

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0302**

In re the Marriage of:
James Allen Hanson,
Petitioner Below,

vs.

Mary Kathleen Hanson,
Appellant,

Marilyn J. Michales & Associates, P. A., third party petitioner,
Respondent.

**Filed August 27, 2012
Affirmed
Stoneburner, Judge**

Dakota County District Court
File No. 19HA-FA-09-249

Scott Wilson, Shorewood, Minnesota; and

Valerie Arnold, Arnold, Rodman & Pletcher, P.L.L.C., Bloomington, Minnesota (for
appellant)

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

Marilyn J. Michales, Matthew J. Gilbert, Marilyn J. Michales & Associates, P.A.,
Minneapolis, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Ross, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant in this dissolution action assigned certain funds to her attorney. In this appeal, appellant argues that the consensual special magistrate, who held the funds after judgment was entered, lacked authority to distribute the funds to appellant's attorney and that the district court lacked authority to approve the distribution. We affirm.

FACTS

In this acrimonious dissolution action, the parties stipulated to the appointment of a consensual special magistrate (CSM). The stipulated order appointing the CSM, in relevant part, granted the CSM the authority to hear and resolve "attorney fee and lien issues between a party and their attorney." The attorneys agreed that "any fee or lien issue between a party and her/his counsel may be resolved by the [CSM], as stated herein."

Appellant Mary Kathleen Hanson (wife) and her attorney's law firm, respondent Marilyn J. Michales & Associates, P.A., (law firm), subsequently entered into an assignment of rights in exchange for legal services. The assignment conveyed to law firm all of wife's rights in the following:

1. The proceeds from the sale of any and all real property in which [wife has] an interest individually, jointly with [husband];
2. Any and all cash payment/s or other property settlement payment/s owed to me by [husband] in connection with Dakota County District Court File 19HA-FA-09-249; and
3. Specifically excluding any and all interest . . . in a homestead property. . . .

The assignment provided that a copy, together with a “fully executed promissory note” and a current balance of attorney fees owed, “may be presented to any person or entity from whom payments to [wife] are to be made; and that such presentment of documents shall be sufficient for all purposes to effectuate the assignment of the funds from [wife] to [law firm].” Wife received notice that law firm was not representing her with regard to the assignment and that she had the right to consult her own attorney prior to entering into the assignment. Wife signed a waiver of attorney form expressly waiving her right to independent counsel.

Law firm withdrew from wife’s representation after entry of the dissolution judgment and subsequently submitted to the CSM the assignment of rights, notice of attorney representation and consent, and the waiver of attorney form executed by wife. The cover letter asked that any disbursement of dissolution assets held by the CSM to wife be made payable jointly to law firm. A copy of the assignment and accompanying documents were sent to wife and wife’s attorney. Law firm also gave notice of intent to claim an attorney lien and subsequently moved for an attorney lien in the approximate amount of \$104,395.99. The CSM issued two checks made payable to wife and law firm, but wife refused to endorse the checks, and they were returned to the CSM by law firm.

At the hearing on law firm’s attorney-lien motion, the CSM offered wife an opportunity to address the validity of the assignment. Wife declined, taking the position that, because no motion had been filed concerning the assignment, the issue of the assignment was beyond the scope of the hearing. Wife opposed the attorney lien as untimely and challenged the amount of attorney fees requested.

The CSM denied law firm's motion for an attorney's lien as untimely. But the CSM also found that it had "no legal authority to withhold receipt of the funds to which [law firm] is entitled based upon the executed assignment." The CSM disbursed funds to law firm to be held in a trust account for 30 days "solely for the purpose of providing to [wife] the opportunity to present any claim of just cause to [the district court] as to why the funds should not be applied to the attorney's fees owed." The amount of the funds disbursed to law firm represents only a fraction of the amount of attorney fees claimed by law firm. The district court adopted the CSM's findings and order.

Wife then moved the district court, in relevant part, to stay disbursement of the funds to law firm, find that law firm is not entitled to attorney fees under the assignment, prohibit law firm from transferring the checks already issued into its operating account, and order law firm to return funds to wife. After the motion hearing, the district court denied wife's motion as it related to law firm, finding that law firm was "due those funds in accordance with the valid agreement between [law firm] and [wife] and the valid order of the CSM." The district court ordered release of the funds to law firm and granted law firm's motion for attorney fees incurred in connection with wife's motion.

The district court subsequently permitted wife to submit an argument that the attorney fees relating to wife's motion were unreasonable. The district court concluded that the fees were reasonable and ordered wife to pay law firm within 30 days. In *Hanson v. Hanson*, 2012 WL 426597 (Minn. App. Feb. 13, 2012), we affirmed the district court's denial of earlier-filed post-trial motions. Wife now appeals the CSM's order honoring the assignment, the district court's order denying wife's motion to stay

disbursement of funds held in trust by the CSM, and the district court's order granting attorney fees to law firm on her motions related to the assignment.

D E C I S I O N

I. Standard of review

A CSM proceeding is a form of alternative dispute resolution that is a binding adjudicative process. *See* Minn. R. Gen. Prac. 114.02(a)(2) (defining consensual special magistrate as “[a] forum in which the parties present their positions to a neutral in the same manner as a civil lawsuit is presented to a judge. This process is binding and includes the right of appeal”). Although the parties’ stipulation afforded the CSM broad authority to decide all trial and post-trial issues, the district court countersigned and thereby adopted all of the CSM’s decisions, making the CSM’s decisions the decisions of the district court. Under these circumstances, it is appropriate to review the CSM’s decision as a decision of the district court. *See Buller v. Minn. Lawyers Mut.*, 648 N.W.2d 704, 707-11 (Minn. App. 2002) (reviewing CSM’s decision adopted by the district court as a decision of the district court), *review denied* (Minn. Aug. 20, 2002).

Wife challenges both the jurisdiction and the authority of the district court to distribute the assigned funds. The existence of subject-matter jurisdiction presents a question of law, which this court reviews *de novo*. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002). Whether an agreement is enforceable presents a question of law, which this court also reviews *de novo*. *Share Health Plan, Inc. v. Marcotte*, 495 N.W.2d 1, 3 (Minn. App. 1993), *review denied* (Minn. Mar. 30, 1993).

II. Assignment

Wife argues that the district court exceeded its jurisdiction by adjudicating the validity of and honoring the assignment, claiming that the district court's action improperly adjudicated the rights of a third party in this dissolution proceeding. Law firm contends that a valid assignment was properly presented to the CSM as the holder of the trust funds, the entity from whom payment would be made to wife, and as such, the CSM had no legal authority to withhold distribution of wife's portion of the marital property to law firm because, as a valid assignment, law firm "possesses as good a claim to the dissolution award as [w]ife did." In addition, law firm argues that the district court has subject matter jurisdiction over payment of funds it has awarded to the parties in a dissolution action. We agree.

"Divorce jurisdiction is statutory, and the district court has no power not delegated to it by statute." *Kiesow v. Kiesow*, 270 Minn. 374, 379, 133 N.W.2d 652, 657 (1965). "While the dissolution court's jurisdiction is purely statutory, . . . the [district] court possesses wide discretion for those matters within its jurisdiction." *Oldewurtel v. Redding*, 421 N.W.2d 722, 726 (Minn. 1988) (citations omitted).

"An assignment is simply the transfer of rights or property." *S O Designs USA, Inc. v. Rollerblade, Inc.*, 620 N.W.2d 48, 54 (Minn. App. 2000) (quotation omitted), *review denied* (Minn. Feb. 21, 2001). "Under Minnesota law no particular form of words is required for an assignment, but the assignor must manifest an intent to transfer and must not retain any control or any power of revocation." *Minn. Mut. Life Ins. Co. v. Anderson*, 504 N.W.2d 284, 286 (Minn. App. 1993), *review denied* (Minn. Oct. 19,

1993). An assignment “operates to place the assignee in the shoes of the assignor, and provides the assignee with the same legal rights as the assignor had before assignment.”

Ill. Farmers Ins. Co. v. Glass Serv. Co., 683 N.W.2d 792, 803 (Minn. 2004).

“Contractual rights and duties are generally assignable, including the rights to receive payment on debts, obtain non-monetary performance, and recover damages.” *Mountain Peaks Fin. Servs., Inc. v. Roth-Steffen*, 778 N.W.2d 380, 385 (Minn. App. 2010) (citation omitted), *review denied* (Minn. Apr. 28, 2010).

The district court is directed by statute to dispose of marital assets, and the proceeds from the sale of the parties’ jointly owned business are marital assets deposited, pursuant to the dissolution judgment, into a trust account held by the CSM for disbursement. The district court found that “the assignment of rights executed by [wife] with [law firm] is a legal contract in which [wife] waived her rights to her share of the funds held in the CSM trust account in exchange for [law firm’s] agreement to provide legal services,” implicitly determining that the assignment is valid. Wife argues that the district court erred in honoring the assignment because there was no formal determination that the assignment was valid, but wife failed to challenge the validity of the assignment. The district court did not adjudicate law firm’s entitlement to attorney fees and did not improperly award property to a third party, rather the district court disbursed to law firm funds awarded to wife under the terms of an unchallenged assignment that was valid on its face.

Wife also argues that, because there was only a summary proceeding (apparently referring to the summary proceeding involving the attorney-lien motion), she was not

afforded due process because she was not given an opportunity to fully defend against enforcement of the assignment, and had she been given that opportunity she would have claimed malpractice or breach of fiduciary duty as defenses to the assignment. Law firm contends that both the CSM and the district court properly honored the assignment and no hearing was required.

A summary proceeding is “any proceeding by which a controversy is settled . . . in a prompt . . . manner, without the aid of a jury.” *Thomas A. Foster & Assocs., Ltd v. Paulson*, 699 N.W.2d 1, 6 (Minn. App. 2005) (quotation omitted). Procedural-due-process claims are reviewed de novo. *Zellman ex rel. M.Z. v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). “The due process protection provided under the Minnesota Constitution is identical to the due process guaranteed under the Constitution of the United States.” *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988). “These protections include reasonable notice, a timely opportunity for a hearing, the right to be represented by counsel, an opportunity to present evidence and argument, the right to an impartial decisionmaker, and the right to a reasonable decision based solely on the record.” *Humenansky v. Minn. Bd. Med. Examr’s*, 525 N.W.2d 559, 565 (Minn. App. 1994) (citing *Goldberg v. Kelly*, 397 U.S. 254, 267-68, 90 S. Ct. 1011, 1020 (1970)), *review denied* (Minn. Feb. 14, 1995). A district court is not required, in a summary proceeding, to consider defenses of legal malpractice and breach of fiduciary duty. *Foster*, 699 N.W.2d at 7.

Here, wife and her post-dissolution trial counsel had ample notice of the assignment and law firm’s request for disbursement of funds under the assignment made

contemporaneously with law firm's motion for an attorney's lien. At the beginning of the hearing on the attorney-lien motion, the CSM specifically presented an opportunity for wife to address the assignment and wife responded by arguing that the issues regarding the assignment were not within the scope of the hearing. Wife did not initiate any proceedings to challenge the validity of the assignment.

We conclude that the district court did not err by honoring the assignment without a formal hearing and that wife received the process she was due with regard to the assignment.

III. CSM's authority

Wife argues that the CSM exceeded its powers by enforcing the assignment. We disagree. The basis of a CSM's authority is the parties' contractual intent in agreeing to submit the case for such adjudication. *Cf. Indep. Sch. Dist. No. 279 v. Winkelman Bldg. Corp.*, 530 N.W.2d 583, 586 (Minn. App. 1995) (discussing the contractual nature of an arbitrator's power), *review denied* (Minn. July 20, 1995). The authority of a CSM is the same as that possessed by a district court. *Melamed v. Melamed*, 286 N.W.2d 716, 718 (Minn. 1979).

The parties' intent in signing the stipulation here is unambiguous, and we have already concluded that the district court had authority to enforce the assignment in the context of distribution of assets.

IV. Validity of stipulation for CSM

Wife argues that the portion of the CSM stipulation granting the CSM power to decide fee issues between a party and its law firm is invalid because it grants law firm a

pecuniary interest in wife's assets. But, as law firm points out, the stipulation merely addresses the types of disputes that the parties and law firms authorize the CSM to determine and does not grant law firm any interest, pecuniary or otherwise, in assets awarded to wife in the dissolution. We find, therefore, no merit in this argument.

Wife also argues that the CSM stipulation is invalid because she was not given an opportunity to consult with independent counsel before agreeing to the stipulation, citing Minn. R. Prof. Cond. 1.8(h)(1) which states: "A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement." But wife concedes that neither malpractice nor breach of fiduciary duty is involved in this appeal and the record does not support an assertion that the stipulation to use a CSM limited law firm's liability to wife for malpractice. We find no merit in this challenge to the stipulation.

Affirmed.