STATE OF MINNESOTA
IN COURT OF APPEALS
A07-99

Barnabas Araya Yohannes, petitioner,
Appellant,

vs.

Aster Marikos Habtesilassie,
Respondent.

Filed January 4, 2008
Affirmed
Willis, Judge

Ramsey County District Court
File No. 62F2-05-000780

Barnabas Araya Yohannes, 2709 Maryland Avenue East, St. Paul, MN 55119 (pro se appellant)

Genevieve M. Zimmerman, Stacey P. Slaughter, Robins, Kaplan, Miller & Ciresi, L.L.P., 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, MN 55402 (for respondent)

Considered and decided by Peterson, Presiding Judge; Willis, Judge; and Wright, Judge.

U N P U B L I S H E D O P I N I O N

WILLIS, Judge

Appellant argues that the district court abused its discretion by denying appellant's motion to reopen the judgment dissolving his marriage to respondent. Because we find no abuse of discretion, we affirm.

FACTS

This appeal arises from a marital-dissolution action brought by appellant Barnabas Yohannes (husband) against respondent Aster Habtesilassie (wife). Husband petitioned for the dissolution in the spring of 2005. Each party had potential civil claims against the other that accrued before the conclusion of the parties' dissolution: wife's claims related to her allegations that husband wrongfully filed for an OFP, and husband's claims were alleged torts committed by wife.

In July 2006, after prolonged negotiations, the parties, both of whom were then represented by counsel, met in chambers with a Ramsey County Family Court referee and reached a settlement of the issues in the dissolution action. The parties then put their agreement on the record in open court, and at the referee's direction, husband's counsel drafted a document that reduced the parties' agreement to writing.

Soon after drafting the agreement and forwarding it to wife's counsel, husband's counsel withdrew from the representation. Wife's counsel then forwarded the written agreement to the referee, and in August 2006, the referee and the district court approved the agreement, which included a provision by which the parties mutually released claims,

and a judgment was entered that incorporated the terms of the written agreement. Husband did not appeal from the entry of the judgment.

In November 2006, husband, appearing pro se, moved to reopen the judgment. After a hearing on husband's motion and consideration of his arguments that wife had not disclosed certain personal property and that husband had not agreed to release his claims against wife, the referee denied husband's motion. The district court signed an order denying husband's motion, and husband appeals.

D E C I S I O N

I. The denial of husband's motion to reopen the dissolution judgment is supported by findings.

Husband argues that because the "district court's Order [denying the motion to reopen] is not supported by findings," he is entitled to a reversal. A district court is required to make factual findings in "all actions tried upon the facts without a jury." Minn. R. Civ. P. 52.01. The findings can be either in a written memorandum or stated on the record. *See id*. ("It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court . . . .").

After a hearing on husband's motion to reopen the judgment, the referee found that husband's testimony lacked credibility, stating that it "contradicts what [husband] said back in July." The referee also stated that "the law does not permit" him to reopen husband's divorce decree under the circumstances, and he denied the motion. The referee then asked wife's counsel to prepare an order denying husband's motion; directing that the order include "another finding, that [husband's] motion or motions to

reopen the decree are insufficient under 518.145, Subdivision 2 and must be denied." The order that the district court signed denying husband's motion provides that "[husband's] motion or motions to re-open the August 1, 2006 Divorce Decree are insufficient to meet the requirements of Minnesota Statute § 518.145 and are hereby DENIED." Because the referee stated orally on the record what his reasons were for denying husband's motion and the district court signed a written order that explains the basis for denial, we reject husband's argument that the order was not supported by findings. And even if the findings were inadequately stated, husband has failed to demonstrate prejudice. *See Waters v. Fiebelkorn*, 216 Minn. 489, 495, 13 N.W.2d 461, 465 (1944) (stating that "error without prejudice is not ground for reversal").

II. The district court did not abuse its discretion by denying husband's motion.

Husband argues next that the district court abused its discretion by denying his motion to reopen based on mistake or fraud under Minn. Stat. § 518.145, subd. 2(1), (3) (2006). Husband contends that "the fraud or mistake related to the inconsistency between the stipulation that was . . . read into the record and the Judgment and Decree purporting to adopt that stipulation."

This court reviews a district court's refusal to reopen a dissolution judgment for an abuse of discretion. *Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996). And a district court's finding of whether a judgment was the result of mistake or fraud is a question of fact, which will not be set aside unless it is clearly erroneous. *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998). But when a party, as here, seeks to

reopen a judgment that is based on a stipulated settlement, the burden is higher: "vacating a stipulation of settlement rests largely within the discretion of the trial court, and . . . will not be reversed unless it [is] shown that the court acted in such an arbitrary manner as to frustrate justice." *Myers v. Fecker Co.*, 312 Minn. 469, 474, 252 N.W.2d 595, 599 (1977).

The legislature has recognized the importance of finality in dissolution proceedings by describing the limited bases for reopening a dissolution judgment:

> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under the Rules of Civil Procedure, rule 59.03;
> (3) fraud, whether denominated intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party;
> (4) the judgment and decree or order is void; or
> (5) the judgment has been satisfied, released, or discharged, or a prior judgment and decree or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment and decree or order should have prospective application.

Minn. Stat. § 518.145, subd. 2 (2006). Relief from a dissolution judgment must be based on the existence of one or more of these statutory conditions. *Shirk v. Shirk*, 561 N.W.2d 519, 522 (Minn. 1997). The party seeking to reopen the judgment bears the burden of proof. *Haefele v. Haefele*, 621 N.W.2d 758, 765 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001).

The district court did not act arbitrarily by denying husband's motion to reopen the judgment. The written settlement agreement that was incorporated into the judgment contains a clear mutual release of claims. And the record, taken as a whole, strongly

suggests that the written agreement accurately reflects the terms of the settlement reached by the parties. At the July 2006 hearing, the parties discussed on the record the general terms of the settlement. The record shows that the parties intended for the settlement to resolve all issues—marital or otherwise—between the parties. After wife's counsel summarized the agreement, the referee asked the parties: "Does this settle all issues between the parties?" The parties, through their attorneys, both responded affirmatively. Additionally, husband stated on the record that he agreed with the settlement, that he had enough time to discuss the settlement with his attorney, and that he was satisfied with his legal representation. And the fact that the settlement included a release provision is shown by wife's statement on the record in response to a question by counsel that she understood that by the terms of the settlement she was releasing her potential civil claims against husband. For reasons that are not apparent from the record, counsel did not ask husband the same question, but nothing in the record suggests that the release of claims was unilateral.

Husband claims that a letter accompanying the notice of withdrawal that husband's former attorney sent to the referee shows that husband did not agree to the release and, therefore, the district court abused its discretion by denying husband's motion. We disagree. The letter states that "[a] proposed [judgment] has been approved both in form and content by both parties and will be submitted to the Court by opposing counsel in the very near future." Counsel's letter then states that "Mr. Yohannes objects to the language set forth. I have advised him to contact opposing counsel and this Court

directly with respect to his concerns." Even if we were to accept husband's argument that his objection related to the mutual-release provision, and that is not clear, the record would support a conclusion that husband's objection arose after the parties had agreed to a mutual release of claims.

Finally, we note that the referee found that husband's argument that he did not intend to release his claims against wife lacked credibility. And husband offered no evidence, such as his former attorney's testimony or affidavit, to support his motion to reopen the judgment. When husband raised the issue of alleged discrepancies between the settlement and documentation of the settlement, the referee noted that "[y]our attorney didn't think [there were differences]. And your attorney is the one who drafted the divorce decree." Moreover, at the hearing on husband's motion, the referee read aloud husband's testimony at the July 2006 hearing, in which he stated that he approved the agreement entered into on that day. The referee said that he did not believe husband's claim:

> The court will not reopen your divorce decree. The law does not permit it. And your testimony today contradicts what you said back in July. Back in July, you said this is acceptable. Now you're saying there are other issues you want to talk about. I'm not going to debate with you. But I'm denying your motions.

The referee, therefore, not only was aware of husband's claims of mistake and fraud but also rejected them as not credible.

Because the district court's refusal to reopen husband's judgment is not clearly erroneous, much less so arbitrary as to "frustrate justice," we affirm.

Affirmed.