

STATE OF MINNESOTA

IN SUPREME COURT

A19-0372

Court of Appeals

Chutich, J.

In re the Matter of:

Rodney Tristan Miller,

Respondent,

vs.

Filed: January 20, 2021  
Office of Appellate Courts

Pamela Marie Miller, n/k/a Pamela Marie Spera,

Appellant,

Maria Molloy, intervenor,

Respondent.

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Pamela M. Spera, Eden Prairie, Minnesota, pro se.

David M. Cox, Two Rivers Law P.A., Otsego, Minnesota, for respondent Maria Molloy.

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S Y L L A B U S

Respondent is entitled to intervene as a matter of right under Minnesota Rule of Civil Procedure 24.01 because her minor daughter has an interest in the retirement accounts that are the subject of appellant's enforcement action. Respondent's right to intervene is limited specifically to the valuation of the accounts.

Affirmed as modified.

## OPINION

CHUTICH, Justice.

This case presents the question of whether a third party can intervene as a matter of right in a proceeding to enforce a 14-year-old divorce decree (“Decree”). Appellant Pamela Marie Spera<sup>1</sup> (Spera) sought enforcement of the Decree that dissolved her marriage to Rodney Miller, seeking specifically to have the retirement accounts she and Miller each held divided according to the terms of the Decree. Neither party had divided their accounts at the time, as the Decree required, while Miller was still alive. Instead, before he passed away in 2018, Miller named his four daughters—his three children with Spera, and one child with respondent Maria Molloy (“Molloy”)—as beneficiaries of his retirement accounts. Molloy is the mother of Miller’s youngest daughter, K.M.M., a minor. Molloy sought to intervene in Spera’s enforcement proceeding as a matter of right to assert K.M.M.’s interest in Miller’s retirement accounts.

The district court denied intervention, finding that under the Decree, Spera had a superior interest in the accounts and that K.M.M.’s interest attached only after the property division required by the Decree took place. The court of appeals reversed, concluding that the four requirements under Minn. R. Civ. P. 24.01 for intervention were met. We conclude that Molloy has satisfied the standard for intervention as of right under Rule 24.01 of the Minnesota Rules of Civil Procedure. Because we hold that Molloy’s right to intervene is narrower than the court of appeals held, we affirm as modified.

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<sup>1</sup> Spera was formerly known as Pamela Miller.

## FACTS

Rodney Miller and Pamela Spera were married in September 1981. They had three daughters together and subsequently separated in July 1999. When they dissolved their marriage in May 2004, Miller and Spera each owned several retirement accounts. Miller owned five accounts: one each at Vanguard, Fidelity Investments, and Dreyfus Founders Funds, and two at American Century. Spera owned four accounts: one at Fidelity Investments and three at American Century.

The Decree ordered the parties to divide their interests in the accounts equally:

28. Retirement Accounts – By virtue of the divorce decree and judgment entered on this day dissolving the bonds of marriage existing between the Petitioner and Respondent, along with this Order, the parties are ordered by the court to divide equally between themselves their interests in all of the above retirement accounts, by transferring one-half of the interest in each of the parties' individual accounts to the other party, pursuant to the divorce decree and judgment. The value of the accounts is to be determined at the time of the division of the accounts, which shall be done within 30 days of the date of this Order.

The Decree also ordered the parties to cooperate in making the conveyances required under paragraph 28:

36. Execution and Exchange of Documents – To implement the terms and provisions contained herein, each of the parties shall make, execute and deliver to the other party instruments of conveyance, assignment and other documents as may be required. In the event either party fails to do so, the Judgment and Decree shall operate as said conveyance.

And the Decree reserved jurisdiction for the district court to distribute assets that were not properly divided:

37. Retention of Jurisdiction – In the event there are assets or income which have not been disclosed and/or divided herein, the court shall retain

jurisdiction over said income and/or assets for the purpose of making an equitable division thereof. The party failing to disclose said income and/or assets shall pay the reasonable attorney fees and costs of the other party incurred in enforcing this provision.

Miller and Spera never divided and transferred the one-half interests in their respective retirement accounts.

In 2012, Miller and Molloy had a daughter, K.M.M.<sup>2</sup> After K.M.M.'s birth, Miller changed the beneficiary designation on his retirement accounts so that each of his four children would receive a percentage of the accounts upon his death. Spera was not included as a designated beneficiary on any of the accounts. Miller died in February 2018, without a will.

On June 22, 2018, Spera filed a motion to enforce the Decree and to divide the retirement accounts. She requested an order enforcing paragraphs 28 and 36 of the Decree and holding the Decree to be in full force and effect concerning the division of the parties' interests in the retirement accounts. Spera also requested that the value of the retirement accounts be determined as of the date of the new order, excluding any value attributed to contributions that she or Miller made after the date of the Decree.

Molloy moved to intervene on behalf of K.M.M. She argued that intervention as a matter of right is allowed under Minnesota Rules of Civil Procedure 24.01, based on K.M.M.'s interest in her late father's retirement accounts. Molloy alternatively requested permissive intervention under Rule 24.02. She also argued that Spera's motion to enforce the Decree should be denied because it was barred by laches and the 10-year statute of

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<sup>2</sup> Miller and Molloy never married; they separated in 2014.

limitations under Minn. Stat. § 541.04 (2020). In the alternative, Molloy asked the district court to reserve ruling on Spera's motion pending an exchange of statements for the retirement accounts of Miller and Spera.

The district court denied Molloy's motion to intervene on behalf of K.M.M. The court found that by naming K.M.M. as a designated beneficiary of a portion of the accounts, Miller "acted in contravention to the Judgment and Decree by designating beneficiaries to his account other than Ms. Spera." Citing *Luthen v. Luthen*, 596 N.W.2d 278 (Minn. App. 1999), the court reasoned that "strong public policy discourages third party intervention in dissolution matters." The court concluded that although K.M.M. "has an interest in the accounts in question, she does not have an interest in the initial division of the accounts within the context of the dissolution" and therefore Molloy could not intervene as a matter of right on K.M.M.'s behalf.

The district court also denied permissive intervention, citing the same public policy considerations, which "supersede[d] Ms. Molloy's interest in ensuring [K.M.M.]'s future interests are protected." The court did not address the merits of Molloy's laches and statute of limitations arguments because it found that she was not a proper intervenor. The court granted Spera's motion for enforcement of the Decree and found that the parties to the dissolution are each entitled to "50% of the retirement accounts pursuant to [paragraph] 28 of the Judgment and Decree" and that the award did not include "any contributions by either party to those accounts after the date of the Judgment and Decree or any additional value that is a consequence of those contributions." Molloy appealed.

The court of appeals reversed, holding that the district court erred in denying Molloy’s Rule 24.01 motion to intervene as a matter of right. *In re Miller v. Miller*, No. A19-0372, 2020 WL 1676639 (Minn. App. Apr. 6, 2020). The court of appeals reasoned that the district court’s reliance on *Luthen* was “misplaced,” because that case was factually distinguishable. 2020 WL 1676639, at \*3. The court of appeals concluded that “[b]ecause K.M.M. claims that she is entitled to a portion of the accounts awarded to Miller, the value of K.M.M.’s interests in the accounts directly depends on accurate valuations of the accounts.” *Id.* The court of appeals noted that “[i]f Miller were alive, he could protect his interests in the accounts by participating in the valuation process; he would not be required to simply accept [Spera’s] evidence regarding the account values.” *Id.* The court of appeals further stated, “Incorrect valuations will impair or impede [Molloy’s] ability to protect K.M.M.’s interests and, as the district court found, K.M.M. is ‘not adequately represented by the existing parties.’ ” *Id.* (footnote omitted). The court of appeals declined to consider the merits of the statute of limitations and laches issues. *Id.* at \*4. Instead, after reversing the order granting Spera’s motion for enforcement of the Decree, the court of appeals remanded to the district court for further proceedings. *Id.* at \*3.

Spera sought review by this court, which we granted.

### ANALYSIS

We independently assess the appropriateness of an order that denies a motion to intervene as a matter of right under Minnesota Rule of Civil Procedure 24.01. *See Norman v. Refsland*, 383 N.W.2d 673, 676 (Minn. 1986). “The standard is similar to that used by

the federal court in reviewing orders under Fed. R. Civ. P. 24(a)(2).” *Norman*, 383 N.W.2d at 676.

Intervention as of right is governed by Rule 24.01. The rule provides as follows:

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the matter may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

Minn. R. Civ. P. 24.01.

Rule 24.01 establishes four requirements for intervention as of right: “(1) a timely application; (2) an interest in the subject of the action; (3) an inability to protect that interest unless the applicant is a party to the action; and (4) the applicant’s interest is not adequately represented by existing parties.” *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 641 (Minn. 2012) (internal quotation marks omitted).

The rule seeks to protect persons who claim an interest relating to the property or subject at issue in the litigation from having that interest adversely affected by litigation taking place without their participation. *See Avery v. Campbell*, 157 N.W.2d 42, 45 (Minn. 1968) (explaining that the rule is intended to allow a person claiming an interest to become a party “to prevent judicial processes from being used to the prejudice” of the rights of the proposed intervenor (citation omitted) (internal quotation marks omitted)). In determining whether intervention is proper, the court must accept the allegations in the pleadings as true, unless they are frivolous on their face. *Costley v. Caromin House, Inc.*, 313 N.W.2d 21, 28 (Minn. 1981).

Here, we conclude that factors (1) and (4) are met, primarily because neither Spera nor Molloy disputes these factors. Molloy's application was timely and the district court correctly found that K.M.M.'s interest was not adequately represented by Spera; Spera has not offered any arguments that would support reaching a different conclusion on either of these factors.<sup>3</sup> Accordingly, we turn to the remaining factors: whether Molloy, on behalf of her daughter K.M.M., has a sufficient interest to support intervention and whether the disposition of the action may impair Molloy's ability to protect that interest. We discuss each requirement in turn.

Although an intervenor must have "an interest relating to the property or transaction which is the subject of the action," Rule 24.01 does not require a potential intervenor to show a likelihood or probability of success on the merits. The rule "requires merely a claimed interest, not a certain one." *Miller v. Astleford Equip. Co.*, 332 N.W.2d 653, 654 (Minn. 1983). Although a frivolous claim will not suffice, *id.*, we have "followed [a] policy of encouraging all legitimate interventions." *Costley*, 313 N.W.2d at 28 (citing *Engelrup v. Potter*, 224 N.W.2d 484, 489 (Minn. 1974); *Avery v. Campbell*, 157 N.W.2d 42, 46 (Minn. 1968)). The standard applicable to the corresponding federal rule, Fed. R. Civ. P. 24(a)(2), is well stated and applicable to Minnesota's rule as well: Rule 24.01 requires "a

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<sup>3</sup> Spera was the only party before the district court, given that Miller was deceased and no probate proceeding had been opened for his estate. Spera did not affirmatively assert, in her briefs to this court, that she could adequately represent the child's interests as a beneficiary of Miller's accounts. To the extent that Spera suggested that the child's interests were adequately represented because financial institutions would divide the accounts, those institutions are not parties to this action and therefore cannot represent the child's interests.

direct and concrete interest that is accorded some degree of legal protection.” *Diamond v. Charles*, 476 U.S. 54, 75 (1986).

Applying these principles here, K.M.M.’s claimed interest in her late father’s retirement accounts is direct and concrete—it is not frivolous. K.M.M. is a named beneficiary of certain retirement accounts that are the subject of Spera’s action to enforce the Decree. Given her father’s death, K.M.M. has an interest in a portion of the property subject to paragraph 28 of the Decree; that is, her claim as a beneficiary to some portion of Miller’s retirement accounts. Further, once a valuation is completed in Spera’s enforcement action, K.M.M. would be entitled to a share of the accounts from the financial institutions that have custody of them. Under these circumstances, K.M.M. has a concrete and legally protectable interest. How Miller’s accounts are valued has a direct bearing on K.M.M.’s interests. Because Molloy can demonstrate that K.M.M. has a legitimate, non-frivolous interest in the retirement accounts, she has satisfied Rule 24.01’s second factor.<sup>4</sup>

Having concluded that K.M.M. has a present, vested interest, we next determine whether Molloy “is so situated that the disposition of the action may as a practical matter impair or impede [her] ability to protect that interest.” Minn. R. Civ. P. 24.01. We conclude that she is so situated. The valuation that Spera seeks necessarily impacts K.M.M.’s interests in the accounts subject to Spera’s action. The relief Spera seeks

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<sup>4</sup> The district court alternatively found that Molloy had no interest in the retirement accounts because Miller acted “in contravention of the divorce decree” when he designated K.M.M. as a beneficiary. It is not clear that this conclusion, even if correct, has any effect on whether Molloy has a sufficient interest to support *intervention* under Rule 24.01. An interest obtained by a beneficiary designation, even if later held to be in violation of the Decree, is still a colorable interest, which is all that Rule 24.01 requires.

requires consideration of the contributions, withdrawals, and earnings in the accounts, on a time-specific basis stretching over many years. While financial institutions may be able to do this valuation easily, as the court of appeals aptly reasoned, incorrect valuations of Miller's and Spera's respective interests in the accounts "will impair or impede [Molloy's] ability to protect K.M.M.'s interests." *Miller*, 2020 WL 1676639, at \*3. Without intervening as a party in this enforcement action, Molloy cannot protect K.M.M.'s interest in Miller's retirement accounts and the proper valuation of those accounts. Accordingly, the third requirement of Rule 24.01 is met.

Although K.M.M. has a present, vested interest in the valuation of the retirement accounts of her father, we agree with the district court that "she does not have an interest in the initial division of the accounts within the context of the dissolution." In a prior dissolution action, we reversed a ruling that gave the children of the marriage a potential interest in the real property their parents had acquired during the marriage. *Johnson v. Johnson*, 169 N.W.2d 595, 597 (Minn. 1969). In *Johnson*, the district court did not divide the parties' real property and ordered that "if either party should die while the property is held in joint tenancy, then the title to the property shall vest in the names of the surviving joint tenant and the children born of this marriage." *Id.* at 596. In reversing the order, we explained that "there is nothing in the statutes which authorizes a court to award the children of the marriage any interest whatsoever in the property acquired during coverture." *Id.* at 597; *see also Melamed v. Melamed*, 286 N.W.2d 716, 718 (Minn. 1979) (holding that the district court did not have the power to award a property interest to the parties' children in a dissolution action).

Similarly, K.M.M. has no interest that gives her the right to intervene in the enforcement action regarding the division of retirement accounts that Miller and Spera acquired during their marriage. K.M.M. is not a child of the marriage. *Cf. Valentine v. Lutz*, 512 N.W.2d 868, 870 (Minn. 1994) (explaining that the “property or transaction” language in Rule 24.01 “more appropriately applies to interests involved in traditional civil actions, such as in contracts and torts, rather than the very personal and family interests” involved in a family law matter). As a matter of public policy, the parties to a marriage have the right “to their own divorce action.” *Luthen v. Luthen*, 596 N.W.2d 278, 282 (Minn. App. 1999).

Our holding today is necessarily narrow. Our holding recognizes that K.M.M. has some interest in property awarded in the Decree and that interest is sufficient for Molloy to intervene as a matter of right under Rule 24.01 as to the *valuation* of Miller’s retirement accounts. On remand, Molloy does not have the right to intervene as to the *division* of the retirement accounts, which is a matter governed by the Decree. Molloy also does not have the corresponding right to make arguments concerning laches or the statute of limitations, which challenge the timeliness of Spera’s enforcement action.

### **CONCLUSION**

For the foregoing reasons, we affirm as modified the decision of the court of appeals.

Affirmed as modified.