STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0031

Alison Margaret Perry,
Respondent,

vs.

Douglas Perry, et al.,
Appellants,

Expert Sheet Metal, Inc., et al.,
Defendants.

Filed November 22, 2021
Affirmed
Smith, Tracy M., Judge

Anoka County District Court
File No. 02-CV-19-180

Kenneth M. Wasche, Kenneth M. Wasche, P.C., Blaine, Minnesota (for respondent)

Erik F. Hansen, Elizabeth M. Cadem, Kirk A. Tisher, Burns & Hansen, P.A., Minneapolis, Minnesota (for appellants)

Considered and decided by Smith, Tracy M., Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

The stipulated 2010 judgment dissolving the marriage of Douglas and Alison Margaret Perry purported to equally divide, among other things, an interest in certain real property purportedly owned by their then-existing family business, Expert Sheet Metal.

Title to the real property, however, was actually in Expert Mechanical, a defunct business solely owned by Douglas Perry that was not addressed by the dissolution judgment. Expert Mechanical was never formally wound up, and, at the time of the marital dissolution, all of its assets were being used by Expert Sheet Metal. After the dissolution, Expert Sheet Metal also ceased operating but, like Expert Mechanical, it was never formally wound up.

In 2019, respondent Alison Margaret Perry filed this separate action seeking to accomplish the property division attempted by the dissolution judgment. The district court found that the dissolution judgment mistakenly identified the owner of the property as Expert Sheet Metal; found that appellant Douglas Perry[1] had treated Expert Mechanical as his alter ego; and ruled that, by means of an outside reverse pierce of Expert Mechanical's corporate veil, even though Expert Mechanical was not a party to the dissolution proceeding, the dissolution court[2] had properly treated the property as owned by Expert Sheet Metal. As a result, the district court directed (a) Douglas, on behalf of Expert Mechanical, to convey the property to Expert Sheet Metal; (b) the formal liquidation of Expert Sheet Metal; and (c) the division of Expert Sheet Metal's net proceeds. On the unique and peculiar facts of this matter, we affirm.

[1] Because they share the same last name, we refer to Douglas and Alison Perry by their first names throughout the rest of this opinion.

[2] For clarity, we refer to the district court that entered the dissolution judgment as the "dissolution court" to distinguish it from the district court in the present action.

DECISION

We initially note that we cannot read the stipulated dissolution judgment in any way other than to equally divide the value of the real property at issue. That said, appellants (Douglas, Expert Mechanical, and the estate of Douglas's mother[3]) make a number of arguments challenging the district court's decision, including, primarily, that the district court erred in using an outside, reverse piercing of the corporate veil of Expert Mechanical to deem the real property at issue to be owned by Expert Sheet Metal.

Generally, to obtain relief on appeal, an appellant must show that the district court erred, that the appellant was prejudiced by that error, and that the prejudice to the appealing party was substantial. Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (applying rule 61 in a family appeal); *Hesse v. Hesse*, 778 N.W.2d 98, 105 (Minn. App. 2009) (noting that appellate courts ignore prejudicial error when the prejudice is de minimis); *see also Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) (noting that appellate courts will not reverse a district court if it reached an affirmable result for the wrong reasons). Here, even if we assume that the district court erred in applying an outside, reverse piercing of Expert Mechanical's corporate veil, we conclude that, on this peculiar record, any error is harmless because, no matter which business owned the property, Alison is entitled to the same interest.

[3] Douglas asserted that his deceased mother had an interest in Expert Mechanical, but she did not appear on Expert Mechanical's articles of incorporation, and the district court found that neither Douglas's deceased mother nor her estate owned the asserted interest.

The district court ruled that Expert Sheet Metal owned the property. Thus, the district court's decision was, essentially, a vehicle for implementing the property division to which Douglas and Alison stipulated in the 2010 judgment dissolving their marriage. Accordingly, if we affirm the district court, Alison will receive the interest awarded her in dissolution judgment. If Douglas is correct, however, and the property was not transferred to Expert Sheet Metal, the property remained in Expert Mechanical. Expert Mechanical was not a party to the dissolution proceeding, and a district court "lacks personal jurisdiction over a nonparty and cannot adjudicate a nonparty's property rights." *Danielson v. Danielson*, 721 N.W.2d 335, 339 (Minn. App. 2006). In this scenario, Douglas claims that he is entitled to the property because (a) it is owned by Expert Mechanical, (b) he is the sole shareholder of Expert Mechanical, and (c) Expert Mechanical purchased the property before the parties' marriage.

On this record, we reject Douglas's argument.[4]

First, "increase in the value of nonmarital property attributable to the efforts of one or both spouses during their marriage . . . is marital." *Baker v. Baker*, 753 N.W.2d 644, 650 (Minn. 2008) (quoting *Nardini v. Nardini*, 414 N.W.2d 184, 192 (Minn. 1987)). Thus, any

[4] The stipulated dissolution judgment states that Expert Sheet Metal "owns or has an interest in" the real estate at issue and that Douglas and Alison "are equally awarded this property as one of the assets of the business." Thus, Douglas's assertion in the current action that, in the dissolution proceeding, the parties did not (attempt to) equally divide the property is both a fiction and an attempt—nunc pro tunc—to significantly alter the property division to which he and Alison stipulated in the judgment dissolving their marriage. *Cf. Erickson v. Erickson*, 452 N.W.2d 253, 255-56 (Minn. App. 1990) (noting that dissolution courts cannot implement or enforce a dissolution judgment in a manner that alters the terms of that judgment or otherwise alters the parties' substantive rights).

increase in the value of the property occurring during the marriage that is attributable to the efforts of Douglas and Alison was marital property. To the extent the increase in the value of the property was not divided between the parties in the stipulated dissolution judgment, that marital property is divisible as "omitted property." *See Searles v. Searles*, 420 N.W.2d 581, 583 (Minn. 1988) (stating that "where a decree makes no division of any real estate and, indeed, makes no mention of real estate, it would seem the matter of ownership rights remains to be determined" (footnote omitted)); *Neubauer v. Neubauer*, 433 N.W.2d 456, 461 n.1 (Minn. App. 1988) (stating that pension benefits omitted from the property division in an otherwise final dissolution judgment could be divided as "omitted property"), *rev. denied* (Minn. Mar. 17, 1989); *Brink v. Brink*, 396 N.W.2d 95, 97 (Minn. App. 1986) (stating that "[w]e are aware of no legal theory under which a party to a dissolution who unintentionally omits an asset from a property division is considered to have abandoned his or her rights to that asset").[5] And the dissolution judgment is clear that the property would be equally divided between Douglas and Alison.[6]

[5] Here, the stipulated dissolution judgment mentioned the property at issue and purported to award Douglas and Alison equal interests therein. Thus, the omission here was not from the judgment but, because of the misidentification of the owner of the property, from the division of property in the judgment.

[6] A recent nonprecedential opinion of this court suggests that the legislature's enactment of what is now Minn. Stat. § 518.145, subd. 2 (2020), casts doubt on a district court's ability to apportion "omitted property" without satisfaction of that statute. *See Pooley v. Pooley*, No. A20-1250, 2021 WL 2910246, at *5 (Minn. App. July 12, 2021), *rev. granted* (Minn. Sept. 21, 2021). As a nonprecedential opinion, *Pooley* is not binding. Minn. R. Civ. App. P. 136.01, subd. 1(c). Additionally, the supreme court accepted review of *Pooley*. Further, we believe *Pooley* is factually distinguishable from the current appeal. *Pooley* involved assets intentionally omitted from that dissolution judgment. *Id.* at *1-2. Here, however, the

Second, to the extent Douglas asserts that he had a nonmarital interest in the property, when both marital and nonmarital interests exist in the same asset, "the nonmarital asset may lose [its nonmarital] status unless the party [claiming the nonmarital interest] can trace [the nonmarital interest] to a nonmarital source." *Swick v. Swick*, 467 N.W.2d 328, 330 (Minn. App. 1991) (citation omitted), *rev. denied* (Minn. May 16, 1991). Here, not only does the stipulated dissolution judgment lack any reference to the specific facts necessary to trace an alleged nonmarital interest in the property, but Douglas and Alison agreed to divide the property equally. And even if Douglas could trace the existence of a nonmarital interest, the stipulated dissolution judgment lacks any identification of the facts necessary to identify the extent of that nonmarital interest. *See, e.g.*, *Antone v. Antone*, 645 N.W.2d 96, 101-02 (Minn. 2002) (addressing how to determine the extent of marital and nonmarital interests in the same asset). Thus, because the existence and extent of any nonmarital interest Douglas could claim was insufficiently identified, that nonmarital interest would be treated as a marital interest and divided as omitted (marital) property.

Third, to the extent Douglas, in the current proceeding, claims that Expert Mechanical had an interest in the property apart from his and Alison's marital and nonmarital interests, he is functionally asserting that there was an extramarital interest in the property. *Cf. Danielson*, 721 N.W.2d at 339-40 (addressing a district court's options for addressing situations when a nonparty to a dissolution proceeding has or may have an interest in an asset in which there is a marital interest, including possible use of the "omitted

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stipulated dissolution judgment attempted to divide the property at issue. Under these circumstances, we are reluctant to follow *Pooley*'s analysis.

property" analysis). Douglas, however, asked the dissolution court to enter judgment on a stipulation in which he agreed that "[t]he parties [to the dissolution] are equally awarded this property as one of the assets of the [Expert Sheet Metal]." And, he agreed as part of the stipulated judgment to make and execute any documents necessary to implement the stipulated division of property. Thus, Douglas—the sole shareholder of Expert Mechanical—either (a) affirmatively waived Expert Mechanical's separate interest in the property; or (b) forfeited that interest in the property by failing to assert it in the dissolution process. *See Weitzel v. State*, 883 N.W.2d 553, 554 n.1 (Minn. 2016) (distinguishing waiver from forfeiture). A waiver could have been the result of negotiating the stipulation. A waiver could also have been a recognition that then-existing Minn. Stat. § 518.58, subd. 2 (2010), would have allowed the dissolution court, if the dissolution had been litigated, to award Alison up to half of his nonmarital property. And a forfeiture would have resulted if Douglas simply made a mistake that he asked neither the dissolution court nor this court to correct after judgment was entered. The time to appeal the 2010 stipulated dissolution judgment has long since expired. Generally, to appeal a judgment, a party must do so within 60 days of its entry. Minn. R. Civ. App. P. 104.01, subd. 1. While there are certain exceptions to that 60-day appeal period, none of those exceptions would render the stipulated 2010 dissolution judgment appealable now. *See id.*, subd. 2 (listing reasons to extend the generally applicable appeal time). Further, caselaw is clear: "Even though the decision of the trial court in the first order may have been wrong, if it is an appealable order it is still final after the time for appeal has expired." *Dieseth v. Calder Mfg. Co.*, 147 N.W.2d 100, 103 (Minn. 1966); *see Dailey v. Chermak*, 709 N.W.2d 626, 631 (Minn. App.

2006) (applying this aspect of *Dieseth* in family law appeal), *rev. denied* (Minn. May 16, 2006). Thus, whatever the reason for any relinquishment of Expert Mechanical's interest in the property, the time to alter or correct that relinquishment has expired and it could not be altered by the district court in this proceeding.

Under these circumstances, whatever the nature of the original ownership of the property at issue—marital, Douglas's nonmarital, Expert Mechanical's extramarital, or some combination thereof—Alison is entitled to the interest awarded her in the dissolution judgment. As a result, any error by the district court in its analysis of that ownership was harmless.

Affirmed.