STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0382

Tamara Lee Grodnick, petitioner,
Respondent,

vs.

Jason Avrum Velick,
Appellant.

Filed October 15, 2012
Reversed and remanded
Cleary, Judge

Hennepin County District Court
File No. 27-FA-07-5924

Jonathan J. Fogel, Fogel Law Offices, P.A., Minneapolis, Minnesota (for respondent)

Evon M. Spangler, Spangler and DeStefano, PLLP, St. Paul, Minnesota (for appellant)

Considered and decided by Chutich, Presiding Judge; Schellhas, Judge; and Cleary, Judge.

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

CLEARY, Judge

Appellant seeks review of a district court order suspending his parenting time and modifying his child-support obligation. Appellant argues that, per stipulations of the parties, the parenting-time issue should have been submitted to a parenting consultant before being considered by the district court. Appellant also challenges the modification

of child support, arguing that there was no statutory basis for modification, that the court erred by applying a caretaker adjustment, and that the court erred by allocating childcare expenses. Lastly, appellant argues that the district court erred by ordering the parties to submit the issue of his contribution to the cost of the parties' eldest child's private-school tuition to the parenting consultant. We reverse and remand.

FACTS

The parties are the parents of three minor children: J.V., S.V., and E.V. The marriage of the parties was dissolved by stipulated Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree (decree) in August 2008. The decree included a stipulation that the parties would utilize a parenting consultant. The decree's findings of fact stated, "The parties have entered into a parenting plan which incorporates . . . the appointment of a parenting consultant . . . . The Court finds that the plan is in the best interests of the minor children and that the parents have implemented appropriate problem solving methods to ensure the plan's future viability." The decree's conclusions of law appointed a parenting consultant for a two-year term or such other term as agreed upon by the parties and the consultant. Pursuant to the decree, the parenting consultant would "be used to assist the parties with all issues that involve the children of the parties, excluding financial issues and modifications of custody, except as otherwise stated below. The parties have agreed to resolve said issues without the intervention of the Court." The parenting consultant would have the ability to mediate and arbitrate disputed issues. If one or both parties disagreed with a decision of the parenting consultant, a disputed issue could then be presented to the court.

Stipulations and orders that followed the decree also addressed the authority of the parenting consultant. Pursuant to a stipulation and order filed in August 2010, the parties agreed to continue to use the services of a parenting consultant. This stipulation and order stated that, in addition to the authority previously granted to the parenting consultant, the consultant would have "the authority to determine the parties' financial contribution based on the current court order(s) regarding . . . religious schooling." A stipulation and order filed in October 2010, appointed a parenting consultant to serve for an additional two-year term unless the parties and the consultant decided to continue the term. This stipulation and order stated that the parenting consultant had the authority to "[d]ecide alterations in the access schedule or revisions to previously decided parenting issues as needed to meet changing circumstances" and reiterated that the consultant had the authority to "determine the parties' financial contributions, based upon the current court Orders, to . . . religious schooling." An order, filed in July 2011, stated, "The parties' financial contributions for the children's religious schooling and camps are no longer reserved . . . . [The parenting consultant] shall have the decision-making power concerning all disputes and shall allocate the parties' financial contributions in accordance with their respective [parental income for determining child support] percentages." The record indicates that respondent Tamara Grodnick previously failed to make timely payment to the parenting consultant and that, until payment was received, the consultant refused to continue to work with the parties. In August 2011, appellant filed a petition seeking to terminate his parental rights to the children. He subsequently dismissed this petition.

In November 2011, respondent filed a motion to modify parenting time and child support. Appellant Jason Velick had moved to California, and respondent requested that appellant's parenting time be suspended. Appellant opposed the motion and argued that the parenting-time issue was to be submitted to the parenting consultant before being considered by the district court. Appellant requested that respondent be ordered to pay her outstanding balance to the parenting consultant. In February 2012, the district court issued an order suspending appellant's parenting time and modifying child support. Additionally, the court stated, "If [J.V.] becomes enrolled in private school, the parties are ordered to submit the issue of [appellant's] contribution to the cost of [J.V.'s] private school tuition to the Parenting Consultant for decision." The court noted that the issue of respondent's failure to pay her outstanding balance to the parenting consultant had been resolved and was moot. This appeal followed.

D E C I S I O N

I.

Appellant argues that the district court erred by suspending his parenting time before the issue had been submitted to the parenting consultant as required by the parties' stipulations. Stipulations in divorce proceedings are favored by courts "as a means of simplifying and expediting litigation" and "are therefore accorded the sanctity of binding contracts." *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). The rules of contract construction apply when construing such stipulations. *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001). If no ambiguity exists, the interpretation of a contract is a question of law subject to de novo review. *Id.*

When interpreting a contract, "the language is to be given its plain and ordinary meaning," and a contract should be interpreted "in such a way as to give meaning to all of its provisions." *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998).

"The term 'parenting consultant' is not used in the Minnesota statues," but "[i]n practice, the term refers to a creature of contract or of an agreement of the parties which is generally incorporated into . . . a district court's custody ruling." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 293 (Minn. App. 2007) (stating that nonstatutory "parenting consultants" are distinct from statutory "parenting-time expediters"); *see also* Minn. Stat. § 518.1751, subd. 4 (2010) ("This section [regarding parenting-time expediters] does not preclude the parties from voluntarily agreeing to submit their parenting time dispute to a neutral third party or from otherwise resolving parenting time disputes on a voluntary basis."); Minn. R. Gen. Pract. 114.02(a)(10) ("Parties may by agreement create an ADR process."). In a stipulation, "parties are free to bind themselves to obligations that a court could not impose." *Gatfield v. Gatfield*, 682 N.W.2d 632, 637 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004).[1] Stipulations "cannot be repudiated or withdrawn from one party without the consent of the other, except by leave of the court for cause shown." *Shirk*, 561 N.W.2d at 521–22 (quotation omitted).

[1] This court recently held that parties cannot by stipulation confer on a court the authority to do something that is prohibited by statute. *Leifur v. Leifur*, 820 N.W.2d 40, 43 (Minn. App. 2012). The use of a parenting consultant is not prohibited by statute, and therefore *Leifur* does not impact the stipulations in this case.

Through the decree, the parties bound themselves to utilize a parenting consultant for "all issues that involve the children," except for financial issues and modifications of custody, for a two-year term or such other term as otherwise agreed upon by the parties and the consultant. If one or both parties disagreed with a decision of the parenting consultant, a disputed issue could then be presented to the court. Through two stipulations that followed the decree, the parties agreed to continue to use the services of a parenting consultant. The last of these stipulations, filed in October 2010, appointed a parenting consultant to serve for an additional two-year term unless the term was extended by agreement of the parties and the consultant. That stipulation also specified that the parenting consultant had the authority to "[d]ecide alterations in the access schedule or revisions to previously decided parenting issues as needed to meet changing circumstances."

There was an agreement to use a parenting consultant in place when respondent moved to modify parenting time in November 2011, and when the district court issued its order suspending appellant's parenting time in February 2012. The parties had agreed to submit a dispute regarding parenting time to the parenting consultant. Any issue regarding a failure to pay the parenting consultant had been resolved when the district court issued its order. The district court therefore erred by making a decision regarding parenting time before the issue had been submitted to the parenting consultant. Consequently, the court's suspension of appellant's parenting time is reversed and the case is remanded.

Because the district court's child-support decision was dependent on the suspension of appellant's parenting time, the court's modification of child support is also reversed. We therefore need not address appellant's arguments regarding the basis for modification, the application of a caretaker adjustment, and the allocation of childcare expenses.

II.

Appellant argues that the district court erred by ordering the parties to submit the issue of his contribution to the cost of J.V.'s private-school tuition to the parenting consultant. As previously stated, the interpretation of a contract is a question of law subject to de novo review. *Blonigen*, 621 N.W.2d at 281. When interpreting a contract, the language should be given its plain and ordinary meaning, and meaning should be given to all of its provisions. *Brookfield Trade*, 584 N.W.2d at 394.

Through the decree, the parties stipulated to use a parenting consultant for all issues that involve the children except regarding financial matters and custody modifications. The decree and parenting plan did not address potential school-tuition costs. Through two stipulations that followed the decree, the parties agreed that the parenting consultant would have the authority to determine the parties' financial contributions for the children's "religious schooling." Therefore, if the children become enrolled in a religious school, the parties have stipulated that a dispute regarding contributions to the cost of tuition for that school will be submitted to the parenting consultant. If the children become enrolled in a nonreligious-private school, a dispute regarding contributions to the cost of tuition for that school is a financial matter that the

decree excluded from the parenting consultant's authority. The district court erred by broadly ordering the parties to submit the issue of appellant's contribution to the cost of J.V.'s private-school tuition to the parenting consultant. Rather, the order should have limited the parenting consultant's authority to determination of appellant's contribution to the cost of tuition for a religious school.

Reversed and remanded.