STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1356

In re the Marriage of: Diane Marie Davies, petitioner,
Appellant,

vs.

Paul Davies,
Respondent.

Filed June 15, 2010
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-F3-05-001727

Gregory P. Seamon, Oakdale, Minnesota (for appellant)

Jeffrey R. Arrigoni, Woodbury, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Hudson, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

Appellant contests the validity of the stipulation underlying the parties' judgment and decree of dissolution because of the lack of the parties' signatures denoting approval

of the stipulation. Because Minn. Stat. § 518.145, subd. 2 (2008) provides the sole means of relief from a judgment and decree and appellant has not shown that the district court abused its discretion in denying her motion for amended findings and conclusions of law, and because appellant did not raise the validity of the stipulation to the district court, we affirm.

FACTS

Appellant Diane Marie Davies and respondent Paul Davies were married in October 1991. They have one minor child. The parties separated in December 2004, and commenced dissolution proceedings in 2005. The parties reached a permanent partial stipulation regarding parenting time for and custody of their child in November 2007, which is not at issue in this appeal.

A trial was scheduled for June 2008. On June 13, appellant's then-attorney[1] Leigh Frost and respondent's attorney Jeffrey Arrigoni sent a letter informing the district court that the parties had reached a settlement and requesting that the trial dates be cancelled. The joint, five-page letter set forth the details of the parties' agreement. Under the terms of the agreement, respondent's counsel was to draft the proposed stipulated findings of fact, conclusions of law, order for judgment, and judgment and decree. Respondent's counsel prepared and sent a draft document to Frost. It appears that Frost responded with changes to the draft on July 18. Appellant also forwarded the same draft via e-mail to respondent the same day, asking him to forward it to his attorney if respondent's attorney

[1] We note that appellant was represented by a series of attorneys throughout the dissolution proceedings.

had not yet received anything from Frost. By separate letter also dated July 18, Frost notified respondent's counsel and the district court that she had withdrawn from representing appellant.

On July 24, respondent's counsel provided both drafts to the district court and requested that the district court sign respondent's July 1 draft without incorporating Frost's revisions, alleging that the revisions "include numerous misstatements, errors, and additional terms and conditions which were not agreed to." Appellant objected to respondent's letter and informed the district court that she was in the process of obtaining new representation. Appellant's new attorney, Judith Oakes, filed a certificate of representation with the district court on October 1. Oakes also sent a letter to the district court stating that appellant did not agree that the July 1 draft incorporated the prior settlement agreement reached by the parties and had instructed her to "negotiate certain revisions." Oakes stated that "at this point, there was no such agreement and we would respectfully request that the [district court] not approve respondent's proposed Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree."

Oakes then sent a letter to respondent's counsel, stating that she had reviewed the July 1 draft and had discussed with appellant specific changes in order for the agreement to be acceptable to her. Oakes identified seven issues: (1) remove sections detailing appellant's employment and education history, or insert similar detail regarding respondent; (2) insert a section stating that federal and Minnesota tax laws and regulations govern the treatment of certain stock transactions; (3) allow appellant to claim the minor child every year as a dependent, instead of alternating years; (4) allow for

retroactive reimbursement of the child's uninsured and uncovered medical, dental, orthodontic, optical, mental health, and counseling expenses to June 1, 2006; (5) include a process of reimbursement for said health-related expenses; (6) allow appellant to purchase COBRA coverage through respondent's employer at her own expense; and (7) require respondent to return all of appellant's medical records produced in discovery.

Counsel for the parties subsequently took part in a telephone conference with the district court on November 17, 2008. At the conference, Oakes stated that appellant "does desire to have the decree entered without further legal proceedings, but we have, I think, three issues of drafting that are unresolved." These three issues were the statement that federal and Minnesota tax laws will govern; the dependent tax exemption; and the return of appellant's medical records upon entry of the decree. Respondent's counsel objected to each of the requests, contending that the tax language would just "cloud" the parties' prior agreement concerning the treatment of the Pfizer stock; changing the alternating dependent exemption would be backtracking in light of the parties' lengthy negotiations; and returning the medical records "would create a hardship" and "be inappropriate" in light of the expense incurred in gathering the records and the likelihood of continuing issues involving the minor child.

The parties did identify three "clarifications" that they agreed upon. First, respondent's education and employment history would be described in approximately the same depth as appellant's. Second, appellant would be able to purchase COBRA insurance through respondent's employer at her own expense. Third, the parties' split of their child's uninsured and unreimbursed health-related expenses would be retroactive to

June 1, 2006, and the judgment and decree would include a process for reimbursement. The district court inquired as to how the "clarifying language" would be prepared, emphasizing the importance of getting the parties divorced. To which, Oakes replied, "We agree." The district court gave the parties four days to work out the language, and stated that, if it did not receive the modified language by close of business on Friday,[2] it would "execute what [it] ha[s]" and the parties could then "file a motion to amend or submit an amended document that's actually signed. This document that I have was not signed by either party." Oakes responded, "Correct." The district court added that it was sensitive to the issue of the medical records and suggested that both parties file the copies of the records they had of one another with the district court and the records would be kept under seal, but still accessible should a party need them in the future. Finally, the district court stated that it was not "inclined" to add the tax-governance language and the issue of the dependent tax exemption would have to be raised in a motion to amend.

It appears respondent's counsel attempted to reach Oakes on November 19 with revisions, but received no response. Appellant concedes that no objection was raised in the days following the November 17 telephone conference. On November 24, the district court executed the Stipulated Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree pursuant to respondent's July 1 draft. The document was not signed by the parties or their respective counsel.

On January 2, 2009, appellant filed a motion to amend certain findings of fact and conclusions of law. Appellant sought to amend findings related to the parties'

[2] The November 17 telephone conference occurred on a Monday.

homestead, the "Alameda" property, which was in possession of appellant; the value and division of appellant's Pfizer 401(k) plan; the division of a U.S. Bank escrow account, which had been offset against certain stock options owned by respondent; and the parties' right to discovery, reasons for entering into the stipulation, and satisfaction with counsel. As for the conclusions of law, appellant sought to change the alternating tax exemption for the parties' child to her exclusively; include a retroactive start date for the sharing of their child's health-related expenses as well as provide a plan for reimbursement of these expenses; impose a lien on the "Hardwood" property, where respondent resides; change the amount awarded to respondent from appellant's Pfizer 401(k) plan from a lump sum to 60% of an IRA account;[3] amend ownership of the Pfizer and 3M dividends from exclusive ownership by appellant and respondent, respectively, to awarding each party half of these dividends; and to split the funds in the U.S. Bank escrow account between the parties instead of awarding a lump sum from the account to appellant. In the alternative, appellant asked for a new trial. Respondent opposed appellant's motion in its entirety and sought attorney fees and costs.

The parties subsequently appeared before the district court. Oakes opened by recognizing the "unusual" nature of the case, "in that [appellant] never assented to the entry of the decree on the record," noting that "it was done entirely by signature of counsel." Oakes also stated that "[appellant] did agree that the decree be entered to end this five-year litigation." Oakes told the district court that "[t]he primary thrust" of

[3] It appears that the Pfizer 401(k) funds were subsequently rolled over into an IRA account.

appellant's motion "is to undo two of the provisions of the agreement which in hindsight looking back into the economic tsunami of 2008 were simply mistakes by the parties, mistakes that they made because they could not conceivably have foreseen the unique circumstances that occurred in 2008," referring to the value of the Alameda property and appellant's Pfizer 401(k) plan. Oakes further noted that the parties' "agreement . . . was commemorated by the exchange of correspondence," and that the agreement was negotiated under "totally different economic circumstances . . . than the economic circumstances of the period from June 2008 to date."

Counsel for respondent reminded the district court of the length of this litigation; asserted that appellant was trying to "renegotiate the terms of the carefully negotiated settlement that took place over the period of a year"; and stated that appellant did not object to the June 13 letter submitted to the district court, detailing the terms of the agreement, and was presented with numerous opportunities to object throughout the proceedings and did not. Respondent's counsel stated that if the district court were to start adjusting parts of the agreement, the whole agreement would need to be revisited and several assets would have to be reevaluated based on the numerous tradeoffs and offsets that occurred during the negotiation process. In response, Oakes stated that

> [t]he difficulty of this case is in part pointed out by counsel's argument in terms of the difficulty in ascertaining when and how [appellant] allegedly consented to the decree. Counsel said she did assent, she did consent, he said she must have, she clearly agreed or she would have done something else, and variations on that theme. But what he did not say is when she agreed and how she agreed, how was that consent manifested. And he didn't say that because it was not.

> *Now we are not asking the court to start all over again. We are asking the court to relieve two very specific inequities caused by the economic downturn.*

(Emphasis added.) Respondent's counsel reiterated that

> the reality of it is this has been an ongoing matter, but there were numerous tradeoffs that were made as to valuations of the nonmarital against those accounts, numerous compromises that aren't part of the record. And if we're going to just arbitrarily do percentages, that's not fair and equitable and consistent with the terms of the settlement.

The district court denied appellant's alternative motions for amended findings or a new trial and awarded respondent conduct-based attorney fees and costs. In its order, the district court detailed the approximately four-year history of the proceedings, and noted that Oakes filed a notice of withdrawal of counsel on April 15, and that appellant's new attorney, Gregory P. Seamon, filed a substitution of attorney on April 20. The district court stated that Minn. Stat. § 518.145, subd. 2(5) allows a party to reopen a judgment and decree if "it is no longer equitable that the judgment and decree or order should have prospective application." The district court observed that "[t]o reopen a judgment and decree because prospective application is no longer equitable, the inequity must result from the development of circumstances that seriously contradict what the parties knew about the property at the time the judgment was made, not merely the change of circumstances after the judgment." The district court concluded that "there is no evidence to show that the financial circumstances of the parties were not fully and fairly disclosed at the time of the stipulation"; "[t]he parties worked hard to establish a settlement agreement and concessions were made on both sides"; and appellant "has not

shown that there was less than full and fair disclosure at the time the settlement was made." The district court likewise denied appellant's motion for a new trial and concluded that respondent met his burden of proving that appellant "has unreasonably contributed to the length of this proceeding," awarding attorney fees and costs incurred. This appeal follows.

By a special-term order, we first dismissed the part of appellant's appeal regarding the award of attorney fees as "[t]here is no appeal from an order awarding attorney fees and the proper appeal is from the judgment." *Davies v. Davies*, No. A09-1356, at 3 (Minn. App. Feb. 2, 2010). Second, we construed the appeal as being taken from the underlying November 24 judgment and decree as the May 27 order denying appellant's motion for a new trial was not an appealable order because there was no "first" trial. *Id.* at 2-3.

D E C I S I O N

We begin by noting that the question of whether the district court abused its discretion in denying appellant's motion for a new trial is not before this court. *See id.* In her alternative motions for amended findings or a new trial, appellant sought relief in part under Minn. R. Civ. P. 59.01, which states the grounds for granting a new trial. As stated in the special-term order, appellant was not entitled to request a new trial as the judgment and decree was entered based on a stipulation and no trial ever occurred. *Id.* at 3; *see also Erickson v. Erickson*, 430 N.W.2d 499, 500 n.1 (Minn. App. 1988) (noting that a motion for a new trial "is an anomaly where there has been no trial"); 2 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 59.3 (4th ed. 2004) ("It is perhaps too

obvious to require stating, but new trial motions are appropriate only where the court has conducted a trial or evidentiary hearing. [Minn. R. Civ. P. 59.01] does not create a general vehicle for reviewing earlier decisions where no trial has been conducted."). Motions for a new trial are not authorized where, as here, there was no trial, and the district court cannot have abused its discretion by denying an unauthorized motion.

We now turn to the parties' judgment and decree of dissolution and the underlying stipulation. The reasons a party may be allowed to reopen a judgment and decree are set forth in Minn. Stat. § 518.145, subd. 2. Appellant sought relief under subdivision 2(5). Under subdivision 2(5), the district court "may relieve a party from a judgment and decree . . . [if] it is no longer equitable that the judgment and decree or order should have prospective application." Minn. Stat. § 518.145, subd. 2(5). Absent an abuse of discretion, we will not disturb a district court's decision not to reopen a judgment and decree, and its findings of fact will not be disturbed unless clearly erroneous. *Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996). "A finding is clearly erroneous if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (quotation omitted). "That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Id.* at 474.

"Courts favor stipulations in dissolution cases as a means of simplifying and expediting litigation, and to bring resolution to what frequently has become an acrimonious relationship between the parties." *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). Stipulations are "accorded the sanctity of binding contracts" and cannot be

repudiated or withdrawn without the consent of the other party, "except by leave of the court for cause shown." *Id.* at 521-22 (quotation omitted); *see also Toughill v. Toughill*, 609 N.W.2d 634, 638 (Minn. App. 2000) (stating even though stipulation had not yet been adopted by the district court or incorporated into a dissolution judgment, party could not repudiate or withdraw from stipulation absent other party's consent or court's permission). However, "if a stipulation was improvidently made and in equity and good conscience ought not to stand, it may be vacated." *Shirk*, 561 N.W.2d at 522. But "upon entry of a judgment and decree based on a stipulation, different circumstances arise, as the dissolution is now complete and the need for finality becomes of central importance." *Id.* Notably, "vacation is not an appropriate remedy to deal with unanticipated consequences of a settlement or inexcusable mistake." *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998); *see also Harding v. Harding*, 620 N.W.2d 920, 923 (Minn. App. 2001) (noting that district court "ordinarily does not have continuing jurisdiction to modify the property division in a divorce judgment due to a change of circumstances"), *review denied* (Minn. Apr. 17, 2001).

Appellant spends most of her brief attacking the validity of the parties' stipulation. When a judgment and decree is entered based upon a stipulation, the stipulation merges into the judgment and decree, and is not subject to attack by a party seeking relief from the judgment and decree. *Shirk*, 561 N.W.2d at 522. "The sole relief from the judgment and decree lies in meeting the requirements of Minn. Stat. § 518.145, subd. 2." *Id.* (reversing appellate court's decision to vacate stipulation on grounds that party was represented by incompetent counsel because that was not a reason for relief under Minn.

Stat. § 518.145, subd. 2). Therefore, before appellant can attack the stipulation, she must show that she met one of the requirements of Minn. Stat. § 518.145, subd. 2.

Appellant sought post-judgment relief under Minn. Stat. § 518.145, subd. 2(5). On appeal, however, appellant has focused entirely on the validity of the underlying stipulation without ever addressing whether the district court abused its discretion in denying her motion to reopen the judgment and decree under the statute. In fact, appellant's brief contains no discussion of Minn. Stat. § 518.145, subd. 2. Appellant's sole means of relief from the provisions of the judgment and decree is under Minn. Stat. § 518.145, subd. 2. *Id.* Thus, to the extent appellant's argument can be construed as arguing that the district court abused its discretion in denying her motion, it has not been briefed and will not be considered by this court. *State Dep't of Labor & Indus. by the Special Comp. Fund v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (appellate courts decline to reach issue in the absence of adequate briefing); *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (issues not briefed on appeal are waived).

Moreover, even if we were to consider the validity of the parties' stipulation underlying the judgment and decree, it does not appear that this issue was properly raised to the district court. Appellant sought post-judgment relief under the equitable principles of subdivision 2(5). *See* Minn. Stat. § 518.145, subd. 2(5). Significantly, appellant did not seek relief under subdivision 2(4), which allows for reopening when "the judgment and decree or order is void." *Id.*, subd. 2(4). At the hearing, Oakes pointed out the procedural irregularities and that appellant never assented to the entry of the judgment and decree on the record. However, Oakes then immediately went on to state that

appellant "did agree that the decree be entered to end this five-year litigation." As respondent points out, Oakes later told the district court that appellant was "not asking the court to start all over again" and was "asking the court to relieve two very specific inequities caused by the economic downturn." Appellant did not properly raise the validity of the stipulation to the district court and, therefore, its validity is not properly before this court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (appellate court will generally not address matters not argued to and considered by the district court); *Minn. Mut. Fire & Cas. Co. v. Retrum*, 456 N.W.2d 719, 723 (Minn. App. 1990) (party may not raise a new theory for the first time on appeal). In sum, the idea that the parties' stipulation is defective, thereby rendering the judgment defective, is unpersuasive because (1) it incorrectly assumes that a stipulation can be attacked after a judgment is entered thereon; (2) here, judgment was entered on the stipulation; (3) while appellant may not have wanted judgment to be entered, she made no objections to entry of judgment by Friday afternoon November 21, and judgment was then entered on November 24; and (4) in post-judgment proceedings, appellant's counsel admitted that appellant agreed to entry of the judgment to end the proceeding.

Appellant also claims for the first time on appeal that her substantive-due-process rights were violated. First, appellate courts will generally not address constitutional issues if raised for the first time on appeal. *See In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981) (declining to address constitutional issue raised for the first time on appeal from a termination of parental rights). Second, appellant provides no legal analysis or citation in support of her due-process claim. This court declines to address

allegations unsupported by legal analysis or citation. *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994).

Finally, appellant argues, again without citation, that public policy dictates that the parties' agreement be verified by the parties. Appellant contends that "from a public policy standpoint, the parties must be confident that the court will not take it upon itself, or impute the power to an attorney representing a party in divorce court, the ultimate power to control the outcome of a divorce proceeding without permission of the individual client, or a properly conducted trial." The district court functions as a third party to dissolution proceedings and "is not bound by a stipulation merely because the parties have entered it." *Toughill*, 609 N.W.2d at 638 n.1.

> [I]n deciding whether to approve a stipulation agreed to by married persons, a district court must exercise its independent judgment to determine whether a stipulation is, on the facts of the case in question, appropriate. . . . [T]he district court has the authority to refuse to accept the terms of the stipulation in part or *in toto*.

Rettke v. Rettke, 696 N.W.2d 846, 850-51 (Minn. App. 2005) (quotation omitted); *see Toughill*, 609 N.W.2d at 638 n.1 ("[W]hile a district court may reject all or part of a stipulation, generally, it cannot by judicial fiat, impose conditions on the parties to which they did not stipulate and thereby deprive the parties of their 'day in court.'"). After detailing the lengthy proceedings ultimately leading up to the parties' dissolution, the district court specifically found that

> [a]t no time between July 2008 and November 24, 2008, did [appellant] advise the court directly, or through counsel, that she did not agree with the terms of the settlement agreement letter that was forwarded to the court on June 13, 2008, or

> that there was no settlement, or that this matter should be placed on for trial.

The district court likewise concluded that "[t]he parties worked hard to establish a settlement agreement and concessions were made on both sides. [Appellant] has not shown that there was less than full and fair disclosure at the time the settlement was made." The record reflects that the district court did consider the propriety of the parties' settlement agreement and we believe that policy favors upholding the stipulation in this case. *See Shirk*, 561 N.W.2d at 521 (favoring stipulations in dissolution proceedings as a means of "bring[ing] resolution to what frequently has become an acrimonious relationship between the parties").

Affirmed.