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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1717**

In re the Marriage of:
Debra Christine Klein,
f/k/a Debra C. Brunette, petitioner,
Respondent,

vs.

Scott David Brunette,
Appellant.

**Filed August 19, 2008
Reversed
Schellhas, Judge**

St. Louis County District Court
File No. 69DU-FA-05-745

Cheryl M. Prince, Gabriel D. Johnson, Hanft Fride, P.A., 130 W. Superior Street, Suite 1000, Duluth, MN 55802 (for respondent)

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Considered and decided by Schellhas, Presiding Judge; Toussaint, Chief Judge;
and Hudson, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges an order enforcing a dissolution judgment. He argues that because the order assigned him a debt that he had no notice was at issue and modified his substantial rights, it was an abuse of discretion. We agree and reverse. Appellant also argues that the district court improperly adopted verbatim an order drafted by respondent. Because we reverse on other grounds, we do not reach this issue.

FACTS

This is an appeal from a postdecree order enforcing a dissolution decree. The decree requires the parties to use funds from the sale of their cabin and homestead to pay off a list of debts. The postdecree order enforces the decree by assigning cabin-sale proceeds to the parties and making them responsible for the payment of corresponding debts. Appellant argues that the district court erred when assigning a particular debt to him because he had no notice that disposition of that debt was at issue, and the assignment is contrary to the decree.

Under the decree, proceeds from the sale of the homestead and cabin were to be used in the following manner: (1) proceeds would first be applied to joint debts not assigned to appellant in the decree; (2) after the debts were paid off in full, net proceeds were to be divided between the parties with respondent receiving 40% and appellant receiving 60%; and (3) after proceeds were divided, appellant was to pay from his share \$28,000 to respondent.

The parties' debts were listed in the decree and included the debt at issue in this proceeding, a debt for capital gains from the sale of a property in Two Harbors, Minnesota, during the marriage (Two Harbors capital-gains debt). At the time of the decree and postdecree order, the amount of the Two Harbors capital-gains debt was unknown. Respondent's motion asked the court to apply cabin-sale proceeds to certain debts listed in the decree. Respondent's motion includes no mention of the Two Harbors capital-gains debt. Respondent's affidavit mentions the Two Harbors capital-gains debt, asking that it be paid later with homestead-sale proceeds.

The district court resolved respondent's motion with an order requiring that \$32,131 be distributed to respondent to pay certain identified debts. With respect to appellant, the court ordered the following:

Given that the [Two Harbors capital-gains debt] is also a joint debt, given that the amount of said taxes is unknown, and given that [appellant] is receiving the remaining proceeds from the cabin sale, [appellant] shall be solely responsible for the "Two Harbors capital gains taxes and costs on loan." [Appellant] shall indemnify and hold [respondent] harmless from any obligation for payment of the same.

The district court then ordered that all proceeds remaining after the distribution to respondent go to appellant and be "used by [appellant] to pay off debts as outlined in the Decree."

This appeal follows. Appellant argues that assigning the Two Harbors capital-gains debt to him was erroneous because (1) it denied him due process since the issue was not before the court, (2) it was contrary to and modified the decree, and (3) it represents an improper verbatim adoption of an order drafted by respondent.

DECISION

I.

Appellant argues he was denied due process because he did not have notice that disposition of the Two Harbors capital-gains debt was an issue before the court. Procedural due-process claims are reviewed de novo. *Zellman ex rel. M.Z. v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). “The due process protection provided under the Minnesota Constitution is identical to the due process guaranteed under the Constitution of the United States.” *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1998). “These protections include reasonable notice, a timely opportunity for a hearing, the right to be represented by counsel, an opportunity to present evidence and argument, the right to an impartial decisionmaker, and the right to a reasonable decision based solely on the record.” *Humenansky v. Minn. Bd. Of Med. Exam’rs*, 525 N.W.2d 559, 565 (Minn. App. 1994) (citing *Goldberg v. Kelly*, 397 U.S. 254, 267-68, 90 S. Ct. 1011, 1020 (1970)), *review denied* (Minn. Feb. 14, 1995). In performing the due-process inquiry, we ask if a protected interest is at stake and weigh the particular interests involved to determine what process is due. *Id.* at 566.

Appellant’s protected interest in property is unquestionably at stake. The issue in appellant’s challenge is notice. He argues that he had no notice that disposition of the Two Harbors capital-gains debt would be addressed by the court. We agree. Nothing in the record notified appellant that payment of the Two Harbors capital-gains debt with cabin-sale proceeds was at issue. To the contrary, respondent’s affidavit in support of her

motion actually asks that the Two Harbors capital-gains debt be paid later with anticipated homestead-sale proceeds. Because appellant had no notice that the Two Harbors capital-gains debt was at issue, we are satisfied that appellant's right to due process was violated when the district court assigned the debt to him. Further, as noted below, in this case, the error is not harmless. *Cf.* Minn. R. Civ. P. 61 (requiring harmless error to be ignored).

II.

Appellant argues next that assignment of the Two Harbors capital-gains debt to him was contrary to and improperly modified the decree. We agree.

“A trial court has the power to clarify and construe a divorce judgment so long as it does not change the parties' substantive rights.” *Potter v. Potter*, 471 N.W.2d 113, 114 (Minn. App. 1991), *cited with approval in Kornberg v. Kornberg*, 542 N.W.2d 379, 388 (Minn. 1996). Though “[a] trial court may not modify a division of property,” it “may issue appropriate orders implementing or enforcing the provisions of a dissolution decree.” *Potter*, 471 N.W.2d at 114. An order enforcing or implementing a dissolution decree is reviewed for an abuse of discretion. *Id.*

A party's substantial rights are changed in an order enforcing a property division when the party receives more or less than under the original decree. *Id.* We are persuaded that appellant would receive more debt and fewer proceeds under the postdecree order than under the original decree, because the order assigns the Two Harbors capital-gains debt solely to appellant, even if appellant's share of the cabin-sale proceeds are insufficient to pay the debt. Under the decree, if the cabin-sale proceeds are

less than the Two Harbors capital-gains debt, homestead-sale proceeds are to be applied to it before the proceeds are divided between the parties. But under the postdecree order, with the debt assigned solely to appellant, homestead-sale proceeds would be divided before the remainder of the debt is paid and appellant would have to pay the debt out of his personal share of homestead proceeds. Because the postdecree order renders a result contrary to the original decree and modifies substantial rights, we conclude that the district court abused its discretion.

Because we reverse based on due process and modification of substantial rights, we do not reach appellant's argument that the order was improperly adopted verbatim.

Reversed.