STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1055

In re the Marriage of: Keith Jonathan Hempel, II, Decedent,
Tobin Hempel and Joshua D. Krsnak, personal representatives for,
Respondent,

vs.

Samantha Leigh Hempel,
Appellant.

Filed September 17, 2018
Affirmed; motion denied as moot
Reyes, Judge

Hennepin County District Court
File No. 27-FA-10-6962

Christopher D. Johnson, Rebecca A. Chaffee, Best & Flanagan, L.L.P., Minneapolis, Minnesota (for respondent)

Ben M. Henschel, Susan A. Daudelin, Henschel Moberg Goff, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Hooten, Judge; and Kalitowski, Judge.*

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

U N P U B L I S H E D O P I N I O N

REYES, Judge

Appellant-mother challenges the denial of her motion to reopen the judgment and decree dissolving the parties' marriage for fraud on the court, arguing that the district court (1) abused its discretion in applying laches to bar her fraud claim; (2) erred in concluding, without an evidentiary hearing, that she failed to make a prima facie showing on all elements of her fraud claim; and (3) abused its discretion by declining to award conduct-based attorney fees. The personal representatives for father filed a cross-appeal, arguing that the district court erred in (1) concluding that mother met her prima facie burden on the first element of her claim of fraud on the court and (2) excluding certain evidence offered by father. We affirm.

FACTS

Appellant Samantha Leigh Hempel (mother) and Keith Jonathan Hempel II (father) were married in 2002. They are the parents of two minor children. On September 13, 2010, father filed a petition for dissolution of marriage. To facilitate a distribution of assets between them, the parties retained a neutral financial expert to prepare a report that included a valuation analysis of Hempel Properties LLC, in which father held a 99% ownership interest and mother held a 1% ownership interest, and Executive Leasing LLC, which mother owned, as of September 30, 2010.

On February 23, 2011, father formed KJH Holdings LLC (KJH). Both Hempel Properties and KJH served as holding companies for a number of subsidiary limited liability companies (LLCs) that father formed for the purpose of acquiring, developing,

and selling real estate. On May 27, 2011, father and mother filed financial-disclosure statements in district court. Father's statement disclosed the formation of KJH and listed its value as "TBD." Mother's statement identified Executive Leasing and listed its value as "TBD." The parties later agreed that the neutral financial expert would not prepare a valuation analysis of Executive Leasing as they had originally planned.

On August 2, 2011, the neutral financial expert submitted his report, which estimated the value of Hempel Properties as either negative $2,137,000 or negative $1,120,000 as of September 30, 2010, depending on a capitalization rate of 9% or 8%, respectively. Based on the report and on information that father was on the verge of bankruptcy, mother decided to settle the dissolution rather than proceed to trial.

On August 27, 2011, the parties signed a stipulated judgment and decree in dissolution of the marriage, which the district court entered on October 4, 2011. Mother received $746,327.37 in total assets and father received $356,921. Father also agreed to pay mother $300,000 in a property settlement. The parties' stipulations included an award to father of sole ownership of Hempel Properties, KJH, and 19 other LLCs, and he agreed to assume all related debt. Mother was awarded sole ownership of Executive Leasing. The parties did not estimate the property value of either Executive Leasing or KJH, and they represented that "[b]oth parties understood their right to conduct additional discovery and appraisals and have waived that right." They also stipulated that, for the purposes of calculating child support, their respective individual annual incomes were $150,000 because their incomes varied from year to year. The judgment and decree included a dispute-resolution clause in which the parties agreed to submit to mediation "[a]ny disputes

that arise between the parties with regard to this agreement which the parties cannot resolve between themselves."

During the pendency of the dissolution, father initiated three business transactions, which mother later alleged that father concealed from her. In January 2011, Hempel Properties sold the Soo Line building to an investor who agreed to both assume the debt on the property and provide father with a remainder interest contingent on a future sale of the property. On October 4, 2011, after the building sold, father received a $247,294 payment for his remainder interest. On June 9, 2011, Hempel Properties entered into an agreement to sell Rockridge Center, and on August 9, received $1,590,858.56 in connection with the sale. On June 14, 2011, NorthStar Equity, an LLC formed by father, executed an agreement to purchase One Financial Plaza using third-party financing. On August 18, 2011, father received a 1.625% interest in the property at closing.

In the months following entry of the parties' stipulated judgment and decree, mother alleged that father purchased a home for $995,000, "joined a country club, purchased expensive cars, and purchased an expensive boat." In May 2012, mother learned of father's home purchase when he moved into the home. On approximately September 19, 2013, mother received a 2011 K-1 statement for Hempel Properties, which showed that father received $1,479,227 in distributions from the business.

In November 2014, father and mother held a mediation to address parenting time, mother's 2011 personal tax liability related to Hempel Properties, and father's "actual vs. stated income" at the time of the dissolution. Father provided mother copies of his personal income tax returns for 2011, 2012, and 2013, showing his adjusted gross income as

$388,437, $507,910, and $1,246,463, respectively, and a personal financial statement dated October 19, 2011, estimating the value of Hempel Properties as $1,953,953 and the value of KJH as $1,621,550. The parties ended the mediation session without fully addressing father's income.

On March 17, 2015, father was diagnosed with brain cancer. Mother stated that, due to father's diagnosis, "[a]t that time, I initiated a pause on conversations regarding the unfinished business of the previous mediation." On May 20, 2016, mother filed a motion in district court for sole legal custody of the parties' two minor children, alleging that father's medical condition affected his cognitive ability to adequately parent their children. The parties subsequently agreed to mediation, but thereafter were unable to reach an agreement on modifying custody.

Following mediation, mother claimed that she had requested to mediate additional financial issues, but father agreed only to address the pending custody motion. The district court ordered the parties to file memoranda addressing whether they had previously mediated or attempted to mediate those issues. Based on the parties' filings, on September 28, 2016, the district court concluded that mother had previously attempted mediation of the financial issues and granted her requests to dispense with further mediation and to file a motion regarding her allegations that father misrepresented his income at the time of their divorce.

On October 28, 2016, mother filed a motion to reopen the dissolution judgment and decree under Minn. Stat. § 518.145 (2016), and for attorney fees, which she subsequently amended on March 2, 2017, to allege that the judgment should be reopened on the grounds

that father had committed fraud on the court. Following a motion hearing, the district court denied mother's motion to reopen the judgment and decree, concluding that the doctrine of laches barred her claim of fraud on the court because she had unreasonably delayed bringing the claim, resulting in severe prejudice to father. The district court further concluded that, even if laches did not bar her claim, she failed to make a prima facie showing on all elements of fraud on the court, though it concluded that the facts alleged were sufficient to make a prima facie showing on the first element, that father engaged in an intentional course of material nondisclosures during the dissolution proceedings. The district court determined that neither party would be awarded attorney fees.

Mother's appeal and father's cross-appeal follow.[1]

D E C I S I O N

I. The district court did not abuse its discretion by applying laches to bar mother's claim of fraud on the court as grounds to reopen the dissolution judgment and decree.

Mother argues that the district court abused its discretion by applying laches to bar her claim of fraud on the court because (1) she brought her claim within a reasonable time of learning of father's alleged nondisclosures and after attempting mediation and (2) father was not prejudiced by the delay. We disagree.

A dissolution judgment and decree is generally final when entered, subject to the right of appeal, unless a party brings a timely motion to reopen it. *Thompson v. Thompson*,

[1] Father died in April 2018, after mother filed her appeal. By order filed June 12, 2018, this court modified the case caption for this appeal to reflect that the respondents are Tobin Hempel and Joshua D. Krsnak, personal representatives for father, decedent.

739 N.W.2d 424, 428 (Minn. App. 2007) (citing Minn. Stat. § 518.145, subds. 1, 2 (2006)). Generally, a motion to reopen the judgment and decree for fraud must be brought within one year after it is entered. *Id*. Fraud, however, is distinct from fraud on the court. *See Maranda v. Maranda*, 449 N.W.2d 158, 165 (Minn. 1989) (noting the existence of "a difference between ordinary fraud and 'fraud on the court.'"). A party may bring a motion to reopen the judgment and decree after one year "if there is proof that the nonmoving party committed 'fraud on the court.'" *Id*. (quoting *Maranda*, 449 N.W.2d at 165). But if a party delays in bringing such a motion "an unreasonably long time after the original judgment, the doctrine of laches should be used to prevent abuse [of the doctrine of fraud on the court]." *Maranda*, 449 N.W.2d at 166.

"Laches is an equitable doctrine that prevents one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay." *Carlson v. Ritchie*, 830 N.W.2d 887, 891 (Minn. 2013) (quotation and alteration omitted). A party possesses a known right "when he or she has actual notice of the claim or, in the exercise of proper diligence, ought to have discovered it." *Jackel v. Brower*, 668 N.W.2d 685, 691 (Minn. App. 2003). "Prejudice to the other party resulting from delay is an essential element of laches." *Anderson v. First Nat. Bank of Pine City*, 303 Minn. 408, 413, 228 N.W.2d 257, 260 (1975).

We review a district court's decision to apply the doctrine of laches for an abuse of discretion. *In re Marriage of Opp*, 516 N.W.2d 193, 196 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994). A district court abuses its discretion by making findings unsupported by the evidence, misapplying the law, or resolving the matter in a manner that

is contrary to logic and the facts on record." *Johnson v. Johnson*, 902 N.W.2d 79, 84 (Minn. App. 2017).

The district court concluded that mother was not diligent in pursuing her claim of fraud on the court until August 2016, approximately five years after entry of the parties' stipulated dissolution judgment and decree and three years after mother learned of sufficient facts to pursue the potential claim. The evidence in the record supports the district court's conclusion. The district court found that mother first had cause for concern about father's reported income in May 2012 when she learned that he had purchased an expensive home and then learned of other expensive purchases. Mother admitted that, sixteen months later, on September 19, 2013, she "became concerned that [father] may have mispresented his income to me during our dissolution proceeding" when she received a K-1 statement for Hempel Properties showing higher than expected distributions of $1,479,227 to father. However, mother took no further action on her claim for approximately 13 months until the parties met in mediation in November 2014.

At the November 2014 mediation session, mother obtained financial documents from father, which she alleged showed a higher than expected value for Hempel Properties compared with the neutral expert's report. After obtaining the documents, mother stated that she "questioned whether [father] may have misrepresented the financial circumstances of Hempel Properties." Yet, despite obtaining this evidence, mother took no immediate steps to pursue her claim. At her own initiative, and for reasons we do not question, in March 2015, mother initiated a pause in any further mediation due to father's diagnosis of

brain cancer. We emphasize that this part of the delay based on mother's humane actions played no part in the district court's decision and plays no part in our decision.

In August 2016, during mediation proceedings over the custody of their children, mother again raised the issue of father's income and requested additional financial documentation. In sum, the evidence supports the district court's determination that, by at least September 2013, mother possessed sufficient facts to pursue her claim of fraud. Despite the issue being partially addressed in mediation in November 2014, mother did not follow through in pursuing her claim until August 2016, approximately 20 months later. The district court's conclusion that mother was not diligent in asserting her claim is supported by the record and is not clearly erroneous.

The district court also concluded that father was prejudiced by the delay. The evidence shows that father's capacity to defend against the fraud claim diminished over time because of his brain cancer. Since being diagnosed in March 2015, father received disability, no longer worked, and he reported becoming weaker. His doctors advised him that his health was tenuous and to reduce and eliminate any unnecessary stress. In May 2016, in her motion for custody, mother alleged that father's condition caused him occasions of forgetfulness, confusion, and that his completion of simple communication tasks required tremendous effort. As of March 2017, father reported receiving chemotherapy treatments five times per month, which significantly reduced his energy and stamina. The district court's conclusion that father suffered prejudice from mother's delay in asserting her claim is supported by the record and is not clearly erroneous.

Because the district court's conclusions regarding mother's lack of diligence in asserting her claim of fraud on the court, along with the resulting prejudice to father caused by the delay, are supported by the evidence in the record, we conclude that the district court did not abuse its discretion by applying the doctrine of laches to bar mother's claim of fraud on the court as grounds to reopen the dissolution judgment and decree.[2]

II. Any alleged errors by the district court in concluding that mother alleged sufficient facts to make a prima facie showing of the first element of fraud on the court or in excluding evidence offered by father are harmless.

In their cross-appeal, the personal representatives for father (collectively, respondents) argue that (1) the evidence does not support the district court's conclusion that mother made sufficient factual allegations to meet her prima facie burden on the first element of her claim of fraud on the court and (2) the district court erred by excluding certain evidence offered by father. We are not persuaded.

To prevail on appeal, a party must show both error and prejudice resulting from the error. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975). Appellate courts disregard harmless error. Minn. R. Civ. P. 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."); *see Kallio v. Ford Motor Co.*, 407

[2] Because the application of laches is dispositive of mother's fraud-on-the-court claim, we do not reach her argument that the district court erred in concluding, without an evidentiary hearing, that she failed to make a prima facie showing on all elements of her claim. Neither do we reach mother's argument that the district court abused its discretion by declining to award her conduct-based attorney fees, which is premised on her request of remand to the district court for further proceedings.

N.W.2d 92, 98 (Minn. 1987) (stating that, "[a]lthough error may exist, unless the error is prejudicial, no grounds exist for reversal").

Here, respondents cannot satisfy their burden to show prejudice because the district court ultimately denied mother's motion to reopen the dissolution judgment and decree. We note that the district court's conclusion that mother made a prima facie showing on the first element of her fraud-on-the-court claim, that father engaged in an intentional course of material nondisclosures, does not constitute an ultimate finding of fact or a legal determination that father engaged in fraud. In determining whether a party meets her prima-facie burden, the district court views the factual allegations in the light most favorable to the claim without regard for weighing the evidence. *See Doering v. Doering*, 629 N.W.2d 124, 130 (Minn. App. 2001), *review denied* (Minn. Sept. 11, 2001).

III. Mother's motion to strike portions of respondents' brief is moot.

On July 13, 2018, mother moved to strike portions of respondents' principal brief and reply brief that contained or referenced exhibits offered by father in district court, which the district court excluded in response to mother's objections. Because we affirm the district court's decision on laches, and the alleged extra-record materials do not affect our decision, we deny the motion to strike as moot. *See Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 233 n.2 (Minn. 2007) (denying motion to strike as moot where court did not rely on challenged material).

Affirmed; motion denied as moot.