STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1789

In re the Marriage of:
Susan M. Friend,
n/k/a Susan M. Anderson, petitioner,
Respondent,

vs.

Thomas A. Friend,
Appellant.

Filed May 16, 2011
Affirmed
Crippen, Judge[*]

Itasca County District Court
File No. 31-F9-99-935

Rachel C. Delich-Sullivan, Law Offices of Richard E. Prebich, Hibbing, Minnesota (for respondent)

Thomas A. Friend, Virginia, Minnesota (pro se appellant)

Considered and decided by Bjorkman, Presiding Judge; Stoneburner, 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

CRIPPEN, Judge

Appellant Thomas Friend challenges the district court's decision to approve two amended qualified domestic relations orders (QDROs)[1] that divide his several retirement accounts pursuant to the judgment and amended judgment dissolving the parties' marriage. Appellant argues that respondent Susan M. Anderson and her attorney committed fraud, the district court exhibited bias, and the QDROs unlawfully deprive appellant of his property. These allegations are not supported by the record, and we affirm.

FACTS

The parties' marriage was dissolved in 2000. The amended judgment awarded respondent 50 percent of appellant's retirement accounts, which include an Iron Range Plumbers and Fitters Local #589 Retirement Income Plan (retirement income plan), Iron Range Plumbers and Fitters Local #589 Defined Benefit Plan (defined benefit plan), and Plumbers and Pipefitters National Pension Fund (national pension). The district court issued three QDROs in November 2001, which divided the three retirement accounts. The fund administrator rejected the QDRO for the defined benefit plan because of a

[1] A QDRO assigns to an alternate payee the right to receive all or a portion of a participant's pension-plan benefits. 29 U.S.C. § 1056(d)(3)(B) (2006); *Boggs v. Boggs*, 520 U.S. 833, 846, 117 S. Ct. 1754, 1763 (1997). An "alternate payee" is any "spouse [or] former spouse . . . who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant." 29 U.S.C. § 1056(d)(3)(K) (2006). "Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any [QDRO]." 29 U.S.C. § 1056(d)(3)(A) (2006).

clerical error in the QDRO, but established a separate account for respondent's half of appellant's retirement income plan pursuant to the QDRO addressing that plan.

In his 2002 appeal of the November 2001 QDROs, appellant argued to this court that the orders for the defined benefit plan and national pension failed to comport with the amended judgment. He concurrently moved the district court to amend the QDROs to comply with the amended judgment and decree. The district court issued amended QDROs dated March 26, 2002, and April 9, 2002, addressing the defined benefit plan. Based on our subsequent holding that the 2001 QDROs did not comply with the amended judgment, we reversed those November QDROs and ordered the district court to issue new QDROs. *Anderson v. Friend*, No. C4-02-57 (Minn. App. Aug. 7, 2002). We also concluded that the district court lacked authority to issue the March and April 2002 amended QDROs during the pendency of appeal proceedings, but we observed that those QDROs, although void, appear to comply with the amended judgment and decree. *Id.* Although the parties litigated other aspects of the dissolution in 2005 and 2006, and the district court issued an amended QDRO addressing the national pension, the district court did not issue amended QDROs addressing the defined benefit plan or retirement income plan.

In April 2006, respondent's attorney sent the voided March 2002 amended QDRO to appellant's defined benefit plan. Appellant advised the plan administrator and the district court by letter that the March 2002 amended QDRO for the defined benefit plan was declared void by our 2002 order and requested that the plan administrator "correct this within ten days." Respondent subsequently acknowledged that the March 2002

amended QDRO is void and advised appellant that she would await his consent to proceed without filing a motion with the district court. The plan administrator advised appellant that it would not act on respondent's April 2006 submission. Neither party filed a motion or requested action and the district court took no action until May 2010.

On May 28, 2010, respondent moved the district court to approve two amended QDROs addressing the retirement income plan and the defined benefit plan. Although the retirement-income-plan QDRO issued in November 2001 remained in effect, she requested an amended QDRO for the retirement income plan because the fund administrator required it to distribute the funds to her. Following a July 2010 hearing, the district court approved the proposed amended QDROs. The district court concluded that, although "it may have been technically improper for [respondent's] attorney to submit the voided 2002 QDRO" to the defined benefit plan in 2006, "the substance of the QDRO was correct." The district court subsequently issued amended QDROs addressing the retirement income plan and defined benefit plan.

D E C I S I O N

A district court may, in its discretion, issue an order that implements or enforces specific provisions of a dissolution judgment and decree as long as the order does not affect the parties' substantive rights. *Potter v. Potter*, 471 N.W.2d 113, 114 (Minn. App. 1991); *Erickson v. Erickson*, 452 N.W.2d 253, 255 (Minn. App. 1990); *see also Fastner v. Fastner*, 427 N.W.2d 691, 698 (Minn. App. 1988) (recognizing that district court has discretion to use QDRO to implement division of pension right). We will not reverse a

district court's order interpreting a dissolution judgment absent a clear abuse of discretion. *Potter*, 471 N.W.2d at 114.

1.

Appellant first alleges that respondent's request for amended QDROs should have been denied because she and her attorney committed fraud by submitting a certified copy of the March 2002 amended QDRO to his defined benefit plan in April 2006, knowing that the QDRO was pronounced void by this court. Appellant argues that respondent and her attorney fraudulently attempted to mislead the defined benefit plan administrator into believing that the 2006 submission was a valid 2006 QDRO by submitting a certified copy of the March 2002 amended QDRO obtained from the court administrator on April 24, 2006, and describing, in the cover letter, the March 2002 amended QDRO as "signed by Judge Maturi on March 26, 2006." Appellant also argues that respondent's attorney obtained that certification by trickery. Auxiliary to these arguments, appellant contends that respondent committed fraud on the court by failing to respond to his accusations of fraud at the July 2010 hearing.

On appeal, appellant relies on Minn. R. Civ. P. 60.02(c), which provides that, upon a motion, the district court may relieve a party from a final judgment, order, or proceeding for "[f]raud . . ., misrepresentation, or other misconduct of an adverse party." But a rule 60.02 motion is not the proper vehicle to challenge a dissolution judgment on grounds of fraud. *Maranda v. Maranda*, 449 N.W.2d 158, 164 (Minn. 1989) (treating such a motion as a request for the court to exercise its inherent power to modify a

dissolution judgment based on an allegation of fraud on the court). Moreover, appellant made no rule 60.02 motion before the district court.

There is no support for appellant's allegation that respondent committed fraud on the court. Fraud on the court is "an intentional course of material misrepresentation or non-disclosure, having the result of misleading the court and opposing counsel" and rendering the outcome "grossly unfair." *Maranda*, 449 N.W.2d at 165. The record reflects no instance in which respondent or her counsel misrepresented facts to the district court or appellant or otherwise misled the district court. Likewise, appellant fails to identify any evidence demonstrating that respondent's attorney's actions in 2006 constituted fraud or trickery. Respondent's attorney's 2006 cover letter to the defined benefit plan administrator contained an error, but the copy of the amended QDRO attached to the letter was accurately dated March 26, 2002, and bore a court administrator date stamp of March 29, 2002. The court administrator's 2006 certification merely attests that the court administrator compared the copy with the original in the district court file; the certification makes no declaration as to original issue date or continuing validity. Respondent's submission of the March 2002 amended QDRO to the defined benefit plan, although improper, is insufficient to constitute an "intentional course" of material misrepresentation. Our careful review of the record reveals, and appellant fails to demonstrate, any evidence that respondent's actions rise to the level of fraud or

unconscionable behavior or that he was harmed as a result. Accordingly, this basis for appellant's challenge lacks merit.[2]

Because there is no evidence of trickery, fraud, or other unconscionable behavior and this case does not involve respondent's equitable rights, appellant's contention that the district court erred by granting equitable relief to a party with unclean hands also lacks merit. *See Fred O. Watson Co. v. U.S. Life Ins. Co.*, 258 N.W.2d 776, 778 (Minn. 1977) (holding that unclean-hands defense denies equitable relief to a party whose conduct has been unconscionable).

Appellant also alleges that the district court displayed bias by failing to adequately address respondent's 2006 actions. A district court judge is presumed to discharge judicial duties in each case with neutrality and objectivity; such presumption is overcome only if the party alleging bias provides evidence of favoritism or antagonism. *State v. Burrell*, 743 N.W.2d 596, 603 (Minn. 2008) (citing *Liteky v. United States*, 510 U.S. 540, 555, 562, 114 S. Ct. 1147, 1157, 1160 (1994)). Appellant fails to meet this burden. The district court exhibited no bias by issuing QDROs during the pendency of the appeal in 2002; indeed, the district court issued the amended QDROs in 2002 because appellant simultaneously pursued relief with the district court and this court on the same issue. As we observed in 2002, the March and April 2002 amended QDROs demonstrate the

[2] Appellant also suggests that his due process rights were violated by respondent's attorney's actions in 2006. We do not address this issue because no district court proceedings or other action by the district court occurred in 2006 as a result of respondent's attorney's actions.

district court's intent to comply with the December 2000 amended judgment and decree. *Anderson*, No. C4-02-57, *2. And appellant's allegation that the district court exhibited bias by failing to act in 2006 on respondent's alleged fraud fails both because the record lacks evidence of fraudulent activity in 2006 and because appellant requested no relief from the district court in 2006. Likewise, because there is no evidence of fraud, the district court had a reasonable basis to reject the fraud allegations appellant raised in response to respondent's 2010 motion and exhibited no bias by doing so. The record reflects no judicial bias or favoritism.

There also is no merit in appellant's additional allegations that respondent and her attorney committed tax fraud, aggravated forgery, and obtaining a signature by false pretenses in 2006. Appellant cites no legal authority for his tax-fraud arguments, which forfeits the issue. *See State v. Meldrum*, 724 N.W.2d 15, 22 (Minn. App. 2006) (holding that pro se litigants are held to same standards as attorneys and when a brief lacks citations to legal authority to support the issues raised, such issues are forfeited), *review denied* (Minn. Jan. 24, 2007). As to aggravated forgery and obtaining a signature by false pretense, appellant cites to criminal statutes, Minn. Stat. §§ 609.625 (aggravated forgery), 609.635 (2010) (obtaining signature by false pretense), but does not identify how criminal violations would serve as the basis for a remedy in a review of the district court's approval of respondent's proposed amended QDROs. *See Larson v. Dunn*, 460 N.W.2d 39, 47 n.4 (Minn. 1990) (noting that criminal statute must explicitly or by clear implication authorize civil action). An appeal of a motion for approval of QDROs is not the appropriate forum to enforce criminal statutes regarding fraud.

2.

Appellant also contends that his retirement-income-plan funds were improperly taken without his knowledge in 2002 pursuant to the QDROs declared void by this court in 2002. These funds were deposited into an account for respondent in February 2002 pursuant to the November 2001 QDRO addressing the retirement income plan. Contrary to appellant's contention, the November 2001 retirement-income-plan QDRO was not challenged in his 2002 appeal to this court and was never declared void. The segregation of funds pursuant to that QDRO was proper. The district court's 2010 amended QDRO addressing the retirement income plan merely implements the December 2000 amended judgment's award of one-half of appellant's retirement income plan by directing the plan administrator to distribute the funds when respondent elects to receive them. *See Erickson*, 452 N.W.2d at 255 (stating that a district court may issue an order implementing or enforcing specific provisions of the dissolution judgment and decree). Accordingly, the record does not support granting appellant's request for return of these funds or reversal of the 2010 amended QDRO addressing the retirement income plan.

3.

Appellant argues that the district court abused its discretion by issuing the 2010 amended QDRO addressing the defined benefit plan because the amended QDRO constitutes "double dipping" by requiring him to retroactively pay respondent funds that he has already paid to her. The amended judgment and decree awarded to respondent a one-half interest in appellant's defined benefit plan, with $600 monthly paid from the plan until appellant retires, representing respondent's marital share of appellant's

disability payments. The 2010 amended QDRO addressing the defined benefit plan orders payment to respondent of $600 monthly "effective December 15, 2000" until appellant's retirement, at which time respondent shall be entitled to a one-half interest in any pension payments. Appellant asserts that $600 has been paid monthly since December 15, 2000, but he misinterprets the QDRO's language. The QDRO does not require appellant to retroactively pay funds he has already paid; it merely ensures that payments continue pursuant to the amended judgment and decree's award of $600 monthly payments until his retirement.

Appellant does not allege to this court, and did not argue to the district court, that the approved QDROs are substantively deficient, incorrect, or inconsistent with the amended judgment and decree. To prevail, an appellant must show error as well as prejudice resulting from the error. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975); *Bloom v. Hydrotherm, Inc.*, 499 N.W.2d 842, 845 (Minn. App. 1993), *review denied* (Minn. June 28, 1993). Appellant fails to establish that the district court erred by approving the proposed amended QDROs. The amended judgment awarded respondent one-half of appellant's retirement accounts and directed that the distribution be achieved by QDROs. The 2010 amended QDROs accomplish the intended division of the defined benefit plan and the retirement income plan.

Affirmed.