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Reexamining *Karon* Waivers After the *Gossman* Decision

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The vast majority of family law cases are settled. In an effort to encourage resolution by agreement, judges often remind parties that they have the power to reach their own agreements and that once they submit an issue for decision by the court, they lose that power. But that power to agree has its limits and sometimes those limits come as a surprise. *See, e.g., Leifur v. Leifur*, 820 N.W.2d 40, 42 (Minn. Ct. App. 2012) (holding that district courts may not approve parties' agreements to make modification of spousal maintenance retroactive to date preceding service of motion). Another surprising limitation to the parties' power to agree is the Court of Appeals' recent published decision, *Gossman v. Gossman*, which held that if the district court has been divested of jurisdiction to modify spousal maintenance by a valid *Karon* waiver, a subsequent stipulation and order ("stipulated order") that purports to modify spousal maintenance is void and unenforceable. ___ N.W.2d ___, A13-1095 (Minn. Ct. App. 2014).

The parties' 2010 stipulated dissolution decree required husband to pay wife spousal maintenance of $5,000 per month for five years and included a valid *Karon* waiver. On three occasions thereafter, the parties executed stipulated orders reducing the amount of spousal maintenance but not the duration of the five year term. Although the parties executed all three stipulated orders, they inadvertently failed to submit the second stipulated order to the district court so only the first and third stipulated orders were signed by a district court judge and filed with the court.

Husband paid spousal maintenance to wife in accordance with the three stipulated orders. In 2012, wife brought a motion to vacate the two stipulated orders that had been filed in district court under Minn. Stat. § 518.145, subd. 2(4) on the ground that they were void. She argued that the district court had lacked jurisdiction to issue the orders modifying spousal maintenance because the dissolution decree contained a *Karon* waiver divesting the district court of jurisdiction. She asked that husband be ordered to pay her $59,170 in spousal maintenance, which was the difference between the amount husband was originally obligated to pay under the dissolution decree and the amount called for by the three stipulated orders.

The district court agreed that the two stipulated orders were void and granted wife's motion to vacate them on that basis. However, the district court denied wife's request for spousal maintenance arrears on equitable grounds and ordered husband to pay the original $5,000 amount prospectively. Further enforcement litigation ensued and eventually both parties appealed, husband challenging the decision to vacate the two stipulated orders and wife challenging the denial of her request for the spousal maintenance arrears.

The Court of Appeals affirmed the district court's decision to vacate the two stipulated orders. Because the district court had been divested of jurisdiction to modify spousal maintenance by the dissolution decree and because subject matter jurisdiction cannot be conferred by agreement, the district court lacked subject matter jurisdiction to issue the two stipulated orders. However, in a split decision, the Court of Appeals reversed the district court's decision denying wife's request for the spousal maintenance arrears. The majority reasoned that denying wife's request for arrears operated as a de facto modification of spousal maintenance which is inconsistent with the conclusion that the two stipulated orders were void

because the district court did not have subject matter jurisdiction to modify spousal maintenance. Judge Randall, retired and serving by appointment, dissented, arguing that the district court had acted within its discretion to do equity and that the findings of fact supporting that decision were not clearly erroneous.

The result in *Gossman* was a smashing victory for wife, a total defeat for husband, and a cautionary tale for the rest of us. The conclusion reached by the Court of Appeals—that once parties enter into a valid *Karon* waiver, they are powerless to later alter their own spousal maintenance agreement—is difficult to accept. We are used to having the ability to do just about anything by agreement but *Gossman* is a big exception to this rule.

The rationale for *Gossman's* conclusion also is difficult to accept. The principle that subject matter jurisdiction cannot be conferred by agreement is a familiar one but seems out of place in this context. The only reason the district court lacked jurisdiction was because the parties reached an agreement for that to happen as allowed by statute. And it is not as though the district court lost jurisdiction over spousal maintenance entirely. The *Karon* waiver in *Gossman*, like all other *Karon* waivers, did not divest the district court of jurisdiction to enforce the spousal maintenance provision, only to modify it. District courts always retain jurisdiction to enforce *Karonized* spousal maintenance obligations, just as they always retain jurisdiction to enforce dissolution decrees generally. But where a district court has jurisdiction to enforce an obligation, doesn't it necessarily have jurisdiction to approve agreements concerning the obligations it is enforcing? Like *Karonized* spousal maintenance awards, divisions of property are final and not modifiable by the district court. Minn. Stat. § 518A.39, subd. 2(f). Yet post-decree agreements to modify divisions of property are commonplace and approved by district courts all the time. Even extrajudicial agreements to modify divisions of property are enforceable in district court. *See, e.g., Nelson v. Quade*, 413 N.W.2d 824, 828 (Minn. Ct. App. 1987). In our view, when a district court approves a *Karon* waiver and divests itself of jurisdiction to modify, it does not lose jurisdiction to approve an agreement to undo the *Karon* waiver just as it does not lose jurisdiction to enforce the maintenance award. However, apparently we are wrong.

Gossman elevates agreements to *Karonize* a spousal maintenance award to a class of their own, a form of super contract that, unlike any other, even the contracting parties themselves are powerless to undo. Moreover, the impact of *Gossman* is not limited to cases involving *Karon* waivers. If a district court does not award spousal maintenance or reserve spousal maintenance, it loses jurisdiction to later award spousal maintenance. *McCarthy v. McCarthy*, 196 N.W.2d 305, 308 (Minn. 1972). *Gossman* would suggest that district courts in such cases could not later approve an agreement between the parties to provide for some amount of spousal maintenance because that would be allowing parties to confer subject matter jurisdiction upon the court.

Post-decree disputes can be very challenging to resolve and attorneys need all the tools available to help clients reach settlements. Spousal maintenance is one of those tools and it is unfortunate that *Gossman* has taken that away in cases involving *Karon* waivers and likely in cases in which spousal maintenance was not awarded or reserved.

So what do we do going forward to get around *Gossman* and get our cases settled? For decrees we are drafting involving *Karon* waivers, one option would be to carve out an exception to the divestiture of jurisdiction to modify to retain jurisdiction to approve agreements regarding spousal maintenance. For decrees which have already been entered, the parties could stipulate to reopen the spousal maintenance portion of the decree under Minn. Stat. § 518.145, subd. 2(5). Or could they? Although district courts always retain jurisdiction to reopen decrees under Minn. Stat. § 518.145, subd. 2(5), before *Gossman* we believed that district courts always retained jurisdiction to approve agreements to amend *Karonized* spousal maintenance awards. The divestiture of jurisdiction to modify a *Karon* waiver would not seem to deprive the district court of jurisdiction to reopen under Minn. Stat. § 518.145, subd. 2(5) but the Court of Appeals may surprise us yet again.

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