

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0582**

In re the Marriage of: Jennifer Kristin Gorney, petitioner,
Appellant,

vs.

Keith Joseph Gorney,
Respondent.

**Filed March 29, 2021
Affirmed
Connolly, Judge**

Carver County District Court
File No. 10-FA-14-5

Jennifer K. Gorney, Carver, Minnesota (pro se appellant)

Keith J. Gorney, Minnetonka, Minnesota (pro se respondent)

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

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

In this post-dissolution dispute, appellant, pro se, argues that the district court abused its discretion in: (1) altering the parties' arrangement for paying the parenting consultant (PC); (2) not ordering respondent (a) to reimburse appellant for 2016 bills, (b) to

disclose the source of funds for an August 2014 check, and (c) to establish and maintain a joint bank account; and (3) not revoking the stay of respondent's 2017 sentence for contempt. She also argues that the district court erred in not requiring respondent to meet obligations from past orders and in making a substantive modification to the dissolution judgment. Because we see no abuse of discretion, no error, and no substantive modification, we affirm.

FACTS

Appellant Jennifer Gorney and respondent Keith Gorney were married in 1999 and are the parents of four children, born in 2005, 2007, 2009, and 2011. The parties separated in 2013, and the marriage was dissolved in March 2016. Both parties were represented by counsel. The dissolution judgment provided that, as of September 2017, respondent would have between 10% and 45% of the parenting time, would pay appellant \$2,033 monthly in child support, and would pay her temporary spousal maintenance of \$2,500 until January 31, 2024.

Respondent, acting pro se, appealed from the judgment, which this court affirmed in *Gorney v. Gorney*, A16-1363, 2017 WL 3862726 (Minn. App. Sept. 5, 2017). By July 2019, appellant, acting pro se, had filed about 25 motions. Hearings on the motions were held in July 2019 and October 2019. After each hearing, the district court issued an order dealing with some of the motions; in February 2020, it issued a final order dealing with the remaining motions. Appellant raises both specific and general objections to these orders.

DECISION

As a threshold matter, we note that the district court's orders reflect its difficulty in dealing with the parties' numerous and often trivial disputes. *See, e.g.*, the July 18, 2017, order, which stated that the "Court will not continue to micromanage this file regarding the minutia of this family's continued reluctance to simply manage the day-to-day issues most people face without intervention by the government" and the February 13, 2020, order, noting that "both parties bear a great deal of responsibility for the length, time and expense associated with this file" and that "the Court is unable to legislate what would be even minimal cooperation between these two people—even when the Court has implored them both to get past the spitefulness and vindictiveness, if only for the sake of their children. Neither party has taken the Court's advice to date." Appellant now argues that the district court "abused its discretion in failing to hold [r]espondent accountable as to his court ordered obligations."

"A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or rendering a decision that is against logic and the facts on record. A district court judge's findings of fact are not set aside unless clearly erroneous." *Knapp v. Knapp*, 883 N.W.2d 833, 835 (Minn. App. 2016) (citations and quotations omitted). Appellate courts "neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder." *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004).

1. Payment of the PC

In 2015, the district court ordered that a party who failed to submit timely payment to the PC would “as a consequence for noncompliance . . . be responsible for the entire co-pay.” Because this system did not prove successful, the district court in its February 2020 order stated that “[i]f Court [o]rdered reimbursements are not made as ordered, and if either party is forced to utilize the services of a PC in seeking reimbursement amounts, the party whom the PC finds against shall pay the entire PC bill *or the amount determined appropriate by the PC.*”¹ Thus, the district court gave the PC, who would be the neutral entity most familiar with the situation, the authority to penalize nonpayment as he or she deemed appropriate.

Appellant objects to this, apparently with the view that respondent should be penalized for nonpayment in accord with the 2015 order. Appellant offers neither any support for her view that the district court lacks authority to replace an ineffective measure with a hopefully more effective one nor any explanation of what is wrong with the district court’s proposed system. Given the district court’s broad discretion in resolving post-dissolution property disputes, there is no basis for compelling the district court to return to a 2015 ruling that proved unsuccessful.

2. Payment of Our Family Wizard (OFW) bills

Appellant moved in June 2019 that respondent be ordered to pay the OFW bill of \$8,669.91, of which \$4,183.36 had accrued prior to June 2018 and \$4,486.55 after June

¹ The italicized portion was handwritten and initialed by the district court.

2018, or within one year of her motion. The district court denied the motion as to the pre-June 2018 amount “as being too far removed in time” because the alleged nonpayments “should have been brought before a mediator or a PC soon after failure to pay,” but granted the motion as to the post-June 2018 amount because “[r]espondent has not successfully rebutted [appellant’s] requests for these amounts.” The district court ordered respondent to make payment within 60 days or have the amount reduced to a judgment.

Appellant argues that “[t]he district court does not have the legal authority to dismiss all expense reimbursements requested prior to June 28, 2018 as too far removed” but offers no support for the view that a district court may not impose reasonable time limits on one party’s objections to another party’s conduct.

3. Disclosure of funds for 2014 check

Appellant was notified by a bank in July 2018 of an uncashed August 2014 check for \$1,212.79, apparently made out to respondent. She argues that this amount was potentially a joint marital asset that should have been added to the marital estate of almost \$100,000 and moved to have respondent “directed to disclose the source of the funds, with proof by way of [an] electronic copy of the face of the check.” The district court denied “that motion . . . for being too far removed in time.”

Appellant argues that she did not learn of the check until 2018, but offers no support for the view that, years after a dissolution, a party that discovers something that might have been a very small percentage of the marital estate may have the estate reopened on that basis. It was not an abuse of discretion to deny this motion. *See Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (refusing to remand for de minimis technical error).

4. Joint bank account

Appellant also argues that the district court abused its discretion “in failing to properly address various requests for relief sought by [a]ppellant.” One such request was that respondent should be ordered to set up and maintain a joint bank account of \$4,000, replenished every year and with a penalty for noncompliance, to “allow [appellant] to reimburse herself . . . when [r]espondent refuses to abide by court-ordered expense reimbursements” and to reimburse “amounts [r]espondent owes but does not timely pay.” She argues that the district court abused its discretion by denying this motion without making “findings justifying its decision.” Again, appellant cites no support for the view that a district court is obligated either to set up a joint account because one party complains that the other is delinquent in making payments or to make findings when it denies a motion for a joint account. In any event, the district court’s findings in other parts of its orders provide support for this decision.

5. Contempt

The district court said in its February 2020 order that it was “denying all [appellant’s] motions related to [respondent’s] contempt.” A trial on appellant’s motion to have respondent held in contempt had been held in May 2017. Respondent was sentenced to 90 days in jail, and the district court stayed his sentence. The district court discussed the matter with appellant at the July 2019 hearing, saying:

. . . I certainly can jail [respondent], but then he won’t pay you any money and that’s worse. . . . Yeah, I can send [respondent] to jail, but that’s counter-productive and we all understand that, so that’s not an option. . . . I can make orders, but, again, how far can I go with enforcing them?

At the October 2019 hearing, the issue of staying the contempt sentence came up again, and the district court asked appellant, “Do you want [respondent’s] contempt actions to possibly be punished by time in jail?” Appellant said she “would prefer . . . other non-jail options be looked into,” suggested work-release, and said she “would not want the consequences of any actions [i.e., jailing respondent] to affect the financial support of his household.” The district court pointed out that work-release would be up to respondent’s employer and asked appellant, “So I just want to make sure, is jail off the table at this point?” Appellant answered, “At this point it would be.” The district court said, “Okay. So that’s what I just want to clarify.”

On appeal, appellant claims the district court “abused its discretion in not revoking respondent’s stay” of his 90-day jail sentence because respondent had violated the conditions of the stay. But appellant had acknowledged that, if respondent were in jail, he would not be able to generate the income on which she depends, so she did not want him in jail. She does not say in her brief that he should go to jail, but rather that he “needs to be held to account.” However, she does not explain how this should be done.

Moreover, she argues that respondent should again be held in contempt because he did not follow the district court’s orders relative to maintaining life insurance, attending counseling sessions, and providing discovery. But appellant has expressed her objections to both having respondent put in jail, thus producing no income for her, and to staying his sentences. There is no discernable way of simultaneously satisfying both these objections.

6. Past orders

The district court said it was “denying all [appellant’s] motions related to

[respondent's] . . . failure to follow prior [o]rders"² because it was "satisfied that there are sufficient ramifications in place in this matter to enforce continued compliance."

Having agreed that jailing respondent was not a practical option, appellant in several instances wants him required to pay either a financial penalty or a past due amount. For example, she argues that "[t]he district court erred by failing to assess interest against [r]espondent for the amounts owed despite its own previous court order." But the transcript reflects the district court's efforts to explain why getting more money from respondent was not always feasible and appellant's disinclination to accept this.

THE COURT: When that amount [of one prior debt] is paid, then they'll garnish more money [from your paycheck], is that what the situation is?

RESPONDENT: Yes.

APPELLANT: Your Honor, may I speak on this topic?

THE COURT: I know, I know, but he just doesn't have anymore money. . . . If . . . you can show that he has substantially more money, I'm willing to do that, but I think we're taking over 65 percent of his check.³

APPELLANT: . . . [I]t appears to me that we may be going down a path of accepting what [r]espondent says here in court at face value in regards to his financial picture without actually looking at what the facts are. So before we say --

THE COURT: Right, but what you have to understand is legally we can only take a certain percentage of his [income.]

APPELLANT: . . . I am aware of that.

THE COURT: My understanding is we're already at the max; is that right? We're at the maximum 65 percent.

APPELLANT: I don't know that. I'm not the one doing those garnishments.

THE COURT: We'll have to check with. . . child support, but my understanding is that the maximum that can be taken legally is that amount. But we'll check.

² The district court specified "paragraphs 13-19 of [appellant's] motion filed June 28, 2019, and paragraph 1 of [her] motion filed October 1, 2019."

³ See Minn. Stat. § 571.922 (b)(4) (2018).

APPELLANT: And my concern is not the legal amount that can be taken. . . .

....

THE COURT: Guys, we're not going to argue about it. The bottom line is I can only take what the State of Minnesota says is the maximum amount. Period. End of story.

....

THE COURT: It doesn't matter, [Appellant,] I can't take more than 65 percent of his check, period. Done. That's it. . . . I know you're ticked, I get it, but I can't take more than that.

Appellant's arguments that the district court erred and/or abused its discretion by not ordering respondent to pay her all the amounts she claims he owes her do not address the fact that appellant was already getting as much from respondent as the law allowed.

In several instances, appellant claims the district court failed to properly address her requests to order respondent to do something. For example, she argues that the district court erred: "by failing to order [respondent] to comply with its . . . counseling order"; by "not holding [respondent] in contempt for continuing to break the order to attend counseling"; "by failing to order respondent to comply with discovery"; by "refus[ing] to follow the contempt process and hold [r]espondent accountable"; and by showing "[an] unwillingness to follow the contempt process when its own orders are broken." She also argues that the district court should "[apply] the adverse inference rule . . . to infer that discovery [of various financial matters] would [have been] adverse to [r]espondent" because the discovery appellant wanted produced would show that respondent has the ability to pay all the financial obligations that she claims he has. But a district court does not abuse its discretion by declining to issue orders that it has no means of enforcing, and

appellant offers no explanation as to how the various orders she wants issued could be enforced.

7. The Home Equity Line of Credit (HELOC) payments

The 2016 final judgment had required appellant to make the HELOC monthly payments of between \$210 and \$215 unless respondent failed to provide her with the HELOC statement by the fifth of each month, in which case he was to make the payments. What happened was that, when respondent failed to send the statements, the payments did not get made. The district court changed this system to require appellant to make a HELOC payment of \$215 every month regardless of whether respondent provided her with the HELOC monthly statement, noting that, even without the statements, appellant “could have made the HELOC payments in an amount that would have covered the minimum [monthly] payment owing.” The district court also ordered that, if “[r]espondent is late on his monthly child support and maintenance obligations so that [appellant] is unable to make the HELOC payment in a timely fashion, [r]espondent shall be liable for any late fees incurred as a result of [his] late obligation payment” and also ordered “[r]espondent to pay \$750.00 to bring the HELOC account current for his failure to provide statements to [appellant] as previously ordered.”

Appellant argues that this is a “substantive modification” of the final order that “changes the substantive rights of the parties” and exceeds the district court’s authority. For this argument, she relies on *Nelson v. Nelson*, 806 N.W.2d 870 (Minn. App. 2011).⁴

⁴ We note that this is the only legal authority cited in either party’s brief.

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, 806 N.W.2d at 871 (citations omitted). But *Nelson* is distinguishable: it concerned a husband's \$67,725 lien on the parties' homestead accruing interest at six and one-half percent annually until their last child would turn 18, seven years later. *Id.* The unfinished homestead was the parties' principal asset. *Id.* at 873. When the wife declined to pay the husband after the child turned 18, the district court entered a personal judgment against her for the amount of the lien plus interest, and this court affirmed that judgment. *Id.* at 873-74.

Changing the requirement that respondent make the HELOC payments in those months in which he neglected to timely send appellant the HELOC statement to a requirement that he pay the late fee incurred as a result of his untimely payment was neither a substantive modification of the final judgment nor an abuse of discretion.

Affirmed.