

IN THE COURT OF APPEALS OF IOWA

No. 1999-26 (9-136) / 98-1257

Filed August 27, 1999

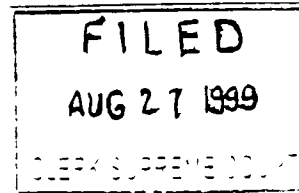
**IN RE THE MARRIAGE OF LONNIE E. OEHLER
AND TAMI LEE OEHLER**

Upon the Petition of
LONNIE E. OEHLER,

Petitioner-Appellant,

And Concerning
TAMI LEE OEHLER,

Respondent-Appellee.



Appeal from the Iowa District Court for Black Hawk County, James L. Beeghly, Judge.

The petitioner appeals a district court ruling granting respondent's application to enforce a joint stipulation and settlement agreement regarding petitioner's visitation rights. **AFFIRMED.**

Carter J. Stevens and Kellyann M. Lekar of Roberts & Stevens, P.L.C.,
Waterloo, for appellant.

Kevin D. Engels of Correll, Sheerer, Benson, Engels, Galles & Demro, P.L.C.,
Cedar Falls, for appellee.

Considered by Sackett, C.J., and Vogel, and Zimmer, JJ.

ZIMMER, J.

Lonnie E. Oehler appeals a district court ruling granting Tami Lee Oehler's application to enforce a joint stipulation and settlement agreement regarding petitioner's visitation rights. We affirm.

I. Background Facts and Proceedings. The parties' marriage was dissolved in September 1995. The parties stipulated to joint legal custody of their daughter Tiana, born November 2, 1990. Tami received primary physical care and Lonnie was granted liberal visitation rights

In September 1996, Tami filed an application for modification of the decree of dissolution of marriage. Tami sought to change the terms of the visitation schedule established under the original dissolution decree. In October 1996, Attorney Dennis Currell filed an appearance on behalf of Lonnie, and filed an answer denying the allegations in Tami's application. The answer also requested modification of the decree to place primary care of Tiana with Lonnie.

Hearing on the modification was initially scheduled for September 15, 1997, but was later rescheduled for May 4, 1998. Efforts were made to negotiate a settlement prior to trial. On May 1, Currell faxed a proposal to Tami's attorney, Kevin Engels. The proposal indicated Currell had been authorized by Lonnie to offer the proposed settlement. Tami responded through her attorney with a few suggested modifications. Currell and Engels spoke by telephone that night, and Currell indicated his client had accepted the proposal along with Tami's additional suggestions. Currell indicated a trial would not be needed.

On May 4, Engels contacted the Black Hawk County District Court Administrator and advised a trial was no longer required because the parties had reached a settlement. The hearing on the application for modification was subsequently removed from the court's trial calendar.

On that same day, Engels prepared a joint stipulation and proposed order per the May 1 agreement. On May 12, 1998, Currell sent a letter to Engels indicating Lonnie had refused to sign the joint stipulation and for this reason Currell was withdrawing as his attorney. Currell filed a motion to withdraw, stating Lonnie had agreed to the settlement, but later, against advice of counsel, refused to sign the joint stipulation. The withdrawal was granted.

On May 18, Tami filed an application to enforce the terms of the joint stipulation arguing Lonnie had agreed to the stipulation and that she had detrimentally relied on his representations in this regard. Lonnie filed a resistance to the application through his new attorney John Ackeman. Lonnie claimed he had not signed the joint stipulation nor agreed to any of its terms.

On June 4, 1998, hearing was held in equity on Tami's application to enforce the joint stipulation. Lonnie testified he never agreed to the proposed joint stipulation prepared by Engels on May 4. The correspondence between Currell and Engels on May 1 and May 4 as well as the motion to withdraw were admitted into evidence without objection. The May 12 letter was also admitted over Lonnie's objection he had not cross-examined Currell with regard to statements in the letter.

On June 4, 1998, the district court entered an order enforcing the terms of the joint stipulation. It found Lonnie was not credible in his testimony he had never agreed to the terms of the joint stipulation. The court determined Lonnie had agreed to the joint stipulation and only later recanted. The court also determined trial on the original application for modification had been canceled upon Lonnie's representation that he agreed to the terms of the settlement and that Tami would be prejudiced if Lonnie was allowed to withdraw his earlier agreement.

Lonnie appeals. He argues he did not agree to or authorize his attorney to accept the terms of the proposed joint stipulation. He also argues the May 13 letter from Currell to Engels was inadmissible under Iowa Code section 602.10114.

II. Scope of Review. We review a case according to the way it was tried in the district court. *See Neuzil v. City of Iowa City*, 451 N.W.2d 159, 163 (Iowa 1990). This is an action to determine whether the parties agreed to a joint stipulation for modification. Because this action was docketed and tried in the district court as an equitable proceeding, our review is de novo. *See Iowa R. App. P. 4; Hawkeye Land Co. v. Laurens State Bank*, 480 N.W.2d 854, 856 (Iowa 1992). Additionally, because the district court approved the terms of the stipulation, thereby modifying the terms of the parties' divorce decree, our review is de novo. *See Iowa R. App. P. 4; In re Marriage of Jacobo*, 526 N.W.2d 859, 864 (Iowa 1995).

Though our review of this modification proceeding is de novo, we nevertheless give weight to the district court's findings of fact, especially when considering the credibility of witnesses, but we are not bound by those findings. *See Iowa R. App.*

P. 14(f)(7); *In re Marriage of Beecher*, 582 N.W.2d 510, 513 (Iowa 1998). We give deference to the factual findings involving credibility of witnesses because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. See *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

III. Admissibility of Evidence. Lonnie argues the May 12 letter from Currell to Engels was inadmissible under Iowa Code section 602.10114(2). That section provides in pertinent part:

An attorney and counselor has power to:

2. Bind a client to any agreement, in respect to any proceeding within the scope of the attorney's or counselor's proper duties and powers; but no evidence of any such agreement is receivable, except the statement of the attorney in person, the attorney's or counselor's written agreement signed and filed with the clerk, or an entry thereof upon the records of the court.

Iowa Code § 602.10114(2) (1997).

Lonnie contends the letter, as evidence of the parties' agreement, is not admissible because it does not fall within the listed exceptions to exclusion. At trial, admission of the letter was challenged, but only on the basis he had not cross-examined the author. The record reflects Lonnie has raised this section 602.10114 challenge for the first time on appeal and has therefore failed to preserve the issue for our review. We will not address an argument on appeal which the district court did not have an opportunity to consider. See *Vincent v. Four M Paper Corp.*, 589 N.W.2d 55, 64 (Iowa 1999).

IV. The Parties Joint Stipulation. Stipulations in dissolution and modification actions are treated as contracts under Iowa law. See *In re Marriage of Udelhoffen*, 538 N.W.2d 308, 309–310 (Iowa App. 1995) (modifications); *In re Marriage of Von Glan*, 525 N.W.2d 427, 430 (Iowa App. 1994) (dissolutions). Here, the question is whether Lonnie agreed to the terms of the proposed stipulation.

This case hinges largely on Lonnie's credibility as a witness. In accordance with our standard of review, we accord great deference to the district court on this issue. The trial court's finding Lonnie was not a credible witness is supported by the trial transcript and documentary evidence. After carefully reviewing the record, we agree with the district court's conclusion Lonnie did agree to the terms of the proposed settlement. The evidence shows he authorized attorney Currell to make a settlement offer and that Currell discussed with him Tami's counter-offer. The evidence supports the conclusion Lonnie agreed with the terms of the initial offer, the terms of the counter-offer, and ultimately the terms of the settlement agreement as embodied in the joint stipulation for modification. The ruling of the district court in finding Lonnie had agreed to the terms of the joint stipulation is therefore affirmed.

In addition, we conclude the agreement reached by Lonnie and Tami is a binding stipulation regarding visitation which Lonnie has no right to repudiate and which should be enforced. First, we note the stipulation is a legally valid agreement. Among other things, the stipulation is supported by legal consideration as the parties mutually promised to support its visitation provisions. See *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996) (finding legal consideration for a stipulation on

alimony in an original dissolution proceeding where the parties mutually promised to support the settlement); *Federal Land Bank of Omaha v. Woods*, 480 N.W.2d 61, 65 (Iowa 1992) (holding where a contract provides for mutual promises, each promise is a consideration for the other promise).

Second, because the stipulation conceded the entire issue of visitation, it is “tantamount to a consent decree.” See *In re Marriage of Ask*, 551 N.W.2d at 645; *In re Property Seized Nov. 14–15*, 501 N.W.2d 482, 485 (Iowa 1993) (stating a stipulation in formal litigation which constitutes a concession of an entire issue operates like a consent decree as to part of a case). As such, “[a] party is not entitled as matter of right to withdraw a stipulation for disposing of an entire issue at any time before actual entry of judgment.” *In re Marriage of Ask*, 551 N.W.2d at 645. Consequently Lonnie cannot agree to the stipulation and later withdraw his approval. It does not matter agreement to the stipulation was reached outside of open court. Nor does it matter this is a modification action rather than an original dissolution action. Once Lonnie agreed to the settlement, he had no right to repudiate his acceptance prior to the district court’s final order approving the joint stipulation for modification.

For the foregoing reasons, the stipulation is entitled “to all of the sanctity of an ordinary contract.” *In re Marriage of Ask*, 551 N.W.2d at 646. We will enforce it as such. Furthermore, we note Tami detrimentally relied on Lonnie’s agreement when she canceled the trial date. The district court’s trial docket was apparently extremely crowded and scheduling a new modification hearing would have pushed

the matter far into the future. We agree with the district court's conclusion Tami would be prejudiced by allowing Lonnie to now withdraw his earlier agreement.

Finally, it does not appear the stipulated modification will adversely affect the best interests of the parties' daughter and we discern no other reason why the parties' stipulation should not be enforced. *See, e.g., In re Marriage of Handeland*, 564 N.W.2d 445, 446 (Iowa App. 1997) (holding a stipulated settlement should be approved and enforced only if it will not adversely affect the best interests of the parties' children).

We determine Lonnie agreed to the terms of the joint stipulation for modification, that the stipulation is enforceable as a matter of law, and that Lonnie had no right to withdraw his approval of the joint stipulation prior to the district court's order adopting it. We therefore affirm the decision of the district court approving the joint stipulation for modification of the parties' decree of marital dissolution.

AFFIRMED.