

NO. A10-2239

State of Minnesota
In Court of Appeals

Jody Lynn Nelson,

Appellant,

vs.

Douglas Jon Nelson,

Respondent.

APPELLANT JODY LYNN NELSON'S REPLY BRIEF

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

Attorney for Respondent

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. INTRODUCTION	1
II. THE TRIAL COURT’S INTERPRETATION OF THE DECREE IS SUBJECT TO A <i>DE NOVO</i> REVIEW.....	1
III. THE TRIAL COURT ERRED IN READING A SEPARATE PERSONAL DEBT OBLIGATION INTO THE DECREE WHERE THE DECREE ONLY PROVIDED RESPONDENT WITH A LIEN.....	2
IV. CONVERSION OF A LIEN TO A MONEY JUDGMENT IS NOT AN AVAILABLE METHOD OF LIEN ENFORCEMENT UNDER MINNESOTA LAW.....	4
A. A Lien Does Not Provide The Lienholder With A Right To Seek A Personal Judgment Against The Encumbered Property’s Owner.....	4
B. Respondent’s Relief Must Relate To The Encumbered Property.....	7
C. Marital Liens Are Intended To Be A Mechanism For Postponing The Sale Of The Homestead For The Benefit Of Minor Children, Not As A Means Of Transferring Personal Liability To The Custodial Parent Remaining In Possession.....	11
V. CONVERSION OF RESPONDENT’S LIEN TO A MONEY JUDGMENT CONSTITUTES AN IMPROPER MODIFICATION OF THE STIPULATED DECREE.....	14
CONCLUSION	16
CERTIFICATE OF COMPLIANCE	17

TABLE OF AUTHORITIES

	Page
<u>Cases</u>	
<u>Am. Nat'l Bank v. HRA For Brainerd,</u> 773 N.W.2d 333 (Minn. Ct. App. 2009)	5
<u>Anderson v. Archer,</u> 510 N.W.2d 1 (Minn. Ct. App. 1993)	1, 2
<u>Bakken v. Helgeson,</u> 785 N.W.2d 791 (Minn. Ct. App. 2010)	8, 9, 11
<u>Dorsey & Whitney LLP v. Grossman,</u> 749 N.W.2d 409 (Minn. Ct. App. 2008)	4, 5
<u>Driscoll v. Driscoll,</u> 414 N.W.2d 441 (Minn. Ct. App. 1987)	8
<u>Erickson v. Erickson,</u> 452 N.W.2d 253 (Minn. Ct. App. 1990)	9
<u>Goar v. Goar,</u> 368 N.W.2d 348 (Minn. Ct. App. 1985)	11
<u>Granse & Assocs, Inc. v. Kimm,</u> 529 N.W.2d 6 (Minn. Ct. App. 1995)	9, 12
<u>Hanson v. Hanson,</u> 379 N.W.2d 230 (Minn. Ct. App. 1985)	9, 10
<u>Karl Krahl Excavating Co. v. Goldman,</u> 208 N.W.2d 719 (Minn. 1973)	4, 6
<u>Kerr v. Kerr,</u> 243 N.W.2d 313 (Minn. 1976)	12
<u>Lundstrom Constr. Co. v. Dygert,</u> 94 N.W.2d 527 (Minn. 1959)	5
<u>Potter v. Potter,</u> 471 N.W.2d 113 (Minn. Ct. App. 1991)	9
<u>Simons v. Shiltz,</u> 741 N.W.2d 907 (Minn. Ct. App. 2007)	11
<u>Ulrich v. Ulrich,</u> 400 N.W.2d 213 (Minn. Ct. App. 1987)	15
<u>United Realty Trust v. Prop Dev. & Research Co.,</u> 269 N.W.2d 737 (Minn. 1978)	6

Treatises

14 Minn. Prac., Family Law § 9:44 (3d ed.)..... 7
14 Minn. Prac., Family Law § 9:47 (3d ed.)..... 7

REPLY ARGUMENT

I. INTRODUCTION

The trial court erred by interpreting the parties' stipulated Dissolution Decree ("Decree") to provide for a cash award from Appellant to Respondent that was not provided in the plain language of the Decree. In addition, the trial court abused its discretion by converting Respondent's marital lien on homestead property to a personal judgment against Appellant, thereby modifying the substantive rights of the parties. The trial court rendered the mechanism of a "lien" meaningless, because Respondent was not required to pursue relief against the encumbered property to which the lien attached.

Rather than cite any relevant legal authority for his argument that conversion to a money judgment is a valid method of lien enforcement, Respondent conclusively asserts that "long standing legal principles" would be turned "upside-down" if this Court recognizes that a marital lien affords its holder relief against encumbered property rather than a right of personal liability against the property's owner. To the contrary, such a holding is both correct under Minnesota law and necessary to ensure that marital liens continue to serve as a mechanism for delaying the disposition of homestead property for the benefit of minor children.

II. THE TRIAL COURT'S INTERPRETATION OF THE DECREE IS SUBJECT TO A *DE NOVO* REVIEW.

While the implementation of a dissolution decree is reviewed under an abuse of discretion standard, the interpretation of a decree is reviewed *de novo*. See Anderson v. Archer, 510 N.W.2d 1, 3 (Minn. Ct. App. 1993). Respondent argues that the trial court

did not abuse its discretion in implementing the Decree, because the trial court interpreted the Decree to provide a personal debt obligation by Appellant to Respondent independent of the marital lien on the parties' homestead. (See Resp. Br. at 4.) The trial court's erroneous interpretation of the Decree is not entitled to deference on appeal. As this Court has recognized: "Because the interpretation of a written document is a question of law, we do not defer to the district court's interpretation of a stipulated provision in a dissolution decree." Anderson, 510 N.W.2d at 3. The trial court's decision must be reversed because the Decree does not award Respondent any type of monetary award from Appellant apart from a lien for his share of the equity in the marital homestead.

III. THE TRIAL COURT ERRED IN READING A SEPARATE PERSONAL DEBT OBLIGATION INTO THE DECREE WHERE THE DECREE ONLY PROVIDED RESPONDENT WITH A LIEN.

Respondent does not point to any language in the Decree which awards him a specific monetary amount distinct from the lien. Instead, Respondent argues that such an obligation is implied in the Decree because, he claims, a lien cannot exist without an underlying debt obligation. (Resp. Br. at 1-2, 5.) Appellant does not dispute that there is an underlying obligation in this case in the form of Respondent's share of the equity in the homestead. (Add-29.) However, this obligation is specifically tied to the homestead, and it is not a separate personal debt obligation from Appellant to Respondent that can be personally enforced against Appellate apart from the encumbered property.

Without any citation to the trial court record, Respondent contends his marital lien "represented the overall division of marital property," rather than his share of equity in the homestead at the time of marriage dissolution. (Resp. Br. at 1.) The trial court did

not make any finding in this respect, (see Add-01-03), and the only evidence before the court was Appellant's unrefuted testimony that the amount of Respondent's lien represented "what was believed to be his relative share of the equity at [the] time [of marriage dissolution]." (Add-29.)

Respondent's unsupported claim that the lien represents the overall division of marital property is belied by the plain language of the Decree. Section XXV awards Appellant the homestead subject to Respondent's lien. (Add-12.) All of the parties' other marital property is divided in Sections XXVI – XXVIII of the Decree. (Add-13-14.) No reference to Respondent's lien is made in these sections, and the division of personal property appears independently equitable. (See id.) For example, each spouse retained possession of one vehicle. (See Add-13, Section XXVI.) Likewise, they each retained possession of the personal property in their possession and the financial accounts in their respective control. (See Add-13-014.)

The parties would not be before the Court today if the Decree had provided Respondent with a specific cash award secured by a lien on the homestead. The Decree did not. Instead, Respondent was awarded only a lien on the homestead, reflecting the parties' intent that the homestead serve as the source of payment for Respondent's pre-existing property interest therein. (Add-12.) If the decree truly provided Respondent with a money award independent of the lien itself as Respondent advocates, there would have been no need for the court to "convert" the lien at all, yet that is how the trial court described its actions in the order: "The marital lien . . . is hereby *converted* to a money judgment against [Appellant]." (Add-03, emphasis added). The trial court erred in

finding an independent debt obligation where the Decree does not contain any language to support that finding.

IV. CONVERSION OF A LIEN TO A MONEY JUDGMENT IS NOT AN AVAILABLE METHOD OF LIEN ENFORCEMENT UNDER MINNESOTA LAW.

A. A Lien Does Not Provide The Lienholder With A Right To Seek A Personal Judgment Against The Encumbered Property's Owner.

Under Minnesota law, a lien only gives its holder a right against the encumbered property; a lien does not entitle the lienholder to a personal judgment against the owner of the encumbered property. As explained by the Minnesota Supreme Court,

The judgment [in a lien enforcement action] is not an ordinary personal judgment against the [property] owner or party personally liable for debts, so as to be a lien upon other real estate of the owner or party personally liable or to permit execution before the sale of the real estate has been completed.

Karl Krahl Excavating Co. v. Goldman, 208 N.W.2d 719, 721 (Minn. 1973). Because an action to enforce a lien must be made against *property*, an action to enforce a lien cannot result in a *personal* judgment against that property's *owner*.

The rule that a lienholder may not seek a personal judgment against the property owner in an action to enforce a lien has been recognized by this Court in several different contexts. For example, in Dorsey & Whitney LLP v. Grossman, 749 N.W.2d 409 (Minn. Ct. App. 2008), a law firm commenced an action to establish an attorney's lien arising from its representation of a corporation and its sole shareholder in patent infringement litigation. 749 N.W.2d at 414-415. As part of its relief sought, the law firm requested and was granted personal judgments against both the corporation and shareholder for the

amount of the lien. Id. at 415. On appeal, the corporation and shareholder argued that the entry of personal judgments against them was improper. Id. This Court agreed. Although it noted that a “lien may be enforced in a variety of ways, including through the ordered sale or mortgage of the property to which the lien attaches,” the Court concluded that the entry of an unqualified personal judgment was not one of the “available methods for foreclosing” the law firm’s lien. Id. at 421.¹

Similarly, in the case of a mechanic’s lien, a subcontractor has a claim against the property that he has repaired or improved, but he does not have a personal claim against the property’s owner in the absence of a contractual relationship with that owner. Lundstrom Constr. Co. v. Dygert, 94 N.W.2d 527, 533 (Minn. 1959). In order to recover the value of the lien, the subcontractor must pursue relief against the encumbered property, and the value of the lien is contingent on the value of the property. If the property loses all its value, the lien may not be worth anything, but the subcontractor still cannot seek a personal judgment against the property owner unless he can maintain an independent cause of action for contractual liability.

Nonrecourse loans are another example recognized by Minnesota courts where a creditor may hold a valid lien against a debtor’s property despite maintaining no right of relief against the debtor personally. For example, in Am. Nat’l Bank v. HRA For Brainerd, 773 N.W.2d 333, 338, 340 (Minn. Ct. App. 2009), this Court rejected a

¹ Even though the Court in Grossman found that the district court had erred by characterizing the judgment as personal in nature, the Court ultimately concluded that, except for the *nature* of the judgment, the enforcement action was otherwise proper because the trial court “identified the proceeds from [the patent litigation] as the source of payment.” 749 N.W.2d at 422.

creditor's argument that it was entitled to a deficiency judgment personally enforceable against a debtor after the debtor defaulted, because the parties' agreement contemplated the secured collateral (or proceeds from the sale of that collateral) as the exclusive payment source for the debt. See also United Realty Trust v. Prop Dev. & Research Co., 269 N.W.2d 737, 741 n.4 (Minn. 1978) (recognizing the effect of a nonrecourse loan is to prohibit a creditor from obtaining a personal judgment against a debtor for any amount remaining owed after a foreclosure sale).

Like the lienholders in the above examples, Respondent's lien is contingent on the value of the property, and cannot be enforced through a personal judgment against Appellant. By awarding Respondent a marital lien on the homestead, but not a separate money award payable by Appellant, the Dissolution Decree recognized the Property as the sole source of payment for any underlying debt obligation.²

The only "authority" Respondent cites for his position that entry of a personal judgment is a valid method of enforcing a marital lien is the Minnesota Practice Series on Family Law. (See Resp. Br. at 6.) While 14 Minn. Prac., Family Law § 9:44 (3d ed.) acknowledges that entry of a personal judgment may be an available right of relief to enforce the terms of a marital property award generally, § 9:47 recognizes that this right of relief is only available when "a party is obligated [under the Decree] to pay a certain

² Even if the Decree *had* provided for a separate debt obligation from Appellant to Respondent independent of the marital lien itself, under Minnesota law, a "lien claimant must exhaust his rights against the property by sale before any deficiency judgment may be entered personally against a party personally liable." Goldman, 208 N.W.2d at 721 (applying this rule in the context of a mechanic's lien). Respondent admits he did not pursue his remedies against the homestead before obtaining the personal judgment against Appellant for the entire amount of his lien. (Resp. Br. at 7.)

sum of money within a certain period of time, and that money is not paid” In the absence of such an obligation, entry of a personal judgment would be improper.

Respondent’s attempt to analogize the rights available to a junior lender upon a senior lender’s mortgage foreclosure is similarly unavailing. (Resp. Br. at 8.) While it is true that a junior lender typically maintains a right to pursue a judgment against a defaulting debtor even after the junior lender’s mortgage has been extinguished, Respondent omits from his analysis the fact that the debtor’s personal liability arises from a separate instrument (e.g., a promissory note) wholly independent of the extinguished mortgage. Here, no separate instrument (or promise) exists independent of the marital lien awarded to Respondent in the Decree that would give rise to a claim of personal liability against Appellant.

Conversion of a marital lien on homestead property to a money judgment when a stipulated divorce decree does not provide the lienholder with a separate money award independent of the lien itself is tantamount to treating the lien as a confession of judgment. In essence, the lien is rendered meaningless, because the lienholder is not required to pursue relief against the encumbered property. This is exactly what happened in this case. Respondent readily admits that he did not try to foreclose or otherwise enforce the marital lien itself, (Resp. Br. at 7), yet he was awarded a judgment for a personal liability that did not exist under the original Decree.

B. Respondent’s Relief Must Relate To The Encumbered Property.

Respondent fails to cite a single case where a Minnesota court has enforced a marital lien in a manner unrelated to the encumbered property. Rather, Respondent

spends the majority of his opposition brief attempting to discredit Appellant's reliance on this Court's holdings in Bakken v. Helgeson, 785 N.W.2d 791 (Minn. Ct. App. 2010) and Driscoll v. Driscoll, 414 N.W.2d 441 (Minn. Ct. App. 1987). Contrary to Respondent's hyperbolic assertion that these cases support Appellant's "legal house of cards," (Resp. Br. at 10), "in an attempt to divert this [C]ourt from the true nature of the law in the case at bar," (Id. at 14), these cases stand exactly for which Appellant has cited them: (1) "[M]arital liens . . . are not judgment liens; they are a method of distributing property in a dissolution proceeding" (App. Br. at 6 (quoting Bakken, 785 N.W.2d at 794)); (2) Marital liens "may be foreclosed as a mortgage . . . when the original [decree] judgment does not expressly provide a different means of enforcement" (App. Br. at 8 (quoting Bakken, 785 N.W.2d at 795)); and (3) a marital lien is intended to protect the lienholder's interests in the event the homestead is sold (App. Br. at 7 (citing Driscoll, 414 N.W.2d at 443, 447)).

Appellant does not dispute Respondent's contention that this Court's language in Bakken, 785 N.W.2d at 795, that "[a] marital lien may be foreclosed as a mortgage under [Minnesota foreclosure statutes] when the original judgment does not expressly provide a different means for enforcement" is permissive. However, the recognition of other methods of lien enforcement does not *ipso facto* mean that conversion of a lien to a money judgment is itself a valid method of enforcement. Indeed, the other methods of marital lien enforcement ratified by this Court relate to the encumbered property itself, as logically follows from the general nature of a lien.

The two types of enforcement mechanisms for marital liens on real property recognized by Minnesota courts are: (1) to treat the lien as a mortgage subject to foreclosure, Bakken, 785 N.W.2d at 795; Erickson v. Erickson, 452 N.W.2d 253, 256 (Minn. Ct. App. 1990); or (2) to seek a court-ordered sale of the property, Potter v. Potter, 471 N.W.2d 113, 114 (Minn. Ct. App. 1991). See also Granse & Assocs, Inc. v. Kimm, 529 N.W.2d 6, 8 (Minn. Ct. App. 1995) (recognizing “forced sale” and “assertion of possessory rights” as the available methods for enforcing a marital lien). For example, in Potter, 471 N.W.2d at 114, this Court held that district court’s order for the immediate public sale of encumbered property was a valid method of enforcement for a marital lien because it did not change the parties’ substantive rights as originally contemplated by the dissolution decree.

Respondent’s reliance on Hanson v. Hanson, 379 N.W.2d 230 (Minn. Ct. App. 1985), for the proposition that converting a marital lien into a money judgment does not affect the substantive rights of the parties is misplaced, for several reasons. (See Resp. Br. at 14.) First, Hanson does not deal with the enforcement of a *lien*. Rather, the Hanson court was confronted with how to divide personal property in the event that one party refuses to turn over the other party’s share of household goods. Hanson, 379 N.W.2d at 231. The parties in Hanson were each awarded 50% of the couple’s personal property, consisting of “tables, chairs, lamps, pictures, etc.” Id. After the wife repeatedly refused to give the husband his half of the goods, the court awarded the wife the property, and ordered her to pay the husband an amount equal to his half of the appraised value of the property in \$1,000 monthly installments. Id. At no point did the

husband ever possess a lien on the property; thus, the court never analyzed whether a lien can be converted into a money judgment. See id. at 231-33.

Moreover, the situation in this case is not analogous to Hanson because the Hanson court's options were limited by the wife's repeated refusal to cooperate with the dissolution decree and the court's post-decree orders. Id. In Hanson, the trial court changed the form of a party's interest in personal property to cash only after the wife refused to divide the property, as required in the dissolution decree. 379 N.W.2d at 233.

In contrast here, the record demonstrates that Appellant made every effort to comply with the Decree. Appellant first listed the property for sale on April 7, 2007, over one year before Respondent's lien matured on April 19, 2008, when the parties' youngest child turned 18. (Add-30, ¶ 4; Add-17.) When the property did not sell after dropping the sale price and having it on the market for several years, Appellant offered to transfer title to Respondent free and clear of her own interest to satisfy Respondent's lien, but Respondent refused. (Add-30, ¶ 5; see also Add-28.) Respondent pursued every available avenue to satisfy Respondent's lien. There is no evidence in the record to suggest Appellant committed waste or otherwise mismanaged the property.³ The fact

³ In conclusory fashion, Respondent asserted in his Affidavit in support of his Motion to Enforce Marital Lien before the trial court that Appellant's post-Decree refinancing of the homestead drained the property's equity. (Affidavit of Douglas Jon Nelson in Support of Motion to Enforce Marital Lien, at 2, ¶ 5.) It is important to note, however, that Respondent both agreed to and was required to cooperate with the refinancing as conditions of the stipulated Decree. (See Add-11, 15.) Further, the refinancing was necessary if the parties were to have any chance of successfully selling the home because it was largely unfinished at the time of their divorce. (See Add-29, ¶ 3.) And in any event, Respondent likely could have protected his lien by timely recording it so that he retained lien priority over the refinanced mortgage. See Simons v. Shiltz, 741 N.W.2d

that the property lost its value through the collapse of the housing market is due to market forces beyond Appellant's control.

Respondent simply cannot circumvent this Court's holding that a marital lien does not constitute a judgment lien, but is instead a method of distributing property. Bakken, 785 N.W.2d at 794. A marital lien entitles its holder to relief against the encumbered property to which it specifically attaches. On the other hand, a judgment lien entitles its holder to relief against all of a defendant's property. This distinction becomes inconsequential if a trial court may, at any time after a marital lien's maturity, convert the marital lien into a personal judgment against the encumbered property's owner. Because the relief requested by Respondent and granted by the trial court did not relate to the encumbered property, it was not a valid method of lien enforcement.

C. Marital Liens Are Intended To Be A Mechanism For Postponing The Sale Of The Homestead For The Benefit Of Minor Children, Not As A Means Of Transferring Personal Liability To The Custodial Parent Remaining In Possession.

"Minnesota courts frequently have approved of awarding possession of the homestead to the custodial parent and *postponing its sale* until the children are emancipated." Goar v. Goar, 368 N.W.2d 348, 351 (Minn. Ct. App. 1985) (citing cases) (emphasis added). "Both Minnesota case law and [Minn. Stat. §] 518.63 recognize that occupancy of the homestead has direct impact on children's welfare." Id. Marital liens awarded to a non-custodial parent are an effective mechanism whereby sale of the

907, 910 (Minn. Ct. App. 2007) (applying "first in time, first in right" rule to marital lien and holding marital lien on homestead had priority over bank's subsequently filed mortgage).

homestead property can be postponed for this purpose. See Kerr v. Kerr, 243 N.W.2d 313, 315 (Minn. 1976) (noting such an arrangement caused the “realization of the interests awarded to each spouse [to be], for all practical purposes, postponed to await sale of the homestead”).

If conversion of a marital lien to a money judgment is recognized as a valid method of lien enforcement, custodial parents will be discouraged from remaining in possession of the homestead for the benefit of minor children, since to do so will result in a tremendous risk of personal liability in the event the property cannot be immediately sold upon the maturity of the non-custodial parent’s lien. This is especially true in light of the realities of today’s residential real estate market, where properties are less likely to increase in value and sellers are forced to compete with the bottomed-out prices of foreclosed and short-sale properties.

Moreover, ratification of a personal judgment as a valid method of marital lien enforcement will not only result in unintended personal liability from a lienholder spouse, but also that lienholder spouse’s creditors. A marital lien is an assignable interest under Minnesota law. Kimm, 529 N.W.2d at 8. As such, it remains susceptible to the lienholder’s creditors. Id. Once a creditor perfects its interest in a non-possessing spouse’s lien, it asserts the same enforcement rights that the non-possessing spouse maintained in the lien. See id. Upon the lien’s maturity, the creditor would then be entitled to a personal judgment against the spouse remaining in possession. Surely this was not the intent of Minnesota courts when they first recognized marital liens as an

effective mechanism for delaying homestead property's sale for the benefit of minor children.

Respondent's argument that an interpretation of the Decree to provide him with a lien enforceable against the property provides Appellant with "all of the upside" and Respondent with "the [entire] burden of the loss of equity" is disingenuous. (See Resp. Br. at 16-17.) Because Respondent's marital lien was for a fixed amount (as opposed to a percentage of sale proceeds), the risk of loss fell first on Appellant, because if the property dropped in value after the divorce, Respondent was still guaranteed the first \$67,725 (plus interest) in equity. Respondent's lien would have to be satisfied before Appellant could take away *any* proceeds from sale of the homestead.

Respondent willingly stipulated to a dissolution decree providing him with a marital lien but no independent debt obligation from Appellant. This stipulation logically followed from the intent of the parties that the sale of their marital homestead be delayed for the benefit of their minor children. If Respondent intended for Appellant to have a personal debt obligation to him, he should have negotiated a decree provision providing him with a specific monetary award. Respondent failed to do so, and as a result, he must bear the risk of loss. It is simply inequitable for Appellant to be saddled with a \$100,000-plus personal judgment because the real estate market collapsed before the parties' children were emancipated and the disposition of the marital property could be realized.

V. CONVERSION OF RESPONDENT'S LIEN TO A MONEY JUDGMENT CONSTITUTES AN IMPROPER MODIFICATION OF THE STIPULATED DECREE.

By converting Respondent's lien into a personal judgment, the trial court awarded Respondent much more than he was entitled to under the terms of the original Decree. In awarding Appellant the homestead subject to Respondent's lien, the Decree only contemplated that Respondent would have a right of relief against the homestead property. Due the obvious risk arising from property value fluctuation (which may result in a property being worth less than the amount of an attached lien), a lien is inherently worth less than a cash award for the same amount. Thus, the Decree's award to Respondent of a lien against the property is not as valuable as if the Decree ordered Appellant to pay Respondent a cash award. By converting Respondent's lien to a personal judgment against Appellant, the trial court treated the lien as a cash award, thereby increasing the value of Respondent's property division. This increase is an improper modification of the original Decree.

The trial court's order also dramatically altered Appellant's substantive rights by increasing her liability significantly beyond the scope provided in the Decree. Under the Decree, Appellant's house was encumbered by Respondent's lien. However, under the trial court's order, all of Appellant's property and future income is subject to Respondent's judgment. By awarding Respondent a right of relief against all Appellant's property and future income, the trial court improperly modified the Decree by expanding the scope of Appellant's liability.

Most significantly, the trial court's order shifted the risk of loss inherent in Respondent's lien from Respondent to Appellant. Under the terms of the Decree, the sale of the home was postponed to accommodate the minor children. Consequently, both Respondent and Appellant shared the risk that the equity in the home would diminish by the time the home was actually sold. The delay in the sale of the home until the emancipation of the children not only caused Respondent's lien to become worthless, but it also obliterated Appellant's share of the equity. By converting Respondent's lien into a money award against Appellant, the trial court's order improperly imposed Respondent's portion of the risk of loss on Appellant. As a result of the trial court's order, not only has Appellant lost all equity in her home, but she also must pay Respondent his lost equity via a lump sum payment in excess of \$100,000. This is not the division of property intended by the Decree.

By converting Respondent's lien to a personal judgment against Appellant, the trial court significantly changed the parties' substantive rights. The trial court's judgment must be reversed because it constitutes an improper modification of the Decree and is an abuse of discretion under Minnesota law. See Ulrich v. Ulrich, 400 N.W.2d 213, 218-19 (Minn. Ct. App. 1987) (holding that a trial court abuses its discretion when it implements the decree in a way that would change the parties' substantive rights under the original decree).

CONCLUSION

For the reasons set forth above, as well as those articulated in Appellant's initial brief, Appellant respectfully requests that the trial court's judgment be reversed.

Respectfully submitted,

Dated: July 18, 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 Appellant 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 4,503 words and 389 lines in this brief, not including the Table of Contents and Table of Authorities.

Dated: July 18, 2011

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

By: Randi J. 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