

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 5, 2004

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. 03-2996
STATE OF WISCONSIN**

Cir. Ct. No. 99FA000264

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

RANDY WEED,

PETITIONER-APPELLANT,

v.

DORENE WEED,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Waupaca County:
RAYMOND S. HUBER, Judge. *Affirmed.*

Before Deininger, P.J., Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Randy Weed appeals an order increasing his maintenance obligation to his former wife, Dorene Weed. The issues are whether the trial court properly interpreted and applied the terms of the parties' divorce

stipulation on maintenance and whether the trial court based the revised award upon the proper rules of law. We affirm on both issues.

¶2 The Weeds were married in 1978 and divorced in June 2000. Randy stipulated to pay Dorene \$635 per month in child support for the parties' remaining minor child, Alan. He also stipulated to the following maintenance terms:

That the Petitioner shall pay as and for maintenance to the Respondent the sum of \$115.38 bi-weekly (\$250.00 per month) until the death of either of the parties, remarriage of the Respondent or further Order of the Court.

That when the Petitioner's child support obligation, pursuant to this Judgment of Divorce, terminates, that shall be a basis for a review of the Maintenance Order herein.

¶3 At the time of the divorce the parties agreed to a figure of \$45,000 per year for Randy's income. Dorene was disabled and received \$963.00 in social security payments, including \$627.00 per month for herself and \$336.00 for Alan. Randy's child support obligation ceased upon Alan's high school graduation in May 2003. Dorene then moved for increased maintenance under the terms of the divorce stipulation.

¶4 At the hearing on Dorene's motion, Randy testified that he no longer received overtime pay and his yearly income was down to \$36,000 per year. Dorene's income consisted of her \$916.00 per month in disability payments and maintenance. Although Alan continued to live with Dorene, he did not contribute to her household expenses because he no longer received social security income and was unemployed.

¶5 Randy's household expenses were unusually low, consisting of sporadic rent payments to his girlfriend. Dorene's household expenses included

her continued support of her son without the income from child support he previously contributed.

¶6 At the conclusion of testimony, the trial court interpreted the stipulation to permit increased maintenance without proof of a substantial change of circumstances. The court concluded that \$1,000 per month was an appropriate award considering Randy's earning capacity, which the trial court found to be well beyond the \$36,000 per year he reported, his unusually low living expenses, and Dorene's need for financial assistance. The trial court noted that a larger amount might be necessary to equalize income if Randy's extra, unreported income were considered but concluded that an amount greater than \$1,000 per month would exceed Dorene's needs. On appeal, Randy argues that the stipulation provides for revised maintenance only upon a substantial change of circumstances, and that the court erred in any event by awarding revised maintenance using the standards for an initial award of maintenance.

¶7 A stipulation incorporated into a divorce judgment is similar in nature to a contract. *Kastelic v. Kastelic*, 119 Wis. 2d 280, 287, 350 N.W.2d 714 (Ct. App. 1984). Its construction is a question of law. *Duhame v. Duhame*, 154 Wis. 2d 258, 262, 453 N.W.2d 149 (Ct. App. 1989). Our review, therefore, is de novo. *Id.* Whether the stipulation is ambiguous is also a question of law. *See Rosplock v. Rosplock*, 217 Wis. 2d 22, 30, 577 N.W.2d 32 (Ct. App. 1998). A stipulation is not ambiguous unless it is reasonably susceptible to more than one meaning. *Id.* An unambiguous stipulation will be construed as it stands. *Id.* at 31.

¶8 The Weed's stipulation plainly allows for revised maintenance without proof of a substantial change of circumstances. The latter can always

trigger revised maintenance, by operation of statute. *See* WIS. STAT. § 767.32(1). Here, in contrast, only one circumstance was necessary for revised maintenance, that being the termination of child support. The stipulation is not reasonably susceptible to an interpretation that adds any circumstance beyond that or requires a finding that the child support termination was a substantial change.

¶9 The trial court applied the proper standards to increase Dorene's maintenance. Randy contends that the court erred by evaluating Dorene's needs and Randy's ability to pay, as if making the initial maintenance determination. In Randy's view, the court could not properly increase maintenance without comparing the original circumstances of the parties, at the time of their divorce, and ordering increased maintenance only on proof that those circumstances had changed. This is, however, merely a different way of stating Randy's first argument. The stipulation plainly disposed of what Randy now argues is necessary, such that the only change necessary for increased maintenance was the undisputed child support termination. In revising a maintenance award, as in originally ordering maintenance, "[t]he objectives of support and fairness must both be considered" *Rohde-Giovanni v. Baumgart*, 2004 WI 27, ¶2, 269 Wis. 2d 598, 676 N.W.2d 452. The trial court correctly did that in reaching a reasonable result solidly based on the facts presented during the motion hearing.

By the Court.—Order affirmed.

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

