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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1625

In re the Marriage of:
Brian J. Lundquist, petitioner,
Respondent,

vs.

Kathleen L. Lundquist,
Appellant.

Filed July 1, 2008
Affirmed
Wright, Judge

Dakota County District Court
File No. F8-05-9514

Suzanne M. Remington, 3300 Edinborough Way, Suite 400, Edina, MN 55435; and

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Considered and decided by Klaphake, Presiding Judge; Wright, Judge; and Muehlberg, Judge.[*]

[*] 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UNPUBLISHED OPINION

WRIGHT, Judge

Appellant-wife challenges a dissolution judgment, the terms of which were reached through alternative dispute resolution before a consensual special magistrate and subsequently adopted by the district court. Wife argues that the judgment is invalid because (1) the stipulation was not an enforceable agreement, and (2) the district court violated her due-process rights by entering the judgment without a hearing. Respondent-husband argues that wife's appeal, which is from the district court's denial of her motion to vacate the judgment, is improper because the district court lacked subject-matter jurisdiction to hear that motion. We affirm.

FACTS

Appellant Kathleen Lundquist (wife) and respondent Brian Lundquist (husband) married on October 31, 1987. Husband petitioned for dissolution in June 2005. The district court scheduled a trial in January 2007, and husband and wife attended several mediation sessions with a neutral in an attempt to resolve disputed issues.

Before the final mediation session began, the parties and their respective attorneys signed a stipulation appointing the neutral as a consensual special magistrate (CSM).[1] If mediation was unsuccessful, the neutral, acting as a CSM, would "decide all issues in dispute" in lieu of the impending trial.

[1] For reasons that are not explained in the record, this stipulation was not filed with the district court until May 2, 2007.

The mediation involved several hours of intense negotiation, but the parties finally reached a settlement. As a result, the neutral announced that he was putting on his "CSM hat." Acting as the CSM, he listened to the parties' oral settlement agreement and recited the terms of the settlement agreement back to the parties, asking them to confirm that the terms recited were correct. After approving the settlement agreement, the CSM informed the parties that they were now bound by the settlement agreement and directed counsel to draft proposed findings of fact, conclusions of law, order, and judgment.

The record contains only fragments of the events that transpired between mid-February 2007, when counsel submitted the agreed-on language for the CSM's signature,[2] and late April 2007, when wife retained new counsel. In any event, wife began to object to the district court adopting the settlement agreement and entering judgment, asserting that she had "felt pressured to agree to several terms that [she] did not think were fair and equitable." And shortly after the district court adopted the settlement agreement on June 26, 2007, wife moved to vacate the resulting judgment. Husband opposed the motion, arguing that the district court lacked subject-matter jurisdiction to hear it. The district court denied the motion, citing the parties' stipulation appointing the neutral as a CSM. In the appeal that followed, wife challenges the dissolution judgment and the order denying her motion to vacate the judgment.

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[2] Counsel for each party also submitted alternative versions of language apportioning certain property-tax liability that had been mistakenly overlooked during the December 6, 2006 settlement negotiations. Because the parties agreed to be bound by whichever version of the language the CSM chose, the final comprehensive agreement signed by the CSM is referred to hereinafter as the "settlement agreement."

DECISION

General Rule of Practice 114.02 describes various forms of alternative dispute resolution (ADR), each with its own "setup, consequences, and appealability." *Buller v. Minn. Lawyers Mut.*, 648 N.W.2d 704, 710 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).[3] Here, the parties submitted their dispute to a CSM, a means of ADR "in which the parties present their positions to a neutral in the same manner as a civil lawsuit is presented to a judge." Minn. Gen. R. Pract. 114.02(a)(2). Adjudication by a CSM is binding but "includes the right of appeal to the Minnesota Court of Appeals." *Id.*

I.

We first address husband's argument that this appeal is not properly before us because the district court lacked subject-matter jurisdiction to hear wife's motion to vacate the dissolution judgment. The existence of subject-matter jurisdiction presents a question of law, which we review de novo. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002).

The stipulation appointing the neutral to act as a CSM provides that his decision is "binding upon the parties and *appealable only to the Minnesota Court of Appeals*." (Emphasis added.) Husband argues that this language stripped the district court of jurisdiction to hear wife's motion to vacate. Husband's argument is unavailing.

Despite its binding nature, the parties have the affirmative right to appeal a CSM's decision to the Minnesota Court of Appeals. Minn. Gen. R. Pract. 114.02(a)(2). But rule

[3] Family law matters in district court generally are subject to ADR. Minn. Gen. R. Pract. 310.01.

114.02 does not provide a specific mechanism for perfecting that appeal. 3A David F. Herr, *Minnesota Practice* § 114.4 (2007). Neither does the parties' agreement. We have, however, considered similar issues in the context of binding arbitration, which also falls within the rubric of "adjudicative" ADR processes. Minn. Gen. R. Pract. 114.02(a).

An agreement to arbitrate is governed by contract principles. *Murray v. Puls*, 690 N.W.2d 337, 344 (Minn. App. 2004), *review denied* (Minn. Mar. 15, 2005). Because an arbitration award cannot be entered as a judgment unless the district court confirms it, the district court necessarily has jurisdiction to consider whether an enforceable agreement exists. *See, e.g.*, *id.* at 342, 344 (addressing meeting-of-the-minds challenge to arbitration agreement). Thus, an agreement to submit a dispute to binding arbitration does not strip the district court of its subject-matter jurisdiction to determine the validity of the arbitration award. *Koes v. Advanced Design, Inc.*, 636 N.W.2d 352, 362 (Minn. App. 2001), *review denied* (Minn. Feb. 19, 2002). We see no basis for distinguishing binding adjudication before a CSM, particularly when this type of ADR lacks the procedural certainty of arbitration. *Cf.* Minn. Stat. §§ 572.08-.30 (Uniform Arbitration Act).
Accordingly, we reject husband's argument that the district court lacked subject-matter jurisdiction to consider wife's motion to vacate.

II.

Wife challenges the district court's entry of judgment on the settlement agreement and subsequent denial of her motion to vacate, arguing that the district court erred by entering judgment on the stipulated agreement because it was not an enforceable

agreement.[4] Whether an agreement is enforceable presents a question of law, which we review de novo. *Share Health Plan, Inc. v. Marcotte*, 495 N.W.2d 1, 3 (Minn. App. 1993), *review denied* (Minn. Mar. 30, 1993).

A.

Wife challenges the neutral's authority to act as a CSM before the district court signed the appointment stipulation. Wife relies on Minn. Stat. § 484.74 (2006) for the proposition that a CSM is "a judicial officer by appointment and order of the district court." Section 484.74, subdivision 2a, provides:

> Consensual special magistrates. . . . [I]n cases where the amount in controversy exceeds $50,000, and with the consent of all of the parties, the presiding judge may submit to the parties a list of retired judges or qualified attorneys who are available to serve as special magistrates for binding proceedings under this subdivision. If the parties agree on selection of a person from the list, *the presiding judge may appoint, by order, the person as a special magistrate.* The special magistrate may preside over any pretrial and trial matters as determined by the presiding judge. If there is a right to a jury trial, the special magistrate shall conduct the jury trial pursuant to the rules of court and shall use the jury pool of the county in which the action is venued. The presiding judge may adopt the rulings and findings of the special magistrate and the results of any jury trial without modification. The parties have a right to appeal from the presiding judge's rulings and findings and from the jury verdict as in other civil matters.

(Emphasis added.) But wife ignores subdivision 4, which expressly limits the statute's application to the second and fourth judicial districts. The dissolution proceeding at issue

[4] Although an order denying a motion to vacate ordinarily is not an appealable order, Minn. R. Civ. App. P. 103.04 permits review of a district court's denial of a motion to vacate a judgment in an appeal properly taken from the underlying judgment. *Rettke v. Rettke*, 696 N.W.2d 846, 850 (Minn. App. 2005).

here was venued in Dakota County, which is in the First Judicial District. *See* Minn. Stat. § 2.722, subd. 1 (2006) (assigning Dakota County to First Judicial District). Thus, wife's reliance on section 484.74 to limit the authority of the CSM is misplaced.[5]

Rather, the actual basis of a CSM's authority as a decision-maker in a binding ADR process is the parties' agreement to submit the case for such adjudication. *See* Minn. Stat. § 484.76, subd. 2 (2006) (requiring nonbinding ADR unless parties agree otherwise); *cf. Park Constr. Co. v. Indep. Sch. Dist. No. 32*, 216 Minn. 27, 33, 11 N.W.2d 649, 652 (1943) (describing arbitrator as private tribunal "deriv[ing] his powers from the parties and not from the law of the land" (citations omitted)). Here, it is undisputed that an ADR with a CSM is a binding adjudicative process, Minn. R. Gen. Pract. 114.02(a)(2), and the first sentence of the parties' appointment stipulation states that the neutral "is hereby appointed as the CSM in this matter." Further, the appointment stipulation confers on the CSM powers—such as hearing and deciding motions—that are consistent with case adjudication in which "the parties present their positions to a neutral in the same manner as a civil lawsuit is presented to a judge." *Id.* (defining CSM). In sum, the parties' contractual intent is clear and is consistent with the relevant rules. By signing the appointment stipulation, wife authorized the neutral to act as a CSM. The

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[5] As section 484.74 "provides guidance as to the role and procedure when using a consensual special magistrate," our analysis here should not be construed as discouraging voluntary compliance with this procedural framework. *Buller*, 648 N.W.2d at 708 & n.2. But we have recognized that section 484.74 is "not intended as a statewide directive in utilizing consensual special magistrates." *Id.*

district court's order formally appointing the neutral as a CSM merely memorialized the terms of the parties' appointment stipulation.

B.

Wife next argues that the Minnesota Civil Mediation Act, Minn. Stat. §§ 572.31-572.40 (2006), requires a signed writing to make a mediated settlement agreement enforceable. She relies on Minn. Stat. § 572.35, subd. 1, which provides:

> A mediated settlement agreement is not binding unless:
>
> (1) it contains a provision stating that it is binding and a provision stating substantially that the parties were advised in writing that (a) the mediator has no duty to protect their interests or provide them with information about their legal rights; (b) signing a mediated settlement agreement may adversely affect their legal rights; and (c) they should consult an attorney before signing a mediated settlement agreement if they are uncertain of their rights; or
>
> (2) the parties were otherwise advised of the conditions in clause (1).

This section, however, is inapposite because the Minnesota Civil Mediation Act does not apply to dissolution proceedings. Minn. Stat. § 572.40. Moreover, mediation is an ADR process that is distinct from use of a CSM. *Compare* Minn. R. Gen. Pract. 114.02(a)(2) (addressing ADR involving CSM) *with* Minn. R. Gen. Pract. 114.02(a)(7) (addressing ADR involving mediation). Thus, when the neutral put on his "CSM hat," he stopped being a mediator.

C.

Wife also argues that, under Minn. Gen. R. Pract. 307(b), after receiving her timely objection, the district court was required to scrutinize the settlement agreement.

As a binding contract, a dissolution settlement agreement requires a meeting of the minds on the essential terms of the agreement. *See Clark v. Clark*, 642 N.W.2d 459, 463, 465 (Minn. App. 2002) (discussing stipulated decree). Rule 307(b) contemplates a specific procedure to ensure that the judgment entered accurately reflects the parties' oral settlement agreement. *Id.* at 464. But wife does not argue that the judgment is at variance with any terms to which she had orally agreed before the CSM. Indeed, wife admits that she and husband reached a meeting of the minds, stating in her affidavit: "On December 6, 2006, [husband] and I basically resolved our disputed issues." And although wife now contends that she "felt pressured to agree to several terms that [she] did not think were fair and equitable," she acknowledges that she, in fact, agreed. She explains that she later "did not want to follow through with [her] verbal agreement" because she "was not comfortable with" its terms. But this is not a basis to invalidate the settlement agreement. *See Crince v. Kulzer*, 498 N.W.2d 55, 57 (Minn. App. 1993) ("Whether a contract is formed is judged objectively by the conduct of the parties, not by their subjective intent. The question is not what the party really meant, but what words and actions justified the other party to assume what was meant." (Citation omitted.)).

D.

Wife contends that the statute of frauds, Minn. Stat. §§ 513.01-513.07 (2006), invalidates the oral settlement agreement because the oral settlement agreement conveyed

interests in the parties' real estate.[6] But "[i]t is important to distinguish the statute of frauds' writing requirement from the issue of whether a contract exists." *Simplex Supplies, Inc. v. Abhe & Svoboda, Inc.*, 586 N.W.2d 797, 800 (Minn. App. 1998). The signed writing required is merely evidence of a contract, not the contract itself. *Id.* The statute of frauds is intended to ensure "that fraud or perjury will not be rewarded by denying enforcement of alleged contracts that never, in fact, existed." *David Co. v. Jim W. Miller Constr., Inc.*, 444 N.W.2d 836, 842 (Minn. 1989).

Under the circumstances presented here, the statute of frauds does not apply to the oral settlement agreement acknowledged before the CSM. Not only do we strongly favor the settlement of cases through ADR processes, but these processes also vitiate the concerns underlying the statute of frauds. *Id.* at 842-43. The likelihood of fraud is minimal when it is a neutral CSM who apprises the district court of a settlement agreement's existence and its terms rather than a party who stands to benefit from the settlement agreement's enforcement. *See id.* (construing statute of frauds with respect to arbitration award transferring interest in land).

Here, the parties and their attorneys, consistent with the relevant rules, signed a written stipulation granting the neutral broad authority to act as a CSM. The neutral was

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[6] Section 513.04 provides:

> No estate or interest in lands . . . shall hereafter be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the parties creating, granting, assigning, surrendering, or declaring the same, or by their lawful agent thereunto authorized by writing.

involved in the settlement negotiation by virtue of his role as mediator, and, after donning his "CSM hat," he directed counsel to articulate and confirm the terms of the parties' settlement agreement. Counsel for both parties were actively involved in drafting the language of the settlement agreement. And the record is devoid of any suggestion that husband or the neutral engaged in fraud of any kind. Under such circumstances, the statute of frauds does not apply to the oral settlement agreement dividing the parties' real estate. *Cf. Beach v. Anderson*, 417 N.W.2d 709, 713-14 (Minn. App. 1988) (holding that settlement stipulation entered on record before court reporter satisfied writing requirement of statute of frauds), *review denied* (Minn. Mar. 23, 1988).

III.

Finally, wife argues that her due-process rights were violated because the district court entered the settlement agreement as a judgment without affording her a hearing. She objects to the fact that she was "[a]t no time . . . allowed to present evidence, cross-examine witnesses or testify herself during this case." Wife's argument, however, ignores the legal effect of a settlement which, "by its very nature, is designed to obviate the necessity of presenting evidence." *See Anderson v. Anderson*, 303 Minn. 26, 31, 225 N.W.2d 837, 840 (1975) (discussing factual stipulations underlying settlements). And such a stipulation for settlement is "looked upon with favor, especially in divorce cases." *Id.*

Wife had the right to "present evidence, cross-examine witnesses or testify herself." But wife, who was represented by counsel throughout these proceedings, chose to relinquish that right when she agreed that the CSM, not the district court, would decide

her case. In sum, she and husband determined by agreement what process was due with respect to their dispute. She is not entitled now to relief from the consequence of her choice.

Affirmed.