STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0790

In re the Marriage of:
Sheila Mary Farrell-McFarland, n/k/a Sheila Mary Farrell Johnston, petitioner,
Respondent,

vs.

Dylan John McFarland,
Appellant.

Filed April 7, 2009
Affirmed
Stauber, Judge

Hennepin County District Court
File No. 27FA000262068

Kathleen M. Newman, Bruce N. Crawford, Kathleen M. Newman & Associates, P.A., Suite 1775, 225 South Sixth Street, Minneapolis, MN 55402 (for respondent)

Dylan J. McFarland, Suite 509, 301 Oak Grove Street, Minneapolis, MN 55403 (pro se appellant)

Considered and decided by Minge, 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 from the district court's denial of appellant-husband's motion to reopen the parties' dissolution judgment for newly discovered evidence and fraud, appellant argues that (a) respondent-wife's failure to disclose her plans to remarry when the parties

were negotiating a lump-sum settlement of spousal maintenance constitutes fraud justifying a reopening of the judgment; (b) his subsequent discovery of respondent's engagement plans constitutes newly discovered evidence warranting a reopening of the judgment; and (c) the district court abused its discretion in denying his motion for an evidentiary hearing. Respondent filed a notice of review arguing that the district court abused its discretion in denying her motion for conduct-based attorney fees. Because there was no abuse of discretion, we affirm.

FACTS

On April 30, 2002, the marriage between appellant Dylan McFarland and respondent Sheila Farrell-McFarland, n/k/a Sheila Farrell Johnston, was dissolved. The judgment and decree ordered appellant to pay respondent permanent spousal maintenance in the amount of $1,425 per month. The decree also ordered the parties to meet in January 2007 with a mutually agreed upon neutral mediator to review the amount of spousal maintenance being paid.

In the fall of 2002, appellant stopped paying spousal maintenance, prompting respondent to file a contempt motion. Appellant subsequently moved to suspend his spousal maintenance obligation on the basis that he was unemployed and that in October 2002, his license to practice law had been suspended for six months for disciplinary reasons. The district court granted appellant's motion in December 2003 and suspended his maintenance obligation. The court further ordered appellant to "provide quarterly affidavits to [respondent] stating his wage and salary income and business profit (or

loss) . . . supported by paycheck stubs, business financial statements, and other appropriate documentation."

In the spring of 2004, appellant obtained part-time employment. Shortly thereafter, appellant and respondent entered into a separate spousal maintenance agreement. The agreement, drafted by appellant, stated that "[appellant], as he has previously represented to the Court, prefers to earn income from pursuits other than the practice of law and does not wish to practice law except to the extent he considers necessary." Under the terms of the agreement, appellant agreed to pay respondent $700 per month from May 1, 2004 to September 30, 2005. The $700 monthly payment was to be credited to appellant's spousal maintenance arrearages. The agreement also stated that respondent waived her right to receive quarterly income/financial information from appellant as previously ordered by the district court. Notably, however, when the parties signed the spousal maintenance agreement, respondent was not represented and did not sign a separate waiver of counsel.

At the expiration of the period set forth in the spousal maintenance agreement, appellant stopped paying spousal maintenance. Appellant subsequently agreed to pay respondent $425 per month through the end of 2005, and in 2006, appellant made only two small payments of $400 or less to respondent. In the fall of 2006, respondent discovered that appellant was a partner at a Minneapolis law firm. Appellant admitted that his base salary at the firm is presently $160,629, and that he earned bonuses of $30,000 in 2004, $70,000 in 2005, and $280,000 in 2006.

Pursuant to the judgment and decree, the parties met with a financial neutral in May 2007, in an attempt to settle the spousal maintenance issues. No settlement was reached at that time and, shortly thereafter, respondent became engaged to be married. On June 29, 2007, the parties met again to mediate the issue. The mediation resulted in an agreement that respondent would accept a lump sum of $80,000 as a full settlement of all past, present, and future spousal-maintenance issues, including any spousal maintenance arrearages. Appellant also agreed to pay an additional $4,023.90 that represented the balance remaining on an installment loan respondent obtained for the purchase of an automobile for the parties' emancipated daughter. The agreement was reduced to a stipulation and order and approved and adopted by court order on July 13, 2007. Appellant then paid respondent $84,023.90 pursuant to the stipulation and order.

On August 7, 2007, appellant discovered that at the time of the parties' June 2007 mediation, respondent was engaged to be married. Respondent was subsequently married on August 18, 2007. Shortly thereafter, appellant moved to vacate the order under Minn. Stat. § 518.145, subd. 2(2), (3) (2006), on the grounds that respondent had concealed her engagement to remarry. In May 2008, the district court issued its order finding that it was undisputed that neither appellant nor the mediator asked respondent if she had any marriage plans. Thus, the court denied appellant's motion and request for an evidentiary hearing because appellant was unable to show that respondent acted fraudulently. The court also held that even if appellant could establish a legal basis to reopen the stipulation based on respondent's non-disclosure of her intention to remarry, the stipulation was fair under the circumstances. A second order was issued a few days later to correct clerical

errors in the original order. Appellant subsequently filed this appeal and respondent filed a notice of review.

D E C I S I O N

I.

A district court's decision whether to reopen a judgment will be upheld unless the court abused its discretion. *Harding v. Harding*, 620 N.W.2d 920, 922 (Minn. App. 2001), *review denied* (Minn. Apr. 17, 2001). The district court's findings as to whether the judgment was prompted by mistake or fraud will not be set aside unless they are clearly erroneous. *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998).

A. Fraud under Minn. Stat. § 518.145, subd. 2(3) (2006)

A dissolution judgment may be reopened for ordinary fraud. Minn. Stat. § 518.145, subd. 2(3). When a motion to reopen a dissolution judgment is made within one year after the entry of the judgment, the legal standard to be applied is ordinary fraud, not fraud on the court. *Doering v. Doering*, 629 N.W.2d 124, 130 (Minn. App. 2001), *review denied* (Minn. Sept. 11, 2001). Because parties to a dissolution proceeding have a duty to disclose all assets and liabilities completely and accurately, fraud in the dissolution context does not require an intentional concealment or an affirmative misrepresentation. *Sanborn v. Sanborn*, 503 N.W.2d 499, 503–04 (Minn. App. 1993), *review denied* (Minn. Sept. 21, 1993).

Appellant argues that respondent had an affirmative duty to disclose her engagement, and her failure to disclose her engagement constitutes fraudulent conduct under Minn. Stat. § 518.145, subd. 2(3), which justifies a reopening of the judgment. To

support his claim, appellant cites *Doering*, a case involving a district court's denial of a motion to reopen a dissolution judgment that was made within one year of the entry of judgment. 629 N.W.2d at 130. Concluding that the district court had inappropriately employed the fraud-on-the-court standard rather than the ordinary fraud standard, this court stated that

> it is not necessary in a marital-dissolution context to show that the adverse party *intentionally* failed to disclose all of the marital assets. Because the confidential relationship between the parties creates an affirmative duty to disclose, nondisclosure is sufficient to establish a breach of that duty, without evidence of intent.

Id. at 131.

Appellant further argues that this court's decision in *Kielley v. Kielley*, 674 N.W.2d 770 (Minn. App. 2004), demonstrates that *Doering* should be broadly construed to require parties to a dissolution action to disclose all relevant information that could have an effect on the fairness of a stipulation. In *Kielley*, this court addressed whether an extrajudicial stipulation for spousal maintenance between the parties that modified the underlying judgment and decree nine years after the entry of judgment was fair and reasonable. 674 N.W.2d at 774–75. Noting that parties to a dissolution action must make full disclosure of their financial circumstances, this court remanded the matter for a determination of whether the stipulation was fair and reasonable after considering the appropriate factors. *Id.* at 778–79.

Respondent argues that she had no affirmative duty to disclose her engagement because the rule of full disclosure set forth in *Doering* and *Kielley* is limited to financial

assets. There is some merit to this assertion. The nondisclosed information in *Doering* involved investment accounts and a pension plan that were not revealed prior to the signing of a marital termination agreement. 629 N.W.2d at 127. The court in *Doering* did not discuss whether its holding should extend to information that does not involve marital assets. *See id.* at 130–31. Similarly, the holding in *Kielley* was made in the context of disclosure of the party's financial circumstances. *Kielley*, 674 N.W.2d at 778–79 (citing the requirement of full disclosure of each party's financial circumstances pursuant to Minn. Stat. § 518.552, subd. 5, in holding that parties to a dissolution action must make full disclosure of their financial circumstances).

Such a construction of the holdings in *Doering* and *Kielley* is consistent with Minnesota caselaw interpreting the fraud standard of Minn. Stat. § 518.145, subd. 2(3), because the cases involving allegations of fraud in the marital context have been in the context of financial assets. *See, e.g., Ronnkvist v. Ronnkvist*, 331 N.W.2d 764, 765–66 (Minn. 1983) (stating that a party to a marital proceeding has a duty to make a full and accurate disclosure of all assets and liabilities that extends up to the time the decree is entered, and a breach of that duty constitutes fraud sufficient to set aside the judgment); *Hafner v. Hafner*, 237 Minn. 424, 431–34, 54 N.W.2d 854, 859–60 (1952) (holding that husband's misrepresentation pertaining to a parcel of real property included in the division of marital property constituted fraud sufficient to modify the dissolution decree); *Sanborn*, 503 N.W.2d at 503–04 (concluding that husband's misrepresentations and nondisclosures concerning the value of his business constituted fraud on the court and made the original property settlement grossly unfair).

More analogous to the situation here is *Kornberg v. Kornberg*, 542 N.W.2d 379, 387–88 (Minn. 1996). In that case, wife did not allege that husband concealed or misrepresented the parties' financial situation; instead, she alleged that husband had misled the court and counsel about his *intention* to take *future* actions after entry of the decree to defeat income she expected to receive from corporate dividends. *Id.* at 388. The supreme court concluded that wife was unable to show fraud: "Wife was not [excluded] from access to information concerning finances, has made no allegations of concealment of funds, and has made no allegations of [husband's] misrepresentation of a specific material fact. She alleges only his covert and unexpressed 'intention.'" *Id.*

Here, appellant and respondent are parties to a dissolution proceeding. Although the decree was entered in 2002, the decree mandated that the issue of spousal maintenance be revisited in 2007. Thus, the full-disclosure-of-assets requirement set forth in *Doering* applies to the parties' stipulation. But the alleged fraud pertained to respondent's future plans to be married, not an asset or employment opportunity. Plans to remarry are completely distinct from a marital asset. Unlike an asset, which is concrete in nature, a party's plans to remarry are more speculative in nature because the marriage may or may not happen in the future. In fact, the record reflects that respondent had marital plans at some point after the dissolution and before the 2007 mediations, but those marital plans failed. The speculative nature of respondent's intent to remarry and the misrepresentations that the district court found appellant made of his own situation support the conclusion that, on the unique facts of this case, respondent did not have an affirmative duty to disclose her engagement. *See Kornberg*, 542 N.W.2d at 388.

Moreover, an engagement is personal in nature. Requiring an affirmative duty to disclose matters of a personal nature is impractical because it would require parties to speculate as to what personal information may be required to be disclosed post marital dissolution. Accordingly, we conclude that respondent did not have an affirmative duty to disclose her engagement.

Appellant further argues that independent of *Doering*, respondent had a common-law legal duty to disclose her engagement. To support his claim, appellant cites *Richfield Bank & Trust Co. v. Sjogren*, which states that fraud occurs when a person, who has a legal or equitable obligation to disclose material facts to another, fails to disclose the material facts. 309 Minn. 362, 365, 244 N.W.2d 648, 650 (1976). Appellant argues that respondent had an obligation to disclose her engagement, and her failure to disclose this information constituted common-law fraud.

We disagree. The duty to disclose set forth in *Sjogren* contemplates special circumstances not applicable here.

Finally, we note that appellant cannot establish that the lack of disclosure affected the fairness of the stipulation. In negotiating the stipulation, the parties entered into an agreement knowing that risks were involved. Moreover, the record reflects that since the date of the parties' dissolution, appellant owed a substantial amount in spousal maintenance arrearages despite the fact that his income had substantially increased. During this time, appellant was less than forthright to respondent and the district court concerning his employment, income, and financial circumstances. By entering into the stipulation, appellant agreed to pay respondent $80,000 in exchange for the release of any

claims respondent might have for spousal maintenance arrearages, future spousal maintenance, and retroactive maintenance to 2004 based on appellant's increased salary at that time. Therefore, on this record, we cannot conclude that the district court abused its discretion in declining to reopen the parties' stipulation.

B. Newly discovered evidence under Minn. Stat. § 518.145, subd. 2(2) (2006)

Appellant also argues that Minn. Stat. § 518.145, subd. 2(2) (2006), provides an independent basis for vacating the stipulation. We disagree. Minn. Stat. § 518.145, subd. 2(2), provides that a judgment may be reopened for "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under the Rules of Civil Procedure rule 59.03." Here, appellant cannot demonstrate that the newly discovered evidence could not have been discovered through due diligence.

II.

Appellant also argues that the district court erred by denying his request for an evidentiary hearing on his motion to reopen the judgment and decree. "Whether to hold an evidentiary hearing on a motion generally is a discretionary decision of the district court, which this court reviews for an abuse of discretion." *Thompson v. Thompson*, 739 N.W.2d 424, 430 (Minn. App. 2007).

A motion to reopen under Minn. Stat. § 518.145, subd. 2(3), is an alternative to an independent action to relieve a party from judgment. *Doering*, 629 N.W.2d at 130. Thus, the motion is procedurally equivalent to a summary judgment motion in which the court does not weigh evidence but determines whether the movant has raised a material issue of fact. *Id.* Demonstrating a genuine issue of material fact likewise satisfies the

good-cause standard for an evidentiary hearing under Minn. R. Gen. Pract. 303.03(d). *Id.* (establishing procedure on motion to reopen dissolution judgment for fraud under Minn. Stat. § 518.145, subd. 2).

Here, appellant argues that the evidence presented was sufficient to prove fraud as a matter of law. Appellant further argues that at a minimum, the evidence presented precludes a summary disposition on the matter. We disagree. It is undisputed that respondent did not disclose her plans to remarry. It is also undisputed that neither appellant nor the mediator asked whether respondent had any plans to remarry. The only dispute is whether the undisputed facts constitute fraud under Minn. Stat. § 518.145, subd. 2, thereby providing a sufficient basis to reopen the stipulation. Because an evidentiary hearing was unnecessary, the district court did not abuse its discretion in denying the request for an evidentiary hearing.

III.

Under Minn. Stat. § 518.14, subd. 1(1) (2006), the district court may, in its discretion, award attorney fees "against a party who unreasonably contributes to the length or expense of the proceeding." Awarding conduct-based attorney fees may be appropriate when a party unnecessarily delays the proceedings by taking "duplicitous and disingenuous" positions or by engaging in conduct that increases the costs of litigation. *Redmond v. Redmond*, 594 N.W.2d 272, 276 (Minn. App. 1999); *Korf v. Korf*, 553 N.W.2d 706, 711 (Minn. App. 1996). The moving party has the burden of showing that another's conduct unreasonably contributed to the length or expense of the proceeding. *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001). An award of attorney fees

under section 518.14, subd. 1, "rests almost entirely within the discretion of the [district] court and will not be disturbed absent a clear abuse of discretion." *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Feb. 18, 1999).

Here, the district court denied the request for conduct-based attorney fees and costs because "[n]either party . . . unreasonably contributed to the length or expense of this proceeding." Respondent argues that the district court's decision was an abuse of discretion because appellant "unreasonably added to the length and expense of this case through litigation tactics that included requesting a substantial amount of non-relevant information through discovery over [her] objections." We disagree. It is undisputed that respondent consciously decided not to disclose her plans to remarry. Although her conduct was not fraudulent, appellant's arguments on the issue are colorable. Accordingly, the district court did not abuse its discretion in denying the request for conduct-based attorney fees.

Affirmed.