STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0953

In re the Marriage of: Deborah Ann Barnett, petitioner,
Appellant,

vs.

Timothy John Barnett,
Respondent.

Filed May 30, 2023
Affirmed
Bryan, Judge

LeSueur County District Court
File No. 40-FA-13-899

Michelle K. Olsen, Jacob M. Birkholz, Birkholz & Associates, LLC, Mankato, Minnesota (for appellant)

Seungwon R. Chung, Michael P. Boulette, Abby N. Sunberg, Taft Stettinius & Hollister LLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Bryan, Presiding Judge; Johnson, Judge; and Hooten, Judge.*

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this appeal from the district court's denial of her motion to modify spousal maintenance, appellant-wife argues that the district court erred in concluding that it lacked

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

authority to modify spousal maintenance. We affirm the district court's decision. The district court could not modify spousal maintenance because it did not expressly award spousal maintenance or expressly reserve a decision regarding an award of spousal maintenance when it entered the initial dissolution judgment and decree.

FACTS

Appellant Deborah Ann Barnett (wife) and Timothy John Barnett (husband) were married in 1987. In August 2013, wife filed a petition for dissolution. The parties agreed to arbitrate several issues, including property division and spousal maintenance. The parties agreed that the arbitrator's decision would be binding and "subject only to modification or vacation pursuant to Minnesota Statutes 572.19 and 572.20 (mistake, fraud, corruption, or partiality or arbitrator exceeded powers)."

On May 28, 2014, the arbitrator issued its Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree. On July 16, 2014, the district court signed and adopted the arbitrator's May 28, 2014 order (the 2014 arbitrated decree).[1] The 2014 arbitrated decree included findings of fact and conclusions of law apportioning various marital property, assets, and debts. It also contained the following findings regarding the parties' income and need for spousal maintenance:

> 10. **[Wife's] Employment, Income and Needs.** [Wife] is currently unemployed. [Wife] stipulated that she is capable of being self-supporting, is not in need of spousal maintenance, and waives her right to receive temporary or permanent spousal maintenance from [Husband].

[1] The parties agreed that there would be no transcript or other record of the arbitration proceedings. The absence of this documentation from the appellate record, however, does not affect our analysis.

> 11. **[Husband's] Employment, Income and Needs.** [Husband] is employed by Johnson's Trucking and has an approximate gross monthly income of $2,400.00. [Husband] is self-supporting, is not in need of spousal maintenance, and waives his right to receive temporary or permanent spousal maintenance from [Wife].
>
> 12. **[Husband's] Business Interest.** [Husband] also has a side business in which he does electrical work.

Based on these findings, the 2014 arbitrated decree included the following conclusion of law regarding spousal maintenance:

> 2. **Spousal Maintenance.** Neither party shall pay temporary or permanent spousal maintenance to the other and the parties hereby waive any right to have the other pay temporary or permanent spousal maintenance. The parties are forever barred from receiving any spousal maintenance whatsoever from the other. This Court divests itself of any further jurisdiction on the issue of spousal maintenance from one party to the other. The denial of spousal maintenance and this Court's divestiture of further jurisdiction on the issue of spousal maintenance, is consistent with the principles of Karon v. Karon, 435 N.W.2d 501 (Minn. 1989), as codified at M.S. § 518.552, subd. 5. Neither party shall ever be successful in obtaining an Order for spousal maintenance from the other.

On December 18, 2020, approximately six-and-a-half years after the 2014 arbitrated decree, wife made the following three requests: (1) that the district court vacate the property allocation and spousal maintenance portions of the 2014 arbitrated decree; (2) that the district court award wife spousal maintenance; and (3) that the district court award wife conduct- and need-based attorney fees in connection with the modification motion. In support of her request, wife alleged that husband had committed "fraud on the court." She also argued that the parties' waiver of spousal maintenance was invalid.

The district court denied the portion of wife's motion pertaining to property allocation, concluding that wife had not established a basis for reopening the record based upon fraud.[2] The district court also concluded that it lacked authority to modify spousal maintenance because there was no spousal maintenance awarded in the 2014 arbitrated decree. The district court further reasoned that the validity of the parties' waiver had no effect on its analysis of whether it could modify maintenance.[3] Finally, the district court denied wife's request for attorney fees. Wife appeals.

DECISION

On appeal, wife argues that the 2014 arbitrated decree contains an invalid waiver of spousal maintenance and that the district court therefore retained "jurisdiction"[4] to modify spousal maintenance.[5] We conclude that because the district court never awarded spousal maintenance in the first instance, it could not modify maintenance.

Upon the dissolution of a marriage, a district court may award spousal maintenance to a party if, among other things, that party "has demonstrated a showing of need." *Madden*

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[2] The district court did find that one marital asset, an IRA in husband's name, was not addressed in the 2014 decree, and ordered the parties to divide that account.

[3] The district court initially agreed with wife that the parties' waiver was invalid, ordered an evidentiary hearing on the issue of spousal maintenance, and reserved the issue of attorney fees. However, husband moved for the district court to revise its order pursuant to Minnesota Rule of Civil Procedure 54.02. The district court granted husband's motion and modified its original order to deny wife's requests in their entirety.

[4] For purposes of this appeal, we assume, without deciding that a type of jurisdiction is at issue in this case. *But see Moore v. Moore*, 734 N.W.2d 285, 287 n.1 (Minn. App. 2007) (noting that parties and courts often use words and concepts associated with jurisdiction imprecisely and declining to address whether subject matter jurisdiction was actually at issue in the spousal maintenance modification dispute), *rev. denied* (Minn. Sept. 18, 2007).

[5] Wife does not argue on appeal that the district court erred in denying the portions of her motion relating to property allocation and attorney fees.

v. Madden, 923 N.W.2d 688, 695 (Minn. App. 2019); *see also* Minn. Stat. § 518.552, subd. 1 (2022) (establishing grounds upon which a district court may award spousal maintenance). Once spousal maintenance has been awarded, "[p]arties to a dissolution action have a general statutory right to seek modification of a maintenance award." *Grachek v. Grachek*, 750 N.W.2d 328, 331 (Minn. App. 2008), *rev. denied* (Minn. Aug. 19, 2008); *see* Minn. Stat. § 518A.39, subd. 2 (2022) (providing for modification of maintenance orders).

A district court cannot modify spousal maintenance, however, if the original decree neither awarded maintenance nor expressly reserved the issue, as doing so would involve "modification of something that never existed." *McCarthy v. McCarthy*, 196 N.W.2d 305, 308 (Minn. 1972); *see also Stolp v. Stolp*, 383 N.W.2d 409, 413 (Minn. App. 1986) (concluding that the district court "had no jurisdiction to award maintenance" in "a situation where absolutely no maintenance was ever awarded"). A district court also loses authority to modify maintenance following the end of a maintenance award, *Eckert v. Eckert*, 216 N.W.2d 837, 839-40 (Minn. 1974), *quoted in Moore*, 734 N.W.2d at 287-89, or if it modifies maintenance to zero and does not expressly reserve authority to review that decision in the future, *Berger v. Berger*, 242 N.W.2d 836, 837 (Minn. 1976).

Separate and apart from the above cases, the parties can also waive their right to request future modifications of spousal maintenance, commonly known as a *Karon* waiver. *Loo v. Loo*, 520 N.W.2d 740, 744 (Minn. 1994); *see Karon v. Karon*, 435 N.W.2d 501, 503-04 (Minn. 1989) (holding that parties may waive the right to modify maintenance); Minn. Stat. § 518.552, subd. 5 (2022) (codifying *Karon* waivers with additional

limitations);[6] *Gossman v. Gossman*, 847 N.W.2d 718, 724 (Minn. App. 2014) (noting that "a *Karon* waiver is a matter of jurisdiction, not a matter of contract" (footnote omitted)). If a *Karon* waiver satisfies four requirements, the waiver divests the district court of its authority to modify the spousal maintenance awarded. *Butt v. Schmidt*, 747 N.W.2d 566, 573 (Minn. 2008) (listing the four requirements); *see also, e.g.*, *Keating v. Keating*, 444 N.W.2d 605, 606-08 (Minn. App. 1989) (concluding that the district court had authority to modify because the parties' *Karon* waiver lacked express divestiture language), *rev. denied* (Minn. Oct. 25, 1989); *Grachek*, 750 N.W.2d at 333-34 (concluding that the district court had authority to order cost-of-living adjustment because the parties' *Karon* waiver did not expressly preclude doing so). This court reviews such legal questions and the interpretation of dissolution judgments de novo. *Grachek*, 750 N.W.2d at 331.

Wife argues that the *Karon* waiver in the 2014 arbitrated decree was invalid, and therefore, the waiver did not divest the district court of its authority to modify spousal maintenance. Husband does not dispute the validity of the *Karon* waiver, arguing instead that the district court has no authority to modify the 2014 arbitrated decree because the decree did not include an initial award of spousal maintenance. We agree with husband.

In this case, wife notes that the 2014 arbitrated decree cites *Karon* and includes statements from the parties waiving their rights to modify spousal maintenance. However,

[6] The 2012 version of the statute was in effect at the time of the 2014 arbitrated decree, but we cite the most recent version because the subsequent revisions do not affect the disposition of this case. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case").

the 2014 arbitrated decree did not include an award of spousal maintenance. Nor did the 2014 arbitrated decree include language reserving a decision on whether to award either party spousal maintenance. Instead, the 2014 arbitrated decree states that "[n]either party shall pay temporary or permanent spousal maintenance to the other." In addition, the 2014 arbitrated decree memorialized the parties' decisions not to seek an initial award of spousal maintenance: "the parties hereby waive any right to have the other pay temporary or permanent spousal maintenance."[7] For this reason, we conclude that wife's December 2020 spousal maintenance modification motion requested "modification of something that never existed." *McCarthy*, 196 N.W.2d 308. Pursuant to the holdings in *McCarthy* and *Stolp*, the adoption of the 2014 arbitrated decree (and the decision not to appeal at that time) ended the district court's authority to modify over spousal maintenance.[8]

Affirmed.

[7] A decision not to seek an initial award of spousal maintenance should not be confused with a waiver of one's statutory right to modify an award of spousal maintenance.

[8] Portions of wife's brief appear to argue that the 2014 arbitrated decree awarded each party $0.00 in permanent spousal maintenance. We remain unconvinced to reverse given the language of the decree and the absence of language to support wife's interpretation. Moreover, even if wife were correct, the district court would have no authority to modify an award of $0.00. *See Berger*, 242 N.W.2d at 837 ("[I]f the court modifies an award of alimony to zero and does not retain jurisdiction to reinstate it at some future time, jurisdiction is also lost."); *see also Eckert*, 216 N.W.2d at 839 (concluding that a district court loses authority to modify spousal maintenance when the term of the obligation ends because "there cannot be modification of something that has ceased to exist").