STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0402

In re the Marriage of: Marvin Louis Kowalski, petitioner,
Appellant,

vs.

Roxann Marie Kowalski,
Respondent.

Filed February 17, 2009
Affirmed in part, reversed in part, and remanded
Stauber, Judge

Cass County District Court
File No. 11FA070125

Tifanne E.E. Wolter, Lawrence W. Ulanowski, Ulanowski Law Firm, P.L.L.C., Suite 107, 217 South Seventh Street, Brainerd, MN 56401 (for appellant)

Shari L. Frey, Erickson & Aanes Law Offices, 319 South Sixth Street, Box 525, Brainerd, MN 56401 (for respondent)

Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Stauber, Judge.

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

STAUBER, Judge

On appeal in this marital-dissolution matter, appellant-husband argues that (1) the record does not support the determination that all of the down payment on the parties' homestead was attributable to respondent-wife's nonmarital funds; (2) the district court

should have reopened the stipulation for mistake, inadvertence, or excusable neglect; and (3) the judgment is internally inconsistent in addressing whether a third party had an interest in certain property awarded to appellant. We affirm in part, reverse in part, and remand.

FACTS

Appellant Marvin Kowalski and respondent Roxann Kowalski were married on October 27, 1989. Prior to the marriage, the parties purchased the family homestead for $48,520. The homestead was purchased with a down payment of $20,520.40.

In January 2007, respondent commenced this marital dissolution proceeding. An evidentiary hearing was held before trial, during which respondent offered Exhibits B103 and B104. These exhibits documented a proposed division of the parties' personal property. Appellant's counsel indicated that he had not had adequate time to review the proposed exhibits, and questioned whether the valuation of the property was accurate since neither he nor appellant had time to fully review it. But after a discussion pertaining to the proposed stipulation was held on the record, appellant stated that he was in agreement with the proposed property distribution, including the proposals contained in Exhibits B103 and B104.

At trial, evidence was presented that of the $20,520.40 down payment on the family homestead, $12,610.93 came directly from the equity in respondent's prior home. The parties then offered conflicting testimony concerning the origin of the remaining $7,909.47 used as a down payment toward the homestead. The district court subsequently found that appellant had no nonmarital interest in the parties' homestead

because respondent contributed the full amount of the $20,520.40 used as the down payment. The district court also awarded the parties personal property as set forth in the parties' stipulation. Finally, the court found that the parties had no financial interest in the real property owned by appellant's father, Louis Kowalski.

Appellant moved for amended findings, requesting that the district court review its findings regarding appellant's claimed nonmarital interest in the parties' home. Appellant also claimed that the following three items listed on stipulated Exhibit B104 were never owned by the parties: (1) 20 guns; (2) a Cub Cadet riding lawn mower; and (3) a hunting shack. Thus, appellant requested that the district court consider a motion to vacate the parties' stipulation based on mistake, namely, the inclusion of the guns, Cub Cadet riding lawn mower, and hunting shack in appellant's marital account. The district court denied appellant's motion to vacate the stipulated portion of the judgment, and denied appellant's request to amend the findings regarding appellant's nonmarital interest in the family homestead. This appeal followed.

D E C I S I O N

I.

Findings of fact must be upheld unless they are clearly erroneous. Minn. R. Civ. P. 52.01. Factual findings are clearly erroneous when they are manifestly against the weight of the evidence or not reasonably supported by the evidence as a whole. *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985). This court views the record in the light most favorable to the district court's findings of fact. *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). The fact that the record might

support findings other than those made by the district court does not show that the court's findings are defective. *Id.*

"Whether property is marital or nonmarital is a question of law, but a reviewing court must defer to the trial court's underlying findings of fact." *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). Property acquired during the marriage is presumptively marital; a spouse claiming a nonmarital interest must prove that interest by a preponderance of the evidence. *Robert v. Zygmunt*, 652 N.W.2d 537, 541 (Minn. App. 2002); *Olsen*, 562 N.W.2d at 800.

Appellant argues that the record does not support the district court's finding that he has no nonmarital interest in the parties' homestead. We disagree. Respondent testified that appellant did not contribute any money toward the down payment on the homestead because during the parties' marriage, appellant was unemployed, had no money, and had been living with his parents. Respondent also testified that of the $20,520.40 down payment on the family homestead, $12,610.93 came directly from the equity in her prior home. Respondent further testified that the remaining $7,909.47 was attributable to her nonmarital efforts, which included $2,000 she borrowed from Ira Allen. Although appellant disputed respondent's testimony and testified that $7,909.47 should be attributed to his nonmarital efforts, appellant failed to offer any receipts or documentation to support his claims. Moreover, the district court specifically found respondent's testimony credible, and we defer to the district court's credibility determinations. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that appellate courts defer to district court credibility determinations). Accordingly, the

record supports the district court's findings that appellant had no nonmarital interest in the parties' homestead.

Appellant also contends that respondent's nonmartial contribution to the homestead should be reduced by $2,580 because of improvements appellant claims he made to respondent's premarital home. We disagree. Although not specifically addressed by the district court, the court implicitly rejected appellant's claim. *See Roberge v. Cambridge Coop. Creamery*, 248 Minn. 184, 195, 79 N.W.2d 142, 149 (1956) (holding denial of motion for amended findings is equivalent to finding contrary to that sought in motion). The district court's implicit finding is supported by the record. Despite appellant's assertions to the contrary, it is not clear from the record that respondent "agreed that . . . appellant had replaced the insulation and the siding" on her premarital home. Although respondent agreed that the insulation and siding had been replaced on her premarital home, there is no indication as to who actually replaced the siding and insulation. Appellant did not offer any documentation supporting his claim that he replaced the siding and insulation in respondent's premarital home. Consequently, we cannot conclude that the district court abused its discretion in declining to reduce respondent's nonmartial contribution to the homestead based on the alleged improvements appellant made to respondent's premarital home.

Appellant further argues that the full amount of the $2,000 loan from Allen should not have been included in respondent's nonmartial interest in the homestead. We agree. The record reflects that at the time of the parties' marriage, a balance of $1,662.48 remained on the loan from Allen. Because the remaining balance was paid with marital

funds, the full amount of the loan from Allen cannot be considered respondent's nonmarital property. Therefore, we reverse this part of the district court's decision and remand on this issue for proceedings consistent with this opinion.

II.

To expedite litigation and resolve acrimonious disputes, Minnesota courts favor stipulations in dissolution cases. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). Once a judgment is entered on a dissolution stipulation, the stipulation is deemed to have merged into the judgment, and the sole method for obtaining relief from the judgment is to satisfy Minn. Stat. § 518.145, subd. 2 (2006). *Id.* Under this statute, a party may be relieved of a judgment and decree for mistake, inadvertence, surprise, or excusable neglect or for fraud, misrepresentation, or misconduct by the adverse party. Minn. Stat. § 518.145, subd. 2. Whether a mistake occurred in giving consent to a stipulation is a question of fact for the district court. *See Hafner v. Hafner*, 237 Minn. 424, 431, 54 N.W.2d 854, 858 (1952) (stating whether wife mistakenly consented to stipulation was question of fact). The district court's decision whether to reopen a dissolution judgment under Minn. Stat. § 518.145, subd. 2, will be upheld unless the court abused its discretion, and the district court's findings as to whether the judgment was prompted by mistake, fraud, or duress will not be set aside unless clearly erroneous. *Harding v. Harding*, 620 N.W.2d 920, 922 (Minn. App. 2001), *review denied* (Minn. Apr. 17, 2001); *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998).

Here, in denying appellant's motion to vacate the parties' stipulation, the district court stated:

> The Court went through the record to determine what the parties had agreed to prior to trial. [Appellant] agreed he would be awarded the items in Exhibit B104, Respondent would be awarded the items listed in Exhibit B103, and the values assigned to those items were the values the Court should use. If there was a mistake that was made, it was a unilateral mistake attributable to [appellant]. The Court was careful to go through what the parties agreed to prior to the trial, and there was an extensive record made of which items were agreed to and which items were not agreed to. It would be unfair at this point to reopen this issue since it could have had a significant impact on the trial strategy of the parties and agreements made on other items.

Appellant argues that the district court abused its discretion in denying his motion to vacate the stipulation for mistake because the record reflects that there was no "meeting of the minds" regarding the terms of the stipulation. To support his claim, appellant contends that the record reflects that the following three items listed on Exhibit B104 were never owned by the parties: (1) 20 guns; (2) a Cub Cadet riding lawn mower; and (3) a hunting shack. Appellant claims that because he did not have adequate time to review the exhibit, he mistakenly agreed to the stipulation without realizing that the three items were not owned by the parties.

In *Cadle v. Cadle*, 457 N.W.2d 736, 737–38 (Minn. App. 1990), husband sought to vacate the entire judgment and stipulation on the basis that the stipulation, as read into the record, was the result of a mistake and did not accurately reflect the agreement of the parties. In concluding that the district court's findings were not clearly erroneous, this court quoted the following language from the order denying husband's motion to vacate:

> [Husband] makes no claim that the requirements for a properly entered stipulation have not been met. Instead, he claims a "meeting of the minds" never took place and that the

> decree does not reflect the actual agreement of the parties. These two claims are mutually exclusive and contradictory. Both claims are refuted by the transcript. The purpose of the transcript is to record the actual agreement of the parties and to establish that a meeting of the minds took place if there is a question later. . . . Both parties agreed to the stipulation and agreed to be bound by it. [Husband] and his counsel had an affirmative duty to listen to the agreement and state any disagreement at the time the stipulation was read into the record. His failure to allege a different agreement cannot be corrected by a motion for amended Findings.

Id. at 739.

Here, the record reflects that at the evidentiary hearing conducted before trial, there was a lengthy discussion on the record pertaining to the proposed stipulation. The record also reflects that appellant was represented by competent counsel, and appellant's attorney specifically stated on the record that appellant was in agreement with the content and values contained in Exhibit B104. Although appellant's attorney stated that he had not had adequate time to review the exhibit, he did not request additional time to review Exhibit B104, nor did he state that he was not in a position to stipulate to Exhibit B104. The record does not support appellant's claim that there was no "meeting of the minds" regarding the terms of the stipulation. *See id.* (quoting the district court's finding that "the purpose of a transcript is to record the actual agreement of the parties and to establish that a meeting of the minds took place if there is a question later").

We also conclude that appellant's claimed "mistake" is a unilateral mistake because he, and not respondent, is claiming that he mistakenly entered into the stipulation. Unilateral mistake which is not caused by fraud or misrepresentation is not grounds for rescission. *Gartner v. Gartner*, 246 Minn. 319, 322, 74 N.W.2d 809, 812

(1950). In the absence of fraud, a person who signs a contract may not rescind on the ground that he did not read it or thought its terms to be different. *Gartner v. Eikill*, 319 N.W.2d 397, 398 (Minn. 1982). Here, there is no claim that respondent purposely misrepresented the nature of the three items. Instead, appellant claims that he mistakenly entered into the stipulation based on the mistaken characterization of the three items. Respondent maintains that there is evidence in the record that the three items were marital property. Therefore, on this record, the district court did not abuse its discretion in denying appellant's motion to vacate the stipulation.

III.

Appellant argues that the district court made conflicting findings because the district court approved the parties' stipulation that valued the hunting shack at $15,000, but later found that "[t]he parties have no financial interest in the real property owned by Louis Kowalski" upon which the hunting shack is located. We disagree. Exhibit B104 specifically refers to the "Hunting Shack." In contrast, the alleged inconsistent finding specifically refers to "the *real property* owned by Louis Kowalski." (Emphasis added.) The distinct language referencing one as the "Hunting Shack," and the other as "real property" indicates that the district court specifically treated the hunting shack as personal property, separate and distinct from the real property owned by appellant's father. Moreover, the parties' description of the hunting shack at trial supports the district court's depiction of it being personal property. Finally, the district court's attempt to divide the marital assets evenly, and the inclusion of the $15,000 hunting shack in appellant's portion of the marital property division, further supports the

conclusion that the district court treated the hunting shack as personal rather than real property. Accordingly, the findings are not inconsistent.

Affirmed in part, reversed in part, and remanded.