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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1037**

In re the Marriage of:
Lynn Ann Gulbranson, petitioner,
Respondent,

vs.

Carl Richard Gulbranson,
Appellant.

**Filed June 18, 2012
Affirmed in part and remanded
Hudson, Judge**

Hennepin County District Court
File No. 27-FA-10-2182

Suzanne M. Remington, Hellmuth & Johnson, PLLC, Minneapolis, Minnesota (for
respondent)

Coley J. Grostyan, Minneapolis, Minnesota; and

Bruce M. Rivers, Minneapolis, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and
Crippen, Judge.*

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

UNPUBLISHED OPINION

HUDSON, Judge

On appeal from the denial of appellant's motion to vacate a stipulated dissolution judgment, appellant argues that the district court abused its discretion by not fully addressing his objections to the stipulation and proposed judgment and by denying his motion based on mutual mistake of fact. Appellant also argues that the district court erred by (1) entering judgment without a hearing, (2) finding that the mistake in inventory value was foreseeable, and (3) entering judgment on matters not contemplated in the stipulation. Because any mistake was not material and appellant agreed to and understood the stipulation while represented by counsel and after lengthy negotiations, the district court did not abuse its discretion in denying appellant's motion. In addition, the district court did not err by not holding a hearing on appellant's objections because a hearing is not required. We affirm the district court on these rulings. However, we direct the district court to modify the portions of the judgment not agreed to by the parties; for that purpose, we remand.

FACTS

Appellant-husband Carl Gulbranson and respondent-wife Lynn Gulbranson were married for 25 years before commencing dissolution proceedings. On November 23, 2010, the dissolution trial was to begin, but the parties instead agreed to mediation. That day, the parties reached agreement on all issues and read the stipulation into the record.

The stipulation included disposition of the parties' ownership interests in three businesses: Edina Bike & Sport, Inc. (EBS), Electric Vehicle Store, Inc., and Alternative

Vehicle Distributors. During the dissolution proceedings, neither party obtained an appraisal of the three businesses or brought a motion seeking to have appraisals completed. As part of the stipulation, the parties agreed that their interests in the three businesses would be sold or liquidated and that, after payment of various debts and obligations, the remaining proceeds would be divided equally between the parties. After the stipulation was read into the record, the appellant's attorney asked appellant, "You understand that by agreeing to this stipulation that you can't come back at a later time and say it wasn't what I anticipated or what I agreed to, right?" Appellant indicated that he understood. Appellant also confirmed to the district court that he listened to the stipulation as it was read into the record, had no objections to it, and had talked to his attorney regarding the stipulation. The district court judge further stated to appellant, "I can see that you have some hesitancy, and although you might not be thrilled with the outcome of the case, do you feel it's as equitable as it can be under the circumstances?" Appellant answered, "Yes, ma'am."

The parties hired a liquidator to sell the business assets. The liquidator conducted an inventory count of EBS's product and determined that a discrepancy existed regarding the cost basis for the inventory. In the judgment and decree, the EBS inventory was valued at \$419,734. The liquidator determined the inventory was worth only \$229,000. In addition, the liquidator determined that EBS had unpaid debts of about \$177,000, rather than the \$153,123 agreed on in the judgment and decree.

Respondent submitted to the district court proposed findings of fact, conclusions of law, order for judgment, and judgment. The next day, appellant moved the district

court to vacate the stipulation based on mutual mistake of fact as to the valuation of EBS and, a week later, appellant submitted a letter stating his multiple objections to the proposed judgment. After hearing argument via telephone conference on the motion to vacate, the district court entered the judgment as submitted by respondent. Appellant moved to vacate the judgment based on mutual mistake of fact; the motion was denied. This appeal follows.

D E C I S I O N

I

Rule 307(b) of the Minnesota Rules of General Practice provides the procedure for entering a judgment based on a dissolution stipulation presented orally to the district court. *Clark v. Clark*, 642 N.W.2d 459, 463–64 (Minn. App. 2002). The rule states that, once a stipulation is submitted to the district court, entry “shall be deferred for 14 days to allow for objections unless the decree contains the written approval of the lawyer for each party.” Minn. R. Gen. Prac. 307(b). Interpretation and application of procedural rules are reviewed de novo. *Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 153 (Minn. 2001).

Appellant argues that the district court erred by entering judgment without a hearing after he objected to the stipulation. On January 6, 2011, respondent served the proposed judgment and transcript and requested entry of judgment pursuant to rule 307(b). The next day, appellant filed a motion to vacate the stipulation, followed by a memorandum on January 14, 2011, elaborating on his objections to the stipulation. Motions on family-law matters may be considered without a hearing. *See* Minn. R. Gen.

Pract. 303.03(d) (stating consideration of motions in family-law matters may be nonoral unless a party requests a hearing or oral testimony). Even so, the district court heard arguments regarding appellant's motion in a telephone conference on February 10, 2011. The district court did not err by entering judgment without a formal hearing.

Appellant also asserts that the district court abused its discretion by not fully addressing his objections to the stipulation and proposed judgment. A party may seek to vacate a stipulation prior to judgment being entered on an oral stipulation if the stipulation "was improvidently made and in equity and good conscience ought not to stand." *Shirk v. Shirk*, 561 N.W.2d 519, 522 (Minn. 1997). A district court's refusal to vacate a stipulation is reviewed for an abuse of discretion. *Maranda v. Maranda*, 449 N.W.2d 158, 164 (Minn. 1989). Here, the district court stated in its May 18, 2011 order that, after reviewing the transcript, it found that the stipulation was not improvidently made.

Whether an oral stipulation prior to judgment should have been vacated is analyzed using a combination of the factors under Minn. Stat. § 518.145, subdivision 2 (2010), and *Tomscak v. Tomscak*, 352 N.W.2d 464, 466 (Minn. App. 1984).¹ The *Tomscak* factors consider whether: (1) the party was represented by counsel; (2) extensive, detailed negotiations took place; (3) the party agreed to the stipulation in

¹ Although *Tomscak* has been superseded by Minn. Stat. § 518.145 and is no longer good law to the extent it allows vacation of a stipulated judgment for reasons beyond those included in Minn. Stat. § 518.145, subdivision 2, courts continue to apply the relevant *Tomscak* factors when addressing whether to release a party from a stipulation on which a judgment has not yet been entered. See *Toughill v. Toughill*, 609 N.W.2d 634, 639–40 n.2 (Minn. App. 2000).

open court; and (4) the party acknowledged that he understood the terms and considered them fair. *Pekarek v. Wilking*, 380 N.W.2d 161, 163 (Minn. App. 1986).

Here, appellant was represented by counsel and participated in negotiations lasting five hours. Additionally, appellant agreed to the stipulation in open court, which the district court confirmed. Finally, appellant acknowledged that he understood the terms of the stipulation and considered the terms to be fair. Because the stipulation was not based on mutual mistake and the *Tomscak* factors were satisfied, the district court did not abuse its discretion by refusing to vacate the pre-judgment stipulation.

II

“When a divorce judgment is entered pursuant to a stipulation, the stipulation merges into the judgment and decree and finality becomes of central importance.” *Harding v. Harding*, 620 N.W.2d 920, 922 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. Apr. 17, 2001). The judgment may be vacated for mistake, fraud, or duress. *See* Minn. Stat. § 518.145, subd. 2(1). We review a district court’s refusal to vacate a judgment for an abuse of discretion, which requires the district court’s ruling be against logic and the facts on record. *Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996); *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). Factual findings supporting the district court’s ruling will be upheld unless they are clearly erroneous. *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998). “That the record might support findings other than those made by the [district] court does not show that the court’s findings are defective.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

Appellant argues that the district court abused its discretion by denying his motion to vacate the judgment based on the mutual mistake of the values assigned to the EBS inventory. In denying appellant's motion, the district court found that the mistake in values was foreseeable and did not prejudice appellant. Appellant argues that these findings are clearly erroneous.

Stipulations are accorded the sanctity of binding contracts, but a judgment entered based on a stipulation merges the stipulation into the judgment. *Shirk*, 561 N.W.2d at 521–22; *Ryan v. Ryan*, 292 Minn. 52, 55, 193 N.W.2d 295, 297 (1971). Therefore, a judgment may be reopened only on a statutory basis under Minn. Stat. § 518.145, subdivision 2, and not on the basis of any alleged defect in the stipulation. *Id.* Here, at the time the parties entered the stipulation, the parties believed the inventory value of EBS to be \$419,734 with debt of \$153,123 and a net value of \$266,611. A later inventory and analysis of EBS's assets revealed an inventory value of \$229,000 with unpaid debts of approximately \$177,000 and a net value of \$52,000. The district court found that the mistake regarding the inventory value was foreseeable because appellant was prepared to begin the dissolution trial based on information regarding EBS that was provided by respondent when he entered mediation; thus he relied on the same information in reaching the stipulation as he would have at trial. Additionally, the district court found that appellant assumed the risk of mistake and therefore his mistake did not justify reopening the stipulated dissolution judgment.

Relying on *Harding*, appellant argues that the mistake in inventory value contradicted the parties' beliefs at the time the stipulation was entered and, therefore,

constitutes a mutual mistake. In *Harding*, this court allowed the reopening of a dissolution judgment that awarded appellant 50% of a business and provided that each party would share equally any tax refunds or liabilities, which in years past had resulted in small refunds of less than \$750. 620 N.W.2d at 921. After the parties agreed to the stipulation, the business was audited by the IRS and, as a result, changed its accounting method, which resulted in federal and state tax liabilities of \$56,229.86, \$89,785.03, and \$25,000 over a two-year period. *Id.* Applying Minn. Stat. § 518.145, subdivision 2(5), which states that a divorce judgment may be reopened if it is no longer equitable, we concluded that the tax liabilities “presented a change in circumstances that is not merely a new set of circumstances or an unforeseen change of a known circumstance . . . but rather a tax determination that seriously contradicts what the parties knew about the property when the judgment was made.” *Id.* at 924.

Here, the district court reasoned, and respondent argues, that *Harding* does not apply because it involved a different subdivision of Minn. Stat. § 518.145 than the one under which appellant brings his appeal. Though true, *Harding* also relied in part on reasoning from mutual-mistake cases. However, the mistake and other circumstances here are distinguishable from *Harding*. Here, appellant’s concern goes to the changed value of the inventory and debt, which the district court found was foreseeable. In contrast, *Harding* involved an unforeseen liability that neither party could have predicted at the time of the decree. Here, appellant did not make a reasonable inquiry into the

value of EBS before entering into negotiations with respondent.² Appellant did not obtain an appraisal of the value of the inventory, and he relied on respondent's statements regarding the value of EBS. A settlement's unanticipated consequences are not grounds to vacate a judgment. *Hestekin*, 587 N.W.2d at 310. Therefore, the mistake in inventory value did not constitute a mutual mistake.

The district court did not clearly err in finding that the mistake in inventory value was foreseeable and did not abuse its discretion by refusing to vacate the judgment based on mutual mistake.

III

“While a district court has the discretion to accept all or part of a proposed stipulation, generally [a district court] cannot, by judicial fiat, impose conditions on the parties to which they did not stipulate and thereby deprive the parties of their day in court.” *Clark*, 642 N.W.2d at 465 (quotation omitted). A district court errs when it signs a proposed judgment containing conditions to which the parties did not stipulate. *Id.* Here, respondent concedes the correctness of appellant's assertion that several additions were made to the judgment that were not agreed to by the parties in the stipulation and consents to reform of the judgment to: (1) remove the \$5,000 figure in reference to the Mark Anderson receivable because the stipulation did not reference the amount of the receivable; (2) remove language requiring appellant to pay respondent half of the \$15,000

² Appellant asserts he was denied information pertaining to the inventory value because his motion to compel discovery was unresolved at the time he entered mediation. But because mediation began the same day the trial was to begin, appellant had access during mediation to the identical information that he would have had at trial.

IRA if he used any portion of it for non-business expenditures because the stipulation required appellant to reimburse respondent only to the extent such funds were used for non-business expenditures; (3) remove the language making either party responsible for attorneys' fees and interest and penalties resulting from a party's failure to cooperate in connection with filing certain income tax returns because this language was not part of the stipulation; (4) remove the language referencing contact with family and friends because, though the parties agreed that a harassment restraining order would be dismissed, the agreement did not address contact with family and friends; and (5) remove language regarding future claims because this language was not part of the stipulation. We remand to the district court to address the propriety of these changes and to exercise its discretion in determining whether to incorporate them into the judgment.

Additional inconsistencies asserted by appellant include: (1) the omission of appellant's \$30,000 personal injury settlement as non-marital property; (2) exclusion of David Krafft as a 10.6% shareholder of EBS upon division of profits from liquidation of EBS; (3) the omission of Kamps & Associates, LLC's, accounts receivables from assets to be deposited into the Wells Fargo accounts; and (4) the requirement that appellant be responsible for tax penalties associated with the IRA account withdrawals. None of these alleged inconsistencies warrant modification. As to (1) and (3), appellant provides no citation to the record or any other evidence indicating that the information should not have been omitted. As to (2), the district court included David Krafft in the division of any EBS liquidation profits when it stated that the profits would be split between husband and wife after "the buy-out payment to David Krafft." As to (4), making appellant

responsible for tax penalties is consistent with the condition appellant agreed to when the stipulation was read in court and which stated husband and wife were each responsible for their own penalties.

Affirmed in part and remanded.