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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0671**

Discover Bank,
Appellant,

vs.

William J. Kaufmann,
Respondent.

**Filed December 31, 2018
Reversed and Remanded
Reilly, Judge**

Hennepin County District Court
File No. 27-CV-06-12560

Ryan P. Supple, Derrick N. Weber, Messerli & Kramer, P.A., Plymouth, Minnesota (for appellant)

William J. Kaufmann, New Brighton, Minnesota (pro se respondent)

Considered and decided by Reilly, Presiding Judge; Cleary, Chief Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant-creditor argues that the district court erred by dismissing appellant's action to renew judgment against respondent-debtor. We reverse and remand with instructions to enter judgment in favor of appellant.

FACTS

On July 6, 2006, judgment was entered in favor of appellant Discover Bank and against respondent William J. Kaufmann and his then-wife for outstanding credit card debt. The judgment was not satisfied, and the ten-year limitation period for the debt was set to expire on July 6, 2016. Prior to the statutory expiration period, appellant moved to renew the judgment against respondent for an additional ten years. Respondent did not oppose the motion or appear for the scheduled hearing. In March 2017, the district court denied appellant's motion for renewal of judgment based upon its determination that the couple's divorce decree allocated responsibility for the outstanding credit card balance to respondent's ex-wife. Appellant moved for summary judgment and argued that although the divorce decree assigned marital liabilities, it did not vacate the judgment against respondent. The district court denied appellant's summary-judgment motion on the ground that respondent was not the proper party because he did not owe any debt under the terms of the divorce decree. Several months later, the district court dismissed appellant's case sua sponte under the principle of nunc pro tunc and Minnesota Rule of Civil Procedure 5.04, stating that there were no questions of fact or law that remained to be addressed because appellant was "pursuing a judgment against a defendant who is no longer responsible for the debt in question pursuant to a family court order." This appeal follows.¹

¹ Respondent did not file a brief or otherwise oppose this appeal. This court ordered the appeal to proceed under Minn. R. Civ. App. P. 142.03 (providing that if a respondent fails to file a brief, the case shall be determined on the merits).

DECISION

I. Standard of Review

On appeal from a grant of summary judgment, “we review the record to determine whether there are any genuine issues of material fact and whether the district court erred in applying the law.” *Horton v. Twp. of Helen*, 624 N.W.2d 591, 593 (Minn. App. 2001), *review denied* (Minn. June 19, 2001). No genuine issue of material fact exists “[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (quotation omitted). We “view the evidence in the light most favorable to the party against whom summary judgment was granted” and “review de novo whether a genuine issue of material fact exists.” *J & W Asphalt, Inc. v. Belle Plaine Twp.*, 883 N.W.2d 827, 831 (Minn. App. 2016) (quotation omitted).

II. Appellant Is Entitled to Renewal of Judgment

Appellant challenges the district court’s determination that appellant was bound by the terms of the stipulated divorce decree and the marriage dissolution proceedings, to which appellant was not a party. A district court lacks personal jurisdiction over one who is not a party to the proceeding before it. *In re Marriage of Sammons*, 642 N.W.2d 450, 457 (Minn. App. 2002). Personal jurisdiction is a question of law subject to de novo review. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004).

The district court determined that respondent satisfied his obligation as judgment debtor to appellant because the underlying debt was allocated to his ex-wife. We disagree. It is uncontested that appellant was not a party to the divorce proceedings. As such,

appellant was not subject to the family court's jurisdiction and is not bound by the terms of the stipulated divorce decree, which allocated, among other things, marital debt between respondent and his ex-wife. In *Danielson v. Danielson*, we recognized that "in a dissolution proceeding, a district court lacks personal jurisdiction over a nonparty and cannot adjudicate a nonparty's property rights." 721 N.W.2d 335, 339 (Minn. App. 2006); *see also Fraser v. Fraser*, 642 N.W.2d 34, 38 (Minn. App. 2002) (noting that statutory authority providing for division of marital property in a marriage dissolution action "does not authorize the district court to adjudicate the interests of third parties"). Based upon our de novo review, we conclude that the district court abused its discretion by determining that the divorce decree prevented appellant from recovering its debt from respondent. To be clear, we conclude that because appellant was not a party in the underlying divorce proceeding, the divorce decree does not, and cannot, bind appellant. Therefore, the divorce decree does not preclude appellant from pursuing respondent for amounts due to appellant under the renewed judgement.

We next turn to appellant's argument that the district court erred by denying its summary-judgment motion. Summary judgment is properly rendered when "the movant shows that there is no genuine issue as to any material fact and the movant is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.01. We review a district court's summary judgment decision de novo to "determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010).

Here, the district court erred by denying appellant’s motion for summary judgment on its judgment-renewal complaint. Once a judgment is docketed, it exists for ten years as a lien upon the judgment debtor’s real property. Minn. Stat. § 548.09, subd. 1 (2018)²; *see also* Minn. Stat. § 541.04 (2018) (“No action shall be maintained upon a judgment or decree of a court of the United States, or of any state or territory thereof, unless begun within ten years after the entry of such judgment.”). A judgment may be renewed by an independent action upon the judgment, so long as the action is commenced within a ten-year period. *Amica Mut. Ins. Co. v. Wartman*, 841 N.W.2d 637, 640-41 (Minn. App. 2014), *review denied* (Minn. Mar. 18, 2014). “If no renewal action is brought within that ten-year period, the original judgment lapses, and becomes unenforceable.” *Id.* at 641 (quotation omitted). If a renewal action is brought within the ten-year period, the judgment remains valid for an additional ten years. *Id.*

Judgment was entered in appellant’s favor and against respondent and his ex-wife on July 6, 2006. The judgment has not been satisfied. Appellant brought a timely suit to renew the judgment in April 2016, within the ten-year statutory period. Respondent did not file an answer, oppose the motion, or appear at the scheduled hearing. Because the pleadings reveal that there are no genuine issues as to any material facts and appellant is

² We cite the most recent version of Minn. Stat. § 548.09 because it has not been amended in relevant part. *See Interstate Power Co. v. Nobles Cty. Bd. of Comm’rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, “appellate courts apply the law as it exists at the time they rule on a case”). For the same reason, we also cite the current versions of other statutes cited in this opinion.

entitled to judgment as a matter of law under section 541.04, the district court erred by denying appellant's motion for dispositive relief.

The district court also erred by dismissing appellant's action under the principle of nunc pro tunc and Minnesota Rule of Civil Procedure 5.04. Nunc pro tunc means "now for then" and describes a "retroactive legal effect through a court's inherent power." *Black's Law Dictionary* 1237 (10th ed. 2014). The purpose of a nunc pro tunc order is to correct the record or fix a clerical error, but "not to supply judicial action." *Hampshire Arms Hotel Co. v. Wells*, 298 N.W. 452, 453 (Minn. 1941). The principle does not provide a basis for dismissal of appellant's action, and the district court erred by relying on it. The district court also erred by relying on rule 5.04, which provides that any complaint that is not filed with the district court within one year of service upon the opposing party is "deemed dismissed with prejudice against all parties unless the parties within that year sign a stipulation to extend the filing period." Minn. R. Civ. P. 5.04(a). The rule is inapplicable here. The affidavit of service shows that appellant served the summons and complaint upon respondent on April 14, 2016. Appellant filed the complaint with the district court on November 10, 2016—clearly within one year of commencement of service against the opposing party. Appellant's action is timely under a plain reading of rule 5.04.

In sum, because we determine that the district court erred by denying appellant's motion for summary judgment, we reverse the district court's decision and remand with instructions for judgment to be entered in favor of appellant.

Reversed and remanded.