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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1542**

In re the Marriage of:

Robert Peter Asfeld, petitioner,
Appellant,

vs.

Kathryn Louise Asfeld,
Respondent.

**Filed April 6, 2010
Affirmed
Shumaker, Judge**

Traverse County District Court
File No. 78-FA-08-11

Robert V. Dalager, Lynnae L. G. Lina, Fluegel, Anderson, McLaughlin & Brutlag, Chtd.,
Morris, Minnesota (for appellant)

Mark A. Reedstrom, Ash & Reedstrom, Milbank, South Dakota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Peterson, Judge; and
Shumaker, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

The appellant challenges the district court's reading of its judgment and decree in the parties' marriage dissolution, which resulted in an order to pay respondent \$10,908.69

of funds appellant received from farming co-operatives. Because the evidence supports the district court's reading of the plain language of the judgment and decree and consequent monetary award to respondent, we affirm.

FACTS

This is a post-marriage-dissolution dispute over entitlement to the proceeds of certain co-operative equity accounts and over the district court's reading of the dissolution judgment and decree.

Appellant Robert Peter Asfeld and respondent Kathryn Louise Asfeld dissolved their marriage after 46 years. During the pendency of the dissolution proceeding, they participated in mediation and negotiated a marital termination agreement. The district court found the agreement to be fair and incorporated it into the judgment and decree of dissolution.

Throughout the marriage, the appellant and respondent operated and managed a farming enterprise. Among the assets related to that enterprise were co-operative equity accounts. As reflected in the judgment and decree entered on October 13, 2008, the parties agreed upon the distribution of co-operative equity funds that had accrued before the dissolution became final and as to possible future equity fund payments:

8. **Co-op Equities.** Respondent is awarded all cooperative equity funds payable by the Border States Cooperative to the parties which have accrued as of August 15, 2008 up to a maximum payment of Fifty Thousand and 00/100 Dollars (\$50,000.00), said payment amount now due the parties as of the time of the entry into the Mediated Settlement Agreement because Petitioner has attained the age of seventy (70) years (as of August 14, 2008). To the extent necessary to receive such cooperative equity fund distribution payment at this

time, Petitioner shall make application for the payment of said sum forthwith. Any amount received or realized in excess of said maximum amount of Fifty Thousand and 00/100 (\$50,000.00) shall be divided equally between the parties, and all future cooperative equity payments from Border States Cooperative, if any, arising from accumulations made to said account prior to August 15, 2008 shall be equally divided between the parties. Increases in said account from patronage or otherwise from and after August 15, 2008 shall be the separate property of the party patronizing the cooperative.

Each party is also awarded one-half of all cooperative equities accrued by the parties up to August 1, 2008 in all cooperative accounts other than said Border States Cooperative which shall be divided as hereinabove described Increases in any such accounts from patronage or otherwise from and after August 1, 2008 shall be the separate property of the party patronizing the cooperative.

After the parties' marriage dissolution, the appellant received two co-operative equity account payments. He received the first on December 31, 2008, from CHS Incorporated, the successor to Border States Cooperative. The payment totaled \$47,448.02, and the parties agree that the respondent was entitled to \$41,475.01 from that payment.

CHS made a second payment on February 13, 2009, in the sum of \$21,817.37. The respondent demanded that the appellant give to her \$18,160.70 from that payment. She claimed that \$14,498.01 was required to bring her to \$50,000, the number referred to in the distribution provision noted above, and that the balance represented her 50% portion of the future payments she was entitled to receive under that provision. The appellant contended that he was entitled to the entire amount of the second payment

because it arose entirely from his exclusive patronage of the co-ops in 2008 and did not represent funds due as of August 15, 2008, as required by the distribution provision.

The respondent moved to have the appellant held in contempt for failure to abide by the judgment and decree and for an award of the claimed portions of the equity fund payment. The funds from the first check were also included in the dispute at this time.

The district court ruled that the appellant was not in contempt, that the respondent had been paid all funds to which she was entitled from the first check, and that she was entitled to \$10,908.69 from the second check. Referring to paragraph 8 of the judgment and decree, the district court stated its reason for the award:

The parties contemplated, and the Order so provides, that all “future cooperative equity payments from Border States Cooperative, if any, arising from accumulations made to said account prior to August 15, 2008 shall be equally divided between the parties.” The Order goes on to state “Increases in said account *from patronage or otherwise* from and after August 15, 2008 shall be the separate property of the party patronizing the cooperative.” This demonstrates that the parties contemplated a future Border States check that would include a patronage dividend. Thus, each party is entitled to 1/2 of the Border States account, or \$8,544.05 each. There is similar language relating to the division of subsequent payments from other cooperatives. Thus, the parties are each entitled to 1/2 of the New Horizons account, or \$2,364.64.

The appellant challenges the district court’s award, arguing primarily that the court misread and misapplied the unambiguous dispositive language in the judgment and decree and thereby erred as a matter of law. Alternatively, the appellant argues that, if the court found an ambiguity in the language, its interpretation was in error.

DECISION

The terms of a stipulated judgment and decree of marriage dissolution are reviewed under contract-law principles. *Starr v. Starr*, 312 Minn. 561, 562-63, 251 N.W.2d 341, 342 (1977). Whether a dissolution judgment and decree is ambiguous is a question of law that we review de novo. *Tarlan v. Sorensen*, 702 N.W.2d 915, 919 (Minn. App. 2005). We also review de novo, as a question of law, the district court's application of unambiguous language in a judgment and decree. *Anderson v. Archer*, 510 N.W.2d 1, 3 (Minn. App. 1993). A judgment and decree is not ambiguous if its meaning can be derived without any guide other than knowledge of the facts upon which its language is based. *Erickson v. Erickson*, 449 N.W.2d 173, 178 (Minn. 1989). We will not overturn the district court's findings unless they are clearly erroneous. Minn. R. Civ. P. 52.01; *McIntosh v. McIntosh*, 740 N.W.2d 1, 10 (Minn. App. 2007).

Both parties contend that paragraph 8, the provision under review, is unambiguous. The district court did not appear to find any ambiguity in the provision. Furthermore, neither party has identified any underlying facts that are in dispute. Thus, the question is whether, in the apparently unchallenged factual context of the case, the district court misread or misapplied the plain, unambiguous language of the provision relating to the distribution of future co-operative equity payments.

The appellant argues that paragraph 8 governs the distribution of co-operative equity funds and refers to “patronage accounts”—which are different from equity funds—only to describe “how credits to the equity account from the patronage account are to be handled.”

The plain language of paragraph 8 provides a number of things. First, the respondent is entitled to all Border States equity funds “accrued as of August 15, 2008” up to a maximum of \$50,000, and to 50% of the excess over \$50,000 from that fund. Second, the respondent is entitled to half of “all future co-operative equity payments from Border States Cooperative, if any, arising from accumulations made to said account prior to August 15, 2008” Third, if there are increases in the Border States account on or after August 15, 2008, “from patronage or otherwise,” the patronizing party is entitled to those increases. It is clear that the respondent is entitled to “future” payments from the Border States account if those payments represent accumulations made prior to August 15, 2008. The provision does not distinguish equity funds from patronage funds. In fact, that distinction, if any is to be made, pertains only to “increases” on or after August 15, 2008.

The record demonstrates that the payment in the second check made on February 17, 2009, represented a patronage refund for the fiscal year 2008. It is undisputed that the 2008 fiscal year ended August 31, 2008. The district court ruled that, when the parties provided for a division of future equity payments from the Border States account as a result of accumulations made prior to August 15, 2008, any such payment “would include a patronage dividend.” This reading is not erroneous. In addressing the possibility of future Border States’ payments from accumulations before August 15, 2008, paragraph 8 does not make the patronage distinction that it makes for increases on or after August 15, 2008. Rather, it refers to accumulations made to the account, which funds are broadly called “equity funds.” Thus, whatever accumulations were made

before August 15, 2008, albeit payable afterward, are to be divided as the district court determined, without regard to how those accumulations were made. The court applied the same reasoning to the New Horizons account.

Finally, the appellant contends that the distributed funds in the second check were not accumulations as of August 15, 2008. The district court necessarily found that the funds represented accumulations before August 15, 2008, and we find no evidence in the record to the contrary.

Affirmed.