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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2360**

In re the Marriage of:
Jeanette Juana Dalseth,
petitioner,
Appellant,

vs.

Stephen Errol Dalseth,
Respondent.

**Filed February 12, 2008
Affirmed
Crippen, Judge***

Dakota County District Court
File No. F6-93-15241

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Considered and decided by Peterson 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.

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant Jeanette Dalseth challenges the district court order denying her motion to compel discovery responses, arguing that the statute of limitations has not run on enforcement of a 1994 property division because the judgment did not state a time for completing the division and contained a clause reserving the court's jurisdiction over the marital assets "pending implementation" of the division. Because the judgment did not postpone enforcement of the division, the district court did not err in refusing further process in appellant's enforcement proceedings.

FACTS

Premised on an agreement of the parties, a 1994 divorce judgment provided that their marital property was to be equally divided but that "until the assets can be transferred to accomplish the division, each party is awarded one-half of any income generated by the assets." The judgment also expressly reserved the district court's jurisdiction over "all assets of the parties pending implementation of the division." In 1996, appellant obtained relief in her action to compel division of some assets and payment of overdue spousal maintenance.

In July 2006, appellant served respondent Stephen Dalseth with discovery requests, seeking proof that he had complied with the terms of the 1994 decree by conveying one-half of all marital property to her. The district court denied appellant's

motion to compel this discovery, disputed by respondent, concluding that enforcement of the underlying judgment was barred by the ten-year statute of limitations.¹

DECISION

The construction and application of a statute of limitations is a question of law, which we are to review de novo. *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54 (Minn. 1998). Divorce decrees are governed by the ten-year limitations period prescribed in Minn. Stat. § 541.04 (2006) (barring action to enforce judgment unless begun within ten years after its entry). *Dolly v. Nichols*, 386 N.W.2d 261, 263 (Minn. App. 1986), *review denied* (Minn. June 30, 1986). Courts have no authority, legal or equitable, to extend or modify the period of limitations prescribed by statute. *DeMars v. Robinson King Floors, Inc.*, 256 N.W.2d 501, 505 (Minn. 1977).

Appellant argues that the clause reserving the court's jurisdiction postpones the running of the limitations period. But the judgment calls for a set division of assets without suggesting any reason why the division is not immediately enforceable and declares that the judgment operated as a "conveyance" in the event respondent delayed in conveying assets. Nothing in the judgment disables appellant from enforcing her rights following entry of the decree, and it follows that the ten-year limitations period began to

¹ It has not been asserted that appellant, after twelve years, may have abandoned her claim to the property awarded to her in the 1994 judgment. *Cf. Hicks v. Hicks*, 533 N.W.2d 885, 886 (Minn. App. 1995) (deeming, after two years of inaction on a motion to reduce child support, that the motion had been abandoned and reversing the district court's grant of that motion); *St. Paul, M. & M. Ry. Co. v. Eckel*, 82 Minn. 278, 280-82, 84 N.W. 1008, 1009 (1901) (stating that where there was lack of due diligence in prosecuting claim, the moving party was guilty of "grossest laches and negligence" and public policy demanded the discouragement of such a stale claim).

run with the entry of the decree. *See Jacobson v. Bd. of Trustees of the Teachers Ret. Ass'n*, 627 N.W.2d 106, 110 (Minn. App. 2001) (stating that the statute of limitations runs from the time that the holder of the right can apply to the court for relief and is enabled to commence proceedings to enforce her rights), *review denied* (Minn. Aug. 15, 2001).

Appellant analogizes her property-division rights to the division of a pension, which sometimes involves delayed enforcement beyond the ten-year limitations period when the present value of the pension is too speculative to be divided through an immediate lump-sum payment. *See McGowan v. McGowan*, 532 N.W.2d 258, 260 (Minn. App. 1995) (stating that “when . . . evidence of the present pension value is too speculative, the trial court may reserve jurisdiction for a distribution when the pension payments begin”). Although the 1994 judgment notes that the agreement of the parties fails to state the value of respondent’s dental practice or most of the practice’s “tangible assets,” neither this nor any other judgment language, nor any evidence of record, suggests that the value of the assets was too speculative to be calculated at the time.²

Appellant next asserts that the limitations period for enforcement of the judgment began to run in October 1996, when she first sought enforcement relief, rather than November 1994, when the judgment was entered. But she provides no argument or authority to support this assertion. An assignment of error based on mere assertion and

² All of the assets are specifically identified in the judgment, including respondent’s dental practice and its tangible assets and specifically valued bank accounts, publicly traded securities, mutual funds, municipal bonds, individual retirement accounts, and other items.

not supported by any argument or authorities is waived and will not be considered on appeal. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971).

Finally, appellant contends that respondent is holding the assets in constructive trust. Not a real trust, a constructive trust is “a remedy for the prevention of unjust enrichment where a person holding property is under a duty to convey it to another to whom it justly belongs.” *Knox v. Knox*, 222 Minn. 477, 481, 25 N.W.2d 225, 228 (1946). Relief under this equitable doctrine depends upon a prima facie showing of a wrongful withholding that leads to an unjust enrichment, *id.* at 482, 25 N.W.2d at 228, and neither is indicated by evidence in the record.

Appellant’s attempt to enforce the decree is barred by the ten-year limitations period prescribed in Minn. Stat. § 541.04. The district court did not err in denying appellant’s motion.

Affirmed.