STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0650
A12-0665
A12-0666

In re the Marriage of:
Kyle W. Zweifel, petitioner,
Respondent,

vs.

Julie Zweifel, n/k/a Julie A. Mead,
Appellant.

Filed March 4, 2013
Affirmed
Peterson, Judge

St. Louis County District Court
File No. 69DU-FA-09-953

Jill I. Frieders, O'Brien & Wolf, L.L.P., Rochester, Minnesota (for respondent)

Julie A. Mead, Duluth, Minnesota (pro se appellant)

Considered and decided by Cleary, Presiding Judge; Peterson, Judge; and Bjorkman, Judge.

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

PETERSON, Judge

In these consolidated marital-dissolution appeals, pro se appellant-wife argues that the district court erred in (1) granting a receiver authority to reduce the asking price for

the parties' homestead without requiring respondent-husband to pay continued maintenance and all of the receiver's fees; (2) not requiring respondent to provide appellant (a) health insurance or (b) financial assistance to pay for health insurance; (3) denying appellant's motion to relieve her of the obligation to pay respondent for the amounts that he reduces the principal balances of the home-mortgage loans; and (4) denying appellant's motions to remove the receiver and the real-estate agent. We affirm.

FACTS

The marriage of pro se appellant-wife Julie H. Zweifel, n/k/a Julie A. Mead, and respondent-husband Kyle W. Zweifel was dissolved in 2010 by a judgment and decree that incorporated a marital termination agreement (MTA) entered into by the parties. The dissolution judgment contained the following provision regarding the sale of the parties' homestead and division of the sale proceeds:

> The homestead of the parties . . . shall be sold by the parties at the best price that may reasonably be obtained. The parties shall cooperate with each other to list said home for sale with a mutually agreeable realtor and shall cooperate to effectuate the sale of the home. Upon sale of the home, the proceeds of sale after first paying the balance on the outstanding mortgages and realtor's fees and customary and usual closing costs shall be divided as follows:
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> 1. Payoff marital debt on the Discover and VISA cards.
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> 2. $4,950 to [wife] for her marital portion of the American Family Whole Life Insurance Policy.
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> 3. $16,000 to [husband].
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> 4. $23,000 to [wife].
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> 5. One half of any remaining proceeds to each party. From [wife's] share of any remaining proceeds the following amounts shall be paid:

> (a) Any remaining balance on [a joint account from which wife made withdrawals without husband's knowledge or consent after the parties entered into the MTA].
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> . . . .
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> Pending sale, [husband] shall pay the regular monthly payments due on the mortgage and the home equity loan and the minimum payments on the VISA and Discover credit cards. [Wife] shall have the sole and exclusive occupancy of the homestead and shall be responsible for paying the utilities on the homestead until the homestead is sold. [Wife] shall be given sixty (60) days notice before she is required to vacate the homestead. [Husband] shall receive a credit for the amounts by which he reduces the principal balances on the mortgages between the date of dissolution of marriage of the parties and the date of sale.

The dissolution judgment differed from the MTA in that the MTA stated that "[t]he homestead shall be placed on the market at an agreed upon price" and the MTA did not provide for a credit to husband for the amount of mortgage-principal reduction pending sale of the homestead. At the time of dissolution, the homestead's market value was estimated to be between $350,000 and $400,000, and the homestead was encumbered by two mortgages in the total amount of $135,000.

Wife appealed from the dissolution judgment, raising challenges on several issues, including the district court's denial of her motion to vacate the MTA and the failure to award her spousal maintenance. This court reversed an award of attorney fees to husband but otherwise affirmed the district court's decision. *Zweifel v. Zweifel*, Nos. A11-972, A11-1424, 2012 WL 1380353 (Minn. App. Apr. 23, 2012) (*Zweifel I*).

Wife moved to reopen and amend the dissolution judgment, requesting, among other relief, that the district court grant her compensation in the amount of the difference

between her suggested homestead listing price and the actual sale price and that husband be ordered to pay one-half of her health-insurance costs. By order filed October 10, 2011, the district court denied wife's motions, and this court affirmed. *Zweifel v. Zweifel*, No. A11-2247, 2012 WL 3553234 (Minn. Aug. 20, 2012). (*Zweifel II*) In *Zweifel II*, wife also attempted to challenge a June 10, 2011 district court order appointing a receiver to facilitate the sale of the homestead. But this court concluded that the issue was not properly before the court because the notice of appeal did not list the order and because the order was listed in the first appeal but was not addressed by this court because wife did not address the scope of the receiver's authority in her brief. 2012 WL 3553234, at *4-5.

In December 2011, wife filed motions to vacate the October 10, 2011 order and to remove the receiver and the real-estate agent. Wife claimed that the receiver and the real-estate agent were biased against wife. In January 2012, wife filed another motion to remove the receiver and the real-estate agent, apparently claiming that the receiver's actions were aiding husband in harassing wife and contending that the real-estate agent lacked accountability and was failing to meet professional standards. Wife also requested a continuance of the hearing on her motions.

The district court held hearings on wife's motions on December 23, 2011, and January 30, 2012. By order filed February 6, 2012, the district court denied a continuance but kept the record open to allow the parties to submit affidavit evidence on their observations of the activities of the receiver and the real-estate agent. By order filed February 10, 2012, the district court ordered the parties to execute another listing

agreement with the real-estate agent for the sale of the homestead, with the same terms as the existing agreement but subject to a reduction in the listing price if recommended by the real-estate agent "following consultation with her colleagues and [employer]." The district court kept the remaining issues under advisement.

By order filed March 22, 2012, the district court denied wife's motions to remove the receiver and the real-estate agent and for an order requiring husband to place wife on his employer's health-insurance plan. The district court also authorized the receiver to amend the asking price for the homestead, with input from the real-estate agent but without the permission of husband or wife.

In the memorandum attached to its order, the district court stated:

> Since being appointed by the Court . . . , [the receiver] has worked on getting the signatures of both parties on the listing agreement for the homestead, has organized and scheduled the walkthrough for [husband] to review the personal property remaining at the homestead, reviewed the parties' lists of property they would like to retain and their responses to the other party's list, and proposed recommendations for resolving issues over disputed ownership of personal property. Due to the animosity between the parties, none of these tasks has been quick or simple. The Receiver has been pursuing her duties diligently in accordance with her appointment and authority granted by the Court in this matter.
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> The Receiver has also remained in contact with the Realtor and has attempted to keep the sale process moving forward in the midst of [wife's] refusal to work cooperatively with the Realtor. The Court notes that this Realtor was chosen solely by [wife]. Although appointment of a new realtor would remove the hostility between [wife] and [the realtor], it will not solve the underlying problem. Based on the history of this case and the Court's observations, it is unlikely that any other professional realtor would be able to

> work any better with [wife]. [Wife's] communications show that she does not make requests but demands immediate action with assertions that she is entitled to whatever it is she is demanding. Any objection or response that does not fully comply with [wife's] demand or assertion is met with accusations of harassment and/or abuse. There is no indication that this behavior would change with another Realtor. [Wife] has refused to comply with reasonable and standard home-selling techniques such as leaving the homestead during showings or allowing the Realtor to place a lockbox on the house. [Wife] has also failed to respond to the Realtor's request for a time to bring other members of her office through the homestead for additional valuation opinions regarding an appropriate asking price in the hope of generating more interest in the property. The emails submitted by [wife] show significantly more argumentative and oppositional behavior on the part of [wife] than on the part of [the realtor].
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> . . . .
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> [Wife] has submitted no evidence in support of her general assertions that [the receiver] has not fulfilled her duties as the court-appointed Receiver. [Wife's] motion to remove the Realtor for not fulfilling the terms of the listing agreement is also unsupported.

The court also noted that wife did not appear motivated to sell the property.

Wife filed three separate appeals from the February 6 and 10 and March 22, 2012 orders. This court ordered the appeals consolidated.

D E C I S I O N

I.

Wife argues that it is not fair or equitable to her to permit the real-estate agent and the receiver to reduce the asking price for the homestead without awarding her "equitable property division and spousal maintenance relief." Wife seeks $1,600 per month in continued maintenance. Wife contends that, in a December 27, 2010 order granting

husband's motion to enforce the parties' MTA and denying wife's motion to vacate the MTA, the district court specifically awarded her temporary maintenance when it found that "[respondent's] obligation to continue paying the mortgage while [wife] remains in the home is a significant benefit to [wife] and is a form of temporary spousal maintenance." In the memorandum that accompanied the December 27, 2010 order, the district court stated:

> [Wife] has the benefit of continuing to live in the home "rent free" while it is on the market – a value of approximately $1,600 per month. Due to the high value of the home and its location, it is unlikely that the homestead will sell quickly in the current housing market and [wife] will continue to receive what amounts to a temporary award of spousal maintenance of approximately $1,600 per month. Based on the length of the marriage, the parties' ages and educational background, and the standard of living during the marriage, it is unlikely that litigating this matter would have resulted in a higher spousal maintenance award.

Although the district court compared the $1,600 per-month value of living in the homestead "rent free" to a temporary maintenance award, the statement was made in the context of explaining why the MTA was fair. In the MTA, both parties waived the right to maintenance and divested the court of jurisdiction to award maintenance to either party. These waivers were included in the judgment and decree, and neither party was awarded maintenance.

When there is no existing maintenance award and no reservation of jurisdiction over maintenance, the district court lacks jurisdiction to address maintenance. *See, e.g.*, *Loo v. Loo*, 520 N.W.2d 740, 745 (Minn. 1994) (stating that "[o]nce maintenance payments end, the court is without jurisdiction to modify maintenance"). Because the

parties waived any right to maintenance and there was no award of maintenance, the district court had no authority to address a motion to modify maintenance.[1]

II.

Wife argues that the district court abused its discretion or misapplied the law when it denied her motion to require husband to put her back on the health-insurance plan provided by his employer or pay $537.66 per month for her own health-insurance plan. An obligation to pay a former spouse's health-insurance premiums is in the nature of spousal maintenance. *See Thompson v. Thompson*, 739 N.W.2d 424, 427 (Minn. App. 2007) (stating that "[h]usband did not provide any evidence to rebut wife's need for spousal maintenance in the nature of one-half of wife's medical insurance premiums"). Consequently, like wife's request for $1,600 in monthly maintenance, the district court had no authority to address a motion to require husband to provide or pay for health insurance. Although wife claims a substantial change in circumstances since entry of the dissolution judgment, that is not a ground for reopening a judgment under Minn. Stat. § 518.145, subd. 2 (2010).

III.

In its June 10, 2011 order granting husband's motion to appoint a receiver, the district court assigned the receiver the responsibility for selling the parties' homestead and personal property pursuant to the terms of the judgment and decree and ordered that "[b]oth parties will share equally the Receiver's fee to be paid upon the sale of the

[1] This court has already twice affirmed the district court's denial of wife's motions to reopen the dissolution judgment to retain jurisdiction over maintenance. *Zweifel I*, 2012 WL at 1380353, at *3; *Zweifel II*, 2012 WL 3553234, at *4.

homestead and/or personal property." In its March 22, 2012 order, the district court granted the receiver "authority to amend the asking price for the homestead, with input from the Realtor, without the permission of [husband] or [wife]." Wife contends that she does not have the means to pay the receiver's fees and argues that it is not fair or equitable for the district court to allow the receiver and the real-estate agent to lower the asking price for the homestead without also requiring husband to pay all of the receiver's fees.

The district court has authority to appoint a receiver in a judgment or after judgment to carry the judgment into effect. Minn. Stat. § 576.01, subd.1(2) (2010). "The trial court has the discretion in receivership proceedings to do what is best for all concerned." *Minn. Hotel Co. v. ROSA Dev. Co.*, 495 N.W.2d 888, 893 (Minn. App. 1993). To sell the homestead, the receiver must be able to determine a reasonable asking price. Because the receiver's fee is not relevant to a determination of the asking price, the district court did not abuse its discretion by allowing the receiver to lower the asking price without also amending its earlier order regarding payment of the receiver's fee. Although wife claims a substantial change in circumstances since entry of the dissolution judgment, that is not a ground under Minn. Stat. § 518.145, subd. 2 (2010), to relieve wife from the terms of the June 10, 2011 order.

IV.

Wife argues that the district court abused its discretion in denying her motion to relieve her of the obligation to pay husband for the amounts that he reduces the principal balances of the mortgage loans between the date of the dissolution and the date of the sale

of the homestead. Wife contends that "her circumstances and the circumstances of the homestead, have changed greatly, and it would force an undue irreparable hardship on [her] if she is not granted relief."

In our review of wife's motion papers, we have not found any request to be relieved of the obligation to pay husband for the amounts that he reduces the principal balances of the mortgage loans. But, even if we have overlooked such a request, a change in circumstances is not a ground under Minn. Stat. § 518.145, subd. 2 (2010), to relieve wife from the terms of the dissolution judgment.

V.

Wife argues that the district court abused its discretion in denying her motions to remove the receiver and the real-estate agent. The findings stated in the district court's memorandum accompanying the March 22, 2012 order, support the denial of wife's motions to remove the receiver and real-estate agent. Wife's argument for removal challenges the district court's credibility determinations. We view the record in the light most favorable to the district court's findings and defer to the district court's credibility determinations. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

Affirmed.