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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1216**

In re the Marriage of:

Sharon E. Lauer, petitioner,
Respondent,

vs.

Patrick Joseph Lauer,
Appellant.

**Filed July 29, 2013
Reversed and remanded
Hudson, Judge**

Chisago County District Court
File No. 13-FA-10-457

Michael L. Perlman, Katherine M. Ray, Perlman Law Office, Minnetonka, Minnesota
(for respondent)

Kay Nord Hunt, Lommen, Abdo, Cole, King & Stageberg, P.A., Minneapolis, Minnesota;
and

Patrice M. Hockings, Hockings Law Office, LLC, Maple Grove, Minnesota (for
appellant)

Considered and decided by Schellhas, Presiding Judge; Hudson, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant husband argues that the judgment in his dissolution was void because it was entered after the district court declared him incompetent or, in the alternative, that the district court erred by entering the judgment based on terms to which the parties did not agree, or committed reversible error by failing to afford him the opportunity to object to the proposed findings. Appellant also challenges the award of attorney fees to respondent wife. Because the district court erred by entering judgment based on a purported agreement that occurred during a period when husband was incompetent, we reverse and remand for further proceedings. We also reverse the grant of attorney fees.

FACTS

In 2010, respondent Sharon Lauer petitioned for dissolution of her 33-year marriage to respondent Patrick Lauer. Sharon Lauer then worked as a mail clerk for the Minnesota Department of Corrections; Patrick Lauer, who had previously been employed as a truck driver, was unemployed due to a 2009 stroke and collected workers' compensation and Social Security disability benefits.

Following court-ordered mediation, Patrick Lauer moved to compel discovery of financial information relating to Sharon Lauer's possible dissipation of marital assets and for sanctions, arguing that she was asserting a frivolous claim relating to an alleged marital debt owed to her father and secured by the parties' homestead. The parties' two adult daughters submitted affidavits in support of the motion to compel discovery,

asserting that Sharon Lauer had made unauthorized transfers from the parties' joint bank accounts and removed personal property from the homestead.

May 2011 settlement hearing

At a settlement hearing on May 26, 2011, the parties' attorneys informed the district court that the parties had agreed on terms to be incorporated in a stipulated judgment. The attorneys recited the asserted agreement: (1) to the source and amounts of the parties' incomes and the parameters of a spousal maintenance waiver, to be verified by their mediator; (2) to a property valuation date; (3) that Patrick Lauer would be granted the homestead, with Sharon Lauer to be paid her equity, less her contribution to a portion of an estimated septic-system bill; (4) to equalize their retirement accounts, with updated statements and balances to be provided; (5) to a stated division of their vehicles; (6) that each party would own his or her own life insurance policy; (7) to divide personal property and submit any related dispute to mediation, and, if necessary, to binding arbitration; and (8) that if Sharon Lauer's father sought a court judgment as to the disputed debt, they would be jointly liable on that debt.

Counsel also stated that, in consideration for withdrawal of Patrick Lauer's motion to compel discovery, the parties had agreed that Sharon Lauer would provide an accounting of the parties' three joint bank accounts from October 1, 2009 through October 1, 2010; that Patrick Lauer would identify any transactions that he believed required additional explanation; and that Sharon Lauer would provide a sworn statement explaining any transaction over \$500, or any transaction directly to her over \$250. The

parties would then submit to mediation, and, if necessary, binding arbitration, any issues about her explanation or the characterization of property involved as marital.

At the hearing, the following colloquy occurred:

THE COURT: [It's] [s]ounding like you got a global settlement here, it's sounding like there might be potential future disagreement you would go to future mediation and eventually binding arbitration.

PATRICK LAUER'S COUNSEL: [W]e have information we still need to gather, and we still have people to speak to and statements to get and verification to receive. But we're hoping what we have set up is parameters for getting to a value, to a balance. And we set up parameters if they have a dispute once they get to that point, so, yes I do think that this is a global . . .

THE COURT: So we don't have need to set another review hearing on this matter, it's sounding like we continue—as I am hearing the agreement . . . both of your clients are to be put under oath and to make sure they can live with the terms of that agreement there's a little bit more If I give you a month to get the final paperwork to me is that enough time?

PATRICK LAUER'S COUNSEL: I'm thinking this . . . if for some reason we get boiled down to compiling all of this and there is something that . . . we can't agree about, I think it would make sense for us to go back to the source of . . . our major portion of our agreement and that is with the mediator that . . . if for any reason once we get this to a final written document and there is something glaring that we're not agreeing about, that we head back to mediation and do it within the time frame that you're suggesting.

. . . .

THE COURT: I'll give 60 days, if both sides agree to that I'll cancel . . the trial date I expect 60 days from today's date to get final documentation memorializing the agreement.

Both parties testified that they were competent to understand the proceedings, they were not under the influence of any substance affecting their ability to understand the proceedings, they understood the agreement and its requirements, they were satisfied with counsel's representation, and they had no questions for the court.

Discovery issues

No proposed agreement or findings were submitted to the district court within 60 days. In June 2011, Patrick Lauer requested that Sharon Lauer explain transactions made from the parties' three joint bank accounts, as well as credit-card payments she made. Sharon Lauer objected to the scope of discovery and declined to mediate the issue of her withdrawal of funds from those accounts, arguing that she was only saving for emergency purposes and never transferred money to preplan for a dissolution. She also declined to mediate the issue of the alleged debt owed to her father, E. William Henry, arguing that the parties had agreed on its resolution.

Guardianship proceeding

In September 2011, the parties' adult daughter, Jolene Lauer, petitioned the district court to be appointed as guardian ad litem (GAL) for Patrick Lauer. Patrick Lauer also moved to appoint a forensic accountant to trace activity in the joint bank accounts and a \$45,400 deposit to an account with the Minnesota Building Trades Credit Union, Henry's employer, representing proceeds from a joint home equity loan in favor of that organization. In response, Sharon Lauer moved to enforce the May 2011 settlement agreement. She alleged that a mediator had been unable to resolve the issue of liability for the debt owed to Henry; that Patrick Lauer had provided no information regarding his

alleged inability to refinance the homestead due to that debt and no updated retirement-account information; and that she had never been informed that he lacked capacity to proceed in the dissolution matter.

In October 2011, the district court held a hearing, restricting testimony to the issue of appointing a GAL. Dr. David Lund, Patrick Lauer's clinical psychologist at a brain-injury clinic, testified that he did not believe that Patrick Lauer was capable of fully understanding the steps he needed to take in the proceeding and that his brain injury did not allow him to fully participate in the case. Dr. Lund also testified that he believed Patrick Lauer may have lacked capacity to participate in the proceedings in May 2011, based on his letter opinion at that time that Patrick Lauer's stress and the lingering effects of his brain injury were causing his cognitive abilities to decline. Jolene Lauer testified that she believed that, in May 2011, Patrick Lauer had the capacity to enter an agreement. The district court found "that, in May 2011, Dr. Lund did not believe [Patrick Lauer] was fully able to participate in decision making" and that "[b]ased on the testimony of Dr. Lund, [Patrick Lauer] is incompetent such that he shall be represented by a guardian ad litem in this matter." The district court appointed Jolene Lauer as GAL.

January-February 2012 hearings

In January 2012, Patrick Lauer moved the district court for relief relating to additional minor property issues, to vacate the agreement relating to the alleged Henry debt, and to trace all deposits and withdrawals from any bank account. Sharon Lauer renewed her motion to enforce the settlement agreement, arguing that it was inconsistent for Patrick Lauer to argue that he lacked competency to waive a motion to compel

discovery, but he did not lack competency to enter into the settlement agreement. At a hearing, the district court noted, “the agreement . . . fell apart from one way or another, but we’re here today because the matter is still not resolved.”

February 2012 order

In February 2012, the district court ordered that the May 26, 2011 agreement remained “in full force and effect.” The district court found that Patrick Lauer argued that he was competent to enter into one part of the stipulation, but incompetent to enter another part of the stipulation. The district court found that the parties’ agreement to mediate in May 2011, and to engage in binding arbitration if mediation were not successful, reflected their understanding that disputes were likely to occur in finalizing the details of their agreement, and that Patrick Lauer “is not permitted the ability to re-negotiate the settlement agreement because unintended consequences occurred.” The district court ordered that, under the May 2011 agreement, any dispute arising from the action would be referred to mediation and, if no resolution was reached, to binding arbitration. The district court ordered Sharon Lauer’s attorney to prepare proposed findings of fact and conclusions of law, and the district court would defer entering judgment for 14 days to permit objections by Patrick Lauer. *See* Minn. R. Gen. Pract. 307(b) (stating that, following a stipulated agreement on the record, after a party submits proposed findings to the district court, entry of judgment “shall be deferred for fourteen (14) days to allow for objections” if opposing party has not consented in writing).

March 2012 judgment and May 2012 order

Sharon Lauer's attorney submitted proposed findings of fact and conclusions of law to the district court and counsel, which followed the terms of the general agreement stated in May 2011. The district court inadvertently signed this document and issued judgment without waiting 14 days for possible objections. Patrick Lauer objected to early entry of the judgment. The district court acknowledged its error, but found that it had reviewed the proposed judgment and that it conformed to the parties' agreement placed on the record in May 2011, with stated minor exceptions. The district court amended the judgment to reflect those changes and again ordered that "[a]ny dispute arising from the action shall be referred to mediation, and if no resolution is reached in mediation, to binding arbitration, per the May 26, 2011 agreement of the parties."

Patrick Lauer moved to compel Sharon Lauer to participate in mediation; to further amend the judgment; and for attorney fees. He argued that the language in the amended judgment referring to mediation of "any dispute" referred to all of the parties' unresolved disputes; that the judgment did not reflect a fair and equitable division of marital assets; and that, with the entry of judgment, he had effectively lost his health insurance, which was obtained through Sharon Lauer's employment. Sharon Lauer argued that a justiciable controversy no longer existed; that the district court had agreed that the parties had a binding settlement agreement; and that the language on mediating "any dispute" related only to disputes as to whether the terms of the judgment had been met. Both parties requested attorney fees.

The district court denied Patrick Lauer's motions. The district court interpreted its prior order regarding mediation to "pertain[] to disputes arising from the *effectuation* of the judgment and decree, not the issues that comprised the original terms of [the] judgment and decree for which a final disposition has been established." The district court also granted Sharon Lauer \$1,094.50 in conduct-based attorney fees. This appeal follows.

DECISION

I

This case requires us to decide whether the district court erred by entering a stipulated judgment in the parties' dissolution, based on their alleged May 2011 agreement. Stipulated agreements provide a judicially favored means of simplifying and expediting dissolution litigation. *Toughill v. Toughill*, 609 N.W.2d 634, 638 (Minn. App. 2000). For this reason, they are "accorded the sanctity of binding contracts" and are subject to the laws regarding contracts. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). Patrick Lauer, however, argues that, in May 2011, he was not competent to enter into a binding contractual agreement on the terms of the parties' dissolution, and the district court, therefore, erred by entering judgment based on the parties' purported settlement agreement.

A person is competent to enter into a contract if that person "has the ability to understand to a reasonable extent the nature and effect of what [he] is doing." *State Bank v. Schrupp*, 375 N.W.2d 48, 51 (Minn. App. 1985), *review denied* (Minn. Dec. 13, 1985). If a party to a contract is found to be incompetent, the contract is invalid. *See id.* at 52.

Whether a party is competent to execute a contract presents a question of fact. *Nelson v. Holland*, 776 N.W.2d 446, 450 (Minn. App. 2009). This court reviews for clear error the district court's findings as to a party's competency. *In re Guardianship of Dawson*, 502 N.W.2d 65, 68 (Minn. App. 1993), *review denied* (Minn. Aug. 16, 1993).

After a hearing in October 2011, the district court found that Patrick Lauer was incompetent and appointed his daughter as GAL. Nonetheless, the district court's entry of judgment based on the parties' purported agreement of May 2011 shows that the district court implicitly found him to be competent at that time. In appointing the GAL, however, the district court specifically found that

Dr. Lund . . . [testified] that, in May 2011, Dr. Lund did not believe [Patrick Lauer] was fully able to participate in decision making. Dr. Lund further testified that he does not believe that [Patrick Lauer] is capable of acting on his own for this matter and that it would be in [Patrick Lauer's] best interest to have a guardian ad litem appointed. Based on the testimony of Dr. Lund, [Patrick Lauer] is incompetent such that he shall be represented by a guardian ad litem in this matter.

The district court also found that Jolene Lauer testified that she believed that her father had the capacity to enter the settlement agreement, but that, after it was placed on the record, he was concerned with the amount of money being spent and wished more advice relating to his decision.

"The closer in time the adjudication of incompetency is to the transaction, the greater the weight that can and should be given it." *Krueger v. Zoch*, 285 Minn. 332, 335, 173 N.W.2d 18, 21 (1969). Sharon Lauer argues that the district court's finding that Patrick Lauer was incompetent at the time of the October 2011 hearing was not

inconsistent with the district court's implicit determination that he had been competent on May 26, 2011. She points out that, at the May hearing, he was represented by counsel; that his daughter, later designated as GAL, was also present; and that at the October hearing, his daughter testified that he had the capacity to make sound decisions in May.

But in making its incompetency decision, the district court relied on Dr. Lund's testimony and his letter dated May 13, 2011, which stated that the amount of stress that Patrick Lauer was experiencing, along with the effects from his brain injury due to stroke, were causing a decline in his cognitive abilities, including his memory, concentration, and decisionmaking abilities. At that time, Dr. Lund opined that Patrick Lauer did not appear "able to fully participate, in his best interest, in his ongoing divorce case" and recommended that someone be appointed to help him through the dissolution process, including decisionmaking. This letter was written only five months before the October hearing at which the district court found Patrick Lauer incompetent to proceed without the assistance of a GAL.

Based on this evidence, we conclude that, to the extent that the district court found that the period of Patrick Lauer's incompetency did not extend back to the time of the May 2011 hearing, the district court clearly erred by doing so. And because the district court's findings of incompetency in October 2011 remain unchallenged, the district court also erred by concluding that any agreement the parties reached in May 2011 was valid. *See, e.g., Krueger*, 285 Minn. at 334, 173 N.W.2d at 21 (concluding that, when a defendant was placed under guardianship two months after execution of a disputed contract, evidence of his physical and mental condition supported the district court's

determination that he was incompetent to enter into a contract, so that the contract was void); *Ewert v. Chirpich*, 169 Minn. 386, 387, 211 N.W. 306, 307 (1926) (upholding a jury verdict that the maker of a note was incompetent to transact business, based on evidence of his gradual mental and physical decline). Thus, the district court erred by entering judgment based on the parties' alleged May 2011 agreement. *See Clark v. Clark*, 642 N.W.2d 459, 465 (Minn. App. 2002) (stating that a district court commits error by signing a proposed judgment that contains conditions to which the parties did not stipulate). Because the judgment was void based on Patrick Lauer's incompetency, we remand the matter to the district court so that the GAL may represent his interest in attempting to resolve this matter.

We note that Patrick Lauer has also argued that the judgment should be vacated based on alternative theories that (1) even if competent, he did not agree to the terms of the judgment as entered; and (2) the district court committed reversible error by entering the proposed judgment without allowing him the 14-day period for objection required by Minn. R. Gen. Pract. 307(b). But because we have concluded that the judgment was void, based on his incompetency and the failure of the GAL to approve a stipulated agreement, we need not address these arguments.

II

In dissolution actions, the district court has discretion to award conduct-based attorney fees against a party who unreasonably contributes to the length or expense of the proceeding. Minn. Stat. § 518.14, subd. 1 (2012). This court reviews the district court's

decision to grant conduct-based attorney fees for an abuse of discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007).

The district court granted \$1,094.50 in conduct-based attorney fees to Sharon Lauer, finding that Patrick Lauer had unreasonably contributed to the length and expense of the proceeding. Sharon Lauer argues that this award was not an abuse of discretion because it was based on Patrick Lauer's post-judgment motion asserting that the parties retained the right to mediate the controversy, even after judgment had been entered. But when "no one party [is] solely responsible for the complex and protracted procedural history of [a] case so as to justify attorney fees as a recourse for bad faith," an award of conduct-based attorney fees amounts to an abuse of discretion. *Nazar v. Nazar*, 505 N.W.2d 628, 636 (Minn. App. 1993), *review denied* (Minn. Oct. 28, 1993), *superseded by statute on other grounds*, Minn. Stat. § 518.551, subd. 5b(d) (Supp. 1993). This record shows that both parties were responsible for the protracted history of this proceeding. Because, in the context of this proceeding, the record does not support the district court's award of conduct-based attorney fees, the district court abused its discretion by granting attorney fees to Sharon Lauer, and we reverse the fee award.

Reversed and remanded.