

NO. A07-1226

State of Minnesota
In Court of Appeals

In Re the Marriage of:

Randall M. Grachek,

Appellant,

and

Pamela Dawn Grachek,

Respondent.

BRIEF OF APPELLANT RANDALL M. GRACHEK

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STATEMENT OF THE CASE

This is an appeal from a judgment entered on April 25, 2007, resulting in a modification of an Order for Spousal Maintenance. The Court granted Respondent's motion for a cost of living adjustment (COLA) despite specific language in the Stipulation incorporated into the Judgment and Decree mutually waiving any additional spousal maintenance whatsoever. (emphasis added).

STATEMENT OF THE FACTS

On July 5, 1995 a Judgment and Decree was ordered relative to the parties' marital dissolution. (A-4). The Court made specific Findings of Fact and Conclusions of Law based upon a written Stipulation dated June 26, 1995. (A-4 – A –25). Paragraph 9 of the Conclusions of Law specifically provides:

KARON LANGUAGE:

9. Except for the maintenance provisions set forth in Paragraph 9, each party waives and is forever barred from receiving any additional spousal maintenance whatsoever from one another, and the Court is divested from having any jurisdiction whatsoever to award temporary or permanent spousal maintenance to either of the parties. Each party also waives the right to seek a change in either the amount or the duration of the spousal maintenance set forth in Paragraph 9. The limitation of maintenance as set forth in this paragraph is supported by consideration, namely each party's agreement to the terms of this Stipulation, and the maintenance and property settlement terms set forth herein. (A-10).

For nearly 12 years, neither party sought any modification of the spousal maintenance provisions of the Judgment and Decree. (A-2). Nevertheless, on December 27, 2006 Respondent served a Cost-of-Living Adjustment Calculation upon the Appellant. (A-2). On April 25, 2007 the Trial Court issued an Order modifying the spousal maintenance provision to include a cost-of-living adjustment. (A-1 – A-3). This appeal followed.

STANDARD OF REVIEW

In cases where a marital dissolution judgment and decree is entered pursuant to a stipulation, the stipulation merges into the judgment and decree. Shirk v. Shirk, 561 N.W.2d 519 (Minn. 1997). Absent ambiguity, it is improper for a court to interpret a stipulated judgment. See Starr v. Starr, 312 Minn. 561, 251 N. W. 2d 341 (1977). The issue of whether a stipulated dissolution decree is ambiguous is a legal question which is reviewed de novo. See Halverson v. Halverson, 381 N.W.2d 69 (Minn.Ct.App. 1986).

The interpretation of an ambiguous stipulation is a factual question. See Trondson v. Janikula, 458 N.W.2d 679 (Minn. 1990) (if a contract is ambiguous, the district court's resolution of ambiguity is treated as a finding of fact). On appeal, the district court's finding is upheld unless clearly erroneous. See Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 229 N.W.2d 521 (1975). A finding is "clearly erroneous" if manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole. Id. In determining whether a finding of fact is clearly erroneous, the evidence is viewed in the light most favorable to the district court's findings. See Trondson, 458 N.W.2d at 682.

ARGUMENT

I. THE DISTRICT COURT ERRED IN GRANTING A COLA INCREASE DESPITE THE PARTIES' WRITTEN WAIVER OF ANY ADDITIONAL SPOUSAL MAINTENANCE.

Additional spousal maintenance may only be secured through a modification or a COLA increase. Minn. Stat. §518A.75 (b) provides that “the court may waive a cost-of-living adjustment in a maintenance order if the parties so agree in writing.” The statute does not provide any guidance nor does it mandate the use of any specific phrases, words or format that must be used in order to effectively waive a COLA increase. Indeed, the parties’ waiver could broadly state “any additional spousal maintenance” and operate as an effective waiver of COLA increases consistent with the statutory language.

This is certainly in contrast to other statutory provisions requiring the utilization of *specific* language in order to be considered both effective and enforceable. For example, the legislature requires the use of specific language with respect to recording and filing conveyances (Minn. Stat. §507.091); mechanic’s lien notices (Minn. Stat. §514.011); form of warranty and quitclaim deeds (Minn. Stat. §507.07); and notice of mortgage foreclosures (Minn. Stat. §507.45).

Courts must give the parties’ contractual language its plain and ordinary meaning. See Current Tech. Concepts, Inc. v. Irie Enterprises, Inc., 530 N.W. 2d 539, 543 (Minn. 1995). To conclude otherwise would render the provision

meaningless, which is contrary to general principles of contract interpretation. See Chergosky v. Crosstown Bell, Inc., 463 N.W. 2d 522, 526 (Minn. 1990).

The language used by the parties in this case satisfied the statutory requirement of an effective waiver. The parties agreed to such a COLA waiver by signing a Stipulation, the language of which was incorporated into the Judgment and Decree dated July 5, 1995. Paragraph 9 of the Judgment and Decree provides that “each party *waives and is forever barred from receiving any additional spousal maintenance whatsoever* from one another.” (emphasis added).

In the Findings of Fact, Paragraph 2, the district court cited to Appendix A of the Judgment and Decree which provided notice of biennial cost of living award increases. The Court noted that Appendix A was only specifically referenced in the paragraph addressing child support. (A-1) and (A-11). The inclusion of Appendix A to the Judgment and Decree has no impact with respect to the waiver language concerning “any additional spousal maintenance whatsoever” as set forth in Paragraph 9 of the Judgment and Decree. At a minimum paragraph VII of Appendix A is a *notice* of provision informing parties that they *may* be entitled to a cost of living increase when conditions of the statute are met.

Appellant asserts that conditions of the statute were not met as the parties mutually waived their rights to obtain any additional spousal maintenance whatsoever. Furthermore, Appendix A is only specifically referenced with respect to

the child support provisions. As such, the inclusion of Appendix A does not create ambiguity with respect to the waiver language for a COLA increase. In this case, since spousal maintenance may only be increased through modification or a COLA increase, the clear meaning of the words “any additional” combined with “whatsoever” is unambiguous. The waiver is unambiguous and therefore bars any request for additional spousal maintenance, whether through modification or a COLA increase.

II. THE WAIVER LANGUAGE IS UNAMBIGUOUS WITH RESPECT TO WAIVING ANY ADDITIONAL SPOUSAL MAINTENANCE, INCLUDING COST OF LIVING ADJUSTMENTS (COLA).

The trial court did not specifically find that the waiver language was either ambiguous as to COLA increases, or that the waiver language failed to satisfy the statutory requirements for an effective waiver of COLA pursuant to Minn. Stat. §518A.75. The statutory language provides that a COLA increase may be waived by a written agreement between the parties. A district court’s analysis as to the waiver is therefore limited to the language of the waiver. Indeed, the intent of the parties is irrelevant in cases where the language of the waiver is *unambiguous*.

In cases where the language used by the parties is plain and unambiguous there is no room for construction. See Northstar Center, Inc. v. Sibley Bowl, Inc., 295 Minn. 424, 205 N.W.2d 331 (1973). Moreover, a contractual provision or term is unambiguous when its meaning can be determined without any guide

other than knowledge of the facts on which the language depends upon meaning. See Starr v. Starr, 312 Minn. 561, 251 N.W.2d 341, 342 (1977). If the language used is subject to more than one interpretation, then ambiguity exists. See Halverson v. Halverson, 381 N.W. 2d 69 (Minn. Ct. App. 1986). This Court applied similar reasoning in the case of Vanderleest v. Vanderleest, 352 N.W.2d 54 (Minn.Ct.App. 1984)(attempts to restrict the word “benefits” to include retirement benefits and exclude disability annuity benefits resulted in a creation of an exception not called for by the written stipulation).

The waiver language in this case is both unambiguous and comports with the statutory requirements resulting in an effective COLA waiver. In determining whether the parties effectively waived a COLA increase, Minn. Stat. §518A.75 requires an examination of the *actual* written agreement, (the parties’ Stipulation incorporated into Paragraph 9 of the Judgment and Decree), as opposed to focusing on the intent of the parties.

A consistent application of the current case law should have resulted in a denial of a COLA increase. In the case of Berens v. Berens, 443 N.W.2d 558 (Minn.Ct.App. 1989) the Court held that an incorporated waiver of a right to seek modification of maintenance terminated the court’s jurisdiction over future motions to modify despite the lack of express divestiture language. In making this determination, this Court focused on Berens’ express waiver of “all rights to

modification to the maintenance ordered herein including but not limited to her rights under Minn. Stat. §518.64 for modifications of orders and decrees. See Berens 443 N.W.2d at 563.

In the case of Karon v. Karon, 435 N.W.2d 501 (Minn. 1989) the waiver agreement was *mutual* as each party gave up the right to receive spousal maintenance from the other. The Judgment and Decree also included express language that the trial court divested itself of jurisdiction to hear any motions related to modification of maintenance. While the Karon court did not specifically address the issue of a COLA waiver, it did emphasize the importance of upholding a mutual waiver which included express divestiture language. At a minimum, it provides guidance with respect to this Court's interpretation of the parties *mutual* stipulated waiver concerning any additional maintenance whatsoever.

Despite these previous holdings, the trial court cited the case of Keating v. Keating, 444 N.W. 2d 605 (Minn.Ct.App. 1989) in support of its decision. Nevertheless, Keating is distinguishable. The language in Keating provided that the waiver was not effective until completion of the maintenance obligation. Such waiver language was distinguished from the waivers in both the Berens and Karon cases. "There is neither express divestiture language as in Karon nor is there an immediate waiver of the right to modify maintenance as in Berens." See Keating, 444 N.W. 2d at 608.

In the present case, the language of the parties' Stipulation incorporated into Paragraph 9 of the Judgment and Decree contained both the express divestiture language and immediately waived "any additional spousal maintenance whatsoever." As such, Keating is not controlling. Whereas the Karon waiver did not include the word "additional" the parties in this case included the word "additional" which would necessarily include a COLA increase. As such, granting a COLA increase was improper and a reversal is mandated.

III. THE WAIVER LANGUAGE EFFECTIVELY DIVESTED THE DISTRICT COURT OF JURISDICTION AS TO RULING ON ANY REQUESTS FOR ADDITIONAL SPOUSAL MAINTENANCE, INCLUDING COLA INCREASES.

Paragraph 9 of the Judgment and Decree divested the court of jurisdiction with respect to modifying or granting any request for a COLA increase. The trial court may divest itself of jurisdiction, which is a power granted through the legislature. See Karon v. Karon, 435 N.W. 2d 501 (Minn. 1989). In addition to express divestiture language, the court may divest itself of jurisdiction by entering a judgment which is final against a party. Id. at 503. A final judgment in this case was entered nearly twelve years ago which mutually barred either party from seeking "any additional spousal maintenance whatsoever." (A-10)

Appellant asserts that the order granting a COLA increase constitutes a void judgment since the court previously divested itself of any jurisdiction "whatsoever" with respect to issues related to spousal maintenance as to either of

the parties. (A-10) A void judgment is one rendered in the absence of jurisdiction over the subject matter or the parties. See Matson v. Matson, 310 N.W. 2d 502 (Minn. 1981). A void judgment is legally ineffective and cannot become valid through the passage of time. See Mesenbourg v. Mesenbourg, 538 N.W. 2d 489 (Minn. Ct. App. 1996). If a judgment is void for lack of jurisdiction, it must be set aside. See Midway National Bank of St. Paul v. Estate of Bollmeier, 504 N.W. 2d 59 (Minn. Ct. App. 1993). Therefore, since the district court lacked jurisdiction to award any additional spousal maintenance, the order granting a COLA increase is void and should be reversed with instructions to vacate the judgment.

IV. PUBLIC POLICY IS SERVED BY ENFORCING THE WAIVER PROVISIONS.

In general, courts favor stipulations in dissolution cases as a means of simplifying litigation. See Anderson v. Anderson, 303 Minn. 26, 225 N.W.2d 837 (1975). As such, stipulations are accorded the sanctity of binding contracts. See Ryan v. Ryan, 292 Minn. 52, 193 N.W.2d 295 (1971). A district court cannot “impose conditions on the parties to which they did not stipulate and thereby deprive the parties of their day in court”. See Clark v. Clark, 642 N.W.2d 459, 465 (Minn.Ct.App. 2002).

The Minnesota Supreme Court recognized the consequences triggered by reopening dissolution proceedings in Ryan v. Ryan, stating:

Where no fraud or bad faith is shown that if we were to allow settlement to be made in open Court to be reopened many months later at the whim of either party, it would create uncertainty, chaos and confusion as to the effect of settlements in future cases. This would be an injustice both to the Courts in which settlements were made and to the litigants involved, who depend upon the reliability of such settlements.

292 Minn. at 55, 193 N.W.2d at 298 (quoting Rogalla v. Rubbelke, 261 Minn. 381, 383, 112 N.W.2d 581, 582 (1961)).

With respect to stipulations concerning maintenance issues, the Minnesota Supreme Court reasoned that as a matter of policy, “intelligent adult women, especially when represented by counsel, must be expected to honor their contracts the same as anyone else.” See Karon v. Karon, 435 N.W. 2d 501, 504 (Minn. 1989).

Public policy mandates a reversal of the order for modification granting a COLA increase. The Respondent was represented by counsel at the time she agreed to the provisions of the Stipulation. (A-20). Moreover, the Respondent’s waiver to seek “any additional maintenance whatsoever” was supported by consideration. See McCormick v. Hoffert, 186 Minn. 380, 243 N.W. 2d 392 (1932)(settlement of all claims relating to marriage is ample consideration for stipulation and all its negotiated terms). To find otherwise, would render countless marital dissolution stipulations meaningless, which could result in casting doubt on

the enforceability of any judgment and decree incorporating such stipulated language.

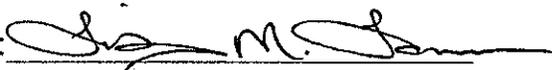
CONCLUSION

Appellant Randall M. Grachek respectfully requests that this Court reverse the trial court's order granting a COLA increase and remand with instructions to find the COLA waiver enforceable and deny Respondent Pamela Grachek's request for any COLA increase and order a credit for any and all COLA payments made towards future spousal maintenance.

Respectfully submitted,

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Dated: July 23, 2007

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CERTIFICATE OF COMPLIANCE

I hereby certify that the Brief of Appellant Randall M. Grachek conforms to the requirements of Minn.R.Civ.P. 132.02, Subds. 1 and 3. The length of this brief is 2,464 words. This brief complies with the typeface requirement of the above rule. This brief was prepared using Microsoft Word 1997.

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