STATE OF MINNESOTA
IN COURT OF APPEALS
A09-96

In re the Marriage of:
Patricia A. Jodsaas, petitioner,
Appellant,

vs.

Larry E. Jodsaas,
Respondent.

Filed November 10, 2009
Affirmed
Klaphake, Judge

Hennepin County District Court
File No. 27-FA-000270014

Sean A. Shiff, Skolnick and Associates, 2100 Rand Tower, 527 Marquette Avenue South, Minneapolis, MN 55402 (for appellant)

Brian L. Sobol, Katz, Manka, Teplinsky, Graves & Sobol, Ltd., 225 S. 6th Street, Suite 4150, Minneapolis, MN 55402 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Kalitowski, 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

KLAPHAKE, Judge

Appellant Patricia A. Jodsaas, n/k/a Patricia A. Newton (Newton) challenges the district court's order reopening part of the property division in the judgment dissolving her marriage to respondent Larry E. Jodsaas (Jodsaas) under Minn. Stat. § 518.145, subd. 2(5) (2008). Newton argues that the basis for Jodsaas' motion to reopen the property division is either a unilateral mistake or newly discovered evidence, and the motion is therefore either time-barred under Minn. Stat. § 518.145, subd. 2(1), (2) (2008), or subject to collateral estoppel based on an earlier court order denying a similar motion. Because we conclude that the district court did not err by determining that it would be inequitable for the judgment to have prospective application or abuse its discretion by refusing to apply the doctrine of collateral estoppel, we affirm.

FACTS

Newton and Jodsaas were married in 1990 and separated in 2001. Shortly before the marriage, Jodsaas acquired a spun-off division of Control Data Corporation that he turned into a successful and highly lucrative business venture through a series of partial sales and acquisitions. By the time the dissolution action began, the business had been reformulated and renamed PolarFab, LLC, a Subchapter S corporation. When PolarFab incurred large operating losses, Jodsaas used the net operating losses (NOL) to offset income and reduce his taxes significantly.

When the parties first separated in 2001, they equally divided assets worth $70 million. On July 19, 2005, the parties entered into a partial settlement of the dissolution

action, dividing most of the remaining real and personal property in a nearly equal fashion. As part of this settlement, the parties agreed that "[Jodsaas] shall pay [Newton] one-half of the tax savings [generated by use of the NOL] within 30 days of filing the federal and all state tax returns." This specifically applied to the 2001 and 2004 tax returns and applied prospectively: the NOL carried forward into tax year 2004 plus any NOL generated during that year would be "divided equally between the parties on an if, as, and when received basis until it is gone." Because the NOL could only offset earned income, Newton, rather than being awarded half of the NOL, would receive one-half of the tax savings generated by use of the NOL. The parties also agreed that "[t]he tax returns will be analyzed by Stephen Dennis (or another accountant agreed upon if Mr. Dennis is not available) with and without the Net Operating Loss."

On July 11, 2005, shortly before the parties signed the stipulation, Jodsaas entered into an agreement to sell PolarFab. The final terms of the PolarFab sale and its financial implications were not available in July 2005. The issues of valuation of PolarFab and division of the parties' marital interest in PolarFab were tried to the court in January and February 2006. After a series of amended findings and an appeal, the court determined that the marital value of the business was $3.7 million, and each party was awarded $1.85 million.

As part of the motion for amended findings in June 2006, Jodsaas asked the court to amend the parties' agreement regarding use of the NOL. When the PolarFab sale originally occurred, it appeared that there were enough losses generated to offset the sale price, and in July 2005, Jodsaas and his accountant assumed that there would be no tax

liability from the sale and that Jodsaas would use a minimal amount of NOL to offset income. In June 2006, Jodsaas' accountant informed him that he would have to use about $4.471 million of the NOL to eliminate tax liability, resulting in a tax benefit of $1.18 million. Based on the parties' stipulation, Newton would be entitled to one-half of the tax savings generated by use of the NOL, or by that calculation, about $590,000. Jodsaas asked the court to amend the judgment so that use of the NOL to offset the sale of PolarFab was excluded from the NOL sharing agreement. Jodsaas argued that Newton was in essence reaping the tax benefits twice: once because the offset permitted the sale to have tax-free proceeds of $3.7 million, which would be split between the parties, and once because she would receive one-half of the benefit of Jodsaas's use of the NOL against his tax liability from the sale. The court denied this amendment, commenting that the parties had agreed to share the benefit of the NOL without limitation. Jodsaas did not appeal this portion of the district court's order.

In October 2006, Jodsaas filed his income tax forms for the tax year 2005. He was able to offset the $23.559 million gain from sale of the business with $12.681 million in current losses, but he was unable to use $6.406 million in capital losses as originally estimated. In order to fully offset the tax liability from the sale, Jodsaas had to use $11.094 million of the NOL, rather than $4.471 million as originally represented to the court; this corresponded to a tax benefit of $4,563,564, requiring a payment to Newton of $2,281,782 instead of $590,000, as previously believed.

Newton moved in August 2008 for entry of judgment on her share of the 2005 tax benefit. Jodsaas moved to reopen the judgment and decree, arguing that he believed

when he agreed to the stipulation that he would not have to use the NOL to offset the sale proceeds. Jodsaas based his motion to reopen on Minn. Stat. § 518.145, subd. 2(5), which permits the court to reopen a judgment and decree if it is no longer equitable for the judgment to have prospective application.

In November 2008, the district court issued its order reopening the judgment and decree and denying Newton's request for entry of judgment. This appeal followed.

D E C I S I O N

We review the district court's decision on a motion to reopen a judgment under Minn. Stat. § 518.145, subd. 2, for an abuse of discretion and its findings for clear error. *Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996). A judgment may be reopened upon a showing of mistake, surprise, inadvertence, excusable neglect, newly discovered evidence, or fraud, if the motion is made within one year of the entry of judgment. Minn. Stat. § 518.145, subd. 2(1), (2), (3) (2008). A judgment also may be reopened if it is no longer equitable that the judgment be applied prospectively, but in this case, the motion must be made "within a reasonable time." *Id.*, subd. 2(5).

The district court concluded that Jodsaas demonstrated a change in circumstances that rendered the prospective application of the judgment inequitable, providing a basis for reopening the judgment under Minn. Stat. § 518.145, subd. 2(5). Under this provision, a judgment may be reopened when there is a "change in circumstances substantially alter[ing] the information about a topic that was accepted earlier." *Harding v. Harding*, 620 N.W.2d 920, 920-21 (Minn. App. 2001) (quoting the court's syllabus),

review denied (Minn. Apr. 17, 2001). Minn. Stat. § 518.145, subd. 2(5) is similar to Minn. R. Civ. P. 60.02(e) or Fed. R. Civ. P. 60(b)(5). These two rules

> provide a court broad equitable discretion to modify a judgment in light of changed circumstances. . . [and] principally appl[y] to a judgment . . . in which a significant change in circumstances makes the continued application of the judgment inequitable and turns the decree into an instrument of wrong.

Jacobson v. County of Goodhue, 539 N.W.2d 623, 625 (Minn. App. 1995) (quotations omitted), *review denied* (Minn. Jan. 12, 1996).

In *Harding*, the parties stipulated to an equal division of the value of a Subchapter S corporation, including a provision that they would share any tax refunds or liabilities for the year of the dissolution. Appellant received $224,000 for her share of the corporation and assumed that she would receive a small tax refund, as the business had for several years. Because of an IRS audit, the business changed its accounting method, resulting in tax liabilities of over $150,000, instead of the contemplated small refund. 620 N.W.2d at 921. This court acknowledged that the district court does not have continuing jurisdiction to modify a property division because of changed circumstances, but it concluded that the tax determination "seriously contradicts what the parties knew about the property when the judgment was made" and "substantially alter[ed] the information on a topic that was accepted earlier." *Id.* at 923-24.

Here, we examined the district court's order of June 26, 2006, in which the court denied Jodsaas' motion that the NOL not be used to offset the parties' tax obligation arising out of the sale of PolarFab. At that time, the court declined to amend the

judgment based on "tax calculations, which were not presented in their entirety to the court during the evidentiary portion of this matter," and because an amendment would alter the stipulated agreement between the parties as to the manner of sharing the NOL. In 2006, the district court was informed that the tax benefit would result in a payment to Newton of $590,172; this would effectively increase her share of the $3.7 million PolarFab sale proceeds from $1.85 million to $1.9 million. When the correct tax calculations were made, however, Newton received $1.85 million of the sale price, as well as $2.281 million from the tax benefit, or $4.131 million. This amount is more than the parties received in total for the sale of the business and represents a substantial alteration in the information that had been accepted by the court as a basis for its June 26, 2006 order.

Newton asserts that this was a mistake on Jodsaas's part and that because more than a year has passed since judgment was entered, the district court erred by reopening the dissolution judgment under Minn. Stat. § 518.145, subd. 2. But as in *Harding*, the correct tax determination here "substantially alters the information on a topic that was accepted earlier." *Id.* at 923-24. It is clear from this record that the parties contemplated an equitable, if not precisely equal, division of property. Whereas the district court's understanding of the tax consequences in 2006 would result in an approximately equal and certainly equitable division of the sales proceeds, the true tax consequences result in a significantly unequal and wholly inequitable distribution. Therefore, the district court did not err by concluding that prospective application of the judgment would no longer be equitable.

Newton also argues that the district court abused its discretion by refusing to apply the doctrine of collateral estoppel based on the district court's 2006 order denying Jodsaas' request to amend the judgment. "Collateral estoppel precludes relitigation of issues that are both identical to those issues already litigated by the parties in a prior action and necessary and essential to the resulting judgment." *In re Trusts Created by Hormel*, 504 N.W.2d 505, 509 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993).

Collateral estoppel may be invoked when (1) an issue is identical to one previously adjudicated; (2) there was a final decision on the merits; (3) the estopped party was a party to or in privity with a party in the prior adjudication; and (4) the estopped party had a full opportunity to be heard on the issue. *State v. Lemmer*, 736 N.W.2d 650, 659 (Minn. 2007). The district court acknowledged that collateral estoppel could pose a bar to reopening the judgment, but noted that Minn. Stat. § 518.145, subd. 2(5) offered "a statutory route" around the doctrines, "expressly permitting the court to reopen and modify a Judgment and Decree in order to correct an inequitable result."

We review the issue of whether collateral estoppel applies as a mixed question of fact and law. *Lemmer*, 736 N.W.2d at 659. But we review the district court's decision on whether or not to apply the doctrine for an abuse of discretion. *Hormel*, 504 N.W.2d at 509; *see Lemmer*, 736 N.W.2d at 659 ("We do not rigidly apply collateral estoppel, and we will not apply collateral estoppel if its application would work an injustice on the party to be estopped").

Thus, even when the prerequisites for applying collateral estoppel are satisfied, the district court retains discretion as to whether to apply that doctrine. The district court

here concluded that the greatly increased tax liability, and therefore the greatly increased NOL-related tax savings, which was not fully determined at the time of the earlier order denying amendment of the judgment, created an "injustice . . . due to the development of circumstances substantially altering the information on a topic that was accepted earlier." Based on the record before us, we agree and conclude that the district court did not abuse its discretion by reopening the judgment and by refusing to apply collateral estoppel.

Affirmed.