

**Judge Hogen, dissenting.**

Because I find that the parties' stipulated dissolution decree did not contain a condition precedent, I dissent. In my view, the majority decision misapplies the law of conditions precedent, discourages cooperation among ex-spouses, and disregards our obligation to pursue equity in dissolution matters.

**Background**

The parties to this appeal were married in July 2009, and remained so for nearly nine years. At the end, rather than air their grievances to the trial court and raise all manner of disputes over the deconstruction of their shared life, the parties showed remarkable cooperation and presented a comprehensive stipulation regarding all matters of the dissolution, which the trial court eventually approved and entered as a stipulated decree.<sup>1</sup> Among other things, the stipulated decree provided mutual waivers of spousal maintenance.<sup>2</sup> In connection with Johnson's waiver, the stipulation provided for the division of real property as follows:

Real Property and Rental Payments for Husband. [Brooks] is awarded, free and clear of any claim of [Johnson], full right, title, and interest to the real property of the parties, located at 2895 Dakota Trail South, in the City of Prior Lake, County of Scott, Minnesota . . . .

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<sup>1</sup> Stipulated Findings of Fact[,] Conclusions of Law, Order for Judgment & Judgment & Decree, *Brooks v. Johnson*, No. 877-18 (Jan. 24, 2018) (hereafter, "Stipulated Decree," "Stipulated Finding," or "Stipulated Conclusion").

<sup>2</sup> Stipulated Finding 27; Stipulated Conclusion 13.

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Title passes upon entry of this Judgment and Decree. To prove the transfer, a Summary Real Estate Disposition Judgment shall be prepared by the attorney for [Brooks] and submitted to the court for approval within (10) days of the entry of the Judgment and Decree. . . .

[Brooks] shall pay [Johnson's] rent on a home for a period of up to eighteen (18) months commencing on the first month following the date of entry of this Stipulated Divorce Decree in an amount not to exceed \$2,250.00 per month. Within that eighteen (18) month time frame, [Johnson] shall locate and find a home to purchase for no more than \$400,000 which [Brooks] shall purchase for [Johnson]. [Brooks] shall enter into whatever financial arrangements she deems appropriate for the purchase of this property, and [Johnson] shall cooperate fully in whatever is needed from him to secure this financing, including sharing title to the property with [Brooks] if that is needed for [Brooks] to secure financing. . . . Upon satisfaction of the underlying mortgage or other financing instrument used to purchase this property, title to such property shall be exclusively with [Johnson].<sup>3</sup>

Unfortunately, the parties did not complete the stipulation that Brooks purchase a home for Johnson. Of course, there are competing accounts of why this happened.

Johnson says it was because Brooks couldn't secure financing for a home.<sup>4</sup> Brooks says it was because Johnson didn't select a home and ask her to buy it.<sup>5</sup>

Either way, there is no question that the parties continued under their own modified understanding of how they would effectuate the spirit of this stipulation. For instance, Brooks paid Johnson's rent for more than 18 months.<sup>6</sup> The parties also

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<sup>3</sup> Stipulated Conclusion 17.

<sup>4</sup> See Johnson Aff. (Nov. 3, 2022) at ¶ 20.

<sup>5</sup> See Brooks Aff. (Jan. 27, 2023) at ¶ 11.

<sup>6</sup> See Johnson Aff. at ¶ 20; Brooks Aff. at ¶¶ 14, 16.

exchanged text messages evidencing their mutual understanding that they would continue their efforts to effectuate the stipulation that Brooks buy a home for Johnson beyond the 18-month timeframe. For instance, more than 18 months after entry of the stipulated decree, Brooks sent Johnson a text message stating that the parties “will need to talk about the house stuff more.”<sup>7</sup> She indicated that she had “been trying but it’s not working,” that it had worsened her credit, and that she had “started seeing someone to help build” up her credit.<sup>8</sup> Johnson responded that the parties “definitely need to” discuss the home purchase and that he was “willing to forgo the decree like [they] both [had] to help” each other because there was “no [hate] or disdain.”<sup>9</sup>

Eventually, though, something changed. In October 2022, Brooks sought relief from the stipulation that she buy Johnson an up-to-\$400,000 home.<sup>10</sup> Johnson countered with a request that the trial court enforce the stipulation.<sup>11</sup> The trial court ultimately granted Brooks relief, concluding that she had “met her obligation under [the stipulation] to purchase a home” for Johnson.<sup>12</sup> The trial court reasoned that the plain terms of the stipulation gave Johnson 18 months to find a home and that “[h]ad he found a \$400,000 home within the 18-month timeframe but had [Brooks] refused to

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<sup>7</sup> Brooks Aff. at Ex. C.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Petitioner’s Notice of Motion & Motion to Amend Parenting Time & Issues Regarding Children & Agreement Regarding Housing, *Brooks v. Johnson*, No. 877-18 (Oct. 11, 2022).

<sup>11</sup> Respondent’s Notice of Motion & Motion, *Brooks v. Johnson*, No. 877-18 (Nov. 3, 2022).

<sup>12</sup> Order on the Motions, *Brooks v. Johnson*, No. 877-18, 8 (Mar. 10, 2023) (“Trial Court Order”).

abide by her agreement to purchase such a home, [he] could have then petitioned the Court to enforce the Decree.”<sup>13</sup> It characterized Johnson’s request instead as a request to modify the property award and concluded that none of the bases for modification were present or were time-barred.<sup>14</sup>

Thus, Johnson lost the \$400,000 property interest that he bargained for in the stipulated decree. Brooks lodges numerous, ultimately unpersuasive, arguments in support of this outcome.

## I.

First, Brooks argues that this dispute is only about the real-property division, and not spousal maintenance.<sup>15</sup> But the Domestic Relations Code contemplates the intermingling considerations of spousal maintenance and property division:

The dual intent of this Section and Section 6 of this Chapter is to enable the Tribal Court to provide for the financial needs of the spouses by property division rather than an award of maintenance when possible.<sup>16</sup>

In this case, the stipulated decree specifically states that Johnson waived his right to spousal maintenance in part for the benefit of Brooks’s purchase of his home, consistent with the intent of the Domestic Relations Code.<sup>17</sup> Moreover, the parties submitted a comprehensive stipulation to resolve all matters relevant to their marriage dissolution:

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<sup>13</sup> Trial Court Order at 6.

<sup>14</sup> *Id.* at 6-7.

<sup>15</sup> Resp. Br. at 13.

<sup>16</sup> Domestic Relations Code Ch. II, § 5(a).

<sup>17</sup> Stipulated Finding 27; Stipulated Conclusion 13.

“Considering all circumstances relative to the dissolution proceedings, the Stipulated Judgment and Decree into which the parties entered is fair and reasonable.”<sup>18</sup> This is further demonstrated by the fact that another consideration for Johnson’s waiver of spousal maintenance was increased child support.<sup>19</sup> To read the provision regarding division of real property without reference to other terms of the stipulated decree would be improper.

## II.

Second, and relatedly, Brooks argues that “the dispute is not about the fairness of the property settlement.”<sup>20</sup> The Domestic Relations Code requires the trial court to equitably divide property, however:

Absent a valid prenuptial or postnuptial agreement to the contrary, the marital property of the spouses is to be divided equitably upon dissolution. The Tribal Court shall consider the length of the marriage; the age, health and occupation of the parties; the earning capacity of the parties, including their educational backgrounds, training, employment skills and work experience; any contribution the spouse made to the education or earning power of the other spouse; the value of the property at the time of division; and whether a party has unreasonably depleted marital assets. The Tribal Court shall not consider the misconduct of either spouse except misconduct related to the unreasonable depletion of marital assets.<sup>21</sup>

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<sup>18</sup> Stipulated Finding 50.

<sup>19</sup> Stipulated Finding 27.

<sup>20</sup> Resp. Br. at 14.

<sup>21</sup> Domestic Relations Code Ch. II, § 5(c).

Originally, Brooks and Johnson agreed to divide their property—and other rights—in a manner that they believed was “fair and reasonable.”<sup>22</sup> But the trial court’s order substantially upset the equitable division the parties agreed upon. Given the minimal other property that Johnson received and absence of any spousal maintenance, it’s difficult to conclude that the stipulated decree, as applied by the trial court, is fair, reasonable, or equitable. Rather, the trial court’s order left Johnson with several hundred thousand dollars less than the parties agreed he should receive as part of their “fair and reasonable” settlement.

### III.

Third, Brooks argues that Johnson selecting a home within 18 months was a condition precedent to her obligation to buy the home. The language of the decree does not contain the unequivocal language required for a condition precedent, however, so the trial court erred as a matter of law in finding that Johnson’s promise to find a home within 18 months was a condition precedent to Brooks’s obligation to buy a home for Johnson.

In another case examining contractual rights, this Court held that “[w]hen a contract contains a condition precedent, a party to the contract does not acquire any

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<sup>22</sup> Stipulated Finding 50.

rights under the contract unless the condition occurs.”<sup>23</sup> There, the Court found that a provision in a settlement agreement stating that the agreement “is contingent upon approval of the Community and approval of the District Court,”<sup>24</sup> was a condition precedent and that absent the requisite approval, it was ineffective.<sup>25</sup>

This case is quite different. There is no language of contingency in the stipulated decree, and obviously, both Brooks and Johnson obtained rights under it. For example, Brooks received her home on the Reservation<sup>26</sup> and Johnson received rent and child support.<sup>27</sup>

The question is whether Johnson was only entitled to have a home of up to \$400,000 purchased for him by Brooks *if* he selected the home within 18 months. In *Comprehensive Care Corp. v. Rehab Corp.*, the Eighth Circuit explained the difference between a promise and a condition:

A promise is an assurance from one party that performance will be rendered in the future, given in a manner that the other party could rely on it. A condition, by contrast, creates no rights or duties in and of itself, but only limits or modifies rights or duties.<sup>28</sup>

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<sup>23</sup> *In re Conservatorship of Dean Brooks*, 4 Shak. T.C. 173, 184 (2003); *see also* Restatement (Second) of Contracts § 224 (“A condition is an event, not certain to occur, which must occur, unless its non-occurrence is excused, before performance under a contract becomes due.”).

<sup>24</sup> *Id.* (quoting agreement).

<sup>25</sup> *Id.* at 190.

<sup>26</sup> Stipulated Conclusion 17.

<sup>27</sup> Stipulated Conclusion 7.

<sup>28</sup> *Comprehensive Care Corp. v. Rehab Corp.*, 98 F.3d 1063, 1066 (8th Cir. 1996) (internal citations omitted).

In *Comprehensive Care Corp.*, one company had agreed to pay the other an additional sum “if within 12 months of the closing date there occurs a ‘Change of Control Event.’”<sup>29</sup> The Court found that the language created a condition precedent and that because no “Change of Control Event” had occurred, no additional sums were due.<sup>30</sup>

Generally, the language of a contract must “unequivocally express an intent of the parties to establish a condition precedent” before a court will construe the contract to contain such a condition.<sup>31</sup> While no special terms or code words are necessary to create a condition precedent, they are typically created using phrases such as “if,” ‘provided that,’ ‘when,’ ‘after,’ ‘as soon as,’ and ‘subject to.’”<sup>32</sup>

The stipulated decree contains none of these typical phrases regarding Brooks’s obligation to purchase a home for Johnson. Moreover, there is *no language* stating that Brooks’s obligation to buy a home rests on Johnson’s selection of the home within 18 months. And the stipulated decree doesn’t say that Johnson will forego his right to the \$400,000 property interest if he doesn’t select a home within 18 months. Indeed, in an

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<sup>29</sup> *Id.* (quoting agreement).

<sup>30</sup> *Id.*

<sup>31</sup> *Mrozik Const., Inc. v. Lovering Assocs., Inc.*, 461 N.W.2d 49, 52 (Minn. Ct. App. 1990) (holding that subcontract providing that subcontractor would be paid “to the extent that the contractor has been paid on the subcontractor’s account” did not establish condition precedent that contractor be paid before it owed payment obligation to subcontractor).

<sup>32</sup> *Comprehensive Care Corp.*, 98 F.3d at 1066 (quoting *Standefer v. Thompson*, 939 F.2d 161, 164 (4th Cir. 1991)).



earlier provision of the decree, there appears to be no relationship between Johnson selecting a home within 18 months and Brooks's purchase of the home:

The parties further agree, and the Court finds it appropriate, that Wife's obligation to pay Husband spousal maintenance is hereby waived. The parties have agreed to, and the Court finds it appropriate and in the children's best interests, that Wife shall pay Husband a child support award as more fully set forth below that is a substantial upward deviation from the Community's current child support guidelines. In addition, the Wife has agreed to pay certain debts incurred by the Husband, to assist for a limited time with the payment of the monthly rent obligations Husband will need in order to obtain his own housing, and to eventually assist in the purchase of a home for the Husband.<sup>33</sup>

Instead, the requirement that Johnson select a home within 18 months appears to be a promise, an assurance to Brooks that he will perform. Most notably, it uses the word "shall," indicating a promise that he will perform. To interpret Johnson selecting a home within 18 months as a condition precedent to Brooks's purchase of a home for Johnson would necessitate rewriting or adding language to the stipulated decree. And courts "should not rewrite, modify, or limit the effect of a contract provision by a strained construction when the contractual provision is clear and unambiguous."<sup>34</sup> Thus, Johnson selecting a home within 18 months was a promise, not a condition.

Similarly, Brooks's obligation to purchase the home was a promise. It is evident that neither party fulfilled its promise regarding the purchase of a home.<sup>35</sup> Rather than

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<sup>33</sup> Stipulated Finding 27.

<sup>34</sup> *Am. Nat'l Bank of Minn. v. Hous. & Redevelopment Auth. for the City of Brainerd*, 773 N.W.2d 333, 337 (Minn. Ct. App. 2009).

<sup>35</sup> *E.g.*, Trial Court Order at 4, Findings 15-16.

analyzing the parties' breached promises as such and determining an appropriate remedy, the trial court "view[ed] [Johnson's] motion as a request to modify the property award in the Decree rather than as a request to enforce it," and analyzed it under the modification provisions in the Code.<sup>36</sup> Doing so was an error of law. I would therefore remand the matter to the trial court with instructions to analyze the parties' allegations as being for breach of contract, and to determine remedies accordingly.

#### IV.

Lastly, Brooks argues that the parties' discussions about buying a home more than 18 months after the stipulated decree amounted to a "side agreement" the court shouldn't enforce.<sup>37</sup> But the cases relied on by Brooks don't match the circumstances here. For instance, in *Pooley v. Pooley*, the issue was the "proper procedure for considering the division of omitted assets from joint petitions for marriage dissolution."<sup>38</sup> That case involved a purported side agreement that existed at the time that the parties filed the joint petition.<sup>39</sup> And the issue was whether the district court needed to review the omitted property "to execute its necessary function of determining

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<sup>36</sup> *Id.* at 6.

<sup>37</sup> Resp. Br. at 23.

<sup>38</sup> *Pooley v. Pooley*, 979 N.W.2d 867, 870 (Minn. 2022).

<sup>39</sup> *Id.* 870-71.

that the settlement was equitable.”<sup>40</sup> It did not, as Brooks suggests, deal with “after-the-fact inequitable asset divisions.”<sup>41</sup>

This case does not involve a dispute over assets omitted from the stipulated decree. Nor does it involve a side agreement that existed at the time that the parties entered into the stipulation. This case involves discussions *subsequent* to entry of the stipulated decree to cooperatively resolve a problem completing one of its provisions. There is no question that the trial court was able to “execute its necessary function of determining that the settlement was equitable” when it entered the stipulated decree.<sup>42</sup>

## V.

Setting aside Brooks’s arguments, I’m concerned by the implications of the majority’s decision. The parties agree that they visited multiple homes in the 18-month timeframe set out in the stipulated decree.<sup>43</sup> But the record is also clear that Brooks was not in a financial position to purchase a home within that timeframe.<sup>44</sup> To address this, Johnson opted to show patience and work with Brooks.<sup>45</sup> Under the majority’s view, Johnson should have instead rushed to the trial court to enforce the stipulated decree. That means Johnson had no option to work cooperatively with Brooks without risking

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<sup>40</sup> *Id.* at 871.

<sup>41</sup> Resp. Br. at 26.

<sup>42</sup> *Pooley*, 979 N.W.2d at 871. The other cases relied on by Brooks involve child-support obligations and are therefore not relevant to the dispute here.

<sup>43</sup> See Brooks Aff. at ¶ 11.

<sup>44</sup> See Brooks Aff. at Ex. C.

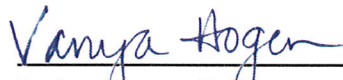
<sup>45</sup> *Id.*

the loss of a \$400,000 property interest. Under the trial court's ruling and the majority's view, Johnson had no option to exercise patience and restraint while Brooks resolved her financial issues.

I fear the majority's outcome—in addition to misapplying the law of conditions precedent—will discourage former spouses from cooperating with one another. Moreover, it may well prompt them to rush back to court with every disagreement or problem that arises under a dissolution decree for fear of inadvertently waiving their rights.

### Conclusion

I hope I'm wrong about the implications of the majority's decision. Time will tell. Regardless, I remain of the view that Johnson has been incorrectly and inequitably denied a substantial, non-contingent property interest that he bargained for—and that Brooks agreed to. I would reverse and remand.

  
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Judge Vanya S. Hogen