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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0871**

In re the Marriage of:  
Marvin Alan Hallin, petitioner,  
Respondent,

vs.

Shareen Lizabeth Demaray,  
Appellant.

**Filed December 24, 2012  
Affirmed  
Halbrooks, Judge**

Anoka County District Court  
File No. 02-FA-10-2592

Lee R. Martie, Kelly A. Boyd, Weikel & Boyd Law Firm, PLLC, Ramsey, Minnesota  
(for respondent)

Edward R. Shaw, Anna Yakle, Brainerd, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and  
Collins, Judge.\*

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals  
by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**HALBROOKS**, Judge

In this marital-dissolution appeal, appellant-wife Shareen Lizabeth Demaray argues that the district court (1) abused its discretion by denying her motion for a continuance to retain counsel to assist her in attempting to reopen the stipulation; (2) erred by finding that a proposed dissolution judgment and decree submitted by respondent-husband Marvin Alan Hallin conforms to the stipulation read into the record at a previous hearing; and (3) made legal conclusions in the dissolution decree that are not supported by the decree's findings of fact. Because the district court acted within its discretion and because none of its findings are clearly erroneous, we affirm.

### FACTS

The parties were married in July 1993. In February 2010, the parties separated, and in October 2010, husband filed for divorce. On September 28, 2011, the parties informed the district court that they had reached settlement of virtually all issues, and the parties read the stipulated agreement into the record.

One aspect of the agreement concerned a home that the parties owned in Aitken near Lake Mille Lacs. The agreement stated that the Mille Lacs home would be immediately put on the market for sale and that the parties would select a real-estate agent with the intention of listing the property within two weeks. The agreement stated that the parties could hire a total of three real-estate agents to assist with the sale and that, if they were nonetheless unable to agree on a price, they would ask the district court (which, under the agreement, would retain jurisdiction over this single issue) to hear

motions and make a decision concerning the price. The agreement also stated that wife would live in the home until the sale and that the parties would each be responsible for one-half of the monthly mortgage, tax, and insurance payments. The agreement was explicit that sharing responsibility for the mortgage was intended to motivate the parties to sell the house more quickly.

Following the September 2011 hearing, the parties asked the district court, before issuing a full and complete dissolution judgment and decree reflecting the entirety of the settlement agreement, to issue a partial decree “so that their marriage could be dissolved immediately.” On October 7, 2011, the district court issued a partial decree, incorporating the parties’ agreement as to dissolving their marriage. On November 15, 2011, wife’s counsel withdrew from representation.

In March 2012, husband and his counsel submitted affidavits to the district court. In his affidavit, husband reported that the Mille Lacs home was still not listed for sale and that wife had refused to talk with the real-estate agent who husband hired or to have any discussions about hiring a different real-estate agent. According to husband, wife had informed her own real-estate agent that she had no intention of selling the home. Husband also testified that while he had been making his mortgage payments on the home, wife had not made any payments since the September 28, 2011 hearing. In order to avoid foreclosure proceedings, husband brought the mortgage current in December 2011, but was not reimbursed by wife. As of February 2012, the mortgage was again in arrears, and the lender had notified husband that foreclosure proceedings were again imminent. Husband averred that wife told him that she was intentionally failing to make

the mortgage payments in order to qualify for a loan modification, which she believed required that she be in arrears.

In her affidavit, husband's counsel testified that between the September 28, 2011 hearing and November 15, 2011, when wife's counsel withdrew from representation, she and wife's counsel had tried unsuccessfully to get wife to agree to sell the Mille Lacs home. Husband's counsel stated that after wife's counsel withdrew, she was unable to get wife to cooperate with the sale of the home or to accept a draft of the final stipulated findings of fact, conclusions of law, order for judgment, and judgment and decree memorializing the terms of the stipulated agreement.

On March 5, 2012, husband moved the district court for an order approving the findings, conclusions, order for judgment, and dissolution judgment and decree that he submitted with the motion (accompanied by a transcript of the September 28, 2011 hearing at which the parties read the agreement into the record), granting husband authority to list the Mille Lacs home for sale, and requiring wife to comply with the real-estate agent's recommendations regarding the listing and the sale price. Husband also requested that he be given authority to list and sell the home without wife's participation should wife refuse to cooperate.

At a March 22, 2012 hearing on husband's motion, wife appeared pro se and asked for a continuance to retain counsel in order to attempt to set aside the agreement read into the record at the September 2011 hearing. Wife argued that she was justified in seeking to reopen the agreement because (1) her counsel at the September 2011 hearing had erroneously advised her to sell her share of the Mille Lacs home and failed to inform her

that she could in fact afford to keep the home through loan modification or refinancing; (2) renting out rooms in the home was her only source of income, in light of her disability; and (3) the proposed dissolution judgment and decree submitted by husband with his motion did not accurately reflect the terms of the agreement read into the record at the September 2011 hearing.

The district court denied wife's request for a continuance, approved the proposed order submitted by husband (which it found conformed to the agreement read into the record at the September 28, 2011 hearing), gave husband authority to list the Mille Lacs home, and ordered wife to cooperate with the real-estate agent in the selling of the home. The district court further ordered that the parties be responsible for their own attorney fees. This appeal follows.

## D E C I S I O N

### I.

Wife argues that the district court abused its discretion by denying her request for a continuance to obtain counsel after her previous attorney withdrew from the case. This court reviews the district court's denial of a motion for a continuance for an abuse of discretion. *Dunham v. Roer*, 708 N.W.2d 552, 572 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006). "The test is whether a denial prejudices the outcome of the trial." *Chahla v. City of St. Paul*, 507 N.W.2d 29, 32 (Minn. App. 1993), *review denied* (Minn. Jan. 20, 1994). A showing of good cause is required to grant a continuance in a family court proceeding, Minn. R. Gen. Pract. 302.02, and "[w]ithdrawal of counsel does not

create any right to continuance of any scheduled trial or hearing,” Minn. R. Gen. Pract. 105.

Wife argues that she was prejudiced because, if she had been granted a continuance to retain an attorney, she could have had the September 28, 2011 stipulation reopened on equitable grounds. She maintains that the agreement unfairly and unnecessarily forced her to leave the Mille Lacs home. “Courts favor stipulations in dissolution cases as a means of simplifying and expediting litigation, and to bring resolution to what frequently has become an acrimonious relationship between the parties.” *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). Stipulations are “accorded the sanctity of binding contracts” and cannot be repudiated or withdrawn without the consent of the other party, “except by leave of the court for cause shown.” *Id.* at 521-22 (quotation omitted); *see also Toughill v. Toughill*, 609 N.W.2d 634, 638 (Minn. App. 2000) (stating that even though stipulation had not yet been adopted by the district court or incorporated into a dissolution judgment, a party could not repudiate or withdraw from stipulation absent other party’s consent or district court’s permission). It is nonetheless true that “if a stipulation was improvidently made and in equity and good conscience ought not to stand, it may be vacated.” *Shirk*, 561 N.W.2d at 522.

Wife’s basis for arguing that the stipulation ought not to stand is that it “was very vague,” and that she “didn’t agree” to its terms with respect to the sale of the Mille Lacs home. But as a part of the stipulation, the parties completed a financial worksheet that reflects a substantial level of detail and belies wife’s assertion that the agreement was “very vague.” And as the district court remarked at the March 2012 hearing, “there is

nothing [in the hearing transcript] to indicate [that wife] didn't" agree to the stipulation when it was made. Nor do we find that the terms of the stipulation were in any way disadvantageous or inequitable to wife. Husband did not consent to reopening the stipulation, and we conclude that wife's reasons for requesting that the stipulation be reopened do not constitute "cause shown."

Because the basis for wife's continuance request lacked merit and the denial of her request did not prejudice the outcome of the proceedings, the district court acted within its discretion when it denied the continuance.

## II.

Wife argues that the district court clearly erred by finding in its March 2012 order that the judgment and decree prepared by husband's counsel conformed to the agreement read into the record in September 2011. Wife observes, correctly, that the September 2011 stipulation, as read into the record, contains no provision regarding attorney fees, while the March 2012 order for judgment—purporting to incorporate the stipulation—provides that "[e]ach party shall assume sole responsibility for their respective attorney's fees and costs."

An appellate court will set aside a district court's findings of fact only if they are clearly erroneous. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). And even if the findings are clearly erroneous, reversal is only required when the challenged findings are also prejudicial. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76,

78 (1975) (stating that to prevail on appeal a party must show error and resulting prejudice).

It is true that the district court's March 2012 order does not strictly conform to the stipulation that it incorporated. And therefore the district court's finding regarding conformity may be technically erroneous. But wife has offered no argument that the alleged error has caused her prejudice. *See Midway Ctr. Assocs.*, 306 Minn. at 356, 237 N.W.2d at 78. We therefore conclude that any erroneous finding that the stipulation conformed to the March order is harmless.

### III.

Wife argues that the district court's conclusions of law in the March 2012 order are not supported by its findings of fact. Specifically, wife contends that the district court established two conditions concerning the sale of the parties' house that were not sought by either party. "An abuse of discretion occurs when the district court resolves the matter in a manner that is 'against logic and the facts on the record.'" *O'Donnell v. O'Donnell*, 678 N.W.2d 471, 474 (Minn. App. 2004) (quoting *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984)). The September 2011 stipulation explicitly provided that the district court shall reserve jurisdiction to hear motions concerning the sale of the Mille Lacs home. As such, there was no requirement that the stipulated provisions concerning the sale of the home be strictly adhered to or remain unaltered when the stipulation was incorporated into an order. In light of wife's refusal to cooperate with the terms of the sale of the Mille Lacs home, we conclude that the district court acted within its discretion by giving husband authority to sell the home and by ordering that wife vacate the home at the



request of a real-estate agent if she fails to cooperate with the agent's efforts to sell the home.

**Affirmed.**