STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2070

Mary Jane Chaignot, petitioner,
Respondent,

vs.

Edward Barton Chapin, Jr.,
Appellant.

Filed October 20, 2009
Affirmed
Toussaint, Chief Judge

Hennepin County District Court
File No. 27-FA-000280008

Denis E. Grande, Tim A. Staum, Mackall, Crounse & Moore, PLC, 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402 (for respondent)

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Considered and decided by Toussaint, Chief Judge; Stoneburner, 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

TOUSSAINT, Chief Judge

In this appeal involving enforcement of a dissolution judgment's division of certain residential property and associated rental income, appellant-father Edward Barton Chapin, Jr. argues that (1) he should not have been required to sell the property by a particular date; (2) rental income should not have been imputed to him; (3) he should have been given credit for certain expenses of the property; and (4) the district court miscalculated the share of martial property due to respondent-mother Mary Jane Chaignot. Because the record supports the district court's findings of fact and does not otherwise show that the district court abused its discretion, we affirm.

D E C I S I O N

I.

The 2004 judgment dissolving the parties' marriage required appellant to sell the duplex that was the parties' marital home but did not specify the date by which he had to do so. We reject appellant's argument that the October 2008 order requiring him to sell the duplex within 90 days improperly alters an otherwise-final property division. When the time to appeal a dissolution judgment expires, the property division therein is final "[e]xcept for an award of the right of occupancy of the homestead, provided in [Minn. Stat. §] 518.63." Minn. Stat. § 518A.39, subd. 2(f) (2008). Under Minn. Stat. § 518.63 (2008), the district court may, upon considering the custody of any children, modify a dissolution judgment's award of the right to occupy a former marital home for a period of time determined by the district court. Here, the dissolution judgment states that "[b]ut

for" the fact that the parties' child would reside in the home with appellant, the judgment would have ordered the home "sold immediately." Thus, because appellant's occupancy of the duplex was based on it being the child's residence, his occupancy was subject to modification under Minn. Stat. § 518.63. *See Angelos v. Angelos*, 367 N.W.2d 518, 521 (Minn. 1985) (noting that legislature specified that occupancy of marital home is not final and "provided for its modification in Minn. Stat. § 518.63 (1984)").

"[M]odification of the occupancy of the homestead, like modification of maintenance and support, should be allowed only when the party seeking modification can show a material change in circumstances." *Angelos v. Angelos*, 372 N.W.2d 405, 407-08 (Minn. App. 1985), *review denied* (Minn. Oct. 24, 1985). Here, the judgment requires appellant to list the duplex for sale "at the fair market value" if the duplex stopped being the child's residence. In January 2007, the district court transferred custody of the child to respondent, and appellant listed the duplex for sale.

Despite appellant's receipt of "no offers" for the duplex, he "refused to consider lowering the price." Later, at a hearing in this enforcement proceeding, appellant agreed to reduce the price by $200,000. The district court's inference that appellant failed to honor the judgment's requirement that he list the duplex for sale at fair market value is supported by the record. Therefore, we conclude that the district court had authority, under Minn. Stat. § 518.63, to modify appellant's ability to live in the duplex. We also conclude that the district court had authority, pursuant to the terms of the judgment, to compel sale of the duplex.

II.

The judgment awarded each party one-third of the rental income from the second unit of the duplex for the period from August 1, 2004, until either satisfaction of respondent's lien on the duplex or its sale. The remaining third of the rental income was to be used for the duplex's expenses. Appellant argues that the district court's imputation to him of rental income for times when the duplex's second unit was not rented alters an otherwise-final aspect of the property division.[1]

The judgment required appellant to pay respondent her share of the rent on a "monthly basis" but does not address what happens if the duplex's second unit is not rented. When a district court is confronted with a circumstance not anticipated by its judgment, the district court has discretion to enforce the judgment as is appropriate under the circumstances, as long as it does not alter rights that are otherwise final under the judgment. *See Hanson v. Hanson*, 379 N.W.2d 230, 233 (Minn. App. 1985) (affirming district court's conversion of one party's share of parties' 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 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).

[1] Part of appellant's argument against imputing rental income to him is based on his attempt to analogize this case to the standard for imputing income to a child-support obligor under Minn. Stat. § 518.551, subd. 5b(d) (2004) and Minn. Stat. § 518.54, subd. 6 (2004). These statutes were repealed in 2006. 2006 Minn. Laws ch. 280, §§ 43, 47. The replacement statutes use a different mechanism for determining income than the repealed statutes. *Compare* Minn. Stat. § 518A.32 (2008) *with* Minn. Stat. §§ 518.54, subd. 6, .551, subd. 5b(d). Therefore, appellant's analogy is of limited assistance here.

No testimony or evidence was presented concerning appellant's attempts to rent the second unit of the duplex. In one unsworn exchange with the district court, appellant asserted that his failure to rent the unit was the result of "a difficult rental market." The district court implicitly rejected this assertion by imputing rent for the unrented periods. A factfinder, even when presented with uncontradicted testimony, is not required to accept that testimony "if the surrounding facts and circumstances afford reasonable grounds for doubting its credibility." *Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987); *see also Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that appellate courts defer to district court credibility determinations).

Here, the record suggests that appellant increased the rent on the second unit to pay for increased duplex-related expenses, apparently pricing the unit out of the market. Appellant could have invoked a separate provision in the judgment providing for reallocation of the existing rental income to cover expenses, but he did not do so. Under these circumstances, we cannot say that the district court abused its discretion by concluding that appellant was responsible for the failure to rent the unit and enforcing the judgment in a manner that made appellant liable to respondent for her share of imputed rent. *See Graff v. Graff*, 472 N.W.2d 882, 884 (Minn. App. 1991) (rejecting argument that district court improperly modified its judgment, stating "court merely recognized that it was impossible to implement the original decree in its original form and reallocated the assets and debts to make it possible to enforce the judgment"), *review denied* (Minn. Sept. 13, 1991).

III.

Admitting that he did not seek respondent's approval for certain duplex expenses allegedly exceeding one-third of the rent, appellant challenges the district court's failure to credit him with those expenses. While appreciating appellant's candor on the point, we must note that the district court stated that appellant "didn't document anything indicating greater expenses, so I'm not going to consider that offset." Also, because appellant did not seek mediation of any expense dispute he may have had with respondent, he did not satisfy one of the judgment's prerequisites for having the district court address whether it was proper to pay respondent less than one-third of the rental income. On this record, the district court did not misapply the judgment by not addressing those expenses.

IV.

Appellant challenges several components of the district court's determination that he owes respondent $82,537. Appellant asserts that respondent owes him $6,315 from her IRA and that this amount was not considered by the district court. While respondent admits that she owes appellant the $6,315, the record shows that the district court considered this amount in its calculation of the amount appellant owed respondent.[2]

[2] Respondent states that the district court made an error in reaching the $6,315 figure, but she did not file a notice of review regarding the error and admits that the error is minor. Therefore, we do not address this alleged error. *See Arndt v. Am. Family Ins. Co.*, 394 N.W.2d 791, 793-94 (Minn. 1986) (holding that this court properly declined to review issue argued by respondent where there was no notice of review); *Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (refusing to remand for de minimis error).

We reject appellant's assertion that the district court "confirmed" that respondent owed appellant $3,813.50 for certain personal property. After initially making this statement, the district court corrected itself, stating, "oh, no, he owes her that because he had the property."

The district court previously ruled that respondent owed appellant $995.50 in support arrears and that this amount would be set off against her share of the duplex proceeds. While this setoff was not included in the district court's calculation of the $82,537 that appellant owes respondent, it is about 12% of $82,537 and, on this record, we conclude that the amount is de minimis and decline to reverse on this basis. *See Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (refusing to remand for de minimus technical error).

Appellant refers to a $1,235 personal-property equalizer, "rent owing of $7,059," and $951 of respondent's alleged support arrears. Because the sources for these figures are not identified and not clear, we cannot evaluate appellant's arguments regarding those figures.

Appellant asserts that respondent owes him $58,761.63 based on an exhibit that appellant presented to the district court that was neither understood by the district court nor part of the district court file transmitted to this court. Because the relevant exhibit is not before this court, the question is not properly before this court. *See Truesdale v. Friedman*, 267 Minn. 402, 404, 127 N.W.2d 277, 279 (1964) (stating that "party seeking review has the duty to see that the appellate court is presented with a record which is sufficient to show the alleged errors"). We note, however, that the calculation in the

exhibit apparently assumes a selling price for the duplex that is $20,000 different than the price to which the parties agreed and which was adopted by the district court's order.

Noting that respondent told the district court that she would prefer appellant to buy out her interest in the duplex rather than to sell the duplex herself, appellant implicitly challenges the propriety of a buyout. But the district court has discretion to enforce its judgment. *Hanson*, 379 N.W.2d at 233; *Sullivan*, 374 N.W.2d at 519. Moreover, it is not clear that a buyout will occur. The district court's October 2008 order gave appellant until January 1, 2009 to sell the duplex or to buy out respondent's interest. If neither occurred, respondent was authorized to prepare the duplex for sale and "to contract with a realtor of her choice for immediate marketing of the home initially at $599,000." Thus, no buyout will occur if the duplex is sold, and, if it sells for an amount other than $599,000, the amount that the parties will receive from the sale will have to be recalculated.

Affirmed.