STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0538

In re the Marriage of:

Oliver Wilfred Cass, petitioner,
Respondent,

vs.

YeYing Cen,
Appellant.

Filed June 12, 2023
Affirmed
Bjorkman, Judge

Ramsey County District Court
File No. 62-FA-17-2558

Jane Binder, Binder Law Offices, P.A., Minneapolis, Minnesota (for respondent)

Kathryn A. Graves, Jaime Driggs, Benjamin J. Hamborg, Henson & Efron, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Bjorkman, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges the denial of her motion to vacate the parties' oral marriage-dissolution stipulation, arguing that the district court abused its discretion because (1) appellant did not have competent counsel, (2) the negotiations were not sufficiently

detailed, and (3) the district court did not ask appellant whether she considered the terms of the stipulation fair and equitable. We affirm.

FACTS

Appellant YeYing Cen (wife) and respondent Oliver Cass (husband) married in 2010. Husband was a gastroenterologist and wife was not employed. In 2014, wife moved from Minnesota to Durham, North Carolina, to look for a home in which they could live after husband retired. The couple purchased a home the following year. Due to wife's myriad health concerns, including sensitivity to electromagnetic frequencies and allergies to plastic and nickel, the Durham home required extensive renovations. During this time, husband continued to live in the couples' Minnesota home, at first regularly visiting wife in Durham and later visiting less frequently. In 2017, husband petitioned to dissolve the marriage. At that time, husband was nearing retirement.

In April 2018, wife moved the district court to place the dissolution proceedings on inactive status, citing various medical conditions. Husband opposed the motion, asking the district court to instead appoint a guardian ad litem (GAL) to assist wife with managing discovery.[1] The district court granted only husband's motion. Four months later, the district court vacated the appointment because the parties agreed that discovery was progressing, and wife's lawyers could adequately represent her best interests.

[1] Wife argued that she did not need a GAL because she had the mental capacity to participate in the litigation and that her medical conditions only affected her physical capacity to attend to discovery.

In April 2019, the district court reappointed the GAL, an experienced family law attorney. The court reasoned that the case had "moved on to a different stage, and the parties must be able to sufficiently understand the complex legal issues in this case in order to arrive at a settlement or prepare for trial," which was set for late July. And the court ordered the GAL

> to represent the best interests of [wife], and, after conducting an independent investigation, advise the court as to what, if any, accommodations are needed to assist [wife] in defending this action with her attorney, and assist the court in addressing the issues of spousal maintenance, division of assets and allocation of debt.

In June, the GAL submitted a report documenting her investigation and assessment of wife's needs. The GAL noted that wife's delay in providing financial and other documentation to her lawyer was a recurring issue. After observing that wife had been represented by four different lawyers during the course of the litigation, the GAL stated that the three she had spoken with all believed that wife "is highly intelligent and fully capable of understanding the component parts of the marital estate and the math that belies the parties' respective nonmarital claims, cashflow analyses, etc."

The GAL concurred with these assessments. She further reported that wife "has a high level of proficiency in the English language" and appeared to understand the financial issues. During a meeting with the court-appointed neutral financial expert (the expert), the GAL observed that wife asked "high level, and very specific questions, regarding how [the expert] reached his conclusions" about the parties' assets. Wife's conversation with the

expert included "excellent and informed questions about the various [financial] schedules and underlying statements/data."

But the GAL did have lingering concerns about wife's "anxiety around her environmental sensitivities and health," and opined that these issues "continued to pose a barrier to [wife] engaging in this divorce process as productively as is needed." The GAL reported that wife's lawyers had "a good understanding of [wife's] issues" and were "skilled and equipped to assist her." Ultimately, the GAL recommended the district court allow her to assist wife "in processing her concerns, [to] ensure that [wife] is being understood and that she is understanding . . . what will serve her best interests, including being available for important events and producing information." The district court followed this recommendation.

The trial occurred on July 23 and 24. On the first day, wife's lawyer informed the district court that wife was having a reaction to a gadolinium[2] injection she received "over a week ago." Wife's lawyer advised that the reaction could cause wife to "become dizzy at times and . . . faint at times." But the lawyer confirmed that wife "intends to be here and participate." The district court then had this exchange with wife:

> DC: All right. Well, I appreciate that, Ms. Cen. Is it Ms. Cen, right?
> A: C-E-N, is fine.
> DC: If you need to take a break you should let your attorney know or let [the GAL] know and they'll let the Court know. All right?

[2] Gadolinium is a contrast agent used in connection with magnetic resonance imaging (MRI).

A: I want to point out just add Gadolinium based is banned in Europe, but it's not banned in this country unfortunately.
DC: Okay, thank you.
A: And so I have repeated in my images, and I just ought to know this information just—
DC: Well, I'm glad you're here today.
A: Thank you. I'm very happy to be here.

On the second day of the trial, it appeared that the parties held common positions with respect to asset division. The district court suggested that the parties discuss settlement. They did so, reaching a stipulation that wife's lawyer put on the record. Wife received more than $1 million in assets, including the Durham home. She agreed to pay off the mortgage on the Durham home. In addition, husband agreed to make a $100,000 cash payment to wife upon entry of the dissolution judgment and pay her an additional $10,000 per month for six months. This division is consistent with wife's pretrial proposal, which the parties used to form the "framework" of the stipulation. Wife also agreed that she would waive her claim for spousal maintenance; her lawyer repeatedly confirmed that the parties intended that there would be no spousal maintenance.

After wife expressed concern that she would not have enough funds to pay off the $489,000 mortgage on the Durham home, she spoke with the GAL off the record. Following their discussion, the GAL reported that she had reviewed the financial documents with wife and showed her that she had sufficient funds to pay off the mortgage, and that wife wanted to enter into the stipulated agreement. Wife stated several times that she understood her obligation to pay off the mortgage and intended to do so.

Wife then questioned whether she would have enough funds to pay the property taxes on the Durham home in future years. Her attorney interjected, and the following exchange occurred:

> Q: Before you say any more, are you suggesting you do not want this settlement and you do not want to settle this case?
> A: I want the settlement.
> Q: Okay. Then what you're saying is contradictory to wanting the settlement. So you have to tell the court whether you want this settlement or you don't want this settlement.
> A: I want the settlement.
> Q: Okay.
> . . . .
> Q: Then you understand if you want the settlement that means you will receive the cash that you have which on Exhibit 262 is over $850,000, plus the retirement, plus your house, and plus the $100,000 from Mr. Cass plus six monthly payments of $10,000 per month and those will be the funds that are available to you, and you have to use those funds to take care of yourself and then do whatever you can to take care of yourself beyond that. Do you understand that?
> A: I do.
> . . . .
> Q: Ms. Cen, we have been discussing settlement in this case now for a long time, is that correct?
> A: Yes.
> Q: We've been to two moderated settlement conferences, we've [worked with the expert]. You've been discussing settlement with me and with [wife's other attorney]. And you've also been discussing settlement with the guardian [ad litem], correct?
> A: Yes.
> Q: And do you understand the settlement as had been read into the record today?
> . . . .
> A: Yes.
> . . . .

Q: And you understand that when as I read into the record when this settlement is approved by the Court which we anticipate it will be, then you will never be able to get spousal maintenance from Mr. Cass; he is paying you $10,000 per month for the next six months as an additional property settlement, but you can never ask for spousal maintenance again because the Court will lose the authority to grant that request. Do you understand that?
A: I understand that.
Q: And nevertheless you are asking the Court to enter this settlement today?
A: Yes.
DC: All right. Do you have any questions of the Court?
A: No.

Thereafter, the district court accepted the stipulation.

On July 26, two days after entering into the agreement, wife sent a letter to the district court indicating that she "was pressured by [her] attorneys to agree to the settlement at the hearing." The letter states that wife did not have enough time to consider husband's settlement proposal and requests "an opportunity to respond to [husband's] counter offer."

Three days later, wife sent another letter to the district court asserting that she would not have agreed to the settlement had she not been "acutely sick from gadolinium poisoning." This letter states that wife "reject[s]" the settlement agreement. After wife sent the second letter, her trial lawyers withdrew from the case.

On August 1, wife filed a pro se motion asking the district court to "add an addition to the settlement on spousal maintenance of $15,000 per month for three and [a] half years." In her supporting affidavit, wife avers that due to "acute gadolinium poisoning, [she] failed to express clearly that '[she] want[s] a settlement instead of the trial but this settlement

lacks spousal support.'" The motion references an October 1 hearing date, which was later rescheduled to November 6.

On August 21, husband filed a proposed dissolution judgment and decree. Wife's GAL signed the document, confirming that it accurately reflected the parties' agreement as presented on the record at trial. On October 1, before the hearing on wife's motion, the district court signed the proposed judgment.

Wife appealed, arguing that the district court denied her due process by entering the judgment and decree without (1) addressing her motion challenging the validity of the stipulation and (2) adhering to Minn. R. Gen. Prac. 307(b). This court agreed, reversing and remanding to allow wife an opportunity to be heard on her motion challenging the validity of the oral stipulation. *See generally Cass v. Cen*, No. A19-1903, 2021 WL 317725 (Minn. App. Feb. 1, 2021).

On remand, wife renewed her motion to vacate the stipulation as "improvidently made and in equity and good conscience ought not to stand." Her supporting affidavit cites purported inaccuracies in the financial information the parties used to reach the settlement; her lack of mental capacity due to gadolinium poisoning; the "pressure from everyone" to settle, which amounted to duress; and the failure by the district court to ask her if she was waiving her right to spousal maintenance, and whether she felt it was fair and equitable to do so.

Following a hearing, the district court denied wife's motion. In a detailed order, the district court found wife's assertion that she "did not understand . . . the amount of money" she was to receive "not credible." It noted that the financial document that formed the

basis for the settlement was prepared at wife's request by the expert. It also noted that wife "was in the best position to know" that she had spent hundreds of thousands of dollars of marital funds on attorney fees, and that she had acknowledged as much on the record. The district court pointed to a "clear" record showing that wife agreed to waive spousal maintenance in exchange for $160,000 from husband. Relevant to this appeal, it found that wife (1) was represented by competent counsel, (2) the settlement negotiations were extensive and detailed, and (3) although it did not specifically ask wife if she found the agreement to be "fair and equitable," she acknowledged that she understood and accepted its terms.

Wife appeals.

DECISION

"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). Because they are considered binding contracts, a party cannot withdraw from a stipulation without the other party's consent or permission of the court. *Id.* at 521-22. When considering a motion to vacate a pre-judgment stipulation in a dissolution matter, the court must determine "whether the stipulation was 'improvidently made and in equity and good conscience ought not to stand.'" *Toughill v. Toughill*, 609 N.W.2d 634, 639 (Minn. App. 2000) (quoting *Shirk*, 561 N.W.2d at 522). Stipulations entered pursuant to fraud or duress that prejudice a party meet this standard. *Id*. (citing *Tomscak v. Tomscak*, 352 N.W.2d 464, 466 (Minn. 1984)).

In determining whether to vacate such a stipulation, district courts may consider the so-called *Tomscak* factors, which include whether: (1) the moving party was represented by competent counsel; (2) extensive and detailed negotiations occurred; (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. *Glorvigen v. Glorvigen*, 438 N.W.2d 692, 695-96 (Minn. App. 1989).[3] This analysis focuses on whether the district court proceedings "substantially complied" with each factor. *Id.* at 696. We will not reverse a district court's decision whether to vacate a dissolution stipulation unless the district court abused its discretion. *Toughill*, 609 N.W.2d at 639. One way a district court can abuse its discretion is by making findings of fact that lack support in the record. *See Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997); *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (citing this aspect of *Dobrin*).

Wife argues that the stipulation was improvidently made and in equity and good conscience ought not to stand because (1) she was not represented by competent counsel, (2) extensive and detailed negotiations did not occur, and (3) the district court did not ask about, and she did not acknowledge, that she understood the terms of the stipulation and considered them fair and equitable. None of wife's arguments persuade us to reverse.

[3] After *Tomscak*, the legislature amended the statute regarding obtaining relief from dissolution judgments. Since then, we have held that a district court is not *required* to consider the *Tomscak* factors, but it is not error to do so when addressing whether to grant relief from a stipulation prior to entry of judgment. *Toughill*, 609 N.W.2d at 640. After entry of judgment, a party may only seek relief under Minn. Stat. § 518.145, subd. 2 (2022). *Id.*

Competence of Counsel

Wife first asserts that the district court clearly erred by finding that her trial lawyers[4] were competent because they "never accurately calculated the bottom-line number for Wife to show her what she would actually receive under the stipulation." She contends that the financial information the parties used was outdated and inaccurate, particularly because it did not account for the hundreds of thousands of dollars she had already spent on legal fees and her responsibility to pay off the mortgage on the Durham home. The district court rejected these contentions, finding that wife "understood the nature of the agreement and her statement that she did not understand . . . the amount of money she would have . . . is not credible."

The record supports this finding. The GAL's report—submitted just one month before trial—states that wife's prior and current lawyers all agreed that wife is "highly intelligent and fully capable of understanding" the financial aspects of the dissolution. The GAL traveled to Durham to meet with wife, and personally observed that wife had "a solid grasp of the numbers," and that when wife had concerns, she "asked high level, and very specific questions" about the expert's calculations. Wife's legal expenses were detailed in her pretrial memorandum, are reflected in the expert's calculations, and were paid from marital funds. The expert specifically testified that any reduction in the balances of the parties' accounts—primarily due to wife's expenditures—was accurately reflected in his spreadsheets. And the trial transcript reveals that wife had ample opportunity to discuss

[4] Wife retained her current lawyers during the first appeal.

the "bottom-line" with her lawyers and the GAL, and that she repeatedly stated that she understood and accepted the terms of the stipulation.

Wife next contends that her trial lawyers were incompetent and subjected her to duress because they let her enter the stipulation when she lacked capacity due to gadolinium "poisoning." She argues that the district court clearly erred by rejecting her averment that she advised the court in chambers that she was "feeling very sick" and was not in a position to participate in the trial. The record defeats wife's contentions.

As the district court noted, the standard for contracting is whether wife possessed "enough mental capacity to understand, to a reasonable extent, the nature and effect of what [s]he is doing." *Timm v. Schneider*, 279 N.W. 754, 755 (Minn. 1938) (quotation omitted). The court found that wife met this standard. It rejected wife's assertions about an in-chamber discussion regarding her health, stating that no discussions took place in chambers and that both wife and her lawyer affirmed at the start of trial that she was prepared to participate. Throughout the two-day trial, wife never again mentioned the purported "poisoning." She did not ask to take a break or for any other accommodation, despite the district court's express invitation to do so. And the two physicians' letters that wife submitted in support of her motion are based on self-reported symptoms and do not contain complete or accurate information that would compel the district court to doubt wife's mental capacity. As to her claimed duress, wife points to no evidence that her lawyer coerced her "by means of threats or other circumstances that destroy[ed] [her] free will and compel[led] her to comply" with her lawyer's "demand." *Kremer v. Kremer*, 912 N.W.2d 617, 628 (Minn. 2018); *see also Kroeplin v. Haugen*, 390 N.W.2d 872, 875 (Minn. App.

1986) (stating "pressure on appellant to reach an agreement on the terms of the dissolution after such a lengthy period of negotiations does not amount to duress"), *rev. denied* (Minn. Sept. 25, 1986).

Finally, wife argues that her trial lawyers were incompetent because they arranged for husband to pay wife an additional $160,000 as "property" rather than as spousal maintenance to avoid having to make a *Karon* waiver "that he knew could not be sustained."[5] But wife cites no specific facts or testimony evidencing that her lawyer, or anyone else, endeavored to circumvent the requirements of *Karon*. And she cites no legal support for her implicit argument that *Karon* applies when the parties agree that spousal maintenance will not be awarded.

Extensive and Detailed Negotiations

Wife contends that the district court clearly erred when it determined that the parties' negotiations—which included several mediations and two moderated settlement conferences—were extensive and detailed because the "bottom-line figure showing Wife what she would actually be receiving" was "nowhere to be found."

At the hearing on wife's motion to vacate the stipulation, wife's lawyer expressly waived this argument, stating, "The second [*Tomscak*] factor is[,] were there detailed and

[5] *See Karon v. Karon*, 435 N.W.2d 501, 503 (Minn. 1989) (explaining that, in a proceeding in which spousal maintenance is awarded, the parties may agree to divest the district court of jurisdiction to later modify the award) *superseded in part by statute*, 1989 Minn. Laws ch. 248, § 7, at 838 (currently codified at Minn. Stat. § 518.552, subd. 5 (2022)), *as recognized in Loo v. Loo*, 520 N.W.2d 740, 746 n.6. (Minn. 1994); *see also Butt v. Schmidt*, 747 N.W.2d 566, 573 (Minn. 2008) (outlining the requirements that must be met to divest a district court of jurisdiction).

extensive negotiations? . . . I don't think that part of the factors is in dispute." Later in the same hearing, the district court asked wife's lawyer to confirm that wife was waiving this argument, to which the lawyer replied, "Yes . . . we're not making an issue of that." Because wife did not challenge this *Tomscak* factor in the district court, we do not consider it on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that a reviewing court only considers issues presented to and considered by the district court).

Fair and Equitable Settlement Terms

As to her third challenge, wife urges us to conclude that the district court clearly erred because the court did not ask whether she considered the terms to be fair and equitable. The parties acknowledge, as did the district court, that no one asked wife this question. But both parties agree that "substantial compliance" —not literal compliance— with the *Tomscak* factors is all that is required of the district court when determining whether a stipulation was improvidently made.

Wife nevertheless insists that the district court's failure to inquire is "fatal" under "the circumstances surrounding the stipulation"—namely, that she: is not a native English speaker, needed a GAL "due to concerns about her mental capacity," was having a reaction to gadolinium at the time of the stipulation, and had "clear difficulty following the proceedings and understanding the effect of the proposed agreement." Once again, the record defeats wife's contentions.

First, while wife is not a native English speaker, the undisputed evidence shows that she is highly proficient in the English language. Before moving to the United States, she taught English at the university level. The district court credited the GAL's report, which

includes observations that wife understands English and "is highly intelligent and has a solid grasp of the numbers." And the district court relied on its own observations of wife throughout the court proceedings. As to wife's capacity to understand complex financial issues, the GAL expressed "a high level of confidence in [wife's] understanding of the calculations." Wife's lawyers agreed.

Second, wife's lack-of-capacity argument is belied by a record that shows she affirmed multiple times in her own words and through counsel that despite her "reaction" to gadolinium she was prepared to participate and understood the proceedings.

Third, wife's contention that the GAL was appointed "due to concerns about her mental capacity," is directly contradicted by the record. The district court originally appointed the GAL to assist wife with managing discovery; as trial approached, it reappointed the GAL to ensure wife was able "to sufficiently understand the complex legal issues in this case in order to arrive at a settlement or prepare for trial." The GAL expressed no concerns about wife's mental capacity to understand the issues presented in the dissolution proceeding. Rather, the GAL's concerns relate to wife's "anxiety around her environmental sensitivities and health." Nowhere in the record is there an indication that wife's mental capacity was the reason for appointing a GAL. Similarly, the record defeats wife's contention that it is "clear" she had difficulty following the proceedings; she asked specific questions and expressed her understanding of the underlying facts and settlement terms multiple times during the proceedings.

On this record, we conclude that the district court did not clearly err by finding that the proceedings substantially complied with *Tomscak*. And we observe no other abuse of discretion by the court in denying wife's motion to vacate the stipulation.

Affirmed.