STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2446

In re the Marriage of:
Glenna Rae McDaniel n/k/a Glenna Rae Burg, petitioner,
Respondent,

vs.

Dwayne Bobby McDaniel,
Appellant.

Filed February 26, 2008
Reversed and remanded
Toussaint, Chief Judge

Lyon County District Court
File No. F6-00-701

Sara J. Runchey, Katie M. Jendro, Runchey, Louwagie & Wellman, P.L.L.P., 533 West Main Street, Post Office Box 1043, Marshall, MN 56258 (for respondent)

Corrine D. Lynch, Corrine D. Lynch Law Office, 7400 Metro Boulevard, Suite 450, Edina, MN 55439 (for appellant)

Considered and decided by Willis, Presiding Judge; Toussaint, Chief Judge; and Peterson, Judge.

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

TOUSSAINT, Chief Judge

Appellant Dwayne Bobby McDaniel challenges the denial of his motion for modification of his spousal maintenance obligation, arguing that the *Karon* waiver in the

stipulated judgment dissolving his marriage to respondent Glenna Rae McDaniel, n/k/a Glenna Rae Burg, is invalid because the dissolution court did not make the findings required by Minn. Stat. § 518.552, subd. 5 (2000). Because the district court erred in determining that the dissolution court had made the required findings, we reverse and remand.

FACTS

The parties' marriage was dissolved after 25 years on August 21, 2000. The dissolution decree, which was based on a stipulated agreement, awarded respondent spousal maintenance of $600 per week for 20 years and provided that payments would not terminate upon her remarriage. A waiver provision (commonly referred to as a *Karon* waiver) was included, stating:

> c. It is further stipulated and agreed that except for the aforesaid maintenance, 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 maintenance to either of the parties.
>
> > i. It is further understood and agreed that both parties specifically waive any right to return to court to seek a modification of either the amount or the term of the aforesaid maintenance, based upon a change of circumstances . . . or to seek cost-of-living increases . . .
>
> d. It is further agreed that the court shall retain jurisdiction solely to enforce [appellant's] obligation to pay maintenance to [respondent] . . . . [Respondent's] waiver of the right to further or additional maintenance is null and void if [respondent's] economic rights and/or responsibilities are adversely affected by [appellant's] discharge of any obligation in a bankruptcy proceeding or non-payment . . .

Appellant moved for modification of his spousal maintenance obligation in August 2006, claiming that "the terms of the Judgment and Decree were unfair and inequitable" and that he and respondent both had a substantial change in income. Appellant also claimed that, when he signed the marital termination agreement, he was suffering from major depression and was not represented by counsel.

On October 25, 2006, the district court denied appellant's motion for modification, concluding that the dissolution court had met the requirements of 518.552, subd. 5 (2000), by specifically finding that the marital termination agreement's waiver provision was fair and equitable and supported by consideration and that full disclosure of financial circumstances occurred between the parties.

D E C I S I O N

A district court has broad discretion over issues of spousal maintenance, and this court will not reserve a trial court's decision absent an abuse of discretion. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). Subject matter jurisdiction and the interpretation of statutes and contracts raise questions of law, which we review de novo. *Santillan v. Martine*, 560 N.W.2d 749, 750 (Minn. App. 1997).

A contractual waiver of a party's statutory right to modify spousal maintenance may be fully enforceable and may divest the district court of authority to award maintenance in the future. *Karon v. Karon*, 435 N.W.2d 501, 503 (Minn. 1989). The district court is a third party to dissolution actions and has the "duty to protect the interests of both parties and all the citizens of the state to ensure that the stipulation is fair and reasonable to all." *Karon*, 435 N.W.2d at 503. For a waiver of the right to seek

modification of maintenance to take immediate effect, its language must be couched in terms explicitly indicating the intent for such an effect and must follow the statutory requirements set forth in Minn. Stat. § 518.552, subd. 5. *Loo v. Loo*, 520 N.W.2d 740, 745 (Minn. 1994); *Santillan*, 560 N.W.2d at 751.

Minn. Stat. § 518.552, subd. 5 (2000), provided:

> The 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. The stipulation must be made a part of the judgment and decree.

This statute is still in effect. *See* Minn. Stat. § 518.552, subd. 5 (2006). This court cannot infer the existence of these statutorily required findings "in the face of the legislative mandate for specific trial court findings of fact." *Santillan*, 560 N.W.2d at 751 (holding waiver of modification of spousal maintenance invalid where district court did not include specific findings required by Minn. Stat. § 518.552, subd. 5). The plain language of the statute requires the court itself to specifically make the findings, not to merely recite the parties' agreed-upon stipulations. The district court erred in concluding that the dissolution court had made the three required findings.

First, in concluding that the dissolution court had found that the waiver was fair and equitable, the district court relied on a provision that the parties had agreed to in their marital termination agreement, incorporated into the dissolution decree: "This Agreement is fair, just and equitable under the circumstances, and it has been made in aid of an orderly and just determination of the property settlement in this matter satisfactory

to both parties." The dissolution court did not make its own finding that the waiver was fair and equitable; it merely restated the parties' language. This mere repetition of the parties' language did not fulfill the statutory requirement that the dissolution court specifically find that the agreement was fair and equitable.

Second, in concluding that the dissolution court had found that the waiver was supported by consideration, the district court noted that although the "finding could have been made more explicit," the "recitations contained in the Court's Decree for dissolution, read together, more than adequately describe the consideration for the agreement to waive modification of spousal maintenance." The district court concluded that the dissolution court's "express finding that the property settlement supported the agreement" was an adequate finding that consideration existed, even though the dissolution court had not used the word "consideration." The district court also noted, "it would be unfair to elevate form over substance in such a manner as to allow the absence of the word "consideration" to operate to invalidate the parties' agreement as to the waiver of the right to seek modification of spousal maintenance in this case."

Moreover, the dissolution court's finding that the spousal maintenance amount "was negotiated between the parties considering the standard of living established during the marriage, and the fact that [respondent] lacks sufficient property . . . to provide for reasonable needs, especially during . . . a period of training or education, and the disparity of earning capacity" was merely repetition of language in the marital termination agreement. It was not an express finding that the waiver was supported by consideration. Although the mutual promises given by the parties may have constituted consideration,

the dissolution court was required to make its own finding that the waiver was supported by adequate consideration. *See Kielley v. Kielley*, 674 N.W.2d 770, 777-78 ("Where promises are mutual, made concurrently, and incorporated into a bilateral contract, such promises are sufficient consideration for each other.").

Third, in concluding that the dissolution court had found that the parties had made full disclosure of their financial circumstances, the district court relied on more language from the dissolution decree: "Each party warrants to the other that there has been accurate, complete and current disclosure of all income, assets, and liabilities." Again, the dissolution court did not make its own finding; it merely restated the parties' language.

The dissolution court's judgment failed to divest the district court of subject matter jurisdiction over modification of appellant's spousal maintenance obligations because the dissolution court did not make its own independent findings as required by Minn. Stat. § 518.552, subd. 5. We therefore reverse the denial of appellant's motion and remand for consideration of the issues he raises.

Reversed and remanded.