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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2245**

In re the Marriage of: Lyn Marie O'Neil, petitioner,
Respondent,

vs.

Kevin Joseph O'Neil,
Appellant.

**Filed October 3, 2011
Reversed and remanded
Stauber, Judge**

Olmsted County District Court
File No. 55FA077695

Bruce K. Piotrowski, George F. Restovich & Associates, Rochester, Minnesota (for
respondent)

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Considered and decided by Kalitowski, Presiding Judge; Peterson, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from the district court's post-dissolution order requiring the sale of
certain homestead property awarded to appellant-husband in the dissolution judgment,
appellant argues that the district court's order impermissibly modified the judgment and
decree by modifying his substantive rights. Because foreclosure rather than judicial sale

is the appropriate remedy under the unique facts and circumstances presented here, we reverse and remand.

FACTS

Appellant Kevin Joseph O’Neil and respondent Lyn Marie O’Neil were married in March 2001. In 2006, the parties purchased a 40-acre parcel of real property from appellant’s elderly aunt at a substantial discount.¹ The aunt occupied a farmhouse on the property, which she did not want to vacate. During negotiations for the purchase of the property, appellant assured his aunt that she could continue to occupy her farmhouse indefinitely. The closing documents, however, did not reserve aunt’s occupancy rights.

Following the closing, the parties landscaped a separate portion of the property, installed a septic system and other utilities, and placed a new manufactured home on the property. They then occupied the property as their homestead. Appellant’s aunt continued to occupy her farmhouse.

In January 2009, the parties’ marriage was dissolved. The district court found that the property is “marital in character” and that “[i]n consideration of what is in essence a life estate” the aunt sold the property to the parties at a considerable discount. The court concluded that the aunt “has the right to remain on the property for the remainder of her life.” This conclusion is supported by the testimony of the parties. The court then awarded the property to appellant, “subject to any encumbrances thereon, [aunt’s] life estate,” and subject to respondent’s lien to secure an equalization payment of \$138,500 to

¹ Initially, aunt suggested a purchase price of \$140,000 for the property, but ultimately the property was sold to the parties for \$40,000. However, immediately after the closing, aunt endorsed the \$40,000 check back to the parties.

compensate respondent for her marital interest in the property. The equalization payment was based on the current market value of the property of \$330,000 as established by an appraisal, less the mortgage encumbrance of \$53,000 assumed by appellant. The property valuation was not discounted on account of the aunt's life estate. The court further ordered that the equalization payment "shall be paid within six . . . months of the date of the entry of the Judgment and Decree." No appeal was taken from the judgment and decree awarding fee title to appellant and a judicial-lien encumbrance to respondent.

The equalization payment to respondent was not paid, and in May 2010, respondent moved for an order enforcing her judicial lien by awarding her immediate possession of the property and ordering the property listed for sale. Appellant responded by requesting that the district court reopen and modify the judgment and decree under Minn. Stat. § 518.145, subd. 2 (2010), to relieve him of the obligation to pay respondent the property equalization payment. Appellant also claimed that "[b]ecause of the life estate, I cannot borrow money to pay" the equalization payment. In the alternative, appellant requested a new trial under Minn. R. Civ. P. 59.01 on the real-property issue.²

On June 16, 2010, the district court denied appellant's motion for a new trial and denied his request for relief from the property equalization payment set forth in the judgment and decree. The court also denied respondent's motion to enforce the judgment and decree by giving her immediate possession of the property. The court found that appellant's argument that he could not refinance the property due to aunt's life estate was

² Appellant alleged at trial, and in his subsequent motions, that the property should be awarded to him because it constituted a gift to him from his aunt.

“being asserted to circumvent the court’s ruling with respect to the property equalization payment owed by [appellant] to [respondent].” But the court sua sponte amended “Conclusions of Law, III. A. to reflect that [aunt] does not have a valid enforceable life estate.” The court commented in its memorandum that “[b]y virtue of this ruling, nothing will now stand in the way of [appellant] refinancing the property in order to pay [respondent] the equalization payment which she is properly entitled to.” The court further ordered that the equalization payment be made within 90 days of the order.

On August 25, 2010, prior to the 90-day period for payment, respondent moved again for an order requiring that the property be sold to satisfy the equalization payment. Appellant responded by again requesting that the district court reopen and modify the judgment and decree under section 518.145, subdivision 2, to relieve him of his obligation to pay the equalization payment. In the alternative, appellant requested that under Rule 59, a new trial be granted on the real-property issue. The district court granted respondent’s motion on October 20, 2010, and ordered the property sold and denied appellant’s motions. This appeal followed.

D E C I S I O N

All divisions of real and personal property in a marital dissolution are final, and may be revoked or modified only where the district court finds that conditions justify reopening a judgment, including those contained in section 518.145, subdivision 2. Minn. Stat. § 518A.39, subd. 2(f) (2010). “While a trial 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.” *Redmond v.*

Redmond, 594 N.W.2d 272, 275 (Minn. App. 1999) (citing *Potter v. Potter*, 471 N.W.2d 113, 114 (Minn. App. 1991)). This court will not disturb an appropriate order to implement or enforce terms of a decree absent a clear abuse of discretion. *Potter*, 471 N.W.2d at 114.

Appellant argues that the October 20, 2010 order impermissibly modified the judgment and decree because the order modified his substantive rights. To support his claim, appellant argues that the sale of the property would affect his substantive rights because he would lose a substantial part of the value of his personal property (his manufactured home affixed to the real estate) awarded under the judgment and decree if the property were sold. Appellant also claims that if the property were sold, respondent would be entitled to the \$138,500 equalization payment as was awarded in the judgment and decree, but he would sustain a substantial loss by being required to pay the costs of sale such as realtor fees and legal costs.

In *Potter*, the district court enforced a lien securing a property division by ordering the immediate sale of the encumbered real estate. *Potter*, 471 N.W.2d at 113. The appellant challenged the district court's order arguing that the sale of his homestead would significantly alter his substantive rights. *Id.* at 114. In rejecting the appellant's claim, this court stated that a party's substantive rights are changed in an order enforcing a property division when the party receives more or less than under the original decree. *Id.* The court held that the sale "will not affect the value of [the] appellant's interest. The sale proceeds will cover the delinquent monthly installments he is legally obligated to

pay pursuant to the original decree's property division. Therefore, [the] appellant's substantive rights have not been changed." *Id.*

Respondent argues that under *Potter*, appellant's substantive rights would not be affected by the sale of the property. We agree. The judgment and decree awarded appellant the property and respondent a \$138,500 equalization payment to compensate her for her marital interest in the property. By awarding appellant the property, he was granted the equities in the property; which, over time, could increase, decrease, or remain the same. Appellant did not appeal that decision. Appellant now claims that the property value has decreased and, therefore, his substantive rights under the judgment and decree would be altered if the property was sold. But any increase or decrease in equity was contemplated by the nature of the property division in the judgment and decree, which appellant failed to appeal. Moreover, any loss in equity can be attributed, at least in part, to appellant's failure to promptly satisfy the equalization payment. Because the judgment and decree awarded appellant the property, including its equities, appellant will receive neither more nor less than he received under the judgment and decree. Therefore, we cannot conclude that appellant's substantive rights would be affected by the sale of the property.

Respondent argues that because appellant's substantive rights would not be affected by the sale, the district court's order to sell the property by judicial sale was consistent with this court's decision in *Potter*. We acknowledge that this court in *Potter* concluded that where the decree does not provide expressly for a means to enforce a lien, a public sale, rather than a lien foreclosure, can be an appropriate means to implement

and enforce a dissolution decree. *Potter*, 471 N.W.2d at 114. But the facts and circumstances presented here are unique from those presented in *Potter*. Unlike *Potter*, the real property at issue here could be affected by a third-party interest. Appellant also has a manufactured home on the property, which cannot be moved easily. Moreover, the property is appellant's homestead, which provides redemptive rights. Although in *Potter*, this fact alone was not enough for this court conclude that foreclosure was the only appropriate remedy, it is a factor for us to consider when determining whether a public sale or foreclosure is the appropriate remedy here.

Upon consideration of all the appropriate factors, we conclude that under the unique facts and circumstances presented here, foreclosure is the appropriate remedy. Foreclosure will allow for joinder of, or intervention by, persons having an interest in the property, protect appellant's redemption and homestead rights, and allow judicial supervision of the foreclosure process. Therefore, we reverse and remand the district court's order for proceedings consistent with this opinion.³

Reversed and remanded.

³ We note that we do not decide any issues pertaining to aunt's purported life estate and her continued occupancy of her home.