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beyond a reasonable doubt that Harper violated the specific provision he was cited and charged with violating.

Harper was cited and charged with violating a specific statute, and the evidence adduced by the State was insufficient to prove beyond a reasonable doubt the threshold matter that Harper was involved in a collision with an unattended vehicle. We find this insufficiency to be plain error. We therefore reverse the district court's order affirming the conviction and remand the matter to the district court with directions to reverse the county court's order and remand the matter to the county court with directions to dismiss.

REVERSED AND REMANDED WITH DIRECTIONS.

CHRISTINE A. WILSON, APPELLANT, V. TERRY P. WILSON, APPELLEE.

803 N.W.2d 520

Filed July 12, 2011. No. A-10-969.

1. **Courts: Jurisdiction: Divorce: Judgments: Alimony: Child Support.** A trial court retains jurisdiction to determine the amounts due for alimony and child support and to enforce its prior judgment, and included in that power to enforce its judgment is power to determine any amounts due under the initial decree.
2. **Modification of Decree.** Material changes in circumstances and developments not contemplated are at the heart of proceedings to modify dissolution decrees.
3. ____. A party seeking to modify a dissolution decree must show a material change of circumstances which occurred subsequent to the entry of the original decree or a previous modification which was not contemplated when the prior order was entered.
4. **Modification of Decree: Words and Phrases.** In the context of marital dissolutions, a material change of circumstances means the occurrence of something which, had it been known to the dissolution court at the time of the initial decree, would have persuaded the court to decree differently.

Appeal from the District Court for Douglas County: THOMAS A. OTEPKA, Judge. Reversed and remanded with directions.

Frederick D. Stehlik and Francie C. Riedmann, of Gross & Welch, P.C., L.L.O., for appellant.

Terry P. Wilson, pro se.

IRWIN, SIEVERS, and CASSEL, Judges.

IRWIN, Judge.

I. INTRODUCTION

Christine A. Wilson brings this appeal from an order of the district court for Douglas County, Nebraska, in which the court granted relief to Terry P. Wilson on his motion to determine amounts due under the decree. In granting relief, the district court adjusted amounts due Christine under the decree and gave Terry credit for a number of financial payments made by Terry after the decree was entered. On appeal, Christine argues that the court's order amounted to an unauthorized modification of the decree, rather than a determination of amounts due under the terms of the decree. We agree and reverse, and remand with directions to reinstate the provisions in the initial decree concerning amounts due Christine in the property settlement award. Pursuant to this court's authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

II. BACKGROUND

On or about October 22, 2009, the district court entered a decree dissolving the marriage of the parties. In the decree, the district court divided, among other items, an "Oppenheimer" fund, a "SEP/IRA" fund, and equity in the parties' marital home and another parcel of real property; the court concluded that the marital home itself was Terry's premarital property. The court provided that each party was to receive one-half of the value of the Oppenheimer fund, but also ordered Christine to pay certain marital debt. As a result, the court determined that Christine's share of the value of the Oppenheimer fund was to be $11,574.50. The court provided that each party was to receive one-half of the SEP/IRA fund, with each party to be awarded $67,500. The court provided that Christine was entitled to 40 percent of the net equity in the marital home, as well as $6,305 as her share of the equity in another parcel of real property owned by the parties. The court ordered Christine to vacate the marital home by October 31, 2009, or whenever the property was sold, whichever occurred first. There was no appeal from the decree.

After the decree was entered, Christine continued to reside in the marital home and she failed to vacate the property by October 31, 2009, as ordered in the decree. On February 9, 2010, Terry filed a motion requesting the court to determine amounts due under the decree. Terry asserted in the motion that he had been required to make additional mortgage payments on the marital home.

On March 1, 2010, the district court held a hearing on Terry's motion, at which Terry was represented by counsel and Christine appeared pro se. Terry offered various evidence, including an exhibit in which he had calculated what Christine was awarded in the decree and had proposed subtracting from that award amounts he had incurred as a result of Christine's failure to vacate the marital home as ordered in the decree, as well as various temporary support payments he had made to Christine. Where the amounts in the decree, set forth above, would have resulted in an award to Christine of nearly $85,500, Terry's calculations resulted in that award's being reduced to $53,880. At the conclusion of the hearing, the court indicated that the motion to determine amounts due was sustained and asked counsel to prepare an order consistent with Terry's exhibit. The court also found Christine to be in contempt and sustained a motion to have the sheriff remove her from the marital home. The court entered an order on March 8. This order did not dispose of other relief requested in Terry's initial motion, including attorney fees and visitation matters.

On March 12, 2010, Christine filed a motion to vacate or set aside the March 8 order. At an April 1 hearing, Christine was represented by counsel and her counsel argued to the district court that its March 8 order amounted to a modification of the decree, because the decree did not provide for amounts awarded to be reduced by other alleged payments made by Terry and did not provide for reducing Christine's award for any temporary support payments. Christine's counsel also objected to the March 8 order, because Terry's counsel had served notice of the motion and hearing on Christine personally and Christine's counsel was never provided notice. On April 19, the court entered an order overruling the motion to vacate.

Christine initially tried to appeal after the court overruled her motion to vacate. On June 25, 2010, this court dismissed that appeal, finding that the district court had not yet resolved issues raised in Terry's motion, including attorney fees and visitation issues.

On August 3, 2010, Christine filed a motion requesting that the district court enter a final order. On September 16, the court entered an order finding that Terry had withdrawn all outstanding issues and finding that the order on Terry's motion to determine amounts due was final. This appeal followed.

III. ASSIGNMENTS OF ERROR

Christine has assigned three errors on appeal, which we consolidate for discussion to two. First, Christine asserts that the district court erred in sustaining Terry's motion to determine amounts due and reducing her award set forth in the decree by giving Terry credit for various payments he made. Second, Christine asserts that the court erred in denying her motion to vacate on the basis of Terry's failure to provide notice to her counsel.

IV. ANALYSIS

Christine first challenges the district court's sustaining of Terry's motion to determine amounts due and reducing her award set forth in the decree. Christine argues that the decree did not provide for the award to be reduced for payments made by Terry or as a result of her failure to vacate the marital home as ordered in the decree and that the court's action amounted to a modification of the decree without following the proper procedure for an application to modify the decree. We agree.

Terry points to the Nebraska Supreme Court's decision in *Roach v. Roach*, 192 Neb. 268, 220 N.W.2d 27 (1974), in support of his assertion that it was proper for the district court to "determine amounts due" under a dissolution decree after the decree has become unappealable. In *Roach v. Roach*, the court entered a dissolution decree in 1961 in which the court ordered the husband to pay support money for a term of years and each year's payments were to consist of one-half of the husband's adjusted gross income. The wife came to suspect that the

husband was not paying her all to which she was entitled, and in 1971, she filed a motion asking for an order compelling the husband to produce tax returns. In response, the husband filed an action to modify the decree. The court ruled that the husband owed the wife $56,000 in past support through December 1970 and set forth new support provisions to commence in January 1972. The omission of the year 1971 in the court's order left confusion as to what the husband owed the wife for the year 1971, and the wife brought an action seeking to have the court "determine the amount of support due" for that year. *Id.* at 269, 220 N.W.2d at 28.

[1] The husband argued to the Supreme Court that the wife should not be able to bring an action to determine the amount of support due, asserting that the court's prior order constituted a final adjudication of the issue. The Supreme Court concluded that res judicata was inapplicable because of the specific issues raised in the wife's motion to compel and the husband's application to modify. The court held that the trial court retained jurisdiction to determine the amounts due and to enforce its prior judgment. *Roach v. Roach, supra*. The court held that included in that power to enforce its judgment was power to determine any amounts due the wife under the initial decree. *Id.*

The present case, however, is markedly different in posture than *Roach v. Roach, supra*. Where that case presented a situation where the trial court had jurisdiction and authority to determine the amounts actually due under the initial decree because of some confusion or ambiguity about what those amounts actually ordered were, the present case involves no ambiguity or lack of clarity concerning what was actually ordered in the decree. Despite Terry's assertion that the obligations of the parties were uncertain, the decree was clear in providing what amounts were due Christine and that Christine was to vacate the marital home. Her failure to vacate the home as ordered did not make the amounts ordered to her unclear or ambiguous.

Similarly, we find this case to be distinct from the situation presented in *Strunk v. Chromy-Strunk*, 270 Neb. 917, 708 N.W.2d 821 (2006). In that case, the dissolution decree

entered by the court contained a settlement provision providing the husband an additional $75,000 judgment if, during his lifetime, the wife voluntarily or involuntarily sold, transferred, gifted, conveyed, or foreclosed upon property granted to her. The wife subsequently executed a warranty deed to herself and her new husband, and the husband brought a motion to determine amounts due seeking to have the court determine that her execution of the deed satisfied the condition precedent and entitled him to the additional $75,000 judgment. In holding that the husband could proceed with a motion to determine amounts due instead of a separate proceeding for declaratory judgment, the Supreme Court relied heavily on principles of law concerning instances where a decree is ambiguous and the parties are left at their peril to know what they are authorized to do. The court also noted that district courts, in the exercise of their jurisdiction over dissolution actions, retain jurisdiction to enforce terms of approved property settlement agreements and have the power to enter such orders as are necessary to carry the decree into effect.

In the present case, as noted, there is no ambiguity apparent in the decree. Unlike the situation in *Strunk v. Chromy-Strunk, supra*, where it was not clear whether a conveyance to the wife and her new husband constituted a conveyance of the property as contemplated by the condition precedent set forth in the decree, there is no provision in the decree in the instant case that was unclear. Where a motion to determine amounts due was proper in *Strunk v. Chromy-Strunk* to determine whether the additional $75,000 provided in the decree was due and owing, the motion in this case actually sought to offset amounts clearly and unambiguously awarded as a result of actions of Christine that were not contemplated at the time of the decree—her failure to vacate the marital home as ordered.

[2-4] Such material changes in circumstances and developments not contemplated are at the heart of proceedings to modify decrees. See, *Collett v. Collett*, 270 Neb. 722, 707 N.W.2d 769 (2005); *Kramer v. Kramer*, 15 Neb. App. 518, 731 N.W.2d 615 (2007). A party seeking to modify a dissolution decree must show a material change of circumstances which

occurred subsequent to the entry of the original decree or a previous modification which was not contemplated when the prior order was entered. See *id.* A material change of circumstances in this context means the occurrence of something which, had it been known to the dissolution court at the time of the initial decree, would have persuaded the court to decree differently. *Id.*

In the present case, Terry's motion to determine amounts due sought to have the court modify the amount of money Christine was entitled to from the Oppenheimer fund, the SEP/IRA fund, and the equity in the parties' marital home, because she had failed to vacate the marital home as ordered in the decree and because her failure to vacate had resulted in his inability to sell the property and incurring of additional mortgage payments and expenses. Terry has not demonstrated that any provision in the initial decree was unclear or ambiguous or required a judicial order to determine the amount due. Rather, he is seeking relief as a result of Christine's failure to comply with the provisions of the decree, a circumstance that was not within the contemplation of the parties at the time of the decree.

We note that the district court did retain jurisdiction to enforce the terms of the initial decree. In fact, in this case, the district court sustained a motion to hold Christine in contempt and to direct the sheriff to remove her from the property. The court held Christine in contempt, provided a purge period during which she could purge the contempt by vacating the property, and authorized the sheriff to remove her from the property if she did not so purge the contempt. There has been no appeal from those holdings, and they demonstrate an appropriate means for the court to enforce the terms of its decree. Modifying the amounts awarded to Christine in the decree, without following the appropriate procedures for bringing and resolving an application to modify the decree, was not appropriate in this action to determine amounts due. As such, we reverse the district court's order and remand with directions to reinstate the provisions of the dissolution decree concerning the amounts awarded to Christine under the decree's property settlement.

Christine also challenges the district court's denial of her motion to vacate on the basis of improper notice and challenges Terry's serving of notice on her personally for the motion and hearing, rather than on her dissolution counsel. In light of our resolution of the merits of Christine's assertion concerning the motion to determine amounts due, we need not resolve this issue and decline to comment on it further.

REVERSED AND REMANDED WITH DIRECTIONS.

HELGA K. HOHERTZ, APPELLEE, V. ESTATE OF GENE E. HOHERTZ, DECEASED, APPELLEE, VETTA HOHERTZ, ALSO KNOWN AS DIANNE HOHERTZ, APPELLANT, AND AID ASSOCIATION FOR LUTHERANS, AND ITS SUCCESSOR, THRIVENT FINANCIAL FOR LUTHERANS, A FRATERNAL BENEFIT ORGANIZATION, APPELLEE.

802 N.W.2d 141

Filed July 19, 2011. No. A-10-967.

1. **Summary Judgment.** Summary judgment is proper if the pleadings and admissible evidence offered at the hearing show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.
2. **Divorce: Judgments: Appeal and Error.** The meaning of a decree presents a question of law, in connection with which an appellate court reaches a conclusion independent of the determination reached by the court below.
3. **Divorce: Final Orders: Intent.** Once a decree for dissolution becomes final, its meaning is determined as a matter of law from the four corners of the decree itself.
4. **Divorce: Property Settlement Agreements: Insurance.** Where a property settlement agreement validly provides for the disposition of life insurance benefits, the subsequent execution of a change of beneficiary form absent consent of the other party to the agreement is ineffective.
5. **Contracts.** Ambiguity exists in a document when a word, phrase, or provision therein has, or is susceptible of, at least two reasonable but conflicting interpretations or meanings.
6. **Divorce: Intent.** If the contents of a dissolution decree are unambiguous, the decree is not subject to interpretation and construction, and the intention of the parties must be determined from the contents of the decree.
7. **Divorce.** If the contents of a dissolution decree are unambiguous, the effect of the decree must be declared in the light of the literal meaning of the language used.