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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0948**

In re the Matter of:

Jennifer Lynn Gaughan, petitioner,
Respondent,

vs.

Patrick Michael Gaughan,
Appellant.

**Filed November 4, 2019
Affirmed
Rodenberg, Judge**

Washington County District Court
File No. 82-FA-18-930

Karen I. Linder, Linder, Dittberner & Winter, Ltd., Edina, Minnesota (for respondent)

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Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and Reilly, Judge.

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

RODENBERG, Judge

Appellant-husband Patrick Gaughan challenges the district court's denial of his rule 60.02 motion to vacate the one-year extension of an order for protection (OFP) pursuant to the parties' written agreement authorizing respondent-wife Jennifer Gaughan to

unilaterally seek and obtain the extension. Husband makes an amalgam of arguments in support of his claim that the extension was improper. Because husband, fully competent and represented by counsel, agreed to the entry of a one-year OFP without a finding of domestic abuse and further agreed that wife “shall have the right, at her sole discretion, to elect to extend the effective period of the [OFP] for one additional year,” the district court did not err in extending the OFP consistent with the parties’ agreement without the necessity of an additional hearing. We therefore affirm.

FACTS

Husband and wife were married in 1992. They have six children, three of whom were minors when, on February 27, 2018, wife petitioned for an OFP under Minn. Stat. § 518B.01 (2018) on behalf of herself and the parties’ minor children. Wife also commenced a separate action for legal separation.

On March 30, 2018, with the advice of counsel, the parties stipulated to a one-year OFP without any finding of domestic abuse. The written stipulation provided that wife would have the temporary sole legal and physical custody of the minor children, and that either party could raise the issue of custody in the couple’s legal-separation proceeding. It further provided that, by signing the stipulation, the parties waived their right to an evidentiary hearing regarding the OFP. Paragraph 23 of the stipulation specified the duration of the OFP, as follows:

This Order is effective for a period of **1 year** from the date of this Order, or until modified by further court order; provided, however, that notwithstanding any provision of Minn. Stat. § 518B.01 to the contrary, [wife] shall have the right, at her sole discretion, to elect to extend the effective period of this

Order for one additional year, upon the filing of an affidavit exercising said right. Upon the filing of an affidavit by [wife] exercising her right to extend the effective period of this Order for one additional year, this Court shall issue and file its order extending the effective period of this Order for one additional year.

On April 2, 2018, the district court issued an order adopting the terms of the parties' stipulation. On February 25, 2019, wife filed an affidavit requesting an extension of the OFP for an additional year under paragraph 23 of the stipulation. The district court granted wife's request and extended the OFP until April 1, 2020.

Husband moved the district court to vacate the order extending the OFP. The district court denied husband's motion.

This appeal followed.

D E C I S I O N

The district court did not abuse its discretion when it denied husband's motion for relief under Minn. R. Civ. P. 60.02.

The sole issue identified in husband's initial brief is whether the district court erred by denying husband's rule 60.02 motion to vacate the order extending the OFP.

Under rule 60.02, a party may seek relief from a "final judgment . . . , order, or proceeding" for the following reasons:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly discovered evidence . . . ;
- (c) Fraud . . . , misrepresentation, or other misconduct of an adverse party;
- (d) The judgment is void;
- (e) . . . it is no longer equitable that the judgment should have prospective application; or

(f) Any other reason justifying relief from the operation of the judgment.

Appellate courts review a district court's denial of rule 60.02 relief for abuse of discretion. *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016). "A district court abuses its discretion when it acts under a misapprehension of the law . . . or when its factual findings are clearly erroneous." *Id.* (citations omitted). We view the record in the light most favorable to the district court's findings and will not reverse unless "we are left with the definite and firm conviction that a mistake has been made." *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotations omitted). We will not make credibility determinations or reconcile conflicting evidence. *Aljubailah v. James*, 903 N.W.2d 638, 643 (Minn. App. 2017).

Husband argues that the district court abused its discretion in two ways when it denied his rule 60.02 motion. He argues that it erred because it "failed to provide a hearing on [Minn. Stat. § 518B.01 subd.] 6a's legislatively-mandated pre-conditions for an extension of the OFP." Husband also argues that the court abused its discretion by denying his rule 60.02 motion because wife "engaged in post-OFP settlement agreement misconduct."

Paragraph 23 of the parties' stipulation effectively waived the requirements of Minn. Stat. § 518B.01, subd. 6a, concerning extension of the stipulated OFP where the term of the OFP was not extended beyond the initial two-year period expressly authorized by Minn. Stat. § 518B.01, subd. 6(b).

Husband argues that we should reverse the district court's one-year extension of the OFP because the statute requires "application, notice, hearing and satisfaction of the statutorily-created criteria," before the OFP could be extended.

We begin with the fact of the parties' negotiated stipulation for a one-year OFP without any finding of domestic abuse. That stipulation was a settlement agreement. A settlement agreement "is contractual in nature." *Voicestream Minn., Inc. v. RPC Properties, Inc.*, 743 N.W.2d 267, 271 (Minn. 2008). "As a general rule, the enforcement of a settlement agreement requires a hearing if the issues are sharply conflicting and there are questions of fact for the fact finder to decide." *Id.* at 272. However, the district court has "the inherent power to summarily enforce a settlement agreement as a matter of law when the terms of the agreement are clear and unambiguous." *Id.* (quotations omitted). It will "read contract terms in the context of the entire contract and will not construe the terms so as to lead to a harsh and absurd result." *Brookfield Trade Cent., Inc. v. Cty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998).

Parties may, by stipulation, "agree to incur certain obligations which the [district] court, acting under its statutory authority, is not empowered to impose." *In re LaBelle's Tr.*, 223 N.W.2d 400, 401 (Minn. 1974). Courts may not, however, approve an action to which parties stipulate that is explicitly prohibited by statute. *Leifur v. Leifur*, 820 N.W.2d 40, 43 (Minn. App. 2012), *review dismissed* (Minn. Nov. 1, 2012). The Minnesota Supreme Court has made clear that when parties bargain for obligations that are not prohibited, those obligations may be honored and enforced by the district court. *LaBelle's Tr.*, 223 N.W.2d at 411; *see Anderson v. Anderson*, 225 N.W.2d 837, 841 (Minn. 1975) (affirming a district court's enforcement of a stipulated contract provision agreed upon by the parties). In determining the enforceability of a stipulated agreement, we consider

whether parties to a stipulated agreement were represented by counsel. *Anderson*, 225 N.W.2d at 841.

The statute authorizes the district court to grant OFP relief for a period not to exceed two years. Minn. Stat. § 518B.01, subd. 6(b). Here, the parties agreed to an OFP without any domestic-abuse finding for a period of one year, and they agreed that wife had the “right, at her sole discretion” to seek and obtain an extension of the OFP for “one additional year.”

Relying on the precedent established in the cases discussed above, the district court determined that the parties’ agreement dispensed with the need for a hearing under Minn. Stat. § 518B.01, subd. 6a, in order to extend the stipulated OFP for the agreed-upon “one additional year.” It correctly noted that, “[t]he burden of proof in a proceeding under Rule 60.02 is on the party seeking relief.” *City of Barnum v. Sabri*, 657 N.W.2d 201, 205 (Minn. App. 2003).

The record supports the district court’s conclusion that husband understood the meaning and potential ramifications of paragraph 23 of the stipulation that he and his attorney signed. That paragraph unambiguously provides that wife “shall have the right, at her sole discretion, to elect to extend the effective period of this Order for one additional year, upon the filing of an affidavit exercising said right.” And the agreement provided an evident benefit to husband—the OFP was entered without any finding of domestic abuse. In obtaining the extension of the OFP, wife followed the procedure to which the parties agreed, and the overall period of the OFP—two years—was within the authority of the district court under Minn. Stat. § 518B.01, subd. 6(b).

Husband asserts that the district court erred when it found that husband waived his right to notice and a hearing under Minn. Stat. § 518B.01, subd. 6a, because “the paragraph speaks only for [wife] and does not state that [husband] waived *his right* to a hearing.”

We review the district court’s determination that husband waived his right to a hearing for clear error. *In re Civil Commitment of Giem*, 742 N.W.2d 422, 432 (Minn. 2007). A finding is clearly erroneous if the reviewing court is “left with the definite and firm conviction that a mistake has been made.” *Thompson v. Thompson*, 739 N.W.2d 424, 429 (Minn. App. 2007). When considering whether the factual findings are clearly erroneous, “we view the record in the light most favorable to the district court’s findings.” *Id.*

A “valid waiver requires two elements: (1) knowledge of the right, and (2) an intent to waive the right.” *White v. City of Elk River*, 840 N.W.2d 43, 51 (Minn. 2013). A waiver may be express or implied. *Frandsen v. Ford Motor Co.*, 801 N.W.2d 177, 182 (Minn. 2011). “[K]nowledge may be actual or constructive and the intent to waive may be inferred from conduct.” *Valspar Refinish, Inc. v. Gaylord’s Inc.*, 764 N.W.2d 359, 367 (Minn. 2009) (quotation omitted).

The district court found that husband knowingly waived his right to notice and a hearing under Minn. Stat. § 518B.01, subd. 6a, if wife followed the parties’ agreement concerning a one-year extension of the OFP. The record supports that finding. And, as discussed, wife followed the procedure upon which the parties agreed.

The district court acted well within its discretion when it determined that rule 60.02 does not entitle husband to relief where he agreed in writing and with the advice of counsel to a process for extending the OFP within the purview of the statute.

Wife's alleged misconduct does not entitle husband to rule 60.02 relief.

Husband also argues that he is entitled to rule 60.02 relief because wife “fabricated an OFP violation that did not exist to get [husband] arrested” and because wife “fabricated extreme domestic and child abuse” to deprive him of parenting time.

First, husband provided no legal authority to the district court, and he provides none on appeal, in support of his argument that such circumstances give rise to rule 60.02 relief in a case such as this, where the parties agreed to the challenged extension provision with the advice of counsel. *See In re Estate of Grote*, 766 N.W.2d 82, 88 (Minn. App. 2009) (stating that “[t]his court declines to address allegations unsupported by legal analysis or citation”).

Second, and importantly, husband’s argument on appeal seems to presume that the parties’ stipulation to an OFP without any finding of domestic abuse means that there was no domestic abuse. The agreement means no such thing. The parties agreed that the OFP would be entered without such a finding, and that the initial term of the OFP would only be one year, despite the statutory provision authorizing a district court to enter an OFP for an initial period “not to exceed two years.” Minn. Stat. § 518B.01, subd. 6(b). The stipulation allowed husband to both avoid the prospect of a domestic-abuse finding and limit the OFP to one year unless wife followed the extension procedure on which the parties agreed. If the district court were to have determined that the one-year-extension provision

was for some reason not enforceable, the proper remedy would not be to excise that provision from the parties' stipulation and revert to the statutory extension procedure while leaving all of the agreement's remaining terms intact. Rule 60.02 is not a mechanism for avoiding an isolated part of a counseled stipulation.

Finally, and as the district court properly recognized, the stipulated OFP allows either party to raise custody-and-parenting-time issues in the legal-separation proceeding. To the extent that husband seeks relief because wife has improperly denied him parenting time by "fabricated" OFP-violation claims, the parties have expressly agreed on a procedure and a forum to address those issues. That forum is well-suited to resolving husband's arguments while preserving the parties' stipulated OFP. See Minn. Stat. § 518.09 (2018) (providing that proceedings for dissolution and legal separation are commenced by the same process).

The district court acted within its discretion when it denied husband's motion over his claims concerning wife's alleged misconduct, where the parties agreed that those concerns could be addressed in another available forum.

Husband's additional arguments are meritless.

While husband's initial brief expressly identified the sole issue on appeal as whether the district court abused its discretion by denying his rule 60.02 motion, he makes a series of related but unpersuasive arguments which merit brief discussion.

Husband briefly argues that settlements in domestic-abuse proceedings in which parties stipulate to terms in OFPs without being required to expressly waive statutory provisions "is a continuing significant legal error in our state courts that must be stopped."

Setting aside that the district court properly resolved the waiver issue, as discussed above, husband has provided no evidence of the purported continuing practice of district courts routinely extending OFPs. Ours is an error-correcting court. *Lake George Park, L.L.C. v. IBM Mid-America Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998), review denied (Minn. June 17, 1998). It is not for us to make sweeping pronouncements about what district courts should do in other cases.

Husband also asserts that the district court was divested of subject-matter jurisdiction when it failed to strictly construe the notice and hearing requirements of section 518B.01, subdivision 6(b). Subject-matter jurisdiction and statutory interpretation are questions of law which are reviewed de novo. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002).

Both the United States Supreme Court and Minnesota Supreme Court have acknowledged that courts and parties often use concepts and language regarding “jurisdiction” imprecisely to refer to non-jurisdictional claim-processing rules imposed by statutes or rules. See *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 510, 126 S. Ct. 1235, 1242 (2006) (providing that “jurisdiction” “is a word of many, too many, meanings” (quotation omitted)). There is a “critical difference between a rule governing subject-matter jurisdiction and an inflexible claim-processing rule.” *Eberhart v. United States*, 546 U.S. 12, 13, 126 S. Ct. 403, 403, (2005). “Jurisdiction refers to a court’s power to hear and decide disputes.” *State v. Smith*, 421 N.W.2d 315, 318 (Minn. 1988). “Subject-matter jurisdiction refers to a court’s statutory or constitutional power to adjudicate the case.” *Giersdorf v. A & M Constr., Inc.*, 820 N.W.2d 16, 20 (Minn. 2012) (quotation omitted).

Non-jurisdictional claim-processing rules are rules designed “to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times.” *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 435, 131 S. Ct. 1197, 1203 (2011). A rule is “jurisdictional” if the legislature “clearly states that a threshold limitation” on the scope of a statute is jurisdictional. *Arbaugh*, 546 U.W. at 502, 126 S. Ct. at 1237. If the legislature fails to do so, courts will treat the statute as a non-jurisdictional claim-processing rule. *Id.*

Here, the district court was not divested of jurisdiction when it followed the parties’ stipulation to extend the OFP without requiring notice and a hearing under section 518B.01, subdivision 6a. That section is a claim-processing rule. It is not jurisdictional. Husband presents no caselaw to the contrary. In *McCullough & Sons, Inc. v. City of Vadnais Heights*, the Minnesota Supreme Court determined that, while jurisdictional requirements “cannot be expanded to account for parties’ litigation conduct,” claim-processing rules may be forfeited or waived. 883 N.W.2d 580, 588 (Minn. 2016) (citation omitted).

As discussed above, parties may stipulate to processes not expressly provided by statute. See *LaBelle’s Tr.*, 223 N.W.2d at 408. And here, husband agreed to an OFP-extension procedure with the advice of counsel. Husband’s argument that, despite the parties’ stipulation, the notice and hearing requirements of Minn. Stat. § 518B.01, subd. 6a, are jurisdictional and must be strictly construed, is without merit. *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 213 (Minn. 2001); see *Henderson*, 562 U.S. at 436, 131 U.S. at 1203 (explaining that, when determining whether a procedure or rule is jurisdictional, courts consider whether there is any clear indication that the legislature intended the rule

to be jurisdictional). The district court's jurisdiction is identified in Minn. Stat. § 518B.01, subd. 3. Plainly, the district court had subject-matter and personal jurisdiction here.

Husband also appears to argue that his due-process rights were violated when the district court extended the OFP without a hearing because doing so changed the effective date for him to obtain joint legal custody of his minor children. He argues that there were “sharply conflicting” issues and “questions of fact for the fact finder to decide.”

Husband's argument stems from his related legal-separation case. In that case, the district court determined that husband would have joint legal custody of his children by the end of 2018. By extending the OFP in this case, however, the district court effectively granted wife sole legal and physical custody until April 2020, absent some amendment to the terms of the OFP, the order(s) in the legal separation file, or both.

As discussed, it remains available to husband to contest the custody issues in the legal-separation case. As the district court noted, the possibility of the OFP having some impact on the custody of the children “should come as no surprise to [husband] because he clearly agreed to its possibility when he agreed to [wife]'s sole legal custody in the stipulated OFP, as well as her right to extend the [OFP] by one year.” If that custody arrangement no longer serves the best interests of the children, amendment to the custody order(s) in the legal-separation case is the proper remedy.

Finally, husband contended at oral argument that Minn. Stat. § 518B.01, subd. 6a, requires a showing that the minor children reasonably fear physical harm before the OFP may be extended. This argument is not properly before us because it was not raised to the district court and was raised for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580,

582 (Minn. 1988) (providing that an appellate court will generally not address issues that were not presented to, considered by, and passed on by the district court). Moreover, because husband’s initial brief made no reference to this argument we need not address it. *See id.*

Even overlooking all of that, husband’s argument has no merit. The statutory provision involved—which was waived by the parties’ stipulation—provides that an OFP may be extended “upon a showing that . . . the petitioner is reasonably in fear of physical harm from the respondent.” Minn. Stat. § 518B.01, subd. 6a(b)(2). Husband would have us rewrite the statute to provide that no OFP extension involving minor children is permissible unless and until the district court hears from the minor children and determines that *the children* are also reasonably in fear of physical harm from the respondent. Courts may not add words to a statute. *Dupey v. State*, 868 N.W.2d 36, 40 (Minn. 2015). Even if husband had not forfeited this argument, we would surely decline the invitation to become a super-legislature and rewrite the OFP statute to include words that the legislature omitted.

Affirmed.