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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1318**

Brenda Sue Britton
f/k/a Brenda Sue Johnson, petitioner,
Respondent,

vs.

Andrew Ondrey Johnson,
Appellant.

**Filed April 23, 2012
Affirmed
Cleary, Judge**

Hennepin County District Court
File No. 27-FA-06-7521

Gregory R. Solum, Edina, Minnesota (for respondent)

Evon M. Spangler, Spangler and de Stefano, PLLP, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Presiding Judge; Stoneburner, Judge; and
Toussaint, Judge.*

UNPUBLISHED OPINION

CLEARY, Judge

Following a motion by appellant Andrew Johnson to terminate or reduce his
spousal maintenance obligation, the district court held that language contained in the

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

parties' Stipulated Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree (decree) prevents appellant from seeking modification of maintenance. On appeal, appellant argues that he did not waive his statutory right to seek maintenance modification and that the district court abused its discretion by not terminating his maintenance obligation. Because we find that the district court was divested of authority over the issue of spousal maintenance and that, in any case, appellant waived his right to seek modification of maintenance, we affirm.

FACTS

The marriage of the parties was dissolved by stipulated decree in November 2006. Paragraph XV of the decree's findings of fact states that the parties agreed that appellant would pay to respondent Brenda Britton spousal maintenance in the amount of \$2,000 per month from November 1, 2006, until October 31, 2016. The paragraph goes on to state:

Pursuant to *Karon v. Karon* and Minn. Stat. 518.552, Subd. 5, and in consideration of the amount and duration of maintenance contained herein, the property settlement provided herein, and the needs and interests of the parties, [respondent] waives any claims to modification of spousal maintenance awarded except as provided herein; and [appellant], who is self-supporting, waives any claims to spousal maintenance and none shall be awarded.

Paragraph 2(a) of the decree's conclusions of law ordered appellant to pay to respondent spousal maintenance of \$2,000 per month from November 1, 2006, until October 31, 2016. Conclusions of law paragraph 2(d) states, "[Appellant] shall not receive past, present or future spousal maintenance and the Court shall be divested of further jurisdiction over the issue of spousal maintenance with regard to him." Conclusions of

law paragraph 2(g) states, “Upon entry of the Judgment and Decree herein, the court shall be divested of any further jurisdiction over the issue of spousal maintenance except as necessary to effectuate subparagraph f above [regarding a statutory bi-annual cost of living adjustment].”

In April 2011, appellant brought a motion requesting that his spousal maintenance obligation be terminated or, in the alternative, modified and reduced. Respondent filed a responsive motion requesting that appellant’s motion be denied, arguing that the decree made spousal maintenance nonmodifiable.

Following a motion hearing, the district court issued an order denying appellant’s motion to modify spousal maintenance. The court found that, at the time of the marriage dissolution, the parties “entered into a *Karon* waiver, such that [appellant] agreed to an irrevocable amount of \$2000 a month as spousal maintenance for 10 years, set now to expire on October 31, 2016. [Respondent] waived any claim to modification and [appellant] waived any claim to spousal maintenance from [respondent].” The court determined “that the *Karon* waiver is clear and that [appellant] is not entitled to proceed with his motion to modify spousal maintenance.” This appeal followed.

D E C I S I O N

I.

A stipulated judgment and decree is a binding contract. *Angier v. Angier*, 415 N.W.2d 53, 56 (Minn. App. 1987). “The rules of contract construction apply when construing a stipulated provision in a dissolution judgment.” *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001). Where no

ambiguity exists, 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); *Blonigen*, 621 N.W.2d at 281. “Because the interpretation of a written document is a question of law, we 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. App. 1993).

Conclusions of law paragraph 2(g) of the decree explicitly divested the district court of authority over the issue of spousal maintenance once the decree was entered. If appellant was now permitted to seek modification of maintenance through the district court, the divestiture provision would become meaningless. Granting appellant’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.

A collateral attack is a proceeding in which the integrity of a judgment is challenged. *In re Wretlind*, 225 Minn. 554, 564, 32 N.W.2d 161, 168 (1948). A judgment which is valid on its face is not subject to collateral attack. *Nussbaumer v. Fetrow*, 556 N.W.2d 595, 599 (Minn. App. 1996), *review denied* (Minn. Feb. 26, 1997). Unless the issuing court clearly lacked jurisdiction, a judgment may not be collaterally attacked as unenforceable. *State v. Nodes*, 538 N.W.2d 158, 160 (Minn. App. 1995), *review granted* (Minn. Dec. 20, 1995) *and appeal dismissed* (Minn. Feb. 9, 1996). “[P]ublic policy favors the finality of judgments and the ability of parties to rely on court orders.” *Nussbaumer*, 556 N.W.2d at 599.

The parties' decree is valid on its face. The parties stipulated to the terms of the decree, including the divestiture provision, when they signed the decree in 2006, and both parties were represented by attorneys at that time. The decree was not appealed and is a final judgment. We are unwilling to reopen the decree to invalidate the divestiture provision now, more than five years after entry of the decree, when the provision was not previously objected to.

Appellant does not argue that the divestiture provision is inconsistent with other language in the decree regarding spousal maintenance. Rather, appellant argues that the divestiture provision only becomes effective as to him and cuts off his ability to seek modification of spousal maintenance after the ten-year period of maintenance payments ends. However, this argument is not supported by the express language of the provision, which states, "*Upon entry of the Judgment and Decree herein, the court shall be divested of any further jurisdiction over the issue of spousal maintenance*" (Emphasis added.)

II.

Even if we were to look past the provision divesting the court of any further authority over the issue of spousal maintenance, the language contained in the decree is sufficient to constitute a waiver of appellant's right to seek modification of maintenance.

A spousal maintenance order is usually modifiable, and parties have a statutory right to seek modification. *Loo v. Loo*, 520 N.W.2d 740, 743 (Minn. 1994). *See also* Minn. Stat. § 518A.39, subd. 1 (2010) (stating that after a maintenance order "the court may from time to time, on motion of either of the parties . . . modify the order respecting the amount of maintenance or support money, and the payment of it . . .").

However:

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 (2010). A waiver of the right to seek modification of spousal maintenance is known as a *Karon* waiver, after the first Minnesota case to hold that such waivers are valid. *Karon v. Karon*, 435 N.W.2d 501, 503–04 (Minn. 1989), *superseded in part by statute*, Minn. Stat. § 518.552, subd. 5; *Grachek v. Grachek*, 750 N.W.2d 328, 331 (Minn. App. 2008), *review denied* (Minn. Aug. 19, 2008).

“Four requirements must be met before a stipulation precluding or limiting maintenance modification divests the court of its jurisdiction over maintenance.” *Butt v. Schmidt*, 747 N.W.2d 566, 573 (Minn. 2008).

These requirements are: 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, *Loo*, 520 N.W.2d at 745–46; 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,” Minn. Stat. § 518.552, subd. 5.

Id. at 573.

“If a statutory right is to be waived by the parties, the waiver must be voluntary and intentional.” *Loo*, 520 N.W.2d at 745. “Absent an enforceable waiver, the parties

may always move for [modification of spousal maintenance] based on changed circumstances” *Id.* at 743.

In *Butt*, the parties’ stipulated judgment and decree ordered husband to pay to wife spousal maintenance of \$1,000 per month for 42 months. 747 N.W.2d at 570. The decree went on to state that, except for that award, “both parties waive any claim to spousal maintenance past, present and future,” and that “it is the express intention of the parties that save for the award of 42 months of spousal maintenance to [wife], neither party is awarded any spousal maintenance either past, present or future.” *Id.* at 573 (quotations marks omitted). The court determined that this language constituted a contractual waiver of the parties’ right to seek modification of maintenance. *Id.* The decree also stated that the court was divested of jurisdiction over the issue of maintenance pursuant to *Karon*. *Id.* Read together, the decree’s provisions prevented the district court from modifying the original spousal maintenance award. *Id.*

Similarly, in *Karon*, the parties’ stipulated judgment and decree ordered husband to pay to wife spousal maintenance of \$1,200 per month for six years, and thereafter \$600 per month for four years. 435 N.W.2d at 502. The decree also stated, “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.* The court held that this language operated as a valid waiver of the parties’ right to reopen the issue of maintenance. *Id.* at 503–04.

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. The language in the parties' decree that, "Pursuant to *Karon v. Karon* and Minn. Stat. 518.552, Subd. 5, and in consideration of the amount and duration of maintenance contained herein, the property settlement provided herein, and the needs and interests of the parties . . . [appellant] waives any claims to spousal maintenance and none shall be awarded," and that "the Court shall be divested of further jurisdiction over the issue of spousal maintenance with regard to [appellant]" prevents appellant from now seeking to modify the original spousal maintenance award.¹

Affirmed.

¹ Given our holding that the decree's language prevents appellant from proceeding with his motion to modify spousal maintenance, we need not reach appellant's argument that the district court abused its discretion by not terminating his maintenance obligation.