

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 REPLY BRIEF

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I. MINNESOTA CASELAW PROVIDES 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.

In *Britton v. Johnson*, an unpublished case from 2012, this Court determined that language in a stipulated judgment and decree divesting the district court of jurisdiction over the issue of spousal maintenance was sufficient to preclude modification based on changed circumstances. A11-1318, 2012 Minn. App. Unpub. LEXIS 344, *6 (Minn. Ct. App. April 23, 2012). The *Britton* Court further reasoned that, even in the absence of the divestiture language, the *Karon* waiver providing for the obligee's waiver of a claim to modification and the obligor's waiver of "any claims to spousal maintenance" was sufficient to constitute a waiver of the obligor's right to seek modification under section 518.552: "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 (discussing *Butt v. Schmidt*, 747 N.W.2d 566, 570-73 (Minn. 2008) and *Karon v. Karon*, 435 N.W.2d 501, 502-04 (Minn. 1989))(unpublished).

Respondent argues that the language in the parties' judgment and decree is not sufficient to override the statutory presumption of termination upon remarriage because Respondent "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." (Resp. Brief, p. 11). But Respondent, like the obligor in

Britton, waived all rights to spousal maintenance; therefore, he waived the right to seek modification of the spousal maintenance award. Respondent attempts to address the *Britton* Court's interpretation of *Butt* and *Karon* by distinguishing the facts here from those in *Butt*. Specifically, Respondent asserts that *Butt* is inapposite because it applies to an obligee's ability to seek an increase in maintenance, as opposed to an obligor's ability to seek termination of maintenance. Significantly, Respondent is missing entirely the *Britton* Court's point, i.e., a *Karon* waiver is reciprocal in nature and precludes either party from seeking additional maintenance as well as from seeking to decrease or terminate maintenance. In *Karon v. Karon*, the obligee argued that she should be able to seek an increase in spousal maintenance despite waiver language, "referring to the economic status of divorced women." 435 N.W.2d 501, 503-04 (Minn. 1989). The Minnesota Supreme Court stated that the argument was not applicable "because 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 504. Respondent does not attempt to distinguish a request to decrease maintenance in the event of "financial setbacks" from a request to terminate maintenance in the event of the obligee's remarriage. Indeed, there is no basis to support such a distinction because the policy underlying the *Karon* waiver—the ability to fix a spousal maintenance award as part and parcel of a final, comprehensive settlement of issues—applies equally to both situations. *See id.* (reasoning that stipulations are "carefully drawn compromises which affect property distribution, real and personal, as

well as future income,” and that “setting aside one portion of the stipulation may totally warp the effects of other portions of the document”).

And even if the parties’ stipulated judgment and decree did provide for a double standard regarding waiver, the divestiture language is sufficient to preclude Respondent from seeking modification or termination. Importantly, this Court has rejected the argument that divestiture language like that found in the parties’ stipulated judgment and decree is limited to only one party’s right to seek modification. *See Young v. Young*, A03-223, 2003 Minn. App. LEXIS 1282, *8-9 (Minn. Ct. App. Oct. 21, 2003)(rejecting the husband’s argument that divestiture language applied only to the wife’s waiver of her right to seek modification)(unpublished); *Britton*, 2012 Minn. App. Unpub. LEXIS 344 at *6 (rejecting the husband’s argument that the divestiture language was only effective as to him).

II. POEHLS DID NOT INVOLVE A STIPULATED JUDGMENT AND DECREE AND THEREFORE IS INAPPOSITE.

Respondent relies primarily on three cases: *Gunderson v. Gunderson*, 408 N.W.2d 852 (Minn. 1987), *Poehls v. Poehls*, 502 N.W.2d 217 (Minn. Ct. App. 1993), and *Arndt v. Arndt*, C6-96-1930, 1997 Minn. App. LEXIS 235 (Minn. Ct. App. Feb. 25, 1997)(unpublished). As discussed in Appellant’s initial brief, the holding in *Gunderson* was modified by *Telma v. Telma*, 474 N.W.2d 322 (Minn. 1991) and reliance on the *Gunderson* holding without applying the *Telma* analysis is improper. Further, Respondent’s reliance on *Poehls* is misplaced because *Poehls* did not even involve a stipulated judgment and decree. Rather, the district court issued the judgment and decree

“[a]fter trial and without written or oral stipulation.” A district court may not order a party to waive a legal right. *See Loo v. Loo*, 520 N.W.2d 740, 745 (Minn. 1994) (stating that waiver of a statutory right must be “voluntary and intentional”). Therefore, reliance on this case to evaluate the validity and effect of a *Karon* waiver or the agreement to divest the district court of jurisdiction is improper.

Finally, *Arndt* may be distinguished from the facts here on the basis that the waiver and divestiture explicitly applied only after a specified date in the future. In *Arndt*, the judgment and decree provided, “In no event shall spousal maintenance continue after January 20, 2006, and appellant waives any further spousal maintenance after said date and the Court shall be divested of any jurisdiction to award spousal maintenance after said date.” 1997 Minn. App. LEXIS at *1-2. Here, the judgment and decree provided that the district court was divested of jurisdiction to modify maintenance “upon entry of the Judgment and Decree” and both parties waived “all rights to additional spousal maintenance including rights pursuant to Minnesota Statutes § 518.552, subd. 5.” (App.’s App., A-5). As set forth in *Karon*, this waiver “cuts both ways” and effectively precludes Respondent from seeking to terminate his spousal maintenance obligation. *See Karon*, 435 N.W.2d at 504.

Dated: January 2, 2012

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