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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0137**

In re the Marriage of:

David Gordon Wingad, petitioner,
Respondent,

vs.

Janet Marie Wingad,
Appellant.

**Filed August 5, 2024
Affirmed
Schmidt, Judge**

Dakota County District Court
File No. 19HA-FA-18-144

Deborah Marie Gallenberg, Dudley & Smith, P.A., Mendota Heights, Minnesota (for respondent)

JanetMarie Nature, Faribault, Minnesota (pro se appellant)

Considered and decided by Schmidt, Presiding Judge; Worke, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

In this marriage-dissolution matter, appellant argues the district court improperly modified the final property division in the judgment dissolving the parties' marriage. Because appellant's noncompliance with the district court's orders constitutes a material change in circumstances, and because appellant did not show that she was prejudiced by any modification to the final property division, we affirm.

FACTS¹

Dissolution of the marriage

In 2018, respondent David Gordon Wingad (husband) petitioned to dissolve his marriage to appellant JanetMarie Nature, f/k/a JanetMarie Wingad (wife). In 2019, the district court ordered the division of the parties' home (the homestead) and a rental property (the rental property). The court also awarded wife a personal-property equalizer payment.

Following the entry of the judgment, wife moved the district court to correct, amend, and stay the judgment and decree. After a hearing, the district court entered an amended judgment that ordered the parties to sell the homestead. The court awarded wife sole occupancy and use of the homestead, along with the responsibility for all liabilities associated with the homestead until it sold. The district court ordered the net proceeds from the sale, defined as any amount remaining after sale expenses and the homestead

¹ A full recitation of the facts and procedural history can be found in this court's opinions from wife's prior appeals. *See Wingad v. Wingad*, No. A20-0781, 2021 WL 4428909 (Minn. App. Sept. 27, 2021), *rev. denied* (Minn. Dec. 14, 2021); *Wingad v. Wingad*, No. A23-1246, 2024 WL 3025983 (Minn. App. June 17, 2024).

mortgage, to be divided as: (1) the first \$20,000 to wife for her nonmarital interest in the property, and (2) the remaining net proceeds to be equally divided between the parties.

Prior appeals

Wife's first appeal challenged the district court's allocation of the parties' real property and order directing them to sell the homestead. *Wingad*, 2021 WL 4428909, at *5-7. We affirmed, reasoning that the district court did not err by declining to increase wife's "non-marital" property interest in the rental property, declining to give wife all the equity in the homestead, or ordering the sale of the homestead. *Id.*

Wife filed a second appeal challenging the district court's denial of her motion to vacate the amended judgment and also arguing for a new trial based on "new evidence." We dismissed the appeal as taken from a non-appealable order. *Wingad v. Wingad*, No. A21-1499 (Minn. App. Dec. 7, 2021) (order).

Wife appealed a third time challenging a June 2022 order that, in part, directed that (1) the homestead be placed on the market, (2) wife refinance the Faribault property and pay husband his share of the equity, and (3) the equalizer payment be deducted from husband's share of the equity in the homestead. We questioned jurisdiction over the appeal. Wife filed a notice of voluntary dismissal, and we then dismissed the appeal as premature, noting that she could seek review of the order in a timely appeal from a final judgment entered on the order. *Wingad v. Wingad*, No. A22-1217 (Minn. App. Sept. 14, 2022) (order). Wife did not file another appeal of the June 2022 order.

Additional district court proceedings

In October 2022, husband moved the district court for an order finding wife in contempt for failing to comply with the June 2022 order, permitting husband to sell the homestead without wife's signature, and ordering wife to refinance or sell the rental property. In support of her responsive motion, wife filed an affidavit executed by the parties' son and his wife, in which the son generally attested that he was unwilling to pay husband, that he wanted compensation for his interest in the rental property, and that he did not want the rental property to be refinanced or sold.

Following a hearing on the motions, the district court filed an order in January 2023 finding wife in constructive civil contempt of court because she refused to arbitrate the issue of how to allocate the proceeds from the sale of the homestead, as required by the court's June 2022 order.

In February 2023, wife moved to vacate the June 2022 and January 2023 orders. Wife asserted that the orders impermissibly amended the judgment and decree. Wife alternatively moved for amended findings and moved to stay the enforcement of the orders. Wife also argued that the district court improperly found her in contempt.

In June 2023, the district court denied wife's motion. The court disagreed with wife's contention that it had modified her substantive rights under the amended judgment and decree, citing to wife's "purposeful failure" to follow the prior orders and the "delays created thereby." In August 2023, the district court issued amended findings and an order, which denied all relief requested by wife that was not addressed in the June 2023 order.

Wife's appeal of the January 2023, June 2023, and August 2023 orders

Wife filed an appeal to challenge the January 2023, June 2023, and August 2023 orders. *See Wingad*, 2024 WL 3025983, at *1-7. Wife argued the district court improperly modified the final property division set forth in the amended judgment and decree and abused its discretion by finding her in contempt of court. *Id.* at *3.

This court affirmed the district court's final property division. *Id.* at *3-5. In doing so, we held the issue related to the sale of the homestead without requiring wife's signature was moot because the property sold during the pendency of the appeal. *Id.* at *4. We also concluded that the court did not abuse its discretion regarding the rental property. *Id.* Finally, we held that the district court's January 2023 order modifying the net proceeds in the homestead benefited wife and, as such, does not justify a reversal. *Id.* at *5.

This court, however, reversed the contempt order because the district court did not follow the proper procedure before finding her in contempt of court. *Id.* at *6-7. We remanded for the district court to determine "what relief granted in the January 2023 order is a result of the defective contempt ruling and what relief in the January 2023 order is an otherwise appropriate attempt to enforce the property division." *Id.* at *7.

Further district court proceedings

In September 2023, the parties appeared in district court on motions filed by husband. Husband requested an order requiring wife to vacate the homestead; awarding husband sole authority to sign the documents to sell the homestead; requiring wife remain responsible for all payments until the homestead sold; updating disposition of the proceeds from the sale of the homestead; and awarding husband conduct-based attorney fees.

On December 4, 2023, the district court filed an order requiring wife to vacate the homestead. The court also ordered the net proceeds to be escrowed in husband's counsel's trust account pending further agreement from the parties, order from the district court, or resolution of the then-pending appellate case in A23-1246. The district court reserved a ruling on husband's request for conduct-based attorney fees.

Wife now appeals the district court's December 4, 2023 order.

DECISION

“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.” *Nelson v. Nelson*, 806 N.W.2d 870, 871 (Minn. App. 2011) (quotation omitted). An order implementing or enforcing a dissolution decree affects the parties' substantive rights when it increases or decreases the original division of marital property. *See id.* We “will not disturb an appropriate order to clarify, implement, or enforce terms of a decree, absent an abuse of discretion.” *Id.*

Wife argues that the district court abused its discretion by (1) ordering wife to vacate the homestead and effectively modifying the parties' tenancy in common and (2) ordering the net proceeds of the homestead be deposited in opposing counsel's trust account. We address each in turn.²

² Wife raises at least five issues in her brief, but most of her arguments challenge orders that are not at issue in this appeal. Again, the scope of this appeal is limited to only the issues the district court addressed in the December 2023 order, namely, requiring wife to vacate the home and depositing the net proceeds from the sale into husband's attorney's trust account.

I. Wife's refusal to comply with the district court's orders constituted a material change in circumstances warranting a modification of wife's occupancy.

Wife argues that the district court inappropriately modified her rights as a tenant in common by ordering her to vacate the homestead. Absent a stipulation to the contrary, the modification of the right to occupy the homestead should only be allowed "when the party seeking modification can show a material change in circumstances." *Plonske v. Plonske*, 473 N.W.2d 911, 912 (Minn. App. 1991) (quotation omitted).

In the 2019 judgment and decree, the district court awarded the homestead to the parties as tenants in common. The court awarded wife sole occupancy and use of the homestead pending its sale and made wife solely responsible for all liabilities associated with the homestead. In the judgment and decree, as well as the amended judgment and decree, the district court ordered the parties to "immediately" list the homestead for sale. All of the court's orders that addressed the homestead consistently required the parties to cooperate with the listing and sale of the property.

The December 4, 2023 order modified possession of the homestead for the purpose of selling it. The district court found that wife had "effectively blocked the sale of the marital homestead since" the court first ordered the property to be sold in 2019. The district court found wife used "multiple means" to block the sale of the homestead and cited to husband's affidavit as "compelling." The district court specifically found that wife's "interference presents a material change in circumstances that merits a change in the exclusive use and possession of the homestead." The district court determined "that the only way this house can be sold is if [wife] no longer lives there."

Given the history of wife's failure to sell the homestead for four years, the district court's findings are not clearly erroneous and its ruling is supported by caselaw requiring a material change in circumstances to modify the right of occupancy of a homestead. *See Id.* The court did not abuse its discretion in ordering wife to vacate the home and awarding husband sole possession so that he could sell the property.

II. The district court did not abuse its discretion by requiring the proceeds from the sale to be deposited into husband's attorney's trust account.

Wife argues that the district court erred in requiring the proceeds from the sale of the homestead to be deposited into husband's attorney's trust account because she never agreed to have the attorney appointed as a trustee. However, the district court found that wife was "unwilling[] to negotiate in hopes of resolving matters outside the courtroom." The court also found that "not a single stipulation has been reached since this case began. The hope of resolution is a vain hope and serves only to delay matters further."

In addition, the district court was permitted to implement the provisions of the dissolution judgment so long as it did not alter the parties' substantive rights. *See Nelson*, 806 N.W.2d at 871. Here, the district court ordered that the net proceeds from the sale "shall be deposited into . . . [the] trust account pending an agreement of the parties, guidance from the Court of Appeals, or subsequent Order of this Court." Such a ruling did not alter wife's substantive rights as the net proceeds will be distributed at a later date. The district court acted within its discretion in ordering the net proceeds from the sale of the homestead to be deposited into the attorney's trust account.

Affirmed.