STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1365

In re the Marriage of:

Alessandra Pantano Orthey, petitioner,
Appellant,

vs.

Christopher Scott Orthey,
Respondent.

Filed July 22, 2024
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-FA-19-329

Kay Nord Hunt, Michelle K. Kuhl, Lommen Abdo, P.A., Minneapolis, Minnesota; and

Anne M. Honsa, Saarah Berenjian, Honsa Mara & Kanne, Minneapolis, Minnesota (for appellant)

Joshua N. Brekken, Brekken Law, LLC, Roseville, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Larson, Judge; and Jesson, Judge.*

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

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant, a spousal-maintenance obligee, challenges the district court's decision that it lacked authority to award her permanent spousal maintenance after the expiration of her temporary spousal maintenance. We affirm.

FACTS

Appellant Allessandra Pantano Orthey, now 49, and respondent Christopher Scott Orthey, now 53, were married in January 1997. They have three children; the youngest, born in August 2003, is now 20. They dissolved their marriage in September 2019.

The Stipulated Judgment and Decree stated that appellant "commenced a full-time [27-month] Physician's Assistant [PA] program on May 13, 2019," and "thereafter. . . hope[d] to become employed," and that she "ha[d] the capacity to become self-supporting after completion of her [PA] program and a period of re-entry into the workforce." It provided that appellant was awarded "as and for temporary spousal maintenance, the sum of $5,800 per month through February 28, 2022," and that additional spousal maintenance would be an equal division of any bonus respondent received. It also provided that "[r]espondent's spousal maintenance obligation shall be reviewed *de novo* by December 1, 2021." The judgment and decree did provide that "[respondent's] award for spousal maintenance is reserved." The term "permanent spousal maintenance" does not appear in the Stipulated Judgment and Decree or in any of the subsequent stipulations.

The parties' Second Stipulation and Order to Amend Judgment and Decree[1] noted that COVID had "extended the length of time it will take [appellant] to obtain her degree," extended the payment of temporary spousal maintenance to March 31, 2022, and stated that, by January 31, 2022, the parties agreed to review de novo respondent's temporary spousal-maintenance obligation. The Third Stipulation and Order to Amend Judgment and decree extended the deadline for de novo review of spousal maintenance to February 28, 2022, and the Fourth Stipulation and Order to Amend Judgment and Decree extended the end of temporary spousal maintenance to July 1, 2022, and provided that de novo review would occur before that date.

In August 2022, a fifth stipulation expanded the de novo review provision to include the language "[a]s long as moving papers are served and filed prior to December 31, 2022, the actual hearing may take place after January 1, 2023. If the hearing is held in January 2023, it will not impact the ability to modify the spousal maintenance retroactively to December 31, 2022." The fifth stipulation also provided that any bonus payments received between July 1, 2022, and December 31, 2022, would not be divided with appellant.

Finally, in December 2022, a sixth stipulation noted that appellant had completed PA training and obtained a job at an hourly rate of $75 per hour and that the fifth stipulation had "remov[ed] the component of spousal maintenance relating to [r]espondent's bonus." It also expanded the de novo review provision to read "[a]s long as moving papers are served and filed prior to March 31, 2023, the actual hearing may take place after April 1,

[1] Their First Stipulation did not concern spousal maintenance.

2023. A placeholder affidavit and Notice of Motion and Motion is all that would be required to preserve de novo review of [r]espondent's spousal maintenance obligation."[2]

Ten days after the March 31, 2023, deadline, appellant served and filed a motion for permanent spousal maintenance of $5,800 per month. Respondent moved to dismiss the motion as untimely. Appellant then sought de novo review and an order that respondent pay her attorney fees incurred in bringing the motion. Appellant was scheduled to begin a new position with an annual salary of $124,700 on or about August 1, 2023.

The district court denied appellant's motion for permanent spousal maintenance on the ground of untimeliness and also denied both parties' requests for attorney fees. Appellant challenges the denial of her motion.

DECISION

The district court determined that it lacked the authority to modify appellant's spousal maintenance by awarding her permanent spousal maintenance ten days after the termination of her temporary spousal maintenance. A district court's authority to hear a motion to modify spousal maintenance raises an issue of law that, when properly before this court, is reviewed de novo. *See Grachek v. Grachek*, 750 N.W.2d 328, 331 (Minn. App. 2008), *rev. denied* (Minn. Aug. 19, 2008).[3]

The district court observed that respondent "makes a somewhat technical argument—that [appellant] failed to timely make a request for permanent spousal

[2] Thus, respondent paid temporary spousal maintenance of $5,800 per month from September 1, 2019, to March 31, 2023, or for 43 months.

[3] There is no argument that this issue is not properly before this court.

maintenance, and this prevents the [district c]ourt from addressing the issue of permanent spousal maintenance now" and that "where a [c]ourt establishes *temporary* spousal maintenance and reserves *permanent* spousal maintenance, the motion for permanent spousal maintenance **must** be made before the end of the temporary maintenance obligation."

The district court cited four cases that support respondent's argument: *Loo v. Loo*, 520 N.W.2d 740, 745 (Minn. 1994) ("Once maintenance payments end, the [district] court is without jurisdiction to modify maintenance."); *Eckert v. Eckert*, 216 N.W.2d 837, 840 (Minn. 1974) ("[T]here cannot be modification of something that has ceased to exist."); *Moore v. Moore*, 734 N.W.2d 285, 288-289 (Minn. App. 2007) (citing *Loo* and *Eckert* and holding that "the district court has no authority to address a motion to modify maintenance that is made after the maintenance obligation expires"), *rev. denied* (Minn. Sept. 18, 2007); and *Diedrich v. Diedrich*, 424 N.W.2d 580, 583 (Minn. App. 1988) ("Generally, if the maintenance obligation terminates under the terms of the original decree, and the [district] court has not expressly reserved jurisdiction, the court is thereafter without jurisdiction to modify.").

The district court found that "the Fifth Stipulation and Sixth Stipulation very clearly addressed the steps necessary to preserve a request for permanent spousal maintenance by adding the 'as long as moving papers are served and filed prior to' requirement" and the sixth stipulation specified that "A placeholder affidavit and Notice of Motion and Motion is all that would be required to preserve de novo review of [r]espondent's spousal maintenance obligation." Based on these findings, the district court determined that, when

appellant signed the sixth stipulation on December 15, 2022, "she knew that she (i) must file a motion to establish spousal maintenance by March 31, 2022; and (ii) . . . a minimal placeholder motion would be sufficient to preserve her right to make the request." The district court also found that appellant had about 100 days to file the motion and that, in her April 26, 2023, affidavit, she "[did] not credibly explain why she didn't comply with the clear requirements of the Sixth Stipulation."

Appellant's affidavit supports this finding. In it, appellant describes a Zoom meeting of the parties, their lawyers, and the mediator on March 29, 2023, at which she "extended a proposal for . . . ongoing spousal maintenance." But she does not say she filed a placeholder motion or took any other action until April 10, 2023, when she served and filed her motion for permanent spousal maintenance, and she does not offer any explanation of why she waited until April 10 to file a motion when she had known since December 16 that the deadline was March 31. The affidavit also says that appellant had accepted a position starting around August 1, 2023, from which she would earn $124,700 annually.

The district court observed that appellant does not have "a significant cognitive or physical impairment preventing gainful employment," and did not "lack[] sufficient education to understand the terms of the various Stipulations"; that both parties had been represented by experienced attorneys throughout; and that appellant was not "a self-represented litigant [who] through inadvertent carelessness missed a deadline," supporting the conclusion that "[t]he equities do not favor a deviation from the result required by" *Loo*, *Eckert*, *Moore*, and *Diedrich.*

Appellant argues that, because the stipulation did not say the district court would cease to have jurisdiction after the specified date of the end of temporal maintenance, it implicitly reserved and retained jurisdiction. But nothing in any of the four cases imposes an obligation to state the law on jurisdiction in a stipulation, and appellant cites no case where this has been required. Moreover, the parties' agreements indicate in two ways that they knew how to reserve jurisdiction, in two ways. First: the end of temporary maintenance is always after or at the same time as the other deadlines because the district court would have no jurisdiction after it ended. Second, as respondent points out, the parties did explicitly reserve other items in the stipulated judgment and decree. For example, the stipulated judgment and decree state that "[t]he parties agree that it is in the best interests of the [parties' youngest] child for [appellant's] child support obligation to be reserved given the financial situation of both parties," and "[r]espondent's award for spousal maintenance is reserved." Thus, the parties knew how to reserve an issue, and did not reserve permanent spousal maintenance.

Appellant relies on two nonprecedential opinions that found a spousal maintenance obligation to exist after payments of temporary spousal maintenance had terminated. "Nonprecedential opinions and order opinions are not binding authority except as law of the case, res judicata, or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority." Minn. R. Civ. App. P. 136.01, subd. 1(c).[4] Both nonprecedential

[4]Appellant also relies on an order opinion, but order opinions, unlike nonprecedential opinions, are not to be cited as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

opinions are distinguishable.

Carlson v. Carlson, No. A07-1432, 2008 WL 3289058, at *1 (Minn. App. Aug. 12, 2008) concerned a dissolution judgment providing that the obligor would pay the obligee temporary spousal maintenance from January to December in 2004 and pay her tuition through the earlier of December 2005 or the completion of her graduate degree. *Carlson*, 2008 WL 3289058, at *2. The obligor paid spousal maintenance for some time after December 2004 and in August 2006 moved for an order confirming that the district court had no jurisdiction to award ongoing spousal maintenance. *See id*. at *1. Thus, the decree itself provided for payments to be made after temporary spousal maintenance was finished. There is no analogous provision in the stipulation here; the stipulations are explicit as to when respondent's obligation would finish, and respondent made no payments not covered by the stipulations. Moreover, the stipulation in *Carlson* provided a specific procedure for the parties to follow "to address spousal maintenance" after December 2004, from which the district court concluded, and this court agreed, that while the stipulated dissolution "arguably permit[ted the obligor] to cease payment of *temporary* spousal maintenance as of December 31, 2004, it reserve[d] the issue of permanent spousal maintenance." *Id.* at *1-4. Again, there was no analogous provision in the stipulation here.

In *Wilke v. Wilke*, No. C8-95-42, 1995 WL 351680 (Minn. App. Jun. 13, 1995), the obligor argued that a district court's 1991 order granted an obligee's 1991 motion and extended maintenance "for three years subject to the Court's review at the end of that period." The district court said that this language "did not establish a hard and fast deadline" but rather "anticipated review approximately three years after the previous order"

and granted the obligee's October 1994 motion for permanent maintenance. *Wilke*, 1995 WL 351680, at *1 (quotations omitted). This court "defer[red] to the district court's interpretation of its own order" and affirmed. *Id.* In contrast, the language of the dissolution judgment and the stipulations here is explicit in setting dates; there is nothing to interpret.

The district court did not err in concluding that, after appellant's temporary-maintenance awarded ended, it had no authority over her motion for permanent spousal maintenance.

Affirmed.