

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

April 7, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 98-0840**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**IN RE THE MARRIAGE OF:  
CHRISTINE CONNORS (F/K/A REIMER),**

**PETITIONER-APPELLANT,**

**V.**

**ROBERT REIMER,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Washington County:  
RICHARD T. BECKER, Judge. *Affirmed.*

Before Snyder, P.J., Nettesheim and Anderson, JJ.

PER CURIAM. Christine Connors appeals from an order denying her relief from a stipulation incorporated in the judgment of divorce holding maintenance open for only five years. We affirm the circuit court's determination that Christine is estopped from seeking relief from the stipulation. We affirm the order.

Christine was divorced from Robert Reimer on July 28, 1994. The judgment incorporated the parties' stipulation that maintenance would be held open as to both parties for a nonmodifiable five-year period. The judgment provides:

Maintenance to both parties is held open for a limited non-modifiable term of five (5) years from the date of the Judgment of Divorce herein.

In making this agreement as to holding maintenance open for a limited non-modifiable term the parties state that they freely and knowingly agreed to fix and limit the term that maintenance would be held open and the parties agree that any and all obligations to pay maintenance shall terminate five (5) years from the date the Judgment of Divorce is rendered.

In arriving at the forgoing provisions as to non-modifiable maintenance as to term the parties have relied upon and the trial court shall be bound to the rationale of the Supreme Court of the State of Wisconsin made in the Court's findings and holdings in Nichols vs. Nichols, 162 Wis. 2d 96, 469 N.W. 2d 619 (1991) and Rintelman vs. Rintelman, 118 Wis. 2d 587, 348 N.W. 2d 498 (1984) and in consideration of S.757.32(1), Wis. Stats.

The parties also based this Marital Settlement Agreement upon the rationale of the Court in Seiler vs. Seiler, 48 Wis. 2d 400, 180 N.W. 2d 627 (1970) and Wright vs. Wright, 92 Wis. 2d 246, 257, 284 N.W. 2d 894 (1977), and upon the rationale of the Court in Bliwas vs. Bliwas, 47 Wis. 2d 635, 178 N.W. 2d 35 (1970).

Furthermore, that the parties have agreed that each of them are estopped under the rationale of Dixon vs. Dixon, 107 Wis. 2d 492, 319 N.W. 2d 846 (1982), and Fobes vs. Fobes, 124 Wis.2d 72, (1985) from modifying this Marital Settlement as to the term of the hold open of maintenance because the parties have contracted to do things which the Court did not have the power to order.

In October 1996, Christine moved for an award of maintenance.<sup>1</sup>

The family court commissioner ordered Robert to pay \$450 per month

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<sup>1</sup> In June 1995, Christine sought an award of maintenance. Her motion was denied after a hearing held in September 1995.

maintenance effective April 1, 1997. The order incorporated the language in the judgment of divorce with respect to the termination date of maintenance.

Christine sought a de novo hearing before the circuit court. Her motion asked the circuit court to find “[t]hat the language limiting the maintenance duration, set forth in the parties’ Marital Settlement Agreement, ... to be without merit and that maintenance be set for an indefinite period.” The circuit court increased maintenance to \$600 per month and determined that it would terminate on July 28, 1999, pursuant to the judgment of divorce.

Christine seeks to be relieved of the binding effect of the parties’ stipulation that after five years from the date of the divorce, no maintenance would be paid. Whether Christine will be held to the terms of the divorce stipulation is a question of law which we review de novo.<sup>2</sup> See *Ross v. Ross*, 149 Wis.2d 713, 719, 439 N.W.2d 639, 642 (Ct. App. 1989). We determine whether “the particular facts of the case meet the general legal standards of fairness and voluntariness, and, further, that the agreement does not contravene the public policy of the state as expressed in its statutory and court-made laws.” *Id.* Christine will be “estopped” from seeking an extension of maintenance if: (1) the parties freely and knowing stipulated to the nonmodifiable maintenance provision which was incorporated in the judgment of divorce; (2) the stipulation was part of a comprehensive settlement of all property and maintenance issues; and (3) the overall settlement, at the time it was incorporated into the divorce judgment, was

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<sup>2</sup> We reject Robert’s contention that Christine’s motion for relief from the stipulation was untimely under § 806.07, STATS., which requires that a motion seeking relief from a judgment be brought within one year. A stipulation incorporated into a divorce judgment takes on a judicial character and is subject to the family court’s continuing jurisdiction over maintenance. See *Nichols v. Nichols*, 162 Wis.2d 96, 104 n.5, 469 N.W.2d 619, 622 (1991). Christine’s motion was not subject to the time limits of § 806.07.

fair, equitable, not illegal and not against public policy. *See Nichols v. Nichols*, 162 Wis.2d 96, 100-01, 469 N.W.2d 619, 620-21 (1991).

We first address whether the stipulation was entered into freely and knowingly. The circuit court found that Christine understood what she was doing at the time of the final divorce hearing. This is a finding of fact which we must affirm unless clearly erroneous. *See Halverson v. Nelson*, 267 Wis. 188, 191, 65 N.W.2d 7, 8 (1954) (stating that ample evidence existed to sustain the trial court's finding that contestants should have known and understood what they were doing when they signed a waiver).

At the final divorce hearing, the stipulation was recited. Christine acknowledged that the night before the hearing, she and her attorney had a "marathon session" of four to six hours trying to resolve the case. She affirmed her understanding that maintenance was held open for five years and that if she did not come into court in the next five years, she could never ask for financial support from Robert. Christine was asked, "You understand that under the agreement the maintenance, the term of maintenance is nonmodifiable. In other words, we can't come into court at a later date and say Judge, I think you ought to give us ten years to make up our mind whether or not you should get maintenance." She answered, "Yes." Christine was also questioned on her reasons for not seeking maintenance at the time of the divorce. Robert was questioned about his understanding of the nonmodifiable maintenance term. He was asked, "So if for some reason your circumstances would change and you would require maintenance, and your wife would be employed, that would only be available to you for the next five years; you understand that?" In adopting the parties' stipulation, the circuit court noted that stipulation had "very clearly" been placed on the record and that the "parties clearly understand it."

The record at the final divorce hearing was very thorough. Christine's belated contention that she was unable to understand the stipulation because she was suffering from depression at the time of the final divorce hearing is belied by the record. The circuit court was made aware that Christine was under a doctor's care for depression. The record does not reflect confusion on Christine's part due to that condition. Christine's claims that she did not understand the "legalese" in the stipulation or the holdings of the cases cited miss the mark. The cases were cited for the purpose of highlighting the nonmodifiable and binding aspect of the stipulation. Christine acknowledged her understanding that the five-year term was not subject to modification. Beyond the case citations, the stipulation did not include "complicated legal jargon." The extreme caution that Christine asserts was necessary to ensure that she freely and knowingly entered into the stipulation was taken.

Christine claims that her attorney's questions about the stipulation at the final divorce hearing gave her a false impression that so long as she came in within five years she could ask for maintenance of any duration and that no questions pointed to the "reality [that] if she came in during the fifth year, the maintenance provision would be largely meaningless because the duration would be so short." Her contention, however, relies on nothing more than her subsequent testimony at the modification motion hearing that she did not understand the stipulation. Christine testified at the hearing that she did not recall her attorney going over the terms of the stipulation in front of the court. She indicated that the terms of the agreement were not explained to her, that she did not understand them, and that she did not agree. The circuit court's finding implicitly rejected Christine's subsequent testimony in favor of the affirmations she gave at the final

divorce hearing.<sup>3</sup> We are required to give due regard to the opportunity of the circuit court to resolve conflicts in the testimony which requires assessing the credibility of the witnesses. *See Hughes v. Hughes*, 148 Wis.2d 167, 171, 434 N.W.2d 813, 815 (Ct. App. 1988).

Next, we consider whether the agreement was fair and equitable and not against public policy. *See Ross*, 149 Wis.2d at 718-19, 439 N.W.2d at 642. We examine the circumstances which existed at the time the stipulation was incorporated into the divorce judgment. *See Nichols*, 162 Wis.2d at 111-12, 469 N.W.2d at 625.

At the final divorce hearing, the circuit court found the parties' stipulation as to property division and maintenance to be fair and reasonable. The parties had been married twenty-four years and Christine had never been employed full-time outside of the home during the marriage. Christine had no formal education beyond high school. She was unemployed and supporting herself only by public assistance. Although maintenance would have been appropriate under the circumstances, Christine acknowledged that she did not seek maintenance because Robert took sole custody of the parties' minor daughter and he had insufficient income to support his household and pay maintenance. Christine was hopeful that she would find employment. She was not ordered to pay child support. A fifty/fifty property division was effected. Further, Christine was aware that her ability to support herself at the time of the divorce was dependent on the availability of assets awarded in the property division. An effort

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<sup>3</sup> Judge Richard T. Becker presided over both the final divorce hearing and the modification motion hearing at which Christine testified. He had ample opportunity to assess her credibility.

to expedite final approval of the findings and judgment was made so that money could be quickly transferred and be made available to Christine.

The stipulation was fair and reasonable under the circumstances existing at the time of the final divorce hearing. It is neither unfair nor against public policy simply because it may result in a subsequent financial hardship.<sup>4</sup> *See id.* at 112-14, 469 N.W.2d at 625-26. Inasmuch as the circuit court lacked the power to enter a nonmodifiable maintenance provision, the stipulation entered into freely and voluntarily is enforceable. The circuit court properly fixed the termination date of maintenance at five years after the date of the divorce.

*By the Court.*—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

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<sup>4</sup> Christine complains that she was forced to expend her property division assets to survive financially.

