**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-2101**

In re the Marriage of:

Blake Rice, petitioner,
Appellant,

vs.

Lori A. Rice, n/k/a Lori A. Greenberg,
Respondent.

**Filed December 3, 2012**
**Reversed**
**Schellhas, Judge**

Carver County District Court
File No. 10-FA-06-388

Kay Nord Hunt, Lommen, Abdo, Cole, King & Stageberg, P.A., Minneapolis, Minnesota; and

Edward L. Winer, Shannon M. Bixby-Pankratz, Moss & Barnett, Minneapolis, Minnesota (for appellant)

Brian L. Sobol, Corwin R. Kruse, Katz, Manka, Teplinsky, Graves & Sobol, Ltd., Minneapolis, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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 granting respondent's motion to reopen the parties' marriage-dissolution judgment and decree on the bases that appellant committed fraud on the court and that the prospective application of the judgment is no longer equitable. We reverse.

## FACTS

Appellant Blake Rice and respondent Lori Greenberg married in 1986 and separated in April 2006. On May 30, they executed a legal separation agreement (LSA) and agreed that Greenberg would retain the marital homestead in Waconia. On June 7, Rice signed a purchase agreement for a home in Chaska (Bavarian Shores). In July, Rice's attorney prepared a petition for marriage dissolution and a proposed marital termination agreement (MTA), supplementing the terms of the LSA. Greenberg chose not to obtain legal counsel in connection with the MTA and marriage dissolution, waiving her right to legal counsel in writing on July 20, as follows:

Wife's Waiver of Counsel

> I, Lori A. Rice, know I have the right to be represented by a lawyer of my choice. I hereby expressly waive that right and I freely and voluntarily sign the foregoing Marital Termination Agreement. I understand that an attorney would be helpful in determining the issues contained in the foregoing Marital Termination Agreement; however, I specifically decline to so retain independent counsel.

During the drafting of the MTA, Greenberg negotiated directly with Rice, resulting in additions and changes to various terms favorable to Greenberg. For example,

Rice offered to pay Greenberg $10,000 per year for vacations for two years. Based on Greenberg's request, Rice then offered to do so for five years. Ultimately, as reflected in the MTA and judgment and decree, Rice acquiesced to Greenberg's request that he pay her $10,000 per year for vacations for 15 years. Also, based on Greenberg's request, Rice agreed to secure his spousal maintenance obligation by a mortgage on Rice's real estate. In contrast to the LSA, Greenberg negotiated the provision in the MTA that requires Rice to pay the cost of any medical and dental insurance premium contribution until 2021, when Rice's spousal maintenance obligation terminates. Additionally, a cash payment of $50,000 from Rice to Greenberg in the LSA increased to $300,000 in the MTA. And, on October 9, after the execution of the MTA and one day before the scheduled dissolution hearing, Greenberg requested an addendum to paragraph 20 of the MTA, which reflected the parties' agreement to file joint federal and state income-tax returns for calendar year 2006 and to jointly assume any tax liability and jointly share any refund resulting from the filing of the returns. Greenberg requested that the parties execute the addendum to provide that the parties would file separate federal and state income-tax returns for 2006. The district court incorporated the addendum in the judgment and decree.

Greenberg signed the MTA on July 17,[1] and Rice signed the MTA on July 26. Neither the MTA nor the judgment and decree sets forth the parties' incomes or the values of their assets, nor does either document identify Bavarian Shores.

[1] The record does not explain why Greenberg signed the waiver of counsel provision on July 20, rather than July 17.

On October 10, the district court received Rice's testimony regarding the marriage-dissolution petition and MTA, as if upon default. Although notified of the hearing by Rice's attorney, Greenberg declined to appear. The court incorporated the terms of the parties' MTA and addendum in a judgment and decree.

At that time, one of the parties' two children was under the age of majority—age 14. In addition to obligating Rice to pay for various expenses for the children, including college, the dissolution judgment requires Rice to pay (1) $8,333.33 per month in spousal maintenance until the earlier of June 1, 2021, or Greenberg's death (the payment termination date);[2] (2) $10,000 per year by May of each year for Greenberg's vacations until the payment termination date; (3) $45,000 in 2013 for Greenberg's purchase of a new automobile; (4) $300,000 in cash immediately; and (5) the cost of medical and dental insurance coverage for Greenberg under Rice's then effective policy until the payment termination date.

The dissolution judgment awarded Greenberg the marital homestead in Waconia and all household goods and other tangible personal property located in it or in Greenberg's possession; a 2003 Lexus 350 automobile; all cash, savings, checking, and other accounts in Greenberg's name or under her control; all stocks, bonds, dividends, profit sharing, pension and retirement interests in Greenberg's name or under her control; and the cash values of any life insurance policies on Greenberg's life. It awarded Rice

[2] During the marriage, Greenberg did not work outside the home, although she obtained part-time employment shortly before the dissolution. The record otherwise contains nothing about her work history or education. On the date of the dissolution hearing, both parties were 44 years old.

one home located in Waconia; one home located in Victoria; two parcels of real estate located in the State of Nevada; all cash, savings, checking, and other accounts in Rice's name or under his control; all stocks, bonds, dividends, profit sharing, pension and retirement interests in Rice's name or under his control; all personal property located at the real estate awarded to Rice; the cash values of any life insurance policies on Rice's life; and his interest in three businesses.

After entry of the judgment and decree, the parties adhered to its terms, including the requirement that they "cooperate in signing any deeds or other conveyance documents to effectuate the terms." In April 2007, while represented by her own legal counsel, Greenberg signed three quit-claim deeds in favor of Rice, including one for Bavarian Shores.

On July 3, 2010, Rice remarried. In August 2010, legal counsel representing Greenberg informed Rice that the dissolution judgment and decree did not contain a finding of fact that the parties' marriage was irretrievably broken or a conclusion of law dissolving the marriage. Rice therefore moved the district court on November 30 to correct the judgment and decree. Greenberg opposed Rice's motion and, on December 3, moved to reopen the judgment dissolution under Minn. Stat. § 518.145 (2010), alleging that Rice failed to fully disclose assets in the marriage dissolution. Greenberg claimed that Rice purchased Bavarian Shores for $1,675,000 on June 14, 2006; that he did not disclose his ownership of Bavarian Shores at the time of the dissolution; and that Greenberg had no knowledge of Bavarian Shores at the time she signed the MTA. Greenberg also claimed "numerous discrepancies, inconsistencies, and problems,"

including that (1) Rice failed to disclose his purchase of Bavarian Shores; (2) the MTA includes a provision that is against public policy; (3) Greenberg signed the MTA on the same day as service of process of the summons and dissolution petition; and (4) Rice verified the petition nine days after service of process upon Greenberg.

Rice countered Greenberg's claims with affidavits, documents, and a memorandum of law. He claimed that Greenberg knew that he intended to purchase Bavarian Shores as early as April 2006, that he discussed the purchase of the home with her before he signed a purchase agreement on June 9, and that the parties addressed the value of Bavarian Shores in their division of assets. Rice submitted a handwritten list of the marital assets with values and allocation to the parties, claiming that he and Greenberg created the document in May 2006. The first item written under Rice's name is "House," followed by "1,000,000" and "1.6," which Rice claims represents Bavarian Shores with a then-anticipated purchase price of $1,675,000. Rice claims that, on May 26, 2006, he "recapped" the handwritten document in an e-mail to his attorney, requesting that his attorney prepare an LSA. Rice explained that he referred to Bavarian Shores in his e-mail as "other" and followed it with the "original sales price" of "$1,800,000" because he had not yet purchased the property. Rice claimed that his attorney inadvertently omitted Bavarian Shores from the LSA and MTA. Rice also submitted an affidavit of Leroy Martin, a business consultant and financial advisor, along with a copy of a "summary of the parties' assets and liabilities as of December 31, 2006," based on Martin's "independent review of documents."

Greenberg then amended her motion, asking the district court to "reopen[] the record to allow [her] to conduct discovery as to the value of the marital estate in 2006" on the bases of "fraud upon the court and Minn. Stat. § 518.145, subd. 5," and to conduct an "evidentiary hearing following completion of discovery as to the issue [of] fraud upon the court, and whether the [judgment] should be reopened for a reapportionment of property, either based upon fraud, omitted assets, and/or based upon the fact it is no longer equitable to give the [judgment] prospective effect." Greenberg claimed that she had no way of knowing the value of the parties' assets and accepted that the values in the handwritten document were accurate. She also claimed that Rice coerced her into not retaining counsel during the marriage dissolution; that Rice "was very abusive and controlling during [their] marriage, and [she] was wary of challenging him"; that "[t]his is one of the reasons [she] agreed to a settlement without retaining counsel – [she] just needed to escape and [she] was afraid of challenging [Rice]"; that the division of marital property was grossly disproportionate because the marital homestead is worth only a third of the $3,000,000 that Rice said it was worth; that Rice undervalued one of his companies, Bureau of Collection Recovery Inc. (BCR); and that "based on [Rice's] numbers," he received over $9,000,000 in marital assets and she received only $3,000,000.[3]

The district court heard the parties' motions on December 14. Without addressing Greenberg's claim of fraud on the court, the court issued an order on January 7, 2011

[3] When Greenberg states, "based on [Rice's] numbers," she appears to be referring to Martin's summary of the parties' assets and liabilities as of the end of 2006.

(filed January 18, 2011); amended the judgment and decree to include a finding of fact that "[t]here has been an irretrievable breakdown of the marriage relationship between the parties" and a conclusion of law that "[t]he bond of matrimony between [Rice] and [Greenberg] are hereby dissolved, effective to October 10, 2006"; and, pertinent to this appeal, made the following finding:

> 23. [Greenberg] has raised an issue relating to the property at 1515 Bavarian Shore and whether [Rice]'s ownership in this property was disclosed as part of dissolution action. (That property does not appear to be referenced in the MTA or final Decree)[.] [Greenberg] has presented at least a colorable claim—sufficient for an evidentiary hearing *on that issue alone* and the Court will allow *limited discovery for the sole purpose of determining what information [Greenberg] had as to this asset and the value of that property as of 2006.*

(Emphasis added.) Also, pertinent to this appeal, the court ordered:

> 4. That the parties may engage in limited discovery related to the sole issue of [Greenberg]'s knowledge concerning the Bavarian Shores property at the time she signed the MTA and the value of said property in 2006.
>
> 5. That at such time as the discovery is complete, the matter shall be scheduled for an evidentiary hearing before the undersigned.
>
> 6. [Rice]'s request for conduct-based attorney fees is reserved pending further order of the Court.
>
> . . . .
>
> 8. That each and every other motion of [Greenberg] is denied.

Neither party appealed from this order, and the court subsequently scheduled an evidentiary hearing on August 18.

Greenberg moved for amended findings, arguing that the district court erred in failing to address the question of fraud on the court. Greenberg requested an amended finding that she made a prima facie showing of fraud on the court sufficient to allow discovery on the value of all marital assets and the parties' income and standard of living in 2006. She also requested that the court order discovery about her knowledge of Bavarian Shores and the parties' income,[4] marital standard of living, and assets at the time of the dissolution. The day before the hearing on Greenberg's amended motion, Greenberg further moved the district court to reopen the record from the December 2010 motion hearing and to supplement it with the parties' joint federal tax returns for 2003, 2004, and 2005. The court postponed the hearing so that it could consider Greenberg's motion to supplement the record and then struck her motion as untimely and prohibited under the rules of civil procedure.[5]

On August 18, the day set for the evidentiary hearing, the district court heard Greenberg's motion for amended findings. Greenberg argued that she had made a prima

[4] For at least the years 2003 through 2005, the parties filed joint income-tax returns, begging the question of why Greenberg would not have been aware of Rice's income for those years. At oral argument, the response to this question by Greenberg's counsel was inadequate and troubling. Counsel stated that "[Greenberg] is no different than many spouses in her situation. She doesn't know the finances. . . . Traditional homemakers don't look at tax returns. They are handed to them, they are told to sign, that's the source of their review."

[5] We are troubled by the fact that, despite the district court's order, on appeal, Greenberg included in her statement of the case the parties' adjusted gross income from their 2003, 2004, and 2005 joint tax returns.

facie showing of fraud on the court and that the court had failed to address that argument in its order. The court stated that it was unsure whether there was fraud on the court and said: "That's why I let you have an evidentiary hearing *on that particular asset*." (Emphasis added.)

Rice argued that Greenberg had failed to provide evidentiary support for her claim of fraud on the court and asked to proceed with the evidentiary hearing, as scheduled, on the issue of Greenberg's knowledge about Bavarian Shores at the time of the dissolution. The district court stated that it would grant Greenberg's motion; it did not hold the scheduled evidentiary hearing concerning Greenberg's knowledge about Bavarian Shores; and it did not hold an evidentiary hearing concerning Greenberg's claim of fraud on the court. Before the hearing ended, the court also stated that

> the trouble I was having Mr. Rice is when you use the word fraud it seems to me to be, you know, a term that just doesn't mean failure perhaps to provide some information but almost a criminal intent and *I do not attribute anything that I read in the file, any actions on your part as devious.*
>
> What I have seen is there was a failure really in the pleadings and in the ultimate [MTA] to fully set forth the extent of your assets and what was being awarded to Ms. Greenberg and I think the equities because, you know, neither of your attorneys were counsel of record at the time this matter was put together, really had the opportunity to fully develop this case and I don't know that, you know, the result may not be as good for Ms. Greenberg at the end of this as it is right now.

(Emphasis added.)

The district court issued a written order on September 21 in which it vacated the findings of fact in its January 7 order "in their entirety," and ordered the following:

1. That the motion of [Greenberg] that this court reconsider its January 7, . . . 2011 Order is granted. That the Findings of Fact as set forth in said Order are vacated in their entirety as are paragraphs 4, 5, 6, and 8 of said Order.

2. That [Greenberg]'s motion to allow discovery as to the value of the marital estate in 2006 is granted based upon the grounds of fraud upon the court and Minn. Stat. [§] 518.145, subd. 5 in that it is no longer equitable that the Judgment and Decree should have prospective application.

3. That following completion of discovery, the parties shall schedule an evidentiary hearing for reapportionment of the property and assets, either based upon fraud, omitted assets and/or based upon the fact it is no longer equitable to give the Decree prospective effect.

This appeal follows.

**D E C I S I O N**

"Courts favor stipulations in dissolution cases as a means of simplifying and expediting litigation, and to bring resolution to what frequently has become an acrimonious relationship between the parties." *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997) (citing *Anderson v. Anderson*, 303 Minn. 26, 32, 225 N.W.2d 837, 840 (1975)). Stipulations are "accorded the sanctity of binding contracts." *Id.* "[P]arties seeking to have a compromise settlement defeated must bear the burden of proof of demonstrating the agreement's vulnerability." *Ryan v. Ryan*, 292 Minn. 52, 55, 193 N.W.2d 295, 297 (1971). "[I]f a stipulation was improvidently made and in equity and good conscience ought not to stand, it may be vacated." *Shirk*, 561 N.W.2d at 522. But "upon entry of a judgment and decree based on a stipulation, different circumstances arise, as the dissolution is now complete and the need for finality becomes of central

importance." *Id.* In *Shirk*, the supreme court "recognized the extremely undesirable consequences triggered by reopening dissolution proceedings in the absence of fraud or bad faith." *Id.*

> Where no fraud or bad faith is shown that, if we were to allow a settlement made in open court to be reopened many months later at the whim of either party, it would create uncertainty, chaos, and confusion as to the effect of settlements in future cases. This would be an injustice both to the courts in which settlements were made and to the litigants involved, who depend upon the reliability of such settlements.

*Id.* (quotation omitted). Noting that "[t]he legislature also has recognized the importance of finality in dissolution proceedings by setting forth specific circumstances that must be present to permit a party to be relieved of the terms of a judgment and decree, and the time limitations that must be observed," the court held that

> when a judgment and decree is entered based upon a stipulation, . . . the stipulation is merged into the judgment and decree and the stipulation cannot thereafter be the target of attack by a party seeking relief from the judgment and decree. The sole relief from the judgment and decree lies in meeting the requirements of Minn. Stat. § 518.145, subd. 2.

*Id.* "A decree of dissolution of marriage . . . is final when entered, subject to the right of appeal," unless a party establishes in a timely motion a statutory basis for reopening the judgment and decree. Minn. Stat. § 518.145, subds. 1–2. The moving party bears the burden of establishing a basis to reopen the judgment and decree. *Haefele v. Haefele*, 621 N.W.2d 758, 765 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001).

An appellate court will not disturb a district court's decision to reopen a dissolution judgment "absent an abuse of discretion." *Kornberg v. Kornberg*, 542 N.W.2d

379, 386 (Minn. 1996). A district court abuses its discretion if it acts "against logic and the facts on record," *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002), makes findings of fact that are unsupported by the record, or improperly applies the law, *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). The proper standard of proof in a civil fraud case is the preponderance-of-evidence standard. *Kornberg*, 542 N.W.2d at 387 n.3. "[W]hether the district court applied the correct legal standard is a question of law, which we review de novo." *Thompson v. Thompson*, 739 N.W.2d 424, 430 (Minn. App. 2007).

***Greenberg's Claim of Fraud on the Court***

Rice argues that the district court abused its discretion by granting Greenberg's motion to reopen the judgment and decree on the basis that he committed fraud on the court. We agree.

The statutory bases for relieving a party from a judgment and decree include "fraud, whether denominated intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party," Minn. Stat. § 518.145, subd. 2(3), and "fraud upon the court." *Id*., subd. 2. A motion "must be made within a reasonable time, and for a reason under clause . . . (3) [for ordinary fraud], not more than one year after the judgment and decree . . . was entered or taken." *Id.* "[W]ithin a reasonable time" and "more than one year after the judgment and decree . . . was entered," a court may "set aside a judgment for fraud upon the court." *Id.*

"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." *Maranda v. Maranda*, 449 N.W.2d 158, 165 (Minn. 1989). "[F]or the 1-year time limit for motions brought under

[Minn. Stat. § 518.145, subd. 2(3) for ordinary fraud] to make any sense, however, there must be a difference between ordinary fraud and fraud on the court." *Id.* (quotation omitted). The *Maranda* court "decline[d] to outline a precise definition of fraud on the court," focusing instead "on whether the offending party engaged in an unconscionable scheme or plan to influence the court improperly." *Id.* "Under this approach, the difference between fraud and fraud on the court is primarily a difference of degree rather than kind." *Id.* The *Maranda* court held that "fraud on the court must be 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.*

As to the reasonable timing of a party's request for relief based on fraud on the court, the *Maranda* court stated that, "[i]n most cases, a year or two should suffice to discover the fraud. In cases brought an unreasonably long time after the original judgment, the doctrine of laches should be used to prevent abuse." *Id*. at 166. After stating that "[a] finding of fraud on the court and the administration of justice must be made under the peculiar facts of each case," the *Maranda* court affirmed a district court's decision setting aside a judgment for fraud on the court after a six-year delay, noting that "the record [was] clear that [the husband]'s conduct prevented [the wife] from having sufficient facts to bring the case earlier," but stating that the six-year delay was "an extreme example and probably reaches to the outer limits of reasonableness." *Id*. at 164, 166.

In this case, Greenberg moved the district court for relief from the dissolution judgment more than four years after entry of judgment. Oddly, the record reflects that

neither the parties nor the court addressed the issue of Greenberg's timeliness. And, unlike in *Maranda*, although Greenberg made general claims of abuse, duress, and coercion by Rice, she made no specific claim or produced any evidence to show that Rice prevented her from gaining the facts necessary to make her request to the court earlier. Moreover, Greenberg's execution of a quit-claim deed to Bavarian Shores in favor of Rice in February 2007 directly contradicts any notion that she could not have sought relief from the court earlier.

In *Kornberg*, the court stated that "[t]he elements of fraud in the context of marital dissolution are: (1) an intentional course of material misrepresentation or nondisclosure, (2) having the result of misleading the court and opposing counsel, and (3) making the property settlement unfair." 542 N.W.2d at 387. Here, without holding an evidentiary hearing, the district court granted Greenberg's motion to reopen the judgment and decree on the basis that Rice committed fraud on the court, and the court ordered "discovery as to the value of the marital estate in 2006." In its September 21 order, the court ordered that at the "completion of discovery, the parties shall schedule an evidentiary hearing for reapportionment of the property and assets, either based upon fraud [or] omitted assets." The court issued this order after vacating, "in their entirety," all of the findings of fact contained in its order of January 7. The court explained its reasoning in a memorandum as follows:

> Part of [Greenberg]'s request for relief is based upon allegations of "fraud on the court" with respect to the financial disclosures made at the time of the [LSA] and the [MTA] in 2006. Certainly the handwritten notes which purportedly laid out the financial agreement reached by the

> parties are not done in the manner normally seen in final divorce decrees. In addition, some of the language relating to omitted assets is also troublesome in that it potentially divests one of the parties from marital assets without any due process. Given the fact that [Rice] evidently was responsible for earning and accumulating most of the financial assets which the parties acquired during their marriage, it is conceivable that these assets were primarily in his name and therefore would ultimately be awarded to him if they were, in fact, omitted from the property settlement. Once again, the uniqueness of such a distribution plan is somewhat suspect.
>
> Ultimately in considering all of the clerical errors, possible lack of full disclosure of financial assets, lack of legal representation of [Greenberg] during these proceedings, and failure of the Court to carefully review the final Judgment and Decree in these matters; for all of these reasons, the parties should be given an opportunity to fully litigate these unresolved issues.

In concluding that the district court abused its discretion by granting Greenberg's motion to reopen the judgment and decree, we have focused on "whether [Rice] engaged in an unconscionable scheme or plan to influence the court improperly." *Maranda*, 440 N.W.2d at 165. In determining that the wife had presented sufficient facts to support a conclusion that the husband committed fraud on the court, the *Maranda* court noted that the wife "was systematically excluded from access to information concerning the parties' finances; . . . [the husband] willfully misrepresented and failed to disclose the existence and value of marital property"; the wife's counsel's independent judgment was questionable; and the husband concealed significant sums of money. *Id.* at 166. In contrast, the *Kornberg* court affirmed a district court's conclusion that the wife had not made a showing of fraud because the record lacked any evidence that the husband "made

misrepresentations to [the wife], that the court was misled in any way, or that the property settlement was unfair." 542 N.W.2d at 387–88 (distinguishing *Maranda*).

Greenberg argues on appeal that "the totality of the circumstances" evidence "a pattern of misrepresentations on the part of [Rice]." She points to the omission of Bavarian Shores in the petition for marriage dissolution, the MTA, and the judgment and decree as evidence of a pattern of intent to mislead the court. She also argues that a clause in the MTA entitled, "Non-retention of jurisdiction," evidences the "intentional nature of [Rice]'s acts." Greenberg's arguments are unavailing.

In *Haefele*, a case in which the husband was an attorney and the wife was unrepresented, this court concluded that the district court did not abuse its discretion when it vacated the MTA and reopened the dissolution judgment, which was "riddled with errors, inconsistencies and assumptions with no supporting evidence," *on the basis of mistake*. 621 N.W.2d at 764. But, noting the elements of "[f]raud, in a marital dissolution context," this court disagreed with "the district court's determination that the facts support a finding of intentional fraud." *Id.* The court said:

> Though the differences between the property values listed in the MTA and the values shown on contemporaneous financial documents are significant, some of those differences favor [the wife] and there is no discernible pattern that suggests [the husband] intentionally altered values for dissolution purposes.
>
> Instead, the record shows that a combination of carelessness, haste, use of improper valuation methods and lack of experience in valuing art may have contributed to the mistaken property valuations.

*Id.*

In this case, a handwritten list of the parties' marital property allocates to Rice a "[h]ouse" with a value of $"1.6." This house is the first item listed under Rice's name, and "[h]ouse" with a value of $"3,000,000" is the first item listed under Greenberg's name. In Rice's e-mail to his dissolution attorney, he included in a list of marital property with corresponding values that he was to be awarded an item identified as "other" with a value of $"1,800,000." In his affidavit submitted to the district court, Rice explained that he planned to purchase a home and identified his future home as "other" because he had not yet signed a purchase agreement. Rice also explained in his affidavit that he resided in the home after the parties' separation, that Greenberg sometimes dropped off or picked up the children there, and that Greenberg was well aware of his plans to try to purchase the home. Greenberg offers no evidence to contradict Rice's explanation. In consideration of all of the terms of the parties' MTA, we conclude that the omission of Bavarian Shores from the LSA, petition, MTA, and judgment and decree is not evidence that demonstrates that Rice intentionally concealed the property from Greenberg or that his attorney omitted the property as part of a scheme or plan to mislead the district court. Greenberg had the burden to show that Rice "engaged in an unconscionable scheme or plan to influence the court improperly." *Maranda*, 449 N.W.2d at 165. As in *Haefele*, the facts that Greenberg submitted and argued to the district court do not support the court's determination that Rice engaged in intentional fraud. 621 N.W.2d at 764.

Greenberg argues that her claim of fraud on the court is supported by her affidavit testimony that Rice coerced her not to obtain legal counsel, that he was "abusive and controlling during [the] marriage," and that she "needed to escape and . . . was afraid of

challenging [Rice]." We agree with the district court's rejection of this argument, which is especially unpersuasive in light of the e-mail that Greenberg sent to Rice on September 28, 2006, as follows:

> In thirty days, you'll be a freelancer; have a ball; have a good time; it's what you have wanted but know that I can change that document ANYTIME I choose regardless of my signature. I could even go to that hearing and talk to the judge on Oct. 10 . . . . Shouting on the internet is so not you.

We conclude that Greenberg has failed to demonstrate that Rice engaged in "an intentional course of material misrepresentation" that misled the district court and made the property division grossly unfair, and failed to raise a material issue of fact on her claim of fraud on the court. *Maranda*, 449 N.W.2d at 165. The district court therefore abused its discretion by granting Greenberg's motion to reopen the judgment and decree on the basis that Rice committed fraud on the court.

***Claim that Prospective Application of Judgment and Decree is No Longer Equitable***

Rice argues that the district court abused its discretion by granting Greenberg's motion to reopen the judgment and decree on the basis that prospective application of judgment and decree is no longer equitable. *See* Minn. Stat. § 518.145, subd. 2(5) (stating this basis for reopening a judgment and decree). We agree.

To reopen a judgment on this basis, "the inequity must result from the development of circumstances substantially altering the information known when the dissolution judgment and decree was entered." *Thompson*, 739 N.W.2d at 430. This court has stated that the district court must consider "whether there is inequity in prospective application of the judgment and decree as a result of the development of circumstances

*beyond the parties' control* that substantially alter the information known when the dissolution judgment and decree was entered." *Id.* at 431 (emphasis added).

Greenberg argues that her "discovery of the existence of [Bavarian Shores] is . . . a circumstance substantially altering the information [she] had earlier accepted regarding the parties' marital assets." But Greenberg knew about Rice's ownership of Bavarian Shores at least as early as April 2007 when, represented by legal counsel, she executed a quit-claim deed to it in favor of Rice. Greenberg has not satisfied this statutory basis for reopening a judgment and decree because she has not offered evidence to demonstrate a "*development in circumstance beyond the parties' control* that substantially alters the information known when the judgment and decree was entered." *Id.* (emphasis added). And Greenberg failed to demonstrate a material issue of fact on this statutory basis for reopening the judgment and decree sufficient to warrant an evidentiary hearing. We therefore conclude that the district court abused its discretion by granting Greenberg's motion on the basis that the prospective application of the judgment and decree is no longer equitable.

**Reversed.**