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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1660**

In re the Marriage of:
Rachel Andrea Fons, petitioner,
Respondent,

vs.

Rick Donato DeMartini,
Appellant.

**Filed May 14, 2012
Affirmed
Cleary, Judge**

Redwood County District Court
File No. 64-FA-08-530

Robert L. Gjorvad, Runchey, Louwagie & Wellman, Marshall, Minnesota (for respondent)

Rick Donato DeMartini, Lamberton, Minnesota (pro se appellant)

Considered and decided by Klaphake, Presiding Judge; Stoneburner, Judge; and Cleary, Judge.

UNPUBLISHED OPINION

CLEARY, Judge

Appellant Rick DeMartini appeals a district court order denying his motion to vacate the parties' dissolution decree and reopen the dissolution proceedings. Appellant argues that the decree should be vacated pursuant to Minn. Stat. § 518.145, subd. 2(4)

(2010), because the parties' marriage was void, making the decree void. Appellant also argues that the decree should be vacated because respondent Rachel Fonss committed fraud on the court by failing to disclose to the district court during the dissolution proceedings that the parties were not legally married. Lastly, appellant claims that the district court did not correctly apply the putative-spouse doctrine. We affirm.

FACTS

Appellant and Cathy DeMartini were married in June 1984. Dissolution proceedings between appellant and Ms. DeMartini were commenced at some point, but ended in 2000 when appellant and Ms. DeMartini apparently reconciled. No judgment dissolving their marriage was entered at that time. It is unclear whether, even to this day, the marriage between appellant and Cathy DeMartini has been dissolved. Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree were filed in May 2003, which provided for child custody and support and divided assets and debts. However, this document does not contain language dissolving appellant and Ms. DeMartini's marriage.

Appellant and respondent planned to marry. Appellant had told respondent that he and Ms. DeMartini were divorced. However, respondent had also heard that Ms. DeMartini was claiming that she and appellant were not yet divorced. In the fall of 2002, at appellant's encouragement, respondent spoke to Attorney Peterson, a family-law attorney who had been retained by appellant specifically to look into this issue. Attorney Peterson told respondent that he had reviewed the matter and assured her that he was positive that appellant was legally divorced from Ms. DeMartini.

The parties were married in December 2002. After the wedding, Ms. DeMartini contacted respondent's parents and told them that Ms. DeMartini and appellant were not divorced. This allegation was relayed to respondent, who did not believe Ms. DeMartini and did nothing to follow up on the allegation.

Respondent contacted Attorney Tarvestad about a bankruptcy filing in early 2007. Attorney Tarvestad told respondent that she had reviewed some information on a public website that indicated that appellant's divorce from Ms. DeMartini was not completed until May 2003. Attorney Tarvestad informed respondent that there was no marriage between the parties. However, respondent believed the advice of Mr. Peterson instead because he was experienced in family law and divorce and had been retained specifically to look into the issue rather than just reviewing a public website.

At some point, respondent mentioned to a third party, Mr. Mattison, that it appeared that appellant did not get a divorce from Ms. DeMartini until after respondent married him.¹ In July 2009, respondent testified during a hearing for other litigation that “[appellant] divorced his first wife, Cathy DeMartini, six months after I married him.”

¹ The testimony during the district court's motion hearing as to the timing of this conversation went as follows:

ATTORNEY: And that was in the fall of 2007, wasn't it?

RESPONDENT: It very well may be.

ATTORNEY: Okay. So in the fall of 2007

The district court took this to mean that respondent's testimony indicated that the conversation did take place in the fall of 2007.

The parties' dissolution proceedings commenced in July 2008. The district court entered the parties' decree in January 2010, after a three-day court trial. The decree purportedly dissolved the parties' marriage and divided assets and debts.

Appellant appealed the decree, arguing that that the district court was biased against him, that he suffered from an unfair trial, and that the court abused its discretion when making discovery rulings and when distributing the parties' assets. *Fonss v. DeMartini*, No. A10-411, 2011 WL 292034 (Minn. App. Feb. 1, 2011). This court rejected those arguments and affirmed in part but reversed the district court's imposition of a \$750 conduct-based sanction on appellant. *Id.* at *5.

In February 2011, following release of this court's opinion, appellant filed a motion in district court requesting that the decree be vacated and the dissolution proceedings reopened. Appellant argued that the parties' marriage was void, making the decree void, and that respondent committed fraud on the court by not informing the district court during the dissolution proceedings that the parties were not legally married. The district court held a hearing, during which both parties testified. Respondent testified that she still cannot say for sure whether appellant and Ms. DeMartini's divorce occurred before or after her marriage to appellant, or whether appellant and Ms. DeMartini are divorced at all.

The district court subsequently issued an order denying appellant's motion to vacate and reopen. The court determined that the decree was not void and should not be vacated pursuant to Minn. Stat. § 518.145, subd. 2(4). The court also determined that appellant had not established all of the elements of fraud on the court and the decree

should not be vacated on that basis. Lastly, the court held that, under the putative-spouse doctrine, respondent had acquired all of the rights necessary to support the awards she was given by the decree. This appeal followed.

D E C I S I O N

I. The district court did not abuse its discretion by refusing to vacate the decree.

Appellant argues that the district court should have vacated the parties' decree. Whether to vacate a dissolution judgment is discretionary with the district court, and a district court's decision not to set aside a judgment should not be disturbed absent an abuse of discretion. *Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996); *Clark v. Clark*, 642 N.W.2d 459, 465 (Minn. App. 2002). A district court abuses its discretion if it acts against logic and the facts on the record, enters fact findings that are unsupported by the record, or misapplies the law. *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010).

“On appeal, a [district] court's findings of fact are given great deference, and shall not be set aside unless clearly erroneous.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). “Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted). “If there is reasonable evidence to support the [district] court's findings of fact, a reviewing court should not disturb those findings.” *Id.*

A. The district court did not abuse its discretion by refusing to vacate the decree under Minn. Stat. § 518.145, subd. 2(4).

Pursuant to Minn. Stat. § 518.145, subd. 2 (2010):

On motion and upon terms as are just, the court may relieve a party from a judgment and decree, order, or proceeding under this chapter, except for provisions dissolving the bonds of marriage, annulling the marriage, or directing that the parties are legally separated, and may order a new trial or grant other relief as may be just for the following reasons:

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(4) the judgment and decree or order is void

A marriage is prohibited if it was entered into before the dissolution of an earlier marriage of one of the parties became final. Minn. Stat. § 517.03, subd. 1(a)(1) (2010). “All marriages which are prohibited by section 517.03 shall be absolutely void, without any decree of dissolution or other legal proceedings” Minn. Stat. § 518.01 (2010). A void marriage is a “marriage that is invalid from its inception, that cannot be made valid, and that can be terminated by either party without obtaining a divorce or annulment. . . . A void marriage does not exist, has never existed, and needs no formal act to be dissolved” *Black’s Law Dictionary* 1062 (9th ed. 2009).

On the limited portions of the record for appellant’s first marriage which were presented to this court in this appeal, it appears that appellant and Ms. DeMartini were not divorced when appellant married respondent in December 2002, and that therefore the marriage between appellant and respondent was void. For purposes of this appeal, we will assume, without holding, that this is true. Appellant argues that, because his marriage to respondent was void, the decree is void. No Minnesota caselaw has addressed whether this is true; however, caselaw has addressed when a judgment is void. “A judgment is void if the issuing court lacked jurisdiction over the subject matter, lacked personal jurisdiction over the parties through a failure of service that has not been

waived, or acted in a manner inconsistent with due process.” *Bode v. Minn. Dep’t of Natural Res.*, 594 N.W.2d 257, 261 (Minn. App. 1999), *aff’d*, 612 N.W.2d 862 (Minn. 2000). “In the interest of finality, setting aside a judgment on voidness grounds is narrowly restricted.” *Majestic Inc. v. Berry*, 593 N.W.2d 251, 257 (Minn. App. 1999) (quotation omitted), *review denied* (Minn. Aug. 18, 1999). None of the *Bode* factors are present in this case.

The district court, as a court of general jurisdiction, has subject-matter jurisdiction over family and dissolution cases, and therefore had subject-matter jurisdiction over the parties’ dissolution. *See* Minn. Const. art. VI, § 3 (“The district court has original jurisdiction in all civil and criminal cases and shall have appellate jurisdiction as prescribed by law.”). *See also Bode*, 594 N.W.2d at 259–60 (stating that “[s]ubject-matter jurisdiction is ‘a court’s power to hear and determine cases of the general class or category to which the proceedings in question belong,’” and does not go to whether the exercise of that jurisdiction in a particular case was in error) (quoting *Black’s Law Dictionary* 1425 (6th ed. 1990)).

It has not been alleged that the district court lacked personal jurisdiction over the parties and, even if the court did, any argument of lack of personal jurisdiction was waived when both parties actively participated in their dissolution proceedings. *See Comm’r of Natural Res. v. Nicollet Cnty. Pub. Water/Wetlands Hearings Unit*, 633 N.W.2d 25, 31 (Minn. App. 2001) (“The defense of personal jurisdiction is deemed waived if not raised as a defense, made by motion, or included in a responsive pleading.”) (citing Minn. R. Civ. P. 12.08(a)), *review denied* (Minn. Nov. 13, 2001); *Majestic Inc.*,

593 N.W.2d at 258 (“Personal jurisdiction may be waived, for instance, through participation in a proceeding. . . . [P]ersonal jurisdiction must be raised in the district court early in the proceedings.”).

Lastly, it has not been alleged that the district court acted in a manner inconsistent with due process. “A judgment will be held void for want of due process only where the circumstances surrounding the trial are such as to make it a sham and a pretense rather than a real judicial proceeding.” *State v. Waldron*, 273 Minn. 57, 66–67, 139 N.W.2d 785, 792 (1966) (quotation omitted). Applying the factors specifying when a judgment is void, the district court did not abuse its discretion by refusing to vacate the decree under Minn. Stat. § 518.145, subd. 2(4).

B. The district court did not abuse its discretion by refusing to vacate the decree due to fraud on the court.

Appellant argues that respondent committed fraud on the court because she knew that she was not legally married to appellant but did not disclose this information to the district court during the parties’ dissolution proceedings. “[F]raud on the court must be an intentional course of material misrepresentation or non-disclosure, having the result of misleading the court and opposing counsel and making the property settlement grossly unfair.” *Maranda v. Maranda*, 449 N.W.2d 158, 165 (Minn. 1989). “A finding of fraud on the court . . . must be made under the peculiar facts of each case.” *Id.* at 164. “A [district] court’s findings concerning allegations of fraud on the court must be upheld unless clearly erroneous.” *Mahoney v. Mahoney*, 474 N.W.2d 232, 234 (Minn. App. 1991), *review denied* (Minn. Nov. 13, 1991).

The district court determined that, even if respondent made an affirmative misrepresentation or engaged in an intentional course of concealment, the other elements of fraud on the court had not been met. Regarding whether respondent misled appellant, the district court found that appellant, far more so than respondent, would have had access to information involving his marriage to and purported divorce from Ms. DeMartini, and that respondent therefore did not mislead appellant. Appellant argues that he did not realize until January 2011 that he was not divorced from Ms. DeMartini at the time he married respondent. Respondent argues that, during the parties' dissolution proceedings, appellant was well aware that he was not divorced from Ms. DeMartini when he married respondent, and that he could have raised the issue to the district court himself but never did. Regardless, appellant would have had direct access to documents and proceedings regarding his relationship with Ms. DeMartini, while respondent's knowledge of that relationship would have had to come from appellant, Ms. DeMartini, and third parties.

The district court also found that the property distribution was not grossly unfair. Likewise, this court stated in the opinion following appellant's first appeal, "The division was not equal, but it was not inequitable. DeMartini does not suggest any alternate, fairer division, and none is apparent to us." *Fonss*, 2011 WL 292034, at *4. Given the circumstances of this case, the district court's findings concerning the allegation of fraud on the court are not clearly erroneous and the court did not abuse its discretion by refusing to vacate the decree due to fraud on the court.

II. The district court’s application of the putative-spouse doctrine was not clearly erroneous.

Appellant argues that the district court erred in its application of the putative-spouse doctrine pursuant to Minn. Stat. § 518.055 (2010). “Whether a person is a putative spouse is a question of fact.” *Xiong v. Xiong*, 800 N.W.2d 187, 191 (Minn. App. 2011), *review denied* (Minn. Aug. 16, 2011).

Pursuant to Minn. Stat. § 518.055:

Any person who has cohabitated with another to whom the person is not legally married in the good faith belief that the person was married to the other is a putative spouse until knowledge of the fact that the person is not legally married terminates the status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of the status, whether or not the marriage is prohibited or declared a nullity.

“The plain language of section 518.055 requires only a ‘good faith belief,’ not a ‘reasonable belief.’” *Xiong*, 800 N.W.2d at 192. “[I]n Minnesota, ‘good faith’ is judged subjectively” *Id.* at 191.

The parties did cohabit and were not legally married. Appellant disagrees with the district court’s findings regarding when respondent knew she was not legally married to him, and thus ceased to have a good-faith belief that she was married. Appellant argues that Attorney Tarvestad unequivocally informed respondent that she was not legally married in early 2007, and that thereafter respondent could not have had a good-faith belief that she was married to appellant.

The district court determined that respondent had putative-spouse status until at least the fall of 2007. The court found that, even after the information respondent was given by Attorney Tarvestad, respondent's reliance on Attorney Peterson's advice formed a belief in good faith that she was legally married to appellant. The court further found that, although respondent discussed with Mr. Mattison in the fall of 2007 that appellant was not divorced from Ms. DeMartini before the parties' marriage, respondent's testimony also indicated that even now she does not feel she can say with confidence that her marriage to appellant was invalid. Given the evidence presented and respondent's testimony at the motion hearing, the district court's finding that respondent had putative-spouse status until at least the fall of 2007 is not clearly erroneous.

A putative spouse acquires the rights conferred upon a legal spouse until knowledge of the fact that the person is not legally married terminates putative-spouse status and prevents acquisition of further rights. Minn. Stat. § 518.055. The district court determined that the rights given to respondent by the decree are the same rights she gained while she had putative-spouse status and that, even if the decree was reopened, "the Court would not amend or modify any portion of the disposition in the Dissolution Decree. That is, [respondent's] putative spouse status would not cause the Court to alter any of its findings and conclusions as contained in the dissolution order." The district court has the discretion to make this determination. *Cf. Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009) ("In dissolution cases, the district court has broad discretion regarding the division of property . . .").

Affirmed.