STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1365

In re the Marriage of: Lori Elaine Coleal, petitioner,
Respondent,
vs.

David Michael Coleal,
Appellant.

Filed June 6, 2011
Reversed and remanded
Stoneburner, Judge

St. Louis County District Court
File No. 69DUFA08210

Larry M. Nord, Mary Cohen, Orman, Nord & Hurd, P.L.L.P., Duluth, Minnesota (for respondent)

James J. Vedder, Shannon M. Bixby, Moss & Barnett, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Wright, Judge; and Stauber, Judge.

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

STONEBURNER, Judge

In an appeal and related appeal, both parties to this marital dissolution challenge aspects of the district court's property division. Because the district court erroneously concluded that it lacked authority to revise its initial decision to enforce the parties' stipulation, erroneously deprived the parties of the opportunity to litigate all issues

regarding a potential revision of that decision, erroneously categorized incentive-stock options awarded during the marriage but vesting after the dissolution as entirely marital property, and erroneously ordered transfer of nontransferable stock options, we reverse and remand for further proceedings consistent with this opinion.

FACTS

In January 2008, while the parties were discussing dissolution of their sixteen-year marriage, appellant David Michael Coleal (husband) was in the process of changing jobs from an executive position with Cirrus Industries Inc. in Duluth to an executive position with Bombardier Learjet Inc. in Wichita, Kansas. The parties initially agreed that, after the dissolution, respondent Lori Elaine Coleal (wife) would move to North Carolina with the parties' children, and she, with husband's knowledge, began the process of qualifying for a mortgage and buying a house in North Carolina.

As part of his negotiations with Bombardier, husband e-mailed the details of his Cirrus compensation plan to Bombardier. Husband's e-mail stated, in relevant part, that he had 575,000 stock options, valued, under certain assumptions stated in the e-mail, at $1,623,750.

In early February 2008, Bombardier offered husband a job with (1) a base salary of $340,000 per year, subject to an annual "upward merit review" beginning May 1, 2009, and supplemented by various short-term incentives; (2) a sign-on bonus of $100,000; (3) a recommendation that the company grant him 40,000 performance share units and 80,000 stock options; (4) additional stock options and performance share units on an annual basis that would be discretionary with the company and based on

performance; and (5) coverage of relocation costs in an undisclosed amount. Husband accepted the offer.

In a letter dated February 29, 2008, Cirrus accepted husband's resignation, effective that day, and informed husband that he had 60 days from that date to exercise his Cirrus stock options. Husband did not have funds available to exercise the options. He sought a 12-month extension of the deadline for exercising the options. Granting an extension required action by the board of directors.

The parties initially worked directly with each other in an attempt to resolve the issues related to marriage dissolution. Husband prepared an outline of a proposed settlement dated January 19, 2008. The outline lists "[Cirrus] Options 575,000 = $287.5K" as a marital asset and contains a chart of assets wife would receive that includes "Options $800,000 TBD based on departure."[1] Wife later testified that, at all times the parties were negotiating, it was her understanding that she would receive between $600,000 and $800,000 for her half of the Cirrus stock options. She testified that husband told her to use a value of $600,000 for her share of the Cirrus stock options in her dealings with the bank for mortgage financing.

At a March 2008 case-management conference, the parties spent considerable time negotiating a stipulated settlement. As a negotiating tool, husband asserted that he would oppose wife's move to North Carolina with the children if the parties did not reach a "global" settlement.

[1] Husband and his trial attorney later testified that the dollar sign preceding "287.5K" was a clerical error and that the number "287.5" represented half of the number of stock options, not the value of the stock options.

The parties reached an oral agreement, but it was not placed on the record. Nor was it reduced to writing at that time. In part, the parties agreed that each would get half of the Cirrus stock options; the net after-tax amount of husband's Bombardier sign-on bonus would be divided with 25% distributed to wife and 75% distributed to husband; the 40,000 Bombardier performance share units would be divided with 10% distributed to wife and 90% distributed to husband; and husband would receive all of the Bombardier stock options. It is not clear from the record what the parties actually agreed to regarding payment of wife's moving expenses.[2] Husband's relocation benefit from Bombardier was not mentioned in the agreement. By letter dated March 25, 2008, Bombardier notified husband that the relocation benefit would be $28,333 (one month's salary).

Husband's attorney drafted a proposed dissolution judgment based, in part, on the oral agreement. The draft was not provided to wife's attorney until the end of June 2008. When the draft was mailed to wife's attorney, husband's attorney took what he later termed as the "unusual" step of telephoning wife's attorney to alert him to the fact that the draft contained variations from the oral agreement reached at the March conference.

Because Cirrus's board of directors never formally acted on husband's request for an extension of the time for him to exercise his options, the Cirrus stock options expired on April 29, 2008, and thereafter had no value. Nonetheless, husband's draft judgment

[2] When the agreement was reduced to writing, it provided that husband would use his best efforts to get Bombardier to pay for wife's moving expenses. In an affidavit that husband later provided to the district court, he stated that he knew at the conference that Bombardier would not pay wife's moving expenses and that he agreed to pay those expenses "out of [his own] pocket." This is consistent with wife's assertion that husband agreed to pay her moving expenses up to the amount of $14,000.

provided that husband would make efforts to extend the deadline for exercising the Cirrus stock options, which the draft stated would be divided equally.

Wife and her attorney responded to the draft by moving the district court for temporary relief. Husband then moved to enforce the agreement. Wife opposed the motion, arguing that husband had failed to make a full and complete disclosure of his financial situation at the time of the negotiations, made misrepresentations during the negotiations, and that the draft judgment did not conform to the oral agreement reached by the parties.

In September 2008, the district court found that the parties' negotiations were based on the best information husband had at the time, and husband had not committed fraud. The district court denied wife's motion for temporary relief and granted, in part, husband's motion to enforce the agreement as drafted, reserving for further negotiation or trial (1) the division of husband's relocation allowance from Bombardier and (2) the division of the Cirrus and Bombardier stock options. The district court stated that neither party would receive any value from the Cirrus stock options and that any Bombardier stock options were a marital asset to be divided between the parties. The October 2008 judgment reflected the terms of this decision. Wife appealed the October 2008 judgment, but because the judgment was not final, this court dismissed the appeal. *Coleal v. Coleal*, No. A08-1871 (Minn. App. Mar. 24, 2009) (order).

The parties could not resolve the reserved issues, and a trial occurred in November 2009. In the resulting January 2010 supplemental judgment, the district court found that the parties no longer owned any Cirrus stock options, but because all of Bombardier's

employment inducements were received prior to entry of the October 2008 dissolution judgment, the Bombardier stock options and signing bonus were marital property, and the Bombardier performance share units and stock options "took the place, in part, of the Cirrus stock options owned by the parties during their marriage." The district court found that husband had agreed to pay wife's moving expenses, which the district court found to be in the amount of $12,584.12. The district court vacated portions of the property division contained in the October 2008 judgment and (1) divided husband's $28,333 relocation benefit equally between the parties; (2) ordered husband to transfer half of the 40,000 Bombardier performance share units and half of the 80,000 Bombardier stock options to wife; (3) awarded wife half of the net proceeds of the Bombardier sign-on bonus; and (4) ordered husband to pay wife's moving expenses.

Husband moved to amend the supplemental judgment, arguing, in part, that the district court lacked authority to consider issues not previously reserved, which, he argued, had become final in the October 2008 judgment. The district court agreed and reinstated the terms of the October 2008 judgment that awarded wife 10% of the performance share units and 25% of the signing bonus.

Husband appealed, asserting that the district court erred as a matter of law by finding that the Bombardier stock options are marital property, abused its discretion in the division of the stock options, and improperly modified the October 2008 judgment by requiring husband to pay wife's moving expenses. In her related appeal, wife asserts that the district court erred by amending the supplemental judgment, arguing that because

final judgment on all issues had not been entered, the district court retained the ability to modify the October 2008 judgment.

D E C I S I O N

I. The district court's authority to revise its earlier judgment

We first address wife's argument that the district court retained the ability to modify the October 2008 judgment because it was not a final judgment. Whether a judgment is final is a question involving the construction and application of a procedural rule, which is a question that we review de novo. *Engvall v. Soo Line R.R. Co.*, 605 N.W.2d 738, 741 (Minn. 2000).

The relevant part of Minn. R. Civ. P. 54.02 states:

> When multiple claims for relief are involved in an action, the court may direct the entry of a *final* judgment as to one or more but fewer than all of the claims . . . *only upon an express determination that there is no just reason for delay* and upon an express direction for the entry of judgment. *In the absence of such determination and direction*, any order or other form of decision, however designated, which adjudicates fewer than all of the claims . . . shall not terminate the action as to any of the claims . . . and *the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.*

(Emphasis added). Here, although the district court directed entry of the October 2008 judgment, enforcing, in part, the agreement as drafted by husband's counsel, the district court did not expressly determine that there was no just reason for delay. The resulting judgment was partial rather than final, and was subject to revision prior to the entry of final judgment. *See Pederson v. Rose Co-op. Creamery Ass'n*, 326 N.W.2d 657, 660

(Minn. 1982) (stating, where a district court expressly directed entry of judgment but did not expressly determine that there was no just reason for delay, and because the district court's ruling "contained no such express determination, it did not become a final order and was subject to revision at any time prior to the entry of judgment adjudicating all claims, rights and liabilities of all parties"). For this reason, the district court erred to the extent that it based its amendment of the January 2010 supplemental judgment on its belief that it was "bound by its [prior] decision to enforce the original agreement."

It is important for a district court to be cognizant of the extent of its ability to revise a prior nonfinal ruling in marital dissolution proceedings, and particularly in this case, for four reasons. First, generally, the terms of dissolution judgments are interrelated. *See Brugger v. Brugger*, 303 Minn. 488, 494–95, 229 N.W.2d 131, 135–36 (1975) (noting that dissolution judgments involve many interrelated issues). Altering one term in a judgment can unfairly impact the fairness of other terms in the judgment.

Second, similarly, if a marital asset changes value between the time it is awarded and the time it is distributed, the district court has authority to alter the valuation of that asset as is necessary to accomplish an equitable division of the parties' marital property. Minn. Stat. § 518.58, subd. 1 (2010)

Third, at trial in this case, the district court discovered that the parties' stipulation was based on a misunderstanding or misrepresentation of the value of the Cirrus stock options, which husband had induced wife to believe was a major marital asset but which had lost all value. Because of the interrelationship among the provisions of the dissolution judgment, the loss of all value of the Cirrus stock options materially affected

the fairness of the agreed-on disposition of remaining assets. When husband learned that the Cirrus stock options were valueless, he had an affirmative obligation to disclose that information to wife and the district court, even if neither asked for it, in order to ensure that the district court was dividing the parties' marital property based on accurate and current information. *See Doering v. Doering*, 629 N.W.2d 124, 131 (Minn. App. 2001) (stating that "[b]ecause the confidential relationship between the parties [to a marital dissolution] creates an affirmative duty to disclose, nondisclosure is sufficient to establish a breach of that duty, without evidence of intent. Further, because the duty to make a full and fair disclosure is an *affirmative* duty, there is no requirement that the moving party show that he requested the information that was not disclosed; the duty to disclose exists in the absence of such a request"), *review denied* (Minn. Sept. 11, 2001).

Fourth, caselaw states:

> The district court is a third party to dissolution proceedings and has the authority to refuse to accept the terms of a stipulation in part or in toto. Therefore, while a party, absent consent of the other party or permission of the court, may not withdraw from or repudiate a stipulation after entering it (even if the district court has yet to approve the stipulation), the district court is not bound by a stipulation merely because the parties have entered it. We note that while a district court may reject all or part of a stipulation, generally, it cannot, by judicial fiat, impose conditions on the parties to which they did not stipulate and thereby deprive the parties of their "day in court." Alternatively stated, while parties to a dissolution stipulation are precluded from disavowing that stipulation before the district court decides whether to accept the stipulation, to the extent that the district court does not accept the stipulation, the parties should not, absent unusual circumstances, be precluded from litigating their claims.

Toughill v. Toughill, 609 N.W.2d 634, 638 n.1 (Minn. App. 2000) (quotation and citation omitted).

Wife asks this court to merely reverse the amendments to the supplemental judgment thereby reinstating the terms of the supplemental judgment. But, while the district court had authority under Minn. R. Civ. P. 54.02 to revise its decision to enforce the purported stipulation, it did not have authority to impose unstipulated and unlitigated conditions on the parties. The supplemental judgment erroneously imposes terms not agreed to or litigated.

On discovering that the information omitted from the original negotiations affected more than the reserved terms of the stipulation, the district court should have afforded the parties an opportunity to litigate all of the affected terms, which, in this case, appear to be all terms of the property division and possibly the maintenance agreement. We therefore reverse the supplemental judgment and the amended supplemental judgment and remand to the district court to determine which terms of the October 2008 judgment need to be litigated to obtain the fair division of assets required by Minn. Stat. § 518.58 (2010), and to allow both parties to maintain the standard of living enjoyed during the marriage as contemplated by the dissolution statutes.[3] The parties must be given an opportunity to litigate those issues before the district court can make a decision on the final terms of the judgment. Because neither party challenged the portion of the

[3] "If the court finds that either spouse's resources or property, including the spouse's portion of the marital property . . . are so inadequate as to work an unfair hardship, considering all relevant circumstances," the court may apportion up to half of the other spouse's nonmarital property. Minn. Stat. § 518.58, subd. 2.

judgment dissolving their marriage, reversal does not affect the effective date of the dissolution of marriage, which remains October 10, 2008. Minn. Stat. § 518.145, subd. 1 (2010) (providing that an appeal from a decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision).

II. Division of stock options

We also conclude that the district court erred by holding that the Bombardier stock options merely replaced the Cirrus stock options and are entirely marital property and by ordering husband to transfer nontransferable Bombardier stock options to wife. Whether property is marital or nonmarital is a question of law that we examine de novo. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002).

Generally, property acquired by either or both parties during a marriage is marital until entry of the dissolution judgment. Minn. Stat. § 518.003, subd. 3b (2010). But we have held that incentive stock options that do not vest until after the dissolution is final have both marital and nonmarital aspects. *Salstrom v. Salstrom*, 404 N.W.2d 848, 851 (Minn. App. 1987) (endorsing the concept stated in *Janssen v. Janssen*, 331 N.W.2d 752, 756 (Minn. 1983) that such assets should be apportioned as marital property only if and when they become payable, at which time "[t]he marital interest in each payment will be a fraction of that payment, the numerator of the fraction being the number of years (or months) of marriage during which the benefits were being accumulated, the denominator being the total number of years (or months) during which benefits were accumulated prior to when paid)." The [district] court, when using this method of allocation, will

retain jurisdiction and award the nonemployee spouse some percentage of the marital interest in each payment." *Id.* (quotation omitted).

The district court rejected application of the *Salstrom* approach to division of incentive stock options based on its finding that "in reality, the . . . stock options from Bombardier simply replaced [the Cirrus stock options]." But there is no support in the record for a finding that the Bombardier stock options replaced the Cirrus stock options. The record plainly demonstrates that the parties lost their interest in the Cirrus stock options only through the failure to timely exercise the options or obtain an extension of the time within which to exercise those options.

The Bombardier stock-option plan states that the stock options are awarded as a "long-term incentive and retention program" and as "compensation for future services." The grant of the Bombardier stock options is expressly contingent on future performance. The supreme court has held that the express language of a stock-options agreement is persuasive evidence of its intent, and incentive options are a quid pro quo in which the corporation gives the options and the employee gives its future performance "as consideration for granting the options." *Pillsbury Co. v. Elston*, 283 N.W.2d 370, 373 (Minn. 1979). Wife's assertion that the district court discredited husband's testimony about the purpose of the Bombardier stock options is misplaced. The district court's supplemental order states that husband's testimony was not credible on the issue of "whether the [Cirrus] stock options would be extended." The district court erred by determining that all of the Bombardier stock options awarded to husband on acceptance of employment with Bombardier are marital assets.

On remand, if the district court determines that wife should be awarded an interest in the Bombardier stock options, it must fashion an award consistent with a valid determination of the extent of the marital interest, if any, in the stock options (as well as the limitations on awards of nonmarital property set out in Minn. Stat. § 518.58, subd. 2) and consistent with the terms of the stock-option plan which, wife concedes, precludes husband from directly transferring stock options to her.

Reversed and remanded.