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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0672**

Pat Hart Fitzsimmons, petitioner,  
Appellant,

vs.

Patricia Lee Fitzsimmons, n/k/a Patricia Lee Ellyson,  
Respondent.

**Filed May 6, 2008  
Reversed  
Ross, Judge**

Carver County District Court  
File No. 10-FA-04-380

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Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Crippen,  
Judge.\*

**UNPUBLISHED OPINION**

**ROSS, Judge**

This appeal arises from a district court order enforcing a pretrial order for payment  
of temporary spousal maintenance after the court entered a final decree of marital

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

dissolution. Appellant Pat Fitzsimmons argues that the district court did not have subject-matter jurisdiction to enforce the pretrial order after final judgment had been entered. Because the pretrial order merged with the final order and the district court did not have subject-matter jurisdiction to enforce the pretrial order, we must reverse.

### **FACTS**

In July 2004, Pat Fitzsimmons petitioned to dissolve his marriage to Patricia Fitzsimmons. Patricia Fitzsimmons filed a motion requesting temporary spousal maintenance. In January 2005, the district court granted the motion and ordered Pat Fitzsimmons to pay Patricia Fitzsimmons monthly, temporary spousal maintenance in the amount of \$3,000 from his claimed non-marital assets starting January 1, 2005.

Pat Fitzsimmons moved the district court to reconsider the order, challenging the payment of maintenance from his non-marital assets. The district court granted his motion and amended the order to require that the temporary spousal maintenance be paid from his income. But Pat Fitzsimmons failed to pay temporary spousal maintenance, and in June 2005, Patricia Fitzsimmons moved for judgment for unpaid spousal maintenance from January through June of 2005. The district court denied her motion at that time, but it reserved the issue of any judgment for unpaid spousal maintenance, reasoning that the issue could be more adequately addressed in the trial scheduled for September 2005.

After that trial, the district court dissolved the marriage in December 2005 and entered final judgment on January 30, 2006. The court awarded temporary spousal maintenance in the amount of \$3,000 monthly, commencing on February 2, 2006, but it did not address arrears or the enforcement of the January 2005 temporary spousal

maintenance order. Patricia Fitzsimmons moved for amended findings of fact in March 2006 and requested that the spousal-maintenance arrears from the January 2005 order be included as an additional component of the property settlement. In August 2006, the district court denied her motion. A notice of filing of the order was served on Patricia Fitzsimmons, but she did not appeal.

Instead, Patricia Fitzsimmons moved to enforce the January 2005 temporary order, requesting \$39,000 for temporary spousal maintenance for the period of January 1, 2005, through January 30, 2006. At the hearing on that motion, the district court reviewed its handwritten notes from the hearing on the earlier motion for amended findings, and it discovered that it had intended to grant Patricia Fitzsimmons's request for \$39,000 in arrears. The court expressed concern that its notes indicating the court's intent to provide for arrears were inconsistent with the court's final order denying the provision of arrears. In other words, the district court judge disclosed that when he previously had *denied* Patricia Fitzsimmons's request that Pat Fitzsimmons be obligated to pay arrears, the judge had actually intended to *grant* that request. But that order denying the request was not appealed from or otherwise challenged, and Patricia Fitzsimmons was then challenging the result collaterally with a motion to enforce the original temporary order. The district court granted Patricia Fitzsimmons's motion, and it ordered Pat Fitzsimmons to pay \$39,000, "which represents temporary spousal maintenance for the period between January 1, 2005 through January 30, 2006." Pat Fitzsimmons appeals.

## DECISION

Pat Fitzsimmons argues that the district court lacked subject-matter jurisdiction to consider a motion to enforce a pretrial order for temporary spousal maintenance after that pretrial order merged with the final order as a matter of law. His argument is valid.

The district court may grant temporary spousal maintenance at any time during a dissolution proceeding. Minn. Stat. § 518.131, subd. 1(b) (2006). But this temporary order has limited duration and enforceability. It “shall continue in full force and effect until the earlier of its amendment or vacation, dismissal of the main action or entry of a final decree of dissolution or legal separation.” *Id.*, subd. 5 (2006). It is well settled that when a final dissolution decree is entered, all allowances of temporary spousal maintenance under a prior order of the court become merged into the judgment and are unenforceable, unless the judgment makes provision for their payment. *Richardson v. Richardson*, 218 Minn. 42, 15 N.W.2d 127 (1944).

Here, judgment was entered in January 2006, and the decree failed to make provision for payment of arrears. A divorce decree is final when entered, subject to the right of appeal. Minn. Stat. § 518.145, subd. 1 (2006). Patricia Fitzsimmons had 60 days to appeal that judgment. Minn. R. Civ. P. 104.01, subd. 1; *see also id.*, subd. 2 (explaining that if certain post-decision motions are made, the 60-day time period runs from the service of notice of filing that disposes of the last such motion outstanding). When she filed her timely motion for a new trial or amended findings to include arrears, this tolled her appeal period. *Id.*, subd. 2. When the district court again failed to include arrears in its order denying Patricia Fitzsimmons’s motion in August 2006, she could

challenge the denial in an additional postdecision motion or by filing an appeal. But “[i]f the time for appeal from an order expires without appeal having been taken, then the order becomes final and the district court’s jurisdiction to amend the order is terminated.” *Marzitelli v. City of Little Canada*, 582 N.W.2d 904, 906 (Minn. 1998).

Patricia Fitzsimmons did bring a motion after the judgment, but not one that affects the final judgment. A motion is proper if it complies with the rules of civil procedure and if, on its face, it is expressly allowed under rule 104.01, subdivision 2. *Madson v. Minn. Mining & Mfg. Co.*, 612 N.W.2d 168, 171-72 (Minn. 2000). Patricia Fitzsimmons’s motion to enforce the pretrial order is not one of the enumerated motions that toll the time for filing an appeal. Minn. R. Civ. App. P. 104.01, subd. 2. Her motion to enforce the pretrial order therefore did not toll the time to appeal the judgment. Under *Richardson*, the district court’s pretrial order merges into the final order, and the prior order becomes unenforceable.

Patricia Fitzsimmons argues that no appeal of the August 2006 order was necessary because the district court retains its authority to enforce the pretrial order. A district court has authority to enforce “provisions of a judgment and decree so long as the parties’ substantive rights are not changed.” *Kornberg v. Kornberg*, 542 N.W.2d 379, 388 (Minn. 1996). But assigning an obligation to a party who previously had no obligation would change that party’s substantive rights. *Id.* at 388–89. Because the pretrial order merged with the final order, there were no arrears to enforce. Obliging Pat Fitzsimmons to pay arrears, when that obligation did not exist in the final order, would change his substantive rights.

Patricia Fitzsimmons also argues that the district court retains jurisdiction to enforce its own orders even if it no longer has jurisdiction over substantive issues. She cites rule 108.01 of the Minnesota Rules of Civil Appellate Procedure in support. But that rule allows the district court to retain jurisdiction only for independent, supplemental, or collateral matters when an appeal has otherwise suspended the district court's authority. Here, no appeal was filed, so her reliance on this rule is misplaced.

The January 2005 pretrial order merged with the 2006 final order, and the district court did not include an obligation for arrears. Patricia Fitzsimmons's recourse under Minnesota Statutes section 518.145, subdivision 1, was to file an appeal from the August 2006 order. She did not, and despite its good intentions to correct the possible oversight, the district court lacked subject-matter jurisdiction to consider the motion to enforce the pretrial order.

**Reversed.**