

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-1995**

In re the Marriage of: Dawn Marie Hegdahl f/k/a Dawn Marie Benson, petitioner,  
Respondent,

vs.

Theodore Paul Benson,  
Appellant.

**Filed August 18, 2009  
Reversed  
Connolly, Judge**

Itasca County District Court  
File No. 31-F2-03-001415

Cheryl M. Prince, Nathan N. LaCoursiere, Hanft Fride, A Professional Association, 1000  
U.S. Bank Place, 130 West Superior Street, Duluth, MN 55802-2094 (for respondent)

Richard E. Prebich, Rachel C. Delich-Sullivan, Law Offices of Richard E. Prebich, 1932  
Second Avenue East, Suite 2, Hibbing, MN 55746 (for appellant)

Considered and decided by Peterson, Presiding Judge; Connolly, Judge; and  
Bjorkman, Judge.

**UNPUBLISHED OPINION**

**CONNOLLY**, Judge

Appellant-husband challenges the district court's order that husband (1) transfer  
possession of the parties' marital homestead to respondent-wife for the purpose of

placing it up for sale and (2) pay wife's attorney fees incurred as a result of wife bringing the current motion. Because husband's substantive rights under the judgment and decree are not sufficiently protected, wife approached the court seeking equity with unclean hands, and the current motion was not brought as a result of husband's failure to comply with a previous district court order, we reverse.

### **FACTS**

The marriage of appellant-husband Theodore Paul Benson and respondent-wife Dawn Marie Hegdahl was dissolved in October 2003. On January 22, 2004, the district court issued its amended findings of fact, conclusions of law, order for judgment, and judgment and decree (amended judgment and decree), awarding husband the parties' marital homestead in Talmoon (the homestead). The district court determined that the fair market value of the homestead was \$155,000, and awarded wife a lien against the property in the amount of \$40,939.07.<sup>1</sup> Wife was ordered to execute a quitclaim deed in favor of husband, subject to her marital lien. Husband was not ordered to refinance the mortgage or take any other actions to remove wife's name from the mortgage or other encumbrances on the property, but was ordered to hold wife harmless for the mortgage debt.

In September 2005, wife brought a motion before the district court seeking, among other things, to have husband refinance the mortgage on the homestead so her name could be removed from the mortgage. Prior to a hearing on that motion, the parties

---

<sup>1</sup> Wife was awarded \$23,500 as her share of the marital interest in the homestead and \$17,439.07 as a personal property and marital debt equalizer.

reached a stipulated settlement of all issues, including an agreement that husband would refinance the debts against the homestead, and that husband would reimburse wife for any and all legal fees she would incur if she had to bring the matter back to the district court because of husband's failure to comply with the agreement. This stipulation was incorporated into the district court's November 9, 2005 order.

Husband made several unsuccessful attempts to refinance the homestead through Ameriquest, First National Bank in Bigfork and Deer River, Lending Tree, Ameripath, and Ditech. Husband even attempted to refinance the mortgage using his mother as a co-signor. Husband also tried to arrange for a sale of the property to a third party in May 2007. During the pendency of the sale, husband requested wife's cooperation in providing documentation to assist with closing. Wife asked for a payment of \$10,000 to compensate her for "damaged credit and increased financing costs" before she would cooperate. Husband offered \$1,500, but wife would not accept less than \$5,000. The sale was not completed.

Husband failed to make payments on the mortgage on the homestead from July 2006 through May 2008. Foreclosure proceedings were initiated twice between 2004 and 2008. In June 2008, husband negotiated a modification of the mortgage and made his June and July mortgage payments, but did not make his August payment. The modification of the mortgage increased the debt on the homestead from \$108,000 to \$124,000. Also during this time, wife's credit rating dropped despite her timely payment of her own mortgage.

Wife brought the current motion in July 2008, seeking an order from the court (1) finding husband in contempt for failing to comply with the November 2005 order; (2) ordering husband to transfer all right, title, and interest in the homestead to wife for her to sell to satisfy the mortgage and other debts against the homestead; and (3) ordering husband to reimburse wife for her legal fees and costs in bringing this matter back to the district court.

At the time wife brought the current motion, husband was disabled and not working, but had a total monthly household income of \$1,987. His mortgage payment was \$831.

The district court found that “[t]he value of the homestead (\$155,000) is not much greater than the outstanding debts [against it] (\$146,300).” The district court found that awarding the homestead to wife would avoid an impending foreclosure sale, and would salvage wife’s credit rating, which had suffered as husband failed to make mortgage payments.

The district court ordered that husband had 45 days to refinance the homestead and remove wife’s name from any encumbrances against the property or he was to execute a quitclaim deed in wife’s favor. Within 30 days of receiving the quitclaim deed, wife was to list the homestead for sale through a licensed real estate broker at fair market value, and sell the property at its “reasonable fair market price.” Wife was ordered to use the proceeds from the sale to pay (1) the mortgage, (2) a home equity line of credit against the homestead, (3) a hardware store’s judgment lien against the property, (4) wife’s attorney fees of \$1,955 incurred as a result of this motion, (5) realtor fees, and

(6) closing costs. Any proceeds remaining after these payments were to go to husband. This appeal follows.<sup>2</sup>

## DECISION

### I.

Husband argues that the district court abused its discretion by ordering the transfer of the homestead to wife, claiming that such an order for transfer altered his substantive rights under the amended judgment and decree.

All divisions of real and personal property in a marital dissolution are final, and may be revoked or modified only where the district court finds that conditions justify reopening a judgment under section 518.145, subdivision 2. Minn. Stat. § 518A.39, subd. 2(f) (2008). “While a trial court may not modify a final property division, it may issue orders to implement, enforce, or clarify the provisions of a decree, so long as it does not change the parties’ substantive rights.” *Redmond v. Redmond*, 594 N.W.2d 272, 275 (Minn. App. 1999) (citing *Potter v. Potter*, 471 N.W.2d 113, 114 (Minn. App. 1991)). We will not disturb an appropriate order to implement or enforce terms of a decree absent a clear abuse of discretion. *Potter*, 471 N.W.2d at 114.

Husband first argues that the district court’s order that he refinance the mortgage within 45 days materially changed his substantive rights, as the amended judgment and decree awarded him title to the homestead free from any obligation to refinance the property. It is true that the amended judgment and decree did not order husband to

---

<sup>2</sup> The district court issued an order on December 19, 2008 staying its September 2008 order.

refinance the debts on the homestead. But husband voluntarily assumed that obligation in the stipulation incorporated into the November 2005 order. To the extent that the September 2008 order requires husband to attempt to refinance the debts on the homestead, it goes no further in altering husband's substantive rights than husband himself had already agreed to in the November 2005 stipulation and order.

Husband next argues that the district court abused its discretion by ordering the homestead be transferred to wife and directing that it be put up for sale.

The parties stipulated in the November 2005 order that husband would seek to refinance the debts on the homestead, but did not specify an enforcement mechanism if husband was unable to refinance. Wife argues that the September 2008 order was simply a means of enforcement to preserve her rights under the November 2005 order. We disagree. The September 2008 order is not simply an enforcement order; the November 2005 order did not require sale of the homestead. The sale wife seeks is an alternative remedy. Wife sought an equitable remedy in 2005 for the impact husband's financial difficulties were having on her credit rating. The result was husband's agreement to attempt to refinance the homestead, but not a requirement that the homestead be sold. Now, wife seeks yet another equitable remedy for her damaged credit. The transfer of the homestead goes beyond simply enforcing the November 2005 order.

The district court has the power to order a public sale of a homestead as a means of enforcing a provision in a decree. *Potter*, 471 N.W.2d at 114. In *Potter*, this court upheld a district court's order that a property be placed up for public sale where the husband had been awarded the homestead but was delinquent in his obligations under the

judgment and decree. *Id.* In affirming the order, this court held that a public sale avoided the danger of an artificially low sale price, and that the husband's substantive rights would be unaltered because the sale was ordered to satisfy obligations that the husband had to pay regardless. *Id.*

This situation is not sufficiently analogous to *Potter* to justify the district court's reliance. First, in *Potter*, husband was delinquent in satisfying wife's lien against the homestead. *Id.* There is no dispute that husband here has satisfied wife's lien. Also in *Potter*, the public sale ordered was to be overseen by both parties, *id.* at 113, which is not the case here. Here, the district court gave wife sole control over the mechanisms of the sale. In affirming the order in *Potter*, this court specifically noted that the husband would "receive neither more nor less than under the original decree." *Id.* at 114. The same cannot be guaranteed here. Husband has no control over the listing price, the sale price, the agent with whom the homestead is listed, the fee to be paid to the realtor, or any closing costs to be allowed to the buyer.

The district court's order instructs wife to list the homestead for sale at its fair market value, but it is unclear whether either the district court or the parties have an idea what that value is. In the order, the district court makes reference to the value of the homestead as \$155,000, but acknowledges elsewhere in the order that this value is based on an August 2002 appraisal, which was done by the parties for the purposes of refinancing the homestead. With no clear idea of the fair market value of the home, and no guidance as to what is to be allowed for realtor fees and closing costs, which are to be deducted prior to husband receiving his share of the proceeds, there are not sufficient

safeguards in place to ensure that husband will “receive neither more nor less than under the original decree.” *Id.*

## II.

Husband argues that the district court abused its discretion by awarding wife equitable relief by transferring the homestead to her when she came to the court with unclean hands. We agree.

“Under the doctrine of unclean hands: ‘he who seeks equity must do equity, and he who comes into equity must come with clean hands.’” *Peterson v. Holiday Recreational Indus., Inc.*, 726 N.W.2d 499, 505 (Minn. App. 2007) (quoting *Hruska v. Chandler Assocs., Inc.*, 372 N.W.2d 709, 715 (Minn. 1985)), *review denied* (Minn. Feb. 28, 2007). “A party ‘may be denied relief where his conduct has been unconscionable by reason of a bad motive, or where the result induced by his conduct will be unconscionable either in the benefit to himself or the injury to others.’” *Id.* (quoting *Johnson v. Freberg*, 178 Minn. 594, 597-98, 228 N.W. 159, 160 (1929)). “The granting of equitable relief is within the sound discretion of the district court, and its decision will not be reversed absent a clear abuse of that discretion.” *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 450 (Minn. App. 2001).

Husband had attempted to sell the homestead in May 2007, and requested that wife cooperate with him in the sale by providing documents to assist with the closing. In response to husband’s request for cooperation, wife demanded a payment of no less than \$5,000 “to compensate her for her damaged credit and increased financing costs” before



she would cooperate. The sale was never completed. The district court found that wife “did not have a court order and was not entitled to any further payment from [husband].”

A party’s conduct can be “unconscionable by reason of a bad motive, or where the result induced by his conduct will be unconscionable either in the benefit to himself or the injury to others.” *Peterson*, 726 N.W.2d at 505 (quotation omitted). In this case, the result of wife’s demand for a payment to which she was not entitled is unconscionable both in the benefit to her and in the harm to husband. Wife sought to have the district court transfer the homestead to her for the purpose of selling it so her name would no longer be on the mortgage. But that very same purpose could have been accomplished in May 2007 had wife cooperated with the sale of the homestead. Instead, wife demanded the \$5,000 payment. As a result of her wrongful conduct, however, interest in the homestead has now been transferred to wife, and she has been given sole control over the sale. Also, as a result of her refusal to cooperate with the sale, husband has lost his ability to have any control over the disposition of the homestead that he was awarded in the amended judgment and decree.

Wife came to the district court with unclean hands. As a result of her unclean hands, wife’s request for equitable relief should have been denied, and the district court abused its discretion by granting her request and transferring the homestead to her.

### **III.**

Husband argues that the district court abused its discretion by awarding respondent attorney fees.

Generally, attorney fees are not recoverable absent specific authority allowing a recovery, such as a contract or statute authorizing the award. *Barr/Nelson, Inc. v. Tonto's, Inc.*, 336 N.W.2d 46, 53 (Minn. 1983); *Geske v. Marcolina*, 624 N.W.2d 813, 816 (Minn. App. 2001). “On review, this court will not reverse a trial court’s award or denial of attorney fees absent an abuse of discretion.” *Becker v. Alloy Hardfacing & Eng’g Co.*, 401 N.W.2d 655, 661 (Minn. 1987).

Here, the parties agreed, as stated in the November 2005 order, that husband “be ordered to reimburse [wife] for any and all legal fees and costs she would incur if she had to bring this matter back to the Court for relief based on [husband’s] not complying with the [o]rder.” There is no dispute that husband stipulated to the terms of this order. As a result, in the September 2008 order, the district court ordered husband to pay wife \$1,955 “for legal fees [wife] incurred enforcing the November 9, 2005, Stipulation and Order.” Wife was to deduct her fee award from the proceeds from the sale of the home before husband received his share.

Husband argues that this award of attorney fees was an impermissible award of conduct-based fees. We disagree. The district court’s award does not appear to be an award of conduct-based fees, as husband argues, but rather, it was authorized by the November 2005 order.

But we disagree that the circumstances of this case fit those described in the November 2005 order. The current action was brought as the result of wife’s refusal to cooperate with husband’s planned sale of the homestead, rather than husband’s failure to comply with the November 2005 order. Therefore, the award must be reversed. The

district court's findings document numerous unsuccessful attempts by husband to secure refinancing, both on his own and with his mother as a co-signor. The district court's findings of fact do not support a conclusion that wife's attempt to bring the matter back to the court was the result of husband's failure to comply with the November 2005 order but rather was the result of wife's frustration of husband's attempted sale of the homestead.

**Reversed.**