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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2421**

In re the Marriage of:
Deborah Marie Saby, petitioner,
Respondent,

vs.

William James Saby,
Appellant.

**Filed December 16, 2008
Reversed and remanded
Halbrooks, Judge**

Mille Lacs County District Court
File No. FA-05-3574

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Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Collins,
Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's order finding him in contempt of court for failing to comply with certain obligations from a dissolution judgment on the principal ground that the district court lacked authority to order what he claims amounts to a modification of the parties' property division. Because we conclude that the district court exceeded its authority, and because contempt is an inappropriate remedy for a party's failure to satisfy a lien under a judgment, we reverse and remand.

FACTS

Appellant William James Saby and respondent Deborah Marie Saby were married on August 30, 1986. Their marriage was dissolved by the district court on July 6, 2006, and a judgment based on the parties' marital termination agreement was entered. As part of the property division, the court ordered a partitioning of the couple's 80-acre homestead property.

Respondent was awarded 23 acres that included the parties' home, subject to "her sole obligation and liability" for the outstanding mortgage balance. The district court also noted that respondent "plans to sell the home and acreage awarded to her and shall apply the net sale proceeds to the parties' mortgage balance . . . and the parties' joint debt."

Appellant was awarded the remaining 57 acres, but he was obligated to partition the property within 30 days. Appellant's interest in the property was subject to a lien in favor of respondent in the amount of \$30,000. The district court also ordered that if

appellant failed to pay respondent the \$30,000 lien, she could foreclose her lien and sell appellant's property to receive payment. Appellant was given six months from the date of the judgment to satisfy the lien.

The district court's final judgment and decree also addressed what would happen in the event that either party defaulted in performance:

If either party hereto defaults in the performance of any of the terms, provisions or obligations as set forth herein, a certified copy of the Court's Judgment and Decree of Dissolution shall constitute an actual grant, assignment and conveyance of the property rights in such manner and with such force and effect as shall be necessary to effectuate the terms of the Decree.

After more than one year had passed, appellant had failed to satisfy either of his obligations relating to the 80-acre homestead property. In response, respondent moved the district court for an order to show cause. She requested that the district court find appellant in contempt of court, order him to immediately and fully perform his obligations to partition the property and satisfy her lien, award her temporary and permanent possession of the 57-acre parcel, and prohibit appellant from residing on the 57-acre parcel.

Respondent had not sold her 23-acre portion of the homestead and moved as originally contemplated. Instead, she had changed her mind and decided to remain on the property. She acknowledged that she was entitled to foreclose on her lien and sell the 57-acre parcel to obtain payment, but she said that she "would rather regain possession of the 57-acre parcel." The hearing on respondent's motion took place on August 31, 2007.

Appellant appeared, pro se, but did not file any responsive pleadings. The district court, nevertheless, permitted him to argue orally.

The district court found appellant in contempt based on his failure to comply with his obligations to partition the 57-acre parcel and to satisfy respondent's lien. The district court ordered appellant to "immediately comply" with his existing obligations to partition and pay respondent, although it set a new deadline—January 1, 2008. Again, the district court outlined the consequences if appellant failed to satisfy both obligations. In the event that appellant satisfied respondent's lien by January 1, 2008, but did not partition the property, respondent was to receive an undivided one-half interest in the 57-acre parcel. If appellant satisfied both obligations by January 1, 2008, he would receive the 57-acre parcel. If he failed to satisfy both obligations, the entire parcel would be respondent's. The district court also "specifically prohibited [appellant] from residing upon, improving, building, molesting or disturbing the 57-acre parcel" and ordered appellant to pay respondent \$1,000 for attorney fees and costs associated with the motion to show cause. This appeal follows.

D E C I S I O N

Appellant challenges the district court's order on the grounds that (1) it, in effect, modifies the property division in the dissolution judgment, which is beyond the district court's jurisdiction; (2) even if the district court had jurisdiction, it abused its discretion by modifying the property division; and (3) the district court abused its discretion by restricting appellant's use of the 57-acre parcel as a result of his contempt. Because we

conclude that the district court exceeded its authority,¹ we decline to reach appellant's second contention.

A. Authority to modify the property division

The central dispute in this appeal is the nature of the district court's action in its post-dissolution order. Appellant characterizes the district court's action as a modification of the property division in the dissolution judgment and directs our attention to the order's second-to-last paragraph, which states that the order "specifically modifies" the dissolution judgment. Respondent characterizes the order as merely implementing previously authorized sanctions and focuses her argument on the district court's contempt findings.

We agree with appellant that the district court's October 24, 2007 order modified the dissolution judgment. Under the dissolution judgment, the fully and clearly expressed consequence of appellant's failure to pay respondent \$30,000 was that respondent could foreclose the lien. The order neither directly expressed nor implied that the consequence of nonpayment was the outright award of the 57 acres to respondent or the complete deprivation of appellant's ability to use the land while he owned it.

¹ The parties addressed this issue in terms of "jurisdiction." That word is used—perhaps abused—for many purposes. *Moore v. Moore*, 734 N.W.2d 285, 287 n.1 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007). Because we reverse based on the extent of the district court's authority, we need not address whether any specific type of jurisdiction is actually at issue here.

We review issues of statutory interpretation de novo. *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 209 (Minn. 2001). Unless there is statutory authority for a different time, the time for taking an appeal from a judgment expires 60 days after the judgment's entry. Minn. R. Civ. App. P. 104.01, subd. 1. Our marital-dissolution statutes permit a district court, in specific situations, to reopen a dissolution judgment for up to one year after its entry. Minn. Stat. § 518.145, subd. 2 (2006). Because the property division in a dissolution judgment "is final," the district court lacks authority to alter the division unless section 518.145, subdivision 2, is satisfied. Minn. Stat. § 518A.39, subd. 2(f) (2006); *Stolp v. Stolp*, 383 N.W.2d 409, 411 (Minn. App. 1986).

Here, the district court modified the property division more than 15 months after entry of the dissolution judgment and failed to cite any of the statutorily specified reasons permitting modification. As a result, we conclude that the district court exceeded its authority as a matter of law.

B. Use of the contempt power

We review a district court's decision to invoke its contempt powers for an abuse of discretion. *Mower County Human Servs. ex. rel. Swancutt v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996). Appellant argues, and we agree, that the district court abused its discretion by finding him in contempt and restricting his use of the 57-acre parcel.

The contempt power's purpose is to provide the district court the means to enforce its orders. *Erickson v. Erickson*, 385 N.W.2d 301, 304 (Minn. 1986). But "[c]ontempt is an extraordinary remedy that must be exercised with caution." *Burgardt v. Burgardt*, 474 N.W.2d 235, 236 (Minn. App. 1991). Because of its extraordinary nature, we have

declined to allow the use of the contempt power to enforce a property settlement. *Id.* at 237. Rather, the statutorily sanctioned remedy is execution:

Where a judgment requires the payment of money, or the delivery of real or personal property, it may be enforced in those respects by execution. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or the person or officer who is required thereby or by law to obey the same. A person so served who refuses may be punished by the court as for contempt, and the individual's obedience thereto enforced.

Minn. Stat. § 550.02 (2006). Thus, the execution statute delineates between judgments requiring the transfer of money or property and those requiring some other act, and provides for contempt proceedings only as to the latter category. *Id.*

In *Burgardt*, when we declined to endorse the use of the contempt power to enforce the payment of money under a property settlement, we noted express statutory authority for the use of contempt proceedings to enforce maintenance and child-support obligations. *Burgardt*, 474 N.W.2d at 237; *cf.* Minn. Stat. § 518A.71 (2006). The legislature has not, in the intervening 17 years, provided any statutory authority for the use of the contempt power to enforce a property division.

We note that the district court foresaw the possibility of appellant's failure to meet his obligation to pay and crafted a remedy into the decree: a lien that could be foreclosed. We have approved the use of this remedy to enforce property divisions. *See, e.g., Erickson v. Erickson*, 452 N.W.2d 253, 256 (Minn. App. 1990) (upholding use of foreclosure to enforce marital lien). And it would be within the district court's authority to order foreclosure here based on appellant's failure to comply with the dissolution

judgment should the district court opt to do so. But because the use of contempt in this context is not proper, we reverse.

Reversed and remanded.