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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1212**

In re the Marriage of:
Kyle W. Zweifel, petitioner,
Respondent,

vs.

Julie Zweifel, n/k/a Julie A. Mead,
Appellant.

**Filed April 29, 2013
Affirmed
Johnson, Chief Judge**

St. Louis County District Court
File No. 69DU-FA-09-953

Jill I. Frieders, O'Brien & Wolf, L.L.P., Rochester, Minnesota (for respondent)

Julie A. Mead, Duluth, Minnesota (pro se appellant)

Considered and decided by Johnson, Chief Judge; Rodenberg, Judge; and
Toussaint, Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Chief Judge

After the dissolution of her marriage, Julie Mead (formerly known as Julie Zweifel) continued to live in the marital homestead for approximately a year and a half. The district court ordered her to vacate the property after finding that she was not cooperating with court-ordered attempts to sell it. We conclude that the district court did not err and, therefore, affirm.

FACTS

Mead and Kyle Zweifel were married in 1997. They entered into a marital termination agreement (MTA) in December 2009, which provided for the sale of their homestead but allowed Mead to live there until it was sold. In December 2010, the district court filed a stipulated dissolution judgment and decree that incorporated the MTA and provided for the division of the proceeds from the sale of the home. Mead appealed from the dissolution and decree and sought to set aside the MTA, but this court affirmed. *Zweifel v. Zweifel*, 2012 WL 1380353 (Minn. App. Apr. 23, 2012), *review denied* (Minn. July 17, 2012).

In the December 2010 decree, the district court stated, “The parties shall cooperate with each other to list said home for sale with a mutually agreeable realtor and shall cooperate to effectuate the sale of the home.” The district court appointed a receiver in June 2011 to facilitate the sale of the home because an order for protection prevented the parties from having contact with each other. The district court gave the receiver the power to remove Mead from the home if she did not cooperate with the sale. On March

22, 2012, the district court denied Mead's motion to remove the receiver and the realtor. This court subsequently affirmed the March 22, 2012 order. *Zweifel v. Zweifel*, 2013 WL 776762 (Minn. App. Mar. 4, 2013).

In its March 22, 2012 order, the district court required Mead to cooperate with the sale, established specific requirements of her cooperation, and warned that any future lack of cooperation with the receiver or the realtor would result in her removal from the home. In April 2012, the receiver wrote a detailed letter to the district court describing Mead's lack of cooperation. The receiver wrote that Mead had, among other things, refused to provide the realtor with a key or to use a lockbox, failed to sign the listing agreement, and failed to leave the home during a showing. The receiver stated that Mead had "made the division and sale of personal property and the sale of the homestead impossible."

On May 2, 2012, the district court ordered Mead to appear for a hearing on May 9, 2012, to explain why she should not be held in contempt for violating the March 22, 2012 order. Mead appeared and testified that she was not trying to be uncooperative. On May 15, 2012, the district court issued an order in which it found that Mead had been uncooperative and had "repeatedly demonstrated that her continued residence in the homestead will hinder and/or delay the sale of the property." The district court ordered Mead to vacate the homestead by May 31, 2012. The district court did not hold Mead in contempt. Mead appeals.

DECISION

Mead argues that the district court erred in its May 15, 2012 order by removing her from the homestead. Her argument consists of four parts.

A.

Mead first argues that the district court erred by not giving her proper notice of the May 9, 2012 hearing, thus preventing her from properly representing herself.

Mead contends that the district court should have given her 14 days' notice pursuant to Minn. R. Gen. Pract. 115.04. But that rule governs non-dispositive motions. The May 9, 2012 hearing was not a hearing on a non-dispositive motion. Rather, it was scheduled by the district court on its own initiative. The district court ordered Mead to show cause as to why she should not be held in contempt. Notice of such a hearing is governed by the following rule: "Contempt proceedings may be initiated by notice of motion and motion or by an order to show cause served upon the person of the alleged contemnor together with motions accompanied by appropriate supporting affidavits." Minn. R. Gen. Pract. 309.01(a). Nothing in this rule requires any particular amount of notice. *See id.*

Mead was personally served on May 4, 2012, with a copy of the May 2, 2012 order. Mead previously had received notice that her lack of cooperation could cause her to be removed from the home. In its March 22, 2012 order, the district court explicitly stated **"that any future lack of cooperation with either the Receiver or with the Realtor with regard to any requests regarding the preparation, staging, or sale of the homestead will result in her removal from the homestead."** The district court also

stated explicitly that Mead had only one more chance to cooperate and thereby remain in the home:

Although it appears that [Mead] is not motivated to sell the property, this Court is reluctant to remove [Mead] from her home and business at this time. Therefore, [Mead] will be given **one more chance** to work with the professionals to expedite the sale of the personal and real property. This means that [Mead] **must** comply with all requests made by either the Receiver or the Realtor. If [Mead] fails to do so, she will be removed from the property.

In the May 2, 2012 order to show cause, the district court specifically referred to the March 22, 2012 order, to the receiver's letter, and to factual issues raised by the receiver's letter.

We conclude that the district court did not err by giving Mead inadequate notice of the May 9, 2012 hearing.

B.

Mead next argues that the district court erred by denying her request to continue the May 9, 2012 hearing. She had surgery on a shoulder approximately one month before the hearing, and her arm was in an immobilizer during the hearing.

“A trial court has discretion in ruling on a request for a continuance and should base its decision on the facts and circumstances surrounding the request.” *Hamilton v. Hamilton*, 396 N.W.2d 91, 94 (Minn. App. 1986). A party's medical incapacity may be grounds for a continuance, but a district court is not precluded from making its own observations of a party's ability to proceed. *Chahla v. City of St. Paul*, 507 N.W.2d 29, 32 (Minn. App. 1993), *review denied* (Minn. Dec. 14, 1993). We apply an abuse-of-

discretion standard of review to a district court's denial of a motion for a continuance. See *Maranda v. Maranda*, 449 N.W.2d 158, 167 (Minn. 1989).

In this case, the district court had the opportunity to observe Mead's ability to proceed and relied on its observations when denying her request for a continuance. In its May 15, 2012 order, the district court noted that Mead "was able to draft and file voluminous motions with the Court which were more than 100 pages and more than 40 pages on April 26 and 31, 2012, respectively." The district court also noted that Mead had submitted lengthy motions following her surgery and had filed multiple appeals after its March 22, 2012 order. The district court's ruling indicates that it considered Mead's condition and her ability to adequately participate in the hearing.

We conclude that the district court did not err by denying Mead's request for a continuance.

C.

Mead next argues that the district court erred by making findings of fact that are not supported by the evidentiary record. We apply a clearly erroneous standard of review to a district court's findings of fact. *Thompson v. Thompson*, 739 N.W.2d 424, 429 (Minn. App. 2007). "When applying the clearly erroneous standard, we view the record in the light most favorable to the district court's findings." *Id.* (citation omitted).

Mead has identified three particular findings that she asserts are unsupported. First, she contends that there is insufficient evidence to support a finding concerning her ability to make utility payments. The district court found that "Mead was having financial difficulties and has been unable to stay current on utility payments since at least

August 2011.” Mead concedes in her appellate brief that she “was behind on utilities.” Mead stated in an April 30, 2012 affidavit that she sought assistance with utility payments “because I knew I could not pay the utilities all on my own.” This evidence supports the district court’s finding.

Second, she contends that there is insufficient evidence to support a finding that she failed to cooperate with the realtor’s placement of a lockbox on the entrance to the home. The district court found, “Although ordered to do so on March 22, 2012, Ms. Mead refused to allow Edina Realty to place a lockbox on the homestead until after she was served with the Order to Show Cause on May 4, 2012.” The receiver testified that Mead would not provide a key to the realtor or allow the placement of a lockbox, which prevented the realtor from accessing the home and, thus, hindered the receiver’s ability to sell it. Mead essentially agreed that she prevented the placement but testified that she did so because she did not understand how the lockbox worked and was concerned that it would allow Zweifel to have access to the home. The district court found that this was not a valid excuse for ignoring its order and that Mead’s failure to cooperate with the use of a lockbox “substantially hindered the Realtor’s efforts to market and show the property.” The district court’s finding on this point is supported by the evidence in the record.

Third, Mead contends that there is insufficient evidence to support a finding that she failed to leave the homestead grounds during showings. The district court did not make any such finding. Thus, there is no finding to review.

We conclude that the district court's essential findings are supported by the evidence in the record and are not clearly erroneous.

D.

Finally, Mead argues that, in light of all the circumstances, the district court erred by ordering her to vacate the home.

A district court may “issue orders to implement, enforce, or clarify the provisions of a decree, so long as it does not change the parties’ substantive rights.” *Redmond v. Redmond*, 594 N.W.2d 272, 275 (Minn. App. 1999). “An order implementing or enforcing a dissolution decree does not affect the parties’ substantive rights when it does not increase or decrease the original division of marital property.” *Nelson v. Nelson*, 806 N.W.2d 870, 871 (Minn. App. 2011) (citing *Hanson v. Hanson*, 379 N.W.2d 230, 233 (Minn. App. 1985)). This court applies an abuse-of-discretion standard of review to a district court’s order to enforce, implement, or clarify terms of a decree. *Id.* (citing *Potter v. Potter*, 471 N.W.2d 113, 114 (Minn. App. 1991)).

The parties’ December 2010 stipulated decree provided that the homestead “shall be sold by the parties at the best price that may reasonably be obtained” and that the “parties shall cooperate with each other to list said home for sale with a mutually agreeable realtor and shall cooperate to effectuate the sale of the home.” The decree also provided for a division of the proceeds from the sale of the homestead. The decree provided that Mead could live in the home until it was sold and was entitled to 60 days’ notice before being required to vacate the home. The district court found that Mead “repeatedly demonstrated that her continued residence in the homestead will hinder

and/or delay the sale of the property.” The district court also found that “Mead has waived her right to reside in the homestead pending its sale due to her failure to cooperate with the sale of the homestead.” The district court’s findings establish a justification for the district court’s chosen remedy.

The facts of this case are distinguishable from those of *O’Connor v. O’Connor*, 386 N.W.2d 395 (Minn. App. 1986), in which this court affirmed a district court’s decision not to order a former husband to vacate a homestead because there was evidence indicating that he was not to blame for the failure of a sale. *Id.* at 398. In this case, however, the evidence amply supports the district court’s conclusion that Mead did not cooperate with efforts to sell the home. The district court’s May 15, 2012 order does not alter the parties’ substantive rights; it merely enforces Zweifel’s right to Mead’s cooperation in selling the home and, consequently, his right to his share of the proceeds of the sale. *See Redmond*, 594 N.W.2d at 275.

Mead also contends that the district court should have allowed her to remain in the home because she cannot afford other housing. In response, Zweifel contends that Mead “seems to argue that she should be allowed to live in the property indefinitely,” despite the parties’ agreement to the contrary. Zweifel also contends that he will not receive his share of the marital estate unless Mead is removed from the home. Zweifel is correct. Furthermore, to not enforce the decree would tend to enlarge Mead’s substantive rights.

Mead contends further that the district court did not give sufficient consideration to her recent surgery. But the record shows that the district court was fully aware of Mead’s recent surgery on her shoulder.

We conclude that the district court did not err by ordering Mead to vacate the home to allow it to be sold. Mead asserts that the district court should not have expressly stated that her presence at the homestead would be a trespass and that the sheriff had authority to remove her. But she cites no authority for her assertion that this part of the order was erroneous.

In sum, the district court did not err in ordering Mead to vacate the homestead.

Affirmed.