STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1382

In re the Marriage of:
Sandra Ann Phillips,
f/k/a Sandra Ann LaPlante, petitioner,
Appellant,

vs.

James Craig LaPlante,
Respondent.

Filed May 20, 2013
Affirmed
Hooten, Judge

Carver County District Court
File No. 10-FA-08-440

Gerald W. Von Korff, Keri A. Phillips, Rinke Noonan, St. Cloud, Minnesota (for appellant)

Michael D. Dittberner, Linder, Dittberner & Bryant, Ltd., Edina, Minnesota (for respondent)

Considered and decided by Johnson, Chief Judge; Schellhas, Judge; and Hooten, Judge.

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

HOOTEN, Judge

Appellant-wife and respondent-husband entered into a stipulated marriage-dissolution judgment and decree under which respondent was to pay appellant temporary

spousal maintenance. Appellant remarried before the expiration of the maintenance term, so respondent ceased making maintenance payments on the basis that his obligation to pay future spousal maintenance was "terminated upon . . . the remarriage of the party receiving maintenance." Minn. Stat. § 518.39A, subd. 3 (2012). Appellant argues that the stipulated judgment and decree contained a waiver of respondent's right to terminate and a divestiture of the district court's jurisdiction to terminate maintenance. Because the stipulated judgment and decree does not contain language that waives respondent's pre-existing statutory right to terminate his maintenance obligation, we affirm.

FACTS

Appellant Sandra Ann Phillips, f/k/a Sandra Ann LaPlante, and respondent James Craig LaPlante stipulated to the terms of their marriage dissolution, which were approved and incorporated by the district court into Stipulated Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree in January 2010. In addition to dividing the parties' assets and liabilities, resolving custody and parenting time issues, and providing for child support through their youngest child's 18th birthday, the judgment and decree provides that, "[c]ommencing December 1, 2009 and for 47 months thereafter, Respondent shall pay to [appellant] the sum of $3,500 as and for spousal maintenance." Further, respondent is to pay $25,000 to appellant "immediately following the final payment of spousal maintenance."

The stipulated judgment and decree also provides, in a finding of fact:

> Following the final payment of temporary spousal maintenance as set forth herein, the parties have waived all rights to additional spousal maintenance including rights

> pursuant to Minnesota Statutes § 518.552, subd. 5, and agree that upon entry of the Judgment and Decree, the court shall be divested of jurisdiction to award spousal maintenance herein, pursuant to *Karon v. Karon*, 435 N.W.2d 501 (Minn. 1989).

In addition to other stated consideration, the final $25,000 lump-sum payment is designated "as and for additional consideration for the *Karon* waiver of spousal maintenance." In Conclusion of Law No. 14, the stipulated judgment and decree states:

> [Appellant] shall pay no temporary or permanent spousal maintenance to Respondent. The Court is hereby divested of jurisdiction to award Respondent spousal maintenance from [appellant] for the past, present[,] or future.
>
> Following the 48th payment of spousal maintenance by Respondent to [appellant] referenced hereinabove, Respondent shall pay no further temporary or permanent spousal maintenance to [appellant]. The Court is hereby divested of jurisdiction to award either party any additional spousal maintenance for the past, present[,] or future. The court shall retain jurisdiction solely to enforce the temporary award of spousal maintenance payments herein.

Appellant remarried in December 2011. Claiming that appellant's remarriage terminated his obligation to make any further monthly spousal-maintenance payments, respondent made a prorated monthly spousal-maintenance payment to appellant for December and, in compliance with the requirements of the stipulated judgment and decree, tendered the final lump-sum payment of $25,000, plus interest, after what respondent deemed to be the "final" monthly payment of spousal maintenance.[1]

Appellant moved the district court to enforce the maintenance obligation, arguing that respondent waived his right to modify or terminate maintenance through the waiver

[1] Appellant returned the $25,000 check to respondent, however, to avoid having her acceptance of the check construed as a waiver of her right to ongoing payments.

and divestiture language in the stipulated judgment and decree. The district court denied appellant's motion, interpreting the "factual recitation" in the stipulated judgment and decree to mean that "(1) the divestiture of jurisdiction does not occur until after the final payment is made; (2) the waiver was for 'all rights to additional spousal maintenance'; and (3) the divestiture was pursuant to the requirements set forth in the statute and *Karon* case." (Footnote omitted.) The district court noted that the stipulated judgment and decree was "silent on the impact [appellant]'s remarriage has upon the maintenance award." In concluding that an express waiver was required, the district court held that the statute terminating spousal maintenance on the remarriage of the obligee applied. This appeal follows.[2]

D E C I S I O N

Appellant argues that the stipulated judgment and decree divested the district court of jurisdiction to modify maintenance and included a valid waiver that prohibited either party from seeking modification of respondent's spousal-maintenance obligation. Respondent counters that the stipulated judgment and decree does not evidence a waiver of his right to seek termination on the basis of appellant's remarriage, but only precludes either party from seeking additional maintenance in either amount or duration. Respondent relies on statutory language that, "[u]nless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated

[2] Jurisdictional questions associated with this appeal are discussed in *Phillips v. LaPlante*, 823 N.W.2d 903 (Minn. App. 2012).

upon the death of either party or the remarriage of the party receiving maintenance." Minn. Stat. § 518A.39, subd. 3.

Parties to a spousal maintenance order have a statutory right to seek modification. Minn. Stat. § 518A.39, subd. 1 (2012). However, "[t]he parties may expressly preclude or limit modification of maintenance through a stipulation, if the court makes specific findings that the stipulation is fair and equitable, is supported by consideration described in the findings, and that full disclosure of each party's financial circumstances has occurred." Minn. Stat. § 518.552, subd. 5 (2012). A waiver of the right to seek modification of spousal maintenance is known as a *Karon* waiver. *See Karon v. Karon*, 435 N.W.2d 501, 503–04 (Minn. 1989) (holding such waivers to be valid), *superseded in part by statute*, Minn. Stat. § 518.552, subd. 5. Courts encourage stipulations and enforce them with "the sanctity of binding contracts," "as a means of simplifying and expediting litigation" and "bring[ing] resolution" to an "acrimonious relationship." *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997).

"Four requirements must be met before a stipulation precluding or limiting maintenance modification divests the court of its jurisdiction over maintenance." *Butt v. Schmidt*, 747 N.W.2d 566, 573 (Minn. 2008).

> These requirements are: 1) the stipulation must include a contractual waiver of the parties' rights to modify maintenance; 2) the stipulation must expressly divest the district court of jurisdiction over maintenance; 3) the stipulation must be incorporated into the final judgment and decree; and 4) the court must make specific findings that the stipulation is fair and equitable, is supported by consideration described in the findings, and that full disclosure of each party's financial circumstances has occurred.

Id. at 573 (citations omitted). "If a statutory right is to be waived by the parties, the waiver must be voluntary and intentional." *Loo v. Loo*, 520 N.W.2d 740, 745 (Minn. 1994). "Absent an enforceable waiver, the parties may always move for [a modification of spousal maintenance] based on changed circumstances . . . ." *Id*. at 743.

A stipulated judgment and decree is a binding contract. *Angier v. Angier*, 415 N.W.2d 53, 56 (Minn. App. 1987). "The rules of contract construction apply when construing a stipulated provision in a dissolution judgment." *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001). "Because the interpretation of a written document is a question of law, we do not defer to the district court's interpretation of a stipulated provision in a dissolution decree." *Anderson v. Archer*, 510 N.W.2d 1, 3 (Minn. App. 1993).

The parties do not dispute that the waiver in this case was "incorporated into the final judgment and decree" or that the district court made "specific findings that the stipulation is fair and equitable, is supported by consideration described in the findings, and that full disclosure of each party's financial circumstances has occurred." *Butt*, 747 N.W.2d at 573; *see also* Minn. Stat. § 518.552, subd. 5. Rather, they argue about whether "the stipulation . . . include[d] a contractual waiver of the parties' rights to modify maintenance" and "expressly divest[ed] the district court of jurisdiction over maintenance." *Butt*, 747 N.W.2d at 573. Both parties do so largely with reference to cases dealing with the effectiveness of waivers of the right to seek modification, but the specific language at issue in each case varies.

In *Gunderson v. Gunderson*, the supreme court held that, even if the intent of the parties was that spousal maintenance was to "continue unconditionally," the statutory right to termination upon remarriage of the obligee applies if there is not a written agreement to a waiver of such statutory right of termination. 408 N.W.2d 852, 853–54 (Minn. 1987). Since there was no written waiver, and the stipulation of the parties regarding spousal maintenance was merely read into the record by the district court and was not incorporated into the judgment and decree, the statutory right of termination of spousal maintenance upon the remarriage of the party receiving maintenance was upheld. *Id.* at 854.

In *Karon*, the supreme court held that the parties could waive their right to seek modification of stipulated maintenance through an express waiver. 435 N.W.2d at 503–04. The stipulation in *Karon* stated that, apart from the maintenance agreed upon, "each party waives and is forever barred from receiving any spousal maintenance whatsoever from one another, and this court is divested from having any jurisdiction whatsoever to award temporary or permanent spousal maintenance to either of the parties," and that the parties "hereby mutually release each other from all rights, claims and other obligations arising out of or during the course of their marriage relationship, except as specifically set forth elsewhere in this Stipulation." *Id.* at 502 (quotation marks omitted). The maintenance obligee later requested that the court increase the amount and duration of maintenance, but the supreme court held that the district court had properly divested itself of jurisdiction to modify the award in that manner. *Id.* at 502–04.

The same year as *Karon*, this court held in *Berens v. Berens* that, when the obligee "expressly waives all rights to modification of the maintenance ordered herein including but not limited to her rights under [an earlier version of Minn. Stat. § 518A.39] for modifications of orders and decrees," the obligee was precluded from seeking a modification of the maintenance award. 443 N.W.2d 558, 563 (Minn. App. 1989) (quotation marks omitted), *review denied* (Minn. Sept. 27, 1989). In *Telma v. Telma*, this court held that a stipulation which provided that the obligor "hereby waives any right he may have under Minn. Stat. 518 and applicable case law to petition this court for modification of his obligation to pay maintenance, either as to amount or duration or termination," was not sufficient to waive the statutory right to terminate spousal maintenance upon the obligee's remarriage because it did not specifically waive that right. No. C1-90-2373, 1991 WL 42605, at *1–2 (Minn. App. Apr. 2, 1991) (quotation marks omitted), *rev'd*, 474 N.W.2d 322 (Minn. 1991). However, the supreme court reversed that decision and enforced the stipulation, characterizing this portion of it as an "unequivocal waiver of [obligor's] right to seek a modification of the spousal maintenance award." *Telma*, 474 N.W.2d at 323. The supreme court explained that the stipulation provided that monthly spousal maintenance was to be paid for a period of five years and that "the termination of the award was limited to the earlier of two stated contingencies—the expiration of the 5-year period or the time when [the obligee's] adjusted gross income exceeded $30,000 per year." *Id.* In finding that this language constituted a sufficient waiver of the obligor's statutory right to terminate upon the obligee's remarriage, the supreme court stated "that portion of the agreement

authorize[ed] a termination of the award on the occurrence of either of two specific events, neither of which was [the maintenance obligee's] remarriage." *Id.*

In *Loo*, the supreme court addressed what the obligor argued was a waiver of the right to seek modification prior to the termination of a stipulated maintenance award. 520 N.W.2d at 744–46. The applicable provision in the stipulated judgment and decree stated that, "[a]fter the last of the payments required above, the obligation for spousal maintenance shall terminate irrevocably. Thereafter neither of the parties shall be entitled to alimony then or in the future." *Id.* at 745 (quotation marks omitted). The supreme court held that this language was insufficient to prohibit modification of spousal maintenance prior to its termination for two reasons: first, "[b]y its own terms, this waiver could not take effect until completion of the maintenance obligation," and second, the "alleged waiver does not contain express words divesting the trial court of jurisdiction to modify spousal maintenance." *Id.* Notably, the supreme court reiterated that a waiver of the right to seek modification that becomes effective after the conclusion of the stipulated spousal maintenance "is unnecessary" because, by operation of law, "[o]nce maintenance payments end, the court is without jurisdiction to modify maintenance." *Id.*

These cases make three principles clear. First, in order to be effective, a waiver of rights to terminate or modify maintenance and divestiture of court authority must be in writing and incorporated into the judgment and decree. Even if the parties intend for spousal maintenance to "continue unconditionally," the statutory right to termination upon remarriage of the obligee survives because the statute authorizing such termination

requires that a waiver of that right be "agreed [upon] in writing or expressly provided in the decree." *Gunderson*, 408 N.W.2d at 853 (quotation omitted).

Second, to be an effective waiver of the right to modify or terminate maintenance, a waiver and divestiture must be clearly effective at the time the waiver is made, not just upon the completion of the maintenance obligation. *See Loo*, 520 N.W.2d at 745; *Keating v. Keating*, 444 N.W.2d 605, 606, 607–08 (Minn. App. 1989) (reaching this conclusion despite language that, "[u]pon fulfilling the obligation of spousal maintenance as set forth hereinabove, each of the parties waives any claim to additional spousal maintenance from the other"), *review denied* (Minn. Oct. 25, 1989).

Third, the stipulation must actually waive a right in order to preclude its assertion. Thus, when a party seeks to extend the term or increase the amount of maintenance but the decree states that the party "waives and is forever barred from receiving any spousal maintenance whatsoever" apart from that already awarded, the obligee's right to modify the amount or duration of the maintenance has been effectively waived. *Karon*, 435 N.W.2d at 502. But when a party who entered a stipulation and decree with *exactly the same waiver language*, as well as additional coextensive divestiture language, sought a statutorily mandated cost of living adjustment, that waiver was held not to preclude the requested cost of living adjustment. *Grachek v. Grachek*, 750 N.W.2d 328, 331–33 (Minn. App. 2008), *review denied* (Minn. Aug. 19, 2008).

The waiver does not need to explicitly use the term 'remarriage,' because when a party waives "any right he may have under Minn. Stat. § 518 and applicable case law to petition this Court for modification," that party has waived the right, then contained in

chapter 518, to terminate because of the obligee's remarriage. *Telma*, 474 N.W.2d at 323. However, "[a]bsent the clear divestiture of jurisdiction, such as in *Karon* or *Berens*, we are not at liberty to assume that parties have specifically bargained to supplant the statutory modification procedures." *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992). "[I]t is not appropriate to infer waiver in the absence of a clear intent to waive a statutorily conferred right." *Keating*, 444 N.W.2d at 607–08 (quotation and alteration omitted).

Other cases have applied these principles. In *Gessner*, this court held that "the statement in the [judgment and decree] that 'neither Party is awarded permanent spousal maintenances, past, present or future,'" merely indicates the parties' agreement that the maintenance will be temporary and not permanent. 487 N.W.2d at 923. An additional "clear divestiture of jurisdiction" would be necessary to preclude the parties from seeking modification of the award. *Id.* In *Kahn v. Tronnier*, this court held that, where "the parties' judgment lacks both an 'express' statement that maintenance would continue after mother's remarriage and a waiver by the obligor of his right to modify maintenance, the district court correctly terminated maintenance." 547 N.W.2d 425, 430–31 (Minn. App. 1996), *review denied* (Minn. July 10, 1996). The *Kahn* court also stated that, where "'[t]he parties have not waived any rights to seek modification'" and "'no clear written expression of the parties' intentions regarding remarriage appears in the record,'" the statutory right to terminate based on the obligee's remarriage applies. *Id.* at 430−31 (quoting *Poehls v. Poehls*, 502 N.W.2d 217, 218–19 (Minn. App. 1993)) (alteration in original).

In *Grachek*, the divorce decree stated that, except for the awarded maintenance, each party "waives and is forever barred from receiving any additional spousal maintenance whatsoever from one another, and the Court is divested from having any jurisdiction whatsoever to award temporary or permanent spousal maintenance to either of the parties" and "waives the right to seek a change in either the amount or the duration of the spousal maintenance" set forth elsewhere in the decree. 750 N.W.2d at 330 (quotation marks omitted). When the obligee later sought a statutorily allowed cost of living adjustment, this court decided that the right to seek modification of the award and the right to a cost of living adjustment were distinct and independent rights, such that the waiver language quoted above, in conjunction with the attachment of a standardized appendix mentioning the possibility of a cost of living adjustment, did not preclude that adjustment by the district court. *Id.* at 331–33.

In this case, the stipulated judgment and decree contains the following factual findings: "[f]ollowing the final payment of temporary spousal maintenance as set forth herein, the parties have waived all rights to additional spousal maintenance including rights pursuant to Minnesota Statutes § 518.552, subd. 5" and "upon entry of the Judgment and Decree, the court shall be divested of jurisdiction to award spousal maintenance herein, pursuant to *Karon*." The first statement is inapplicable in this case because it only waives the parties "rights to additional spousal maintenance" after "the final payment of temporary spousal maintenance." Such a waiver is ineffective to waive a present right to termination or modification. *See Keating*, 444 N.W.2d at 607–08. Moreover, this language is limited to waiving the parties' "rights to additional spousal

maintenance" and divesting the district court "of jurisdiction to award spousal maintenance." Thus, neither statement includes a waiver of the right to terminate maintenance because of appellant's remarriage. Moreover, the citations to Minn. Stat. § 518.552, subd. 5[3] and *Karon* in the stipulated judgment and decree merely indicate the sources of authority for precluding or limiting modification of the maintenance award rather than a reference to the specific statutory rights that were waived.

Similarly, the conclusions of law in the stipulated divorce decree do not support appellant's claim that respondent waived his statutory right to a termination of his spousal maintenance obligation upon the remarriage of appellant pursuant to section 518A.39, subdivision 3. The conclusion of law set forth in provision 14 indicates that the district court "is hereby divested of jurisdiction to award Respondent spousal maintenance from [appellant] for the past, present[,] or future," is not applicable to the current controversy since it merely precludes respondent, the obligor, from seeking maintenance from appellant. *See Berens*, 443 N.W.2d at 563 (declining to address whether the obligor is barred from modifying the maintenance award when it is clear that the obligee has waived the right to seek modification).

Another conclusion of law in the same provision provides that "[f]ollowing the 48th payment of spousal maintenance by Respondent to [appellant] referenced hereinabove, Respondent shall pay no further temporary or permanent spousal maintenance to [appellant]," and that the district court is "hereby divested of jurisdiction to award either party any additional spousal maintenance for the past, present[,] or

[3] This statute simply recognizes these agreements as valid, subject to some conditions.

future." These conclusions merely reaffirm that appellant's maintenance is temporary and precludes her from seeking to increase the duration or amount of the maintenance. This language does not address the termination of respondent's maintenance obligation as a result of appellant's remarriage as provided by statute. These statements also provide a divestiture of jurisdiction, but only to the extent that a party seeks "any additional spousal maintenance for the past, present[,] or future." Since neither party in this case is seeking additional maintenance, these statements are also inapplicable in resolving the current dispute.

The cases reviewed above give several examples of effective agreements to expressly preclude modification or termination of maintenance in the stipulation and decree. These may include specific waivers of the right to modify or terminate maintenance or divestitures of jurisdiction over the entire issue of maintenance as set forth in the maintenance statutes. But, because the parties in this case did not include such express language, they are now limited to the specific language in the divorce decree. This strict interpretation of the language in a judgment and decree is supported by the logic underlying the *Karon* decision, that "stipulations are carefully drawn compromises" and that giving effect to those compromises encourages the parties to avoid needless litigation when they could reach a fair result without the involvement of the courts. 435 N.W.2d at 504. If courts ignored the specific language of a stipulated judgment and decree in order to infer a broader waiver of rights, parties may be less willing to engage in such stipulations in order to avoid the preclusion of rights for which they had not bargained.

Because parties must expressly waive a statutory right in writing in order to preclude it and because the waiver and divestiture language here does not preclude the termination of the maintenance award upon the remarriage of appellant, the district court did not err in terminating respondent's monthly maintenance obligation, thereby triggering the payment of the $25,000 lump-sum payment by respondent to appellant.

Affirmed.