
NO. A11-1475

State of Minnesota
In Court of Appeals

Conrad William Leifur,

Appellant,

v.

Katherine Fashant Leifur,

Respondent.

APPELLANT'S REPLY BRIEF

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DISCUSSION

I. THE ENFORCEABILITY OF THE PARTIES' MEDIATED SETTLEMENT AGREEMENT IS REVIEWED BY THIS COURT DE NOVO, NOT AN ABUSE OF DISCRETION STANDARD.

Respondent is attempting to distract this Court from the sole issue on appeal; the enforceability of the parties' mediated settlement agreement. Respondent cites to the wrong standard of review. Whether a document constitutes an enforceable contract is a question of law that this court reviews *de novo*. Mohrenweiser v. Blomer, 573 N.W.2d 704, 706 (Minn. Ct. App. 1998), *review denied* (Minn. Feb. 19, 1998). A mediated settlement agreement is a contract and is subject to rules of contract interpretation and enforcement. Dykes v. Sukup Mfg. Co., 781 N.W.2d 578, 581-82 (Minn. 2010); Theis v. Theis, 271 Minn. 199, 204, 135 N.W.2d 740, 744 (Minn. 1965).

The key issue on appeal is whether the Court erred as a matter of law in determining the mediated settlement agreement is an unenforceable contract. Appellant is not raising as an issue on appeal the effective date of a spousal maintenance modification under the statute. The mediated settlement agreement is enforceable as a matter of law and thus, the agreement itself would dictate an effective retroactive date of June 1, 2009, and supersede the statute.

Parties regularly enter into agreements that are inconsistent with a statute. This Court has repeatedly held that parties may stipulate to waive statutory rights in dissolution cases. See Frauenschuh v. Giese, 599 N.W.2d 153, 159 (Minn. 1999), *superseded by statute on other grounds*; Geiger v. Geiger, 470 N.W.2d

704, 707 (Minn. Ct. App. 1991) *citing* Karon v. Karon, 435 N.W.2d 501, 503 (Minn. 1989), *superseded by statute on other grounds* (allowing for an express waiver of spousal maintenance). Likewise, in Ruzic v. City of Eden Prairie, the same concept in Karon was recognized in other areas of law, stating this “Court has determined a waiver of jurisdiction and statutory rights has been allowed in other situations.” 479 N.W.2d 417, 420 (Minn. Ct. App. 1991); see Minnesota Vikings Football Club v. Metropolitan Council, 289 N.W.2d 426, 431 (Minn. 1979) (stating parties may stipulate to limit their rights to appeal); Weber v. Sentry Ins., 442 N.W.2d 164 (Minn. Ct. App. 1989), Footnote 1; see *also* Faretta v. California, 422 U.S. 806, 836, 95 S.Ct. 2525, 2541, 45 L.Ed.2d 562 (1975) (holding a waiver of constitutional rights is allowed). In the present case, the parties reached agreement that any modification of child support and spousal support be retroactive to June 1, 2009, taking the place of the effective retroactive date under the statute. The parties had the right and the ability to stipulate to this agreement. The parties’ binding mediated agreement should be honored and enforced.

II. THE MEDIATED SETTLEMENT AGREEMENT IS A SEPARATE, FREESTANDING AND BINDING CONTRACT ON ITS FACE, IS FAIR AND REASONABLE, AND MUST BE ENFORCED UNDER MINNESOTA LAW.

- A. Respondent relies on cases referred to as “agreements to agree,” which are readily distinguishable from the case at bar and therefore, not persuasive authority.**

The mediated settlement agreement in the case at bar is a separate, freestanding and complete agreement on its face. Respondent incorrectly relies on Appellate Court cases determined to be “agreements to agree” or “agreements to negotiate,” to assert that the present case is “too vague” or “indefinite” to be enforceable. The cases referenced by Respondent are easily distinguishable from the present case.

For example, in King v. Dalton Motors, Inc., the “first option to purchase” agreement left the essential price term in the agreement “to be negotiated and to be agreeable to the parties at the time of sale.” 260 Minn. 124, 126, 109 N.W.2d 51, 53 (1961). This Court determined such a term really provided no standard at all for ascertaining the price or condition of sale. Id. at 126, 54. Thus, because of the uncertainty, the agreement was unenforceable. Id. at 128, 54. This Court, however, noted the circumstances may have been different if the technical meaning of the first option phrase was not negated by other language in the instrument. Id. at 127, 53.

In First Trust Co. of St. Paul v. Holt, the agreement involved the sale of property. 361 N.W.2d 476, 478 (Minn. Ct. App. 1963). In the agreement, the

sale itself was contingent upon a lease to be negotiated in the future. Id. at 478. Moreover, the agreement required repairs to be completed prior to the sale but failed to specify who would be responsible for repairs. Id. at 479. This Court determined that the two agreements could not be integrated because the terms contradicted one another. Id.

In Shepard v. Carpenter, the agreement itself was a contract to enter into a future contract. 54 Minn. 153, 155, 55 N.W. 906, 906 (Minn. 1893). Moreover, the terms of the agreement were indefinite on its face, failing to specify the place to haul or deliver goods as well as how payments were made. Id. Hansen refers to a letter of intent. Hansen v. Phillips Beverage Co., 487 N.W.2d 925, 925 (Minn. Ct. App. 1992). "No contract is formed by the signing of an instrument when one party knows the other does not intend to be bound by the document." Id. at 927. The letter of intent, at paragraph IX, is specifically entitled "non-binding offer." Id. at 926. This paragraph specifically provided that the letter "shall be construed as merely summarizing and evidencing the discussions between the sellers and purchasers, and not as an order or an agreement to purchase the assets of the company." Id. The language of the agreement indicates that both parties understood that the letter of intent was not binding and they were agreeing to pursue a future contract. Id.

Here, the mediated settlement agreement is unambiguously identified as a "binding" agreement between the parties. The agreement itself is uncomplicated and a complete agreement on its face. Clearly, the language of this agreement,

distinguished from Hansen, indicates both parties understood that the binding agreement is just that, a binding agreement. Parties regularly enter into partial settlements in mediation or other ADR processes. A partial settlement is not equivalent to an “agreement to agree.” The sole stipulation in the mediated settlement agreement unambiguously defined that any modification of child support and spousal support be made retroactive to June 1, 2009. No additional terms are essential to this agreement to render it enforceable. Where agreements are of a different type and where consideration for each agreement is separately bargained for by the parties, the performance of each party is specifically divided into several parts, and the consideration was apportioned accordingly, the agreements are divisible. Anderson v. Krammeier, 262 N.W.2d 366, 371 (Minn. 1977). Contrary to Respondent’s argument, there is no need for this agreement to define what happens if mediation is ultimately successful or unsuccessful in resolving the remaining issues. There are only two options: either the parties resolve the remaining issues in mediation and agree to a support amount consistent with the change in circumstances or the parties return to Court to resolve the issues. In either circumstance, the effective retroactive modification date of June 1, 2009 would apply. Therefore, an additional agreement is not necessary to enforce the existing agreement nor does it negate the mediated settlement agreement.

B. The mediated settlement agreement is clear and unambiguous and the district court erred as a matter of law in interpreting, rather than enforcing, the agreement.

In the present case, the language of the mediated settlement agreement is clear and unambiguous. Whether a stipulated dissolution judgment is clear or ambiguous is a legal question. Anderson v. Archer, 510 N.W.2d 1, 3 (Minn. Ct. App. 1993); Halverson v. Halverson, 381 N.W.2d 69, 71 (Minn. Ct. App. 1986). Absent ambiguity, a district court simply enforces, rather than interprets, a stipulated judgment or a contract. See Starr v. Starr, 312 Minn. 561, 562-63, 251 N.W.2d 341, 342 (1977). The only binding term of the agreement states "*The parties agree that any modification of child support and spousal support be retroactive to June 1, 2009.*" The agreement is clear and unambiguous on its face and should be enforced.

C. There was a meeting of the minds on the essential term of the mediated settlement agreement.

Respondent's argument that she never intended to be bound by the mediated settlement agreement is inconsistent with the parties' conduct in this proceeding from June 2009 through April 2010. The intent of the parties to a contract becomes relevant only when the contract language is ambiguous. Turner v. Alpha Phi Sorority House, 276 N.W.2d 63, 66 (Minn. 1979). Here, the contract language is unambiguous.

In the event this Court finds the language of the agreement ambiguous, "[t]o constitute a full and enforceable settlement, there must be such a definite

offer and acceptance that it can be said that there has been a meeting of the minds on the essential terms of the agreement." Jallen v. Agre, 264 Minn. 369, 373, 119 N.W.2d 739, 743 (1963). In searching for contractual intention, the Court must read the contract in its entirety and consider it in the light of the subject matter, the object and purposes of the parties, and the natural meaning of the language used. See Midway Center Assocs v. Midway Center Inc., 306 Minn. 352, 353, 237 N.W.2d 76, 77 (1975); see also Independent School Dist. v. Loberg Plumbing & Heating Co., 266 Minn. 426, 437, 123 N.W.2d 793, 800 (1963). However, the secret, unexpressed intention of the parties is not sought. Grimes v. Toensing, 201 Minn. 541, 545, 277 N.W. 236, 238 (1938). It is not the province of a court of equity to rewrite or abrogate contracts to protect parties from those consequences that are attendant on their voluntary abandonment of the contract and that were reasonably foreseeable when the contractual obligations were assumed. Cady v. Bush, 283 Minn. 105, 109, 166 N.W.2d 358, 362, (1969); citing Liggett v. Koivunen, 227 Minn. 114, 123, 34 N.W.2d 345, 350 (1948); see also 6 Dunnell, Dig. (3 ed.) § 3142; 8A Dunnell, Dig. (3 ed.) § 3833; 27 Am.Jur.(2d) Equity, §§ 25, 71.

The purpose of the parties' mediated settlement agreement was to suspend litigation and continue to negotiate the remaining issues related to Appellant's substantial change in financial circumstances without the necessity of filing a motion to preserve retroactivity as of the mediation date. In essence, Respondent is incorrectly asking this Court to rewrite the agreement to state that

the contract was null and void after the June 2009 mediation session. The contract states “*They have scheduled a second mediation session for June 5, 2009 to continue the discussions.*” Nowhere in the agreement does it state that the contract would terminate upon completion of mediation or if mediation were unsuccessful. Nowhere in the agreement does it state the parties would discontinue mediation or other negotiation efforts in June 2009. As the parties had already attended mediation from February to May 2009, it was reasonably foreseeable at the time the parties executed their mediated settlement agreement on May 28, 2009 that negotiations would continue beyond the June 5, 2009 mediation date.

The only binding term of the agreement states “*The parties agree that any modification of child support and spousal support be retroactive to June 1, 2009.*” Contrary to Respondent’s position, the language of the agreement did not unduly complicate the future modification proceeding. The district court was required to make sufficient findings related to the substantial change in circumstances, based on the income, expenses, and circumstances of both parties, regardless of what effective date retroactivity would be applied.

When determining whether a contract has been formed, courts look to the objective conduct of the parties and not their subjective intent. Gresser v. Hotzler, 604 N.W.2d 379, 382 (Minn. Ct. App. 2000). Clearly, Appellant believed and relied on the fact that Respondent signed the binding agreement and intended to be bound by its terms.

Contrary to Respondent's assertions, the parties' circumstances "evidence" that the parties continued negotiations until April 2010. In her brief, Respondent ignores three letters, which were part of the Court's record in this proceeding, as well as the parties' actions and inactions supporting performance of the agreement. Between June 2009 and April 2010, despite alleged arrears, Respondent did not file a motion before the Court. Respondent did not seek assistance from Hennepin County Family Court Services. The record is further void of Respondent's counsel seeking demand for payment of spousal maintenance arrears from February 1, 2009 through April 2010 or of a request to revoke the existing mediated settlement agreement. It was not until April 28, 2010 that Respondent's counsel sent a letter to the Court, confirming an initial hearing date scheduled for July 12, 2010. (A. 1). This letter represents both parties deliberate and intentional delay in seeking relief from the Court to resolve the remaining issues. Based on the parties' joint delay in reaching out to the district court, Respondent's actions demonstrate she intended to be bound by the mediated settlement agreement. Because of Respondent's actions, Appellant reasonably believed that she intended to be bound by the mediated settlement agreement.

Moreover, the second and third letters support Appellant's reasonable delay in filing his motion in this proceeding. On July 1, 2010, the Court sent a letter to the parties, rescheduling the motion hearing date to August 10, 2010. (A. 2). On August 12, 2010, Respondent's counsel sent another letter to the

Court, confirming the motion hearing was yet again rescheduled to October 28, 2010. (A. 3). The explicit language of the mediated binding agreement and the parties overt actions represent the parties continued efforts to resolve the issues out of court from June 2009 to April 2010.

D. The consideration was mutual to the parties, deferring litigation and saving money in attorneys' fees when executing the mediated settlement agreement.

Respondent's reliance on Baehr v. Penn-O-Tex Oil Corp., 258 Minn. 533, 104 N.W.2d 661 (1960) is misplaced. To be enforceable, an agreement or promise requires consideration. Id. at 538-39, 665. In Baehr, this Court recognized an agreement of forbearance to sue may be sufficient consideration for a contract. Id. at 539, 665. This Court further recognized that circumstantial evidence may support the inference of such an agreement to forbear. Id. at 540, 665. However, the Court distinguished the Baehr case from these general principles, stating although defendant's agent made a promise to plaintiff, it was not in such circumstances that a contract was created. Id. Plaintiff in the Baehr case contended that his failure to institute suit immediately upon learning of assignment to defendant permitted an inference of an agreement to forbear from suit in consideration for defendant's assurance of payment of rents to plaintiff. Id. at 538, 665. In Baehr, the Court determined that because there was no evidence plaintiff deferred legal action any longer than suited for his own personal convenience, there is no consideration for defendant's promise and therefore, no contract. Id. at 540, 665.

The case at bar is readily distinguishable. First, on May 28, 2009, when the parties reached agreement, there was a significant basis for Appellant to seek modification of his spousal maintenance and child support obligation. Appellant voluntarily lost his employment and earned income of approximately \$250,000 per year. (A. 23-24). Employment opportunities in his financial industry were practically nonexistent or required that he move out of state. (A. 25-27). Appellant commenced new business opportunities and ventures that he anticipated would be financially promising. (A. 27-32). Appellant had been paying his support obligations from assets awarded in the Judgment and Decree for a period of one year when the parties entered mediation. (A. 34-36). Moreover, under the Judgment and Decree, his spousal maintenance was subject to a review hearing in May 2010. (A. 36). In May 2009, Respondent also had a claim for child support and spousal maintenance arrears as Appellant was unable to pay the amounts ordered under the Judgment and Decree, beginning in February 2009. (A. 161). At the time of mediation, both parties had a viable claim for Court relief.

It is long-settled contract law that mutual promises "are a sufficient consideration for each other." Koehler & Hinrichs Merc. Co. v. Ill. Glass Co., 143 Minn. 344, 346, 173 N.W. 703, 704 (1919). And "Minnesota follows the long-standing contract principle that a court will not examine the adequacy of consideration as long as something of value has passed between the parties." Brooksbank v. Anderson, 586 N.W.2d 789, 794 (Minn. Ct. App. 1998).

Contrary to Baehr, at the time the parties entered the mediated settlement agreement, the consideration was mutual by the parties to defer litigation and save money in attorneys' fees.

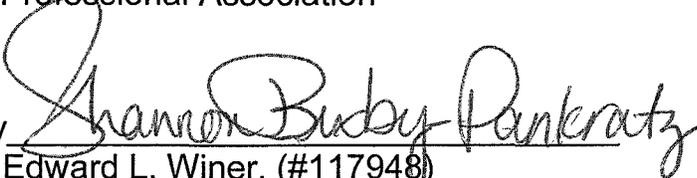
CONCLUSION

The sole issue on appeal, the enforceability of a mediated settlement agreement, represents a significant legal issue of broad application. It is now required that parties attend some form of ADR, to attempt to resolve some, if not all, issues before seeking relief from the Court. Stipulations are a judicially-favored means of simplifying and expediting dissolution litigation and are accorded the sanctity of binding contracts. The application of Minnesota law, including longstanding rules of contract construction, should not give way to Respondent's assertion the mediated settlement agreement is unenforceable. This uncomplicated, clear and unambiguous binding mediated settlement agreement should be determined to be enforceable.

Dated 4-26-12

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Microsoft Word, in Arial font, 13 point, and according to the word processing system's word count, is no more than 14,000 words, exclusive of the cover page, table of contents, table of authorities, signature block and appendix, and complies with the typeface requirements of Minn. R. Civ. App. P. 132.01.

Dated: 4-26-12


Shannon M. Bixby-Pankratz