

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0372**

In re the Matter of:

Rodney Tristan Miller, Petitioner,

vs.

Pamela Marie Miller, n / k / a Pamela Marie Spera,
Respondent,

Maria Molloy, intervenor,
Appellant.

**Filed April 6, 2020
Reversed and remanded
Peterson, Judge***

Hennepin County District Court
File No. 27-FA-000264110

David M. Cox, Two Rivers Law P.A., Otsego, Minnesota (for appellant)

Pamela M. Spera, Eden Prairie, Minnesota (pro se respondent)

Considered and decided by Cochran, Presiding Judge; Segal, Judge; and
Peterson, Judge.

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

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from an order that denies appellant's motion to intervene in proceedings to enforce a marital-dissolution judgment and grants respondent's motion to enforce that judgment, appellant argues that she is entitled to intervene to protect her daughter's interest in property that was awarded to her daughter's father in the dissolution. We reverse and remand.

FACTS

Respondent Pamela Marie Miller, n/k/a Pamela Marie Spera, and Rodney Tristan Miller married in 1981 and had three daughters together. When they dissolved their marriage in May 2004, each parent owned several retirement accounts, and, in a stipulated judgment and decree, the district court ordered:

28. Retirement Accounts—By virtue of the divorce decree and judgment entered on this day dissolving the bonds of marriage existing between the Petitioner and Respondent, along with this Order, the parties are ordered by the court to divide equally between themselves their interests in all of the above retirement accounts, by transferring one-half of the interest in each of the parties' individual accounts to the other party, pursuant to the divorce decree and judgment. The value of the accounts is to be determined at the time of the division of the accounts, which shall be done within 30 days of the date of this Order.

The judgment and decree also stated:

36. Execution and Exchange of Documents—To implement the terms and provisions contained herein, each of the parties shall make, execute and deliver to the other party instruments of conveyance, assignment and other documents

as may be required. In the event either party fails to do so, the Judgment and Decree shall operate as said conveyance.

Judgment in the dissolution was entered on May 18, 2004, but Miller and respondent never divided and transferred the one-half interests in each of their retirement accounts.

In 2012, Miller and appellant Maria Molloy had a daughter, K.M.M., and, at some point, Miller designated each of his four daughters as beneficiaries of his retirement accounts. Miller died on February 11, 2018. He left no will, and no proceeding has been commenced to administer his estate. On June 22, 2018—more than 14 years after judgment was entered in respondent's and Miller's marital-dissolution action—respondent brought a motion to enforce paragraphs 28 and 36 of the judgment and decree. She requested that the accounts be valued

as of the date of the new Order, with the qualification that, in the event that either party made any contribution to that party's retirement account subsequent to the date of the original Judgment and Decree, any value attributed to that subsequent contribution(s) shall not be divided with the other party.

Appellant moved to intervene on behalf of K.M.M. and argued that intervention as a matter of right is appropriate under Minnesota Rules of Civil Procedure 24.01 because her motion was timely, K.M.M. has an interest in the retirement accounts, disposition of respondent's motion to enforce will impair K.M.M.'s ability to protect her interest, and K.M.M.'s interest is not adequately represented by the current parties to the enforcement proceeding. Appellant alternatively requested permissive intervention under Minnesota Rules of Civil Procedure 24.02. Appellant also argued that respondent's motion to enforce

is barred by the ten-year statute of limitations¹ and laches and that granting respondent's motion will alter the parties' substantive rights.

The district court determined that appellant made a timely motion and that K.M.M. is "not adequately represented by the existing parties." But it denied appellant's motion to intervene as a matter of right because it determined that the judgment and decree, which was entered before Miller designated his beneficiaries, is superior to any beneficiary designation, and because public policy does not favor appellant's intervention. The district court concluded that, "[a]lthough [K.M.M.] has an interest in the accounts in question, she does not have an interest in the initial division of the accounts within the context of the dissolution. As a result, [appellant] may not intervene on [K.M.M.'s] behalf as a matter of right." The district court also rejected appellant's request to permissively intervene.

Because the district court did not permit appellant to intervene, it declined to address her arguments that respondent's motion is barred by the statute of limitations and laches. The district court granted respondent's motion to enforce, concluding that "[t]he fact that the division [of the retirement accounts] did not occur in 2004 should not change the substantive rights of the parties to share equally in the other's retirement assets." It ordered that "[t]he parties are each entitled to 50% of the retirement accounts pursuant to [paragraph] 28 of the Judgment and Decree This award does not include any

¹ Appellant cited Minnesota Statutes section 541.04 (2018), which states: "No action shall be maintained upon a judgment or decree . . . unless begun within ten years after the entry of such judgment."

contributions by either party to those accounts after the date of the Judgment and Decree or any additional value that is a consequence of those contributions.”

DECISION

Motion to intervene

Whether the district court properly denied appellant’s motion to intervene is a threshold question; if the motion was properly denied, appellant cannot challenge the portion of the order granting respondent’s motion to enforce the judgment and decree. *See Westfield Ins. Co. v. Wensmann, Inc.*, 840 N.W.2d 438, 445 (Minn. App. 2013) (“We consider [the intervention issue] first, as we reach the merits of [the] appeal . . . only if [appellant] was properly permitted to intervene”), *review denied* (Minn. Feb. 26, 2014). We review de novo the denial of a motion to intervene as a matter of right. *Id.*

Rule 24.01 “is designed to protect nonparties from having their interests adversely affected by litigation conducted without their participation.” *Luthen v. Luthen*, 596 N.W.2d 278, 281 (Minn. App. 1999) (quoting *Gruman v. Hendrickson*, 416 N.W.2d 497, 500 (Minn. App. 1987)).

Thus, “if [the applicant’s] interest is similar to, but not identical with, that of one of the parties, a discriminating judgment is required on the circumstances of the particular case, but [the applicant] ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee.”

Id. (quoting *Costley v. Caromin House, Inc.*, 313 N.W.2d 21, 28 (Minn. 1981)).

The district court shall grant a motion to intervene as a matter of right if: (1) the applicant makes a timely motion; (2) “the applicant claims an interest relating to the

property or transaction which is the subject of the action”; (3) the applicant is situated such that the disposition of “the action may as a practical matter impair or impede the applicant’s ability to protect that interest”; and (4) the applicant’s interest is not “adequately represented by existing parties.” Minn. R. Civ. P. 24.01; *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 641 (Minn. 2012). To determine whether intervention is proper, the court must accept the allegations in the pleadings as true, absent a sham or frivolity. *Costley*, 313 N.W.2d at 28.

The district court concluded that appellant made a timely motion, that K.M.M. has an interest in the retirement accounts, and that K.M.M. is not adequately represented by any party. But the district court concluded further that “[a]lthough [K.M.M.] has an interest in the accounts in question, she does not have an interest in the initial division of the accounts within the context of the dissolution. As a result, [appellant] may not intervene on [K.M.M.’s] behalf as a matter of right.” Citing this court’s opinion in *Luthen v. Luthen*, 596 N.W.2d at 282, the district court explained that “strong public policy discourages third party intervention in dissolution matters.”

The district court’s reliance on *Luthen* is misplaced. In *Luthen*, a marital-dissolution case, the husband fathered a child out of wedlock, and, after learning about the child, his wife commenced a dissolution action. *Id.* at 279. The husband and wife negotiated the terms of a marital-termination agreement, which was forwarded to the district court along with a proposed judgment and decree, and a default hearing was scheduled in the district court. *Id.* Meanwhile, in a paternity action commenced by the county and the mother of the out-of-wedlock child, the husband was adjudicated the father of the child, and the issue

of child support was reserved. *Id.* at 280. The mother and the county then moved to intervene in the dissolution action as a matter of right on the theory that the husband was attempting to reduce his future child-support obligations by disposing of assets in the dissolution. *Id.* at 279-80. In addition, the mother filed a motion for a temporary injunction to enjoin the dissolution and claimed that, if the dissolution action were allowed to proceed, the husband and wife could transfer assets of substantial value, which would result in her suffering an irreparable loss of a potentially substantial amount of child support. *Id.* at 280. The district court granted the motions to intervene and for a temporary injunction and stayed the dissolution action. *Id.*

The wife appealed, and, on appeal, the mother contended “that she is entitled to a fair share of the marital income-producing assets because these assets would be considered when determining [the husband’s] child support obligation.” *Id.* at 281. This court disagreed and explained: “Simply put, children have a right to child support, but they do not have a vested legal interest in the marital property which, in a dissolution, goes to the mother and the father.” *Id.* at 282. This court then concluded:

Strong public policy dictates that the rights of a woman and a man to their own divorce action, where they can present their individual respective claims to marital property, maintenance, and child support, cannot be clouded by intervenors outside the marriage who speculate that they have a financial stake in the man getting more money than the woman or the woman getting more money than the man.

Id.

Unlike *Luthen*, where the mother and the county made their motion to intervene before the district court made a decision about how it would divide the marital property,

appellant made her motion to intervene 14 years after the district court approved the stipulated judgment and decree that divided respondent's and Miller's marital property. In paragraph 28 of the judgment and decree, the dissolution court awarded both respondent and Miller one-half of each of the retirement accounts. Respondent did not ask the district court to modify that property award; she asked the court to enforce the award. And appellant is not asserting that K.M.M. has an interest in marital property that has not been awarded to respondent or Miller in their dissolution proceeding; she is asserting that, because Miller has died, K.M.M. has an interest in property that was already awarded to Miller under paragraph 28. Thus, the public policy that this court recognized in *Luthen* does not apply in this case.

Under the plain language of Minnesota Rules of Civil Procedure 24.01, an applicant "shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action." Respondent specifically sought enforcement of paragraph 28, and the property that is the subject of respondent's motion to enforce is the retirement accounts that were awarded equally to respondent and Miller under paragraph 28. Appellant claims that K.M.M. has an interest relating to the accounts awarded to Miller.

To enforce paragraph 28, it will be necessary to determine the value of each of the retirement accounts in 2004 and then determine how those values have changed since 2004. If Miller were alive, he could protect his interests in the accounts by participating in the valuation process; he would not be required to simply accept respondent's evidence regarding the account values. Because K.M.M. claims that she is entitled to a portion of

the accounts awarded to Miller, the value of K.M.M.'s interests in the accounts directly depends on accurate valuations of the accounts. Incorrect valuations² will impair or impede appellant's ability to protect K.M.M.'s interests and, as the district court found, K.M.M. is "not adequately represented by the existing parties." We therefore reverse the district court's denial of appellant's motion to intervene as a matter of right and its grant of respondent's motion for enforcement and remand for further proceedings.

Statute of limitations and the doctrine of laches

Appellant makes several arguments regarding the statute of limitations and the doctrine of laches and asks us to resolve these issues on appeal. After denying appellant's motion to intervene, the district court stated that "[b]ecause [appellant] is not an intervenor, her arguments regarding enforcement of the Judgment and Decree will not be addressed." The district court also stated that it was not "ruling on the application of Minn. Stat. § 541.04 or the doctrine of laches." Because the district court expressly stated that it would not address or rule on the statute of limitations or the doctrine of laches, we will not consider these issues. *See Thayer v. Am. Fin. Advisers, Inc.*, 322 N.W.2d 599, 604 (Minn. 1982) (reviewing court must limit itself to consideration of only those issues that were presented and considered by trial court).

Reversed and remanded.

² We note that the district court's order addresses contributions to the retirement accounts made after the date of the judgment and decree, but it does not address withdrawals made after that date. The record does not indicate whether there have been contributions or withdrawals, but accurate valuations should account for both.