

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 22, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2004AP184

Cir. Ct. No. 2001FA308

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

ANDREA L. PROPPER,

PETITIONER-APPELLANT,

V.

RYAN T. PROPPER,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Washington County: PAUL V. MALLOY, Judge. *Affirmed.*

Before Snyder, P.J., Brown and Nettesheim, JJ.

¶1 PER CURIAM. Andrea Propper has appealed from a judgment of divorce from Ryan Propper. She challenges the trial court's determination that

Ryan complied with a prejudgment stipulation pertaining to physical placement of the parties' children. We affirm the judgment.

¶2 The trial court granted judgment divorcing the parties on June 21, 2001. A hearing was scheduled for December 9, 2002, to resolve custody of the parties' children, physical placement, and other issues. However, immediately before the hearing, the parties reached a stipulation regarding custody and placement. The trial court approved the stipulation at the December 9, 2002 hearing.

¶3 The stipulation required Ryan to “cooperate with treatment with a doctoral-level therapist for as long as the therapist deems necessary,” and stated that he “shall remain in therapy as long as the selected therapist deems necessary.” It further stated that “[t]he provider will be a person who has training, experience and background in the area of treating domestic abuse, anger control and anger management.” It provided that after Ryan’s course of treatment was begun, he would be entitled to additional placement with the parties’ two children, consisting of the Wednesday night before the weekend he did not have placement, and additional hours on the Thursday before his weekend placement. The stipulation provided that the additional placement could be eliminated by the trial court if Ryan “fails to make gains in his treatment because he does not accept the need for treatment or does not cooperate with treatment.”¹

¹ At neither the December 9, 2002 hearing nor any other hearing in this case did the trial court make a determination as to whether Ryan had engaged in acts of domestic abuse. Consequently, in this appeal we are not reviewing a trial court finding that domestic abuse occurred, or a trial court decision determining how a finding of abuse should impact placement.

¶4 Subsequently, Ryan moved for an order finding Andrea in contempt for failing to increase his placement as provided in the December 9, 2002 stipulation. Andrea contended that Ryan had failed to comply with the stipulation, and sought alternative relief. At a hearing on September 18, 2003, the trial court determined that Ryan had complied with the stipulation and was therefore entitled to a continuation of the increased placement provided by it.² A written order incorporating the trial court's September 18, 2003 ruling, followed by a written judgment of divorce, were subsequently entered.

¶5 The material issue presented by this appeal is narrow: Is the evidence sufficient to support the trial court's finding that Ryan complied with the stipulation entered into by the parties and approved by the trial court on December 9, 2002? Andrea contends that the trial court's order must be reversed because Ryan did not obtain the treatment required by the stipulation, and because he chose a provider who lacked the necessary expertise in treating domestic violence required by the stipulation. We conclude that the evidence is sufficient to support the trial court's finding that Ryan complied with the stipulation.

¶6 "A stipulation incorporated into a divorce judgment is in the nature of a contract." *Rosplock v. Rosplock*, 217 Wis. 2d 22, 30, 577 N.W.2d 32 (Ct. App. 1998). The construction of a written contract presents a question of law which this court reviews de novo. *Id.* Whether a contract is ambiguous is also a question of law that we decide independently of the trial court. *Id.*

² The trial court had temporarily increased Ryan's placement pursuant to the provisions of the stipulation on July 8, 2003.

¶7 A contract is ambiguous if it is reasonably susceptible to more than one meaning. *Id.* When a contract is plain and unambiguous, a court will construe it as it stands without looking to extrinsic evidence to determine the intent of the parties. *Id.* at 31. Courts may not rewrite a clear and unambiguous contract, or use the mechanism of construction to review an unambiguous contract to relieve a party from any disadvantageous terms to which the party has agreed. *Id.*

¶8 At the September 18, 2003 hearing, the trial court concluded that the terms of the December 9, 2002 stipulation were unambiguous. We agree.³ The stipulation plainly and clearly required that Ryan cooperate with and remain in treatment with a doctoral-level therapist for as long as the therapist deemed necessary. It also required that the provider be a person who had training, experience and background in the area of treating domestic abuse, anger control and anger management.

¶9 We uphold the trial court's finding that Ryan complied with these terms. On review of a factual determination made by the trial court without a jury, this court will not reverse the trial court's findings unless they are clearly erroneous. *Noll v. Dimiceli's, Inc.* 115 Wis. 2d 641, 643, 340 N.W.2d 575 (Ct. App. 1983). The trial court is the ultimate arbiter of the credibility of the witnesses. *Id.* at 644. Where more than one reasonable inference can be drawn from the credible evidence, this court must accept the inference drawn by the trial court. *Id.*

³ In her reply brief, Andrea concedes that the counseling requirements are unambiguously set forth in the stipulation.

¶10 The trial court's finding of compliance is supported by the evidence in the record. The record establishes that after entering into the stipulation, Ryan attended therapy sessions with Dr. Peter Joosse.⁴ Dr. Joosse is a psychiatrist, and therefore constituted a doctoral-level therapist as required by the stipulation.

¶11 The evidence was also sufficient to support the trial court's determination that Dr. Joosse had training, experience and background in the area of treating domestic abuse, anger control and anger management. Initially, we note that Andrea does not dispute that Dr. Joosse had training, experience and background in treating anger control and anger management. However, she disputes whether he had sufficient qualifications in the area of treating domestic abuse.

¶12 The record indicates that Dr. Joosse is trained as a psychiatrist and currently supervises an inpatient unit at a hospital, as well as engaging in a part-time private practice. In addition to being a practicing psychiatrist, Dr. Joosse testified that he has attended three or four continuing education seminars, which have assisted him in defining and understanding the dynamics of domestic violence. He also testified that in the past he was directly involved in setting up a

⁴ At the December 9, 2002 hearing, Andrea agreed that the guardian ad litem, a family social worker involved in the case, and Dr. Marc Ackerman, a psychologist retained by Andrea to do a custody and placement evaluation, could cooperate to direct Ryan to a therapist. The record indicates that, one day after the hearing, the guardian ad litem sent a letter to Dr. Ackerman, requesting a list of counselors. On December 13, 2002, Ryan's attorney provided the guardian ad litem with a list of covered providers, and asked that Ryan be permitted to see Dr. Joosse. On December 16, 2002, the guardian ad litem sent the list of covered providers to Dr. Ackerman and the family social worker, and asked for their recommendations as to a counselor by the end of December. The social worker approved Dr. Joosse, but Dr. Ackerman did not respond to these contacts or a subsequent follow-up letter from the guardian ad litem on January 6, 2003. On February 17, 2003, Ryan notified the guardian ad litem that he was commencing treatment with Dr. Joosse on February 20, 2003, and on March 4, 2003, the guardian ad litem notified the parties' attorneys that she did not object to Dr. Joosse.

domestic abuse program for Washington County, and had acted as the supervisor of that program. He described the program as a joint program with social services, the police, and the Washington County Mental Health Center. The trial court's finding that Dr. Joosse had training, experience and background in the area of treating domestic abuse is therefore clearly supported by the record.

¶13 Andrea argues that domestic abuse treatment is a specialized area within the mental health field, and that Dr. Joosse lacked the requisite expertise to provide treatment in this area. She also objects to his failure to use assessment tools and methods specifically designed to diagnose and treat domestic abuse perpetrators.

¶14 The defect in Andrea's argument is that the stipulation did not require the level of expertise that is now sought by her. It made no mention of specific types of assessment tools or methods of assessment and treatment. It did not require that the provider be a member of the Wisconsin Batterers Treatment Association, or be a certified treatment provider. It did not mandate any other particular level of specialization. The narrow question before the trial court was whether Ryan complied with the terms of the stipulation as approved by the parties and included in the written judgment. The stipulation required only that the provider be a doctoral-level therapist with training, experience and background in the area of treating domestic abuse, anger control and anger management. Based upon the evidence in the record, the trial court's finding that Dr. Joosse was a qualified provider under the terms of this stipulation is not clearly erroneous.

¶15 Andrea also argues that Ryan did not receive the treatment required under the stipulation. She relies on Dr. Joosse's testimony that he did an assessment of Ryan, but did not do therapy with him. She also relies on Dr.

Joosse's testimony that when he diagnoses domestic abuse issues, he refers patients to other therapists to be treated.⁵

¶16 The record supports a conclusion that Dr. Joosse provided treatment within the meaning of the stipulation. At the September 18, 2003 hearing, both Andrea's expert witness, Dr. Darald Hanusa, and Dr. Joosse testified that assessment is the first step of treatment. Moreover, the stipulation itself contained no definition or description of treatment. As previously noted, it did not specify types of assessment tools, methods of treatment, or treatment standards to be used. It merely required Ryan to "cooperate with treatment" and "remain in therapy" as long as the selected therapist deemed necessary.

¶17 At the September 18, 2003 hearing, Dr. Joosse testified that he met with and assessed Ryan during three hour-long sessions between February 20, 2003 and March 13, 2003. He testified that he interviewed Ryan's current wife, reviewed Tom Holt's clinical notes from his treatment of Ryan for anger management, reviewed Dr. Marc Ackerman's custody and placement evaluation, reviewed material provided by the children's schools, reviewed the transcript of the stipulation from the December 9, 2002 hearing, and consulted with the guardian ad litem. He testified that Ryan cooperated with him in all things he requested and recommended, and remained in therapy for as long as he deemed

⁵ Dr. Joosse's testimony indicated that he assesses patients for domestic abuse issues, and if he believes they are currently abusive, he refers them to other providers for treatment, generally within his clinic.

necessary.⁶ Based upon his sessions with Ryan and the other information obtained by him, Dr. Joosse concluded that Ryan had already benefited from the previous services provided to him, that he had made significant progress since the divorce proceedings began, and that, to a reasonable degree of medical certainty, he did not need any additional therapy for domestic abuse issues.

¶18 Ryan thus cooperated with treatment and remained in therapy as long as Dr. Joosse, the selected therapist, deemed necessary. Although Drs. Hanusa and Ackerman concluded that Dr. Joosse was not qualified to provide domestic abuse treatment and did not adequately assess Ryan, and while Dr. Hanusa did not believe that Ryan had embraced treatment, the trial court was entitled to find that Dr. Joosse was a therapist qualified to provide care to Ryan under the terms of the stipulation. Because Dr. Joosse could be deemed qualified under the stipulation, and because he determined that no further therapy for domestic abuse issues was required, the trial court's finding that Ryan complied with the conditions of the stipulation is not clearly erroneous.

¶19 Although we affirm the judgment, we acknowledge and appreciate the position taken by Andrea and echoed in the amicus curiae brief filed by the Wisconsin Coalition Against Domestic Violence, emphasizing the deleterious effects of domestic abuse and the wisdom and desirability of requiring the best counseling available in domestic abuse situations. However, this is not a case where the trial court was called upon to independently determine whether a party

⁶ Andrea repeatedly argues that Ryan did not cooperate with treatment, and that his conduct with Dr. Joosse demonstrated his denial of his need for treatment, in contravention of the stipulation. However, Dr. Joosse testified that Ryan accepted that his treatment was for domestic violence, and while he began the sessions reluctantly, he ultimately embraced treatment. The trial court found Dr. Joosse's testimony to be credible, a finding we do not disturb.

required domestic abuse treatment, or to determine the level of expertise required for the provider of that treatment. Rather, the narrow issue presented to the trial court was whether the evidence supported a finding that Ryan complied with the parties' stipulation. Based upon the language of the stipulation and the evidence in the record regarding Ryan's cooperation with therapy with Dr. Joosse, the trial court's finding that Ryan complied with the stipulation cannot be disturbed. The judgment therefore must be affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

