COURT OF APPEALS
DECISION
DATED AND RELEASED

September 28, 1995

No. 94-2255

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

IN RE THE MARRIAGE OF:

RANDALL SCOTT GROBE,

Petitioner-Respondent,

v.

JUDY M. GROBE,

Respondent-Appellant.

APPEAL from an order of the circuit court for Dane County: RICHARD J. CALLAWAY, Judge. *Affirmed*.

Before Eich, C.J., Gartzke, P.J., and Dykman, J.

PER CURIAM. Judy Grobe appeals from an order denying her motion to continue and increase maintenance paid by her ex-husband, Randall Grobe. The issue is whether the parties' stipulation for "family maintenance" was subject to modification. We conclude that it was not, and therefore affirm.

Judy and Randall divorced in 1981. Judy received custody of their two sons. Pursuant to stipulation, the judgment provided for "family maintenance" payments of $1000 per month until August 1984 followed by child support payments of $500 per month commencing in September 1984. The parties also stipulated to a property settlement "in lieu of any and all maintenance except as otherwise provided herein," and agreed that "[t]he parties shall hereafter live separately ... and each party may for his or her separate benefit engage in any employment, business or profession as he or she shall chose."

In March 1984, the parties stipulated to extending the $1000 family maintenance payments until August 1985. The court approved that amendment and so ordered it in December 1984.

Later that month, the parties stipulated that the $1000 payments would continue until Judy remarried, and would be considered "alimony" for tax purposes. In December 1985, the parties stipulated that the $1000 family maintenance payments would continue until "further order of the court or until the minor children attain their age of majority." Again, the court approved and ordered the divorce judgment amended accordingly. In 1987, Randall increased the family maintenance payment to $1200 per month, although there was no written agreement to that increase.

In the ensuing years, Randall greatly increased his income and assets. Meanwhile, Judy experienced health difficulties and her financial situation grew more precarious.

In August 1993, Judy moved the family court commissioner for an order to divide the family maintenance into maintenance and child support components, and to increase the support component. At the time, the parties' younger son, then fifteen years old, lived with Randall, and the older son, then seventeen years old, lived with Judy. The older son's eighteenth birthday was in January 1994, and he was scheduled to graduate from high school in June 1994.

The family court commissioner's order on the motion characterized Randall's obligation as "family support" and increased it to $4000 from September 1993 until May 1994, when all payments were ordered ceased. Judy petitioned for de novo review by the trial court, and Randall moved the court for an order reducing the family court commissioner's $4000 per month award, based on his allegedly changed circumstances since the hearing on the motion. The trial court concluded, however, that it lacked authority to amend the parties' stipulation to limit the amount and duration of Randall's obligation. Judy takes her appeal from that order.

Maintenance is subject to modification unless the parties stipulate otherwise and both parties enter into the stipulation freely and knowingly, the overall settlement was equitable at the time, it was not illegal or against public policy and the parties seeking release from the order contends that the court could not have entered it without the parties' agreement. ***Nichols v. Nichols***, 162 Wis.2d 96, 104, 469 N.W.2d 619, 622 (1991).

Judy first contends that the ***Nichols*** rule does not apply because the "family maintenance" at issue contained a child support component and, therefore, remains modifiable despite any stipulations to the contrary. We disagree. In this action, Judy seeks additional maintenance. No persuasive reasons exist why the ***Nichols*** rule cannot apply merely because the parties chose to combine maintenance with child support in one payment. A stipulation regarding maintenance would still bind the parties as to the maintenance component of that payment.

Judy next argues that even if the parties could have agreed to nonmodifiable maintenance, they failed to do so here. Again, we disagree. The divorce judgment provided for the waiver of all maintenance "except as otherwise provided herein," by the family maintenance agreement. The judgment also provided that the parties could engage in any employment, business or profession "for his or her separate benefit." These provisions plainly amount to a stipulation waiving maintenance except for the stipulated family maintenance. Because the stipulation is not challenged as involuntarily, unfair, illegal or against public policy, that resolves the issue.

By the Court.—Order affirmed.

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