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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2060**

In re the Marriage of:

Kevin Brian Donovan, petitioner,
Appellant,

vs.

Anne Donovan, n/k/a Anne Marie,
Respondent.

**Filed October 7, 2008
Affirmed in part, reversed in part, and remanded
Shumaker, Judge**

Dakota County District Court
File No. F3-92-7765

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Considered and decided by Shumaker, Presiding Judge; Toussaint, Chief Judge;
and Collins, Judge.*

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

UNPUBLISHED OPINION

SHUMAKER, Judge

On appeal after remand in this child-support dispute, appellant-father contends that the child-support provision in the dissolution judgment is ambiguous, that equitable defenses preclude respondent-mother from collecting any arrearages, and that the district court erred by directing that child-support arrearages be paid to respondent-mother. We conclude that the challenged provision is unambiguous and that the district court did not err by concluding that equitable defenses did not apply or by directing the arrearages to be paid to the respondent-mother. We therefore affirm in part. However, because we conclude that the calculation of the arrearages is incorrect in light of the plain language of the provision, we reverse in part and remand for recalculation of arrearages.

FACTS

Appellant-father Kevin Brian Donovan and respondent-mother Anne Marie (formerly Anne Donovan) were married in 1983. They have two children: a son born in 1986 and a daughter born in 1988. Father and mother separated in 1991. Their marriage was dissolved by judgment and decree of dissolution of marriage in April 1993.

As part of the dissolution proceedings, father and mother negotiated a marital termination agreement and submitted it to the district court for approval. The district court concluded that the terms of the marital termination agreement were reasonable and proper, and then approved and incorporated them in its dissolution judgment.

Consistent with the marital termination agreement, spousal maintenance was set at \$1,500 per month for two years. Mother waived her right to “future modification of

spousal maintenance based upon a full and fair disclosure of [father]’s assets and income and his agreement to pay additional child support and to provide health and hospitalization insurance coverage for the minor children.”

The parties were awarded joint legal custody of the two minor children, and mother was granted sole physical custody of the two minor children. Father’s monthly child support obligation was set at \$850 for the first three months, \$1,000 for the next five months, and \$1,200 thereafter, to be reduced when the eldest child was no longer entitled to child support.

The dissolution judgment also incorporated the marital termination agreement’s provision for “additional child support,” or a child-support-bonus payment. It is this provision that is the subject of this appeal. The provision is particularly complex; it provides definitions, a formula for calculating the bonus, examples, and the time that the bonus would terminate. Father did not make any child-support-bonus payments following the entry of the dissolution judgment.

In March 2005, the district court issued an order, pursuant to the parties’ oral stipulation, transferring physical custody of their younger child to the maternal grandparents. The March 2005 order suspended father’s child-support obligation and required father to provide various financial documents to mother’s attorney. It also provided that the issue of whether the child-support payments normally withheld from father’s wages would be applied to the child-support-bonus arrearages was to be decided by a separate order.

In August 2005, father moved to clarify and interpret the dissolution judgment or, in the alternative, to reopen the judgment and vacate the child-support-bonus provision. Father also requested that the court order any payments of back child support to be paid to the maternal grandmother. Mother filed her own motion, requesting that the court deny father's motions and that father be ordered to pay back child-support-bonus payments with interest, in the amount of \$237,850.

Following a hearing, the district court ordered that the dissolution judgment be reopened "to allow the Court to make written findings, as required by Minn. Stat. § 518.551, subd. 5(i)"; reserved the parties remaining motions; and allowed either party to schedule a hearing on those motions. Mother then appealed from that order.

On appeal, we reversed, explaining that the dissolution judgment could not be reopened so as to supply findings omitted in the initial dissolution judgment, and that the dissolution judgment could not be reopened except for one of the reasons set forth in Minn. Stat. § 518.145, subd. 2 (2004). *Donovan v. Donovan*, No. A06-142, 2006 WL 3490835, at *2-*3 (Minn. App. Dec. 5, 2006). We remanded for review of father's motion to reopen in light of the reasons set forth in Minn. Stat. § 518.145, subd. 2, and noted that the district court "retain[ed] jurisdiction to interpret or clarify a judgment," but that this power was distinct from the power to reopen. *Id.* at *3-*4. We further directed that, on remand, "the remaining motions reserved by the district court are properly before it for resolution" and said that the district court "may, but is not required to, conduct an evidentiary hearing." *Id.* at *4.

On remand, the district court received the written submissions of the parties. In August 2007, it issued an order concluding that the language of the child-support-bonus provision in the dissolution judgment “[wa]s clear and unambiguous,” that the court did not have jurisdiction to order that the payments be paid to anyone other than mother, and that equitable defenses, such as laches, did not apply. The district court further concluded that mother was entitled to judgment of \$253,816—a sum that represented \$161,285 in child-support-bonus arrearages, \$76,565 in accrued interest as of July 31, 2005, and \$15,966 in accrued interest from August 1, 2005 through March 31, 2007. Father’s appeal followed.

DECISION

I.

Generally, we will give great weight to the district court’s interpretation of its own decree. *Mikoda v. Mikoda*, 413 N.W.2d 238, 242 (Minn. App. 1987), *review denied* (Minn. Dec. 22, 1987). “Whether language is ambiguous is a question of law to be decided initially by the trial court” *Halverson v. Halverson*, 381 N.W.2d 69, 71 (Minn. App. 1986). As a question of law, it is subject to de novo review on appeal. *Anderson v. Archer*, 510 N.W.2d 1, 3 (Minn. App. 1993). “[A] dissolution provision is unambiguous if its meaning can be determined without any guide other than knowledge of the facts on which the language depends for meaning.” *Landwehr v. Landwehr*, 380 N.W.2d 136, 138 (Minn. App. 1985) (quotation omitted). “[I]f language is reasonably susceptible to more than one interpretation, there is ambiguity.” *Halverson*, 381 N.W.2d at 71. The meaning of an ambiguous judgment provision is a fact question reviewed on a

clearly erroneous basis. *Tarlan v. Sorensen*, 702 N.W.2d 915, 919 (Minn. App. 2005); *Landwehr*, 380 N.W.2d at 139-40.

The district court concluded that that the child-support-bonus provision was “clear and unambiguous when read alone and when read in reference to the remainder of the [dissolution judgment].” On appeal, father contends that the child-support-bonus provision is ambiguous because it is internally inconsistent, fails to implement its own declaration of the parties’ intent, and conflicts with the examples it provides. We disagree. The provision is not ambiguous. When read in context and with the provision’s examples, the formula for calculating the child-support-bonus payment is clear.

Father first contends that the provision is ambiguous because it states that the parties intended that the child-support-bonus payment be calculated upon a three-year running average, but according to the examples the bonus is to be calculated on a three-year total aggregate. This argument collapses in light of the provision’s plain language, which dictates that the bonus payment is the sum of 10% of the annual bonus for that year, plus 10% of the annual bonus for the immediately preceding two years, unless at least \$25,000 was paid for each of those two years. The provision also provides for an aggregate yearly limitation, stating that the sum of the bonus payment for that year and the preceding two years cannot exceed \$75,000. The provision’s examples then illustrate how the bonus is calculated using this method.

Father similarly contends that the provision is ambiguous or internally inconsistent because the method of calculation directs “that the calculation of the Child Support

Bonus Payment be calculated based upon a three (3) year running average” but the method provided for calculating the bonus payment does not include a division step. The reference to a three-year average is a reference to the parties’ intentions and is aptly characterized as a purpose statement. The examples and the method of calculation, when read together, are not ambiguous.

Likewise, father’s contention that his obligation should in no event exceed 10% of his annual bonus is contrary to the provision’s plain language. The provision specifies that father will make “a child support bonus payment amount equal to ten (10%) percent of any annual gross bonus received by [father] *on the terms more fully set forth immediately below.*” (Emphasis added.) Then the provision identifies the method of calculation, which clearly contemplates an annual payment over the amount of 10% of his annual bonus. Moreover, the examples illustrate annual payments over the amount of 10% of the annual bonus.

We note that the parties voluntarily negotiated and adopted this provision, along with its examples, as part of their marital termination agreement. The examples show the parties’ objective intent, and the court is bound by that intent, even though father argues that his subjective intent was otherwise. *Cf. Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999) (“Unambiguous contract language must be given its plain and ordinary meaning, and shall be enforced by courts even if the result is harsh.”) (footnote omitted); *Berken v. Beneficial Standard Life Ins. Co.*, 300 Minn. 281, 283-84, 221 N.W.2d 122, 124 (1974) (explaining that courts do not look at the parties’ subjective intent when a contract’s provision is unambiguous).

Father next contends that the language is ambiguous because the remainder of the dissolution judgment's findings do not support an "upward deviation" from the child-support guidelines. His argument is not persuasive. As the district court points out in its August 2007 order, the child-support-bonus provision and the judgment's findings relating to parental status, income, the parties' present financial situation, and familial support are harmonious.

Father's argument, however, does allude to a problem with the district court's calculation of the arrearages. The district court's August 2007 order does *not* identify the yearly totals due to mother. Instead, it refers only to the lump sum of arrearages in the amount of \$161,285. The district court appears to have simply adopted the calculation of the total arrearages made by mother's accountant, which was provided to the court as part of mother's motion.

Mother's calculation indicates that ten percent (10%) of father's annual bonus in 1993 was \$0. Nonetheless, mother's calculation concludes that the child-support-bonus payment due in 1993 was \$50,000. Mother apparently arrived at this \$50,000 payment by adding up the amounts that the dissolution judgment assumes would have been due in 1991 and 1992. This result contradicts the plain language of the provision.

The provision provides a method for calculating the child-support-bonus payment, which explains that the payment is "the sum of (i) ten (10%) percent of the Annual Bonus for the calendar year plus (ii) ten (10%) percent of the Annual Bonus for each of the immediately preceding two (2) calendar years *unless at least \$25,000.00 for each of the immediately preceding two (2) calendar years has been paid.*" (Emphasis added.) The

provision's examples then go on to illustrate that, if the annual bonus in 1993 was \$0 and the payments for the two preceding years were \$25,000, then the child-support-bonus payment due in 1993 is \$0. Based on the provision and the income figures provided in mother's calculation, we conclude that mother's calculation erroneously concluded that father owed a \$50,000 payment in 1993. The district court erred when it apparently adopted this calculation.

Father also contends that mother's calculation of a \$25,000 bonus payment in 1994 is erroneous. Under the provision, the bonus payment due in 1994 is dependent upon the calculation of the bonus payment due in 1993. Without knowing the payment due in 1993, we cannot calculate the payment due in 1994.

We agree with the district court that the child-support-bonus provision is not ambiguous. We therefore affirm in part. However, because the district court appears to have adopted mother's calculation, which concluded that a \$50,000 child-support-bonus payment was due in 1993 and because this conclusion is inconsistent with the provision's plain language, we reverse in part and remand for recalculation of the arrearages.

II.

Father argues that mother should be precluded by laches from collecting any arrearages under the child-support-bonus provision. We review a district court's decision to apply, or not apply, laches for an abuse of discretion. *In re Marriage of Opp*, 516 N.W.2d 193, 196 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994).

Equitable defenses, like laches, are inapplicable to child-support-arrearage motions. *Id.* at 196-97; *Stich v. Stich*, 435 N.W.2d 848, 852 (Minn. App. 1989); *see also*

Ryan v. Ryan, 300 Minn. 244, 251 n.2, 219 N.W.2d 912, 916 n.2 (1974) (“[E]quitable defenses are not available in an action based on accrued payments due under the decree of divorce.”). We have consistently held that a custodial parent’s lack of diligence in the collection of child support does not extinguish the support obligation, because the support obligation is focused on the needs of the child, not the diligence of the custodial parent. *Opp*, 516 N.W.2d at 197; *Vitalis v. Vitalis*, 363 N.W.2d 57, 59-60 (Minn. App. 1985); see also *Faribault-Martin-Watonwan Human Servs. ex rel. Jacobson v. Jacobson*, 363 N.W.2d 342, 346 (Minn. App. 1985) (“[T]he rule [that equitable defenses do not apply to accrued payments due under a divorce judgment] is even more appropriate in an action for accrued child support arrearages because the child’s right to support must be protected.”). We also concluded that laches was not a defense to the collection of child-support arrearages even when there was a significant delay in seeking the arrearages. See, e.g., *S.G.K. v. K.S.K.*, 374 N.W.2d 525, 528 (Minn. App. 1985) (nine-year delay); *Benedict v. Benedict*, 361 N.W.2d 429, 432 (Minn. App. 1985) (seven-year delay).

Because Minnesota courts have consistently concluded that the doctrine of laches does not apply to the collection of child-support arrearages, the district court did not abuse its discretion by refusing to apply laches in this case.

III.

In his argument relating to laches, father raises two other arguments, suggesting that the arrearages be paid to his children, instead of mother, and that his obligation has already been satisfied by his payment of the children’s other expenses.

First, father argues that any payment of arrearages should be directed payable to his children, now adults, instead of mother. In support of his argument, father points out that support may be paid to a third-party custodian, instead of to the parent, if the child resides with the third party and the court approves the custody arrangement. Minn. Stat. § 518A.38, subd. 4 (2006) (“If a child resides with a person other than a parent and the court approves of the custody arrangement, the court may order child support payments to be made to the custodian regardless of whether the person has legal custody.”). Father’s argument is unpersuasive. Mother seeks arrearages from the period during which the children were in her custody, not in the custody of a third party. The documentation mother submitted in support of her calculation of the arrearages indicates that she sought child-support-bonus arrearages due from 1993 to 2004. The 1993 dissolution judgment ordered that physical custody be placed with mother, and physical custody apparently stayed with mother until the children were either emancipated or until March 2005 when the district court transferred custody of the parties’ youngest child to the maternal grandparents. The district court did not err by ordering that the arrearages be paid to mother.

Second, father suggests that he has satisfied the child-support-bonus obligation by paying sums of money directly to his children for the last several years. Father cannot satisfy his obligation in this manner. The dissolution judgment specifically provides that such gifts or payments do not satisfy father’s child-support obligations, stating that “Payment of child support is to be in cash as ordered herein, and the giving of gifts or making purchases of food, clothing and the like will not fulfill the obligation.”

Nonetheless, father contends that Minnesota caselaw supports the proposition that his direct payments to the children can take the place of the child-support-bonus payments. The cases he cites, however, *Stich v. Stich*, 435 N.W.2d 848 (Minn. App. 1989) and *Holmberg v. Holmberg*, 578 N.W.2d 817 (Minn. App. 1998), *aff'd and remanded by* 588 N.W.2d 720 (Minn. 1999), are distinguishable. In *Stich*, we held that an obligor met his support obligation by paying child support directly to the child when she moved out of her mother's home and the trial court had found that the mother had consented to the payments being directly paid to the child. 435 N.W.2d at 854. In the case at hand, however, there is no evidence, much less a finding by the district court, that mother consented to father making any child-support-bonus payments directly to the children. In *Holmberg*, we held that an obligor's child-support obligation is offset by social security disability benefits paid on behalf of an obligor's child. 578 N.W.2d at 827. *Holmberg* is distinguishable from the case at hand because it involves payment of social security disability benefits to an obligor's child, not payments from the obligor himself. Father does not direct this court to any other Minnesota authority indicating that the sums he ostensibly paid directly to his children satisfied his obligation to make the child-support-bonus payments. We therefore conclude that his argument is without merit.

Affirmed in part, reversed in part, and remanded.