STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1873

In re the Marriage of: Debra Leigh Stadsklev, petitioner,
Appellant,

vs.

Thomas Carl Stadsklev,
Respondent.

Filed August 11, 2009
Affirmed
Minge, Judge

Scott County District Court
File No. 70-FA-07-17324

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Considered and decided by Minge, Presiding Judge; Worke, Judge; and Collins, Judge.*

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

MINGE, Judge

On appeal of a dissolution judgment, appellant argues that the district court (1) improperly refused to vacate the parties' stipulation; (2) ordered judgment based on

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

an ineffective waiver of spousal maintenance and unsupported findings of fact; and (3) erred in awarding respondent attorney fees. We affirm.

FACTS

In 1984, appellant Debra Leigh Stadsklev and respondent Thomas Carl Stadsklev were married. In June 2007, appellant commenced a dissolution action. From July 2007 until March 2008, the parties engaged in discovery and settlement talks. A pretrial conference was scheduled for March 2008. Appellant came from California to attend. Just prior to their conference with the district court, the parties reached a verbal agreement on a stipulation establishing the terms of their dissolution. They notified the district court of their settlement, recited the terms of their agreement on the record, and moved that the district court grant the dissolution on that basis.

After acquiring new counsel and prior to entry of a written order adopting the stipulation, appellant moved to vacate the stipulation. In June 2008, the district court denied her motion, requested that respondent's counsel draft proposed findings of fact, conclusions of law, and order for judgment. In July 2008, respondent did so. Appellant objected to respondent's proposed findings, and again moved to vacate the stipulation. The district court denied appellant's motions, entered judgment in accord with respondent's proposal, and awarded respondent $3,000 for attorney fees and costs in defending the motions. This appeal follows.

D E C I S I O N

I.

The first issue is whether the district court improperly refused to vacate the parties' stipulation on the record. Generally, "[w]e will not disturb a district court's determination whether to vacate a stipulation absent an abuse of discretion." *Toughill v. Toughill*, 609 N.W.2d 634, 639 (Minn. App. 2000). We review legal issues de novo. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). We will not set a district court's findings of fact aside unless they are clearly erroneous. Minn. R. Civ. P. 52.01. Courts encourage stipulations and enforce them with "the sanctity of binding contracts," "as a means of simplifying and expediting litigation" and "bring[ing] resolution" to an "acrimonious relationship." *Id*. Once there is a valid stipulation, a party needs consent of the other party or "leave of the court for cause shown" to withdraw from it. *Id*. at 522.

> When a district court is considering whether to allow a party to repudiate or withdraw from a dissolution stipulation which has not yet been incorporated into a dissolution judgment, the district court is to consider whether the stipulation was improvidently made and in equity and good conscience ought not to stand. Stipulations based on fraud or duress and which prejudice the defrauded or coerced party are improvidently made and in equity and good conscience ought not to stand.

Toughill, 609 N.W.2d at 639 (quotations and citations omitted).

Because appellant objected to the stipulation *before* judgment was entered, we look at certain factors in deciding whether to vacate the stipulation. *Tomscak v. Tomscak*, 352 N.W.2d 464, 466 (Minn. App. 1984) (abrogated for addressing whether to vacate stipulated judgments, but not stipulations not yet incorporated into a judgment by *Shirk*,

561 N.W.2d at 522).[1] The factors are (1) "the party was represented by competent counsel"; (2) extensive and detailed negotiations occurred; (3) "the party agreed to the stipulation in open court"; and (4) the party acknowledged that he or she understood the terms and considered them fair and equitable. *See Toughill*, 609 N.W.2d at 639 (adopting so-called *Tomscak* factors).

A. Counsel/Negotiations

There is no dispute that both parties were represented by legal counsel. Although appellant claims that her counsel was ineffective and negotiations were not extensive and detailed, the district court rejected these assertions. There is an adequate basis for the district court's findings. The district court determined that appellant's counsel was competent, there were extensive and detailed negotiations which included correspondence and settlement proposals, and the parties negotiated in person for at least 75 minutes on the date of pretrial hearing. On this record, we conclude that the district court did not clearly err in finding that these first two factors were met.

[1] In *Shirk*, the Minnesota Supreme Court addressed the standard that applies when a motion to vacate a stipulation is made after judgment is entered. 561 N.W.2d at 522. The court ruled that once a judgment is entered on a stipulation, the finality of the stipulated judgment "becomes of central importance" and because of the enactment of Minn. Stat. § 518.145, subd. 2 (1996), "[t]he sole relief from the judgment and decree lies in meeting the requirements of Minn. Stat. § 518.145, subd. 2." *Id*. The *Shirk* decision, however, does not address what standard should be applied when—as in this case—a motion to vacate the stipulation is made before judgment is entered. We conclude, then, that the factors set forth in *Tomscak* guide our analysis. *See Haefele v. Haefele*, 621 N.W.2d 758, 762 (Minn. App. 2001).

B. Agreement in Open Court

Appellant claims that, at the hearing, the district court failed to *voir dire* the parties regarding their understanding, acknowledgement, and consent to the stipulation. The record contradicts this. After the stipulation was recited by counsel, the district court clarified the agreements over health-care payments and the sale of their house, and then directed the parties' attorneys to "ask [their] clients to acknowledge their agreement on the record." Appellant confirmed that she had extensive discussions with respondent, reached a settlement, understood the agreement and its implications, had ample time to talk to her attorney, had no questions, understood that the agreement was binding, agreed to be bound, and confirmed that nothing was clouding her judgment or ability to understand what she was doing. Appellant stated that, on the way to the courthouse, she had been involved in a car accident and told the district court that the accident did not impair or cloud her judgment. The record clearly indicates that appellant agreed to the stipulation in open court.

Appellant specifically argues that there was not an agreement on the consideration for the spousal-maintenance waiver. The record contradicts this. Appellant's attorney stated that the consideration for the waiver was the property agreement and respondent's payment of the outstanding balance on a VISA credit card. While noting several "corrections or clarifications" to the stipulation, respondent's attorney stated the consideration was solely the VISA balance. The district court asked appellant's attorney whether the "modifications or additions" were accurate, and appellant's attorney stated: "That is an accurate recitation." Thus, it appears there is agreement on consideration.

However, even if there were different perceptions as to what constituted consideration for the waiver of maintenance, each party thought that the property settlement and stipulation were advantageous. Regardless, it would not be unusual for parties to have differing perceptions regarding their respective reasons for a settlement.

Appellant also argues that the agreement was based on a mistake of fact related to tax consequences of her receipt of $50,000 from respondent's deferred-compensation account. Appellant claims that she understood that she would not be responsible for the income-tax consequences. The record contradicts this. At the March hearing, it was stated on the record: "Respondent has a deferred compensation plan. [Appellant] will be awarded $50,000 from that deferred compensation plan within 30 days. . . . [Appellant] will be responsible for all tax liability associated with any liquidation of those funds after division." We do not speculate on the prudence of or motivation for the decision to assume these tax consequences; however, we are satisfied that the decision resulted from the parties' negotiations and that appellant and her attorney were aware of her responsibility. In sum, we conclude that the district court did not clearly err in finding that the parties reached an agreement.

C. Fair and Equitable Terms

While the district court did not specifically ask appellant to acknowledge that the agreement was "fair and equitable," the record contains evidence sufficient to support the district court's statement on the record that the agreement was fair and equitable. In response to appellant's motion to vacate the stipulation, the district court again weighed the terms of the settlement and found them "fair and equitable" and that they gave each

party "things they wanted" and required each party "to give up other things they wanted." We conclude that it was not an abuse of discretion for the district court to not inquire further into appellant's understanding of the agreement or to determine the agreement was fair and equitable. Although a district court judge could always ask more questions, especially when a spousal maintenance waiver is involved, we will not vacate this stipulation on this basis.

D. Other Matters—Improvidence, Duress, Incapacity

Going beyond the factors as identified by the *Tomscak* court, appellant presents a number of arguments regarding the improvidence of the agreement. In doing so, appellant focuses primarily on the circumstances surrounding the hearing, including her mental state and lack of understanding. Except for the tax consequences of a lump-sum distribution and permanent waiver of maintenance, which have already been discussed, appellant argues little over which stipulation terms are improvident. Although appellant might have reached a more favorable settlement, and we appreciate that she has suffered personal misfortunes since commencing these proceedings, the record does not support a conclusion that the district court clearly erred when it found the stipulation equitable and fair.

As for appellant's claim that she was under duress at the time of making the stipulation, we note that duress is a defense when an agreement is coerced by an unlawful threat, that "destroys the victim's free will and compels [her] to comply with some demand of the party exerting the coercion." *Wise v. Midtown Motors, Inc.*, 231 Minn. 46, 51, 42 N.W.2d 404, 407 (1950); *see also Bond v. Charlson*, 374 N.W.2d 423, 428 (Minn.

1985) (holding duress only a defense to a contract "when agreement is coerced by physical force or unlawful threats."). Although appellant may have been in a financially precarious position, there is no claim of any threat. We conclude that the district court did not clearly err in finding that duress is not an apt characterization of appellant's circumstances.

As for her capacity, appellant claims that she slept poorly the night prior to the hearing, that she suffered injuries as a result of the car accident on the day of the hearing, and that her emotional condition prevented her from properly consenting to the stipulation. At the hearing, she acknowledged the accident but stated she did not seek medical treatment due to the accident and that the accident did not cloud her judgment. She was accompanied by counsel, and the hearing transcript does not reveal unusual responses from appellant suggesting she lacked capacity. The record includes only a one-page letter from a doctor summarizing her general medical history since 2000. There is no medical or psychological evidence supporting her position that she lacked capacity in March when she reached the settlement agreement. Respondent also disputes appellant's claims about her condition. We conclude that the district court did not clearly err in finding that appellant had capacity to enter into the stipulation.

In sum, we conclude the district court did not err or abuse its discretion in declining to vacate the stipulation.

II.

Independent of the *Tomscak* analysis, appellant argues that the district court erred by ruling that the parties' waiver of spousal maintenance was proper under Minn. Stat.

§ 518.552, subd. 5 (2008). While parties to a marital dissolution can, under Minn. Stat. § 518A.39, subd. 2 (2008), move to modify an existing maintenance award, they may waive that right. Minn. Stat. § 518.552, subd. 5. Such a waiver is often called a *Karon* waiver, after the supreme court's opinion in *Karon v. Karon*, 435 N.W.2d 501, 503 (Minn. 1989) (partially superseded by statute). The *Karon* opinion prompted the legislature to enact Minn. Stat. § 518.552, subd. 5, which codifies the current requirements for waivers of the right to move to modify maintenance. *Loo v. Loo*, 520 N.W.2d 740, 746 n.6 (Minn. 1994).

Under Minn. Stat. § 518.552, subd. 5, parties to a dissolution may agree to "preclude or limit *modification of maintenance* through a stipulation," if the district court makes certain findings and the stipulation is incorporated into the dissolution judgment. Minn. Stat. § 518.552, subd. 5 (emphasis added). A statutory *Karon* waiver applies only to the right to seek *modification* of an existing maintenance award. *Id.* However, the term "modification" is not apt when there is no award of maintenance or reservation of jurisdiction to do so in the future. *See Eckert v. Eckert*, 299 Minn. 120, 123, 216 N.W.2d 837, 839 (1974) (stating that "there cannot be modification of something that has ceased to exist"); *Moore v. Moore*, 734 N.W.2d 285, 287 (Minn. App. 2007) (stating that "where there is no existing maintenance award and no reservation of 'jurisdiction' over maintenance, the district court lacks 'jurisdiction' to address maintenance") (footnote omitted), *review denied* (Minn. Sept. 18, 2007).

Here, the parties' dissolution judgment neither awards maintenance nor reserves to the district court the authority to do so in the future. Thus, because the statutory *Karon*

waiver is limited to cases involving a waiver of the right to seek to *modify* maintenance, the statutory *Karon* waiver is inapplicable here. For this reason, the requirements for a statutory *Karon* waiver do not apply to the lack of an award to appellant of spousal maintenance.

We note, however, that the transcript and the parties' arguments to this court suggest that they apparently assume that the requirements for a statutory *Karon* waiver apply in cases where a party waives the right to receive maintenance in the first instance. Conceivably, this misconception distorted the negotiations producing the stipulation that the parties proposed to the court. For three reasons, however, we reject the idea that any misconception substantively prejudiced appellant.

First, on this record, there is a significant overlap of the statutory *Karon* factors and the *Tomscak* analysis performed by the district court and affirmed by this court. The first statutory *Karon* factor requires the district court to find the proposed waiver "fair and equitable" and is similar to the fourth *Tomscak* factor requiring the parties to acknowledge that they consider their proposed stipulation to be fair and equitable. Minn. Stat. § 518.552, subd. 5. The second and third statutory *Karon* factors require the consideration for the waiver to be described in the findings and full disclosure of the parties' financial circumstances. Minn. Stat. § 518.552, subd. 5; *Toughill*, 609 N.W.2d at 639. On this record, use of these requirements would have produced a result similar to that produced by the district court's analysis of the first two *Tomscak* factors requiring the parties to have the opportunity to be represented by counsel and requiring the parties to engage in extensive and detailed negotiations. *Toughill*, 609 N.W.2d at 639. And the

fourth statutory *Karon* factor requires the proposed stipulation to be made part of the judgment. Minn. Stat. § 518.552, subd. 5. This requirement is a similar but elevated version of the third *Tomscak* factor requiring the proposed stipulation to be agreed upon in open court. *Toughill*, 609 N.W.2d at 639.

A second reason that we conclude that appellant is not substantively prejudiced is that, to the extent that the statutory *Karon* factors and the *Tomscak* analysis are different, the record shows that a different result would not have been reached if the statutory *Karon* factors had been applied here. While *Tomscak* does not explicitly state that the district court should review the consideration for the stipulation when deciding whether to reopen a dissolution stipulation, consideration for the parties' proposed stipulation was present here; at the hearing, counsel referred to both the property division and the apportionment of a debt as consideration for the maintenance waiver. While the record leaves unclear the extent to which the property division survived as consideration for the waiver, the debt apportionment was unambiguously identified both at the hearing and in the judgment as consideration for the waiver. Thus, the statutory-*Karon*-waiver requirement that consideration be identified in the judgment is satisfied here. Also, while *Tomscak* does not explicitly require full disclosure of each party's financial circumstances, a lack of adequate disclosure is implicit in the *Tomscak* analysis. *See Merickel v. Merickel*, 414 N.W.2d 208, 211 (Minn. App. 1987) (noting that "claims of misrepresentation, nondisclosure, duress, and equitable division of the assets . . . mirror the *Tomscak* requirements for vacation of a stipulation."). And here there is no indication that respondent's disclosure was inadequate or otherwise defective.

The last reason we conclude that appellant is not prejudiced in this matter is that the district court considered appellant's claims regarding her medical circumstances as well as her other circumstances relevant to the stipulation in her motion to vacate the stipulation and the district court still concluded that reopening the stipulation was not required. On appeal, appellant has not shown that the district court erred in this conclusion. Thus, because the statutory-*Karon*-waiver requirements are inapplicable, and because any assumption by the parties to the contrary did not prejudice appellant, we will not alter the district court's resolution of the maintenance question.

III.

Appellant further argues that the district court's approval of the waiver of spousal maintenance was improper because the district court relied on facts not in the record. The record indicates that the district court utilized information in the parties' affidavits, which were submitted relative to the posthearing motions. Appellant's affidavit contained information about her work experience, employment, and capacity to be self-supporting, which the district court construed to support findings that appellant is capable of self-support and that the spousal-maintenance waiver was fair and reasonable. Because this is material that was in the record prior to the district court's final order and was supplied by appellant, we conclude that this objection is without merit.

IV.

The fourth issue is whether the district court abused its discretion by failing to identify a basis for awarding attorney fees. "Conduct-based fee awards may be awarded against a party who unreasonably contributes to the length or expense of the proceeding

and are discretionary with the district court." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007); *accord* Minn. Stat. § 518.14, subd. 1 (2008). We have remanded cases when the district court has not identified the basis for an attorney fee award and the record was insufficient to facilitate review of the reward. *See, e.g., Geske v. Marcolina*, 624 N.W.2d 813, 819-20 (Minn. App. 2001).

Here, although the district court did not state the statutory basis for its award, in its order denying appellant's first motion, it stated that appellant has shown "no valid reason why the stipulation should be vacated," and that "[i]f this stipulation were set aside, the Court imagines that no stipulation read into the record could ever stand." The district court went on to note that "[t]he parties and their counsel did an admirable job of coming to a fair and equitable settlement," that counsel "did an admirable job of creating a thorough record of the stipulation," and that "[t]he fact that a different law firm believes [appellant] could have gotten more from [respondent] is irrelevant[.]" In its order denying her second motion, the district court found that, despite its prior comprehensive rejection of appellant's argument for reopening the matter, appellant "basically restat[ed] the same motion as was previously ruled []on." For this reason, the district court awarded respondent "$3,000 as and for attorneys fees and costs to represent her client for both of the motions." It also stated that "[i]t is the Court's intention that this award be for both of the post-settlement motions that Respondent was required to defend."

The record is clear that fees were awarded because the district court determined there had been a proper settlement and that appellant's motions seeking to avoid its consequences unreasonably contributed to the proceeding's length or expense. This is

self-evidently a conduct-based award. Therefore, we ignore the district court's failure to identify a basis for its fee award as harmless. Minn. R. Civ. P. 61. Also, there is support in the record for the conclusion that the many purported bases for vacating the stipulation are unpersuasive, and the first and second motions were largely redundant. Accordingly, we conclude that the district court did not abuse its discretion in awarding conduct-based attorney fees and affirm that award.

Affirmed.

Dated: