STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0900

In re the Marriage of: Nyawan Kuon Dak, petitioner,
Respondent,

vs.

Khan Deng Turuok,
Appellant.

Filed May 2, 2022
Affirmed
Klaphake, Judge[*]

LeSueur County District Court
File No. 40-FA-15-958

Michael P. Herrmann, Janna M. Borgheiinck, Wornson, Goggins, PC, New Prague, Minnesota (for respondent)

Michelle K. Olsen, Jacob M. Birkholz, Birkholz & Associates, LLC, Mankato, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Bratvold, Judge; and Klaphake, Judge.

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

In this appeal from the district court's denial of his motion requesting that the district court force the sale of property, enforce the judgment, and provide other relief, appellant

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

argues that the district court erred by refusing to (1) correct a clerical error under Minn. R. Civ. P. 60.01, (2) reform the order, and (3) clarify the order. We affirm.

DECISION

Appellant Khan Deng Turuok and respondent Nyawan Kuon Dak divorced in April 2016 pursuant to a stipulated dissolution judgment. After numerous court proceedings, the parties agreed that Dak would keep the marital home subject to a lien in favor of Turuok. The amended judgment in this matter, based on a stipulated agreement which the parties reached in September 2017, provides that Dak will satisfy Turuok's lien against the marital home "at the time of closing on the sale of the homestead, or at any time prior to closing." The order also states that Turuok's name must be removed from the mortgage by December 31, 2017. And if Dak fails to remove Turuok's name, she must "put the home for sale after 30 days." Dak removed Turuok's name from the mortgage before December 31, 2017. Dak's counsel sent Turuok's counsel a letter from the mortgage company confirming the removal of Turuok's name and noting that it is the removed person's responsibility to record the letter. There is no evidence that Turuok recorded the letter. But neither party disputes that Dak was able to remove Turuok's name. Two and one-half years later, Turuok moved the district court to, among other things, require Dak to remove his name from the mortgage or sell or refinance the home. Based on the amended judgment, the district court denied Turuok's motion.

Turuok first argues that the amended judgment reflects a clerical error correctible at any time under Minn. R. Civ. P. 60.01 because the parties intended to require that Dak either refinance or sell the home in order to remove Turuok's name. We are not persuaded.

Rule 60.01 provides that "[c]lerical mistakes in judgments . . . arising from oversight or omission may be corrected by the court at any time." The district court has broad discretion in determining whether to vacate or modify a stipulated judgment for clerical error under rule 60.01. *Gould v. Johnson*, 379 N.W.2d 643, 646 (Minn. App. 1986). But lest they become a disguise for attacks on the judgment, clerical errors must be distinguished from more substantial mistakes under Minn. R. Civ. P. 60.02. *Egge v. Egge*, 361 N.W.2d 485, 488 (Minn. App. 1985). Clerical errors must ordinarily be "apparent on the face of the record" and not attributable to an exercise of discretion. *Wilson v. City of Fergus Falls*, 232 N.W.2d 322, 323 (Minn. 1930). Parties may use rule 60.01 to "make the judgment . . . speak the truth" but not to make it say something other than what it originally stated. *Egge*, 361 N.W.2d at 488 (quotation omitted).

In *Egge*, we determined that an alleged error in a stipulated decree was not clerical. *Id.* We reasoned that the parties' intent was not clear from the record and no "objective reference" existed against which to test the accuracy of the decree. *Id.*; *see also Solberg v. Solberg*, 382 N.W.2d 859, 861 (Minn. App. 1986) (stating that when parties' intent was not clear, any error was more than clerical).

Here, any error is more than clerical. The parties' intent is not clear from the record. The record reflects that, at a hearing in May 2017, the parties contemplated Dak refinancing the home. But the operative order did not require Dak to refinance the home. Instead, it stated only that Turuok's name must be removed by December 31, 2017. And the record shows that the parties' attorneys engaged in some negotiation regarding the terminology used in the operative order. But the record contains no information resolving or explaining

the apparent discrepancy between the May 2017 hearing and the written agreement that the parties memorialized in the operative order. As in *Egge* and *Solberg*, the parties' intent is not clear and any error in drafting the order is not clerical.

Turuok asserts that this case is like *Johnson v. Johnson*, 379 N.W.2d 215 (Minn. App. 1985). There, the husband's attorney erroneously drafted a spousal-maintenance provision to terminate when *husband* died or remarried, but the record clearly indicated that the parties contemplated spousal maintenance continuing until the *wife* died or remarried. *Id.* at 217-18. The error was a matter of substituting a single word for another. *See id.* at 218. We held that the district court, applying rule 60.01, properly modified the provision to terminate when wife died or remarried. *Id.* Here, in contrast, the record is unclear as to the parties' intent, and correcting the alleged error would require more than mere word substitution. Thus, *Johnson* is distinguishable and not persuasive here. In sum, we conclude that any error in the order is not clerical error correctible under rule 60.01.

Turuok next argues that the district court erred by refusing to reform or clarify the order. We reject these arguments for two reasons. First, Minnesota Statutes section 518.145, subdivision 2 (2020), allows a district court to relieve a party from a judgment or order because of mistake, inadvertence, fraud, or other reasons within one year of the entry of the order. Here, Turuok sought relief more than two and one-half years after the district court entered the order. His request for relief is therefore untimely.

Second, even if his request for relief could be considered timely, Minnesota law is clear that "a [district] court may not modify a final property division" except to "implement, enforce, or clarify the provisions of the decree, so long as it does not change

the parties' substantive rights." *Nelson v. Nelson*, 806 N.W.2d 870, 871 (Minn. App. 1999) (quotation omitted). An order changes substantive rights when it increases or decreases the original division of marital property. *Hanson v. Hanson*, 379 N.W.2d 230, 233 (Minn. App. 1985). Here, to require Dak to sell the house and pay four percent interest on Turuok's lien, as Turuok requests, would decrease Dak's share of the property by depriving her of the home and forcing her to pay more than the agreed upon amended judgment lien amount. Similarly, such an arrangement would increase Turuok's share of the property by granting him more money than in the original agreement. And requiring Dak to refinance the home, as Turuok alternatively requests, changes her substantive rights by asking her to do something which the order does not require. Because granting Turuok's requested relief would impermissibly alter the final property division and the parties' substantive rights, we reject Turuok's arguments that the district court erred by failing to reform or clarify the order.

Affirmed.