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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-433**

Mariola Minga-Gigowski, n/k/a Minta, petitioner,
Respondent,

vs.

Thomas Gigowski,
Appellant.

**Filed August 31, 2010
Affirmed
Harten, Judge***

Hennepin County District Court
File No. DC270554

Mariola Minta, Ramsey, Minnesota (pro se respondent)

Thomas A. Gigowski, West Allis, Wisconsin (pro se appellant)

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Harten,
Judge.

UNPUBLISHED OPINION

HARTEN, Judge

Appellant, acting pro se, challenges the district court's order declaring that appellant's judicial lien on the parties' homestead was satisfied and denying his motions for release of the funds to himself, for interest, and for sanctions of respondent and

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

appellant's former attorney. Because we see no error in the district court's findings of fact or in its legal determinations, we affirm.

FACTS

In 2003, the marriage of appellant Thomas Gigowski and respondent Mariola Minta was dissolved by a judgment that awarded her the homestead and appellant a \$9,500 lien on the homestead. Prior to the dissolution, appellant had assigned \$6,000 of his interest in the homestead funds to his attorney for payment of attorney fees. After the attorney had withdrawn and the \$9,500 was in escrow at a title company, appellant signed a "Nullification" that purported to revoke this assignment.

In 2009, respondent moved to declare the marital lien satisfied and to award her the funds as past child support. Appellant filed an objection to respondent's motion and moved for, among other things, release of the escrowed funds to himself and sanctions against respondent and appellant's former attorney.

After a hearing at which both parties, the title company, and appellant's former attorney appeared, a referee issued an order declaring that the judicial lien established by the dissolution was satisfied and denying all other motions; appellant's motion to have the title company release the escrowed funds to himself was denied "without prejudice pending further proceedings." Appellant, acting pro se, argues that the order should be "set aside."¹

¹ Respondent takes no part in the appeal.

DECISION

“Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous. . . . The findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court.” Minn. R. Civ. P. 52.01.

The findings in the order are not clearly erroneous. The finding that appellant’s lien on the parties’ homestead was satisfied was supported by testimony from respondent that she had arranged for \$9,500 to be held in escrow at the title company and indication from the title company’s attorney that the funds were still being held in escrow.² The finding that appellant had assigned his interest in the escrowed funds to his former attorney is supported by the signed document in the record stating that appellant, as assignor, gave the attorney’s law firm “full power and authority to withdraw and use \$6,000.00 of the monies from [its] portion of the above funds for the purpose of paying amounts which may become due and owing for fees for legal services . . . as set out in the Retainer Agreement between [them].” The finding that appellant had “signed something entitled Nullification which [he] claims nullifies the assignment of home proceeds to his lawyer” is supported by a copy of that document in the record. The finding that there are no grounds for sanctioning respondent is supported by the absence of any evidence in the record.

² The referee noted that “All involved agreed the Court could hold the funds rather than the title company, but the Court does not have the ability to hold the disputed funds.” *But see* Minn. R. Civ. P. 67.02 (permitting a person in possession of money claimed adversely by two other persons, neither of whom has brought an action against the person in possession, to place the money in the custody of the court). Thus, the title company could transfer the funds to the court.

Appellant has shown no reason to reverse the denial of his motion for an order directing the title company to release escrowed funds to him. The district court correctly concluded that it has no jurisdiction over the title company or over the dispute between appellant and his former attorney. Moreover, the hearing transcript reveals that appellant rejected the referee's suggestions of an attorney-fee arbitration as a means of resolving their dispute and of transferring the funds to the attorney's trust account to get them out of escrow with the title company.³

Appellant's arguments are without merit.

Affirmed.

³ On appeal, appellant also seeks sanctions against the title company, which he claims is "in violation [of a court order] for continued support of [an] unsecured claim against [a]ppellant's funds, as evidenced by ongoing refusal to deliver said escrowed funds to [a]ppellant." This argument is not properly before us because it was not presented to the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that this court generally does not address matters not presented to the district court.). In any event, appellant's argument fails for two reasons: first, the title company is not a party to this action and the district court has no jurisdiction to impose sanctions; second, the title company acted in accord with the district court's denial of appellant's motion to have the title company release the funds to him.