STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1805
A09-2360
A10-10

In re the Marriage of:
Andrew Jay Redleaf, petitioner,
Appellant,

vs.

Elizabeth Grace Redleaf,
Respondent.

Filed September 14, 2010
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-FA-07-3480

Alan C. Eidsness, Suzanne M. Remington, Henson & Efron, P.A., Minneapolis, Minnesota (for appellant)

Nancy Z. Berg, Allison Maxim, Walling, Berg & Debele, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Minge, Presiding Judge; Halbrooks, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges the district court's denial of his motion to reopen a dissolution judgment, arguing that the prospective effect of the judgment is no longer

equitable. Because we conclude that the district court acted within its discretion, we affirm.

FACTS

Appellant Andrew J. Redleaf and respondent Elizabeth G. Redleaf were married in April 1984. In 1999, appellant founded Whitebox Advisors, LLC, a hedge-fund advisor. Appellant, who has spent his entire career in the financial-market industry, is the chief executive officer of Whitebox. The parties separated in the fall of 2006. They entered into a marital termination agreement (MTA) in February 2008, and judgment was entered February 20, 2008. As part of the property settlement, respondent was awarded the couple's two homes, the household goods and furnishings unless specifically awarded to appellant, and four of the parties' cars. Appellant was awarded certain personal items, one of the parties' cars, and the right and title to, and equity in Whitebox and all other business entities in which he held an interest. The MTA, which was incorporated into the judgment, also contained the following property settlement:

> A. On or before February 15, 2008, [appellant] shall pay to [r]espondent, as a cash property settlement, $750,000;
> B. On or before February 15, 2008, [appellant] shall pay to [r]espondent, as a cash property settlement, $20,000,000;
> C. Commencing March 15, 2008, [appellant] shall pay to [r]espondent $1,500,000 per month on the first Friday of the month, for sixty (60) months; and
> D. On March 15, 2013, [appellant] shall pay to [r]espondent $30,000,000.

The MTA specifically notes that the parties entered into the MTA without a full appraisal of their assets, including Whitebox. In an affidavit, respondent asserts that

appellant proposed the property settlement on the day that the business-valuation appraisers were scheduled to meet with appellant and his employees. Respondent accepted the settlement offer but negotiated an accelerated-payment clause in the event that appellant lost his controlling interest in Whitebox. The terms of the MTA also provide that appellant will personally secure the property settlement. As part of the agreement, respondent waived any right to spousal-maintenance or child-support payments from appellant either at the time of the MTA or in the future.

Following the dissolution, appellant began paying respondent in accordance with the terms of the MTA; as of May 2009, he had paid respondent $36 million in cash, with the last payment occurring in January 2009. In December 2008, appellant advised respondent that he was unable to continue making the $1.5 million monthly payments. In May 2009, pursuant to Minn. Stat. § 518.145, subd. 2 (2008), appellant moved to reopen the judgment claiming it was no longer equitable that the decree have prospective application.

Appellant supported his motion with an affidavit that described the financial condition of Whitebox. According to appellant, "[s]ince February 2008, Whitebox ha[d] dramatically lost value and ha[d] suffered declining revenues." Appellant estimated that Whitebox would have assets under management (AUM) totaling $2.3 billion dollars—a significant decline from previous years. Appellant also estimated that his taxable income in 2009 would be $3,054,513, as compared with his taxable income between 2006 and 2008, which ranged from $22.3 million to $56.6 million. Appellant asserted that in order to make the payments required by the MTA, he would have to liquidate all of his assets,

leaving him with nothing. Appellant also submitted an affidavit of Clint Semm, the chief administrative officer/controller of Whitebox, in support of his motion. Semm described the financial condition of Whitebox following the recent economic crisis and he estimated that appellant's 2009 partnership taxable income would be approximately $3 million.

Respondent submitted an affidavit in opposition to appellant's motion in which she indicated that although appellant could have paid the entire property settlement at the time of the MTA, she agreed to the extended payment schedule because it reduced the strain on appellant while still allowing her to proceed with her business plans. In addition, respondent retained Arthur H. Cobb, a certified public accountant, to evaluate appellant's assertions regarding the declining value of Whitebox. Cobb stated in his affidavit:

> 15. There has not been an assertion and available information does not indicate that the value of Whitebox Advisors, LLC as of February 6, 2008, the date of the MTA, was "different from what it was believed to be when the parties entered" the MTA. There has not been an assertion and available information does not seriously contradict "what the parties knew about the property when the judgment was made." Further, before February 6, 2008, [appellant] apparently was aware of the prospect and likelihood of declines in assets under management and financial crisis . . . .
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> . . . .
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> 16. [Appellant] retained ownership of the 84.5 percent interest in Whitebox Advisors, LLC. [Appellant] has not set forth the value of Whitebox Advisors, LLC and has not indicated any willingness or effort to sell 42.25 percent, or any interest, in Whitebox Advisors, LLC, AJR financial, LLC, Whitebox Intermarket Fund, LP or any of the "all other

> business entities in which Petitioner holds an interest" to generate funds to come current on past due payments and to make payments through March 15, 2013.

The district court held a hearing on appellant's motion. Appellant acknowledged that Whitebox was able to succeed in 2006 and 2007 in part because of appellant's market awareness. But appellant argued that, despite respondent's assertions that he had predicted the financial crisis, he could not have anticipated the enormity of the economic collapse. Thus, appellant contended that the collapse and devaluation of Whitebox was a major change requiring the reopening of the judgment. Appellant also indicated that, despite the fact that his motion requested a termination of his remaining property-settlement payments, he was willing to pay respondent "one half of his net after tax income until 2013 to give her exactly the deal that would be fair to both sides." Respondent argued that appellant's income was irrelevant because the dispute concerned a property settlement, not a maintenance award. She also responded that allowing appellant to reopen the judgment would "open the floodgates" to any person who was unhappy with a property settlement that was affected by the financial crisis or housing-market collapse.

The district court denied appellant's motion to reopen the judgment, finding that appellant had submitted information about what had happened to Whitebox since the judgment was entered but nothing "altering what was known about the company when the agreement was reached." The district court thus concluded that "[a]ll that has happened here is that [appellant]'s prediction about the market proved inaccurate" and

the fact that his prediction did not prove correct did not make the terms of the property settlement inequitable.

The district court entered judgment in favor of respondent in the amount of $6 million for appellant's missed settlement payments from February 2009–May 2009 and granted her request for attorney fees. The parties later stipulated to another $6 million judgment in favor of respondent for appellant's missed payments from June 2009–September 2009. A third judgment was stipulated to in the amount of $1.5 million in favor of respondent for appellant's missed October payment. Appellant filed timely appeals after each entry of judgment, and this consolidated appeal follows.

D E C I S I O N

The district court generally does not have continuing jurisdiction to modify a property division set forth in a judgment due to changes in circumstances. *See Graff v. Graff*, 472 N.W.2d 882, 883 (Minn. App. 1991) (stating that "property divisions are final and not subject to modification"), *review denied* (Minn. Sept. 13, 1991). But Minn. Stat. § 518.145, subd. 2, provides that

> [o]n motion and upon terms as are just, the court may relieve a party from a judgment and decree, order, or proceeding under this chapter . . . and may order a new trial or grant other relief as may be just for the following reasons:
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> . . . .
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> (5) the judgment has been satisfied, released, or discharged, or a prior judgment and decree or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment and decree or order should have prospective application.

We review the district court's decision on a motion to reopen a judgment under Minn. Stat. § 518.145, subd. 2, for abuse of discretion and its findings for clear error. *Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996). The party seeking relief from a judgment bears the burden of proof. *Haefele v. Haefele*, 621 N.W.2d 758, 765 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001).

This court has interpreted section 518.145, subdivision 2(5), to require the moving party to demonstrate that more than mere unforeseen circumstances developed between the time of the judgment and the time of the motion. *Harding v. Harding*, 620 N.W.2d 920, 923 (Minn. App. 2001), *review denied* (Minn. Apr. 17, 2001). We have held that a judgment is no longer equitable if circumstances develop beyond the control of the parties that "substantially alter the information known when the judgment and decree was entered." *Thompson v. Thompson*, 739 N.W.2d 424, 431 (Minn. App. 2007). In other words, the unforeseen circumstances must seriously contradict what the parties knew at the time that they originally entered into the judgment. *Harding*, 620 N.W.2d at 924.

Appellant argues that *Harding* supports his argument that the devaluation of Whitebox warrants reopening of the judgment. In *Harding*, a husband and wife started a business during their marriage. *Id.* at 921. After deciding to dissolve their marriage, the parties negotiated an MTA that provided that the wife would receive $224,000 for her 50% share of the business and that the parties would file joint income taxes for 1997 and share any resulting refunds or liabilities. *Id.* Historically, the parties had received a modest annual refund. *Id.* But two years later, the Internal Revenue Service audited the business, causing the company to change its accounting method. *Id.* The accounting

change resulted in federal and state tax liability for 1996 and 1997 of more than $170,000. *Id.* The wife moved to vacate the MTA and reopen the judgment on the ground that the settlement was unreasonable and unfair. *Id.* The district court denied the motion. *Id.*

On appeal, we reversed and remanded to permit the reopening of the judgment solely to determine a fair and equitable distribution of the corporate stock based on Minn. Stat. § 518.145, subd. 2(5). *Id.* at 924. In so doing, we stated:

> After scrutinizing the nature of the issue in this case, it is evident that appellant has presented a change in circumstances that is not merely a new set of circumstances or an unforeseen change of a known circumstance. Appellant maintains that the value of the corporate business was different from what it was believed to be when the parties entered into the stipulation. The considerations here concern not just the circumstances of the tax change after the judgment was entered, but rather a tax determination that seriously contradicts what the parties knew about the property when the judgment was made.

Id.

The district court here concluded that the change in Whitebox's circumstances did not make the original terms of the parties' negotiated property settlement inequitable in its prospective application. We agree. Appellant's motion relies entirely on the recent economic downturn and subsequent devaluation of Whitebox. This is an unforeseen circumstance that developed after the judgment was entered. But appellant's projected decrease in his after-tax salary and the decline in Whitebox's AUM does not alter or contradict any information that the parties knew at the time of the judgment so as to make the prospective application of the MTA inequitable.

The property settlement in the MTA is not discussed in terms of the value of Whitebox or appellant's after-tax income nor was the amount intended to compensate either party for a specific interest in Whitebox. Respondent was entitled to one-half of the value of Whitebox. But in lieu of establishing that value based on an appraisal of the business, she agreed to appellant's proposed cash settlement without any reference to Whitebox. Additionally, the inequity in the judgment's prospective application in *Harding* was a permanent condition; it was not a temporary decline in the value of the business. Here, appellant has alleged only that the economy caused his business's profitability to recently decline. Appellant does not assert that this condition is permanent, and there is no basis in the record to conclude that the judgment will be inequitable in its prospective application.

Because the district court did not abuse its discretion in concluding that appellant has not met his burden in order to vacate and reopen the judgment, we affirm.[1]

Affirmed.

[1] Appellant also argues that various findings of the district court were clearly erroneous. Because we conclude that the district court's findings accurately reflect the record and appellant's submissions to the district court, this argument is without merit. *See Wilson v. Moline*, 234 Minn. 174, 182, 47 N.W.2d 865, 870 (1951) (stating that the function of an appellate court "does not require [it] to discuss and review in detail the evidence for the purpose of demonstrating that it supports the [district] court's findings" and an appellate court's "duty is performed when [it] consider[s] all the evidence, as we have done here, and determine[s] that it reasonably supports the findings"); *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004) (applying *Wilson* in a family-law appeal).