II*); *Krasner v. Hoffman*, Nos. A17-1773, A18-0170, 2018 WL 6442164 (Minn. App. Dec. 10, 2018); *Humphreys v. Krasner*, No. A16-1643, 2017 WL 2628046 (Minn. App. June 19, 2017), *review denied* (Minn. Sept. 19, 2017) (*Krasner I*).

to the court-approved appraisal value, which she believed was too low. *Id.* In 2018, the district court approved the sale of the property to two neighbors for \$125,000—a sum that was well below the 2013 court-approved initial asking price of \$235,000 but was in line with more current appraisals. *Id.* We affirmed that order on Krasner’s appeal. *Id.*

We now arrive at the subject of this appeal: the district court’s October 2019 order distributing the proceeds of the partition sale among the siblings. In that order, the district court determined that, after deduction of closing costs, there remained \$122,262.64 in proceeds from the sale. From these proceeds, the district court deducted other costs related to the partition action and maintenance of the property and deducted \$10,000 in referee fees and real-estate commission on the sale of the property, \$25,000 in attorney fees, \$4,492.59 in insurance costs for the property, and \$2,485 in maintenance and repair costs. The district court directed that the real-estate agency and the referee be paid directly for their expenses and that respondents be reimbursed for the remaining expenses in the amount that each contributed.

After deduction of these costs, \$80,285.05 remained for distribution among the siblings. Each sibling’s one-quarter share would be \$20,071.26. But the district court decided to deduct \$9,000 from Krasner’s share and distribute that amount equally among the other three siblings as compensation to the three siblings for the loss of the property’s value caused by Krasner’s bad-faith efforts to prevent the sale of the property. Thus, in the end, the district court ordered distribution of partition proceeds of \$11,071.27 to Krasner and \$23,071.26 to each of the remaining three siblings.

Krasner appeals.²

DECISION

As an initial matter, we identify what is and what is not before us on this appeal.

Krasner appeals an order distributing the partition sale proceeds. In her brief, Krasner makes arguments challenging the property's sale and events leading up to the sale. But those arguments were either raised and decided in Krasner's previous appeals, *see generally Krasner II*, 2019 WL 2415252; *Hoffman*, 2018 WL 6442164; *Krasner I*, 2017 WL 2628046, or could have been, but were not, raised by Krasner in those appeals and are therefore not subject to review now. *See Peterson v. BASF Corp.*, 675 N.W.2d 57, 66-68 (Minn. 2004), *vacated on other grounds, BASF Corp. v. Peterson*, 554 U.S. 1012, 125 S. Ct. 1968 (2005) (concluding that the court need not review an issue that could have been brought in a prior appeal, but was not, because "consideration of [the petitioner's] [newly raised] arguments . . . would undermine principles of fairness and judicial economy"). For this reason, issues that are not before us include the selection of the referee, the fees to be paid to the referee, certain maintenance and upkeep fees, the approval of the sale of the property, and the sale price of the property.

In addition, Krasner asserts arguments regarding the district court's allocation order that she did not make to the district court. Specifically, she asserts a claim for the return to her of personal property from the cabin. We will not consider issues that were not raised to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

² We note that Ann Humphreys Sellers did not file a brief in this appeal.

In sum, we consider only Krasner's challenges to the district court's allocation order, addressing only those issues that Krasner actually raised to the district court. Krasner argues that the district court abused its discretion or erred by (1) improperly deducting attorney fees from the partition proceeds and reimbursing her brothers for those fees, (2) not taking into account the value of Krasner's alleged improvements to the property in allocating the proceeds, and (3) deducting \$9,000 from Krasner's share and distributing it to the other siblings due to Krasner's bad-faith actions that delayed the sale and reduced the property's value.

Partition proceedings are governed by statute as well as by principles of equity. *Swogger v. Taylor*, 68 N.W.2d 376, 380 (Minn. 1955); see Minn. Stat. § 558.01-.32 (2018). We review a district court's decision regarding division of partition sale proceeds for an abuse of its discretion. *First Trust Co. of St. Paul v. Holt*, 411 N.W.2d 564, 565 (Minn. App. 1987). In doing so, we will not set aside a district court's findings of fact unless they are clearly erroneous. *Anderson v. Anderson*, 560 N.W.2d 729, 730 (Minn. App. 1997), review dismissed (Minn. May 28, 1997). Findings of fact are clearly erroneous if we are "left with the definite and firm conviction that a mistake has been made." *LaPoint v. Family Orthodontics, P.A.*, 892 N.W.2d 506, 515 (Minn. 2017) (quotation omitted).

Under Minnesota's partition statute, the district court determines the amount of costs, charges, and disbursements that each party must pay or receive. Minn. Stat. § 558.10. The district court distributes the proceeds according to the provisions of Minn. Stat. § 558.16. First, it pays a just proportion of the action's "general costs." *Id.* Second, it pays the "costs of the reference." *Id.* Third, it satisfies any liens in order of their priority. *Id.*

Fourth, it distributes the remaining proceeds among the co-owners of the property according to their respective shares. *Id.* In addition to this statutory authority, the district court has discretion to apply principles of equity in determining the amount it will allocate to each party. *Swogger*, 68 N.W.2d at 383.

We turn to Krasner's arguments.

Attorney Fees

Krasner contends that the district court erred by directing payment of \$25,000 in attorney fees out of the partition proceeds. The district court determined that those fees were reasonable, necessary, and of benefit to all of the parties in completing the partition action.

Krasner does not identify any legal bar to the payment of attorney fees from partition proceeds, and caselaw recognizes the appropriateness of paying attorney fees from the proceeds when the expenditure results in a benefit to all interested parties. *See Kuller v. Kuller*, 109 N.W.2d 561, 563 (Minn. 1961); *Hanson v. Ingwaldson*, 87 N.W. 915, 915 (Minn. 1901).

Nor does Krasner identify how the district court clearly erred by finding that the \$25,000 in attorney fees here were reasonable and necessary and benefited all interested parties. We do not presume that the district court has erred; the party asserting error has the burden of showing it. *Horodenski v. Lyndale Green Townhome Ass'n*, 804 N.W.2d 366, 372 (Minn. App. 2011) (citing *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975)). Krasner has failed to meet that burden.

In any event, the record provides no support for the argument. Although the district court did not provide detail in its order about which fees were included in the reimbursement, the district court had ample opportunity to review an itemized billing statement provided by the brothers' attorney and to identify those fees that furthered the partition to the benefit of all of the parties. The record reflects that the district court did so here, as it reduced the attorney fees from the \$71,904.92 requested by the brothers to \$25,000. The district court did not err in apportioning attorney fees.

Krasner's Claimed Improvements to the Property

Krasner also argues that the district court abused its discretion by allocating the proceeds among the four siblings without giving her financial credit for improvements she claims to have made to the property. Krasner supports her argument with a self-made, partial list of improvements and her estimated value of each improvement. But the district court found that Krasner actually decreased the property's value, and that finding is supported by the record. The record establishes that only Krasner used the property and that she left the property in disarray. Krasner has not shown that the district court clearly erred by declining to consider her claimed improvements in its distribution.

Adjustment for Loss of Property Value

Finally, Krasner argues that the district court abused its discretion by deducting \$9,000 from her share and distributing it to her siblings as compensation for the loss of value to the property resulting from Krasner's bad-faith efforts to delay and prevent the property's sale. Krasner again asserts that she made several improvements to the property and that she did not have exclusive control of it. But these arguments have no bearing on

whether the district court abused its discretion by reducing her share to compensate her siblings for her bad-faith efforts to delay the sale of the property. And, in an earlier opinion regarding this matter, we affirmed the district court's finding that Krasner acted in bad faith to delay and prevent the property's sale. *See Hoffman*, 2018 WL 6442164, at *4. The district court thus did not abuse its discretion by considering Krasner's bad-faith efforts when it determined her share.

We next consider whether the amount the district court deducted from Krasner's share is reasonable. The district court found that Krasner's bad-faith efforts over six years to prevent and delay the property's sale amounted to \$9,000. This finding is not clearly erroneous. To the contrary, Krasner's stream of near-continuous legal actions against persons involved in the property's sale reduced the property's market value, which dropped from \$235,000 to \$125,000. *See Krasner II*, 2019 WL 2415252, at *1 (stating that Krasner sued her brothers, the referee, and her brothers' attorney, among others). We therefore conclude that the district court's \$9,000 deduction from Krasner's share of the sale proceeds to compensate her siblings is reasonable.

Affirmed.