

NO. A10-2239

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State of Minnesota  
**In Court of Appeals**

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Jody Lynn Nelson,

*Appellant,*

vs.

Douglas Jon Nelson,

*Respondent.*

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**APPELLANT JODY LYNN NELSON'S  
BRIEF, ADDENDUM AND APPENDIX**

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FELHABER, LARSON, FENLON  
& VOGT, P.A.

Jessica J. Nelson (#0347358)  
Randi J. Winter (#0391354)  
220 South Sixth Street, Suite 2200  
Minneapolis, MN 55402  
(612) 339-6321

*Attorneys for Appellant*

THE ENGEL LAW FIRM, PLLC

Matthew A. Engel (#315400)  
333 Washington Avenue North, Suite 300  
Minneapolis, MN 55401  
(612) 373-7060

*Attorney for Respondent*

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## STATEMENT OF THE ISSUE

1. Did the trial court err in converting Respondent's marital lien on homestead property to a money judgment personally enforceable against Appellant where the Dissolution Decree does not provide an underlying debt obligation separate and distinct from Respondent's lien on the homestead?

### How the issue was raised in the trial court:

Respondent commenced a post-decree enforcement proceeding, seeking to convert his marital lien to a money judgment against Appellant. In opposition briefing and at hearing, Appellant argued that the relief sought by Respondent was not contemplated by the parties' Dissolution Decree. Rather, Appellant argued that because the Decree did not provide an independent debt obligation from Appellant to Respondent, and because the Decree was silent with respect to how Respondent's marital lien could be enforced, the lien must be treated as a mortgage entitling Respondent to the remedy of foreclosure on the homestead. (See, e.g., T. 3-4.)

### The trial court's ruling:

After conducting a brief hearing and noting that little, if any, case law exists with respect to this issue, the trial court held that Respondent's marital lien was separate and distinct from Appellant's obligation to repay a debt owed pursuant to the Dissolution Decree. The trial court then ordered the marital lien to be converted to a money judgment against Appellant and entered judgment against Appellant for the same.

### How the issue was subsequently preserved for appeal:

Appellant filed a timely notice of appeal within 60 days of the trial court's entry of judgment. (App-4-5.)

### Apposite authorities:

*Bakken v. Helgeson*, 785 N.W.2d 791 (Minn. Ct. App. 2010).

*Erickson v. Erickson*, 452 N.W.2d 253 (Minn. Ct. App. 1990).

*Driscoll v. Driscoll*, 414 N.W.2d 441 (Minn. Ct. App. 1987).

## STATEMENT OF THE CASE

When Appellant Jody Lynn Nelson and Respondent Douglas Jon Nelson divorced in 2001, Appellant was awarded the parties' homestead and Respondent was awarded a lien on the homestead for his share of the equity in the property. The Dissolution Decree provided that the lien would become enforceable when the parties' youngest child reached the age of majority, but did not specify any means of enforcement. Appellant's attempts to sell the property proved unsuccessful, and by the time of the child's emancipation in 2008, all equity in the property had been lost. Respondent commenced a post-decree enforcement proceeding, requesting that the trial court convert his lien to a money judgment personally enforceable against Appellant. Appellant opposed, arguing that the Decree did not provide a personal debt obligation separate and distinct from the homestead, and as such, the proper remedy for Respondent to enforce his lien was to foreclose on the property. The trial court disagreed, converting Respondent's lien to a personal judgment against Appellant. This appeal follows.

## STATEMENT OF THE FACTS

Appellant Jody Lynn Nelson ("Appellant") and Respondent Douglas Jon Nelson ("Respondent") divorced in 2001. (See Add-4-25.) At the time of the parties' divorce, the only marital asset of significant value was the parties' homestead in Chisago City, Minnesota. (Add-29.) Pursuant to their Divorce Decree, Appellant was awarded the homestead, along with the sole physical custody of the parties' three minor children, and Respondent was awarded a lien against the homestead. (Add-8, 12.) The amount of the lien was \$67,725.00, which was equal to Respondent's share of the equity in the

homestead at the time of marriage dissolution. (Add-12, 29.) With respect to this lien, the Decree provides as follows:

That [Appellant] shall be awarded and have all right, title, interest, and equity in and to the homestead of the parties, . . . subject to all encumbrances of record and a lien in favor of [Respondent] in the amount of \$67,725.00. That [Appellant] is awarded this homestead subject to a lien payable to [Respondent] upon the occurrence of the first of the following events:

1. Sale of the homestead by [Appellant];
2. [Appellant's] remarriage[;] or
3. Upon the emancipation of the last of the parties['] children.

\* \* \*

[Respondent] shall execute a quitclaim deed and such other documents as may be necessary to transfer to [Appellant] his entire right title, interest, and equity in and to the homestead, subject to his lien contained herein . . . .

(Add-12, emphasis added.) The Decree is silent with respect to how Respondent's lien could be enforced. (See Add-4-25.)

The parties' third and youngest child turned 18 on April 19, 2008. (See Add-7.) Shortly thereafter, Respondent began seeking payment of the lien from Appellant. (See Add-28.) At the time, Appellant had already been trying to sell the property for over one year. (Add-30.) Unfortunately, as is the case with countless residential properties across the country, the value of the house diminished substantially during the collapse of the real estate market. (Add-30.) Despite continued reductions in the sale price, Appellant was unable to sell the home. (Add-30.) As of July 2010, the fair market of the house was less than the amount owed against the property. (Add-30.) Given that there was no longer

any equity in the home, Appellant offered Respondent the entire property in order to satisfy the lien, but Respondent refused. (Add-28.)

Instead, Respondent filed a post-decree motion requesting that the lien be converted to a money judgment against Appellant. (App-1-3.) Appellant opposed Respondent's motion on the basis that such relief was not contemplated by the Decree. Specifically, Appellant argued at hearing (and maintains on appeal) that pursuant to the express terms of the Decree, Respondent was awarded a lien on the property, but not any separate underlying debt obligation personally enforceable against Appellant. (See, e.g., T. 2-3; Add-12.) Appellant further argued that because the Decree only awarded Respondent a security interest on the homestead, foreclosure constitutes the proper remedy for enforcing Respondent's marital lien. (T. 4.)

Ultimately, the trial court disagreed, concluding that "[t]he Judgment and Decree in the case at bar does not state that the sole source of repayment of the \$67,725 (plus interest) is the homestead." (Add-3.) The trial court further concluded, "Thus [Respondent's] marital lien on the real estate is separate and distinct from [Appellant's] obligation to pay [Respondent] the amount of the debt owed pursuant to the Judgment and Decree." (Add-3.) As a result, the court ordered, "The marital lien created by the Judgment and Decree . . . is hereby converted to a money judgment against [Appellant] . . . ." (Add-3.) This appeal follows.

## ARGUMENT

### **I. STANDARD OF REVIEW.**

“The trial court may not modify a division of property after the original judgment has been entered and the time for appeal has expired.” Erickson v. Erickson, 452 N.W.2d 253, 255 (Minn. Ct. App. 1990). The trial court may only “issue appropriate orders implementing or enforcing specific provisions of the dissolution decree.” Id. While a trial court has the power to clarify and construe a divorce judgment, it may not do so in a way that would change the parties’ substantive rights. Ulrich v. Ulrich, 400 N.W.2d 213, 218 (Minn. Ct. App. 1987).

Although the trial court is accorded discretion in implementing a dissolution decree, “if there is a clearly erroneous conclusion that is against logic and the facts on the record, the court of appeals will find that the trial court abused its discretion.” Stromberg v. Stromberg, 397 N.W.2d 396, 400 (Minn. Ct. App. 1986). In addition, a district court abuses its discretion when it improperly applies the law. Bauerly v. Bauerly, 765 N.W.2d 108, 110 (Minn. Ct. App. 2009); Schisel v. Schisel, 762 N.W.2d 265, 272 (Minn. Ct. App. 2009).

### **II. THE TRIAL COURT ERRED IN CONVERTING THE MARITAL LIEN INTO A MONEY JUDGMENT PERSONALLY ENFORCEABLE AGAINST APPELLANT.**

#### **A. The Decree Does Not Create A Debt Obligation Separate And Distinct From The Marital Property.**

The trial court abused its discretion when it awarded Respondent a personal judgment against Appellant, because the parties’ stipulated Dissolution Decree only

provides Respondent a security interest in the parties' marital homestead; it does not create a personal debt obligation by Appellant to Respondent separate and distinct from the homestead. By converting the marital lien into a personal judgment, the trial court improperly modified the Dissolution Decree and misapplied controlling law concerning marital liens.

“[M]arital liens . . . are not judgment liens; they are a method of distributing property in a dissolution proceeding.” Bakken v. Helgeson, 785 N.W.2d 791, 794 (Minn. Ct. App. 2010). See also Charlson v. Charlson, 374 N.W.2d 473, 476 (Minn. Ct. App. 1985) (“A lien on a homestead is a division of property.”). Judgment language postponing payment of a homestead lien interest in order to accommodate occupancy of the home by minor children is considered a form of child support. Saabye v. Saabye, 373 N.W.2d 386, 387 (Minn. Ct. App. 1985). This is because a decree “could easily . . . provide[] for an immediate sale of the homestead and division of the proceeds. Instead, a method of dividing the homestead [is] chosen which [will] have the least impact on its occupancy by the children.” Kerr v. Kerr, 243 N.W.2d 313, 315 (Minn. 1976). In other words, a marital lien is a means of ensuring that the lienholder retains a security interest in the marital property, while delaying the lienholder's ability to cash in on his share of the equity until the home is sold or the children no longer occupy the home.

Thus, unless otherwise specifically provided in a dissolution decree, a marital lien does not create a separate personal debt obligation from the possessing-spouse to the lienholder. This Court has previously recognized the distinction between the award of a marital lien and the award of a separate underlying debt obligation. For example, in

Driscoll v. Driscoll, 414 N.W.2d 441, 443 (Minn. Ct. App. 1987), the Court noted that a marital lien on homestead property awarded to one spouse “was not an asset.” The Court further reasoned that such a lien “had no value, but [instead] protected [the lienholder’s] interests in the event the home were sold . . . .” Id. at 443, 447 (holding trial court properly exercised its discretion in awarding marital lien because “[a]s a no-value asset, the court-ordered lien simply protects [the lienholder] in the event [the spouse remaining in possession] . . . sells the homestead”).

During the trial court proceedings, Respondent relied on (and the trial court cited) State Bank of Pennock v. Schwenk, 395 N.W.2d 371 (Minn. 1986), for the premise that a lien constitutes a security instrument separate and apart from an obligation to repay a debt. Appellant agrees. Under the plain language of the Decree, Respondent was awarded a lien—a form of security interest—in the homestead. Unlike in Schwenk, however, the Decree at issue in this case does not independently award Respondent \$67,725.00 or otherwise support the creation of a debt obligation separate and apart from the lien itself. See Schwenk, 395 N.W.2d at 373.

In Schwenk, as part of the dissolution decree, the trial court awarded the wife a marital award of “\$100,000, plus interest, to be paid [by the husband] in the annual installments of \$25,000.” Id. *In addition to that sum*, the court awarded the wife a lien against the parties’ real estate to secure the marital award required by the decree. Id. In contrast, under the plain language of the Decree at issue here, Respondent was not awarded a separate marital award amount against Appellant; rather, Respondent was *only* granted a lien against the homestead. (See Add-12.) Pursuant to the Decree, Appellant

was awarded the homestead “subject to . . . *a lien* in favor of [Respondent] in the amount of \$67,725.00.” (Id., emphasis added.) This, in and of itself, is not an asset creating a personal debt obligation upon Appellant. See Bakken, 785 N.W.2d at 794; Driscoll, 414 N.W.2d at 443, 447.

The parties could have agreed to include language in the Decree awarding Respondent a separate marital award to be paid by Appellant, but they did not. Because the Decree does not provide an independent personal obligation of Appellant to Respondent, the trial court’s conversion of Respondent’s lien on the marital homestead to a personal judgment against Appellant constitutes an improper modification of the original Decree. See Stromberg, 397 N.W.2d at 400 (holding trial court order that resulted in a significant change in the distribution of assets than that authorized in the original decree “is more in the nature of a modification of the property distribution than an enforcement of the original distribution provision, and was therefore an abuse of the trial court’s discretion”).

**B. Respondent’s Marital Lien Should Be Treated As A Mortgage.**

The trial court erred by converting Respondent’s marital lien on the homestead to a money judgment rather than treating the lien as a mortgage. “A marital lien may be foreclosed as a mortgage under Minn. Stat. §§ 581.01[-].12 (2008) when the original judgment does not expressly provide a different means for enforcement.” Bakken, 785 N.W.2d at 795 (citing Erickson, 452 N.W.2d at 256).

This Court’s recent holding in Bakken, 785 N.W.2d 791, is instructive. In Bakken, the successor-in-interest of a marital lien commenced an action to foreclose the lien

against homestead property. Id. at 794. The language of the original judgment and decree creating the lien in Bakken provided that the husband was awarded the homestead subject to the wife's \$5,000 lien "payable when the premises [were] sold." Id. at 793. The decree "did not expressly provide a means for enforcement [of the marital lien]." Id. at 795. Despite numerous transfers of the property, the lien remained unpaid. See id. at 793-94.

Over ten years passed from the original entry of judgment dissolving the marriage before the lienholder in Bakken initiated her foreclosure action. See id. The property owner argued, and the trial court agreed, that the foreclosure action was barred by the 10-year statute of limitations for enforcing a judgment or judgment lien. Id. at 794. On appeal, this Court found the trial court erred in treating the marital lien as a judgment lien. Id. at 794-95. Instead, the Court held, "Because no more specific enforcement mechanism was provided in the original dissolution judgment, [the] lien may be foreclosed as a mortgage . . . ." Id. at 796.

Bakken is the most recent of other instances when this Court has recognized that marital liens representing a party's homestead interest should be treated as a mortgage entitling the lienholder to the remedy of foreclosure. For instance, in Erickson, 452 N.W.2d at 256, the Court held that a trial court properly characterized a marital lien as a mortgage. There, "[t]he decree awarded the property to [the husband] subject to [his wife's] lien for 50% of the net proceeds upon the sale of the property." Id. at 254. The decree further required the husband to sell the property as soon as the parties' son graduated from high school or reached age 18. See id.

Three years after the son turned 18, the wife sought enforcement of the original decree. Id. at 254. At that time, the trial court “interpreted the original decree to require [the husband] to take reasonable steps to sell the property.” Id. When the property remained unsold several months later, the trial court issued an order awarding the wife “a lien in the nature of a mortgage in the principal amount of \$45,446.00[,]” which represented half the equity in the property. Id. at 254-55. In rejecting the husband’s argument that the trial court erred in characterizing the wife’s lien as a mortgage entitled to foreclosure on appeal, this Court held,

This argument is without merit. Foreclosure is the statutory mechanism that provides for the satisfaction of mortgages. *See* Minn. Stat. ch. 181 (1988). We recognize the original decree did not provide expressly for a means to enforce [the wife’s] lien. . . . [B]ecause we find no authority exempting spousal liens from foreclosure, the trial court acted within its discretion by concluding [the wife] may foreclose on her lien.

Id. at 256.

The same analysis applies in the instant case. Respondent’s lien on the homestead became enforceable pursuant to the Decree when the parties’ youngest child turned 18 in 2008. The Decree does not provide that Respondent’s marital lien could be converted to personal judgment against Appellant. Indeed, the Decree is completely silent with respect to Respondent’s mechanism for enforcing his lien. Therefore, based on established precedent in this jurisdiction, the trial court should have characterized the lien as a mortgage entitling Respondent to foreclose on the property. *See Bakken*, 785 N.W.2d at 796; *Erickson*, 452 N.W.2d at 256.

**CONCLUSION**

The trial court's conversion of Respondent's marital lien to a money judgment against Appellant was an abuse of discretion because it exceeded the relief contemplated by the Decree. By treating the marital lien as a personal debt obligation, the trial court misapplied controlling law and improperly modified the Decree in a way that substantially affected the rights of the parties. For these and all the reasons set forth above, Appellant respectfully requests that the trial court's judgment be reversed.

Respectfully submitted,

Dated: June 7, 2011

FELHABER, LARSON, FENLON & VOGT, P.A.

By: *Randi Winter*

Jessica J. Nelson, #0347358

Randi J. Winter, #0391354

220 South Sixth Street, Suite 2200

Minneapolis, MN 55402-4504

Telephone: (612) 339-6321

ATTORNEYS FOR APPELLANT

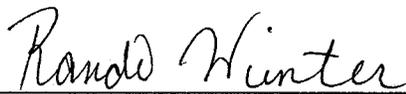
**CERTIFICATE OF COMPLIANCE**

Attorneys for Respondent hereby certify that this brief complies with the word count and line count limitation contained in R. Civ. App. P. 132, subd. 3, as follows:

The word processing software used to prepare this brief was Microsoft Word 2003. There are 2,963 words and 289 lines in this brief, not including the Table of Contents, Table of Authorities, Addendum and Appendix.

Dated: June 7, 2011

FELHABER, LARSON, FENLON & VOGT, P.A.

By: 

Jessica J. Nelson, #0347358

Randi J. Winter, #0391354

220 South Sixth Street, Suite 2200

Minneapolis, MN 55402-4504

Telephone: (612) 339-6321

ATTORNEYS FOR APPELLANT