STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1517

In re the Marriage of:
Benjamin Robert Lewis, petitioner,
Appellant,

vs.

Elle Hawkinson Frane,
f/k/a Michelle Marie Lewis,
Respondent.

Filed October 2, 2017
Affirmed
Bratvold, Judge

Hennepin County District Court
File No. 27-FA-12-5396

Lindsay K. Fischbach, Barna, Guzy & Steffen, Ltd., Minneapolis, Minnesota (for appellant)

Elle Hawkinson Frane, Buffalo, Minnesota (pro se respondent)

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and Bratvold, Judge.

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

BRATVOLD, Judge

In this spousal-maintenance appeal, appellant-husband challenges the district court's ruling that his temporary maintenance obligation continued after respondent-wife

remarried. Because the dissolution judgment incorporated the parties' stipulation that waived their right to seek maintenance modification, we conclude that they "otherwise agreed in writing" to continue maintenance after wife's remarriage under Minn. Stat. § 518A.39, subd. 3 (2016). Therefore, we affirm.

FACTS

In December 2012, the district court entered judgment dissolving the parties' 15-year marriage and adopting in full the parties' stipulation to dissolution terms as set out in a marital termination agreement. The dissolution judgment required appellant Benjamin Lewis (husband) to pay respondent Elle Frane (wife) "temporary spousal maintenance commencing January 1, 2013, in the amount of $2,000 per month for 36 months and $1,500 per month for 12 months thereafter."

The dissolution judgment included the parties' agreement to divest the district court of jurisdiction over modification of "the term and/or amount of the maintenance awarded to the parties regardless of any change in the parties circumstances as set forth in *Karon v. Karon*, 435 N.W.2d 501 (Minn. 1989) and Minn. Stat. § 518.552, subd. 5." The judgment also stated that the "parties understand and agree the District Court will have no authority or power to consider any matter relating to spousal maintenance between the parties; to modify the parties' agreement herein to waive spousal maintenance; and to determine whether changed circumstances permit the District Court to consider anew the issue of spousal maintenance."

The judgment also ordered husband to pay child support for the three children. The judgment included spousal-maintenance payments in wife's income for purposes of

calculating child support and provided that child support will be recalculated "commencing January 1, 2016 to reflect the reduction in [husband's] spousal maintenance and again commencing January 1, 2017 to reflect the termination of her spousal maintenance."

In March 2015, just over two years into the four-year temporary maintenance term, wife remarried. Without seeking a court order, husband stopped paying spousal maintenance. In October 2015, wife represented herself and moved to modify child support based on her reduced income due to husband's termination of maintenance. Husband opposed the motion, but only with respect to calculation of his income for child-support purposes. Husband agreed, however, that child support needed to be recalculated because his maintenance obligation terminated when wife remarried, and the dissolution judgment "contemplated child support being recalculated when [wife] stops receiving spousal maintenance payments."

In December 2015, the district court denied wife's modification motion on the ground that there was no substantial change in circumstances because husband was "obligated to pay temporary spousal maintenance through the end of 2016," regardless of wife's remarriage.[1] The district court applied Minn. Stat. § 518A.39, subd. 3, which

[1] Wife did not argue in her child-support modification motion that husband was required to continue paying maintenance. The district court nonetheless determined it was appropriate to address the spousal-maintenance issue because it had a duty to decide the case based on applicable law and to ensure fairness to wife as a self-represented litigant. *See Christenson v. Argonaut Ins. Cos.*, 380 N.W.2d 515, 519 (Minn. App. 1986) (stating that a district court "has a judicial duty to ensure that a case is presented based on all applicable law," and that the district court must "be especially aware of its duty" when a party is unrepresented), *review denied* (Minn. Mar. 27, 1986).

provides that maintenance terminates upon the receiving party's remarriage, unless the dissolution judgment expressly provides otherwise or the parties "otherwise agree in writing." The district court reasoned that the parties had "otherwise agreed in writing" because they waived their right to seek maintenance modification based on changed circumstances, and husband bargained with wife to obtain "a *Karon* waiver in return for his agreement to pay temporary spousal maintenance." The district court also determined that the parties had agreed that maintenance would cease only after expiration of the four-year term, and their "agreement did not contemplate a termination upon [wife's] remarriage." After husband moved for amended findings, the district court affirmed its order in July 2016. As of June 2016, husband was over $20,000 in arrears for failing to make payments between April 2015 and March 2016.

Husband appealed from the July 2016 order. By special-term order, this court construed husband's appeal as taken from both the December 2015 and July 2016 orders. *See* Minn. R. Civ. App. P. 104.01, subd. 2 (stating that a timely motion for amended findings tolls the time for appealing "the order or judgment that is the subject of such motion"); *Mingen v. Mingen*, 679 N.W.2d 724, 726 n.1 (Minn. 2004) (stating that an order denying a motion for amended findings is not independently appealable).

D E C I S I O N

Generally, we review a district court's spousal-maintenance decision for abuse of discretion. *Kielley v. Kielley*, 674 N.W.2d 770, 775 (Minn. App. 2004). But interpretation of statutes is a question of law, which we review de novo. *Nelson v. Nelson*, 866 N.W.2d 901, 903 (Minn. 2015). This court treats stipulated marriage-dissolution judgments as

contracts for purposes of construction. *Nelson v. Nelson*, 806 N.W.2d 870, 872 (Minn. App. 2011). Accordingly, contracts are to be given their plain and ordinary meaning, and the construction and interpretation of a contract is a question of law if no ambiguity exists. *Id.* Because the parties' dispute raises legal questions regarding the stipulated judgment and Minn. Stat. § 518A.39, subd. 3, we will review the district court's decision de novo.

Section 518A.39, subdivision 3, states, "[u]nless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon . . . the remarriage of the party receiving maintenance." Thus, there are two ways for a maintenance obligation to continue after the recipient remarries: (1) the dissolution decree expressly provides that maintenance will continue beyond the receiving spouse's remarriage, or (2) the parties otherwise agree in writing to continue maintenance beyond remarriage. *See Gunderson v. Gunderson*, 408 N.W.2d 852, 853-54 (Minn. 1987).

Here, as wife acknowledges, the first option is not satisfied because the dissolution judgment did not expressly reference "remarriage." *See id.* (stating that a dissolution decree must "positively" express that maintenance will continue after the receiving party's remarriage to overcome statutory termination). Thus, the statute terminates maintenance upon wife's remarriage unless the parties "otherwise agreed in writing" to continue maintenance.

The parties' dispute centers on the terms of their written stipulation, which was fully incorporated into the dissolution judgment. Because courts may not infer waivers of statutory rights, and the stipulated judgment did not expressly mention wife's remarriage, husband argues that the statute terminated his maintenance obligation upon wife's

remarriage. *See Keating v. Keating*, 444 N.W.2d 605, 607-08 (Minn. App. 1989) (stating that it is "not appropriate to infer waiver in the absence of a clear intent to waive a statutorily conferred right"), *review denied* (Minn. Oct. 25, 1989). Wife argues that the stipulated judgment included the parties' *Karon* waivers, which divested the district court of jurisdiction over maintenance modification based on changed circumstances, and that remarriage qualifies as a changed circumstance.

We begin our analysis with a discussion of relevant precedent. Husband relies on *Gunderson*, in which the supreme court held that husband's maintenance obligation terminated when wife remarried because the dissolution decree did not "positively express[]" that maintenance would continue after remarriage. 408 N.W.2d at 853. *Gunderson* expressly left open the possibility that a written stipulation could be evidence that the parties "otherwise agreed in writing" to continue maintenance beyond wife's remarriage, and found the parties had not done so in that case because that judgment was based on an oral stipulation. *Id.* at 853-54. Thus, *Gunderson* is not controlling because, in this case, the judgment is based on a written stipulation.

In *Telma v. Telma*, the supreme court more directly addressed the question that it left open in *Gunderson*. 474 N.W.2d 322, 323 (Minn. 1991). There, the dissolution judgment incorporated the parties' written stipulation regarding the amount, duration, and termination of maintenance. *Id.* Husband was required to pay wife maintenance for five years, and termination was limited to the earlier of two contingencies: (1) expiration of the five-year period, or (2) when wife's gross annual income exceeded a certain threshold. *Id.* In the stipulation, husband "specifically waived 'any right he may have under Minn. Stat.

§ 518 (sic) and applicable case law to petition this Court for modification of his obligation to pay maintenance, either as to amount or duration or termination.'" *Id.*

Telma noted that *Gunderson* "did not foreclose the consideration of clear written expressions of the parties' intention" to continue maintenance after remarriage, and that such intent could be "ascertained from their agreement as a whole." *Id. Telma* concluded that the parties' agreement "clearly" expressed their intent to continue maintenance after remarriage because husband had unequivocally waived "his right to seek a modification of the spousal maintenance award," and the parties' written agreement contemplated that the maintenance award would terminate only upon the "occurrence of either of two specific events, neither of which was [wife's] remarriage." *Id.*

Here, the district court relied on *Telma* and determined that "the parties' broad waivers of the right to modify maintenance and their agreement as a whole demonstrated their intent to continue maintenance even beyond [wife's] remarriage." Husband argues that *Telma* is inapposite because: (1) he and wife did not agree on "specific contingencies" for maintenance termination, and (2) the *Karon* waiver did not waive his right to maintenance modification under chapter 518 or specifically reference his right to maintenance termination upon remarriage. We are not persuaded.

Our cases applying *Telma* have said that a "*Telma*-like" waiver of maintenance-modification rights is critical to determining whether the parties' agreement allows termination of a maintenance obligation. *See, e.g.*, *Kahn v. Tronnier*, 547 N.W.2d 425, 430-31 (Minn. App. 1996), *review denied* (Minn. July 10, 1996); *accord Poehls v. Poehls*, 502 N.W.2d 217, 218 (Minn. App. 1993). Here, the parties included a "*Telma*-like" waiver

in their stipulation. Specifically, they agreed to divest the district court of jurisdiction to "*modify the term and/or amount of the maintenance* awarded to the parties *regardless of any change in the parties circumstances*." (Emphasis added.) The parties further agreed that "the District Court will have *no* authority or power to consider *any* matter relating to spousal maintenance between the parties; to modify the parties' agreement herein to waive spousal maintenance; or to determine whether changed circumstances permit the District Court to consider anew the issue of spousal maintenance." (Emphasis added.) The dissolution judgment's findings of fact also stated that the parties "understand each will be forever barred from seeking *any* modification of maintenance or alimony from the other both now and at *any* time in the future." (Emphasis added.)

We also rely on the child-support terms in the dissolution judgment, by which the parties agreed that wife's income included maintenance for purposes of calculating child support. *See Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 916 (Minn. 1990) (stating that contractual language "should never be interpreted in isolation, but rather in the context of the entire agreement"). They also agreed to recalculate child support on "January 1, 2016 to reflect the reduction in [wife's] spousal maintenance and again commencing January 1, 2017, to reflect the *termination* of her spousal maintenance." (Emphasis added.) The child-support terms indicate the parties contemplated that husband's temporary maintenance obligation would terminate only upon expiration of the four-year term.

We recognize that the statutory right to maintenance termination upon remarriage is separate and independent from the statutory right to modification based on changed circumstances. *Compare* Minn. Stat. § 518A.39, subd. 2 (maintenance modification), *with*

id., subd. 3 (maintenance termination upon remarriage). And a *Karon* waiver generally is a waiver of the right to maintenance modification. Minn. Stat. § 518.552, subd. 5; *Karon*, 435 N.W.2d at 503. But *Telma* held that parties may preclude maintenance termination without expressly mentioning "remarriage" in their written agreement so long as the agreement "as a whole" clearly reflects their intent to continue maintenance after remarriage. 474 N.W.2d at 323.

We conclude that the parties' written agreement "as a whole" clearly reflects their intent to continue maintenance after remarriage: they bargained for four years of temporary maintenance, contemplated changed circumstances, and decided to waive the right to seek maintenance modification based on changed circumstances. Therefore, the parties' agreement barred husband from terminating maintenance before the end of the four-year temporary maintenance term.

Husband relies on court of appeals decisions that have interpreted *Gunderson* or *Telma* under different facts. We do not consider two cases because they did not involve waivers of maintenance-modification rights, and they were decided before *Telma*. *See Peterson v. Lobeck*, 421 N.W.2d 367, 368 (Minn. App. 1988); *West v. West*, 410 N.W.2d 58, 60-61 (Minn. App. 1987), *review denied* (Minn. Oct. 21, 1987).

Husband also cites two post-*Telma* cases involving the maintenance-termination statute, but they are both factually distinguishable. In *Poehls*, the district court ordered husband to pay permanent spousal maintenance, the judgment did not expressly mention remarriage, and there was no stipulation or waiver of rights. 502 N.W.2d at 218-19. In *Kahn*, the dissolution judgment awarded maintenance based on the parties' stipulation, but

it did not expressly provide that maintenance would continue after remarriage, and neither party claimed that there was a written agreement to continue maintenance beyond remarriage. 547 N.W.2d at 427, 429-30. The distinguishing feature of *Poehls* and *Kahn* is the lack of a written agreement that would have established the parties "otherwise agreed in writing" to continue maintenance after remarriage. Also, neither case included any waiver by the parties to seek future modification.[2]

Husband also relies on secondary authority in the *Minnesota Practice Series*, which states that maintenance terminates automatically if the receiving party remarries "prior to the termination point in a stipulated decree with a *Karon* waiver" and the parties have not "specifically agreed" to continue maintenance beyond remarriage. 14 Michael P. Boulette *Minnesota Practice Series* § 10:14 (3d ed. 2016) (citing *Gunderson*, 408 N.W.2d at 853-54). We do not find this commentary persuasive for three reasons. First, "[w]hile *Minnesota Practice* remains a valuable resource for practitioners in understanding the nuances of statutes and caselaw, it is not binding legal authority." *Tornstrom v. Tornstrom*, 887 N.W.2d 680, 685 (Minn. App. 2016), *review denied* (Minn. Feb. 14, 2017); *see generally State Farm Mut. Auto. Ins. Co. v. Lennartson*, 872 N.W.2d 524, 532 n.4 (Minn. 2015) (stating that secondary sources are non-binding). Second, *Minnesota Practice* does not consider *Telma* and relies exclusively on *Gunderson*, which, unlike this case, did not

[2] We note that husband and the district court cited unpublished court of appeals cases addressing similar issues. Of course, unpublished cases are not precedent. Minn. Stat. § 480A.08, subd. 3 (2016); *Vlahos v. R&I Constr. of Bloomington, Inc.*, 676 N.W.2d 672, 676 n.3 (Minn. 2004). Also, each of these cases turned on the terms of stipulations that differ materially from the parties' stipulation in this case. Thus, we focus our analysis on the facts of this case and specifically on the terms of the parties' stipulation.

involve a stipulated judgment or a waiver of modification rights. And third, the unambiguous language of this stipulated judgment states that the district court has "no authority or power to consider any matter relating to spousal maintenance between the parties[.]"

In sum, construing the parties' written stipulation as a whole, we conclude that they "otherwise agreed in writing" to continue husband's maintenance obligation regardless of whether wife remarried during the four-year temporary maintenance term. The district court therefore did not err in concluding that maintenance termination under Minn. Stat. § 518A.39, subd. 3, did not apply, and husband is required to pay maintenance through the end of the four-year term.

Affirmed.