

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0939**

In re the Marriage of:
Kathryn M. Goodyear,
f/k/a Kathryn M. Goodyear-PeKarna,
Petitioner,
Appellant,

vs.

Matthew DeWitt PeKarna,
Respondent.

**Filed April 1, 2013
Affirmed
Stauber, Judge**

Carver County District Court
File No. 10FA03335

William C. Peper, Peper Law Offices, P.C., Minnetonka, Minnesota; and

John Garrett Westrick, Westrick & McDowall-Nix, PLLP, St. Paul, Minnesota (for
appellant)

Peter J. Horejsi, Peter J. Horejsi, P.L.L.C., Bloomington, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Connolly, Judge; and
Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

STAUBER, Judge

Appellant-mother challenges the district court's denial of her motion for a personal judgment against respondent-father in the amount of her marital share of the marital home, which has since been lost through foreclosure. Because the district court's denial of appellant's motion was not an abuse of discretion, we affirm.

FACTS

Appellant Kathryn M. Goodyear, f/k/a Kathryn M. Goodyear-PeKarna, and respondent Matthew DeWitt PeKarna were divorced in 2005 following a six-day contested trial. Sole physical custody of the parties' two minor children was awarded to respondent. Respondent was awarded the marital homestead and appellant was awarded "an interest free lien against [the home] in the amount of [\$223,260]—which constitutes [her] marital and non-marital interest in said property."¹ Appellant was entitled to demand payment of the non-marital portion of the lien—totaling \$141,042—within six months of the date of the order.² The marital portion of the lien—totaling \$82,218—was to be "satisfied by a standard lien against the property," which was to be satisfied on the happening of any of six occurrences, including the parties' youngest child's graduation from high school or the mortgage payments on the marital home becoming 60-days past due.

¹ The amount of the lien was later amended.

² The record reflects that after the trial appellant refinanced the mortgage on the home awarded to respondent and satisfied the non-marital portion of the lien.

Appellant was also ordered to pay child support in the amount of \$2,093 per month, which was later modified in July 2008 and reduced to \$1,000 per month. Appellant has consistently refused to pay child support, and the court found that she owed child-support arrearages in the amount of \$39,605 for the period between June 2005 and February 2008. The district court ordered that the arrearage amount be paid out of a \$50,000 fund that had been sequestered from respondent's payment of the non-marital lien. Since the payout from the sequestered funds, appellant continues to refuse to pay her child-support obligation despite having the financial ability to do so, with arrears of nearly \$60,000 as of the court order that is the subject of this appeal.³

Appellant's refusal to pay her child-support obligation led to extreme financial difficulty for respondent. On several occasions, respondent warned appellant that her failure to pay child support prevented him from being able to pay the mortgage and would result in a mortgage foreclosure, and when respondent's employment position was eliminated, the home was lost in a foreclosure action. Appellant did not exercise her right under the dissolution decree to redeem the property, and the home was sold at a sheriff's sale for an amount less than the mortgage balance.

In October 2011, appellant moved that the remaining balance purportedly secured by her lien against the home be reduced to personal judgment against respondent. Respondent filed a cross motion, seeking release of any liability under the lien pursuant to Minn. Stat. § 518.145, subd. 2(5) (Supp. 2011), arguing that it was no longer equitable

³ There is nothing in the record indicating that appellant began paying her child-support obligation after the order. As a result, appellant's child-support arrears have likely continued to grow since that time.

that the judgment and decree should have prospective application as to the existence of the lien. The district court denied appellant's motion to reduce the property settlement to a personal judgment against respondent. Appellant moved for amended findings of fact, conclusions of law, and order for judgment, and that motion was summarily denied. This appeal follows.

D E C I S I O N

Marital liens are a method of distributing property in a dissolution proceeding; as such, they are not an interest in real property, but rather are personal property in and of themselves. *Bakken v. Helgeson*, 785 N.W.2d 791, 794-95 (Minn. App. 2010). “While a [district] court may not modify a final property division, it may issue orders to implement, enforce, or clarify the provisions of a decree, so long as it does not change the parties’ substantive rights.” *Redmond v. Redmond*, 594 N.W.2d 272, 275 (Minn. App. 1999). An order implementing or enforcing a dissolution decree does not affect the parties’ substantive rights when it does not increase or decrease the original division of marital property. *Hanson v. Hanson*, 379 N.W.2d 230, 233 (Minn. App. 1985). Whether to grant a personal judgment following the extinguishment of a lien is discretionary with the district court. *See Nelson v. Nelson*, 806 N.W.2d 870, 871 (Minn. App. 2011) (reviewing a district court’s entry of personal judgment after a party failed to satisfy a monetary amount of a lien awarded to the other party in a dissolution judgment for an abuse of discretion).

Here, the dissolution court awarded the marital home to respondent and granted appellant “an interest free lien” against the property, noting that appellant’s marital

interest in the property “shall be satisfied by a standard lien against the property.”⁴ The decree does not indicate, however, whether appellant’s lien on the property was subordinate to the mortgage encumbering the property. As in *Nelson*, the district court was faced with an ambiguous provision in the dissolution decree and the responsibility of sorting out a situation six years after the dissolution decree was entered, all while dealing with a dramatically changed real-estate market. The district court construed the dissolution decree in awarding appellant a lien on the homestead without a personal obligation on the part of respondent to indemnify appellant in the event that the equity in the home was lost due to foreclosure or a depressed real-estate market. And in light of appellant’s actions contributing to the loss of the homestead and her failure to take steps to redeem the property from foreclosure, we conclude that the district court’s decision was reasonable, and therefore the district court did not abuse its discretion by denying appellant’s motion for a personal judgment.

Affirmed.

⁴ While we recognize that the district court did not have the benefit of our opinion in *Nelson* at the time of the dissolution judgment and decree, we nonetheless repeat our conclusion from that case that because the decree appears to use the word “lien” as if it were an obligation, the inartful use of the term in the context of this marital-dissolution decree creates an ambiguity.