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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0514, A13-1961, A13-1962**

In re the Marriage of:
Elizabeth Ann Tagg, petitioner,
Respondent,

vs.

Joel Homer Tagg,
Appellant

**Filed April 14, 2014
Affirmed
Rodenberg, Judge**

Washington County District Court
File No. 82-F9-06-007705

Dennis Johnson, Gary K. Luloff, Chestnut Cambronne PA, Minneapolis, Minnesota (for respondent)

Christopher D. Johnson, Rebecca A. Chaffee, Best & Flanagan LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Rodenberg, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

On appeal, appellant-husband argues that the district court abused its discretion in ordering the sale of two of the parties' properties and in declining to revalue a third property awarded to him by the dissolution judgment and decree. Because the district

court did not abuse its discretion in ordering the sales and because the proceeds of those sales are to be divided in conformity with the judgment and decree of dissolution, which is final, we affirm.

FACTS

Appellant-husband Joel Homer Tagg and respondent-wife Elizabeth Ann Tagg divorced on November 20, 2007 pursuant to a stipulated judgment from which there was no appeal. This appeal concerns only those portions of the judgment and decree relating to the parties' three real properties divided by that judgment and decree.

First, the parties owned three adjoining parcels of land in Marine on St. Croix (together, the Marine on St. Croix property). According to the judgment and decree, the Marine on St. Croix property was to be listed for sale at \$1.6 million "or the listing price recommended by the realtor whichever is higher." When the Marine on St. Croix property sold, the parties were each to receive one-half of the net sale proceeds. But until the property sold, wife could occupy the property and was "responsible for payment of the mortgage, property tax, insurance, utility payments and all other costs associated with maintaining the property"

Second, the parties owned property titled in husband's name in Scottsdale, Arizona (Arizona property). This property was also to be sold, with husband being "responsible for payment of the property tax, insurance, utility payments and all other costs associated with maintaining the property" until sold. When the Arizona property sold, the parties were each to receive one-half of the net sale proceeds.

Third, husband was awarded property titled in his name in Forest Lake (Forest Lake property). The stipulated judgment valued the Forest Lake property at \$517,000. Wife was awarded one-half of the fair market value, or \$258,500, which was to be paid from husband's share of the net sale proceeds from the sale of either the Marine on St. Croix property or the Arizona property, "whichever shall be the first to sell." But, "[i]f the proceeds from the sales of both properties are not sufficient to satisfy the \$258,500 award, [wife] shall be entitled to place a [m]arital lien for the unsatisfied portion upon [husband's] Forest Lake property."

In addition to the "equalizer" payments contemplated to compensate wife for husband's receipt of the Forest Lake property, the judgment and decree also provided that wife owed husband for reimbursement for an IRS debt. In the event that the equalizer payments could not "be satisfied from the net sale proceeds at the closing on the sale of the first property to sell, any remaining payments owed to either party [were to] be satisfied from the closing on the sale of the second property."

Over the next five years, the parties disagreed repeatedly on the contemplated property sales. When the real estate market declined badly, the parties were unable to find a buyer for the Marine on St. Croix property at the initial \$1.6 million listing price. Wife eventually took over the listing and began decreasing the asking price. At one point, wife seemed to have found a buyer, but husband refused to sign the purchase agreement for \$775,000. He thought the price was too low. In 2012, wife stopped making payments on the mortgage.

The parties eventually agreed upon a realtor suggested by husband to analyze the Marine on St. Croix property and suggest a listing price. This realtor suggested listing the property at \$849,000, but husband refused to sign the listing agreement. Husband was willing to list the property for its 2012 tax-assessed value of \$1,133,700.

At some point, husband signed a contract for deed to sell the Arizona property, but that deal fell through. Husband eventually relisted the Arizona property at what he considered a fair price, but wife described that listing price as “unrealistic.” Husband continued to receive rental income from the property.

On January 31, 2013, wife moved the district court to (1) require husband to sign a listing agreement with the realtor earlier suggested by husband to sell the Marine on St. Croix property and (2) require husband to obtain an appraisal of the Arizona property and place it on the market at fair market value.¹ On February 22, the district court ordered the parties to sign the proposed listing agreement for the Marine on St. Croix property within five days, with the realtor being authorized to “determine the initial selling price.” The district court also ordered a neutral appraisal of the Arizona property at wife’s expense.

On March 14, wife sought to have husband held in contempt of court for failing to sign the listing agreement for the Marine on St. Croix property within five days. The district court ordered husband to appear in court and show cause why he should not be held in contempt. On March 22, husband filed a notice of appeal related to the February order. Husband then moved the district court to stay proceedings pending his appeal and

¹ A motion was also made to divide all rents from the Forest Lake property and the Arizona property between the parties. But these issues were not raised in this appeal.

to deny wife's motion to hold him in contempt. At a hearing on April 12, the district court denied husband's motion to stay the proceedings pending the appeal. The district court directed husband to sign the listing agreement and concluded, "We are getting this thing listed. We're getting it sold. We're moving on. It's as easy as that."

Husband then moved this court to review the district court's denial of a stay. We denied husband's motion for a stay pending appeal. On July 3, wife signed a purchase agreement for the Marine on St. Croix property for \$799,000. Husband refused to sign the purchase agreement, still believing the price was too low.

Wife then moved the district court for approval of the sale of the Marine on St. Croix property and for an order requiring that the Arizona property be listed for sale at the appraisal price. After the parties' arguments, the district court stated, "I have no doubt whatsoever [husband] is playing us all on this" and that husband is trying to "drag this out as long as possible." It stated further that husband "has figured out in his mind he's going to get virtually nothing out of the [Marine on St. Croix] property and I think he's determined to drive [wife] to the point that she'll get nothing out of it." The district court ordered husband to sign the purchase agreement for the Marine on St. Croix property "forthwith," along with all other documents "reasonably necessary to finalize the sale of the property." The district court stated that, if husband refused to sign, it would sign an order forcing the sale.

The district court also ordered that the listing price of the Arizona property be reduced by \$40,000 at the start of each month until the property was sold. Finally, the district court denied husband's request for a stay.

Husband refused to sign the Marine on St. Croix purchase agreement, and, on October 2, the district court filed an order directing the sale of the Marine on St. Croix property pursuant to the July 3 purchase agreement. Husband then appealed the September and October orders, and we consolidated husband's three appeals. On October 29, the district court filed a summary real estate disposition judgment awarding the Marine on St. Croix property to wife, and the sale of that property closed the next day. We now address the consolidated appeals.

D E C I S I O N

“District courts have broad discretion over the division of marital property and appellate courts will not alter a district court's property division absent a clear abuse of discretion or an erroneous application of the law.” *Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005). When dividing property, a district court abuses its discretion if it resolves the matter in a manner “that is against logic and the facts on record[.]” *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court “may not modify a division of property after the original judgment has been entered and the time for appeal has expired.” *Erickson v. Erickson*, 452 N.W.2d 253, 255 (Minn. App. 1990). But the district court “may issue appropriate orders implementing or enforcing specific provisions of the dissolution decree.” *Id.*

Husband argues that, because the Forest Lake property awarded to him by the judgment and decree has decreased in value, wife will receive 60.6% of the couple's assets after the sale of the Marine on St. Croix property and the Arizona property. To reach this conclusion, husband divides equally the proceeds from the \$799,000 sale of the

Marine on St. Croix property and the proceeds of the Arizona property, assuming that it is sold at its \$537,000 appraisal price, assigns to wife the \$258,500 she is owed from the Forest Lake property, and assigns himself \$0 from this property. Husband contends that the market value of the Forest Lake property is currently \$250,000, meaning that the “equalizer” agreed upon and ordered by the district court in 2007 is now more than the current value of the property.

In suggesting that he will receive nothing from the Forest Lake property, husband misconstrues the judgment and decree. As the district court correctly explained, the stipulated judgment “locked in a dollar price on [the Forest Lake] property but . . . locked in a percentage on the [Marine on St. Croix property].” The district court explained that the reference to \$1.6 million relating to the Marine on St. Croix property was only “a listing price” with an agreement that each party would “get[] half of whatever it sells for.” The judgment and decree equally divided the proceeds from the two property sales and awarded wife \$258,500 (one-half of the fair market value of the Forest Lake property) to compensate her for husband’s immediate receipt of that property. Husband agreed, in 2007, that the Forest Lake property was then worth \$517,000, and he wanted to have the property at that value.

Because the stipulated judgment awarded husband the Forest Lake property valued at \$517,000, and subject to his obligation to pay wife \$258,500, he has already received half the value of that property. Only the other two parcels remain to be divided. And each party will receive 50% of the value of those properties after sale. That those

remaining properties will sell at a price lower than the parties hoped for at the time of the judgment and decree does not alter the overall distribution of the parties' assets.

The judgment and decree expressly anticipated the possibility that the properties could decrease in value. Husband owed wife an equalizer payment of \$258,500 to be paid from the "net sale proceeds" of the Marine on St. Croix property or the Arizona property, "whichever shall be the first to sell." But if the payment could not "be satisfied from the net sale proceeds at the closing on the sale of the first property to sell, any remaining payments . . . [were to] be satisfied from the closing on the sale of the second property." The judgment and decree further provided: "If the proceeds from the sales of both properties are not sufficient to satisfy the \$258,500 award, [wife] shall be entitled to place a marital lien for the unsatisfied portion upon [husband's] Forest Lake property." The judgment thus provided a detailed plan to effectuate an equitable division of property that did not include revaluing the Forest Lake property.

Husband relies on *Stromberg v. Stromberg*, 397 N.W.2d 396 (Minn. App. 1986) in arguing that the sale of the Marine on St. Croix property for \$799,000 resulted in an inequitable property division. In *Stromberg*, the judgment and decree directed the parties "to cooperate with each other in listing the property for sale" and "in effecting a sale of the property as soon as practicable." 397 N.W.2d at 398. Because the property remained unsold four years later, the district court ordered it sold by public auction. *Id.* at 399. We reversed because a public auction would not create a just and equitable division of the marital property. *Id.* at 400.

We have already determined that *Stromberg* is distinguishable from this case, stating in an order of the special term panel that *Stromberg* “involved an alteration of the property distribution in the dissolution judgment rather than enforcement, 397 N.W.2d at 400, as occurred here.” Additionally, in *Stromberg* there was concern that the forced auction of a property would result in a sale at less than market value. *Id.* (explaining that the market value of the home was \$86,000 and a forced sale would “likely net the parties little more than the \$22,000 outstanding mortgage”). Here, there is no evidence that the Marine on St. Croix property was sold for anything less than market value. It was on the market for several years, and an independent analysis of the value of the Marine on St. Croix property resulted in a suggested listing price of \$849,000. The property was then sold for \$799,000, only \$50,000 below the listing price. And wife negotiated with the eventual purchasers and entered an arms-length transaction. Given the amount of time that had passed and the parties’ differing views on how to sell their properties, the district court did not abuse its discretion in ordering the sale of the Marine on St. Croix property at what it determined, and at what the record supports, was its market value.

Husband also argues that the district court’s order reducing the listing price of the Arizona property by \$40,000 each month results “in an inequitable division of the parties’ property.” Husband characterizes the result of the district court’s order as a “fire sale” and as “an improper modification of the [d]ecree.” He suggests that reducing the listing price of the Arizona property each month will force a sale below fair market value, like the forced auction in *Stromberg*. But at oral argument, counsel agreed that the Arizona property still has not sold, despite multiple \$40,000 reductions in the listing price. The

true market value must therefore be lower still than the reduced list price. And, when the dropping list price reaches the true market value of the property, each party will “receive one-half of the net sale proceeds” as required by the judgment and decree. The district court acted within its discretion in effectuating the sale of the Arizona property contemplated by the judgment and decree.

The judgment and decree requires the sale of both the Marine on St. Croix property and the Arizona property. This requirement endures even though both properties have lost value. The district court “may issue appropriate orders implementing or enforcing specific provisions of the dissolution decree.” *Erickson*, 452 N.W.2d at 255. Here, the district court’s orders regarding both the Marine on St. Croix property and the Arizona property merely enforce specific provisions in the judgment and decree that require the properties to be sold. *See id.* The district court acted within its discretion in ordering the sales.

Husband also argues that there has been a substantial decrease in the value of the Forest Lake property and that the district court abused its discretion in declining to revalue the property. “If there is a substantial change in value of an asset between the date of valuation and the final distribution, the court may adjust the valuation of that asset as necessary to effect an equitable distribution.” Minn. Stat. § 518.58, subd. 1 (2012).

Husband relies on *Bollenbach v. Bollenbach*, 285 Minn. 418, 175 N.W.2d 148 (1970) in support of his argument that the district court should take notice of the Forest Lake property’s decrease in value and distribute the decrease equally. But in *Bollenbach*, the supreme court explained:

[T]he decree should be so phrased as to permit such modification as might be required to prevent the inequities resulting from marked changes in market value of the property between the date of the decree and a timely execution of the plan of distribution contemplated by it, *at least to the extent that modification is possible before the judgment and decree become final.*

285 Minn. at 436, 175 N.W.2d at 159 (emphasis added). Here, the judgment and decree became final in 2007. *See* Minn. Stat. § 518.145, subd. 1 (2012) (“A decree of dissolution of marriage or of legal separation is final when entered[.]”). The stipulated judgment awarded husband the Forest Lake property at a value of \$517,000. Husband chose to retain the property through a falling market and he retains it still. *Bollenbach* permits modification *before* a judgment and decree becomes final; it does not support husband’s argument that the parties’ judgment and decree must be modified six years *after* it became final. *See* 285 Minn. at 436, 175 N.W.2d at 159.

Finally, a district court “may not modify a division of property after the original judgment has been entered and the time for appeal has expired.” *Erickson*, 452 N.W.2d at 255. “And mere unforeseen circumstances will not permit a reopening of the judgment.” *Harding v. Harding*, 620 N.W.2d 920, 923 (Minn. App. 2001), *review denied* (Minn. Apr. 17, 2001). At oral argument, husband contended that the division of marital property must be equal “at the end of the day.” But that argument begs the question: At the end of which day? Husband wanted and received the Forest Lake property at an agreed value in 2007. And the parties’ judgment and decree does not include any provision to revalue the Forest Lake property or redistribute the marital assets at a later date. Because the distribution of the Forest Lake property was final in 2007, the district

court did not abuse its discretion in declining to reopen the judgment and decree so as to revalue the Forest Lake property after consummation of the agreed-upon sale of the two other properties.

Affirmed.