

NO. A12-1382

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State of Minnesota  
**In Court of Appeals**

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In Re the Marriage of:

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

vs.

James Craig LaPlante,  
*Respondent.*

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**RESPONDENT'S BRIEF 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).

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## STATEMENT OF LEGAL ISSUES

- I. Did Respondent's spousal maintenance obligation end upon Appellant's remarriage?

The district court held in the affirmative.

### **Apposite Authority:**

Minn. Stat. § 518A.39, subd. 3 (2012)

Gunderson v. Gunderson, 408 N.W.2d 852 (Minn. 1987)

Poehls v. Poehls, 502 N.W.2d 217 (Minn. App. 1993)

Kahn v. Tronnier, 547 N.W.2d 425 (Minn. App. 1996)

## STATEMENT OF THE CASE

Appellant has appealed the district court's April 3, 2012 order denying Appellant's motion to direct Respondent to continue paying maintenance to Appellant. (ADD.1-2) The April 3, 2012 order was issued by the Honorable Jerome B. Abrams of the First Judicial District, who presided over the February 22, 2012 hearing on the parties' motions at the Carver County Courthouse. (ADD.1 - 2)

## STATEMENT OF THE FACTS

Appellant and Respondent were divorced on January 10, 2010. (A-1) Paragraph 14 of the parties' stipulated divorce decree's conclusions of law required Respondent to pay Appellant spousal maintenance of \$3,500 per month for a period of four years, "[c]ommencing December 1, 2009 and for 47 months thereafter," i.e., through the payment due for November 2013. (A-17) The last three sentences of paragraph 14 read as follows: "Following the 48<sup>th</sup> payment of spousal maintenance by Respondent to [Appellant] referenced hereinabove, Respondent shall pay no further temporary or permanent maintenance to [Appellant]. 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." (A-17) Paragraph 14 did not list any other termination events which would cause a cessation of spousal maintenance, such as the death of either party or Appellant's remarriage.

Paragraph XVI of the divorce decree's findings at the top of page 5 provided that both parties "waived all rights to additional spousal maintenance" following "the final payment of maintenance." (Emphasis added.) (A-5) Paragraph XVI of the findings on the bottom of page 4 provided that parties had provided for the "future support of [Appellant]" by giving her "temporary spousal maintenance, as well as the transfer of a greater portion of the retirement assets in the form of cash." (A-4) The last sentence of paragraph XVI on page 5 stated that the consideration supporting the waiver of additional maintenance included "the amount and duration of temporary spousal maintenance awarded to [Appellant] herein, the property division, including \$175,000 awarded to [Appellant] from Respondent's Ameriprise Brokerage Account,<sup>1</sup> 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." (A-5) Paragraph XXVII of the decree listed five separate retirement/investment assets: (1) Respondent's TCF Bank ESOP worth \$297,589.36; (2) Respondent's Ameriprise IRA worth \$159,255.31; (3) Respondent's TCF Bank Cash Balance Plan worth \$87,572.79; (4) Respondent's TCF SERP worth \$22,802.74; and (5) Respondent's Ameriprise

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<sup>1</sup> In her brief, Appellant states that the divorce decree "erroneously indicated" that \$175,000 had been awarded to Appellant from Respondent's Ameriprise brokerage account. See Appellant's brief at 3, n.2. Appellant is correct. Although \$175,000 was awarded as an additional property settlement, this sum was not derived solely from Respondent's Ameriprise brokerage account. Paragraph 25 of the decree's conclusions of law stated that Appellant was awarded \$150,000 from the brokerage account less the sum of \$2,000 Respondent had paid to Appellant on September 15, 2009, with the remaining \$148,000 (\$150,000 minus \$2,000) to be paid no later than November 21, 2009. (A-23 to A-24) The additional \$25,000 payment was to be made following the final payment of maintenance (A-24), thereby bringing the total to \$175,000.

Brokerage Account worth \$179,654.48. (A-8) Paragraph 25 of the conclusions of law awarded Appellant one-half of the first 4 of these assets, or \$283,608.93. (A-25 to A-26) Paragraph 25 also required Respondent to liquidate the \$179,654.48 Ameriprise Brokerage Account and to hand over most of the funds (i.e., \$148,000), tax-free, to Appellant. (A-26) Paragraph 25 further provided that Appellant was to receive an additional \$25,000 in cash “as and for her Karon waiver of spousal maintenance in this matter, to be paid immediately following the final payment of maintenance awarded to her herein.” (A-26)<sup>2</sup>

At the time of the divorce, Appellant was employed as a stockperson at Target, earning a gross income of \$1,104 per month. (A-4) After the divorce, she obtained a position as an accounting clerk with CBRE, earning a gross income of \$2,370 per month. (RA.4)

On December 8, 2011, Appellant married Arnold Phillips. (RA.5) After learning of Appellant’s remarriage, Respondent pro-rated the amount of maintenance owed for that month, and transferred the reduced sum into Appellant’s checking account (RA.12)

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<sup>2</sup> The decree’s award of other assets did not advantage Respondent. Paragraphs 17 and 18 of the conclusions of law awarded Respondent the parties’ Waconia homestead and a Michigan cottage. (A-20 to A-21) Although paragraph XXI of the findings indicated that the Michigan cottage had equity of \$74,862, paragraph XX of the findings stated that the Waconia homestead had negative equity of \$67,000. (A-6) Paragraph 23 of the conclusions of law awarded Petitioner the 2004 Cadillac Escalade and the 2007 Premier Pontoon and Trailer. (A-22) Paragraph 24 of the conclusions of law awarded Respondent the 2002 Nissan, the 1996 Jaguar, a 1994 Mastercraft and two 1998 Yamaha Waverunners. (A-23) Paragraphs XXIV and XXV of the findings indicate that the combined value of the Cadillac and pontoon awarded to Appellant (\$30,810) exceeded the value of the vehicles and watercraft awarded to Respondent (\$24,575). (A-7 to A-8)

When Appellant questioned Respondent in an email as to why he had deposited less than \$3,500 into her account, he responded by explaining that he considered his maintenance obligation to have ceased upon her remarriage. (RA.12, RA.15-16) Appellant responded by asserting that she decided to get married after consulting with her attorney, whom she claimed had advised her that her remarriage should not affect her ability to continue receiving maintenance. (RA.15) Appellant also told Respondent that he would be “responsible for all costs” if the parties went “back to court”, and asked Respondent to let her know if she “should proceed with litigation.” (RA.15)

On February 3, 2012, Appellant served Respondent with a motion seeking payment of maintenance arrears and a directive that Respondent resume the \$3,500 per month maintenance payments. (RA.1-2) In an attached affidavit, Appellant asserted that Respondent had agreed that “he could not ask to terminate or decrease” the maintenance award. (RA.4) On February 16, 2012, Respondent responded with a motion asking the court to determine that his spousal maintenance obligation ended upon Appellant’s remarriage. (RA.7-8) In an attached affidavit, Respondent asserted that the parties’ divorce decree did not contain any waiver of his “right to reduce, terminate, or otherwise modify” his maintenance obligation.” (RA.13)

The hearing on the parties’ motions occurred on February 22, 2012. (ADD.1) On April 3, 2012, the district court issued an order denying Appellant’s motions to have Respondent pay maintenance arrearages and to force Respondent to continue paying spousal maintenance (ADD.1-2). In its attached memorandum, the district court

characterized the parties' language regarding waiver and divestiture of jurisdiction as "inconsistent and imprecise," thereby lacking a "clear expression of their intention of what would happen to the spousal maintenance upon the remarriage of the [Appellant]." (ADD.7) The district court therefore concluded that the waiver and divestiture language utilized by the parties in their divorce decree applied "to only 'additional spousal maintenance'", and that Respondent therefore retained his right to have his spousal maintenance obligation considered terminated upon Appellant's remarriage. (ADD.7) This appeal follows.

## ARGUMENT

### Standard of Review

The interpretation of an unambiguous divorce decree is a question of law, which an appellate court reviews *de novo*. *Emerick ex. rel. Howley v. Sanchez*, 547 N.W.2d 109, 112 (Minn. App. 1996). The question of whether a stipulated divorce decree is clear or ambiguous is a question of law which an appellate court reviews *de novo*. *Halverson v. Halverson*, 381 N.W.2d 69, 71 (Minn. App. 1986). Stipulations in divorce proceedings are treated as binding contracts. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). The interpretation of an ambiguous contract is a finding of fact. See *Trondson v. Janikula*, 458 N.W.2d 679, 682 (Minn. 1990). Findings of fact are not set aside unless clearly erroneous. See *id.* When deciding whether a finding of fact is clearly erroneous, an appellate court takes the view of the evidence which is most favorable to the district court's findings. See *id.*

**I. RESPONDENT'S MAINTENANCE OBLIGATION TERMINATED UPON APPELLANT'S REMARRIAGE.**

A. Relevant Statutory Law and Case Law.

Maintenance almost uniformly terminates upon an obligee's remarriage. Minn. Stat. § 518A.39, subd. 3 (2012), provides as follows: "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." In Gunderson v. Gunderson, 408 N.W.2d 852, 853 (Minn. 1987), the Minnesota Supreme Court held that a temporary spousal maintenance obligation terminated upon an obligee's remarriage even though the decree did not expressly provide for termination upon remarriage. The Gunderson court was interpreting Minn. Stat. § 518.64, subd. 3 (1986), the predecessor statute to Minn. Stat. § 518A.39, subd. 3 (2012), which contained identical language to the current statute. The Supreme Court reasoned as follows: "[S]ubdivision 3 requires that a decree state *expressly* that maintenance will continue beyond **remarriage**. The decree involved here did not. This absence is not remedied by evidence that the parties intended maintenance to continue unconditionally.... [A] stipulated agreement fixing parties' maintenance rights and obligations is important to the subsequent judicial review of a divorce decree whose terms reflect that stipulation. However, evidence of how parties view a maintenance obligation, whether taken from negotiations or a stipulation, is irrelevant to the issue of whether maintenance should continue past **remarriage** given ... subdivision 3's

requirement that any such provision be positively expressed in the decree.” (Emphasis added.) Id. at 853. \*

In Telma v. Telma, 474 N.W.2d 322 (Minn. 1991), the Minnesota Supreme Court made an exception to its holding in Gunderson. In Telma, the parties’ divorce decree provided that the obligee was to receive 5 years of temporary maintenance, and did not state whether the temporary award would terminate upon the obligee’s remarriage. See Id. at 323. The decree also provided that the obligor waived “any right he may have...to petition [the] [c]ourt for modification of his obligation to pay maintenance, either as to amount or duration or termination.” Id. In Telma, the Minnesota Supreme Court held that language whereby the obligor “unequivocal[ly] waive[d] ... his right to seek a modification of the spousal maintenance award” coupled with the limitation of the termination of maintenance to two specific non-marriage events (i.e., (1) expiration of the five year term and; (2) the obligor’s income exceeding \$30,000),<sup>3</sup> meant that the parties intended that maintenance continue past the obligee’s remarriage. Id. The Telma court reasoned that Gunderson “did not foreclose the consideration of clearly written expressions of the parties’ intention” for maintenance to continue past remarriage.<sup>4</sup> Id.

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<sup>3</sup> The award of 42 months of temporary maintenance in Gunderson, supra, specified only one termination event – the expiration of the 42 month period. See Gunderson at 853. The decree in the present case also specifies only one termination event – the end of the 48 month term of temporary spousal maintenance.

<sup>4</sup> The district court in the present case distinguished Telma as follows: “In Telma the breadth of the waiver and divestiture language was expansive and sought to include modifications for amount, duration, and termination. In contrast, the breadth of the waiver and divestiture utilized in this case was limited to only ‘additional spousal maintenance’.” (ADD.7)

This Court has repeatedly declined to expand Telma's exception to the Gunderson holding. In Poehls v. Poehls, 502 N.W.2d 217, 219 (Minn. App. 1993), this Court reversed a trial court's determination that a permanent spousal maintenance obligee's remarriage did not terminate spousal maintenance, noting that the decree in Poehls, unlike the decree in Telma, did not contain a waiver by the parties of their right to seek modification. The Poehls court further noted the waiver in Telma had been "unequivocal." Id. The Poehls court stated that it "decline[d] to read the Telma decision as substantially abrogating the legislative directive of [subdivision] 3," and ordered termination of the obligor's maintenance obligation. Poehls at 218-19. In Kahn v. Tronnier, 547 N.W.2d 425, 430-31 (Minn. App. 1996), this Court affirmed a trial court's termination of temporary maintenance following an obligee's remarriage notwithstanding the decree's silence on the impact of remarriage, where there was no waiver by the obligor of the right to modify maintenance. The Kahn court stated that the facts of that case were similar to the facts in Poehls, *supra*, in that the Kahn divorce decree "lack[ed] both an 'express' statement that maintenance would continue after [the obligee's] remarriage and a waiver by the obligor of his right to modify maintenance." Kahn at 430-31. In Arndt v. Arndt, No. C6-96-1930 (Minn. Ct. App. Feb. 25, 1997)(unpublished opinion attached and incorporated into the Appendix to Respondent's Brief at RA.19-20), the Minnesota Court of Appeals affirmed a district court's termination of a 15 year, temporary spousal maintenance award upon the obligee's remarriage, even though the decree contained a waiver of the obligee's right to seek modification of maintenance, where the decree was silent on the issue of remarriage and did not contain a similar

waiver by the obligor. The decree in Arndt provided: “In no event shall spousal maintenance continue after January 20, 2006, and [the obligee] waives any further spousal maintenance after said date and the Court shall be divested of any jurisdiction to award spousal maintenance after said date.”(RA.19) As this Court persuasively stated in Arndt: The decree here contains no express or affirmative statement that maintenance will continue beyond [the obligee’s] remarriage. It is silent on the issue of remarriage and no contrary intent can be inferred from the agreement as a whole. While the decree contains a waiver by [the obligee] of her right to seek modification of respondent's maintenance obligation beyond January 20, 2006, it does not contain a similar waiver by [the obligor].” (RA.20)

B. Response to Appellant’s Argument.

Notwithstanding § 518A.39, subd. 3 and the caselaw, Appellant argues that the language in the parties’ divorce decree regarding the divestiture of jurisdiction to award maintenance and the parties’ waiver of additional maintenance supports a conclusion that Respondent waived his right to have his maintenance terminate upon Appellant’s remarriage. Appellant’s argument lacks merit.

Appellant first notes several instances in in paragraph XVI of the findings and paragraph 14 of the conclusions of law where it states that the court is “divested of jurisdiction to award” either or both parties spousal maintenance or additional spousal maintenance. See Appellant’s Brief at 17. The problem with this argument is that such language does not divest the court of jurisdiction to terminate or modify maintenance; it only divests the court of jurisdiction to award Respondent maintenance or to award

Appellant additional spousal maintenance. Appellant also relies upon the following sentence in paragraph 14 of the decree's conclusions of law to argue that maintenance must continue past remarriage: "This court shall retain jurisdiction solely to enforce the temporary award of spousal maintenance payments herein." See Appellant's Brief at 18. However, this sentence needs to be read in the context of the sentence preceding it: "The Court is hereby divested of jurisdiction to award either party any additional spousal maintenance for the past, present or future." (A-17) The second sentence is thus a modifier of the previous sentence. All it does is clarify that the court retains jurisdiction to enforce the spousal maintenance award, even though it lacks jurisdiction to award additional maintenance.

Next, Appellant asserts that Respondent should be viewed as having waived his right to modify spousal maintenance, citing Butt v. Schmidt, 747 N.W.2d 566, 573 (Minn. 2008) for the proposition that language waiving any claim to spousal maintenance by an obligor is sufficient to operate as a waiver by an obligor of the obligor's right to seek modification of a maintenance award. See Appellant's Brief at 22-23. Appellant is distorting the holding in Butt v. Schmidt – a case which is inapposite. Butt v. Schmidt does not address whether an obligor loses the right to have maintenance cease upon an obligee's remarriage, but rather involves the question of whether a district court has the ability to modify spousal maintenance in favor of an obligee who waived "additional maintenance" in their decree. See Butt at 570, 573. In Butt v. Schmidt, the Supreme Court simply held that the obligee's waiver of "any spousal maintenance" apart from the temporary maintenance awarded was tantamount to a clear waiver of her right to obtain

any modification of the award. See Butt at 573. In the present case, Appellant, an obligee, also agreed to waive her right to additional maintenance (beyond the 4 years awarded her), and she further agreed that the court would be divested of jurisdiction to award her additional maintenance. If Appellant had argued that she should be able to modify her award by increasing its amount before the term ended or by extending its duration after the term ended, she would have been barred from so doing just like the obligee in Butt. Respondent, on the other hand, is an obligor who waived only his right to seek any maintenance for himself. He did not waive his right to seek a modification of the maintenance awarded to Appellant, nor did he waive his right to have his obligation terminate upon Respondent's remarriage.<sup>5</sup>

A reversal of the district court in the present case would represent a radical departure from existing law, and would conflict with the principle that a waiver of a right must be clear from the record. There must be more than equivocal or contradictory language to support a conclusion that someone has waived their statutory rights. Waiver requires the intentional or voluntary relinquishment of a known right. Adam v. Adam, 358 N.W.2d 487, 489 (Minn. App. 1984). Absent an express waiver by the parties, the

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<sup>5</sup> In her brief, Appellant argues that it would be unfair to read the language in the parties' divorce decree as limiting only her right to seek modification of spousal maintenance, but not Respondent's right to seek a modification. See Appellant's brief at 19, 21-22. In Berens v. Berens, 443 N.W.2d 558, 563 (Minn. App. 1989), this Court held that a district court may be divested of jurisdiction to modify spousal maintenance even if the parties' agreement simply waived the recipient's right to obtain modification. There are no cases which hold that waivers of the right to modify maintenance must be mutual, especially where the parties' stipulation recites the consideration for one party's waiver.

district court cannot infer waiver of a statutory right. Keating v. Keating, 444 N.W. 2d 605, 607-08 (Minn. App. 1989).

### CONCLUSION

The parties' divorce decree contained language barring Appellant from receiving additional maintenance and barring Respondent from being awarded any maintenance. Respondent did not waive his right to modify the amount or duration of the maintenance award or to have maintenance end upon Appellant's remarriage, and the decree did not divest the court of jurisdiction to terminate maintenance. As such, Appellant's spousal maintenance award ended upon her marriage to her current spouse. This Court should affirm the district court's decision.

Respectfully submitted,

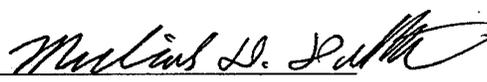
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## CERTIFICATE OF COMPLIANCE

The undersigned counsel for Appellant, James Craig LaPlante, certifies that this brief complies with the requirements of Minn. R. App. P. 132.01 in that it is printed in 13 point, proportionately spaced typeface utilizing Microsoft Word 2002 and contains 3,270 words, including headings, footnotes and quotations (and excluding the Table of Contents and Table of Authorities).

Date: December 19, 2012

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