STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0191

In re the Marriage of:
Deborah Lee Olson, fka
Deborah Lee Tuchtenhagen, co-petitioner,
Appellant,

vs.

Howard Otto Tuchtenhagen, co-petitioner,
Respondent.

Filed January 20, 2009
Affirmed
Halbrooks, Judge

Sibley County District Court
File No. 72-F5-95-000088

Mark Gray, 3960 Minnehaha Avenue, Minneapolis, MN 55406 (for appellant)

Kenneth R. White, Law Office of Kenneth R. White, 325 South Broad Street, Suite 203, Mankato, MN 56001; and

Anthony F. Nerud, Nerud Law Office, 325 West Main Street, P.O. Box 558, Arlington, MN 55307 (for respondent)

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Crippen, Judge.*

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

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges the district court's denial of her post-dissolution motion, arguing that (1) Minnesota's anti-palimony statutes divest the district court of jurisdiction; (2) the district court improperly amended the property division set forth in the dissolution judgment and decree; (3) the district court erroneously found that payments made to appellant during the parties' post-judgment cohabitation constituted payments toward the property settlement; (4) the district court abused its discretion in applying the doctrines of laches and unjust enrichment; and (5) the district court abused its discretion by not awarding appellant conduct-based attorney fees. Because the record supports the district court's order, we affirm.

FACTS

Appellant Deborah Lee Olson and respondent Howard Otto Tuchtenhagen were married in 1974. Their marriage was dissolved in October 1995. Respondent was awarded the marital homestead. Appellant received a $22,000 lien against the homestead, and the district court determined that respondent owed appellant an additional $5,000 for various equity interests. The judgment and decree set forth a payment plan, stating that the $27,000

> shall be paid over the course of ten (10) years. That in each of the first five (5) years, [respondent] shall pay to [appellant] the sum of $3000.00 per year. Payment shall be made on or about October 1 of each respective year. In the second five (5) years, [respondent] shall pay to [appellant] the sum of $2400.00 per year . . . . Interest on the unpaid principal shall accrue at the rate of six percent (6%) per annum; interest shall

> be paid in the tenth year. Upon the completion of the payment in full of [respondent]'s obligation to [appellant], she shall execute and deliver to [respondent] a Satisfaction and Release in regard to the marital lien.

Respondent made the first $3,000 payment in 1995. In 1996, the parties reconciled and began to cohabitate. While the parties were living together, respondent made no payments to appellant that were designated as payments required by the property settlement, but he did make other payments to her. The parties ended their relationship in July 1999, and respondent resumed making payments pursuant to the judgment and decree. Respondent paid appellant $3,000 in 1999, 2000, 2001, and 2002. After having made five payments of $3,000, respondent made four annual payments of $2,400.

The parties disagree as to the amount of the final payment, which was to have been made in October 2007. On October 23, 2007, appellant moved the district court to enforce the judgment and decree. Appellant contended that interest had accrued during the three years of reconciliation, entitling her to a final payment of more than $13,500. Respondent filed a responsive motion on October 31, 2007, arguing that he had overpaid appellant. Both parties requested court costs and conduct-based attorney fees.

The district court found that respondent had satisfied his obligations under the judgment and decree through the designated payments and the other monies that he paid to appellant during their post-dissolution cohabitation and ordered appellant to execute and record a satisfaction and release of the marital lien. The district court denied both parties' requests for attorney fees. This appeal follows.

D E C I S I O N

I.

We first address appellant's argument that Minnesota's anti-palimony statutes divest the district court of jurisdiction in this matter. *See* Minn. Stat. §§ 513.075–.076 (2008). We review questions of subject-matter jurisdiction de novo. *See Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002); *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 209 (Minn. 2001). This court also reviews the applicability of a statute de novo. *Ramirez v. Ramirez*, 630 N.W.2d 463, 465 (Minn. App. 2001).

Appellant argues that the district court lacked jurisdiction to hear respondent's claim that he paid monies to appellant during their post-dissolution cohabitation that satisfied his obligations under the judgment and decree.[1] Appellant contends that respondent's claim is barred because the parties lived together in contemplation of sexual relations and out of wedlock and had no written contract regarding any payments from respondent to appellant that were not designated as payments pursuant to the judgment and decree.

Minnesota law provides that

> [i]f sexual relations between the parties are contemplated, a contract between a man and a woman who are living together in this state out of wedlock, or who are about to commence living together in this state out of wedlock, is enforceable as to terms concerning the property and financial relations of the parties only if: (1) the contract is written and signed by the parties, and (2) enforcement is sought after termination of the relationship.

[1] Respondent sought recovery of $4,420.83, claiming that he had paid more to appellant than she was owed under the judgment and decree.

Minn. Stat. § 513.075. Minnesota law also provides that unless such a contract is executed,

> the courts of this state are without jurisdiction to hear and shall dismiss as contrary to public policy any claim by an individual to the earnings or property of another individual if the claim is based on the fact that the individuals lived together in contemplation of sexual relations and out of wedlock within or without this state.

Minn. Stat. § 513.076. The plain language of the anti-palimony statutes makes "a contract between a man and woman living together in this state out of wedlock in contemplation of sexual relations . . . not enforceable unless the contract is written and signed by the parties and the parties seek to enforce it after the relationship has terminated." *In re Estate of Palmen*, 588 N.W.2d 493, 495 (Minn. 1999). But the anti-palimony statutes "do not operate to automatically divest unmarried couples living together of all legal remedies." *Id.* at 496.

Here, it is undisputed that the parties had no agreement regarding the non-designated payments made during their post-dissolution cohabitation. Instead, the claims of both parties are based on the judgment and decree. Respondent's claim is therefore not based upon an unwritten agreement where the only consideration was the contemplation of sexual relations out of wedlock. *See In re Estate of Eriksen*, 337 N.W.2d 671, 674 (Minn. 1983) (stating that the anti-palimony statutes "will apply only where the *sole* consideration for a contract between cohabiting parties" is the contemplation of out-of-wedlock sexual relations). We therefore agree with the district court that sections 513.075 and 513.076 do not apply to the facts of this case.

II.

The district court determined that the monies paid by respondent during the parties' post-dissolution cohabitation constituted payments under the property settlement and implicitly found, by ordering the execution of the satisfaction and release of the lien, that respondent had satisfied his payment obligations. Appellant argues that the district court modified the final property division as set forth in the judgment and decree. We review purely legal issues de novo. *Haefele v Haefele*, 621 N.W.2d 758, 761 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001).

A district court may not modify a division of property.[2] Minn. Stat. § 518A.39, subd. 2(f) (2008); *Erickson v. Erickson*, 452 N.W.2d 253, 255 (Minn. App. 1990). But a district court has "the power to implement or enforce the 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); *see also Erickson*, 452 N.W.2d at 255; *Linder v. Linder*, 391 N.W.2d 5, 8 (Minn. App. 1986). A party's substantive rights are changed when the district court's order affects the value of a party's interest. *See Potter v. Potter*, 471 N.W.2d 113, 114 (Minn. App. 1991). But when a party receives "neither more nor less than under the original decree," the party's rights have not been changed. *Id.*

We therefore address whether the district court's order affected the value of appellant's interest as specified by the judgment and decree. Respondent's $27,000 debt to appellant was to be paid in five annual installments of $3,000, followed by five annual

[2] Property divisions become final after the appeal period expires. *Boom v. Boom*, 367 N.W.2d 536, 538 (Minn. App. 1985), *review denied* (Minn. June 27, 1985). It is undisputed here that the time for appeal from the 1995 judgment and decree had passed.

installments of $2,400. Interest was to accrue on the unpaid principal at the rate of six percent per annum, to be paid with the final $2,400 payment. It is undisputed that respondent paid the first $3,000 installment in 1995. If this payment plan had been followed strictly, respondent would have paid appellant $33,840, with the last installment and interest paid in October 2004.

The district court found that respondent's payments to appellant during their post-dissolution cohabitation constituted payments against the property settlement, "to the extent they were owed thereunder." Respondent claims to have paid appellant more than $3,000 per year in 1996, 1997, and 1998—the three years when no designated payments were made. In light of the district court's order, respondent has paid appellant $33,600 pursuant to the judgment and decree.[3]

Under the district court's order, appellant received almost exactly what she would have received had the property settlement payments been made in strict accordance with the judgment and decree. The $240 difference is approximately 0.7% of the amount that appellant would have received had the property settlement been executed exactly. We decline to remand for this de minimis difference. *See Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1995) (refusing to remand for de minimis technical error in child-support case); *see also* Minn. R. Civ. P. 61. Because the district court's order did not alter appellant's substantive rights under the judgment and decree, we conclude that the district court's order was an enforcement, not a modification, of the property division.

[3] I.e., eight payments of $3,000 and four payments of $2,400.

III.

We next address appellant's argument that the district court improperly determined that respondent made payments to her during the parties' post-dissolution cohabitation. This court reviews an order enforcing or implementing a dissolution judgment for an abuse of discretion. *Potter*, 471 N.W.2d at 114. But we will uphold the district court's findings of fact unless they are clearly erroneous.[4] *Peterson v. Peterson*, 395 N.W.2d 443, 447 (Minn. App. 1986); *see also* Minn. R. Civ. P. 52.01. The party challenging the factual findings "must show that despite viewing that evidence in the light most favorable to the [district] court's findings . . . the record still requires the definite and firm conviction that a mistake was made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

Respondent claims to have paid appellant $30,533.48 during their post-dissolution cohabitation. At the November 8, 2007 hearing on the motions, respondent presented copies of cancelled checks and other documents in support of this claim. Appellant argues that the checks do not show that she received any money from respondent because "nearly every" cancelled check was made payable to respondent, not appellant; and respondent presented copies only of the front sides of the checks, so there is no proof that

[4] Appellant argues that when a district court takes no live testimony, the standard of review for all factual findings is de novo, and cites *N. States Power Co. v. Williams*, 343 N.W.2d 627, 630 (Minn. 1984), for this proposition. After *Williams*, Minn. R. Civ. P. 52.01 was changed to provide that "[f]indings of fact, *whether based on oral or documentary evidence* shall not be set aside unless clearly erroneous." (Emphasis added.) *See City of Lake Elmo v. City of Oakdale*, 468 N.W.2d 575, 578 (Minn. App. 1991) (holding that Minn. R. Civ. P. 52.02 supersedes *Williams*). Accordingly, de novo is not the correct standard of review.

appellant endorsed them.[5] Respondent argued to the district court that he drew the checks from his business account, endorsed them, and gave them to appellant.

The district court determined that respondent paid monies to appellant during their reconciliation, noting that appellant "did not submit any information indicating a dispute with the monies transferred during the reconciliation, as set forth by [respondent]." The district court acknowledged that respondent's evidence consisted of cancelled checks made payable to respondent, but pointed out that appellant did not provide the district court with any evidence indicating that she did not receive the amounts claimed by respondent.

Appellant argues that because respondent presented no evidence that she endorsed the checks, the district court erred in finding that monies were paid to her. But respondent does not claim that appellant endorsed the checks. Respondent's attorney stated at the hearing that *respondent* endorsed the checks and gave them to appellant. Because appellant has not presented evidence that would allow the district court to fully address whether she received the payments in question, she cannot complain that the district court failed to rule in her favor on this issue. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) ("[A] party cannot complain about a district court's failure to rule in [the party's] favor when one of the reasons it did not do so is

[5] Appellant also argues that it was unfair for respondent to present the copies of the checks, claiming she had "no way of knowing she would be provided with 100 pages of documents . . . on the morning of the hearing." But respondent's October 29, 2007 affidavit sets forth the amounts he claims to have paid appellant during their reconciliation. Furthermore, the exhibits to this affidavit indicate that these payments were made by check. There is no dispute that appellant was served with this affidavit before the November 8, 2007 hearing.

because that party failed to provide the district court with the evidence that would allow the district court to fully address the question."), *review denied* (Minn. Nov. 25, 2003). Based on this record, we cannot say that the district court abused its discretion in accepting the evidence produced by respondent. We therefore conclude that the district court's finding that respondent paid monies to appellant during their reconciliation was not clearly erroneous.

IV.

Appellant argues that the district court abused its discretion in applying the doctrines of laches and unjust enrichment. We review a district court's application of these doctrines for an abuse of discretion. *See City of Cloquet v. Cloquet Sand & Gravel, Inc.*, 312 Minn. 277, 279, 251 N.W.2d 642, 644 (1977) (stating the standard of review for cases involving equitable relief); *In re Marriage of Opp*, 516 N.W.2d 193, 196 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994) (stating the standard of review for the application of the theory of laches).

A district court has "the power to implement or enforce the provisions of a judgment and decree so long as the parties' substantive rights are not altered." *Kornberg*, 542 N.W.2d at 388. Because we have concluded that appellant's substantive rights under the judgment and decree were not changed by the district court's order and because this court will not reverse a correct decision simply because it is based on incorrect reasons, we do not reach the issue of whether the district court abused its discretion by applying the doctrines of laches and/or unjust enrichment. *See Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987).

V.

The district court summarily denied both parties' requests for conduct-based attorney fees, stating that "[n]either party shall recover anything against the other, including attorney fees." Appellant argues that the district court abused its discretion when it denied her request for conduct-based attorney fees without making any findings.

We will uphold a district court's denial of conduct-based attorney fees absent a clear abuse of discretion. *Kitchar v. Kitchar*, 553 N.W.2d 97, 104 (Minn. App. 1996), *review denied* (Minn. Oct. 29, 1996). "The district court will be found to have abused its discretion only if its decision is based on a clearly erroneous conclusion that is against logic and the facts on record." *LeRoy v. LeRoy*, 600 N.W.2d 729, 732 (Minn. App. 1999) (quotation omitted), *review denied* (Minn. Dec. 14, 1999).

Minnesota law provides that a district court may, in its discretion, award "fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2008). The district court must set forth findings that "permit meaningful appellate review on the question whether attorney fees are appropriate because of a party's conduct." *Kronick v. Kronick*, 482 N.W.2d 533, 536 (Minn. App. 1992). Here, the district court made no findings regarding the propriety of conduct-based attorney fees.

But a remand is not warranted because the record contains no evidence that respondent's conduct unreasonably contributed to the length or expense of the litigation. *See Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001) (stating that the moving party has the burden of showing that the nonmoving party "unreasonably

contributed to the length or expense of the proceeding"). Appellant claims that respondent's refusal to make the October 2007 payment contributed to the length of the proceedings and caused her to expend attorney fees. But appellant presented no evidence to the district court that respondent's conduct was unreasonable. *See Eisenschenk*, 668 N.W.2d at 243. Appellant therefore cannot complain that the district court denied her request for conduct-based attorney fees. *See id.* Based on this record, we conclude that the district court did not abuse its discretion in denying appellant's request for conduct-based attorney fees.

Affirmed.