STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0148

In re the Marriage of:

Jacob Kanake M'mujuri, petitioner,
Respondent,

vs.

Beatrice Kamathi Kanake,
Appellant.

Filed December 2, 2019
Affirmed
Jesson, Judge

Ramsey County District Court
File No. 62-FA-16-2565

Allison F. Eklund, Eklund Law, PC, Roseville, Minnesota (for respondent)

Carla C. Kjellberg, Kjellberg Law Office, PLC, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Jesson, Judge; and Kirk, 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

JESSON, Judge

Appellant Beatrice Kamathi Kanake challenges the district court's denial of her motion to withdraw from a property settlement agreement—reached during a settlement conference as part of an ongoing dissolution proceeding—and argues that the court failed to find that the agreement was just and equitable. She also suggests that the subsequent judgment and decree is not supported by the record. Because we are satisfied that the district court did not err or abuse its discretion, we affirm.

FACTS

In April 1991, appellant Beatrice Kamathi Kanake (wife) married respondent Jacob Kanake M'mujuri (husband) in Kenya. Around 2002, wife joined husband in the United States. The parties separated nearly eight years later, and in 2016, husband filed for divorce. In response, wife alleged that she left the marriage as a result of husband's domestic abuse. Because the parties' three children are adults, the primary issue in the divorce was property division.

But the property division was complicated by the fact that the parties own several properties in Kenya. Hoping to reach a property division agreement, the parties agreed to attend mediation. But mediation attempts failed.

In February 2018—almost 16 months after the dissolution proceeding began—the parties attended a review hearing, informing the court that they were unable to reach an agreement through financial early neutral evaluation. In an order issued following that hearing, the district court stated that, off the record, the parties agreed to allow the district

court to conduct a settlement conference. The district court also noted that both husband and wife waived "any right to object to the undersigned judge acting as the ultimate trier of fact on the grounds that the undersigned judge also conducted a settlement conference."[1]

At the subsequent conference, the district court met with the parties and their attorneys in separate rooms, and the parties reached a property division agreement. Pursuant to the agreement, husband and wife divided their bank and retirement accounts and their property in Kenya. Wife agreed to keep one Kenyan property that was her family's, and husband received the several remaining properties.

Immediately following the settlement conference, the district court held a hearing to confirm the parties' agreement. At the hearing, both husband and wife conveyed that they had no questions about the agreement and did not need additional time to discuss the settlement with their respective counsel. The district court then walked through each aspect of the settlement agreement, asking open-ended questions to husband and wife. Both parties indicated that it was correct. Additionally, wife confirmed that she understood that she did not have to agree to the settlement, that she agreed to give up her right to a trial by agreeing to the settlement, and that she understood that the agreement was a "full and final" settlement regarding the parties' property. Wife's attorney said that she would prepare a final, stipulated dissolution for the parties to sign and for the district court to approve.

[1] The record reflects that neither party objected to the district court's characterization of the agreement to a settlement conference at the time the order was issued or at the hearing following the settlement conference.

But the parties did not submit a proposed order to the district court by the deadline. As a result, the district court scheduled a review hearing, and at that hearing, wife asked to withdraw from the property division agreement because she was under duress at the time of the settlement conference. According to wife, at the conference she felt like husband was manipulating her, and she "shut down" when she realized that husband could potentially receive her family's property.

The district court denied wife's request to withdraw from the agreement. In doing so, the district court reasoned that counsel represented both parties, husband and wife each engaged in settlement negotiations, and that husband ultimately agreed to *wife's* proposal regarding the property in Kenya. Based on these facts, the district court concluded that there was no basis permitting wife to withdraw from the property settlement agreement. The district court again directed the parties to file a stipulated dissolution judgment or, if the parties could not agree, separate proposed orders based on the property settlement agreement.

Each party filed a proposed order, with only minor differences between the two. At the subsequent hearing to finalize the dissolution, the district court noted that the parties discovered two additional pieces of property in Kenya not included in their property settlement agreement. In the interest of finalizing the divorce, husband agreed that the district court could award wife both pieces of property. Wife agreed with the award of the two additional properties to her, but reiterated her opposition to the property settlement agreement as a whole. Adopting wife's proposed dissolution order, the district court entered judgment divorcing the parties. Wife appeals.

D E C I S I O N

We begin by noting that wife raises arguments that can be divided into two categories: those related to the settlement conference and the resulting property division agreement and those related to the following judgment and decree. With respect to the settlement conference and resulting agreement, wife contends that the district court erroneously denied her motion to withdraw from the property division agreement and failed to make a finding that the agreement was fair and equitable. And wife argues that the judgment and decree—adopted from her proposed judgment nearly identical to husband's—is not supported by the record. We review each argument in turn.

I. The district court did not abuse its discretion by denying wife's motion to withdraw from the property settlement agreement.

Wife argues that when considering her request to withdraw from the property settlement agreement, the district court applied the wrong standard and improperly denied her request. But we will not disturb a district court's decision on whether to vacate a dissolution stipulation unless the district court abused its discretion. *Toughill v. Toughill*, 609 N.W.2d 634, 639 (Minn. App. 2000).

Courts favor the use of stipulations in dissolution proceedings because they often simplify and expedite litigation. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). Therefore, stipulations are "accorded the sanctity of binding contracts." *Id.* As such, a party may not withdraw from a stipulation without the consent of the other party, except with the court's permission for "cause shown." *Id.* at 521-22. But stipulations based on

fraud or duress that prejudice the coerced party are "improvidently made" and "ought not to stand." *Toughill*, 609 N.W.2d at 639.[2]

Here, wife sought to withdraw from the property settlement agreement on the basis that she was under duress. The district court concluded that wife did not establish any basis warranting withdrawal from the settlement agreement.[3] In reaching this conclusion, the district court noted that wife was represented by "well-prepared and attentive" counsel and that both parties participated in "extensive, detailed, and fair negotiations." Further, the court explained that both parties acknowledged their agreement in open court and that nothing interfered with their ability to think clearly.[4]

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[2] By contrast, we note that once a district court enters judgment on the parties' stipulation, "different circumstances arise, as the dissolution is now complete and the need for finality becomes of central importance." *Shirk*, 561 N.W.2d at 522. Thus, once a district court enters judgment on the parties' stipulation, "[t]he sole relief from the judgment and decree lies in meeting the requirements of Minn. Stat. § 518.145, subd. 2." *Id.* (footnote omitted).

[3] Before arriving at its conclusion, the district court examined four factors: "whether (1) the party was represented by competent counsel; (2) negotiations were extensive and detailed; (3) the party agreed to the stipulation in open court; and (4) when questioned by the judge, the party acknowledged understanding the terms and considering them fair and equitable." *Toughill*, 609 N.W.2d at 639. When reviewing a stipulation where a judgment has not yet been entered, as is the case here, it is not an abuse of discretion for the district court to consider these factors when evaluating a party's request to withdraw from a stipulation. *Id.* at 640.

[4] In cases where one party claims to be the victim of domestic abuse, "[t]he court shall not require parties to participate in any facilitative process . . . ." Minn. R. Gen. Prac. 310.01(b). But "[i]n circumstances where the court is satisfied that the parties have been advised by counsel and have agreed to an ADR process . . . that will not require face-to-face meeting of the parties, the court may direct that the ADR process be used." *Id.* We note, here, that the district court stated in an order that both parties agreed to participate in a settlement conference. And during that conference, the parties were in separate rooms, with counsel, and the district court shuttled back and forth between the parties, eliminating any face-to-face interaction.

The district court's findings are supported by the record. The record demonstrates that both parties were represented by counsel, and nothing suggests that wife's counsel was not competent. Second, wife engaged in negotiations, which the district court found to be extensive and detailed. Third, both husband and wife agreed to each aspect of the settlement in open court, and wife indicated that nothing was impairing her ability to reach the agreement. Finally, although the district court never explicitly asked wife if she believed the property settlement was fair, the district court did extensively question wife about each aspect of the property settlement agreement and whether she agreed to it, and wife indicated that she did. And wife never informed the court that she thought the property division was unfair at any point during the hearing about the property settlement agreement. Because the record supports the district court's conclusion that wife did not have a basis to withdraw from the property settlement agreement, it was not an abuse of discretion to deny wife's request.

Still, wife contends that the district court should have first determined whether a meeting of the minds occurred, citing *Ryan v. Ryan*, 193 N.W.2d 295 (Minn. 1971). "Whether parties reach an objective meeting of the minds on the essential elements of a contract is a question of fact, which this court reviews under the clear-error standard." *Tornstrom v. Tornstrom*, 887 N.W.2d 680, 686 (Minn. App. 2016), *review denied* (Minn. Feb. 14, 2017). Here, while the district court did not explicitly use the phrase "meeting of the minds," the court implicitly determined that a meeting of the minds occurred. In its order denying wife's request to withdraw from the settlement agreement, the district court stated that "the [p]arties memorialized their binding property agreement,

under oath, before this [c]ourt." And because the record supports the conclusion that the parties *did* reach an agreement on property division, it was not clearly erroneous for the district court to implicitly determine that a meeting of the minds occurred.[5]

Additionally, in challenging the district court's denial of her request to withdraw from the property settlement agreement, wife contends that the district court judge improperly conducted the settlement conference, citing the Code of Judicial Conduct. Rule 2.9 of the Minnesota Code of Judicial Conduct states that "[a] judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter" unless an exception identified in the rules applies. But one exception to rule 2.9 permits a judge to "confer separately with the parties and their lawyers" when attempting to settle pending matters before the judge, as long as both parties agree. Minn. Code Jud. Conduct Rule 2.9(4).

Here, in an order issued four days before the settlement conference, the district court found that "[e]ach party specifically agreed, off the record, to allow the [c]ourt to conduct

[5] Wife also alleges that the district court improperly relied on confidential settlement offers as evidence in denying her motion to withdraw from the property settlement agreement. But we note that, before the settlement conference, the district court found that wife expressly agreed to waive any objection to the district court acting as the ultimate trier of fact because the district court also conducted the settlement conference. And although wife draws our attention to Minnesota Statutes section 595.02, subdivision 1(m) (2018), which provides that a party cannot be questioned about certain aspects of mediation, we note that the statutory provision "does not apply to the parties in the dispute in an application to a court by a party to have a mediated settlement agreement or a stipulated agreement resulting from the collaborative law process set aside or reformed." Minn. Stat. § 595.02, subd. 1(m).

the settlement conference." Additionally, each party waived "any right to object to the undersigned judge acting as the ultimate trier of fact on the grounds that the undersigned judge also conducted a settlement conference." Although wife asserts that there is "no evidence" that the parties agreed for "the [c]ourt to independently caucus with the parties," the district court made an explicit finding that both parties *did* consent to the district court judge conducting the settlement conference. Nothing in the record indicates that this is a clearly erroneous finding.[6]

For these reasons, we are not persuaded by wife's arguments and discern no abuse of discretion in the district court's denial of wife's request to withdraw from the property division agreement.

II. The district court did not erroneously fail to find that the property division agreement was just and equitable.

Wife also contends that the district court did not make a required finding that the division of the parties' assets and property—divided pursuant to the settlement agreement—is fair and equitable. We review a district court's division of property for an abuse of discretion, and uphold related factual findings unless they are clearly erroneous. *Nolan v. Nolan*, 354 N.W.2d 509, 512 (Minn. App. 1984), *review denied* (Minn. Dec. 20, 1984).

[6] Wife also suggests that an agreement allowing the district court to conduct the settlement conference must be in writing, but no provision in statutes or caselaw establishes this requirement. Moreover, wife never contested the propriety of the district court judge conducting the settlement conference at any point before this appeal.

The division of marital property must be "just and equitable." Minn. Stat. § 518.58, subd. 1 (2018). To determine what constitutes an appropriate distribution, "the court must consider all relevant factors, including those listed in the statute." *Nolan*, 354 N.W.2d at 512 (quotation omitted). And when reviewing stipulations, the district court "has a duty to protect the interests of both parties and all the citizens of the state to ensure that the stipulation is fair and reasonable to all." *Karon v. Karon*, 435 N.W.2d 501, 503 (Minn. 1989). But the statute does not require an equal division of marital property in order to be just and equitable. *See Ruzic v. Ruzic*, 281 N.W.2d 502, 505 (Minn. 1979).

By adopting the settlement agreement, the district court implicitly concluded that the division of marital property was just and equitable. The language of the statute does not require the district court to make an explicit finding that the division of property is just and equitable, as long as the district court considered relevant factors and the ultimate property division *is* just and equitable. *See* Minn. Stat. § 518.58, subd. 1 (stating that "the court shall make a just and equitable division of the marital property of the parties without regard to marital misconduct, after making findings regarding the division of the property" based on "all relevant factors").

Assessment of the "just and equitable" division of property is complicated here by the parties' failure to submit documentation regarding the value of their numerous properties in Kenya. Although the property division on its face may signal some concern,[7]

[7] On its face, the property settlement agreement does not appear to divide the parties' assets equally. Based on the agreement, husband received roughly 65% of the parties' assets in the United States, while wife received 35%. And in terms of the parties' properties in Kenya, husband received 17 properties and wife received three.

the district court had only limited information with which to evaluate the property division agreement. Without information regarding the actual value of the parties' properties in Kenya, the district court relied on the parties' knowledge of the properties and their consent to the division of property in evaluating the agreement. And here, based on the record before the district court—which included numerous properties with unknown values—it was not clearly erroneous for the district court to implicitly conclude that the property settlement agreement was just and equitable.[8]

III. The record supports the judgment and decree.

Wife also contends that the judgment and decree is not supported by the record. Specifically, wife asserts that the provisions about spousal maintenance, attorney fees, and health insurance have no support in the record. According to wife, she never agreed to waive spousal maintenance or attorney fees, and the provisions stating otherwise in the judgment and decree are incorrect.

In her answer to husband's petition, wife sought spousal maintenance from husband and requested that husband pay need-based attorney fees. But after the property settlement agreement, wife never asserted these claims again. And wife's attorney submitted a document entitled "stipulated findings of fact, conclusions of law, order for judgment and judgment and decree." In that document, wife (or wife's attorney) conveyed that the parties were able to reach a full and final agreement regarding "all issues" relating to the

[8] For instance, although wife only received three properties in Kenya, the district court noted in a later order that the property wife received produced rental income. *See Ruzic*, 281 N.W.2d at 505 (concluding that division of property was equitable where wife received a smaller share of assets but received a property that generated rental income).

dissolution. Wife's proposal included provisions which stated that the parties both agreed that neither was awarded spousal maintenance and that each party would be solely responsible for their own attorney's fees. And the district court adopted the proposed dissolution and findings of fact submitted by wife's attorney.

Because the district court adopted *wife's* proposed document—in which she stated that the parties agreed that neither would receive spousal maintenance or attorney fees and that each party would carry their own health insurance—the judgment and decree is supported by the record. *See generally Bliss v. Bliss*, 493 N.W.2d 583, 590 n.6 (Minn. App. 1992) (stating that "a party who submits proposed findings and conclusions should also conscientiously review and revise this document prior to submission to the trial court" to ensure that the proposed documents are sufficiently detailed), *review denied* (Minn. Feb. 12, 1993). And although wife asserts that the district court made no findings on the issues of spousal maintenance and attorney fees, it is unclear why the district court would need to do so when wife's proposed stipulation stated that the parties agreed that neither party would receive maintenance and each party would pay their own fees. As such, wife's arguments that the judgment and decree is not supported by the record are unavailing.

In sum, the district court did not abuse its discretion by denying wife's motion to withdraw from the property settlement agreement and did not erroneously fail to find that the agreement was just and equitable. The judgment and decree is supported by the record. We therefore conclude that there is no basis to reverse the district court's decision.

Affirmed.