STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0821

In re the Marriage of:
Ellen Elizabeth Stanley, petitioner,
Appellant,

vs.

Jack Allen Stanley,
Respondent.

Filed May 27, 2008
Affirmed in part, reversed in part, and remanded
Halbrooks, Judge

Dakota County District Court
File No. F8-05-12834

Ellen Elizabeth Stanley, 1603 Raindrop Drive, Eagan MN 55121 (pro se appellant)

Amy L. Senn, U.S. Bank Building, 7200 80th Street South, Cottage Grove, MN 55016 (for respondent)

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Crippen, Judge.*

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

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges the district court's dissolution judgment on the grounds that the findings are insufficient to support the district court's conclusion that she waived her right to any future modification of the duration or amount of spousal maintenance and that the district court made several other errors in memorializing the parties' oral agreement. Because the district court did not err in applying Minn. Stat. § 518.552 (2006), we affirm in part. But because the district court's order includes an unstipulated-to factual finding referencing respondent's subsequent child, we reverse in part and remand for issuance of an amended judgment.

FACTS

Appellant Ellen Stanley and respondent Jack Stanley separated in February 2005 after approximately eighteen years and five months of marriage. A hearing was held before the district court on August 17, 2006, in an attempt to settle issues related to the marriage dissolution. Appellant and respondent reached an agreement at the hearing that included, among other things, a stipulation that appellant would receive permanent spousal maintenance, paid for the first four months at $500 and then at $300 per month. The parties also stipulated that, aside from an exception not applicable here, they waived any future modification to the maintenance award. Appellant stated that she understood that she would be bound by the terms and conditions of the agreement, and the agreement was read into the record before the district court.

Although the exact sequence of events that transpired over the next several months is not entirely clear, a written summary of the August 17 oral agreement was never submitted to the district court. And at some point during this time period, appellant repudiated the agreement as to the spousal-maintenance term. As a result, the district court scheduled a hearing.

At the November 9, 2006 hearing, appellant stated that she was no longer satisfied with $300 in monthly maintenance and, instead, requested $500 per month. The district court denied appellant's request and stated that it would obtain a transcript of the August 17 hearing and issue a written dissolution judgment and decree based on the transcript. Judgment was subsequently entered, setting respondent's maintenance obligation to appellant at $300 per month. The judgment also stated that each party waived his or her right to modify the maintenance award and that the district court was divested of further jurisdiction over maintenance in accordance with the August 17 stipulation.

Appellant moved to vacate the maintenance provisions in the judgment, contending that they are not accompanied by the statutorily required findings. She also moved to strike a finding in the judgment that refers to respondent's child with his girlfriend, as contrary to the parties' August 17 agreement. Following a hearing, the district court denied appellant's motion. This appeal follows.

D E C I S I O N

I.

Appellant argues that the district court did not make the statutorily required findings in the dissolution judgment to support its conclusion that each party waived the

right to seek future modification to the maintenance award. A district court generally has broad discretion over issues of spousal maintenance, and this court will not reverse such a decision absent an abuse of discretion. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). But issues of subject-matter jurisdiction and the interpretation of statutes and stipulations in dissolution judgments are questions of law, which we review de novo. *Olmanson v. LeSueur County*, 693 N.W.2d 876, 879 (Minn. 2005) (statutory interpretation); *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002) (subject-matter jurisdiction); *Anderson v. Archer*, 510 N.W.2d 1, 3 (Minn. App. 1993) (stipulations).

A stipulated waiver of a party's statutory right to modify spousal maintenance is commonly referred to as a *Karon* waiver, bearing the name of the case establishing the general validity of such stipulations. *Karon v. Karon*, 435 N.W.2d 501 (Minn. 1989) (superseded in part by statute); *see also* Minn. Stat. § 518A.39 (2006) (permitting subsequent modification of maintenance awards under certain conditions). A *Karon* waiver occurs when both parties agree to the nature and the amount of the spousal maintenance and also agree that each person is precluded from altering the award. *See, e.g., Karon*, 435 N.W.2d at 503-04. The stipulation must include language that memorializes these agreements and state the district court is divested of further jurisdiction over maintenance. *Loo v. Loo*, 520 N.W.2d 740, 745 n.5 (Minn. 1994). A *Karon* waiver must be explicit and unambiguous regarding the statutory rights that are being waived. "[I]t is not appropriate to infer waiver in the absence of a clear intent to waive a statutorily conferred right." *Keating v. Keating*, 444 N.W.2d 605, 607-08 (Minn. App. 1989), *review denied* (Minn. Oct. 25, 1989); *see also Loo*, 520 N.W.2d at 745

("[C]ourts should not assume that parties specifically bargained to supplant the statutory modification procedure without a clear or express statement divesting the court of jurisdiction.").

In addition, all *Karon* waivers must be accompanied by the statutorily required findings set forth in Minn. Stat. § 518.552, subd. 5 (2006),[1] which requires the district court to find that (1) the stipulation is fair and equitable; (2) it is supported by consideration described in the judgment; and (3) both parties have fully disclosed their financial assets and liabilities. *Loo*, 520 N.W.2d at 745 n.6. If all of these findings are not made, the *Karon* waiver is ineffective. *Santillan v. Martine*, 560 N.W.2d 749, 751 (Minn. App. 1997) (holding a waiver of modification of spousal maintenance ineffective when the district court did not include all the findings required by statute). This court may not infer the existence of these statutorily required findings "in the face of the legislative mandate for specific [district] court findings of fact." *Id.*

Here, appellant's claim that the district court failed to make the required findings in the dissolution judgment is contradicted by the judgment itself. Relevant excerpts of the dissolution judgment state:

FINDINGS OF FACT

. . . .

15. Each party has fully disclosed to the other their assets and liabilities.

[1] These statutory requirements were enacted subsequent to the *Karon* decision. 1989 Minn. Laws ch. 248, § 7, at 838. These requirements go beyond the *Karon* court's holding that a district court ensure that the waiver is "fair and reasonable." *Karon*, 435 N.W.2d at 503.

. . . .

CONCLUSIONS OF LAW

. . . .

2. . . . [T]he [r]espondent shall pay to the [appellant] spousal maintenance in the sum of . . . $300.00 per month. . . .

The amount of maintenance shall not be changed by either party . . . .

. . . .

Pursuant to *Karon v. Karon* . . . and Minnesota Statute Section 518.552, subdivision 5, [appellant] and [r]espondent both waive their rights to any future modifications of the duration or amount of maintenance under any circumstances whatsoever. Both parties declare that they understand that this waiver means that neither party will ever be able to modify spousal maintenance, no matter how their circumstances may change in the future. This waiver is made in consideration of the parties' acknowledgement that this is a fair and equitable arrangement. The Court is divested of further jurisdiction over spousal maintenance.

. . . .

25. Each party expressly stipulated and agreed that each has entered into their stipulation after full disclosure upon the advice of respective counsel and that each has relied upon the other party having fully disclosed all of his or her assets, both real and personal, all income, including any and all assets or income in the nature of third parties and under their control whether or not in their names.

Each of the parties hereto has entered into their stipulation intending that it be a full, complete, and final settlement in satisfaction of any and all claims of any kind, nature, and description to which each party may be entitled or claim to be entitled, now or in the future, against the other, except as expressly provided herein to the contrary, each is

> released from any and all further liability of any kind, nature or description whatsoever to the other.
>
> 26. The parties acknowledged that each had given the stipulation serious thought and consideration, and understood its contents. Their agreement is fair, just and equitable under the circumstances, and it has been made in aid of an orderly and just determination of the property settlement in this matter, satisfactory to both parties. . . .

Thus, the dissolution judgment explicitly addresses all three of the matters required by Minn. Stat. § 518.552, subd. 5.

Appellant contends that because these statements are contained in the conclusions-of-law section of the judgment, they are not factual findings and do not support her *Karon* waiver. But how the district court characterizes a particular statement in an order or judgment is not dispositive. *Dailey v. Chermak*, 709 N.W.2d 626, 631 (Minn. App. 2006) ("[M]islabeling of a finding of fact as a conclusion of law, or vice versa, is not determinative of the true nature of the item."), *review denied* (Minn. May 16, 2006). It is the nature of the statement that determines whether it is a finding of fact or conclusion of law. *See Bissell v. Bissell*, 291 Minn. 348, 352 n.1, 191 N.W.2d 425, 427 n.1 (1971) ("[A] fact found by the [district] court, although expressed as a conclusion of law, will be treated upon appeal as a finding of fact." (quotation omitted)). Therefore, we conclude that the inclusion of the necessary factual findings in the conclusions-of-law section of the judgment does not alter our determination that the district court made findings that are sufficient to satisfy section 518.552.

II.

Appellant challenges certain provisions in the dissolution judgment that she alleges are contrary to the parties' August 17 oral agreement in district court. Specifically, she claims that (1) there is a finding referring to respondent's child with his girlfriend that the parties agreed would not be mentioned in the judgment; (2) the dissolution judgment restricts her ability to withdraw funds from respondent's pension until he retires, which was not part of the agreement; and (3) the parties' agreement that any existing arrears owed under a prior, temporary district court order would not merge into the dissolution judgment is not contained in the judgment.

Appellant's claims regarding the pension fund and arrears were not briefed or raised at the February 2007 motion hearing. Accordingly, appellant has waived these claims that she raises for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

However, the record supports appellant's assertion that the parties agreed that the dissolution judgment would not reference respondent's child with his girlfriend. The district court's finding violating this stipulation states:

> 12. On June 5, 2006, the [r]espondent's girlfriend gave birth to a child . . . . The [r]espondent is the natural father of this child and the [r]espondent has a duty and obligation to support the child. The natural father of the child is [respondent] and he acknowledges his paternity of the child and agrees to be responsible for the support of the child.

We therefore reverse in part and remand to the district court so that an amended dissolution judgment that omits the paragraph referencing this child can be issued.

Affirmed in part, reversed in part, and remanded.