

No. A13-1095

State of Minnesota
In Court of Appeals

OFFICE OF
APPELLATE COURTS

JAN 23 2014

FILED

Melissa Lynn Gossman,
Respondent/Cross-Appellant,

vs.

Jonathan Douglas Gossman,
Appellant/Cross-Respondent.

**PRINCIPAL BRIEF AND APPENDIX OF
RESPONDENT/CROSS-APPELLANT**

DE BEER & ASSOCIATES, P.A.
Linda S.S. de Beer (#231976)
8653 Eagle Point Boulevard
Lake Elmo, MN 55042
(651) 714-2378

ECKBERG, LAMMERS, BRIGGS,
WOLFF & VIERLING, PLLP
Mark J. Vierling (#112823)
Kevin S. Sandstrom (#348958)
1809 Northwestern Avenue
Stillwater, MN 55082
(651) 493-2878

Attorneys for Respondent/Cross-Appellant

Attorneys for Appellant/Cross-Respondent

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 ISSUES

1. Did the district court's jurisdiction over spousal maintenance terminate with entry of the Judgment and Decree and thus terminate its jurisdiction to approve subsequent stipulations for modification of spousal maintenance?

A. Answer: Yes. This issue was raised in the trial court by Petitioner's Supplemental Notice of Motion and Motion (A.000034)

B. The district court determined that it did not have jurisdiction to approve orders for modification of spousal maintenance. (A.000089)

C. This issue was preserved for appeal by Husband filing of his motion for amended findings (A.000126) and Husband's notice of appeal.

D. Apposite Authority:

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

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

Herubin v. Finn, 603 N.W.2d 133 (Minn. App. 1999)

Evans v. Evans, 672 N.W.2d 232 (Minn. App. 2003)

Minn. Stat. §518.552, subd. 5

2. Did the district court have jurisdiction to enforce the parties' Stipulations as a matter of contract law

A. Answer: No. This issue was raised in the trial court by Husband's Responsive and Supplemental Notice of Motion and Motion. (A.000043)

B. The district court determined that it did not have jurisdiction to enforce the parties' Stipulations. (A.000089)

C. This issue was preserved for appeal by Husband filing of his motion for amended findings (A.000126) and Husband's notice of appeal.

D. Apposite Authority:

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

Herubin v. Finn, 603 N.W.2d 133 (Minn. App. 1999)

Hemmesch v. Molitor, 328 N.W.2d 445 (Minn. 1983)

Minn. Stat. §518.552, subd. 5

3. Is Wife is collaterally estopped from contesting the court's void orders?
- A. Answer: No. This issue was not raised in the district court.
 - B. This issue was not raised in the district court.
 - C. This issue was not preserved for appeal because it was not raised in the district court. It also was not raised in Husband's Statement of the Case.
 - D. Apposite Authority:

Minn. R. Civ. P. 104.01

4. Did Wife waive her right to collect spousal maintenance ordered in the Judgment and Decree?
- A. Answer: No. This issue was raised by Husband in his motion dated December 3, 2008. (A.A. – 42.)
 - B. The district court determined that Wife did not waiver her right to collect spousal maintenance ordered in the Judgment. (A.000089)
 - C. This issue was preserved for appeal by Husband filing of his motion for amended findings (A.000126) and Husband's notice of appeal.
 - D. Apposite Authority:

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

5. Did the trial court abuse its discretion by misapplying the law when it retroactively modified husband's spousal maintenance obligation?
- A. Answer: Yes. This issue was raised by Wife in her Supplemental Notice of Motion and Motion (A.000034).
 - B. The district court denied Wife's motion in part in its October 10, 2012 Order. (A.000089)

C. This issue was preserved for appeal by Wife filing her motion for amended findings (A.000103) and Wife's notice of appeal.

D. Apposite Authority:

Christenson v. Christenson, 490 N.W.2d 447 (Minn.App.1992)

Evans v. Blesi, 345 N.W.2d 775 (Minn. App.1984), pet. for review denied (Minn. June 12, 1984)

Leifur v. Leifur, 820 N.W.2d 40 (Minn. App. 2012)

Minn. Stat. §518A.39, subd. 2(e)

STATEMENT OF THE CASE AND FACTS

The parties signed a Marital Termination Agreement that was filed on May 28, 2010. (A.000001) The Marital Termination Agreement was incorporated into the Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree which was entered on July 23, 2010. (A.000014) The Decree ordered Husband to pay Wife temporary spousal maintenance of \$5,000 per month for a period of 60 months, effective June 1, 2010, subject to a Karon waiver. (A.000019) The Karon waiver provided that except for the temporary maintenance award to Wife, neither party was awarded past, present or future spousal maintenance and the trial court was divested of jurisdiction to modify spousal maintenance. (A.000014) The appeal period expired.

On December 10, 2010, a Stipulation and Order Amending Judgment and Decree was filed reducing Husband's spousal maintenance obligation from \$5,000 per month to \$3,400 per month effective November 1, 2010. (A.000027) In August of 2011, the parties executed a second Stipulation and Order Amending Judgment and Decree. (A.000052) This agreement reduced Husband's spousal maintenance obligation to \$2,400 per month effective April 1, 2011. (Id.) However, neither party filed the document with the Court. (Id.) On December 22, 2011, a third Stipulation and Order Amending Judgment and Decree was filed. (A.000029) This Order further reduced Husband's spousal maintenance obligation to \$1,360 per month until June 1, 2012 and thereafter reduced the award to \$1,160 per month. (A.000029) Wife was not represented by counsel in negotiating the three reductions in Husband's maintenance obligation. (A.000027 and A.000029)

In June 2012, Wife filed a motion asking the trial court to vacate the previously filed spousal maintenance modification orders for lack of jurisdiction, to enter judgment against Husband in an amount equal to his spousal maintenance arrears, and to restore the proper spousal maintenance amount of \$5,000 per month. (A.000034) A hearing took place on July 6, 2012 and an Order was filed on October 10, 2012. (A.000089) The district court granted Wife's motion and determined that the court lacked jurisdiction to modify spousal maintenance at the time of the parties' earlier stipulations. (A.000097) The court further noted that where a court issues an order without jurisdiction, that court's order is null and void. (A.000097-98) The court clarified that Husband's spousal maintenance obligation of \$5,000 per month was still in full force and effect pursuant to the original Judgment and Decree. (A.000099) Despite these determinations, the court retroactively modified Husband's maintenance obligation by forgiving his unpaid spousal maintenance of \$59,179. (A.000099) Motions for Amended Findings were heard on January 25, 2013. (A.000162) By Order filed April 24, 2013, the district court granted Wife judgment against Husband for unpaid spousal maintenance since June 2012, the date of the last null and void order. (A.000162) This appeal followed.

ARGUMENT

I. STANDARD OF REVIEW AS TO JURISDICTION TO MODIFY SPOUSAL MAINTENANCE OBLIGATION.

Jurisdiction is a question of law that the Court of Appeals reviews de novo. In re Comm'r of Pub. Safety, 735 N.W.2d 706, 710 (Minn. 2007). No deference is given to a lower court on questions of law. Modrow v. JP Foodservice, Inc., 656 N.W.2d 389, 393

(Minn. 2003). When the material facts are not in dispute, the Court of Appeals reviews the lower court's application of the law de novo. In re Collier, 726 N.W.2d 799, 803 (Minn. 2007); In re Estate of Barg, 752 N.W.2d 52, 63 (Minn. 2008).

II. THE TRIAL COURT DID NOT HAVE JURISDICTION TO MODIFY SPOUSAL MAINTENANCE.

In its October 10, 2012 Order, the district court properly determined that it lacked jurisdiction to modify spousal maintenance and that the prior orders modifying maintenance are null and void. (A.000097-98) The district court's determination should be upheld.

A. The District Court's Jurisdiction Terminated with Entry of the Judgment and Decree and Thus It Did Not Have Jurisdiction to Approve the 2010 or 2011 Stipulation of the Parties to Modify Spousal Maintenance.

The parties provided a Karon waiver in their Judgment and Decree. Four requirements must be met before a stipulation precluding or limiting maintenance modification divests the court of its jurisdiction over maintenance: 1) the stipulation must include a contractual waiver of the parties' rights to modify maintenance; 2) the stipulation must expressly divest the district court of jurisdiction over maintenance; 3) the stipulation must be incorporated into the final judgment and decree; and 4) the court must make 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. Butt v. Schmidt, 747 N.W.2d 566, 573 (Minn. 2008)(citing Loo v. Loo, 520 N.W.2d 740, 745-46 (Minn. 1994); Minn.Stat. §518.552, subd. 5). The parties' Marital Termination Agreement states as follow:

WHEREAS, except as provided herein, pursuant to Minn. Stat. § 518.552, Subd. 5, and Karon v. Karon, 435 N.W.2d 501 (Minn. 1989) each party is precluded from seeking spousal maintenance (alimony) now and in the future. This preclusion is supported by consideration, to-wit: (i) that it is mutual, and (ii) that there has been full disclosure between the parties of all assets and debts, and (iii) that the property division that has been agreed to by the parties is fair and equitable. The parties have fully reviewed their financial situation by considering their marital settlement, resources, incomes, debts, living expenses and earning potential. The stipulation with respect to maintenance (alimony), be it past, present or future, is fair and equitable, and there has been a full disclosure of each party's financial circumstances.

(A.000004)

The Marital Termination Agreement further provides that “neither party is awarded spousal maintenance (alimony) from the other either past, present or future, and that the same is hereby forever waived. The Court is divested of jurisdiction to modify the maintenance provisions herein.” (Id.) The provisions of the parties' Marital Termination Agreement were incorporated into the July 23, 2010 Judgment and Decree in Finding of Fact XIX. (A.000018)

Based on the above, the four requirements of a valid waiver of spousal maintenance were satisfied and the trial court was in no uncertain terms divested of jurisdiction to modify spousal maintenance. Husband does not deny that the Karon waiver in the parties' Judgment and Decree was valid and enforceable. He acknowledged that the district court was divested of jurisdiction on the record during the July 6, 2012 hearing. (A.000070, lines 12-16) Rather, Husband argues that the purpose of the Karon decision was to allow parties to mutually contract to modify spousal maintenance and therefore the ability to contract supersedes the court's divestiture of its jurisdiction. (AB-

10) His argument circumvents the real issue in this Appeal. This issue is not whether the parties are able to make stipulations between themselves, but rather whether the district court had the jurisdiction to ratify the parties' stipulation and therefore enforce it.

Husband indicates that just as the parties agree to limit jurisdiction, they may return jurisdiction to the Court. (AB-10) Notably, however, Husband does not offer a single statute or case in his brief supporting the position that the parties may "revest" the trial court with jurisdiction after the trial court has been divested of jurisdiction. He indicates that the case of Anderson v. Twin City Rapid Transit Co., 250 Minn. 167, 84 N.W.2d, 593 (1957) supports his position. (AB-10) First, this is a 1957 decision made 32 years prior to the Karon decision. Secondly, in Anderson, there was dispute as to whether language in a contract was ambiguous and whether it met the provisions of the arbitration statute. The case does not relate in any way to the specific issue of spousal maintenance modification or the specific statutes and caselaw regarding modification of spousal maintenance. The Anderson case does not discuss divestiture of jurisdiction. In Anderson, the Court indicated that where ambiguity exists in a contract, the courts are required to resort to construction of the contract, but where there is no ambiguity, the contract must be enforced because the courts are not permitted to write contracts for the parties. The court in Anderson had not been divested of jurisdiction over the issue. In the case at hand, there is no ambiguity as to the Karon waiver. Neither party has alleged that the Karon waiver is ambiguous or that it did not meet the criteria for a waiver of modification of maintenance or for a divestiture of the court's jurisdiction. The statutes and caselaw provide for certain specific requirements for modification of maintenance

and divestiture of jurisdiction. The Anderson case in no way circumvents these requirements or provides an avenue to invalidate the divestiture of the court's jurisdiction.

Husband further cites the cases of Loo v. Loo, 520 N.W.2d 740 (Minn. 1994) and Gessner v. Gessner, 487 N.W.2d 921 (Minn. App. 1992), arguing that these cases support the trial court re-asserting jurisdiction in the instance of a stipulation as opposed to a contested re-assertion of jurisdiction. Neither of these cases reflects what Husband purports they reflect. Neither of these cases makes a distinction between a contested request by one party for the court to accept jurisdiction and an uncontested request by both parties for the court to accept jurisdiction. Neither of the cases indicates that the parties may stipulate to provide the court jurisdiction or that the court may assert jurisdiction once jurisdiction is divested. Husband's argument that a Karon waiver relates to the right of only one party to seek modification of maintenance is a leap. The waiver language in the parties' Judgment and Decree pertains to the right of each party's right to seek modification and the language regarding divestiture pertains to a request by either party. Husband has not presented a single supported instance of a court re-asserting jurisdiction over an issue after it has been divested of jurisdiction over that issue, by stipulation or otherwise.

Minn. Stat. §518.552, subd. 5 indicates that 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 statute further indicates that the stipulation must be made part of the judgment and decree. It appears that if the Court had a mechanism for re-asserting jurisdiction by stipulation, that at a minimum, the stipulation would need to contain the same findings that were necessary to divest the court of jurisdiction. None of the parties’ stipulations contain any such findings.

Husband’s assertion that the parties may confer jurisdiction upon the court by stipulation is contrary to law. In the case of Herubin v. Finn, 603 N.W.2d 133, 137 (Minn. Ct. App. 1999) (citing Hemmesch v. Molitor, 328 N.W.2d 445, 447 (Minn. 1983), the Court makes it clear that subject matter jurisdiction may be questioned at any time, even on appeal, because subject matter jurisdiction may not be conferred upon the court by consent of the parties.

Husband further argues in his brief that because the trial court failed to promptly decline jurisdiction when presented with the parties’ stipulations, that the court rightfully gained jurisdiction. (AB – 11-12) Husband’s argument appears to be that a court that does not have subject matter jurisdiction need only assert jurisdiction, even if erroneously and contrary to law, in order to obtain jurisdiction. Again, there is no statute or case presented by Husband supporting this position. The district court failing to abide by the law does not ratify its actions or orders. Subject matter jurisdiction may be asserted at any time, even on appeal. (Herubin v. Finn, 603 N.W.2d 133, 137 (Minn. Ct. App. 1999) (citing Hemmesch v. Molitor, 328 N.W.2d 445, 447 (Minn. 1983),

Husband further argues on page 12 of his brief that the court had jurisdiction because it currently retains jurisdiction over stipulations unrelated to spousal

maintenance. A Karon waiver relates only to divestiture of jurisdiction over the issue of spousal maintenance modification and not to issues such as child support or parenting time. The fact that the Court has continuing subject matter jurisdiction over those unrelated issues at the same time as being divested over the issue of spousal maintenance is not evidence or support that the district court may simply assert jurisdiction over the issue of maintenance. The parties did not agree to divest the court of jurisdiction over those issues unrelated to maintenance, nor could they have as the court has continuing jurisdiction over these issues related to children.

Lastly, Husband argues on page 13 of his brief that there is no provision in Minn. Stat. §518.552, subd. 5 that precludes the court from reasserting jurisdiction. However, the lack of preclusion does not indicate that the court has the authority to reassert jurisdiction. The lack of provision in the statute is not necessary as Karon makes it clear that jurisdiction is divested and other case law as cited above makes it clear that the court does not receive subject matter jurisdiction through consent of the parties. Husband does not offer a single instance in which a court properly reasserted jurisdiction to modify spousal maintenance after a Karon waiver and divestiture took place. “Statutes permitting modification of maintenance awards are inapplicable when there is an approved stipulation divesting the trial court of jurisdiction, and the trial court made proper findings under Minn. Stat. §518.552, subd. 5. Evans v. Evans, 672 N.W.2d 232, 235 (Minn. App. 2003).

In summary, the trial court properly interpreted Karon and Minn. §518.552 in concluding that it lacked jurisdiction to modify spousal maintenance. The parties’

stipulations are null and void and were properly vacated by the district court. The Minnesota Supreme Court and the legislature has recognized the “importance of finality in dissolution proceedings” by setting forth specific circumstances that must be present to permit a party to be relieved of the terms of a judgment and decree. See Ryan v. Ryan, 193 N.W.2d 295, 298 (Minn. 1971) (where no fraud or bad faith is shown, allowing settlement made in court to be reopened months later at whim of either party would create uncertainty, chaos, and confusion); Minn. Stat. §518.145, subd. 2 (court may relieve party from terms of judgment and decree for mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, a void judgment and decree where judgment has been satisfied, released or discharged). The “sole relief from the judgment and decree lies in meeting the requirements of Minn. Stat. §518.145, subd. 2.” Shirk v. Shirk, 747 N.W.2d 519, 521 (Minn. 2008). Husband has not met those requirements and did not meet those requirements through the stipulations. The district court’s order declaring the modification orders void should be upheld.

B. The Court Does Not Have Jurisdiction to Enforce the Parties’ Stipulations as a Matter of Contract Law.

Husband next argues that the parties’ may stipulate to modify spousal maintenance as a matter of contract law notwithstanding a Karon waiver. (AB – 13) Husband provides citations to various cases that indicate that parties may contract to modify or waive the terms of their contracts by mutual agreement. However, none of those cases expressly indicate that the specific issue of spousal maintenance may be modified after the court has been divested of jurisdiction. A Karon waiver is a contractual waiver. However, the

subject matter jurisdiction of the court is not a matter that may be contracted. The parties may not stipulate to the court having subject matter jurisdiction that it does not otherwise have. Herubin v. Finn, 603 N.W.2d 133, 137 (Minn. Ct. App. 1999) (citing Hemmesch v. Molitor, 328 N.W.2d 445, 447 (Minn. 1983)). None of the cases that Husband cites indicates that the parties' contract may be enforced by a court that does not have jurisdiction over the subject matter of the contract. The Karon case indicates that the family court does not have jurisdiction over the issue of spousal maintenance once its criteria are met. Husband does not cite to any case that indicates that once a court relinquishes jurisdiction, that common contract law takes the place of the Karon requirements or affect or that that common contract law confers jurisdiction onto a court. Minn. Stat. §518.552, subd. 5 indicates that the parties may expressly preclude or limit modification of maintenance through a stipulation. It does not indicate that the parties may expressly include or open modification of maintenance through a stipulation or that it may confer jurisdiction onto the court. Even if ordinary contract law applied to the waiver of spousal maintenance modifications and the parties could stipulate to modification post-Karon waiver, Husband again ignores the real issue to be determined which is that neither Minn. Stat. §518.552, nor any other statute or case indicates that the parties may stipulate to jurisdiction in order to enforce such a contract. In order for the modified contract to be enforced by a court, the court needs jurisdiction to enforce it. As a matter of contract (the Judgment and Decree), Husband stipulated to divest the Court of jurisdiction to enforce any future modification of spousal maintenance. The divestiture should be upheld.

C. Wife is Not Collaterally Estopped From Contesting The Court's Void 2010 and 2011 Orders.

Husband next argues that Wife is collaterally estopped from contesting the 2010 and 2011 modifications because she did not timely appeal either of the court orders, citing Minn. R. Civ. P. 104.01. (AB-17) This argument is akin to Husband's faulty argument that because the trial court failed to promptly decline jurisdiction that it somehow gained jurisdiction. He presents no support for the proposition that the failure to contest a void order makes it valid. Furthermore, Minn. R. Civ. P. 104.01, subd. 1 states that an appeal may be taken from a judgment within 60 days after its entry and from an appealable order within 60 days after service of written notice of its filing. The Orders are not judgments and no subsequent Amended Judgment and Decree was entered. Furthermore, there was no written notice of filing of the Orders on either party. Thus, the appeal period regarding the Orders has not expired and Husband's argument fails in this regard.

Secondly, as the Court did not have jurisdiction to make its Orders, failure to appeal an Order that was erroneously obtained does not validate those Order. Failure to appeal does not induce or permit jurisdiction that is not otherwise present. As indicated above, lack of subject matter jurisdiction may be raised at any time, even on appeal.

D. Wife did Not Waive Her Right to Collect Spousal Maintenance Ordered in the Judgment and Decree.

Lastly, Husband argues that Wife expressly waived the effect of the Karon waiver by entering into the stipulations because the Karon waiver is subject to being waived itself just as any other contractual provision. (AB – 19) Again, Husband relies on

tenants of ordinary contract law that are not applicable to the novelty and requirements of a Karon waiver. Unlike contracts of other types, a Karon waiver has very specific and intentional requirements as set forth in the Karon and Butt cases and Minn. Stat. §518.552, Subd. 5. Husband seems to suggest that the district court should ignore the body of law that it needs to uphold regarding waiver of spousal maintenance obligations and instead apply ordinary contract law as it relates to other types of contractual provisions. Again, at a minimum, the requirements to bring about a Karon waiver and divestiture of jurisdiction over spousal maintenance should be required. However, even if a “waiver of the waiver” was applicable, the district court still did not and does not have subject matter jurisdiction over the waiver of the Karon waiver. Parties may not confer jurisdiction onto the court by stipulation when the court would not otherwise have jurisdiction. Husband continues to confuse two separate issues – a contractual waiver and jurisdiction to enforce a contractual waiver.

III. STANDARD OF REVIEW AS TO FORGIVENESS OF ARREARS.

A trial court has the inherent power to grant equitable relief as the facts in each particular case and the ends of justice may require. DeLa Rosa v. DeLa Rosa, 309 N.W.2d 755, 757-58 (Minn.1981). The decision to grant equitable relief is within the discretion of a trial court and will not be reversed unless there is an abuse of that discretion. Medtronic, Inc., v. Advanced Bionics Corp., 630 N.W.2d 438, 450 (Minn.App.2001). However, misapplying the law is an abuse of discretion. Bauerly v. Bauerly, 765 N.W.2d 108, 110 (Minn. App. 2009); Schisel v. Schisel, 762 N.W.2d 265, 272 (Minn.App.2009). The district court abused its discretion by misapplying the law

regarding its own lack of jurisdiction and forgiving Husband's spousal maintenance arrears.

IV. THE TRIAL COURT ABUSED ITS DISCRETION BY MISAPPLYING THE LAW WHEN IT RETROACTIVELY MODIFIED HUSBAND'S SPOUSAL MAINTENANCE OBLIGATION WITHOUT JURISDICTION TO DO SO.

Parties may agree to divest a trial court of jurisdiction to modify spousal maintenance. Karon v. Karon, 435 N.W.2d 501 (Minn.1989); Minn.Stat. § 518.552, subd. 5 (2012). Here, the parties incorporated a Karon waiver into their Decree and divested the trial court of jurisdiction to modify spousal maintenance. The trial court properly determined that the divestment of jurisdiction made the parties' subsequent spousal maintenance modification orders null and void. However, in direct contrast to its divestment of jurisdiction, the trial court then made an equity ruling that forgave Husband's spousal maintenance arrears prior to the June 2012 modification. Forgiveness of spousal maintenance arrearages constitutes a retroactive modification of a maintenance obligation. Christenson v. Christenson, 490 N.W.2d 447, 449 (Minn.App.1992). In summary, the trial court determined that it did not have jurisdiction over modification of spousal maintenance, and then improperly made a retroactive modification of spousal maintenance. Because the trial court did not have jurisdiction to modify Husband's spousal maintenance obligation, it did not have jurisdiction to forgive or modify Husband's spousal maintenance arrears. When a trial court issues an order without jurisdiction, the trial court's order is considered null and void. *See* Evans v. Blesi, 345 N.W.2d 775 (Minn.Ct.Capp.1984), pet. for review denied (Minn. June 12, 1984). Thus,

the forgiveness of Husband's maintenance arrears is null and void. Additionally, the trial court should exercise consistency in its rulings. The divestment of jurisdiction is a complete divestment and the trial court should not circumvent its own divestment through an equity ruling, in effect picking and choosing where to assert jurisdiction and reject jurisdiction.

Even if the trial court had jurisdiction to modify spousal maintenance, the forgiveness of spousal maintenance arrears was not supported by law. The trial court's ability to retroactively modify spousal maintenance and therefore reduce spousal maintenance arrears is restricted by Minn.Stat. §518A.39, subd. 2 (e) (2012) which provides that a modification of support or maintenance may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification, and only from the date of service of Notice of Motion on the responding party. This is demonstrated in Leifur v. Leifur, 820 N.W.2d 40 (Minn.App.2012). In Leifur, the parties attended mediation and stipulated in writing that the husband's spousal maintenance obligation would be retroactive to June 1, 2009. In May 2010, the wife filed a motion to enforce the maintenance and support obligations in the parties' Judgment and Decree. The husband filed a motion requesting that his maintenance obligation be terminated or suspended and that the suspension be retroactive to June 1, 2009 pursuant to the mediation agreement. The trial court found that it did not have authority to retroactively modify husband's spousal maintenance obligation to June 1, 2009 pursuant to Minn.Stat. § 518A.39, subd. 2 (e). The Court of Appeals affirmed and held that a trial court does not have authority to make a maintenance obligation retroactive to a date prior

to service of notice of a modification motion. Id. at 43. It further held that a trial court “may not disregard unambiguous statutory language” and that “parties cannot by stipulation confer on the court authority to do something that the legislature has explicitly prohibited.” Id.

In the case at hand, the trial court was divested of jurisdiction to modify spousal maintenance. However, even if we assume that the trial court had jurisdiction to modify spousal maintenance, the trial court still did not have a basis to retroactively modify Husband’s spousal maintenance obligation. Husband filed his responsive motion on July 2, 2011. His responsive motion did not request a modification of his spousal maintenance obligation. Thus, because Husband never served Wife with a Notice of Motion for modification, no retroactive spousal award could be ordered by the district court.

In conclusion, a trial court has inherent power to grant equitable relief. The decision to grant equitable relief is reviewed by an abuse of discretion standard. Misapplying the law is an abuse of discretion. The parties agreed to divest the trial court of jurisdiction to modify spousal maintenance. The trial court found that the previous spousal maintenance orders were null and void because of the divestment of jurisdiction. However, the trial court circumvented its divestment of jurisdiction by forgiving Respondent’s spousal maintenance arrears over her objection, which is akin to retroactively modifying spousal maintenance. A divestment of jurisdiction is a total divestment and the trial court may not use its equitable powers to grant relief expressly prohibited by the legislature and case law. Furthermore, even if the trial court had jurisdiction to modify spousal maintenance, Husband failed to properly serve a Motion to

allow the trial court to retroactively modify spousal maintenance pursuant to Minn. Stat. §518A.39, subd. 2 (e).

CONCLUSION

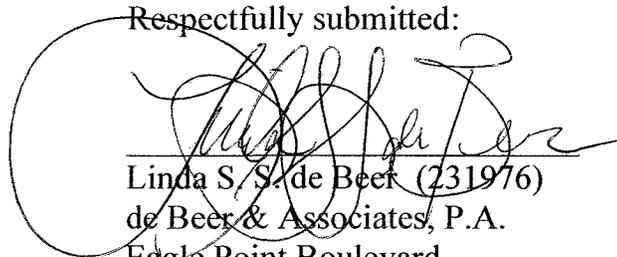
The trial court properly determined that it did not have jurisdiction to modify Husband's spousal maintenance obligation and that the parties' post-Karon waiver stipulations were null and void. There is no support for the Court exercising jurisdiction that it did not properly have. Wife respectfully requests that the decision of the district court in this regard be upheld.

As the Court did not have jurisdiction to modify Husband's spousal maintenance obligation, it also did not have jurisdiction to retroactively modify that obligation through the forgiveness of arrears over Wife's objection. Wife respectfully requests the decision of the district court in this regard be reversed and that judgment be entered in favor of Wife for the full amount of maintenance arrears.

Dated:

1/22/2014

Respectfully submitted:



Linda S. de Beer (231976)
de Beer & Associates, P.A.
Eagle Point Boulevard
Lake Elmo, MN 55042
651-714-2378

Attorneys for Respondent/Cross-Appellant