

*This opinion is nonprecedential except as provided by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
A22-0047**

In re the Marriage of:

Jacqueline Anne Johanning Probst, petitioner,
Respondent,

vs.

Thomas Raymond Probst,
Appellant.

**Filed September 6, 2022
Reversed and remanded
Cochran, Judge**

Nobles County District Court
File No. 53-FA-16-565

Eugene D. Mailander, Malone & Mailander, Slayton, Minnesota (for respondent)

William J. Wetering, Hedeem, Hughes, & Wetering, Worthington, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Cochran, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

This dispute involves the enforcement of a provision in a 2016 stipulated marital-dissolution judgment and decree to award respondent-wife a share of appellant-husband's retirement savings account. Shortly after the judgment and decree

was entered, the district court filed a qualified domestic relations order (QDRO) to implement the provision regarding the transfer to wife of a portion of the retirement savings account. In 2021, the district court filed an order amending the QDRO.

Husband now challenges the district court's decision to amend the QDRO. We first conclude that the district court abused its discretion by amending the QDRO without interpreting the language of the stipulated judgment and decree. We next conclude that the language of the judgment and decree is ambiguous and consideration of extrinsic evidence is required to resolve the ambiguity. We therefore reverse and remand.

FACTS

Appellant Thomas Raymond Probst (husband) and respondent Jacqueline Anne Johanning Probst (wife) divorced on July 6, 2016, via a stipulated judgment and decree. Among other provisions, the judgment and decree adopted the parties' agreement to divide husband's Minnesota Deferred Compensation Plan (MNDCP), which is a retirement savings plan administered by the Minnesota State Retirement System (MSRS). Regarding the MNDCP account, the judgment and decree provided: "As further property settlement, [wife] shall receive a transfer of \$30,000.00 from [husband's] retirement account through the use of a QDRO,[¹] said sum to be computed as of May 25, 2016."

The parties thereafter agreed on the language of a QDRO and filed a proposed QDRO with the district court. The district court adopted the proposed QDRO in its entirety

¹ A QDRO is a qualified domestic relations order requiring a portion of a retirement plan to be assigned or paid to another person, such as a former spouse. *Langston v. Wilson McShane Corp.*, 828 N.W.2d 109, 113 (Minn. 2013) (citing 29 U.S.C. § 1056(d)(3)(B) (2018)).

and filed the order on July 20, 2016. Paragraph eight of the QDRO stated: “This Order assigns to [wife] an amount equal to \$30,000.00 of [husband’s] total MNDCP account balance. The total MNDCP account balance includes all money types (pre-tax, Roth, and rollover), and shall not include any contributions, gains or losses to the Plan that occur.” Paragraph nine provided the method by which wife was to receive her share of the account: “A separate MNDCP account in the name of [wife] shall be established by MSRS. The amount or percentage specified in paragraph 8 shall be transferred and deposited into [wife’s] account using the same investment option percentages as [husband’s] account.” The QDRO also provided that the district court “retains jurisdiction over this matter to amend this Order and to enter such further orders as are necessary to enforce the assignment of [husband’s] MNDCP account to [wife] as set forth herein.”

Although the district court filed the QDRO in July 2016, no party or attorney provided the QDRO to MSRS in 2016 or in the following approximately four-and-a-half years. Accordingly, no division of husband’s MNDCP account occurred.

On June 29, 2021, wife moved to amend the QDRO. Along with her motion, wife filed a proposed amended QDRO, in which she proposed that the district court revise the 2016 QDRO to provide both that wife was entitled to \$30,000 from the MNDCP account *and* that “[a]ny investment gains or losses” since 2016 “shall be pro-rated between [husband] and [wife].” Wife did not cite any legal basis for her motion.

The district court held a hearing on wife’s motion in July 2021. Wife’s counsel explained at the hearing that wife contacted him in January 2021 regarding her share of

husband's MNDCP account, at which point counsel realized that the QDRO had never been forwarded to MSRS. Counsel then sent the QDRO to MSRS in January 2021.²

In a letter from wife's counsel to the district court following the hearing, wife further asserted that the stipulated judgment and decree provided that husband's MNDCP account was to be divided on May 25, 2016. Counsel noted that he "ha[s] no record of receiving the signed [QDRO]" from the district court after it issued that order in 2016. He further stated that, "[i]n any event, it is [wife's] position that the QDRO does not control but rather the stipulated settlement contains the terms of the divorce decree that the parties agreed upon." Wife argued that she was therefore entitled to \$30,000 from husband's account "together with interest from May 25, 2016, which is exactly what the [s]tipulation anticipated." She requested an amended QDRO reflecting that she was entitled to "interest," meaning investment gains attributable to her \$30,000 share of the account, beginning on that date.

Husband later filed an objection to wife's motion, arguing that it would be improper for the district court to amend the QDRO to provide wife with any more than \$30,000 from the MNDCP account. He emphasized the language in the QDRO that "[t]he total MNDCP account balance" from which wife was to take her share, "*shall not include any . . . gains . . . to the Plan that occur.*" (Emphasis added.) And he argued that amending the QDRO to award wife investment returns on her share of the MNDCP account would

² Because husband declined to request a transcript of the July 2021 motion hearing, the record does not reflect what husband's counsel argued at the hearing.

constitute an unlawful modification of the parties' final property-division agreement as reflected in the QDRO and stipulated judgment and decree.

In November 2021, the district court filed an order granting wife's motion to modify the QDRO. The district court first noted that wife argues "that she is entitled to the initial [\$30,000] amount for her account and any prorated interest from . . . the agreed upon division date, May 26, 2016."³ The court further explained that an MNDCP account does not accrue interest like "a regular retirement savings account," but rather "is designed for investment." The district court then determined that husband would be "unjustly enriched" if he were to retain the investment returns on wife's \$30,000 share of the MNDCP account. Based solely on the unjust-enrichment determination, the district court granted wife's motion to amend the QDRO "to include May 26, 2016, as the stipulated date of division" and "to include language to prorate [wife's] account with the acquired returns on the previously awarded \$30,000 portion of the investment since May 26, 2016."

Husband appeals.

DECISION

Husband challenges the district court's decision to amend the QDRO on four related grounds. First, he argues that the original QDRO directed that wife receive a "lump sum" award from husband's MNDCP account and, as a result, the district court lacked jurisdiction to amend the QDRO to "allow [wife] to collect more than was bargained for."

³ It is unclear why the district court identified May 26, 2016, as the date of division, rather than May 25, 2016, which is the "computed as of" date specified in the stipulated judgment and decree. Respondent suggests that this was merely a mistake.

Second, husband contends that wife failed to bring her motion to amend the QDRO pursuant to any of the statutory grounds in Minn. Stat. § 518.145, subd. 2 (2020), for reopening an order arising from a marriage-dissolution proceeding. Third, husband asserts that the original QDRO constituted a binding contract that unambiguously provided that wife was not entitled to any returns on investment from her share of the MNDCP account because the QDRO stated that her share “shall not include any contributions, gains or losses to the Plan that occur.” Fourth, husband challenges the district court’s conclusion that he was unjustly enriched by retaining the returns on investment from wife’s \$30,000 share of the MNDCP account because wife’s “loss of interest from the plan is purely due to [wife’s] inaction.”

As with his arguments to the district court, a central premise of husband’s arguments on appeal is that amending the QDRO to provide wife with investment returns on her \$30,000 share of husband’s MNDCP account constitutes an unlawful modification of the parties’ property-division agreement. The district court did not address this issue. Instead, the court granted wife’s motion to amend the QDRO based solely on an unjust-enrichment theory. For the reasons set forth below, we conclude that the district court misapplied the law by deciding wife’s motion based on unjust enrichment rather than by interpreting the language of the parties’ stipulated dissolution judgment. And we further conclude that husband’s substantial rights were affected by the district court’s misapplication of the law, requiring reversal and remand to the district court to consider wife’s motion under a proper application of the law.

I. The district court misapplied the law by amending the QDRO without interpreting the property division in the dissolution judgment.

Two related legal standards are central to this case. First, Minnesota courts adhere to the principle that “[s]ubject to the right of appeal, a dissolution judgment and decree is final when entered, unless in a timely motion a party establishes a statutory basis for reopening the judgment and decree.” *Knapp v. Knapp*, 883 N.W.2d 833, 835 (Minn. App. 2016); see Minn. Stat. § 518.145, subd. 1 (2020) (making a similar statement). The statutory grounds for reopening a judgment and decree are provided by Minn. Stat. § 518.145, subd. 2. Absent one of those statutory grounds, once an original judgment and decree has been entered and the time for appeal has expired, the district court may not modify a division of property. *Erickson v. Erickson*, 452 N.W.2d 253, 255 (Minn. App. 1990); see *Shirk v. Shirk*, 561 N.W.2d 519, 523 (Minn. 1997) (stating that “[t]he sole relief from the judgment and decree lies in meeting the requirements of Minn. Stat. § 518.145, subd. 2”). As noted above, wife did not bring her motion to amend the QDRO under any of the statutory grounds in Minn. Stat. § 518.145, subd. 2.

Second, although “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.” *Nelson v. Nelson*, 806 N.W.2d 870, 871 (Minn. App. 2011) (emphasis added) (quotation omitted); see also *Fastner v. Fastner*, 427 N.W.2d 691, 698 (Minn. App. 1988) (recognizing that district court has discretion to use QDRO to implement division of pension 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.” *Nelson*, 806 N.W.2d at 871.

We review a district court's decision whether to reopen a judgment and decree for an abuse of discretion. *Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996). Likewise, “[t]his 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. “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.” *Knapp*, 883 N.W.2d at 835 (quotation omitted).

Based on the standards just described, to determine whether amending a QDRO is proper requires first determining whether the requested amendment would “increase or decrease the original division of marital property.” *Nelson*, 806 N.W.2d at 871. This analysis in turn requires interpreting the language of the property division in the parties' dissolution judgment. *See Ertl v. Ertl*, 871 N.W.2d 410, 414-16 (Minn. App. 2015) (interpreting stipulated provisions in a dissolution judgment and a QDRO and concluding that “the district court erred by modifying the parties' unambiguous [judgment]”). Minnesota courts construe stipulated judgments according to the rules of contract interpretation. *Id.* at 415.

In interpreting contract language, courts must “review the language of [the] contract to determine the intent of the parties.” *Id.* (quotation omitted). “When the language of a contract is clear and unambiguous, [courts] construe it according to its plain meaning.” *Id.* However, “[a] writing is ambiguous if it is reasonably subject to more than one

interpretation.” *Id.* If the language of a judgment is “of doubtful meaning or open to diverse constructions,” the district court may clarify it. *Stieler v. Stieler*, 70 N.W.2d 127, 131 (Minn. 1955). When clarifying a judgment, the district court may examine the whole record and must adopt the construction that properly reflects the intended effect. *Palmi v. Palmi*, 140 N.W.2d 77, 81 (Minn. 1966); *see also Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 913 N.W.2d 687, 692 (Minn. 2018) (“If the district court determines that a contract is ambiguous, it may admit parol, or extrinsic, evidence of the parties’ intent.”). A proper clarification gives “full effect . . . to that which is necessarily implied in the judgment, as well as to that actually expressed” and does not amend the judgment’s terms or challenge its validity. *Stieler*, 70 N.W.2d at 131-32.

Here, husband argued to the district court that granting wife’s motion to amend the QDRO would unlawfully modify the property division in the judgment and decree as implemented by the original QDRO. Husband specifically emphasized the original QDRO’s language stating that “[t]he total MNDCP account balance,” from which wife was to take her \$30,000 share, “shall not include any . . . gains . . . to the Plan that occur.” Wife, in contrast, argued that “the QDRO does not control” and instead the judgment and decree alone reflects the parties’ agreement. She asserted that granting her investment returns dating back to May 2016 was “exactly what the [s]tipulation anticipated.”

The district court did not address the parties’ arguments regarding the stipulated property-division provision in the dissolution judgment. It also did not interpret either the language of the judgment and decree or the language of the original QDRO, and it did not determine whether amending the QDRO to provide wife with investment returns dating

back to May 2016 would modify the original division of marital property. Rather than addressing these issues, the district court concluded that wife was entitled to investment returns attributable to her \$30,000 share of the account “since May 26, 2016,” solely because husband would be “unjustly enriched” if he were to retain those investment returns.

The district court’s application of an unjust-enrichment standard to the motion before it constitutes a misapplication of the law. Generally, “equitable relief cannot be granted where the rights of the parties are governed by a valid contract.” *U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981).⁴ There is no legal support for the district court’s decision to grant wife’s motion solely on the basis of unjust enrichment. Instead, the proper approach by the district court would have been to first interpret the language of the property division in the dissolution judgment and then determine whether wife’s request to amend the QDRO to provide her investment returns on her share of the MNDCP account dating back to May 2016 was (1) a proper implementation, enforcement, or clarification of the parties’ original agreement, *or* (2) a

⁴ We note two exceptions to this rule. First, the district court may modify a dissolution judgment—and hence a property division in a dissolution judgment—under Minn. Stat. § 518.145, subd. 2(5), if “it is no longer equitable that the judgment and decree or order should have prospective application” and a party brings a motion on that basis “within a reasonable time.” Second, Minn. Stat. § 518.58, subd. 1 (2020), provides that “[i]f 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 equal distribution.” Here, wife did not purport to bring her motion to amend the QDRO on the grounds of either Minn. Stat. § 518.145, subd. 2, or Minn. Stat. § 518.58, subd. 1, and the district court made no determination that the requirements of either section were met.

proper modification of the parties' agreement under one of the statutory bases provided in Minn. Stat. § 518.145, subd. 2. Because the district court misapplied the law by failing to follow the proper legal analysis, we conclude that the district court abused its discretion in deciding wife's motion to amend the QDRO.

II. The district court's misapplication of the law requires reversal and remand.

Having concluded that the district court misapplied the law, we must next consider whether remand is necessary. Even when a district court errs, we "must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." Minn. R. Civ. P. 61. As explained below, we conclude that husband's substantial rights were affected by the district court's misapplication of the law because the language of the property division in the dissolution judgment is ambiguous and the district court failed to consider husband's reasonable interpretation.

The determination of whether a stipulated judgment is ambiguous is a question of law that we review de novo. See *Ertl*, 871 N.W.2d at 414-15; *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003) (stating that "[t]he determination of whether a contract is ambiguous is a question of law"). As discussed earlier, we interpret stipulated judgments according to the ordinary rules of contract interpretation. *Ertl*, 871 N.W.2d at 415. We will conclude that "[a] writing is ambiguous if it is reasonably subject to more than one interpretation." *Id.*

The parties' stipulated dissolution judgment provided that wife "shall receive a transfer of \$30,000.00 from [husband's] retirement account through the use of a QDRO, said sum to be computed as of May 25, 2016." Husband and wife propose conflicting

interpretations of the relevant provisions of the judgment and dispute whether they intended wife to receive the returns on investment attributable to her \$30,000 share of the account that have accrued prior to the division of the account. Husband points to the original QDRO as evidence of the parties' agreement and emphasizes its language that wife's \$30,000 award from the account "shall not include any . . . gains." He argues that this language, which was agreed to by the parties to implement the stipulated property division, indicates that the parties intended wife to receive a "fixed sum" of \$30,000 and did *not* intend wife to receive investment returns on that \$30,000 that accrued prior to the actual division of the account. Wife, in contrast, focuses solely on the language of the judgment and decree. She argues that the language "computed as of May 25, 2016," signals that the parties intended to divide the MNDGP account on that date and therefore intended wife to begin receiving investment returns on her \$30,000 share at that time. She further asserts that husband's "reading of the stipulated settlement renders the specific date of May 25, 2016, meaningless."

We conclude that both parties' interpretations are reasonable. On the one hand, the language of the original QDRO, which was agreed to by the parties, supports husband's argument that the parties intended for wife to receive a fixed sum of \$30,000 without any additional investment "gains." On the other hand, the inclusion of the May 25, 2016, date in the judgment and decree reasonably supports wife's contention that the parties intended to divide the account on that date. Under that interpretation, one could reasonably infer that the parties intended that wife would be entitled to receive investment returns on her share of the account dating back to May 25, 2016. Because the language of the judgment

is susceptible to at least these two reasonable interpretations, we conclude that it is ambiguous.

We further conclude that reversal and remand to the district court is necessary to resolve this ambiguity. Reversal is necessary because the district court failed to consider husband's (or wife's) reasonable interpretation of the language of the property division and instead granted wife's motion solely on the grounds of an erroneous legal analysis based on unjust enrichment. Remand to the district court is necessary to correct this error and to permit the district court to make factual findings regarding the parties' intent. *See Kucera v. Kucera*, 146 N.W.2d 181, 183 (Minn. 1966) (stating that "the trial court has the responsibility of finding the facts and resolving the conflicts in the evidence"); *Suleski v. Rupe*, 855 N.W.2d 330, 338 (Minn. App. 2014) (reversing and remanding where "findings are missing"). Remand to the district court is also necessary to provide the parties the opportunity to present extrinsic evidence regarding whether they intended wife to receive the returns on investment attributable to her share of the MNDCP account that have accrued prior to the division of the account. *See Palmi*, 140 N.W.2d at 81 (explaining that "if a judgment or decree is ambiguous[,] the whole record may be examined to ascertain its meaning"); *see also Staffing Specifix*, 913 N.W.2d at 692 ("If the district court determines that a contract is ambiguous, it may admit parol, or extrinsic, evidence of the parties' intent."). On remand, the district court is to consider wife's motion to amend the QDRO under a proper understanding of the law consistent with this opinion and in light of any extrinsic evidence presented by the parties.

Reversed and remanded.