STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1090

Robert Lee Kistner, petitioner,
Appellant,

vs.

Joan Carol Kistner,
Respondent.

Filed July 30, 2012
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-FA-000283950

John G. Westrick, Westrick & McDowall-Nix, P.L.L.P., St. Paul, Minnesota (for appellant)

Karen I. Linder, Linder, Dittberner & Bryant, Ltd., Edina, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Halbrooks, Judge; and Hudson, Judge.

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

HALBROOKS, Judge

Appellant challenges the district court's denial of his motion to amend the judgment and decree to specify that appellant's optional joint annuitant election be revoked, to compel respondent to sign an optional annuity revocation, and for attorney

fees. Respondent filed a notice of related appeal, challenging the district court's denial of her motion for conduct-based attorney fees. We affirm.

FACTS

Appellant Robert Kistner and respondent Joan Kistner were married in October 1979. In 1997, appellant retired from teaching. In planning for his retirement, appellant had six pension annuity options to choose from. Life Plan A-1 provides the highest monthly benefit payment but does not provide survivor coverage. Life Plan E-1 provides a smaller monthly benefit payment and allows for designation of an optional joint annuitant with 100% survivorship and a bounce-back feature. The literature sent to appellant from the Teachers Retirement Association (TRA) stated that a designation of an optional joint annuitant is irrevocable two months after the date of the first payment. Appellant ultimately selected Life Plan E-1 and named respondent as his optional joint annuitant. He began accruing annuity payments on July 1, 1997, and received the first payment in October 1997.

After almost 24 years of marriage, appellant filed for divorce in March 2003. The parties signed a marital termination agreement (MTA) on September 22, 2004. The recital to the MTA provides that respondent agreed to pay appellant monthly spousal maintenance in order to restore him to what his full pension would have been, had he chosen Life Plan A-1. The recital further states that the MTA is meant to be a "full, complete and final settlement" and that

> [i]f the Court approves this Agreement, and if the Court grants a dissolution to [appellant] herein, the terms of this Agreement shall be made a part of any Decree issued by

> reference, whether or not each and every portion of this Agreement is literally set forth in the Judgment and Decree.

The district court adopted verbatim all of the findings of fact and conclusions of law from the MTA, but did not include the MTA recital language in the judgment and decree (J and D). Appellant was awarded the TRA annuity, valued at $230,798. The J and D provided that, for the retirement assets, "[Appellant] is hereby awarded all right, title, interest, and equity, free and clear of any claim on the part of [r]espondent, in and to his retirement benefits." Respondent waived any right to collect temporary or permanent maintenance from appellant. Respondent was ordered to pay appellant spousal maintenance of $571 per month (without any cost-of-living increase) until appellant remarried or the death of either party.[1]

Appellant remarried in July 2006, relieving respondent of the obligation of maintenance payments. But respondent remained the optional joint annuitant under appellant's Life Plan E-1. On July 20, 2010, TRA sent a letter to appellant's attorney advising that Life Plan E-1 had a bounce-back feature that allowed appellant to change to Life Plan A-1 if both parties revoked the optional joint annuitant election. Under Life Plan E-1, appellant was receiving a gross monthly payment of $3,089; the payment under Life Plan A-1 was $4,023 per month.

On December 23, 2010, more than six years after entry of the dissolution J and D, appellant moved to "[a]mend[] the dissolution decree . . . to specify that [appellant]'s teacher retirement optional joint annuitant election must be revoked to fully effectuate the

[1] The amount of $571 was the estimated difference in monthly benefits between Life Plan A-1 and Life Plan E-1 at the time.

terms of the parties[’] Marital Termination Agreement and the Decree based thereon,” to compel respondent to sign the optional annuity revocation (OAR), and for an award of attorney fees based on respondent’s refusal to sign the OAR form. Respondent moved for conduct- or need-based attorney fees and costs incurred in responding to appellant’s motion.

Following a hearing, the district court issued an order, clarifying the J and D by adding the following italicized language to the terms of the retirement benefits: “[Appellant] is hereby awarded all right, title, interest, and equity, free and clear of any claim on the part of [r]espondent, *notwithstanding [respondent]’s interest in [appellant]’s TRA survivor benefits.*” The district court denied all of the other motions, including both parties’ motions for attorney fees. This appeal follows.

D E C I S I O N

The district court’s analysis was based on its determinations that (1) the MTA is merged with the dissolution J and D, (2) the J and D cannot be reopened, (3) the J and D is ambiguous, and (4) based on the MTA recital, the parties understood and agreed that respondent’s monthly maintenance payments to appellant were actually part of the property division so that appellant would be compensated for his election of Life Plan E-1 and respondent would retain her survivor benefit. For the reasons set out below, we agree.

I.

Stipulated dissolution judgments are treated as binding contracts. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). The supreme court has stated that when a J and D is

based upon a stipulation, "the stipulation is merged into the [J and D] and the stipulation cannot thereafter be the target of attack by a party seeking relief from the [J and D]." *Id.* at 522. "The sole relief from the [J and D] lies in meeting the requirements of Minn. Stat. § 518.145, subd. 2 [(2010)]." *Id.* To reopen a J and D under Minn. Stat. § 518.145, subd. 2, a motion must be brought within a reasonable amount of time, based on a limited number of grounds. Appellant does not meet the requirements of the statute and does not assert that he does. We therefore conclude that the district court correctly determined that the parties' MTA merged with the J and D and that the now eight-year-old J and D cannot be reopened.

II.

Appellant contends that the district court erred when it found that the J and D is ambiguous. As a general rule, when the parties have stipulated to the provisions in a judgment and the terms are unambiguous, the language shall be construed according to its plain meaning. *Starr v. Starr*, 312 Minn. 561, 562-63, 251 N.W.2d 341, 342 (1977). "[A] dissolution provision is unambiguous if its meaning can be determined without any guide other than knowledge of the facts on which the language depends for meaning." *Landwehr v. Landwehr*, 380 N.W.2d 136, 138 (Minn. App. 1985) (quotation omitted). If a provision is reasonably susceptible to more than one meaning, it is ambiguous. *Id.* But words cannot be read in isolation to determine whether an ambiguity exists; rather, the stipulated judgment must be considered in its entirety. *Id.* at 139.

Whether a provision in the judgment is ambiguous is a legal question, which this court reviews de novo. *Halverson v. Halverson*, 381 N.W.2d 69, 71 (Minn. App. 1986).

If a provision is determined to be ambiguous, parol evidence may be admitted to clarify the intent of the parties. *Webb v. Webb*, 360 N.W.2d 647, 649 (Minn. App. 1985.) This court affords great deference to the district court's construction of the ambiguous language, and we will not reverse absent clear error. *Tarlan v. Sorensen*, 702 N.W.2d 915, 919 (Minn. App. 2005).

The J and D provides for respondent to make what the judgment characterizes as monthly "maintenance" payments of $571 to appellant. But when the J and D is considered as a whole, the stipulated facts do not support an award of maintenance. Under Minn. Stat. § 518.552, subd. 1 (2010), maintenance is awarded when either spouse lacks sufficient property to provide for his reasonable needs or is unable to provide adequate self-support. If maintenance is necessary, the amount of maintenance is determined, in part, by "the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance." Minn. Stat. § 518.552, subd. 2(g) (2010). At the time of the J and D, respondent was 53 years old, working part-time, and earning $833 per month; she had reasonable monthly expenses of $4,583. She did not have sufficient income to meet her reasonable monthly living expenses. Appellant was then 72, retired, and receiving monthly pension payments; his reasonable monthly living expenses were $5,179.93. In the division of property, each party received a total of $629,358.

As noted by the district court, the facts and conditions set forth in the J and D are inconsistent with the label of "maintenance" because the underlying requirements for an award of maintenance were not present. When the facts and provisions of the J and D are

something other than what they are labeled, they are ambiguous. *Landwehr*, 380 N.W.2d at 139 (determining that the term "alimony" in the judgment and decree was ambiguous because "several of the terms of payment [were] uncharacteristic of alimony or spousal maintenance").

To resolve the ambiguity, the district court made a factual determination as to what the parties intended, which we review for clear error. *Tarlan*, 702 N.W.2d at 919. The district court considered the MTA and the J and D together to determine the parties' intent, finding the recital to the MTA to be "very illuminating." The MTA recital provides that the payments of maintenance were intended to restore appellant to "what would have been his full pension benefit in the absence of [r]espondent having been named his survivor." The district court determined that the maintenance provision was part of the parties' property settlement and not based on a disparity of income or earning potential.

Because the recital to the MTA clearly states that the purpose of the maintenance obligation was to restore appellant to the position he would have had if he had opted for Life Plan A-1 and because the parties' financial circumstances at the time of the dissolution did not warrant an award of maintenance, the district court did not clearly err by finding the $571 obligation to be part of the property division.

As an additional basis for its ruling, the district court determined that the equitable doctrines of unclean hands and laches support the result that the status quo be maintained and that respondent retain her designation as optional joint annuitant. Because we affirm

the district court's clarification of the J and D based on the resolution of the ambiguity in the J and D, we do not reach the equitable grounds.

III.

Respondent contends that the district court erred by not granting her motion for conduct-based attorney fees incurred in responding to appellant's motion. A district court may "in its discretion" award attorney fees "against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2010). An award of conduct-based attorney fees can be made regardless of the recipient's need or the payor's ability to pay. *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001). This court reviews a decision regarding conduct-based attorney fees for an abuse of discretion. *Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn. App. 2007).

Here, the district court found the J and D to be ambiguous in regard to whether the monthly payments were properly construed as maintenance, as characterized, or as part of the division of property. The record supports that there was a reasonable basis for appellant's motion. Because appellant's motion was not frivolous, the district court did not abuse its discretion by denying respondent an award of attorney fees.

Affirmed.