COURT OF APPEALS
DECISION
DATED AND FILED

March 28, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2010AP3066 **Cir. Ct. No. 1999FA298**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

IN RE THE MARRIAGE OF:

THOMAS G. WIELAND,

PETITIONER-RESPONDENT,

V.

RUTH A. WIELAND,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Waukesha County: KATHRYN W. FOSTER, Judge. *Affirmed*.

Before Neubauer, P.J., Reilly, J., and Neal Nettesheim, Reserve Judge.

¶1 PER CURIAM. Ruth Wieland appeals from an order that denied her motions for modification and relief from judgment, as well as an order denying her motion for reconsideration. Ruth argues on appeal that the circuit court erred

when it applied the doctrine of estoppel to bar her from seeking relief from the terms of a marital settlement agreement and when it dismissed her claim for relief from judgment pursuant to WIS. STAT. § 806.07(1)(h) (2009-10)[1] without a hearing. We affirm the orders of the circuit court, both on Ruth's original motions and on reconsideration.

BACKGROUND

¶2 Ruth and Thomas Wieland were married in 1980. Ruth worked in human resources and Thomas worked as a certified public accountant. Ruth stopped working in 1995 and was diagnosed with bipolar disorder that same year. She was also diagnosed in 1996 with fibromyalgia and began extensive treatment in 1998 for temperomandibular joint disorder (TMJ).

¶3 Thomas commenced a divorce action in 1999 and, in 2000, the parties entered into a marital settlement agreement. Both parties were represented by counsel and testified in the stipulated divorce proceedings that they understood the agreement. The court approved the agreement and incorporated it into the judgment of divorce.

¶4 The marital settlement agreement set forth the terms of property division and stated that both parties were waiving maintenance. The parties agreed to split their bank accounts equally, and each party also received other property worth $657,473. The agreement also provided that Thomas would make payments to Ruth in the amount of $64,400 per year for ten years, pursuant to the terms of Section 71 of the Internal Revenue Code. The contractual provision

[1] All references to the Wisconsin Statutes are to the 2009-10 version.

relating to Section 71 payments stated, "The Circuit Court of Waukesha County shall not have jurisdiction to modify the provisions of this Article."

¶5 A few days before the Section 71 payments were scheduled to end, Ruth filed a pro se motion to modify the judgment of divorce by extending the payments. She later obtained counsel and filed an amended motion. The circuit court denied both motions after a hearing, and denied Ruth's subsequent motion for reconsideration. Ruth now appeals.

STANDARD OF REVIEW

¶6 A circuit court's decision whether to apply the doctrine of estoppel stated in ***Rintelman v. Rintelman***, 118 Wis. 2d 587, 596, 348 N.W.2d 498 (1984), involves determinations that the facts of the case adhere to general legal standards of fairness and voluntariness and that the agreement does not contravene public policy, which are questions of law subject to de novo review. ***Ross v. Ross***, 149 Wis. 2d 713, 718-19, 439 N.W.2d 639 (Ct. App. 1989).

¶7 We review a circuit court's decision on a motion for relief from judgment under WIS. STAT. § 806.07 for erroneous exercise of discretion. ***Kovalic v. DEC Int'l***, 186 Wis. 2d 162, 166, 519 N.W.2d 351 (Ct. App. 1994). In doing so, we do not decide whether we would have granted the motion, but whether the circuit court's decision was within the wide range of decisions that a reasonable circuit court could have made. ***Id.***

DISCUSSION

¶8 In ***Rintelman***, 118 Wis. 2d at 596, the Wisconsin Supreme Court recognized an exception to the general rule that maintenance is always subject to modification and held that a party is estopped from seeking modification of the

terms of a stipulation incorporated into a divorce judgment if both parties entered into the stipulation freely and knowingly, if the overall settlement is fair and equitable and not illegal or against public policy, and if one party later seeks to be released from the terms of the court order on the grounds that the court could not have entered the order it did without the parties' agreement.

¶9 Ruth argues on appeal that the circuit court should not have applied the ***Rintelman*** estoppel doctrine to bar her from seeking relief from the terms of the marital settlement agreement because the agreement was unfair and against public policy. In arguing that the agreement was unfair, Ruth asserts that she and Thomas did not negotiate the agreement on equal footing. We are not persuaded by this argument.

¶10 The record shows that the agreement was a comprehensive contract, signed after approximately ten hours of negotiations that took place in three different meetings during the week leading up to Ruth and Thomas's scheduled divorce trial. Both parties were represented by counsel. They were both educated individuals. Ruth held a Master's degree and Thomas was licensed as a certified public accountant. The divorce had been pending for over a year, and the parties had already conducted discovery and made detailed financial disclosures. At the March 22, 2000 hearing that took place in circuit court in lieu of the scheduled trial, Ruth testified that the symptoms of her bipolar disorder were under control, that she understood her various options for maintenance, and that she believed the settlement agreement was fair and reasonable for her. She further testified that there was nothing about the condition of her health that affected her ability to understand the stipulated divorce proceedings or the agreement, and that she understood she could not later come back to court and ask for more financial

support. Based on record facts, we are satisfied that the fairness element of the ***Rintelman*** estoppel doctrine was met. *See* ***id.***

¶11 Ruth also argues that the marital settlement agreement was against public policy because it did not address how she would be supported after the ten-year term of Section 71 payments ended. She asserts that, because she suffers from mental and physical conditions that prevent her from working, it is likely that she will need public assistance and become a burden on the state if the agreement is not modified. *See* ***LaRocque v. LaRocque***, 139 Wis. 2d 23, 41, 406 N.W.2d 736 (1987) ("The circuit court must not prematurely relieve a payor spouse of a support obligation lest a needy former spouse become the obligation of the taxpayers.").

¶12 As Thomas points out in his brief, the Wisconsin Supreme Court rejected a similar "public assistance" argument in ***Nichols v. Nichols***, 162 Wis. 2d 96, 111-12, 469 N.W.2d 619 (1991). There, the payee spouse argued that a stipulation against modification of maintenance that was included in the divorce judgment was against public policy because, without an increase in maintenance, the payee would be forced into seeking public assistance. ***Nichols***, 162 Wis. 2d at 111. The court concluded that the stipulation was not against public policy, reasoning that the ***Rintelman*** doctrine of estoppel is equitable only if it applies to both payors and payees. ***Id.*** at 111-14. If payees may seek modification of nonmodifiable maintenance due to financial setbacks suffered since the divorce, but payors of maintenance may not do the same, the payor is denied the benefit of his or her bargain, while the payee receives the benefit of his or her bargain without risking the effects of the stipulation. ***Id.*** at 114.

¶13 The same reasoning applies here. When Ruth entered into the marital settlement agreement, she received benefits, including the certainty of fixed payments for a ten-year period. If Thomas had lost his job, or if Ruth's physical and mental health had improved to the point where she could maintain employment, the amount of the payments would not have decreased. In addition, as the circuit court noted, upholding the agreement serves the public policy goal of achieving finality in divorce proceedings and the need for parties to honor their agreements.

¶14 Based on the foregoing, we conclude independently of the circuit court that the marital settlement agreement satisfies the fairness and public policy elements of the ***Rintelman*** estoppel doctrine, and that the doctrine was properly applied in this case. *See* ***Rintelman***, 118 Wis. 2d at 596.

¶15 Ruth also argues on appeal that the circuit court should not have dismissed her motion for relief from judgment under WIS. STAT. § 806.07(1)(h) without a hearing. Deciding whether to grant relief from judgment is a discretionary decision, and we will not find an erroneous exercise of discretion if the record shows that the circuit court exercised its discretion and that there is a reasonable basis for its decision. ***Nelson v. Taff***, 175 Wis. 2d 178, 187, 499 N.W.2d 685 (1993).

¶16 The rules of civil procedure applicable to divorce cases permit relief from a final judgment only in extraordinary circumstances. ***Winkler v. Winkler***, 2005 WI App 100, ¶16, 282 Wis. 2d 746, 699 N.W.2d 652. In ***M.L.B. v. D.G.H.,*** 122 Wis. 2d 536, 552-53, 363 N.W.2d 419 (1985), the Wisconsin Supreme Court identified factors that a circuit court should consider when exercising its discretion under § 806.07(1)(h):

> [A] circuit court should consider factors relevant to the competing interests of finality of judgments and relief from unjust judgments, including the following: whether the judgment was the result of the conscientious, deliberate and well-informed choice of the claimant; whether the claimant received the effective assistance of counsel; whether relief is sought from a judgment in which there has been no judicial consideration of the merits and the interest of deciding the particular case on the merits outweighs the finality of judgments; whether there is a meritorious defense to the claim; and whether there are intervening circumstances making it inequitable to grant relief.

Ruth concedes in her appellate brief that the circuit court applied these factors in rendering its decision on her motion for relief from judgment. However, she argues that the court ignored other, pertinent information regarding her health.

¶17 We disagree, and note that the circuit court considered her mental and physical health at length on the record in its September 16, 2011 decision, and also addressed those issues in its written orders. The record contains deposition transcripts from the doctor whom Ruth consulted for her facial pain and TMJ, the doctor who treated her for fibromyalgia, her treating psychiatrist, and a psychologist. Ruth asserts that, during the postjudgment motion hearing, the circuit court admitted that it did not read through all of the depositions in their entirety. Whether the circuit court read every page is immaterial, however, since Ruth fails to offer any facts contained in the depositions or elsewhere that show she did not understand the agreement at the time it was made or that her mental and physical condition was so extraordinary as to warrant relief under WIS. STAT. § 806.07(1)(h), ten years after the stipulated divorce judgment was entered.

¶18 We note also that Ruth concedes in her reply brief that WIS. STAT. § 767.59 precludes her from revising the terms of the Section 71 payments, and that the marital settlement agreement expressly stated that the circuit court did not have jurisdiction to revise the terms of those payments.

¶19 For the reasons stated above, we affirm the orders of the circuit court.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.