STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1257

Tanya Lynn Morrison, f/k/a Tanya Lynn Rambow, petitioner,
Respondent,

vs.

Paul Roland Rambow,
Appellant.

Filed May 23, 2011
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-FA-06-67

Marc G. Kurzman, Kurzman Grant Law Office, Minneapolis, Minnesota (for respondent)

David J. Van House, Van House & Associates, P.A., North Oaks, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Toussaint, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

In this post-dissolution dispute, appellant challenges both the district court's award of a money judgment to respondent and, in the alternative, the amount of the award. Because we see no abuse of discretion in either the award or its amount, we affirm.

FACTS

The six-year marriage of respondent Tanya Morrison and appellant Paul Rambow was dissolved in August 2006. The dissolution judgment awarded appellant the parties' real properties in Florida (the properties) and awarded respondent a $615,000 cash payment, due in 90 days, secured by liens on the properties. Respondent was also awarded spousal maintenance of $2,000 monthly until the cash payment was made.

A referee's order later gave respondent sole and unrestrained authority to sell the properties if appellant had not made payment by February 11, 2007. Appellant challenged the order in the district court, which concluded that it lacked jurisdiction. Appellant then challenged the order in this court. *Rambow v. Rambow*, No. A07-0966, 2008 WL 1748285 (Minn. App. Apr. 15, 2008) remanded the order for the inclusion of safeguards of appellant's interest in the properties.

In May 2007, a district court order granted respondent "all right, title, and interest" in the properties. Respondent subsequently moved to hold appellant in contempt for failure to pay spousal maintenance and to sign a deed transferring his interest in the properties. Following an October 2007 hearing, a district court order stated that (1) appellant had paid "zero dollars" of his $2,000 monthly spousal maintenance obligation; (2) foreclosure proceedings had been started against the properties, jeopardizing respondent's unsecured interest; (3) appellant asserted that he had a buyer for the property, but the buyer had made no offer and, in any event, should not have been dealing with appellant when respondent owned the property; and (4) appellant was to sign a deed conveying the properties to respondent under threat of incarceration.

At an April 2010 hearing on several motions made by the parties, respondent testified that, by the time she received the deed and could sell the properties, they were already in foreclosure, and she received no money from their sale. The district court ordered judgment of $500,000 against appellant for respondent. Appellant challenges that judgment, arguing that the district court abused its discretion in awarding the money judgment because it gave respondent a double recovery and, in the alternative, in setting the amount of the judgment.[1]

D E C I S I O N

1. Double Recovery

A district court may issue appropriate orders to implement or enforce a dissolution decree, and such orders are reviewed for an abuse of discretion. *Potter v. Potter*, 471 N.W.2d 113, 114 (Minn. App. 1991). A district court confronted by circumstances not anticipated by the judgment has discretion to enforce the judgment as appropriate under those circumstances, providing it does not alter rights that are otherwise final under the judgment. *See, e.g.*, *Hanson v. Hanson*, 379 N.W.2d 230, 233 (Minn. App. 1985) (affirming district court's conversion of one party's share of marital property to cash award after parties were unable to physically divide property); *Sullivan v. Sullivan*, 374 N.W.2d 517, 519 (Minn. App. 1985) (affirming district court's replacement of former

[1] Respondent also argues that appellant and his attorney should be sanctioned by awarding respondent costs and fees on appeal. But respondent did not file a motion for fees as required under Minn. R. Civ. App. P. 139.06, and thus the issue is not properly before us.

husband as real estate agent selling parties' home, with neutral real estate agent when parties could not agree on sale price or other terms of sale).

The district court's order provided in relevant part that:

> [Respondent] is awarded a judgment against [appellant] in the amount of $500,00.00, the estimated value of the cash settlement from the marital estate that remains owed to her.
>
> - Interest and entry of judgment is stayed so long as [appellant] continues paying [respondent] $3,000.00 per month.
>
> - If [appellant] falls more than sixty (60) days in arrears in his payments of $3,000.00 per month, judgment may be entered and interest may begin charging at the judgment rate per annum.
>
> - The parties shall each keep detailed records of [appellant's] $3,000.00 per month direct payments to [respondent] so that any spousal maintenance arrears [appellant] has on record through Hennepin County Support and Collections may be later reduced accordingly.

Appellant argues that the district court abused its discretion in awarding respondent a $500,000 money judgment because its previous transfer to her of the properties gives her a double recovery.[2]

[2] As a threshold matter, respondent argues that, because appellant did not make this argument to the district court, he may not raise it now. Appellant did not submit a reply brief refuting this argument, and a review of the hearing transcript indicates that the double-recovery issue was never raised to the district court. This court does not generally consider matters not presented to and considered by the district court, and a party may not change its theory of recovery on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). In the interests of justice, we nevertheless address the merits of appellant's arguments. *See* Minn. R. Civ. App. P. 103.04 (providing that this court may address any matter as the interests of justice may require).

Respondent testified that, because appellant delayed signing the deed to the properties until October, they were already in foreclosure, and all proceeds from the sale went to the bank. This testimony was unrefuted. Because respondent recovered nothing from the sale, the judgment did not provide her with a double recovery.

2. Amount of the judgment

The district court found that "[t]he parties estimate that [appellant] owes [respondent] approximately $500,000.00 from the case settlement from the marital estate." Appellant challenges the amount. We review the district court's finding of fact for clear error. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008).

At the hearing, the district court first asked respondent's attorney how much respondent was owed. The attorney testified that "the amount owing, including the statutory interest in '06, '07, '08, '09, '10 is $502,249.47." The district court then asked appellant's attorney if this figure was disputed. He said that it was disputed; that he did not have the calculations supporting this figure; and that appellant had made payments of "approximately $140,000 on one occasion and $62,000 on another occasion." The district court then said to respondent's attorney, "So then you'll give me a proposed order by the end of the month, should we say with the amount?" Respondent's attorney said, "Okay." The district court then said, "And then if I don't receive anything, an objection, I'm going to be assuming that's the amount. I'm just going to sign it." Appellant does not claim that he sent an objection to the amount.

When asked for the amount appellant owed respondent, appellant's attorney said, "$615,000, less the $140,000 payment, less the $62,500 payment, [= $412,500] plus the

interest." Thus, respondent's attorney said the amount owed was $502,249.47; appellant's attorney said it was $412,500 with interest. The district court said, "So we're talking – it's right around half a million dollars, right?" Respondent's attorney said, "Correct," and appellant's attorney did not object.

Particularly in light of appellant's attorney's failure to object either orally at the hearing or in writing, the district court's finding that "[t]he parties estimate that [appellant] owes [respondent] approximately $500,000.00" was not clearly erroneous.

Affirmed.