STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0505

In re the Marriage of:
Brad Allen Friesz, petitioner,
Respondent,

vs.

Elizabeth Farr Friesz,
Appellant.

Filed January 3, 2022
Affirmed
Frisch, Judge

Hennepin County District Court
File No. 27-FA-14-4144

Peter J. Gleekel, Larson • King, LLP, St. Paul, Minnesota (for respondent)

Todd R. Haugan, Haugan Law Office, Ltd., Wayzata, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Reyes, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Following the district court's order denying a motion to reopen the judgment and decree and increase spousal-maintenance payments, appellant argues that the district court erred by (1) failing to find that respondent committed fraud on the court and (2) interpreting the term "employment income" to exclude investment income. We affirm.

FACTS

The Parties' Marital Dissolution & Husband's Stonebridge Ownership-Interest Pursuit

Appellant Elizabeth Farr Friesz (wife) and respondent Brad Allen Friesz (husband) married in 1998. They had two children together, a son in 2002 and a daughter in 2005. Wife worked part-time as a nurse and husband worked as the president of Stonebridge Construction, Inc.[1]

In June 2014, husband petitioned to dissolve the parties' marriage. In September, the parties stipulated to a custody and parenting plan, resolving the parenting issues of the marital dissolution. The parties, however, struggled to resolve the financial issues, particularly because wife was concerned that husband might have secretly purchased an ownership interest in Stonebridge.

During dissolution discovery in 2015, wife deposed husband. Husband testified that in 2010, he initially sought to purchase an ownership interest in Stonebridge. Wife knew that husband desired to purchase an ownership interest prior to dissolution. She knew, for example, that in 2013, husband had hired an attorney to write a proposed purchase agreement to buy an interest in Stonebridge. Husband testified that, as of the date of his deposition in February 2015, he did not hold any ownership interest in Stonebridge.

Wife received documents during discovery showing husband's early attempts to purchase an ownership interest in Stonebridge, including emails and draft purchase agreements from 2012 and 2013. But discovery did not reveal that husband held any

[1] Husband was a project manager for Stonebridge until 2014, when he became president.

ownership interest in Stonebridge or had any agreement in place to purchase an ownership interest in Stonebridge at a future date.

In April 2015, the parties executed a stipulated judgment and decree (the J&D), dissolving their marriage.[2] Both parties were represented by counsel. The parties represented to each other and to the district court that they had "fully disclosed . . . all of their assets . . . and all of their income generated from any source."

The J&D set forth a two-tiered spousal-maintenance plan. Tier I mandated that husband pay wife a set monthly spousal-maintenance award. Payments under Tier I are not in dispute. Tier II instructed husband to pay wife an additional spousal-maintenance award based on the annual amount of his "employment income" for a set duration. This provision also instructed husband to provide wife with his annual tax returns "so long as there is a payment due and owing to Wife for spousal maintenance."

After execution of the J&D, husband did secure an agreement to purchase an ownership interest in Stonebridge. This agreement was formalized sometime between July 2015 and October 2016, or between 3 and 19 months after the parties' dissolved the marriage.

Wife Learns of Husband's Ownership-Interest Purchase

In November 2016, wife requested husband's 2015 tax return, which he refused to disclose. Husband argued that, pursuant to the J&D, he was not required to provide wife

[2] In September 2016, the parties stipulated to a minor amendment to the J&D, which does not impact this appeal.

with the tax return because he had already satisfied his spousal-maintenance obligation under the J&D. Wife disagreed but took no immediate action.

Eight months later, in July 2017, wife repeated her demand that husband disclose his 2015 tax return. In November 2017, wife moved the district court to compel husband to disclose the tax return. In January 2018, the district court ordered that husband disclose the 2015 tax return "to determine whether he derives any income . . . from his ownership interest in Stonebridge." In July 2018, husband disclosed the 2015 tax return.

Upon receipt of husband's 2015 tax return, wife was "surprised" to learn that husband held a 20% ownership interest in Stonebridge.[3] Husband's tax return showed that his ownership interest in Stonebridge generated him almost $100,000 in profits in 2015.

Wife's Initial Motion to Reopen the J&D and Post-Dissolution Discovery

In February 2019, wife moved to reopen the J&D to obtain additional spousal maintenance and payments pursuant to the Tier II scheme, based on husband's ownership-interest income from Stonebridge, and to conduct additional post-dissolution discovery. Wife argued that husband misrepresented his ownership interest in Stonebridge prior to execution of the J&D and that her dissolution agreement was based on the assumption that husband did not hold an ownership interest in Stonebridge at the time. Simultaneous with her motion, wife served additional discovery requests on husband.

[3] The parties disagree as to when wife first learned about husband's ownership interest in Stonebridge. Wife claims that she only learned of the ownership interest in July 2018, after she received the 2015 tax return. Husband claims that wife knew about the ownership interest in "early 2017" because around that time he provided her with his 2016 income information, which showed that husband owned stock in Stonebridge. The district court did not resolve the question.

Husband opposed wife's motion, arguing that it was time-barred and irrelevant. And husband objected to each of wife's additional discovery requests as overbroad and irrelevant.

In June 2019, the district court stayed wife's motion to reopen and to obtain additional spousal-maintenance payments but granted wife's motion to compel post-dissolution discovery. Specifically, the district court held:

> Based upon [husband's] strenuous efforts to prevent [wife] from learning about his 2015 and 2016 income, his acquisition of an ownership interest in Stonebridge Construction just three months after the parties signed the stipulated Judgment and Decree of dissolution . . . , [and] his misrepresentations to this Court regarding his income for child support purposes, the Court finds that there is substantial reason to infer that [husband] engaged in a pattern of intentional and material misrepresentations or nondisclosure to [wife] and this Court . . . justifies allowing [wife] to pursue discovery on these subjects.

During this post-dissolution discovery period, wife obtained a signed copy of the executed Stonebridge shareholder agreement, which gave husband a 20% ownership interest. This agreement was dated July 31, 2015, three months after the parties executed the J&D.

Husband also produced emails suggesting that he did not purchase his ownership interest until December 2016, but the effective date of the purchase agreement was backdated to July 31, 2015.[4] One email from January 2016 contained comments from a Stonebridge owner suggesting that ownership "lock [husband] down" soon by selling him

[4] At oral argument, husband conceded that he had an agreement in place to purchase an ownership interest in Stonebridge no later than October 2016. This timing allowed Stonebridge to issue husband a schedule K-1 for 2015 so that he could take advantage of certain real-estate tax benefits.

an ownership interest "before he throws [his] arms up and quits." Husband argued that this email and other similar documents showed that he did not purchase the ownership interest in 2015, and in no event did he purchase the ownership interest prior to execution of the J&D.

The District Court Denies Wife's Renewed Motion to Reopen

In November 2020, wife renewed the motion to reopen the J&D, alleging that husband committed a fraud upon the court. Wife argued that the Stonebridge ownership-interest "transaction was contemplated prior to entry of the Judgment and Decree," as evidenced by the draft purchase agreements, which were substantially similar to the final purchase agreement. Wife also renewed the motion to increase her spousal-maintenance award, arguing that husband's ownership-interest income from Stonebridge should be included in the Tier II spousal-maintenance calculation.

In opposition to wife's renewed motions, husband argued that he did not purchase the ownership interest in 2015 and that the Tier II spousal-maintenance obligation only extended to "employment income," which did not include his ownership-interest income from Stonebridge.

In March 2021, the district court denied wife's motions. The district court rejected wife's renewed motion to reopen the J&D, finding that husband did not acquire the ownership interest in Stonebridge until December 2016. The district court specifically found that "there is no basis for finding that [husband] made any misrepresentation or nondisclosure that misled [wife] and the Court with respect to an ownership interest in Stonebridge." The district court also denied wife's motion to increase the

spousal-maintenance award, determining that the term "employment income" in the J&D's Tier II scheme did not include husband's ownership-interest income from Stonebridge.[5]

Wife appeals.

DECISION

I. The district court acted within its discretion by denying wife's motion to reopen.

Wife argues that we should reopen the J&D, pursuant to Minn. Stat. § 518.145, subd. 2 (2020), because husband committed fraud on the court by failing to disclose his ownership interest in Stonebridge.[6] Wife alleges that husband purchased, or had secured an agreement to purchase, the ownership interest prior to the parties' execution of the J&D.

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[5] Specifically, the district court found:

> In using the term "employment income," treating [husband's] then existing investment income as a separate matter, and capping the obligations to pay Tier Two maintenance as a percentage of income up to $330,000, the parties intended limits on [husband's] obligation to pay spousal maintenance and did not intend income received via his ownership interest in Stonebridge or other investments to be a factor in determining that obligation.

[6] The parties disagree over the proper method to reopen the J&D. Wife argues that she can move to reopen the J&D under either Minn. Stat. § 518.145, subd. 2, or Minn. R. Civ. P. 60.02. Rule 60.02 does not apply to motions to reopen marital-dissolution decrees. Minn. R. Civ. P. 60.02 ("On motion . . . , the court may relieve a party . . . from a final judgment (*other than a marriage dissolution decree*) . . . ." (emphasis added)); *Lindsey v. Lindsey*, 388 N.W.2d 713, 716 n.1 (Minn. 1986) ("[M]otions to modify divorce decrees brought under Rule 60.02 should not be entertained by the district courts."). But wife may move to reopen the J&D pursuant to Minn. Stat. § 518.145, subd. 2. *Maranda v. Maranda*, 449 N.W.2d 158, 164 n.1 (Minn. 1989) ("[P]ost-*Lindsey* motions to vacate should be brought under Minn. Stat. § 518.145.").

We review a district court's refusal to reopen a judgment and decree for an abuse of discretion. *Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996). "A district court's decision to reopen the judgment and decree based on fraud on the court will be sustained absent an abuse of discretion."[7] *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence." *Knapp v. Knapp*, 883 N.W.2d 833, 835 (Minn. App. 2016) (quotation omitted). We review the district court's findings of fact for clear error. *Id.* "The moving party bears the burden of establishing a basis to reopen the judgment and decree." *Thompson v. Thompson*, 739 N.W.2d 424, 428 (Minn. App. 2007).

Although a motion to reopen a judgment and decree for ordinary fraud must be brought within one year of entry of the judgment, no such time limit applies to motions to reopen a judgment and decree for a fraud upon the court.[8] Minn. Stat. § 518.145, subd. 2; *see Maranda*, 449 N.W.2d at 165 ("The significance of a finding of fraud on the court is that it eliminates the time restriction for bringing a motion to vacate a judgment."). "Because of the court's unique role in marriage dissolution cases, . . . if one party defrauds

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[7] Wife argues that the Rule 12 motion-to-dismiss standard of review should apply here rather than the abuse-of-discretion standard. But wife is not appealing an order arising from a Rule 12 motion to dismiss a civil complaint; she is appealing an order arising from the denial of her motion to reopen under Minn. Stat. § 518.145. Our caselaw is clear that the proper standard of review for a district court's decision to deny a motion to reopen a judgment and decree is abuse of discretion. *Kornberg*, 542 N.W.2d at 386; *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009).

[8] Wife also argues that husband committed ordinary fraud against her, but this claim is time-barred. Minn. Stat. § 518.145, subd. 2 ("The motion must be made . . . not more than one year after the judgment and decree . . . was entered."); *see Maranda*, 449 N.W.2d at 165 ("In order for the 1-year time limit for motions [to reopen] . . . to make any sense . . . there must be a difference between ordinary fraud and 'fraud on the court.'").

the other, he or she necessarily defrauds the court which sits as a third party to the stipulation." *Maranda*, 449 N.W.2d at 165.

To establish a fraud on the court, appellant must show "an intentional course of material misrepresentation or non-disclosure, having the result of misleading the court and opposing counsel and making the property settlement grossly unfair." *Id.* The standard for demonstrating a fraud on the court is more strenuous than the standard for ordinary fraud. *Doering v. Doering*, 629 N.W.2d 124, 129 (Minn. App. 2001), *rev. denied* (Minn. Sept. 11, 2001). Here, to establish fraud on the court, wife must demonstrate that husband intentionally failed to disclose his ownership interest in Stonebridge and, necessarily, that husband obtained his Stonebridge ownership interest prior to entry of the J&D.

The district court found that husband did not acquire his ownership interest in Stonebridge until December 2016. The district court determined that "there is no basis for finding that [husband] made any misrepresentation or nondisclosure that misled [wife] and the Court with respect to an ownership interest in Stonebridge." As husband acknowledged at oral argument, he did have an agreement in place to purchase the Stonebridge ownership interest in *October* 2016. For purposes of this appeal, we assume—without deciding—that the existence of the purchase agreement in October 2016 means that husband had an actual ownership interest in Stonebridge as of that date.

However, even if we conclude that the district court clearly erred by finding that husband did not purchase the ownership interest until *December* 2016, we cannot conclude that the district court abused its discretion by denying wife's renewed motion to reopen. Wife has not produced any non-speculative evidence showing that husband purchased the

ownership interest prior to execution of the J&D in April 2015. At most, wife's evidence leads to the conclusion that husband purchased the ownership interest in July 2015. But even if we conclude that husband did purchase the ownership interest in July 2015, the purchase date occurred three months *after* execution of the J&D.

Wife argues that we can infer that husband purchased the ownership interest prior to execution of the J&D based on the existence of draft purchase agreements from 2012 and 2013. But we are not a fact-finding court. *Kucera v. Kucera*, 146 N.W.2d 181, 183 (Minn. 1966) ("It is not within the province of [appellate courts] to determine issues of fact on appeal."). The mere fact that the record allows an inference that is inconsistent with the district court's finding of fact is insufficient to allow us to grant relief from that finding on appeal. *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000) ("That the record might support findings other than those made by the trial court does not show that the court's findings are defective."). And these draft documents do not clearly establish that husband purchased his ownership interest prior to execution of the J&D. Thus, even if we were a fact-finding court, the only inference that we could make from these draft documents is that husband sought to purchase an ownership interest in Stonebridge prior to entry of the J&D and wife concedes that she was aware of husband's desire to acquire an ownership interest.

In sum, the district court found as a matter of fact that husband did not intentionally misrepresent the date on which he acquired his ownership interest in Stonebridge and that the date of husband's acquisition of that interest was after the district court entered the J&D dissolving the parties' marriage. On appeal, wife challenges these findings, citing

husband's efforts to thwart discovery of his 2015 tax return and the purchase agreement, as well as the fact that he had purchased an ownership interest in Stonebridge at all. Ultimately however, wife's evidence shows, at most, that husband considered purchasing an ownership interest in Stonebridge prior to entry of the J&D and that husband did eventually purchase the ownership interest after the entry of the J&D in July 2015. This evidence is insufficient to show that the district court's findings are *clearly* erroneous. Because wife did not show that the district court's findings on which it denied her motion to reopen the J&D were clearly erroneous, we cannot conclude that the district court abused its discretion by denying that motion.

II. "Employment income" does not include husband's ownership-interest income.

Wife also argues that the district court erred by concluding that the term "employment income" in the J&D's Tier II spousal-maintenance provision excluded income from husband's ownership interest in Stonebridge. We disagree.

We treat a stipulated judgment and decree to dissolve a marriage as a binding contract. *Sehlstrom v. Sehlstrom*, 925 N.W.2d 233, 238 (Minn. 2019). Whether the contract language is ambiguous is a question of law that we review de novo. *Nelson v. Nelson*, 806 N.W.2d 870, 872 (Minn. App. 2011). If the language is plain and unambiguous, its meaning should be determined in accord with that plainly expressed intent. *Carl Bolander & Sons, Inc. v. United Stockyards Corp.*, 215 N.W.2d 473, 476 (Minn. 1974). Contract language is ambiguous if it is reasonably susceptible to multiple interpretations. *Nelson*, 806 N.W.2d at 872. If the language is unambiguous, "[t]he interpretation of a contract is a question of law." *City of Virginia v. Northland Off. Props.*

Ltd. P'ship, 465 N.W.2d 424, 427 (Minn. App. 1991), *rev. denied* (Minn. Apr. 18, 1991). If the language is ambiguous, its meaning is a question of fact that we review for clear error. *See Nelson*, 806 N.W.2d at 872.

We read contract provisions in the context of the entire contract, deriving the parties' intent from the whole document rather than from the individual clauses. *Country Club Oil Co. v. Lee*, 58 N.W.2d 247, 249 (Minn. 1953). We also read contract language to avoid surplusage, so that each word has its own meaning. *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 542 (Minn. 1995) ("A contract must be interpreted in a way that gives all of its provisions meaning.").

The relevant provision of the J&D's Tier II spousal maintenance provides:

> Wife will receive additional spousal maintenance as follows:
>
> i. 45% of all employment income received between $141,000-$185,000;
>
> ii. 35% of all employment income received between $185,001-$250,000; and
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> iii. 25% of all employment income received between $250,001-$330,000.
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> These second tier payments will continue for a period of 11 years from entry of the Judgment and Decree and will be calculated on all employment income received beginning in 2015. Any distributions received incident to Lakeville Woods [investment property] are excluded from calculation of spousal maintenance.

The J&D does not define the term "employment income."

The parties agree that "employment income" is unambiguous, although they reach different conclusions as to the meaning of the term. Husband argues that employment

income constitutes wages, salaries, and tips, but that income derived from dividends, interest, royalties, or other *investments* is not *employment* income, and is therefore excluded from the Tier II spousal-maintenance calculation. Wife contends that the definition of employment income is self-evidently "income derived from [husband's] employer," which includes any investment income originating from husband's employer.

Wife also argues that the statutory spousal-maintenance definition of "gross income" is synonymous with the term "employment income" as used in the J&D. The statute defines gross income as "any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions, [and] self-employment income." Minn. Stat. § 518A.29(a) (2020). The statute defines self-employment income to include "income from . . . operation of a business, including joint ownership of a partnership or closely held corporation." Minn. Stat. § 518A.30 (2020).

We agree with both parties that the relevant language of the J&D is unambiguous. *See Nelson*, 806 N.W.2d at 872. The parties used the term "employment income" as opposed to the term "gross income," manifesting a clear intent to limit the amount of husband's income that would be included in the Tier II calculation. The term "employment income" differs from the statutorily defined term "gross income." To construe the agreement otherwise would render the parties' choice of the word "employment" meaningless. *See Current Tech. Concepts*, 530 N.W.2d at 543 (providing that we must not render any word in a contract superfluous). Such a construction is not reasonable. Instead, the parties' use of a term other than "gross income" indicates that they intended to limit

husband's exposure under the Tier II spousal-maintenance calculation to something less than gross income.

The totality of the agreement further supports this interpretation. The district court found that, by specifically providing for payments related to "investment income" as a "separate matter," the parties manifested their intent to exclude income derived from investments from husband's "employment income." We see no error in the district court's interpretation. The parties, who were both represented by counsel when they negotiated their stipulation, agreed that the Tier II spousal-maintenance payments would be based on husband's "employment income." By tethering the Tier II payment scheme to husband's "employment income," the parties unambiguously agreed that any ownership-investment income that husband earned would not be calculable in the spousal-maintenance payments. Therefore, the district court did not err by finding that husband's income from his Stonebridge ownership interest was not calculable in the Tier II payment scheme.[9]

Affirmed.

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[9] Even if we found ambiguity in the term "employment income," we would still conclude that the district court did not err in its interpretation of the agreement. We review the district court's interpretation of ambiguous contract terms for clear error as a question of fact. *See Nelson*, 806 N.W.2d at 872. The district court made specific factual findings in determining that husband's Stonebridge ownership-interest income did not apply to the Tier II calculation: the parties' use of the term "employment income," the parties' exclusion of husband's then-existing ownership-investment income from the Tier II calculation, and the parties' ceiling on husband's total spousal-maintenance obligation (capped at husband's first $330,000 of employment income).

The logical conclusion from the district court's findings is that "employment income" means income from employment (wages and salary), rather than investment income. Accordingly, we find no clear error in the district court's determination that, as a factual matter, employment income did not include husband's ownership-investment income.