STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2231

In re the Marriage of:

John Allen Toop, petitioner,
Appellant,

vs.

Lynette Ruth Toop,
Respondent.

Filed August 8, 2011
Affirmed
Schellhas, Judge

Pope County District Court
File No. 61-FA-08-744

James P. Peters, Law Offices of James P. Peters, PLLC, Glenwood, Minnesota (for appellant)

Stephen James Knudsen, Alexandria, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Schellhas, Judge; and Willis, Judge.*

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

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

SCHELLHAS, Judge

Appellant challenges the district court's order denying his motion for clarification and enforcement of a prior marriage-dissolution judgment, arguing that: (1) he is entitled to indemnification from respondent for mortgage payments, insurance payments, and maintenance costs incurred after respondent abandoned the homestead; and (2) the district court erred by not transferring possession of the marital homestead to him so that he could sell it, as contemplated by the dissolution judgment. We affirm.

FACTS

On June 30, 2009, the district court issued findings of fact, conclusions of law, and a judgment, dissolving the marriage of appellant John Toop and respondent Lynette Toop. On November 13, 2009, the district court amended the June 30 judgment, which provides:

> The parties shall immediately list for sale the homestead[.] . . . During the time that the homestead is for sale [Ms. Toop] shall have temporary exclusive possession of the homestead and shall be solely liable for normal maintenance and all monthly payments of the principal, interest, taxes and insurance on the homestead, and she shall indemnify and hold [Mr. Toop] harmless from any liability or obligation to make payment whatsoever regarding the homestead.

The judgment further provides that the parties will "divide equally the net proceeds from such sale" and "equally split the liability of any deficiency."

The judgment requires Mr. Toop to pay Ms. Toop temporary spousal maintenance. The parties waived the right to move to modify maintenance, pursuant to

Minn. Stat. § 518.552, subd. 5 (2010), and *Karon v. Karon*, 435 N.W.2d 501, 503 (Minn. 1989).

On August 31, 2010, Ms. Toop filed for bankruptcy.[1] She also left the homestead, after turning off the furnace and electricity; failed to make mortgage payments in August, September, and October; failed to pay for homeowner's insurance; and ceased maintaining the homestead. Consequently, Mr. Toop placed money in escrow for the unpaid mortgage payments and deducted the amounts from his monthly spousal-maintenance payments. He also paid for furnace fuel in the amount of $138 and lawn-mowing service in the amount of $140.

On September 7, Mr. Toop filed a motion in district court for clarification of "the obligations and rights of the parties under the Judgment and Decree and Order, as Amended, relating to whether he may deposit portions of spousal maintenance payments into a separate account pursuant to [his] right to indemnification." On September 23, he filed an amended motion for clarification and enforcement of "the obligations and rights of the parties under the Judgment and Decree and Order, as Amended." In his supplemental memorandum of law in support of his amended motion, Mr. Toop sought the district court's approval of placing a portion of his monthly spousal-maintenance payments in a separate account to cover the cost of the mortgage, insurance, and

[1] Judicial notice may be taken of facts generally known in the jurisdiction or readily capable of accurate determination by resort to outside sources. Minn. R. Evid. 201(b). Judicial notice is appropriate for undisputed facts of common knowledge and "those for which neither expertise nor foundation is needed." *State v. Pierson*, 368 N.W.2d 427, 434 (Minn. App. 1985). Because the record contains little information about Ms. Toop's bankruptcy proceeding, we take judicial notice of the public records regarding Ms. Toop's bankruptcy proceeding.

maintenance costs. Mr. Toop also asked the district court to transfer possession of the homestead to him so that he could sell it, as contemplated by the dissolution judgment. Mr. Toop did not specify this request for relief in his original or amended motion.

The district court denied Mr. Toop's motion, stating the following:

> Currently, [Mr. Toop] has not made any payments on the family homestead for which indemnification is necessary. In order to enforce the indemnification right outlined in the Judgment and Decree, [Mr. Toop] must first obtain an indemnification judgment. Additionally, the maintenance obligation and the indemnification clause are separate obligations, therefore [Mr. Toop] placing part of the spousal maintenance payments into escrow to cover the homestead expenses is inappropriate at this time. The Judgment and Decree are not ambiguous, and do not require clarification.

This appeal follows.

D E C I S I O N

Request for Indemnification-Provision Clarification

A district court "has jurisdiction to interpret and clarify a judgment [that] is ambiguous or uncertain on its face, even after the time for appeal has passed." *Halverson v. Halverson*, 381 N.W.2d 69, 71 (Minn. App. 1986). Such an interpretation is not an amendment of the judgment's terms, or a challenge to the judgment's validity. *Id.* Whether language is ambiguous is a question of law, which is initially decided by the district court. *Id.* Language is ambiguous when it is subject to more than one interpretation. *Id.* This court reviews legal issues de novo. *Haefele v. Haefele*, 621 N.W.2d 758, 761 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001).

The district court concluded that "[t]he Judgment and Decree are not ambiguous, and do not require clarification." The judgment requires Ms. Toop to "indemnify and hold [Mr. Toop] harmless from any liability or obligation to make payment whatsoever regarding the homestead." The language is not subject to more than one interpretation, and the court therefore did not err by concluding that the indemnification provision is unambiguous. Mr. Toop does not appear to challenge the court's conclusion.

Request for Indemnification-Provision Enforcement

The district court denied Mr. Toop's motion to enforce the indemnification provision because it found that he "has not made any payments on the family homestead for which indemnification is necessary." Mr. Toop argues that the court erred because the judgment entitles him to indemnification for the August, September, and October mortgage payments plus interest and late fees; the $138 he spent on furnace fuel; and the $140 he spent on lawn mowing.

"Generally, an indemnitor's obligation to indemnify only arises after the one to be indemnified has suffered actual loss or damage." *Saint Paul Fire & Marine Ins. Co. v. Cent. Nat'l Ins. Co. of Omaha*, 480 N.W.2d 681, 685 (Minn. App. 1992) (citing *Aetna Casualty & Surety Co. v. Bros*, 226 Minn. 466, 469, 33 N.W.2d 46, 48 (1948)). Here, Mr. Toop has not actually made the August, September, or October mortgage payments. Instead, he placed money in escrow to cover the missed mortgage payments and late fees, deducting those amounts from his spousal-maintenance payments. The record suggests that the money remains in the account established by Mr. Toop and that nothing prevents him from withdrawing it. The district court therefore did not err by concluding that Mr.

Toop "has not made any payments on the family homestead for which indemnification is necessary."

With respect to Mr. Toop's request for enforcement of the judgment as to his payments for fuel and lawn mowing, the judgment states that Ms. Toop "shall be solely liable for normal maintenance" and "shall indemnify and hold [Mr. Toop] harmless *from any liability or obligation to make payment* whatsoever regarding the homestead." (Emphasis added.) Nothing in the record indicates that Mr. Toop had any obligation to make the payments. When Mr. Toop made the payments for fuel and lawn mowing, he was not liable for them; he made the payments voluntarily. The district court therefore did not err by concluding that Mr. Toop "has not made any payments on the family homestead from which indemnification is necessary."

Impact of Bankruptcy

Ms. Toop states in her affidavit submitted to the district court, "My bankruptcy attorney . . . tells me that I have the right to discharge my obligation to indemnify [Mr. Toop] . . . in a chapter 13 bankruptcy, since it is not a domestic support obligation." Mr. Toop argues that the indemnification provision is not dischargeable in bankruptcy. We agree. *See Fast v. Fast*, 766 N.W.2d 47, 48–49 (Minn. App. 2009) (citing 11 U.S.C. § 523(a)(15) (2006) and concluding that hold-harmless obligation established by dissolution judgment was not discharged by bankruptcy proceeding). But, here, although the indemnification provision is enforceable, Mr. Toop has not yet incurred any liability entitling him to indemnification.

Even if Mr. Toop made involuntary payments for which he is entitled to indemnification, his indemnification claims are stayed by Ms. Toop's bankruptcy proceeding. The filing of a bankruptcy petition automatically stays

> the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title[.]

11 U.S.C. § 362(a)(1) (2006). But the filing of a bankruptcy petition does not stay "the collection of a domestic support obligation from property that is not property of the estate." 11 U.S.C. § 362(b)(2)(B) (2006). A "domestic support obligation" is defined as a debt that is (1) "owed to or recoverable by," among others, a "former spouse," (2) that is "in the nature of alimony, maintenance, or support" of such "former spouse," and (3) that was established by a divorce decree or court order. 11 U.S.C. § 101(14A) (2006).

In this case, Ms. Toop's indemnification obligation in the dissolution judgment is not in the nature of domestic support. The judgment, which is based on the parties' settlement agreement, does not provide for domestic support to Mr. Toop from Ms. Toop. The only provision for domestic support in the judgment is the spousal-maintenance obligation of Mr. Toop to Ms. Toop. Mr. Toop's request for indemnification is not an attempt to collect a domestic-support obligation. Even if Mr. Toop had a ripe indemnification claim, it would be subject to the stay imposed by Ms. Toop's bankruptcy proceeding.

Transferring Possession of the Home

Mr. Toop argues that the district court erred by not transferring possession of the home to him. He argues that reversal is required because the court failed to address this issue. Mr. Toop wants possession of the homestead so that he can market it for sale pursuant to the judgment, but he did not seek this relief in his original or amended motion. He only included his request for possession of the homestead in his supplemental memorandum of law.

In family court, "Motions shall set out with particularity the relief requested in individually numbered paragraphs." Minn. Gen. R. Prac. 303.02(a). "The court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, . . . or may take other appropriate action." *Id.* 303.03(b). Rule 303.03(b) is derived from Minn. Gen. R. Prac. 115 and is intended to make family court motion practice similar to other civil actions. Minn. Gen. R. Prac. 303.03, 1996 advisory comm. cmt. Rule 115.06 addresses the failure to comply with the rules for other civil motions. "The language of rule 115.06 permits the court, but does not require it, to strike a motion where the rule is not followed." Minn. Gen. R. Prac. 115 advisory comm. cmt.

Here, Mr. Toop failed to set out with particularity in his original or amended motion his request that possession of the homestead be transferred to him. Because Mr. Toop failed to comply with the rules, the district court, in its discretion, could decline to address his request. And even if the court did not intentionally decline to address Mr. Toop's request for possession of the homestead, the court's order reveals that it implicitly rejected Mr. Toop's request by denying his motion to clarify and enforce the dissolution

judgment. *See Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949) (stating that appellate courts cannot assume district court error); *Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999) (applying *Loth*). His argument for reversal therefore fails.

We note that Ms. Toop states in her affidavit that she does not object to transferring possession of the homestead to Mr. Toop. But she filed a bankruptcy petition, and the filing of a bankruptcy petition automatically stays "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3) (2006). Property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1) (2006). As of the date that Ms. Toop filed a bankruptcy petition, she had a legal interest in the home. The automatic stay therefore applied to the home as of August 31, 2010. Mr. Toop filed his original and amended motion on September 7 and September 23, 2010, respectively. On the record before us, we must assume that the bankruptcy stay prohibits Mr. Toop's current attempt to obtain possession of the home.

Affirmed.