STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0113

State of Minnesota,
County of Kandiyohi, petitioner,
Respondent,

Angela R. Hoffenkamp,
n/k/a Angela R. Soine, petitioner,
Respondent,

vs.

Daniel A. Hoffenkamp,
Appellant.

Filed January 13, 2009
Affirmed
Ross, Judge

Kandiyohi County District Court
File No. FA-05-470

John Kallestad, Kandiyohi County Attorney, 415 Southwest Sixth Street, P.O. Box 1126, Willmar, MN 56201 (for respondents State of Minnesota and Kandiyohi County)

Angela R. Soine, 714 Stearns Avenue, Paynesville, MN 56362 (pro se respondent)

LeeAnn Clayton, Clayton Law Office, P.O. Box 113, Spicer, MN 56288 (for appellant)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Huspeni, 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

ROSS, Judge

Daniel Hoffenkamp appeals from a child support magistrate's ruling that denied his motion to dismiss, established child support, and ordered reimbursement to the county for benefits it paid on behalf of Mr. Hoffenkamp's children. Mr. Hoffenkamp argues that the child support magistrate should have granted his motion to dismiss because child support had been unambiguously established in the dissolution judgment. He also argues that there were no arrearages of his child-support obligation under the existing order, and that the child support magistrate therefore lacked authority to award a judgment for reimbursement to the county. Because the child-support provisions in the dissolution judgment were ambiguous, because the child support magistrate did not clearly err in concluding that child support had not been established in the dissolution judgment, and because the child support magistrate properly awarded a judgment of reimbursement to the county, we affirm.

FACTS

Angela and Daniel Hoffenkamp were married from September 15, 2001 until January 13, 2006. They had two children during the marriage. The Hoffenkamps executed a marriage termination agreement (MTA) and appeared at the district court on January 11, 2006. Both parties testified to the contents of the agreement and urged the court to adopt the agreement in its entirety. The district court dissolved their marriage two days later, apparently adopting their MTA without changes.

The nine-page judgment contains several features that are particularly relevant here: (1) the parties agreed to share joint legal and physical custody of the children, with

approximately equal parenting time; (2) the parties agreed to be represented by the same attorney; and (3) the parties agreed that it was in the best interests of the children that neither party pay child support because their incomes were comparable and they each had sufficient income to provide for the children while they were in his or her care.[1] The judgment also states that Ms. Hoffenkamp "shall receive the sum of $20,000 as and for child support and to allow her to set up an apartment . . . [and] [n]o other child support shall be ordered since each party shall become self-supporting and each shall have the children on an equal time basis." Finally, the judgment provides that, "[i]n the event circumstances develop wherein the children require public assistance, then and in such event the parties shall be required to provide child support to be determined at that time."

The district court was apparently wary of this agreement and addressed the parties individually at the dissolution hearing before entering judgment. The district court told Ms. Hoffenkamp, "You are relinquishing some claims here. . . . [T]here may be a non-marital claim and there may be debt. You're also waiving child support even though you're not working and he has the farm." Mr. William Bernard, the attorney for both parties, informed the court as follows:

> We've covered some of these potential things [including] . . . your concern about child support. . . . [I]f she should ever approach the county for any public assistance . . . [then] they'll both be called in on child support. [Mr. Hoffenkamp] is aware of that. In other words, if she gets a job or doesn't get a job, she burns the $20,000 and eventually goes to the county for, for assistance that they'll both be called in to work out child support.

[1] The judgment states this conclusion, but the district court record does not include findings of the parties' incomes.

The court soon repeated its doubts regarding the agreement:

> [A]s Mr. Bernard just indicated, I'm not sure about the child support, this agreement for lump sum payment in lieu of support. Mrs. Hoffenkamp you have the right to seek child support and if you want to go to the county to get enforcement I don't think you can be limited or denied the right to further child support if the income's justified in the future. And Mr. Hoffenkamp should understand he's got exposure there. It's very possible that child support could be sought in the future . . . [T]o say that the $20,000 payment will satisfy all future child support obligations I'm not sure that you should go—consider that to be correct.

Despite these concerns, the district court entered judgment dissolving their marriage based on the MTA, with the $20,000 provision included without further clarification.

In October 2006, Ms. Hoffenkamp applied for and received daycare assistance, medical assistance, and cash assistance from Kandiyohi County.[2] In August 2007, the county filed a complaint against Mr. Hoffenkamp to establish basic medical and child-care support under Minnesota Statutes section 256.87, and for reimbursement of the public assistance furnished on behalf of the children for past support. Mr. Hoffenkamp filed a motion to dismiss, arguing that the county's motion to establish support was improper because support had been established in the dissolution judgment.

The child support magistrate (CSM) denied Mr. Hoffenkamp's motion to dismiss and ordered a hearing on the merits. After that hearing, the CSM ordered Mr. Hoffenkamp to pay ongoing child support of $229 per month. The CSM noted that Mr. Hoffenkamp "is not being ordered to reimburse [Ms. Hoffenkamp] for past child support as the court believes this would be inequitable in light of the $20,000 . . . lump sum

[2] The CSM found that Ms. Hoffenkamp received cash benefits in an unknown amount, medical assistance benefits of $3,256.81, and child care assistance of $2,128.

payment." The CSM also ordered Mr. Hoffenkamp to pay $20 per month to reimburse the county for past medical and dental expenses and for past child care expenses. But the order provided that "[e]xecution and interest on the [reimbursement payments] is stayed as long as [Mr. Hoffenkamp] remains current in the [ongoing] support obligation." Mr. Hoffenkamp appeals.

D E C I S I O N

Mr. Hoffenkamp argues that because child support was unambiguously established in the dissolution judgment, the county's motion to establish support was improper and his motion to dismiss should have been granted. The county, as assignee of Ms. Hoffenkamp's rights, argues that because child support was not established in the dissolution judgment, the CSM did not err by denying Mr. Hoffenkamp's motion to dismiss. Without explaining its rationale, the CSM denied Mr. Hoffenkamp's motion to dismiss and established ongoing child support.

I

When child support has been established, the procedure to alter the terms of support is a motion to modify support. *See Eustathiades v. Bowman*, 695 N.W.2d 395, 399 (Minn. App. 2005) ("[I]f there has been an affirmative setting of a support amount, including the affirmative setting of support at an amount of zero, any subsequent change of the support obligation is a modification; and . . . if there has been only a reservation of support [or if support was not previously ordered], a later setting of a support obligation is an initial setting of support."). To determine if the CSM erred by denying Mr. Hoffenkamp's motion to dismiss, we look at the dissolution judgment and decide whether (1) child support was established; (2) child support was not established; or (3) the child-

support provisions are ambiguous. Stipulated dissolution judgments are treated as binding contracts. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). "The general rule for the construction of contracts . . . is that where the language employed by the parties is plain and unambiguous there is no room for construction." *Starr v. Starr*, 312 Minn. 561, 562–63, 251 N.W.2d 341, 342 (1977). Language is ambiguous when it "is reasonably subject to more than one interpretation." *Halverson v. Halverson*, 381 N.W.2d 69, 71 (Minn. App. 1986). Whether a dissolution judgment is ambiguous is a legal question, which we review de novo. *Tarlan v. Sorensen*, 702 N.W.2d 915, 919 (Minn. App. 2005).

Mr. Hoffenkamp points to two provisions in the judgment to support his argument that child support was unambiguously established. First, the judgment states that, "[i]t is in the best interest of the children that neither party pay support to the other as their incomes are comparable and they will have the children approximately equal amounts of time. Each of the parties has sufficient income to allow each to provide for the children while they are in his or her care." Second, in the paragraph titled, "Child Support," the judgment provides that, "Angela Hoffenkamp shall receive the sum of $20,000 as and for child support and to allow her to set up an apartment . . . [and] [n]o other child support shall be ordered since each party shall become self-supporting and each shall have the children on an equal time basis." Mr. Hoffenkamp contends these two provisions unambiguously establish the amount of child support as $20,000 and affirmatively set ongoing support at zero. We disagree.

The judgment does not unambiguously establish child support because some language suggests that child support was established, while other language suggests that child support was not established. For example, the judgment provides that $20,000 will

be paid to Ms. Hoffenkamp "as and for child support" and "no other child support shall be awarded." This language suggests that child support was established. But the judgment also provides that "neither party [shall] pay support to the other" and if the children require public assistance, "then and in such event the parties shall be required to provide child support." This language suggests that child support was not established. The flatly contradictory language shows that the judgment did not unambiguously establish child support.

It is also unclear whether the $20,000 lump-sum payment was child support, maintenance, a property settlement, or a combination of these. The judgment could be interpreted as making a $20,000 child-support award because the judgment provides that the $20,000 is "as and for child support." Alternatively, it could be interpreted as an award of maintenance because the judgment provides that the $20,000 was "to allow [Ms. Hoffenkamp] to set up an apartment." The lump-sum payment might also have been intended as a property settlement because the judgment orders that "[t]he $20,000 shall be put in a savings account for [Ms.] Hoffenkamp to be paid to her upon the completion and finalization of this dissolution process." The most likely interpretation may be that the $20,000 lump-sum payment was an improper combination of maintenance and child support. The judgment also states that "[i]n the event circumstances develop wherein the children require public assistance, then and in such event the parties shall be required to provide child support *to be determined at that time.*" (Emphasis added). This provision suggests that the $20,000 was not child support, but rather that the judgment expressly reserved the issue, because it states that child support will be determined based on a future condition.

The contradictory and ambiguous child-support provisions lead us to conclude that the judgment is ambiguous regarding child support.

II

We must next determine whether the CSM clearly erred by finding that child support had not been established. It is Mr. Hoffenkamp's burden to show that the CSM erred. *See Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949) (explaining that error on appeal is never presumed and the burden of showing error rests upon the one who relies upon it). "If a judgment is ambiguous, a district court may construe or clarify it. The meaning of an ambiguous judgment provision is a fact question, which we review for clear error." *Tarlan*, 702 N.W.2d at 919 (citation omitted). On appeal from a CSM's ruling, the standard of review is the same as it would be if the decision had been made by a district court. *Perry v. Perry*, 749 N.W.2d 399, 402 (Minn. App. 2008).

Although the CSM's order does not explicitly state that child support was not established, a necessary inference from the order is that the judgment did not establish child support. First, the CSM calculated Mr. Hoffenkamp's liability based on a two year "look back" period immediately preceding the commencement of this action. She noted, "During the two years prior to the commencement of this proceeding, [Mr. Hoffenkamp] had the ability to contribute to the support of the joint children." The statute under which the county sought reimbursement from Mr. Hoffenkamp provides that "[t]he parent's liability is limited to the two years immediately preceding the commencement of the action, except [in actions] where child support has been previously ordered." Minn. Stat. § 256.87, subd. 1 (2006). Yet when child support has been established, the parent's liability extends to the full amount of assistance furnished accruing within 10 years

preceding the commencement of the action. *Id*. The calculations of Mr. Hoffenkamp's liability based on the two-year period show that the CSM determined that child support had not been established in the judgment.

Confronted with ambiguous and contradictory child-support provisions, the CSM examined the language of the judgment and determined that it did not establish child support. Because the CSM's interpretation of the confusing judgment is reasonable, we conclude that the CSM did not clearly err by finding that child support had not been established in the dissolution judgment.

III

Mr. Hoffenkamp argues that the CSM lacked authority to award a judgment for reimbursement of assistance furnished. But this argument fails because "an order for child support and an order for reimbursement are two totally separate matters." *Hendrickson v. Hendrickson*, 403 N.W.2d 872, 874 (Minn. App. 1987). In *Hendrickson*, this court examined a county's action under Minn. Stat. § 256.87 as it related to modification of a child-support award and determined that "[a]n order for reimbursement under § 256.87 is an additional remedy available to the county if it has advanced public assistance for a child, and it is not a modification of a child support award under § 518." *Id*. So even when child support is established in a dissolution judgment, a county is not required to bring an action to modify child support because "an order entered pursuant to § 256.87 does not modify the child support provisions of a dissolution decree and is not governed by [the child support modification factors]." *Id*. Because the county's motion for reimbursement is separate and distinct from a motion to modify a child-support

obligation, the CSM's order for reimbursement was proper even if child support had been established in the dissolution judgment.

Although the stipulated dissolution judgment purported to have the "best interests of the children" in mind, in hindsight, it seems to have fallen short. Only a few months after the parties' dissolution was final, Ms. Hoffenkamp had to apply for public assistance benefits for the children. The dissolution judgment adopted by the district court but drafted by the attorney secured by Mr. Hoffenkamp, did not order an ongoing child-support obligation. The CSM made a detailed analysis of the parties' incomes and custody arrangements and ordered Mr. Hoffenkamp to pay ongoing support in the amount required by the child support guidelines. The district court originally entered judgment without making findings as to why a deviation from the child support guidelines was appropriate. Because we conclude that the dissolution judgment's child-support provisions are ambiguous and that the CSM's determination that child support had not been established was not clearly erroneous, we affirm the CSM's denial of Mr. Hoffenkamp's motion to dismiss and judgment.

Affirmed.