DA 18-0027

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 239N

IN RE THE MARRIAGE OF:

KAREN E. JOHNSON,

Petitioner and Appellant,

and

JEFFREY A. JOHNSON,

Respondent and Appellee.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. BDR-09-646
Honorable Elizabeth Best, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Steven T. Potts, Steven T. Potts, PLLC, Great Falls, Montana

For Appellee:

Barbara E. Bell, Marra, Evenson & Levine, PC, Great Falls, Montana

Submitted on Briefs: August 15, 2018

Decided: September 25, 2018

Filed:

Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Karen Johnson appeals from the Order Affirming Standing Master issued October 12, 2017, by the Eighth Judicial District, Cascade County, affirming the Standing Master's "Order on Petitioner's Motion to Amend Findings of Fact Conclusions of Law, and Order, and Stipulated Settlement Agreement" issued August 14, 2017. We reverse and remand for further action consistent with this opinion.

¶3 Karen and Jeffrey married in 1993. Karen filed for dissolution and on January 17, 2012, the District Standing Master issued his Findings of Fact, Conclusions of Law and Order. Finding 32 provided for the parties to submit within 20 days "total valuations of the marital property and present to the Court a proposal to equalize the marital property." The parties did so by submitting their Stipulated Settlement Agreement (Agreement) on February 7, 2012. The Agreement provided for an equal division of the parties' marital estate with each party receiving a net value of $173,378. Pursuant to the Agreement, Karen received the 2006 Subaru Tribeca as her sole and separate property. The parties valued the Tribeca at $18,000. The Agreement also provided for Jeffrey to be solely responsible for payment of the loan associated with the Tribeca at Montana Federal Credit Union. The

parties noted the loan liability at that time to be $17,033. Karen's $173,378 net distribution included the $18,000 value of the car and Jeffrey's $173,378 net distribution included him making full payment of the Montana Federal Credit Union loan of $17,033. Despite the obvious intention of the parties for their Agreement to meet their obligations pursuant to Finding 32 and the intention of the lower court to order an equalization based on the parties' subsequent submittals, it does not appear further order was issued. Nevertheless, the Agreement is indisputably a binding contract between the parties which comports with the intention of the standing master to equalize the marital estate between the parties.

¶4 On December 23, 2012, Karen's Tribeca was destroyed by fire. Although Karen insured the vehicle, the insurance proceeds were not paid to her directly but rather $10,500 of the insurance proceeds were paid to Montana Federal Credit Union to satisfy the loan obligation associated with the vehicle (which Jeffrey alone was required to pay pursuant to the parties' Agreement). Jeffrey did not reimburse Karen the $10,500 or continue to make monthly loan payments to her to pay the obligation he alone was required to pay pursuant to the parties' Agreement. The remaining $3,800 in insurance proceeds was paid jointly to Karen and Jeffrey. Jeffrey signed this amount over to Karen. Prior to the insurance company issuing these proceeds, Karen somewhat unartfully sought to enforce the parties' settlement agreement by filing a "Motion to Amend Findings of Fact, Conclusions of Law, and Order, and Stipulated Settlement Agreement" in which she sought to have Jeffrey pay the loan with Montana Federal Credit Union (which he alone was required to pay under the parties' Agreement) so that the insurance proceeds would be paid to her and available

to her to purchase a replacement vehicle. Four and a half years later, a different standing master considered Karen's motion. Given the unartful way in which Karen sought to enforce the parties' Agreement, the Standing Master erroneously considered Karen's motion as a request to reopen the property division.

¶5 A settlement agreement is a contract. *Gamble v. Sears*, 2007 MT 131, ¶ 24, 337 Mont. 354, 160 P.3d 537. Interpretation of a settlement agreement is an issue of law reviewed for correctness. *Kruer v. Three Creeks Ranch of Wyoming, L.L.C.*, 2008 MT 315, ¶ 16, 346 Mont. 66, 194 P.3d 634.

¶6 The parties' Agreement set over the Tribeca to Karen as her sole and separate property. She had the right to do whatever she desired with the vehicle including sell it, give it away, or lend it to another. Karen insured the vehicle and paid the insurance premiums. The fact that Karen insured the vehicle did not eliminate Jeffrey's obligation to pay the loan. Had Karen disposed of the vehicle in a manner that did not provide insurance proceeds, such as gifting it to another, Jeffrey would still be obligated to pay the loan. The parties' Agreement requires Jeffrey alone to pay the loan with Montana Federal Credit Union. Jeffrey is not entitled to Karen's insurance proceeds to pay the loan. Karen alone is entitled to receive any insurance proceeds paid to compensate for her loss of the vehicle. Although the insurance company issued Karen's insurance proceeds directly to the credit union, this did not negate Jeffrey's obligation to pay the full amount of the debt assigned to him by the parties' Agreement. Jeffrey cannot satisfy his obligation to pay the debt assigned to him by the parties' Agreement by using Karen's insurance proceeds.

¶7 The Settlement Master and the District Court erroneously considered Karen's motion to involve a request to reopen and modify the parties' property division rather than a request to enforce the parties' Agreement and thus they applied an incorrect standard in considering the issue. The parties' Agreement is valid, binding, and should be enforced. To effectuate and enforce the parties' Agreement, this matter is reversed and remanded to the District Court to require Jeffrey to reimburse Karen for the $10,500 she paid on the Montana Federal Credit Union debt obligation which was his sole and separate debt obligation.

¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶9 Reversed and remanded for further action consistent with this opinion.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ BETH BAKER

Justice Dirk Sandefur, dissenting.

¶10 I dissent from the Court's analysis and holding. I would instead affirm the judgment of the Montana Eighth Judicial District Court affirming the judgment of its Standing Master

denying Petitioner/Appellant Karen Johnson's motion to amend the prior distribution of the parties' marital estate as effected by the dissolution decree filed by the Standing Master on January 17, 2012, and the parties' subsequent marital settlement agreement, filed February 8, 2012.

¶11 Following bench trial, the District Court Standing Master issued findings of fact, conclusions of law, and a decree (Decree) dissolving the parties' marriage and, *inter alia*, apportioning the marital estate pursuant to § 40-4-202, MCA.[1] In a rather unorthodox manner, the Decree apportioned the marital estate in accordance with its enumerated findings of fact and conclusions of law, but subject to a contemplated final valuation and apportionment scheme that the Standing Master would determine by subsequent order upon consideration of proposed valuations and "proposal[s] to equalize the marital property" to be subsequently submitted by the parties.[2] Finding the value of the parties' 2006 Subaru Tribeca car "nearly equal to its $17,000.00 [loan] debt," the Decree apportioned it to Karen but ordered Jeffrey to "pay [the] debt *provided* [Karen] *provides him continuing proof of insurance*." (Emphasis added.) At all times pertinent, the Subaru was encumbered by a

1 The Standing Master acquired jurisdiction over the case by referral from the District Court pursuant to §§ 3-5-124 through -126, MCA, and a conforming local charter order.

2 In pertinent part, the Decree stated, "[b]ecause . . . the number of valuations reached by the Court are different than" those proposed by the parties, "both parties shall submit total valuations of the marital property" and "proposal[s] to equalize the marital property" but not necessarily "on a 50/50 basis." The Decree further provided that, "[u]pon submission of the aforementioned final marital valuation, the Court will make an equitable division, though perhaps not equal division of the marital estate." The Decree accordingly declared "[t]hat the property and debt division that will be finalized by the Court is not unconscionable and the parties are ordered to perform all terms and conditions of [the subsequently ordered] division."

third-party security interest securing repayment of a purchase money loan. In a post-Decree *Stipulated Settlement Agreement* (Agreement), the parties agreed to entry of a "final order" that would apportion the marital estate as set forth in the stipulated itemized valuation and apportionment schedule attached to the Agreement. The Agreement expressly provided that "the terms" of the prior Decree "be incorporated into" the contemplated final order. The Agreement further provided that "[e]ach party waives any other claims . . . against the marital estate that are not included in" the Decree or the Agreement.

¶12 The stipulated Agreement schedule valued the six-year-old Subaru at $18,000 and, in accordance with the prior Decree, apportioned it to Karen but apportioned the parties' outstanding loan debt ($17,033) to Jeffrey. Except for a more accurate statement of the value of the vehicle and the outstanding loan debt, nothing in the language of the Agreement or attached schedule purported to alter the provision of the Decree pertinent to the vehicle. For reasons not of record, the Standing Master did not ultimately issue the contemplated final order regarding the valuation and apportionment of the marital estate. Neither party subsequently objected to the Decree pursuant to § 3-5-126(2), MCA (10-day deadline for filing of objections to the Standing Master findings, conclusions, and order).

¶13 Ten months later, on December 23, 2012, a fire destroyed the Subaru while in Karen's possession. Karen subsequently made a claim on the automobile casualty insurance policy previously required under the parties' third-party loan and security

agreement. The insurer adjusted the claim in the total amount of $14,371.85,[3] ultimately issuing a $10,489.47 check to the third-party lienholder in satisfaction of the outstanding loan debt and a separate $3,882.38 check jointly to Karen and Jeffrey as the registered owners of the vehicle.[4] Jeffrey subsequently signed his interest over to Karen by endorsement.

¶14 Before the insurer issued separate checks to the lienholder and registered owners, Karen filed a petition pursuant to § 40-4-208(2)(b)(i) and (3)(b), MCA, seeking amendment of the Decree and the parties' subsequent Agreement to require Jeffrey to pay Karen the sum of nearly $10,500, representing the remaining loan debt that he would have had to pay to the third-party creditor under the Decree and subsequent Agreement had the insurance proceeds not satisfied and extinguished the loan. A new Standing Master denied Karen's modification petition on the stated grounds that the risk of casualty loss of the vehicle was foreseen by the parties and provided for by the Decree by apportionment of the vehicle and debt between the parties and conditioning Jeffrey's loan payment obligation on Karen maintaining casualty insurance on the vehicle. Karen subsequently filed an objection to the Standing Master's ruling, thereby appealing to the District Court pursuant to § 3-5-126(2), MCA. As before, Karen asserted that the post-Decree loss of the vehicle

3 The settlement also included provision of a rental car to Karen for three weeks.

4 The insurer initially issued a settlement check in the total amount jointly to the loan lienholder, Karen, and Jeffrey. After Karen refused to endorse the first check to allow satisfaction of the creditor's lien, the insurer issued separate checks to the lienholder and jointly to the registered owners.

constituted a significant change in circumstances warranting modification of the original apportionment of the marital estate pursuant to § 40-4-208(2)(b)(i) and (3)(b), MCA. Following hearing, the District Court affirmed the Standing Master's ruling on the stated ground that no uncontemplated change of circumstances occurred because "Karen was compensated for her lost equity," thereby "ma[king] her whole."

¶15 On appeal, Karen cites *In re Marriage of Smith*, 260 Mont. 533, 535-36, 861 P.2d 189, 190-91 (1993), in support of her proposition that the post-Decree loss of the Subaru was a significant uncontemplated change in circumstances warranting re-opening and amendment of the prior marital property apportionment to require Jeffrey to pay her the full amount he would otherwise have had to pay to the third-party lienholder but for the intervening extinguishment of the third-party debt by application of the proceeds of the insurance required by the parties' preexisting third-party loan and security agreement. Karen again asserts that the proposed amendment is necessary to preserve the equalization of the marital estate distributions effected by the Decree and subsequent Agreement, thereby avoiding an inequitable windfall to Jeffrey and corresponding loss to her.

¶16 In *Smith*, we affirmed the re-opening of the original marital dissolution decree for a post-decree award of maintenance based on the former wife's unanticipated post-decree inability to support herself. *Smith*, 260 Mont. at 535-36, 861 P.2d at 190-91. The wife made a showing that she became unable to support herself due to post-decree changes in her financial condition, including her former husband's failure to pay on a promissory note executed in her favor as a component of the parties' marital settlement agreement, as

incorporated in their dissolution decree. *Smith*, 260 Mont. at 535-36, 861 P.2d at 190-91. Though we somewhat ambiguously referenced § 40-4-208(2)(a), MCA, as the threshold predicate for re-opening "the property distribution portion of the dissolution decree," we more narrowly affirmed on the basis of § 40-4-208(1), (2)(a), and (2)(b)(i), MCA (authorizing amendment of final decree to provide or revise "maintenance or support" based upon showing of post-decree "changed circumstances so substantial and continuing as to make the terms [of the decree] unconscionable"). *See Smith*, 260 Mont. at 535-36, 861 P.2d at 190-91. Within that framework, we concurred that the former wife had shown "good cause" under the circumstances "for modification" of the decree for a post-decree award of maintenance. *Smith*, 260 Mont. at 535-36, 861 P.2d at 190-91. By their express terms, § 40-4-208(1), (2)(a), and (2)(b)(i), MCA, authorize reopening of a dissolution decree only for the purposes of considering a post-decree award or revision of "maintenance or support," neither of which are at issue here. Thus, *Smith* is distinguishable and of no consequence here.

¶17 Though not artfully, the Decree expressly conditioned Jeffrey's obligation to pay the parties' preexisting third-party loan debt on Karen maintaining the preexisting automobile casualty insurance required by the parties' preexisting loan and security agreement with the third-party lender. The parties' post-Decree Agreement broadly incorporated provisions of the Decree pertaining to the Subaru without change except for more accurate valuations of the vehicle and outstanding loan debt. It is beyond material dispute that, as between the lien creditor and the registered owners (Karen and Jeffrey), the

parties' preexisting third-party loan and security agreement entitled the lienholder to the proceeds, in satisfaction of the secured debt, of the previously required casualty coverage in the event of loss of the vehicle. Absent a contrary provision in the Decree or the parties' subsequent Agreement, the net effect of the parties' preexisting third-party loan and security agreement and the subsequent apportionment of the vehicle and encumbrance between them pursuant to § 40-4-202, MCA, was that the Decree and supplemental Agreement did not entitle Karen to anything more than ownership of the vehicle and any remaining equity after satisfaction of the outstanding loan debt. Contrary to Karen's assertion, Jeffrey thus could not receive an *uncontemplated* windfall. Absent a contrary provision in the Decree or the parties' subsequent Agreement, operation of the parties' preexisting third-party loan and security agreement and the casualty insurance required thereunder effectively limited his apportioned payment obligation to satisfaction of the outstanding loan debt to the third-party lienholder, except to the extent that a post-Decree casualty loss and the lienholder's right to all or a portion of the resulting casualty insurance proceeds may preemptively extinguish the debt. If the Standing Master or parties sought to avoid this result, the Decree or subsequent Agreement could have so provided, but did not.

¶18 Inherent in the ownership of automobiles, the risk of a casualty loss was ever-present in the contemplation of the parties and the Standing Master, as evident in the casualty insurance requirement of the parties' preexisting third-party loan and security agreement and the subsequent provision of the Decree apportioning the Subaru asset and

liability between the parties and conditioning Jeffrey's payment obligation on Karen maintaining the preexisting insurance coverage on the vehicle. Nothing in the language of the Decree or the parties' Agreement evinces any intent to require Jeffrey to pay Karen the amount that he would have otherwise had to pay to the third-party lienholder in satisfaction of the parties' loan debt but for the intervening insurance extinguishment of the debt.

¶19 The sole basis of Karen's claim for relief under § 40-4-208, MCA, from the Decree and the parties' Agreement was that her post-Decree casualty loss and other financial circumstances rendered the originally equitable and conscionable marital estate apportionment inequitable or unconscionable after the fact. However, § 40-4-208(3), MCA, precludes re-opening and amendment of final marital estate distributions under §§ 40-4-201 and -202, MCA, except "upon written consent of the parties" or "conditions that justify the reopening of a judgment under the laws of this state." Here, Jeffrey did not consent to Karen's proposed amendment. Karen did not appeal the Decree provisions requiring her to maintain insurance on the vehicle and expressly conditioning Jeffrey's loan payment obligation on her continued maintenance of motor vehicle insurance. Nor did Karen appeal the lack of a Decree provision entitling her to additional payment from Jeffrey under the scenario now at issue.

¶20 Karen has neither shown, nor even asserted, that the Agreement, which incorporated the provisions of the prior Decree regarding the apportionment of the 2006 Subaru and debt between the parties, was unconscionable when executed for purposes of § 40-4-202, MCA. Moreover, unlike § 40-4-208(1), (2)(a), and (2)(b)(i), MCA (authorizing amendment of a

decree to provide or revise "maintenance or support" based on a showing of post-decree "changed circumstances so substantial and continuing as to make the terms [of the decree] unconscionable"), § 40-4-208(3), MCA, does not include a similar changed circumstances/unconscionability authorization or exception for amendment of a final marital estate distribution, whether effected by judgment or marital settlement agreement, that was not inequitable or unconscionable at the time of apportionment. Karen has further not shown or asserted applicable grounds for relief from a final judgment under M. R. Civ. P. 59 or 60(b). A post-decree change in circumstances affecting the value of, or otherwise altering, a final marital estate distribution that was originally equitable and not unconscionable under § 40-4-202, MCA, is not a cognizable ground for modification of a final marital estate distribution under § 40-4-208(3), MCA. *See In re Marriage of Hamilton*, 254 Mont. 31, 34-37, 835 P.2d 702, 703-06 (1992) (post-decree inheritance of former husband, gratuitous forgiveness of third-party marital debt apportioned to former husband, and subsequent deterioration of wife's financial condition insufficient to warrant post-decree amendment of marital estate distribution absent showing of unconscionability of marital settlement agreement or grounds of relief from final judgment under M. R. Civ. P. 60(b)); *Heintzelman v. Heintzelman*, 193 Mont. 183, 185-86, 631 P.2d 290, 291-92 (1981) (former husband's post-decree recovery of FELA award on pre-decree injury claim known to both parties did not constitute grounds for modification under § 40-4-208(3), MCA). *See also Rausch v. Hogan*, 2001 MT 123, ¶ 18, 305 Mont. 382, 28 P.3d 460 (wife

collaterally estopped from relitigating equity of stipulated and decreed 50/50 joint ownership of home in context of post-decree real property partition action).

¶21 Faced with this problem, the Court makes no attempt to reconcile *Smith* and *Hamilton*. The Court similarly makes no attempt to harmonize or reconcile § 40-4-208(1), (2)(a), and (2)(b)(i), MCA (broad standard for amendment of dissolution decrees to award or modify post-decree maintenance or support), with § 40-4-208(3), MCA (narrow standard for amendment of final apportionments of marital estates). Unfairly criticizing the Standing Master and District Court for fielding the legal theory and authorities hit to them by the parties, the Court goes astray from the outset by re-shaping Karen's claim for relief as a contract enforcement claim rather than, as specifically pled and repeatedly argued by Karen, a § 40-4-208, MCA claim for amendment of the partially adjudicated, partially contract-stipulated, and inseparably intertwined marital estate distribution based on an asserted unforeseen post-Decree change in circumstances. More importantly, aside from glossing over and ignoring the issue actually raised and litigated below and thereby throwing the Standing Master and District Court under the bus for addressing the claim and arguments actually asserted, the Court's interpretation of the Agreement is independently erroneous. The Agreement broadly incorporated the non-conflicting provisions of the prior Decree. Nothing in the language of the Agreement contravened the Decree's express recognition of the preexisting and continuing third-party contract requirement for continued casualty insurance to secure the third-party loan debt. Nor did anything in the Agreement contravene the Decree's manifestly implicit recognition that

operation of the parties' third-party loan and security agreement and the casualty insurance required thereunder would either extinguish or substantially reduce the subject debt in the event of post-Decree loss of the vehicle. Nothing in the plain language of the agreement can be fairly construed to expressly or implicitly require Jeffrey to make any payment related to the Subaru or its financing debt to Karen after the third-party debt no longer existed. Therefore, I would affirm, holding that the Standing Master correctly denied Karen's petition, regardless of how construed on appeal.

¶22 I dissent.

/S/ DIRK M. SANDEFUR

Justice James Jeremiah Shea and Justice Jim Rice join in the dissenting Opinion of Justice Dirk Sandefur.

/S/ JAMES JEREMIAH SHEA
/S/ JIM RICE