STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0825

In re the Marriage of:
Heather Ann McGraw, petitioner,
Appellant,

vs.

Timothy Brendan McGraw,
Respondent.

Filed May 12, 2014
Reversed and remanded
Kirk, Judge

Scott County District Court
File No. 70-FA-10-14260

John T. Burns, Jr., Burns Law Office, Burnsville, Minnesota (for appellant)

Shelly D. Rohr, Wolf, Rohr, Gemberling & Allen, P.A., St. Paul, Minnesota (for respondent)

Considered and decided by Kirk, Presiding Judge; Worke, Judge; and Larkin, Judge.

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

KIRK, Judge

Appellant challenges the district court's decision to continue the services of a parenting consultant, arguing that the district court did not have the authority to order the

continued use of a parenting consultant except by mutual agreement of the parties. Under the plain and ordinary language of the judgment, the parties bound themselves to utilize a parenting consultant for only two years, and the district court was not authorized under Chapter 518 of the Minnesota Statutes or caselaw to require the parties to continue the use of a parenting consultant. We reverse and remand.

FACTS

The facts of this case are undisputed. Appellant Heather Ann McGraw (mother) and respondent Timothy Brendan McGraw (father) were married in September 1992. In May 2011, the parties entered into a stipulated custody and parenting-time agreement after mother commenced an action to dissolve the parties' marriage. The stipulation addressed a number of parenting issues including custody, a parenting-time schedule, reunification therapy, and the use of a parenting consultant.

The parties entered into a contract with a parenting consultant for a two-year term to mediate parenting-time issues relating to the children's school schedules, parenting styles, extracurricular activities, and education. The stipulation allowed for a successor parenting consultant, if necessary, during this two-year period. The stipulation allowed the parties to bring a dispute with a decision of the parenting consultant before the district court.

In September 2011, the district court entered a judgment and decree dissolving the parties' marriage and incorporating the terms of the stipulation into the judgment. The parties share joint legal custody of their minor children, and mother has primary physical custody.

On October 19, 2012, the parenting consultant resigned because mother had failed to pay for her share of his fee. He provided the names of five candidates to serve as the successor parenting consultant. On November 29, father moved the district court to nominate one of the candidates to serve as the successor parenting consultant for a new two-year term. Mother responded, requesting in part that the district court find that the judgment did not contain terms requiring a renewal of the parenting-consultant contract. Mother also requested the appointment of a guardian ad litem (GAL) for their minor child C.C.M. Although two minor children remained at home, she only requested the appointment of a GAL for C.C.M.

On February 26, 2013, the district court issued an order requiring the parties to renew the parenting-consultant contract for an additional two-year term with the successor parenting consultant requested by father. The district court concluded from a "common sense reading" of the parties' judgment that they had selected a parenting consultant as the ongoing method to resolve parenting disputes until their minor children were emancipated. The district court reasoned that because the judgment was an enforceable contract, mother could not unilaterally change its terms.

Mother moved for amended findings, again arguing that the parties had only agreed to utilize the services of a parenting consultant for two years. On April 30, the district court denied mother's motion, finding that mother was contractually bound by the language of the judgment to utilize the services of a parenting consultant until the minor children were emancipated.

The district court found support for its interpretation of the judgment on numerous grounds: (1) neither the judgment and decree nor the May 3, 2011 stipulation contained an alternative dispute resolution (ADR) paragraph; (2) the parties mediated the judgment with a desire to avoid the cost of litigation; (3) the parties acknowledged in the judgment that this was their final agreement that was "intended to cover any and all disputes and claims which may have arisen or may arise between the parties"; (4) the judgment stated that the parties wished to permanently resolve their parenting issues; (5) the judgment outlined custody and parenting time, and described the parenting consultant's role, duration of appointment, decision-making authority, payment, and a successor selection process; (6) parenting consultants are often used by parties until the minor children are emancipated; and (7) it is in the best interests of the minor children to enforce the parties' contract and name a successor parenting consultant because the parties had appeared in court three times since the original parenting consultant's resignation. The district court also appointed a GAL for C.C.M.

This appeal follows.

D E C I S I O N

I. The district court misinterpreted the parenting-consultant provision of the judgment.

"Courts favor stipulations in dissolution cases as a means of simplifying and expediting litigation, and to bring resolution to what frequently has become an acrimonious relationship between the parties." *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). Stipulations are therefore accorded the sanctity of binding contracts. *Ryan*

v. Ryan, 292 Minn. 52, 55, 193 N.W.2d 295, 297-98 (1971). This court applies the rules of contract construction to a stipulated provision in a dissolution judgment. *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001). "The general rule for the construction of contracts . . . is that where the language employed by the parties is plain and unambiguous there is no room for construction." *Starr v. Starr*, 312 Minn. 561, 562-63, 251 N.W.2d 341, 342 (1977). A contract should be interpreted "in such a way as to give meaning to all of its provisions." *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998).

Mother argues that the district court improperly interpreted the judgment to include an agreement to use a parenting consultant on an ongoing basis beyond the initial two-year term. Father argues that it is clear from reading the judgment that the parties had agreed to submit their parenting-time disputes to a parenting-time consultant until the minor children were emancipated.

The judgment states that the original parenting consultant's "appointment will end two years from the date of the signed agreement [May 3, 2011]." Under the plain and ordinary language of the contract, the parties agreed to bind themselves to the assistance of a parenting consultant for two years. "When the language of a contract is clear and unambiguous, we enforce the agreement of the parties as expressed in the contract." *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 832 (Minn. 2012).

The provision outlining the parenting-consultant role specifically defines the original parenting consultant's duties; the language does not broadly apply to any parenting consultant. Moreover, the successor parenting-consultant provision applies

only when the original parenting consultant does not complete the agreed upon two-year term. There is no language in the judgment providing that the parenting-consultant contract will be automatically renewed after the conclusion of the original parenting consultant's initial two-year appointment. "[C]ourts cannot remake contracts or imply provisions through judicial interpretation." *Brodsky v. Brodsky*, 639 N.W.2d 386, 393 (Minn. App. 2002) (quotation omitted), *review denied* (Minn. Apr. 23, 2002). This court will not presume a renewal of the parenting consultant's appointment beyond the initial two-year term where no such language exists in the parties' judgment.

We next examine the remaining provisions of the judgment. *See Brookfield Trade Ctr.*, 584 N.W.2d at 394. In the preamble of the judgment, the parties affirm their desire to "permanently resolve parenting issues." But "paragraphs in a contract containing [a preamble] of the purposes and intentions of the parties thereto are not strictly speaking parts of the contract, unless adopted as such by reference thereto." *Berg v. Berg*, 201 Minn. 179, 189, 275 N.W. 836, 842 (1937) (quotation omitted). As a preamble is a general, non-binding statement, it cannot override a specific provision of the judgment. *See Bank Midwest, Minn., Iowa, N.A. v. Lipetzky*, 674 N.W.2d 176, 181 n.8 (Minn. 2004) (stating "contract construction compels us to determine that the more specific language takes precedence over the more general language"). Similarly, the parties' general acknowledgment that the judgment and decree reflects their final agreement concerning all past and future disputes does not override the clear and specific language in the judgment restricting the use of the parenting consultant to a two-year term. *See id.*

The district court noted that a parenting consultant is generally utilized on an ongoing basis to address issues as they arise until the minor children are emancipated. While this may be true in many cases, there are other situations where the parties may find the use of a parenting consultant to be necessary for a short time while they adjust to life after the marital dissolution. We do not interpret the judgment to require the parties to adhere to this custom because it is not included as a term of the contract. *See Starr*, 312 Minn. at 562-63, 251 N.W.2d at 342. We note that the use of a parenting consultant hinges on the parties' *mutual* and *voluntary* agreement. *See* Minn. Stat. § 518.1751, subd. 4 (2012).

While the parties have not agreed to any other form of ADR, nothing prevents them from agreeing to a different type of ADR process in the future. Moreover, it may be appropriate going forward for the parties to seek less expensive forms of dispute resolution. The record reflects that mother regarded the original parenting consultant's hourly fee of $250 as too expensive and believed that the GAL appointment would adequately address the needs of C.C.M.[1]

For these reasons, the district court erred when it interpreted the judgment as requiring the renewal of the parenting-consultant contract until the minor children emancipated.

[1] The district court appointed a successor parenting consultant who charged $350 per hour.

II. The district court exceeded its authority by appointing a parenting consultant beyond the stipulated two-year term.

The district court has broad discretion in deciding parenting-time questions based on the best interests of the children and we will not reverse absent an abuse of discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995); *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002); *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001). The term "parenting consultant" is not found in Minnesota statutes, and is described in caselaw as "a creature of contract or of an agreement of the parties which is generally incorporated into (or at least referred to in) a district court's custody ruling." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 294 (Minn. App. 2007). The "[p]arties may by agreement create an ADR process," such as the use of a parenting consultant. Minn. R. Gen. Pract. 114.02(a)(10); *see* Minn. Stat. § 518.1751, subd. 4.

Mother challenges the district court's authority to appoint a parenting consultant beyond the two-year term. The district court found that it was in the best interests of the children to appoint a successor parenting consultant because the parties had appeared in court three times since the original parenting consultant's resignation.

We look to caselaw because there is no statute that addresses the use of a parenting consultant. In *Szarzynski*, this court upheld the district court's decision to remove a parenting consultant for good cause because he was not acting in the child's best interest. 732 N.W.2d at 293-94. "Even when the parenting consultant agreement does not expressly retain the district court's authority over parenting issues, Chapter 518

authorizes continuing jurisdiction of parenting time by the district court." *Id.* at 294. *Szarzynski* establishes that even when a parenting consultant is appointed as the parties' form of dispute resolution, the district court retains authority over parenting-time issues. *See, e.g.*, Minn. Stat. §§ 518.175, .1751 (2012) (establishing the continuing authority of the district court to decide and modify parenting time, and to review parenting-time decisions made by the parenting expeditor).

But we do not interpret *Szarzynski* to allow the district court to order the parties to appoint a parenting consultant under the guise of the best-interests factors. We stress that the appointment of a parenting consultant is a bargained-for element of a parenting plan between the parties. *See* Minn. Stat. §§ 518.1705, subd. 2(a), .1751, subd. 4 (2012).

Finally, we realize that our decision implicates outstanding parenting-time issues relating to the minor children C.C.M. and B.M.M. that are not properly before this court at this time. We remand this case back to the district court to use its best judgment in ascertaining whether or not compensatory parenting time and other parenting-time issues need to be addressed between father and the minor children.

Reversed and remanded.