

13

Case No. A12-1382

**STATE OF MINNESOTA
IN COURT OF APPEALS**

In re the Marriage of:

Sandra Ann Phillips, f/k/a Sandra Ann
LaPlante, petitioner,

Appellant,

vs.

James Craig LaPlante,

Respondent.

**APPELLANT'S BRIEF, ADDENDUM
AND APPENDIX**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	i, ii
STATEMENT OF THE ISSUE	1
STATEMENT OF THE CASE	1
FACTS.....	2
ARGUMENT	6
I. The district court erred as a matter of law by terminating Respondent’s spousal-maintenance obligation upon Appellant’s remarriage because the parties’ stipulated judgment and decree clearly expressed their intention to divest the district court of jurisdiction to modify maintenance upon entry of the judgment and decree and included a valid Karon waiver that was reciprocal in nature.....	6
A. The divestiture language alone satisfies the Telma standard	17
B. The waiver language satisfies the requirements for Karon waivers and constitutes a valid waiver of the parties’ right to modify maintenance	20
CONCLUSION	24
ADDENDUM	
APPENDIX	

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>PAGE</u>
<i>Anderson v. Archer</i> 510 N.W.2d 1, 3 (Minn. Ct. App. 1993)	7
<i>Arndt v. Arndt</i> Minn. App. LEXIS 235 (Minn. Ct. App. Fed. 25, 1997)	8, 14, 16, 18
<i>Blonigen v. Blonigen</i> 621 N.W.2d 276, 281 (Minn. Ct. App. 1987)	7
<i>Britton v. Johnson</i> Minn. App. Unpub. LEXIS 344 (Minn. Ct. App. April 23, 2012) ...	8, 9, 15, 16, 18, 19, 23
<i>Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey</i> 584 N.W.2d 390, 394 (Minn. 1998)	7
<i>Butt v. Schmidt</i> 747 N.W.2d 566, (Minn. 2008)	9, 16, 20, 21, 22, 23
<i>Current Tech. Concepts, Inc. v. Irie Enters., Inc.</i> 530 N.W.2d 539, 543 (Minn. 1995)	7
<i>Gunderson v. Gunderson</i> 408 N.W.2d 852 (Minn. 1987)	5, 9
<i>Indep. Sch. Dist. No. 877 v. Loberg Plumbing & Heating</i> 123 N.W.2d 793, 799-800 (Minn. 1963)	7, 19
<i>Kahn v. Tronnier</i> N.W.2d 425, 430-31 (Minn. Ct. App. 1996)	13
<i>Karon v. Karon</i> 435 N.W.2d 501 (Minn. 1989)	4, 7, 8, 9, 10, 16, 17, 20, 22, 23
<i>Poehls v. Poehls</i> N.W.2d 217, 218 (Minn. Ct. App. 1993)	13
<i>Shirk v. Shirk</i> 561 N.W.2d 519, 521 (Minn. 1997)	7
<i>Telma v. Telma</i> 1991 Minn. App. LEXIS 313 (Minn. Ct. App. March 27, 1991)	8, 11, 23

Telma v. Telma
474 N.W.2d 322 (Minn. 1991)..... 2, 5, 8, 12, 13, 17

Young v. Young,
Minn. App. LEXIS 1282, *8-9 (Minn. Ct. App. Oct. 21, 2003)..... 14, 19

Minnesota Statutes/Rules:

Minn. Stat. § 518.552 2, 5, 12
Minn. Stat. § 518.552, subd. 5 (2012)..... 6, 7, 8, 16
Minn. Stat. § 518.64, subd. 3 20
Minn. Stat. § 518A.39, subd. 3..... 4, 17, 20, 21

Other Authorities:

Black's Law Dictionary 329 (3rd pocket ed. 2006) 17

STATEMENT OF THE ISSUE:

Whether the district court erred as a matter of law by terminating Respondent's spousal-maintenance obligation upon Appellant's remarriage when the parties' stipulated judgment and decree divested the district court of jurisdiction to modify maintenance upon entry of the judgment and decree and included a valid *Karon* waiver that was reciprocal in nature.

District court's ruling:

The district court determined that the language in the judgment and decree was not sufficient to overcome the statutory presumption in Minn. Stat. § 518.64, subd. 3, and terminated Respondent's spousal maintenance obligation.

Apposite cases:

Telma v. Telma, 474 N.W.2d 322, 323 (Minn. 1991)

Karon v. Karon, 435 N.W.2d 501 (Minn. 1989)

Butt v. Schmidt, 747 N.W.2d 566 (Minn. 2008)

Britton v. Johnson, A11-1318, 2012 Minn. App. Unpub. LEXIS 344 (Minn. Ct. App. April 23, 2012) (unpublished).

STATEMENT OF THE CASE:

This case was heard in Carver County District Court, First Judicial District, Case No. 10-FA-08-440, the Honorable Jerome B. Abrams presiding.

In January 2010, the parties dissolved their twenty-five year marriage by a stipulated judgment and decree. In pertinent part, the stipulated decree provided that Respondent would pay Petitioner spousal maintenance in the amount of \$3,500 per month for 48 months. The stipulated judgment and decree had language divesting the district court of jurisdiction to award spousal maintenance upon entry of the judgment and decree and included a *Karon* waiver, whereby the parties waived their right to modify the spousal-maintenance order. Petitioner's waiver of the right to seek modification of

spousal maintenance was supported by consideration of “the amount and duration of temporary spousal maintenance awarded to Petitioner herein,” among other things.

In December 2011, Appellant remarried and Respondent ceased paying spousal maintenance, claiming that Appellant’s remarriage relieved him of his obligation under Minn. Stat. § 518.64, subd. 3. Appellant moved the district court to enforce Respondent’s maintenance obligation, arguing that the stipulated judgment and decree clearly expressed the parties’ intentions that spousal maintenance was not subject to modification pursuant to the standard in *Telma v. Telma*, 474 N.W.2d 322, 323 (Minn. 1991). In addition, Appellant moved for attorney fees under Minn. Stat. §518.14.

On April 19, 2012, the district court filed an order, denying Appellant’s motion to enforce Respondent’s maintenance obligation. The district court reasoned that, while the stipulated judgment and decree utilized waiver and divestiture language, it limited the waiver and divestiture to only preclude Appellant from seeking additional spousal maintenance. However, the district court granted Appellant’s motion for attorney fees and directed Appellant to provide an affidavit and proposed order regarding attorney fees. The parties stipulated that Respondent would pay Appellant’s attorney fees in the amount of \$6,275.00. On June 19, 2012, the district court filed a stipulated order regarding attorney fees. Judgment was entered the same day.

FACTS

In January 2010, Appellant Sandra Ann LaPlante n/k/a Sandra Ann Phillips and Respondent James Craig LaPlante dissolved their twenty-five year marriage by a

stipulated judgment and decree. (Judgment and Decree¹, Jan. 8, 2010). During the marriage, Appellant stayed home to raise the parties' children, going back to work on a part-time basis when the youngest child began school. (Pet. Aff., Feb. 3, 2012). At the time of the dissolution, Petitioner was employed by Target as a stock person, earning about \$13,000 per year, and Respondent was employed by TCF Bank as an executive vice president, earning about \$165,000 per year.

The parties' marital assets included the homestead property with negative equity of \$67,000; a cottage in Michigan with equity of \$74,862.00; Respondent's retirement savings, comprised of five different accounts including an Ameriprise Brokerage Account, totaling \$746,874.68; three vehicles; and several recreational vehicles. The parties stipulated to the following property distribution: Appellant received \$150,000.00² from Respondent's Ameriprise Brokerage Account, as well as a total of \$272,207.56 from the other retirement accounts, a vehicle, and a recreational vehicle; Respondent received the homestead, the Michigan cottage, two vehicles, some recreational vehicles, and the remainder of his retirement savings. In addition, the parties agreed that Respondent would pay Petitioner spousal maintenance in the amount of \$3,500 per month for 48 months. Significantly, in section 16 of the Findings of Fact, the parties included a *Karon* waiver, indicating that the consideration for the waiver included the \$150,000 Ameriprise distribution, as well as the "amount and duration" of the temporary maintenance:

¹ Unless otherwise indicated, the Facts are taken from the Judgment and Decree.

² The Judgment and Decree erroneously indicates that the payment was \$175,000.

Following the final payment of temporary spousal maintenance as set forth herein, the parties have waived all rights to additional spousal maintenance including rights pursuant to Minnesota Statutes § 518.552, subd. 5, and agree that upon entry of the Judgment and Decree, the Court shall be divested of jurisdiction to award spousal maintenance herein, pursuant to Karon v. Karon, 435 N.W.2d 501 (Minn. 1989). The Court finds this waiver of spousal maintenance is fair and equitable and the consideration supporting the waiver of spousal maintenance is the amount and duration of temporary spousal maintenance awarded to Petitioner herein, the property division, including \$175,000 awarded to Petitioner from Respondent's Ameriprise Brokerage Account, the parties' work history and education, their physical and emotional condition and skills which enable them both to maintain employment and to meet their reasonable needs.

Paragraph 14 in the Conclusions of Law reiterates the parties' intent that their agreement regarding spousal maintenance was part and parcel of the dissolution settlement as a whole, and that the district court, upon entry of the stipulated judgment and decree, would lack jurisdiction to modify it in any way:

Petitioner shall pay no temporary or permanent spousal maintenance to Respondent. The Court is hereby divested of jurisdiction to award Respondent spousal maintenance from Petitioner for the past, present or future.

Following the 48th payment of spousal maintenance by Respondent to Petitioner referenced hereinabove, Respondent shall pay no further temporary or permanent spousal maintenance to Petitioner. The Court is hereby divested of jurisdiction to award either party any additional spousal maintenance for the past, present, or future. The court shall retain jurisdiction solely to enforce the temporary award of spousal maintenance payments herein.

Paragraph 25 of the Conclusions of Law further provided that, "immediately following the final payment of spousal maintenance awarded to [Appellant] herein," Respondent

would pay \$25,000 to appellant “as and for additional consideration for the Karon waiver of spousal maintenance in this matter.”

On January 8, 2010, the Carver County District Court filed the stipulated judgment and decree. In December 2011, Appellant remarried. (Order, April 19, 2012). Respondent notified Appellant that he intended to stop paying maintenance and attempted to make a final \$25,000 payment pursuant to paragraph 25 of the stipulated judgment and decree. (Order, April 19, 2012). Appellant rejected this payment and on February 22, 2012, brought a motion to enforce Respondent’s maintenance obligation pursuant to the stipulated judgment and decree. (Order, April 19, 2012).

Appellant argued that the stipulated judgment and decree included a clear and unequivocal waiver of the right to modify the amount and duration of maintenance, thus satisfying the requirement set forth in *Telma v. Telma*, 474 N.W.2d 322 (Minn. 1991) and overriding Minn. Stat. § 518.64, subd. 3. Specifically, Appellant emphasized that the *Karon* waiver was necessarily reciprocal in nature, as it had the potential to inure to the benefit of either party, depending on the circumstances, and was a crucial part of the parties’ overall final settlement. Relying on *Gunderson v. Gunderson*, 408 N.W.2d 852 (Minn. 1987), Respondent countered that because the *Karon* waiver lacked an “express waiver of Respondent’s right to modify,” it was effective only to the extent that Appellant sought additional spousal maintenance in the future.

The district court denied Appellant’s motion. The district court reasoned that, while the stipulated judgment and decree utilized waiver and divestiture language, it limited the waiver and divestiture to only preclude Appellant from seeking additional

spousal maintenance. (Order, April 19, 2012). Specifically, the district court interpreted Minn. Stat. § 518A.39, subd. 3 and *Gunderson* to require a clear expression of the parties' intention regarding remarriage in order for the *Karon* waiver to apply to Respondent's right to modify maintenance upon Appellant's remarriage. (Order, April 19, 2012). In addition, the district court awarded need-based attorney fees to Appellant based on "Respondent's income, property awarded upon dissolution, and the absence of a monthly obligation to pay \$3,500 in spousal maintenance." (Order, April 19, 2012). On August 8, 2012, Appellant filed her Notice of Appeal, challenging the district court's interpretation of the stipulated judgment and decree as a matter of law.

ARGUMENT

- I. **The district court erred as a matter of law by terminating Respondent's spousal-maintenance obligation upon Appellant's remarriage because the parties' stipulated judgment and decree clearly expressed their intention to divest the district court of jurisdiction to modify maintenance upon entry of the judgment and decree and included a valid *Karon* waiver that was reciprocal in nature.**

The district court determined that the language in the stipulated judgment and decree was ineffective to override Minn. Stat. § 518A.39, subd. 3 because it lacked a clear expression of the parties' intent with regard to remarriage. But because the stipulated judgment and decree divested the district court of jurisdiction to modify maintenance upon entry of the judgment and decree, and included a valid *Karon* waiver that applies equally to Respondent's ability to seek modification of spousal maintenance under Minnesota statute as it does to Appellant's ability to do so, the Court must reverse.

A stipulated judgment and decree is a binding contract. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). Therefore, the rules of contract interpretation apply to the construction of stipulated judgment and decrees. *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. Ct. App. 1987). Courts interpret a contract to give all of its provisions meanings. *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). It is a cardinal rule of contract construction that the parties intended the language they used to have effect. *Indep. Sch. Dist. No. 877 v. Loberg Plumbing & Heating*, 123 N.W.2d 793, 799-800 (Minn. 1963).

Where there is no ambiguity, the construction and effect of a contract is a question of law subject to de novo review. *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). Because the interpretation of a written document is a question of law, [appellate courts] do not defer to the district court's interpretation of a stipulated provision in a dissolution decree." *Anderson v. Archer*, 510 N.W.2d 1, 3 (Minn. Ct. App. 1993).

In general, a stipulated judgment and decree is a final judgment, approved by the district court, that settles all issues in a dissolution action, and the doctrine of res judicata prevents the parties from relitigating issues therein. *Karon v. Karon*, 435 N.W.2d 501, 503 (Minn. 1989). However, a party may seek modification of a spousal maintenance order pursuant to Minnesota Statutes Section 518A.39. Specifically, subdivision 2 provides that a party may seek to modify maintenance upon a showing that there has been a substantial change of circumstances, as defined in that subdivision, that makes the terms of the order unreasonable and unfair. Pertinent here, subdivision 3 addresses

modification in the event of death or remarriage: “Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.”

The Minnesota Supreme Court has interpreted the application of subdivision 3 to language in a stipulated judgment and decree on two occasions: once before *Karon v. Karon*, 435 N.W.2d 501 (Minn. 1989), the seminal case on waiver of the statutory right to modify maintenance, and once after. In addition, the Minnesota Court of Appeals has interpreted subdivision 3 in a number of published and unpublished cases. In synthesis, Minnesota caselaw provides, “clear written expressions of the parties’ intention [to continue maintenance upon remarriage] as ascertained from their agreement as a whole” is sufficient to overcome the statutory presumption of termination pursuant to Minn. Stat. § 518A.39, subd. 3. *Telma v. Telma*, 474 N.W.2d 322, 323 (Minn. 1991). The parties need not use the word “remarriage” to satisfy this standard. *Id.*; *Telma v. Telma*, C1-90-2373, 1991 Minn. App. LEXIS 313, *7 (Minn. Ct. App. March 27, 1991) (J. Lansing, dissenting)(unpublished). Language divesting the district court of jurisdiction with regard to spousal maintenance upon entry of the judgment and decree is sufficient to satisfy the *Telma* standard, though divestiture on the date on which maintenance is to terminate may not be sufficient. *Britton v. Johnson*, A11-1318, 2012 Minn. App. Unpub. LEXIS 344, *5-6 (Minn. Ct. App. April 23, 2012)(unpublished); *Arndt v. Arndt*, C6-96-1930, 1997 Minn. App. LEXIS 235, *2-3 (Minn. Ct. App. Feb. 25, 1997). Further, a valid *Karon* waiver is sufficient to express the parties’ intent to waive their statutory rights to modify spousal maintenance and “cuts both ways” with regard to each party’s

rights to modify maintenance. *Britton*, 2012 Minn. App. Unpub. LEXIS 344 at *5-6; *Karon v. Karon*, 435 N.W.2d 501, 504 (Minn. 1989). “Language waiving any claim to spousal maintenance is sufficient to operate as a waiver of the right to seek modification of a maintenance award, and . . . language explicitly waiving the right to seek modification is not necessarily required.” *Britton*, 2012 Minn. App. Unpub. LEXIS 344 at *10 (citing *Karon*, 435 N.W.2d at 502-04 and *Butt v. Schmidt*, 747 N.W.2d 566, 570-73).

Here, the district court determined that the statutory presumption applied because the parties did not expressly mention “remarriage” and because the divestiture and waiver language was limited to “additional spousal maintenance.” But as set forth below in the discussion of the development of caselaw interpreting subdivision 3, Minnesota courts have rejected these arguments in applying subdivision 3.

Pre-*Karon* caselaw: *Gunderson*

The Minnesota Supreme Court first addressed subdivision 3 in *Gunderson v. Gunderson*, 408 N.W.2d 852 (Minn. 1987). In *Gunderson*, the stipulated judgment and decree required the husband to pay the wife rehabilitative maintenance of \$300 per month for 42 months. 408 N.W.2d at 853. When the wife remarried, the husband moved to terminate his maintenance obligation under subdivision 3. *Id.* The district court denied the husband’s motion, reasoning that the decree established maintenance in “unconditional terms,” and that, based on the parties’ negotiations, the parties had intended maintenance to continue unconditionally. *Id.* But the Minnesota Supreme Court reversed on grounds that the decree did not “state *expressly* that maintenance will

continue beyond remarriage” as required by subdivision 3. *Id.* The *Gunderson* Court reasoned that the absence of express language in the decree was not remedied by evidence of the parties’ intentions that were not reduced to writing. *Id.* Significant to the analysis here, the decree in *Gunderson* did not have any waiver or divestiture language whatsoever.

Karon v. Karon

In *Karon*, the Minnesota Supreme Court determined that parties may waive their statutory rights to modify spousal maintenance through language in a stipulated judgment and decree. 435 N.W.2d at 503. In *Karon*, the decree awarded temporary maintenance to the wife for 10 years and provided the following waiver: “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 spousal maintenance to either of the parties.” *Id.* at 502. Despite the waiver, the district court granted the wife’s motion to modify maintenance based on a change in circumstances under subdivision 2. *Id.* The Minnesota Supreme Court reversed, holding that parties may waive the statutory right to modify maintenance as part of a comprehensive settlement. *Id.* at 503. Importantly, with regard to the wife’s arguments regarding the negative impact of such a holding on the economic status of divorced women, the *Karon* Court explained that “the decision would **cut both ways** if the stipulation were upheld—the husband could not decrease maintenance and would be obligated to pay it for 10 years regardless of any financial setbacks.” *Id.* at 503-504. The *Karon* Court further reasoned that the waiver of

the statutory right to modify maintenance is important to allow parties to reach a final, comprehensive settlement:

Normally, stipulations are carefully drawn compromises which affect property distribution, real and personal, as well as future income. One may, for example, give or take certain items in order to have another reduced or eliminated. Setting aside one portion of the stipulation may totally warp the effects of other portions of the document. It would be difficult to imagine why anyone would agree to temporary maintenance or even maintenance itself for an indefinite period if the agreement could be later nullified.

Id. at 504.

Minnesota Court of Appeals' *Telma v. Telma*

A few years after *Gunderson* and one year after *Karon*, the Minnesota Court of Appeals addressed the application of subdivision 3 to a decree that included waiver language in the unpublished opinion *Telma v. Telma*, C1-90-2373, 1991 Minn. App. LEXIS 313 (Minn. Ct. App. March 27, 1991). In *Telma*, the stipulated judgment and decree provided that the husband was to pay the wife spousal maintenance of \$1,200 per month for five years. 1991 Minn. App. LEXIS 313 at *1. The decree specified that maintenance would terminate upon one of two events: the expiration of a five-year period or when the wife's gross annual income exceeded \$30,000. *Id.* at *6. The decree further provided, "[Husband] hereby waives any right he may have under Minn. Stat. 518 and applicable case law to petition this court for modification of his obligation to pay maintenance, either as to amount or duration or termination." *Id.* at *1. When the wife remarried, the husband moved to terminate his spousal maintenance obligation pursuant to subdivision 3. *Id.* at *1-2. The district court denied his motion, finding that the

decree, “as a whole,” showed that the parties intended for maintenance to continue upon remarriage. *Id.* at *4. Relying on *Gunderson*, the Minnesota Court of Appeals reversed. *Id.* at *5. Specifically, the *Telma* Court of Appeals cited *Gunderson* for the statement that subdivision 3 “requires that a decree state expressly that maintenance will continue beyond remarriage,” and emphasized that the stipulation and decree at issue did “not mention remarriage.” *Id.* at *2. With regard to the waiver language, the Court stated, “When appellant waived his right to petition to modify maintenance, he did not waive his right to the statutory termination of maintenance.” *Id.* at *3.

Importantly, Judge Lansing dissented, asserting that the husband “waived ‘any right’ under Minn. Stat. chap. 518 and applicable case law to modify the duration or amount of, or to terminate, his maintenance obligation.” *Id.* at *6. The dissent characterized the majority’s analysis as “substituting a new statutory standard that apparently requires actual use of the word remarriage.” *Id.* The dissent emphasized that “nothing in *Gunderson* or the statute requires that remarriage be mentioned expressly.” *Id.* at *7. Citing *Karon*, the dissent concluded, “If we enforce stipulations waiving an obligee’s right to future modifications of maintenance, we should be consistent by enforcing an obligor’s waiver of a right to future modifications of maintenance.” *Id.* at *8.

Minnesota Supreme Court’s *Telma* and subsequent caselaw

In *Telma v. Telma*, 474 N.W.2d 322 (Minn. 1991), the Minnesota Supreme Court reversed the Court of Appeals, essentially adopting the dissent’s analysis. The *Telma* Court stated, “While in *Gunderson v. Gunderson*, we stated that Minn. Stat. § 518.64,

subd. 3 required that a marital dissolution decree state expressly that maintenance will continue beyond remarriage, we did not foreclose the consideration of clear written expressions of the parties' intention in this regard as ascertained from their agreement as a whole." 474 N.W.2d at 323. The Court concluded that the district court correctly interpreted and enforced the husband's "unequivocal waiver of his right to seek modification of the spousal maintenance award." *Id.*

Following *Telma*, the Minnesota Court of Appeals addressed the application of subdivision 3 in two published opinions, both with regard to judgment and decrees that lacked divestiture and waiver language. In *Poehls v. Poehls*, the judgment and decree, issued by the court pursuant to a trial, required the husband to provide permanent spousal maintenance until the death of either party or until further order by the court. 502 N.W.2d 217, 218 (Minn. Ct. App. 1993). But because the decree did not contain a waiver of the parties' rights to seek modification nor any written expression of the parties' intentions regarding remarriage, the Minnesota Court of Appeals determined that statutory presumption terminating maintenance upon remarriage applied. *Id.* at 219. In *Kahn v. Tronnier*, the Minnesota Court of Appeals determined that the statutory presumption of termination applied where, "similar to *Poehls*," the stipulated decree lacked an express statement that maintenance would continue upon remarriage and a waiver by the obligor to modify spousal maintenance. 547 N.W.2d 425, 430-31 (Minn. Ct. App. 1996).

Unpublished cases

The Minnesota Court of Appeals has issued a number of unpublished opinions addressing the application of subdivision 3 to language in various language in stipulated decrees. In *Arndt v. Arndt*, the Minnesota Court of Appeals determined that the statutory presumption of termination applied when (1) the decree contained a waiver by the wife to receive further maintenance but not a similar waiver by the husband and (2) the decree did not divest the district court of jurisdiction until the temporary maintenance was scheduled to end. C6-96-1930, 1997 Minn. App. LEXIS 235 (Minn. Ct. App. Fed. 25, 1997). In two subsequent cases, the Minnesota Court of Appeals determined that the decrees' language was sufficient to override the statutory presumption where both parties agreed to divest the district court of jurisdiction upon entry of the judgment and decree. In *Young v. Young*, the parties' intentions as expressed in the stipulated judgment and decree overcame the presumption. A03-223, 2003 Minn. App. LEXIS 1282, *8-9 (Minn. Ct. App. Oct. 21, 2003)(unpublished). Specifically, the decree in *Young* provided:

The parties have provided for the future support of [wife] through the payment of maintenance and the award of income-producing assets. Based upon the division of property, [wife] hereby presently and absolutely waives any right to have [husband] pay her any further or additional temporary or permanent maintenance other than as set forth herein. By presently waiving any right to modify or extend the award of maintenance provided herein, the parties intend to divest the court of jurisdiction to modify the award of maintenance provided herein, or award further maintenance in the future or extend the duration of maintenance provided in this decree. Consideration for this agreement is the parties' mutual waiver of past, present, and future maintenance and the award of property to [wife].

Id. at *7-8. In addition, the decree provided, “The Court is hereby divested of jurisdiction to award [wife] any further or additional maintenance immediately upon entry of the Judgment and Decree herein. The Court shall retain jurisdiction to enforce [husband’s] obligation to pay maintenance to [wife] in accordance herewith.” *Id.* at *8.

Notably, the husband argued that these provisions only reflected the wife’s waiver of her right to seek additional maintenance, but did not affect his ability to seek modification upon her remarriage. *Id.* at *8. Significantly, the Court of Appeals rejected this argument: “But the emphasized language in the finding of fact expressly states that ‘the parties intend to divest the court of jurisdiction to modify the award of maintenance.’ This unambiguous language reflects the intention of both parties to divest the court of jurisdiction to modify the maintenance award.” *Id.* at *8-9.

In *Britton v. Johnson*, the most recent case to address the application of subdivision 3, the Court of Appeals determined that divestiture-upon-entry language alone was enough to overcome the statutory presumption of termination. 2012 Minn. App. Unpub. LEXIS 344 at *5-6. The Court reasoned, “If appellant was now permitted to seek modification of maintenance through the district court, the divestiture provision would become meaningless. Granting [husband’s] request to modify spousal maintenance would require voiding the divestiture provision, and as such, appellant’s request is a collateral attack on that provision.” *Id.* at *4-5. The Court went on to determine that, even without the divestiture language, the husband’s waiver of the right to claim spousal maintenance was sufficient to constitute a waiver of the right to seek modification based on the analyses set forth in *Karon* and *Butt*: “As seen in *Butt* and

Karon, the Minnesota Supreme Court has determined that language waiving any claim to spousal maintenance is sufficient to operate as a waiver of the right to seek modification of a maintenance award, and that language explicitly waiving the right to seek modification is not necessarily required.” *Id.* at *10.

In sum, “clear written expressions of the parties intention [to continue maintenance upon remarriage] as ascertained from their agreement as a whole” is sufficient to overcome the statutory presumption of termination pursuant to Minn. Stat. § 518A.39, subd. 3. The parties need not use the word “remarriage” to satisfy this standard. Language divesting the district court of jurisdiction with regard to spousal maintenance upon entry of the judgment and decree is sufficient to satisfy the *Telma* standard, though divestiture on the date on which maintenance is to terminate may not be sufficient. *Britton*, 2012 Minn. App. Unpub. LEXIS 344 at *5-6; *Arndt*, 1997 Minn. App. LEXIS 235 at *2-3. Further, a valid *Karon* waiver is sufficient to express the parties’ intent to waive their statutory rights to modify spousal maintenance and “cuts both ways” with regard to each party’s rights to modify maintenance. *Britton*, 2012 Minn. App. Unpub. LEXIS 344 at *5-6; *Karon v. Karon*, 435 N.W.2d 501, 504 (Minn. 1989). “Language waiving any claim to spousal maintenance is sufficient to operate as a waiver of the right to seek modification of a maintenance award, and . . . language explicitly waiving the right to seek modification is not necessarily required.” *Britton*, 2012 Minn. App. Unpub. LEXIS 344 at *10 (citing *Karon*, 435 N.W.2d at 502-04 and *Butt v. Schmidt*, 747 N.W.2d 566, 570-73).

A. The divestiture language alone satisfies the *Telma* standard.

The stipulated judgment and decree provides the following divestiture language:

(1) “Following the final payment of temporary spousal maintenance as set forth herein, the parties have waived all rights to additional spousal maintenance including rights pursuant to Minnesota Statutes § 518.552, subd. 5, and agree that **upon entry of the Judgment and Decree, the Court shall be divested of jurisdiction to award spousal maintenance herein**, pursuant to *Karon v. Karon*, 435 N.W.2d 501 (Minn. 1989).” (Findings of Fact, § XVI) (emphasis added).

(1) “Petitioner shall pay no temporary or permanent spousal maintenance to Respondent. **The Court is hereby divested of jurisdiction** to award Respondent spousal maintenance from Petitioner for the past, present or future.” (Conc. of Law, ¶ 14) (emphasis added).

(2) “Following the 48th payment of spousal maintenance by Respondent to Petitioner referenced hereinabove, Respondent shall pay no further temporary or permanent spousal maintenance to Petitioner. **The Court is hereby divested of jurisdiction** to award either party any additional spousal maintenance for the past, present or future. The court shall retain jurisdiction solely to enforce the temporary award of spousal maintenance payments herein.” (Conc. of Law, ¶ 14) (emphasis added).

This language constitutes a clear written expression of the parties’ intent that the temporary spousal maintenance was not subject to modification. *See Telma*, 474 N.W.2d at 323 (setting forth standard for overriding presumption in subdivision 3). This language, approved by the district court and incorporated in its order, consistently and unambiguously provides that the district court is divested of jurisdiction to modify maintenance “upon entry of the Judgment and Decree.” *See BLACK’S LAW DICTIONARY* 329 (3rd pocket ed. 2006) (defining “Hereby” as “By this document; by these very

words.”). Unlike in *Arndt*, it does not state that the Court will divest jurisdiction when the last payment is made. See 1997 Minn. App. LEXIS 235, *1. The *Britton* Court’s reasoning is on point here: “If [Respondent] was now permitted to seek modification of maintenance through the district court, the divestiture provision would become meaningless. Granting [Respondent’s] request to modify spousal maintenance would require voiding the divestiture provision, and as such, [Respondent’s] request is a collateral attack on that provision.” See 2012 Minn. App. Unpub. LEXIS 344 at *4-5.

Referring solely to the *Karon*-waiver language in section 16 of the Findings of Fact (the first excerpt above) and citing *Arndt*, the district court stated, “the divestiture of jurisdiction does not occur until after final payment is made.” (Order, p. 6). This is contrary to the plain language set forth in the divestiture provisions stated above. The stipulated decree does not state that divestiture will occur upon the final payment; it consistently states that the district court is divested of jurisdiction “upon entry of the Judgment and Decree” or is “hereby divested of jurisdiction.”

Respondent may argue that the divestiture language is conflicting and ambiguous because paragraph 14 of the Conclusions of Law (second excerpt above) states that the court is divested of jurisdiction to “award Respondent spousal maintenance from Petitioner for the past, present, and future.” But this language does not conflict with the rest of the language in that paragraph or in Section 16 of the Findings of Fact; it is consistent with the overarching statement “The court shall retain jurisdiction solely to enforce the temporary award of spousal maintenance payments herein.” (Conc. of Law, ¶ 14). To ignore this last statement is to violate the rule of contract construction that the

parties intended the language they used to have effect. *See Indep. Sch. Dist. No. 877*, 123 N.W.2d at 799-800.

Respondent may further argue, based on paragraph 14 of the Conclusions of Law, that the language only divests the district court of jurisdiction to award spousal maintenance to him. In *Young*, the husband made a similar argument, arguing that the divestiture language “only reflect wife’s waiver of her right to seek modification of the maintenance award.” 2003 Minn. App. LEXIS 1282 at *8. The Minnesota Court of Appeals rejected this argument: “But the emphasized language in the finding of fact expressly states that ‘the parties intend to divest the court of jurisdiction to modify the award of maintenance.’ This unambiguous language reflects the intention of both parties to divest the court of jurisdiction to modify the maintenance award.” *Id.* at *8-9; *see also Britton*, 2012 Minn. App. Unpub. LEXIS 344 at *6 (rejecting the husband’s argument that the divestiture language was only effective as to him). As a matter of policy, it would be highly inequitable to read the divestiture language as limiting Petitioner’s right to seek modification of spousal maintenance but not Respondent’s right to seek modification of spousal maintenance, particularly in light of the significant disparity in income of the parties.

In sum, the divestiture language clearly and consistently over three separate paragraphs expresses the parties’ intention that the district court be divested of jurisdiction to modify spousal maintenance upon entry of the judgment and decree. Based on the plain language of these provisions alone, the Court should reverse the district court’s order.

B. The waiver language satisfies the requirements for *Karon* waivers and constitutes a valid waiver of the parties' right to modify maintenance.

The stipulated decree includes the following *Karon* waiver:

Following the final payment of temporary spousal maintenance as set forth herein, the parties have waived all rights to additional spousal maintenance including rights pursuant to Minnesota Statutes § 518.552, subd. 5, and agree that upon entry of the Judgment and Decree, the Court shall be divested of jurisdiction to award spousal maintenance herein, pursuant to *Karon v. Karon*, 435 N.W.2d 501 (Minn. 1989). The Court finds this waiver of spousal maintenance is fair and equitable and the consideration supporting the waiver of spousal maintenance is the amount and duration of temporary spousal maintenance awarded to Petitioner herein, the property division, including \$175,000 awarded to Petitioner from Respondent's Ameriprise Brokerage Account, the parties' work history and education, their physical and emotional condition and skills which enable them both to maintain employment and to meet their reasonable needs.

As discussed above, *Karon* provides that parties may waive their statutory rights to modify spousal maintenance through language in a stipulated judgment and decree. 435 N.W.2d at 503. Following the Minnesota Supreme Court's decision in *Karon*, the Minnesota legislature enacted subdivision 5 to Minn. Stat. § 518.552, specifying criteria for a valid *Karon* waiver. *Butt v. Schmidt*, 747 N.W.2d 566, (Minn. 2008)(citing Act of May 25, 1989, ch. 248, § 7, 1989 Minn. Laws 834, 838). Section 518.552, subdivision 5 states:

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.

Minn. Stat. § 518.552, subd. 5 (2012). In addition, for a *Karon* waiver to divest the court of jurisdiction to modify maintenance, “the stipulation must include both a contractual waiver of the parties’ statutory right to move for modification of maintenance prior to its termination and express language divesting the court of jurisdiction to consider motions for modification of spousal maintenance.” *Butt*, 747 N.W.2d at 573 (quotation omitted).

The *Karon* waiver here satisfies this criteria. The district court made a specific finding that “this waiver of spousal maintenance is fair and equitable.” (Finding of Fact § XVI). The waiver is supported by consideration described in the findings. Specifically, section XVI states, “the consideration supporting the waiver of spousal maintenance is the amount and duration of temporary spousal maintenance awarded to Petitioner herein, the property division, including the \$175,000 awarded to Petitioner from Respondent’s Ameriprise Brokerage Account, the parties work history and education, their physical and emotional condition and skills which enable them both to maintain employment and to meet their reasonable needs.” Significantly, this language explicitly states that Petitioner waived her right to seek a modification of spousal maintenance in the future, regardless of what financial circumstances may befall her, in exchange for Respondent’s waiver of the right to modify “the amount and duration of temporary spousal maintenance.” In other words, the stipulated decree includes a clear *quid pro quo*: Petitioner waived her right to modify maintenance in exchange for a set amount and duration of temporary spousal maintenance. The district court’s order improperly interferes with the parties’ agreement, taking back what Respondent unambiguously agreed to provide without

accounting for what Petitioner gave up in exchange. The order “warp[s] the effects of other portions of the document” by taking away part of the consideration for Petitioner’s agreement to waive modification of spousal maintenance. *See Karon*, 435 N.W.2d at 504.

In addition, the stipulated decree provides that “Each party has warranted the other that there has been an accurate, complete and current disclosure of all income, assets and liabilities,” thus satisfying the third statutory criteria. (Findings of Fact, § XXX). Lastly, the parties “waived all rights to additional spousal maintenance” and agreed that the district court was divested of jurisdiction to award spousal maintenance pursuant to *Karon v. Karon*. *See Butt*, 747 N.W.2d at 573.

The district court determined that the waiver was limited to “additional spousal maintenance” and did not include waiver of the right to seek modification of maintenance upon remarriage. (Order, p. 7). But after examining the language in *Butt* and *Karon*, the *Britton* Court stated, “As seen in *Butt* and *Karon*, the Minnesota Supreme Court has determined that **language waiving any claim to spousal maintenance is sufficient to operate as a waiver of the right to seek modification of a maintenance award, and that language explicitly waiving the right to seek modification is not necessarily required.**” 2012 Minn. App. Unpub. LEXIS at *10. Specifically, in *Butt*, the following language, similar to the language in the stipulated decree at issue here, satisfied the criteria that the parties waive the right to modify maintenance: (1) “except for the award of \$1,000 per month spousal maintenance for a period of forty-two months to Schmidt, both parties waive any claim to spousal maintenance past, present and future; and (2) “it

is the express intention of the parties that save for the award of 42 months of spousal maintenance to Schmidt, neither party is awarded any spousal maintenance either past, present or future.” 747 N.W.2d at 573. Similarly, in *Karon*, the following language operated as a valid waiver of the parties’ right to modify maintenance: “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 spousal maintenance to either of the parties.” *Britton*, 2012 Minn. App. Unpub. LEXIS 344 at *9 (citing *Karon*, 435 N.W.2d at 502).

This interpretation is consistent with the *Karon* Court’s statement that a *Karon* waiver necessarily “cuts both ways” with regard to either party’s ability to seek modification. 435 N.W.2d at 504. The dissent in the Minnesota Court of Appeals *Telma* reiterated this notion in the context of applying subdivision 3: “If we enforce stipulations waiving an obligee’s right to future modifications of maintenance, we should be consistent by enforcing an obligor’s waiver of a right to future modifications of maintenance.” 1991 Minn. App. LEXIS 313 at *8.

In sum, the stipulated judgment and decree includes a *Karon* waiver that meets the statutory criteria as well as the criteria set forth in *Butt*. It clearly states the parties’ intentions that Petitioner was waiving her right to seek modification of maintenance in the future in exchange for, among other things, Respondent waiving his right to seek modification of maintenance in the future. The waiver was supported by valid consideration and as such, must be enforced. Moreover, *Karon* and *Butts* provide that the

waiver is not limited solely to the parties' ability to seek additional maintenance; it constitutes a waiver to seek any kind of modification of maintenance, including the termination of maintenance under subdivision 3.

CONCLUSION

The stipulated judgment and decree includes language expressing the parties' intention that spousal maintenance be fixed in amount and duration and not subject to modification by either party. The parties' intention is expressed in the language that divests the district court of jurisdiction over spousal maintenance upon entry of the judgment and decree as well as the valid *Karon* waiver. Significantly, Petitioner's waiver of the statutory right to seek modification of maintenance was explicitly provided as a quid pro quo for the "amount and duration of spousal maintenance." The spousal maintenance order was an integral part of the parties' comprehensive settlement agreement; to allow Respondent to terminate spousal maintenance "warp[s] the effects of other portions of the document." Therefore, the Court should reverse the district court's order terminating Respondent's spousal maintenance obligation and order Respondent to pay spousal maintenance pursuant to the stipulated judgment and decree.

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