STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0741

In re the Matter of:
Staci Ann Chase n/k/a Staci Ann McGovern, petitioner,
Respondent,

vs.

Mark Alan Chase,
Appellant.

Filed November 13, 2012
Affirmed
Harten, Judge[*]

Olmsted County District Court
File No. 55-FA-06-10302

Staci Ann McGovern, Rochester, Minnesota (pro se respondent)

Mark A. Chase, Jupiter, Florida (pro se appellant)

Considered and decided by Stauber, Presiding Judge; Rodenberg, Judge; and Harten, Judge.

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

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

HARTEN, Judge

In this appeal, pro se appellant argues that the district court acted without jurisdiction to award judgment and require him to pay the Sterling loan because respondent had agreed to pay the Sterling loan in 2008.[1] We affirm.

FACTS

The parties' marriage was dissolved by judgment in March of 2008 (the 2008 judgment). Paragraph 16 of the conclusions of law provided that appellant "shall be responsible" for certain debts, including "[h]is student loan" and the "Sterling State Bank loan." The 2008 judgment also obligated appellant to "refinance his student loan to take [respondent's] name off the account."

On 8 November 2011, respondent filed a motion for contempt of court, wherein she requested that the district court find appellant in contempt for failing to make payments on the loans. The motion requested that the district court (1) enter judgment against appellant in the amount of $10,174.19, representing "debt paid by [respondent] that was the sole obligation of [appellant]" pursuant to the 2008 judgment, and (2) grant respondent attorney fees in the amount of $800.00. In addition to exhibits addressing

[1] Appellant's brief also alleged that the district court erroneously held him in contempt. In a special term order, this court dismissed the part of this appeal "finding appellant in conditional civil contempt" as "premature." *Chase v. Chase*, No. A12-0741 (Minn. App. 20 June 2012). The order thus limits this appeal to that part of the 27 February order "awarding respondent the recovery of money." *Id.*

payments respondent made on appellant's loans, she submitted two affidavits in support of her motion.

On 9 November 2011, the district court issued an order to show cause and appear that was served on appellant 16 November 2011. In a letter dated 18 November 2011, appellant requested a continuance of the motion hearing. The district court denied appellant's request for a continuance, but allowed him to attend the 30 November 2011 motion hearing via telephone.

The district court ordered judgment on 27 February 2012. The district court found that (1) the 2008 judgment clearly established appellant's duty to pay the Sterling loan and the student loan; (2) appellant had intentionally failed to make payments toward the Sterling loan and minimal payments toward the student loan since March 2008; and (3) there was no evidence supporting appellant's claim that respondent agreed to pay the Sterling loan. The district court found that respondent had paid $10,174.19 towards appellant's loans and concluded that appellant failed to prove that he is incapable of making payments on his Sterling and student loans. The district court ordered, among other things, judgment in the amount of $10,174.19 in favor of respondent and awarded respondent $400 in attorney fees.

Appellant submitted a motion to reconsider, which the district court denied. This appeal of the 27 February 2012 judgment follows.

D E C I S I O N

Appellant argues that the district court erred in awarding judgment against him, requiring him to pay respondent $10,174.19. Appellant does not challenge the specific

dollar amount of the adverse judgment.[2] Instead, he first argues that he has no duty to indemnify respondent for any payment she made on the Sterling loan because the two orally agreed in 2008 that she would refinance the Sterling loan at that time, remove his name, and make the payments on the loan thereafter. Secondly, appellant argues that because respondent waited three years to bring this contempt motion against him the district court lacks jurisdiction to award judgment against him.

"[T]he existence and terms of a contract are questions for the fact finder." *Morrisette v. Harrison Int'l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992). "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. In applying Minn. R. Civ. P. 52.01, "we view the record in the light most favorable to the judgment of the district court." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). "The decision of a district court should not be reversed merely because the appellate court views the evidence differently." *Id*. "Rather, the findings must be manifestly contrary to the weight of the

[2] Respondent's affidavit stated, and the district court found, that she paid $10,174.19 towards appellant's loan debts. Yet, our review of the record indicates a discrepancy between the amount paid reflected in respondent's affidavit ($10,174.19) and the amount paid reflected by respondent's exhibits ($9,901.46) (difference $272.73). Whether the judgment amount is proper is not an issue before us, but one which the district court may correct if the discrepancy is the result of a clerical error. *See* Minn. R. Civ. P. 60.01 (providing that "[c]lerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time upon its own initiative or on the motion of any party and after such notice, if any, as the court orders").

evidence or not reasonably supported by the evidence as a whole." *Id.* (quotation omitted).

Respondent claims that she refinanced the loan and put it in her name because it came due in 2008, and she had to take action or she was "going to be sued." Appellant claims that respondent agreed to take over the Sterling loan as part of an agreement to settle her withdrawal of over $9,000 from their account while the parties were separated. Stipulations in dissolution proceedings are favored by courts "as a means of simplifying and expediting litigation" and "are therefore accorded the sanctity of binding contracts." *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). Yet, the district court found that the parties did not agree that respondent would take over the Sterling loan.

The record supports the district court's finding. Appellant's evidence regarding the alleged agreement consists only of conflicting testimony and irrelevant receipts. Appellant says they had an agreement, and respondent denies it. "When evidence relevant to a factual issue consists of conflicting testimony, the district court's decision is necessarily based on a determination of witness credibility, which we accord great deference on appeal." *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009). Appellant also submitted receipts showing that respondent withdrew money from their account and that he paid a certain amount of rent. These receipts do not necessarily imply agreement. Moreover, while the 2008 judgment provided that each party was responsible for their own debts incurred after the date the parties separated (1 March 2007) the receipts submitted by appellant to support his argument were from 2004, years before they were separated.

Appellant also argues that respondent's three year "delay" in bringing this motion divested the district court of jurisdiction to impose judgment against him. The record indicates appellant still had not complied with the 2008 judgment at the time the motion was filed. Minnesota law provides a ten-year statute of limitation on actions for enforcement of provisions in a dissolution judgment. Minn. Stat. § 541.04 (2010). Appellant's argument is without merit.

Affirmed.