

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0686**

In re the Marriage of:
Vicki Collette Sandberg, petitioner,
Respondent,

vs.

Mark Alan Sandberg,
Appellant.

**Filed February 8, 2021
Affirmed in part, reversed in part, and remanded
Bratvold, Judge**

Hennepin County District Court
File No. 27-FA-18-8541

Michelle M. Kniess, Kniess Law, LLC, Woodbury, Minnesota (for respondent)

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Considered and decided by Reilly, Presiding Judge; Worke, Judge; and Bratvold,
Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

On appeal from a judgment dissolving the parties' marriage, appellant-husband argues that the district court erred by entering respondent-wife's proposed judgment, even though husband objected that the proposed judgment did not accurately reflect the stipulated agreement reached by the parties after mediation. Husband contends that the

district court abused its discretion when it denied his objections to the proposed judgment by (a) awarding wife an “additional amount” from husband’s 401(k) account to satisfy a marital debt secured by wife’s nonmarital cabin; (b) allowing wife to pay off debts in excess of the parties’ alleged agreement by using the proceeds of their marital home; and (c) failing to order wife to account for the marital home’s proceeds. Husband also challenges the district court’s decision ordering husband to pay conduct-based attorney fees.

We determine that the district court did not abuse its discretion by allowing wife to pay off marital debts from the proceeds of the marital home, failing to order an accounting of the marital-home proceeds, and ordering conduct-based attorney fees. Thus, we affirm in part. But because the parties did not agree to award wife an “additional amount” from husband’s 401(k) and this unstipulated term was added to the judgment by the district court at wife’s suggestion, we reverse in part and remand for further proceedings consistent with this opinion.

FACTS

Appellant Mark Alan Sandberg (husband) and respondent Vicki Collette Sandberg (wife) married in 1993, and separated in 2017. In December 2018, wife petitioned to dissolve the parties’ marriage. The parties, who have no minor children, lived together in a home during the marriage, which they sold during the dissolution proceedings.

The parties participated in three alternative dispute resolution sessions, including a moderated settlement conference on January 14, 2020. During that conference, the parties informed the district court that they had reached an agreement, and this agreement was

placed on the record with the district court present. During the hearing, the parties submitted exhibit 1, which was prepared in a prior Financial Early Neutral Evaluation (FENE) session.

Wife's attorney described exhibit 1 as "a schedule of the parties' assets and liabilities as of May 31st of 2019." Wife's attorney added that the parties agreed "to the values of everything in this sheet as stated here with some exceptions . . . and agreed to the allocation of all of the assets and liabilities as noted in here with some exceptions that I will also note." The resulting dissolution judgment states that the parties, with counsel, "negotiated a resolution of all issues at the Moderated Settlement Conference which were read [i]nto the record." The only transcript in the record is of the moderated settlement conference hearing.

At the hearing, the parties agreed that wife's attorney would draft the proposed judgment by January 31, 2020. When the parties were unable to agree on the language and terms of the proposed judgment, the district court extended the deadline to February 14, and later to February 21. When the district court still had not received the proposed judgment on February 21, it filed an order setting a drafting session for February 28. The order noted that the parties had told the court they were "very close to settling all contested issues" but that the court had "significant concerns" because "the parties have been making this representation for months, but have not yet finalized their agreement."

On February 27, husband's attorney withdrew from representation,¹ and husband appeared pro se at the February 28 drafting session. At that drafting session, the parties failed to resolve the language for their agreement. As a result, the district court ordered wife's attorney "to prepare the final judgment and decree, conforming to the terms placed on the record on January 14, 2020." After wife's attorney submitted a proposed judgment, husband's attorney, who had been reengaged, filed a letter on husband's behalf, citing Minn. R. Gen. Prac. 307(b) and objecting to the proposed judgment. The letter was accompanied by husband's affidavit, which made more specific objections and requests.

The district court referee held a final telephone conference, off the record, with the parties' counsel on April 16, 2020. The resulting judgment states that "the parties reached agreements as to all matters at a Moderated Settlement Conference," "read those agreements into the record," and that "the parties' agreements regarding a division of personal and real property . . . are fair and equitable [and] are supported by adequate consideration." In a memorandum accompanying the judgment, the district court addressed the April 2016 telephone conference, stating that it was held "to discuss the approximately \$75,000 difference on the balance sheet" between wife's proposed judgment and husband's objections to it. The memorandum notes that the district court did not receive arguments from counsel, rather it "merely confirmed that the parties have an intractable difference of

¹ The record is unclear about why counsel withdrew from representation and then filed a certificate of representation on the same day. The record is also unclear about why husband appeared pro se at the February 28 drafting session if he was represented by counsel.

opinion on this issue, and that the Court is required to make a decision.” The district court’s memorandum concluded:

The Court ultimately finds that the proposed Judgment and Decree conforms to the parties’ agreement placed on the record after their Moderated Settlement Conference, and it is fair and equitable under the circumstances. As is almost axiomatic under Minnesota law, an “equitable” division of marital assets is not necessarily a perfectly “equal” division.

Husband appeals.

DECISION

I. The district court abused its discretion when it entered wife’s proposed judgment over husband’s objection that the proposed judgment added terms not agreed to by the parties.

Husband argues that the district court erred by entering wife’s proposed judgment because that proposed judgment did not accurately reflect the parties’ stipulation to divide the marital estate “equally.” Wife responds that the district court did not err because the district court followed the procedures for entering a proposed judgment as provided in Minn. R. Gen. Prac. 307(b).

Caselaw explains that, before a district court enters a judgment on an oral stipulation, a party may seek relief in two ways. “First, the party can seek to withdraw from or vacate the stipulation upon which the proposed judgment is based.” *Clark v. Clark*, 642 N.W.2d 459, 463 (Minn. App. 2002); *see Shirk v. Shirk*, 561 N.W.2d 519, 521-22 (Minn. 1997) (addressing a party’s ability to withdraw from a stipulation); *Toughill v. Toughill*, 609 N.W.2d 634, 638 (Minn. App. 2000) (same). Second, under Minn. R. Gen. Prac. 307(b), “the party can attack the proposed judgment, alleging that the proposed

judgment does not accurately reflect the parties' stipulation." *Clark*, 642 N.W.2d at 463. "While a district court has the discretion to accept all or part of a proposed stipulation, 'generally, [a district court] 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.'" *Id.* at 465 (citing *Toughill*, 609 N.W.2d at 638-39 n.1).

Here, husband neither obtained wife's permission, nor filed a motion, to withdraw from or vacate the stipulation. As a result, our review concerns husband's attack of wife's proposed judgment under Minn. R. Gen. Prac. 307(b), which provides:

Where a stipulation has been entered orally upon the record, the lawyer directed to prepare the decree shall submit it to the court with a copy to each party. Unless a written, fully executed stipulation is filed or unless the decree contains the written approval of the other party or their legal representative, a transcript of the oral stipulation shall be filed by the lawyer directed to prepare the decree. Responsibility for the cost of the transcript shall be determined by the court. Entry of the decree shall be deferred for 14 days to allow for objections unless the decree contains the written approval of the lawyer for each party, or the other party if he or she is self-represented.

In *Clark*, the appellant argued that the district court erred by adopting the respondent's proposed judgment because the proposed judgment did not accurately reflect the oral stipulation the parties entered into the record. 642 N.W.2d at 465. This court ruled that the district court erred by entering judgment without having first received the transcript or written approval of both parties. *Id.* We also ruled, however, that the error was harmless because the district court later reviewed the transcript and rejected the appellant's allegations that the respondent's proposed judgment did not accurately reflect the

stipulation. *Id.* As a result, we affirmed the district court’s entry of respondent’s proposed judgment.²

Here, wife asks this court to apply the same approach that *Clark* used. Under rule 307(b), the parties entered their stipulation orally into the record, wife’s attorney prepared the proposed judgment as the district court directed, and wife’s attorney submitted the proposed judgment to the court and to each party with the stipulation transcript. The district court at first deferred entering a judgment to allow husband an opportunity to object and then entered its judgment over his objections. According to wife, the proposed judgment was “consistent with the terms of the agreement placed on the record.”

Wife contends that, because no procedural error occurred, no abuse of discretion occurred, and we should affirm the district court’s entry of the judgment and decree. Husband argues the district court erred in entering the judgment because the terms of that judgment do not track the stipulation, and therefore the district court’s judgment imposed unstipulated conditions upon him by “judicial fiat.”

Wife is correct that we review the district court’s decision on husband’s objections for abuse of discretion. *See Ryan v. Ryan*, 193 N.W.2d 295, 298 (Minn. 1971) (stating that “the vacation of stipulations is a matter resting largely in the discretion of the trial court, and its action will not be reversed unless it can be shown that the [district] court acted in such an arbitrary manner as to amount to an abuse of discretion”). But husband is also

² In a separate part of the *Clark* opinion, we reversed the district court’s denial of appellant’s motion under Minn. Stat. § 518.145, subd. 2, to reopen the otherwise properly-entered judgment because the district court did not apply the applicable statutory analysis. *Clark*, 642 N.W.2d at 466.

correct that caselaw establishes that a district court lacks authority to enter a stipulated dissolution judgment by imposing conditions not agreed to by the parties. As *Toughill* explains:

The district court is a third party to dissolution proceedings and has the authority to refuse to accept the terms of a stipulation “in part or *in toto*.” Therefore, while a party, absent consent of the other party or permission of the court, may not withdraw from or repudiate a stipulation after entering it (even if the district court has yet to approve the stipulation), the district court is not bound by a stipulation merely because the parties have entered it. We note that *while 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.”* Alternatively stated, while parties to a dissolution stipulation are precluded from disavowing that stipulation before the district court decides whether to accept the stipulation, to the extent that the district court does not accept the stipulation, the parties should not, absent *unusual circumstances*, be precluded from litigating their claims.

609 N.W.2d at 638 n.1 (emphasis added, citation omitted). For that reason, we consider whether the district court abused its discretion by rejecting husband’s objections and entering a judgment with terms different from the parties’ stipulation. Husband makes three arguments, and we consider each in turn.

A. Dividing “marital equity” in the cabin and liquidating the 401(k) account to pay off marital debt on wife’s cabin

Husband argues that the district court erred in its division of the “marital equity” in wife’s nonmarital cabin and by the use of the 401(k) account to pay off a marital debt, specifically, the Home Equity Line of Credit (HELOC), on the cabin. To be clear, while the 401(k) account is in husband’s name, it is, in fact, marital property.

We consider the alleged error in two steps. As for marital equity in the cabin, husband contends that the parties' stipulation provided that there was \$100,000 in marital equity in the cabin. We are not persuaded. The district court ruled that the cabin is wife's nonmarital property and this conclusion is supported by the deed attached to the decree. *See Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997) (stating that whether property is marital or nonmarital presents a legal question, but we must defer to the district court's underlying findings of fact).

The district court also found that the cabin is encumbered by a marital debt (the HELOC) of \$71,030 and the "marital equity" in the cabin is \$28,970. (Apparently, the \$28,970 in marital equity is the amount of the HELOC that the parties paid off before the dissolution.) The decree awards the cabin to wife as her nonmarital property and directs the parties to pay off the outstanding (marital) balance on the HELOC with funds liquidated from husband's 401(k) account. The district court's decision to award wife her nonmarital property along with the \$28,970 in "marital equity" follows the parties' stipulation, as stated in exhibit 1. Thus, we reject husband's claim that the district court should have determined that wife received \$100,000 in marital equity in the cabin, based on the stipulation.

The second step of husband's alleged error has merit. He contends that the parties stipulated they would satisfy the HELOC debt by liquidating a sufficient amount from his 401(k) account before dividing the account, but that the judgment and decree requires that the 401(k) account be divided first and that husband satisfy the HELOC using his portion of the 401(k) account. Husband accurately describes the district court's judgment, which

provides that “Wife is awarded . . . \$225,370 from Husband’s 401(k) . . . *plus an additional amount* calculated by the parties’ accountant *to satisfy the HELOC encumbering the cabin property*, and pay estimated taxes and fees.” (Emphasis added.)

During the hearing after the moderated settlement conference on January 14, the parties orally entered a stipulation into the record about their agreement to pay off the marital debt on wife’s cabin. Wife’s attorney stated:

The U.S. Bank HELOC and any unpaid, unsecured liability that remains will be paid from a partial liquidation of Mr. Sandberg’s 401(k) . . . once they know what the numbers are to pay off, [the parties] will pull an amount that after withholding estimated taxes and everything else, that will satisfy those debts.

. . .

Then the division, I think, of the 401(k) in the—in the Exhibit 1 will be adjusted to effectuate an equal property division.

The district court restated the parties’ agreement:

[T]he U.S. Bank HELOC on the cabin is going to get paid out of the 401(k). If the cash from the house sale proceeds wasn’t sufficient to retire all the unsecured debt . . . then the 401(k) money is also going to retire those unsecured debts. We clear all of that off the balance sheet, and then we divvy up what’s left.

. . .

Did I get that right?

[Wife’s attorney]: That is correct.

The court: All right. [Husband’s attorney], did I goof anything on that?

[Husband’s attorney]: No. That sounds accurate.

After the hearing, wife’s attorney submitted a proposed judgment that provided that the 401(k) account would be divided and then she would be awarded an “additional

amount” of the 401(k) funds “to satisfy the HELOC encumbering the cabin property, and pay estimated taxes and fees.” Husband objected to the proposed judgment, contending the parties had stipulated to pay off the HELOC and *then* divide the 401(k) account, but the “proposed provision attempts to award [wife] the amount needed to pay the HELOC without first taking that amount off the top of the total retirement before equally dividing our retirement as intended.” The district court entered wife’s proposed judgment over husband’s objections.

We agree with husband that the district court erred because the terms of the proposed judgment did not follow the parties’ stipulation, so the district court’s entry of judgment imposed unstipulated conditions “by judicial fiat.” *See Clark*, 642 N.W.2d at 465 (citing *Toughill*, 609 N.W.2d at 638-39 n.1). Thus, we reverse and remand to the district court to order a fair and equitable division of marital property, including the 401(k) account and other retirement accounts, and for further proceedings not inconsistent with this opinion. On remand, the district court will have discretion to reopen the record, if necessary, to readdress the property division and to make the additional or amended findings necessary for it to adequately explain and support whatever decision it makes on remand.

B. Allocating sale proceeds from the marital homestead to satisfy marital debts

Husband argues that the district court erred by allowing wife to use the sale proceeds from the marital homestead to pay off debts in excess of the debts they agreed to pay off in the stipulation. Based on wife’s proposed judgment, the judgment entered by the district court states that “[t]he parties agree to apply the net proceeds [from the sale of the marital

homestead], which total \$89,133.55, to pay and satisfy marital debt and equally divide the remaining proceeds.”

Husband agrees that the parties stipulated to pay off marital debt (other than the HELOC on the cabin) from the proceeds of the sale of the marital homestead. Husband’s affidavit objected to this aspect of wife’s proposed judgment based on the itemization of a particular marital debt, specifically, the proposed judgment listed the amount of U.S. Bank Visa debt as \$17,990.86. According to husband, the parties stipulated to pay off U.S. Bank Visa debt of \$13,265. Husband points to exhibit 1 to show the debt listed in wife’s proposed judgment did not match their agreement—the exhibit lists the U.S. Bank Visa debt as \$13,265, but the proposed judgment lists the debt in this account as \$17,990.86, and this second amount was reflected in the final judgment.³ Wife responds that the parties stipulated, as reflected in the transcript of the hearing, that they would “update” the amount of each marital debt before the final payoff, and so wife concludes, husband has not met his burden of showing an abuse of discretion in the district court’s use of the \$17,990.86 figure rather than the \$13,265 figure.

Wife is correct that the district court’s judgment is supported by the parties’ agreement, as stated in the transcript of the hearing after the settlement conference. In discussing how the proceeds from the sale of the marital home will be allocated, the record provides:

³ Husband relies exclusively on exhibit 1 and ignores the transcript when describing the parties’ stipulation. Exhibit 1 explains the parties’ stipulation, at times, but is less than clear and certainly mathematically inaccurate.

[Wife's attorney]: [The parties] have agreed that they are going to look at the liability section in Section 8 of Exhibit 1, and they're going to update all of the balances and make sure all the debts are included, and their intent is to payoff in priority those—those debts. All the debts that they have with the homestead proceeds.

The court: So the 89 and change is going to go pay off everything that they can in Section 8 on the liabilities, so we can get that off this balance sheet.

[Wife's attorney]: Correct. And they're going to update those numbers to make sure that we have a full payoff of everything that exists. It might even mean that there's another debt that gets added at this point, but that's the intent.

The court: Sure.

...

[Wife's attorney]: And, again, the parties, once they know what the numbers are to pay off, they will pull an amount that after withholding estimated taxes and everything else, that will satisfy those debts

The court: [Husband's attorney]?

[Husband's attorney]: That sounds like an accurate agreement with the provisions that were changed.

When the full discussion is read in context, we conclude that the parties agreed that the final judgment would “update” the amount of the marital debts and satisfy “[a]ll the debts that they have with the homestead proceeds.” We therefore conclude that the district court did not abuse its discretion by allowing wife to pay off the U.S. Bank Visa debt of \$17,990.86 from the marital homestead proceeds.

C. Ordering an accounting of the marital-debt payoff

Husband argues that the district court erred by not ordering wife to provide an accounting of the marital debts paid with the proceeds from the marital home. Husband identifies \$999.91 of homestead proceeds that he contends are not accounted for. Wife

responds that this issue is not properly before this court because husband did not file a formal motion for an accounting in the district court.

“[A]n undecided question is not usually amenable to appellate review.” *Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988). *Clark* discusses the “difficulties and risks” of informally seeking relief from the district court without a motion, including the problem of preserving a record for appellate review. *Clark*, 642 N.W.2d at 464, n.2. *Clark* advised that “the better procedure is to serve and file a notice of motion and motion, along with any necessary supporting memorandum, affidavit(s), and other documents” moving the court for the requested relief. *Id.* It is unclear why husband, in making his request for an accounting, chose to file a letter and affidavit with the district court, instead of a motion, in making this discovery request when *Clark* addresses a similar procedure and advises against it.

Here, husband did not file a single motion or discovery request throughout the alternative dispute resolution or litigation process. Husband contends that he “did raise this issue with the trial court in his Affidavit objecting to the entry of [wife’s] proposed Judgment and Decree.” In his affidavit, however, husband states, “I want [wife] to be ordered to provide me with documented proof of her disposition of the homestead proceeds.” The district court did not respond to this informal request. Husband cites no authority to support his assertion that his request made in an affidavit is properly before the district court or reviewable by this court, and we can find none.

Because husband’s argument on this point stems from a request in an affidavit that the district court neither addressed nor decided, we conclude that whether the district court

should have ordered an accounting of the payoff of marital debt is not amenable to appellate review.

II. The district court did not abuse its discretion by ordering conduct-based attorney fees.

Husband argues that the district court abused its discretion by awarding conduct-based attorney fees of \$999 because he “refuse[d] to sign [wife’s] proposed Judgment and Decree.” Wife responds that the district court’s award is supported by factual findings and the court acted within its discretion.

Under Minn. Stat. § 518.14, subd. 1 (2018), a court may award conduct-based attorney fees “against a party who unreasonably contributes to the length or expense of the proceeding.” We review a district court’s decision to award conduct-based attorney fees for abuse of discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007). The district court may award conduct-based attorney fees of up to \$999 without a formal motion. *Cf.* Minn. R. Gen. Prac. 119.01 (stating that parties seeking fee awards exceeding \$999 must do so by formal motion).

Here, without a motion by any party, the district court found that husband unreasonably contributed to the length and expense of the dissolution proceedings based on his conduct at the court-ordered drafting session on February 28. The parties did not reach a final agreement at the February 28 drafting session. The district court determined that “[w]hile [husband] repeatedly expressed dissatisfaction with the situation, he did not effectively participate in the drafting session,” and that husband’s “refusal to reduce the

parties' agreement to writing 'unreasonably contribute[d] to the length or expense of the proceeding.'" (Quoting Minn. Stat. § 518.14, subd. 1).

Based on our review of the record, the district court did not award conduct-based fees simply because husband refused to sign wife's proposed judgment; the district court found husband's conduct at the drafting session justified an award of fees. The district court is in the best position to determine whether a party has unreasonably contributed to the length or expense of district court proceedings. We conclude that the relevant findings by the district court are not clearly erroneous, and the award does not amount to an abuse of discretion.

Affirmed in part, reversed in part, and remanded.