STATE OF MINNESOTA
IN COURT OF APPEALS
A11-972
A11-1424

In re the Marriage of:
Kyle W. Zweifel,
petitioner,
Respondent,

vs.

Julie Zweifel,
n/k/a Julie A. Mead,
Appellant.

Filed April 23, 2012
Affirmed in part and reversed in part
Toussaint, Judge[*]

St. Louis County District Court
File Nos. 69DU-FA-09-953, 69DU-FA-09-725, 69DU-CO-10-231

Jill I. Frieders, O'Brien & Wolf, L.L.P., Rochester, Minnesota (for respondent)

Julie A. Mead, Duluth, Minnesota (pro se appellant)

Considered and decided by Cleary, Presiding Judge; Stoneburner, Judge; and Toussaint, 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

TOUSSAINT, Judge

In these consolidated appeals from a marital dissolution judgment, appellant Julie Zweifel, n/k/a Julie A. Mead, asserts that the district court abused its discretion by (1) denying her motion to set aside the marital termination agreement (MTA); (2) refusing to award her spousal maintenance; (3) issuing a qualified domestic relations order (QDRO); (4) awarding respondent Kyle W. Zweifel appellant's nonmarital property; and (5) ordering appellant to pay conduct-based attorney fees.

Because appellant has shown no valid basis for setting aside the MTA, which also governs the maintenance and QDRO issues, and failed to offer evidence that certain property was nonmarital in nature, we affirm those parts of the district court order. But because appellant's challenges to the district court's orders raised legitimate concerns and were not interposed solely to harass or delay, we reverse the district court's order for conduct-based attorney fees.

D E C I S I O N

Marital Termination Agreement

We review the district court's decision on whether to set aside an MTA for an abuse of discretion. *Toughill v. Toughill*, 609 N.W.2d 634, 640 (Minn. App. 2000). A district court abuses its discretion when its decision is against logic and the record facts. *Haefele v. Haefele*, 621 N.W.2d 758, 762-63 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001). We will not reverse a district court's findings of fact unless they are clearly erroneous. *Id.* at 763.

Even when, as here, a party moves to set aside an MTA before judgment has been entered, a party may not unilaterally repudiate the agreement. *Toughill*, 609 N.W.2d at 638. "Stipulations are a judicially-favored means of simplifying and expediting dissolution litigation and, for this reason, are accorded the sanctity of binding contracts." *Id.* (quotation omitted). In order to withdraw from a signed stipulation, even if not already incorporated into a judgment, a party must obtain the other party's consent or the court's permission. *Id.* The district court may relieve a party from the terms of a stipulation if it was entered into because of fraud, mistake, or duress. *Id.* at 639; *see* Minn. Stat. § 518.145, subd. 2 (2010). The district court may also consider whether the stipulation was "improvidently made and in equity and good conscience ought not to stand." *Shirk v. Shirk*, 561 N.W.2d 519, 522 (Minn. 1997). Appellant claims that she acted under duress; "duress" implies taking advantage of a party's mental or emotional condition, *Lindsay v. Lindsay*, 388 N.W.2d 713, 715 (Minn. 1986), or "undue pressure" coupled with abusive behavior, *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998).

When determining whether a party should be relieved from a stipulation because of mistake, fraud, or duress, the district court may consider certain factors, originally set forth in *Tomscak v. Tomscak*, 352 N.W.2d 464, 466 (Minn. App. 1984), a case superseded by Minn. Stat. § 518.145 (2010). Although *Tomscak* is no longer good law to the extent it allows vacation of a stipulated judgment for reasons other than those recited in Minn. Stat. § 518.45, subd. 2, courts continue to employ the factors set forth in *Tomscak*, including whether (1) the party was represented by competent counsel;

(2) there were extensive, meaningful negotiations; (3) the party agreed to the stipulation in open court; and (4) the party indicated to the court that he or she understood the terms and found them fair and equitable. *Id.* In the case of a stipulation that has not been reduced to judgment, the court considers primarily the first two factors. *Toughill*, 609 N.W.2d at 640.

The district court found that appellant was represented by competent counsel, who was also experienced in family law and domestic abuse issues. The negotiations took place during a Financial Early Neutral Evaluation (FENE), an informal setting, and the proceedings were facilitated by an experienced evaluator. Both attorneys and the evaluator took special precautions to prevent contact between the parties because of the domestic abuse allegations. Both appellant's attorney and the evaluator testified that appellant did not seem to be under more stress than is usual for a person in an FENE proceeding, and that appellant did not state that she was unable physically or mentally to take part in the negotiation process. Both testified that they informed appellant that she did not have to sign the agreement but the alternative would be to go to trial. They stated that appellant understood the terms, participated in the negotiations, and was not threatened in any way. The negotiations took place over a period of nine hours. In addition, the district court found that the MTA favored appellant in several ways: it prevented the necessity of a court appearance, a consideration because of the allegations of abuse; it permitted her to live rent-free in the homestead, in lieu of maintenance, until the homestead was sold; it provided for equitable debt payment and for a favorable division of assets. The district court further found that there was no evidence of duress,

fraud, or mistake; appellant was sequestered from respondent, which meant that she was not exposed to abusive behavior, and the negotiation process took place in a measured fashion. Although appellant testified that she felt pressured and that her attorney and the evaluator did not adequately inform her of the process, the district court found the testimony of her attorney and the evaluator to the contrary to be more credible than appellant. We defer to the district court in matters involving the credibility of witnesses and the resolution of conflicts in testimony. *Haefele*, 621 N.W.2d at 763.

Based on the record before us, the district court's findings are supported by evidence and its conclusions are consistent with the law. We conclude that the court did not abuse its discretion by refusing to vacate the MTA.

Spousal Maintenance

Appellant challenges the district court's decisions not to award, and not to retain jurisdiction over the issue of maintenance. In the MTA, the parties agreed to a mutual waiver of maintenance and a divestiture of the court's jurisdiction over the issue. Parties to a dissolution action may

> expressly preclude or limit modification of maintenance through a stipulation, if the court makes specific findings that the stipulation is fair and equitable, supported by consideration described in the findings, and that full disclosure of each party's financial circumstances has occurred. The stipulation must be made a part of the judgment and decree.

Minn. Stat. § 518.552, subd. 5 (2010); *see Butt v. Schmidt*, 747 N.W.2d 566, 573 (Minn. 2008) (stating that stipulated waiver of maintenance modification must include consideration and express divestiture of court jurisdiction).

In the dissolution judgment, the district court found that "neither party shall pay" maintenance to the other, and that the particular division of property was made in lieu of maintenance. The district court acknowledged the incorporation of the MTA. Specifically, the district court found that the continued mortgage and credit card payments were more favorable to appellant than temporary spousal maintenance, that the MTA was fair and equitable, and that appellant reaped a "windfall of almost $20,000 by remaining in the house with [respondent] paying the mortgage while she challenged the validity of the [MTA]." Appellant has not challenged the financial disclosures made by respondent, and the MTA included an express divestiture of court jurisdiction. In short, all the requirements for a valid waiver of maintenance were met and the district court therefore did not abuse its discretion by refusing to award maintenance or retain jurisdiction over the issue.

QDRO

Appellant's objection to the QDRO is that it "allows [respondent] to control [appellant's] 401 (k) by divesting control to [respondent] and allows him to be receiver of profits if [appellant] dies, [respondent] is awarded any financial loss of interest from December 7, 2009 until the time the 401 (k) is divested." Appellant's position reflects a misunderstanding of the QRDO. It is a standard order directing the plan administrator to pay appellant a lump sum equal to 50% of the value of the account on the valuation date, December 7, 2009. In the event of appellant's death prior to distribution, it orders payment to her estate. Any interest earned prior to distribution is segregated in a separate

account. The district court did not abuse its discretion by issuing this order, which reflects the agreement of the parties in the MTA.

Nonmarital Property

Appellant argues that the district court abused its discretion by refusing to credit her with a nonmarital interest in the homestead. "Nonmarital property" takes various forms; it may be a gift, devise, or inheritance to one spouse but not the other, made at any time, or property acquired before the marriage, or after the valuation date, or excluded by a valid antenuptial contract, or any property acquired in exchange for any of the above types of nonmarital property. Minn. Stat. § 518.003, subd. 3b (2010).

Whether property is marital or nonmarital is a question of law. *Olsen v. Olsen*, 561 N.W.2d 797, 800 (Minn. 2008). The district court's findings will not be reversed absent clear error. *Id.* The party claiming a nonmarital interest in property has the burden of proving this by a preponderance of the evidence. *Kerr v. Kerr*, 770 N.W.2d 567, 570 (Minn. App. 2009).

The district court found that appellant produced no credible evidence in support of her claim of a nonmarital interest in the homestead, and this court defers to district court credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Because appellant provided no support for her claim, the district court did not abuse its discretion by refusing to award her a nonmarital interest in the homestead.

Conduct-Based Attorney Fees

The district court ordered appellant to pay one-half of respondent's attorney fees and costs incurred after the FENE, a total of $7,676.75, because her "actions in trying to

vacate the settlement . . . were unreasonable and unnecessarily contributed to the length and expense of these proceedings."

The district court may award attorney fees and costs against a party who "unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2010). We review the district court's award of conduct-based fees for an abuse of discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007). The district court need not consider the recipient's need for or the payer's ability to pay a conduct-based award. *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001). The district court need not find that the payer acted in bad faith in order to make the award. *Id.* The district court must make something more than conclusory findings. *Id.* at 817.

Merely contributing to the length or expense of a proceeding is not a sufficient basis for an award of attorney fees; the party sanctioned must have been unreasonable, "asserting claims or defenses known to be frivolous or asserting an unfounded position solely to harass or to delay proceedings." *Aaker v. Aaker*, 447 N.W.2d 607, 612 (Minn. App. 1989), *review denied* (Minn. Jan. 12, 1990). Although appellant's challenges have undoubtedly delayed the finality of this proceeding, the district court's findings do not support a conclusion that her actions were intended to harass respondent or that she sought to delay the dissolution, or that her claims were wholly frivolous. We conclude that the district court abused its discretion by ordering appellant to pay conduct-based attorney fees, and reverse that part of the court's judgment.

Affirmed in part and reversed in part.