MINNESOTA JUDICIAL TRAINING UPDATE

SPOUSAL MAINTENANCE & "*KARON* WAIVERS"
THE #1 RULE FOR JUDGES (and attorneys) TO FOLLOW

PROBLEM – DEFECTIVE *KARON* WAIVERS: The vast majority of divorces are resolved by agreement of the parties. With regard to spousal maintenance, many agreements include what are commonly referred to as "*Karon* waivers." *Karon* waivers are prepared by the attorneys and approved by the court. On close examination, however, many *Karon* waivers do NOT contain crucial language required by both statute and case law. In other words, a large number of *Karon* waivers presented to the court for approval are defective and legally unenforceable. This is a potential problem that is easily avoidable. *Gossman v. Gossman*, 847 N.W.2d 718 (Minn.App.2014).

QUESTION: What is a *Karon* waiver? What is the most important rule for judges and attorneys to follow to ensure a *Karon* waiver is valid and enforceable?

ANSWER: A *Karon* waiver is an agreement between divorcing parties to waive or limit their rights to seek a modification of a spousal maintenance award.

1. A properly executed *Karon* waiver fully and completely divests the court of jurisdiction over spousal maintenance.

2. With a valid *Karon* waiver the court is without authority to establish or modify spousal maintenance.

3. After a district court issues a final Judgment & Decree that divests the court of jurisdiction over the issue of maintenance (i.e. *Karon* waiver), that issue is not subject to modification even if the parties subsequently enter into another agreement that seeks to modify the original maintenance award.

   Note: Legislation has been introduced that would undo the above rule (#3) and allow parties to restore the court's authority to award or modify maintenance through a binding stipulation.

WHAT IF J & D IS SILENT OR THE PARTIES AGREE TO NO SPOUSAL MAINTENANCE? If the J & D is silent with regard to spousal maintenance (i.e. no *Karon* waiver and does not award or reserve spousal maintenance), or if the parties simply agree to "no spousal maintenance," then, absent grounds for reopening the J & D under M.S. 518.145, the court has no authority to establish future spousal maintenance. **NOTE:** An agreement for no spousal maintenance is not a *Karon* waiver and does not require compliance with the General Rule noted below – see top of page two.

MOST IMPORTANT RULE FOR JUDGES & ATTORNEYS TO FOLLOW: In order for a *Karon* waiver to be valid and enforceable there are 4 strict requirements that MUST be met. (See General Rule – top of page two.) Questions of fundamental fairness or other equitable considerations are irrelevant.

GENERAL RULE – In order for a *Karon* waiver to be valid and enforceable there are 4 requirements that MUST be met. *Gossman v. Gossman*, 847 N.W.2d 718 (Minn. App. 2014) and M.S. 518.552, subd 5.
1. The stipulation **MUST** include a contractual waiver of the parties' rights to modify maintenance;
2. The stipulation **MUST** expressly divest the district court of jurisdiction over maintenance;
3. The stipulation **MUST** be incorporated into the final judgment and decree; and
4. Per M.S. 518.552, subd 5, the court **MUST** make its own independent specific findings that:
    a. the stipulation is fair and equitable,
    b. is supported by consideration described in the findings, and
    c. that full disclosure of each party's financial circumstances has occurred.

Note: The plain language of M.S. 518.552 requires the court itself to specifically make the above findings, not to merely recite the parties' agreed-upon stipulations. See *McDaniel* case in Resources.

WARNING: FAILURE TO FOLLOW THESE REQUIREMENTS = WAIVER NOT ENFORCEABLE

A GOOD EXAMPLE OF A DEFECTIVE *KARON* WAIVER – DESPITE THE PARTIES' INTENT:

FACTS: In *Hietpas v. Reed*, 2014 WL 6863173, (Minn. App. 12/08/2014) in a stipulated Judgment & Decree, the parties (both represented) agreed that husband would pay wife temporary maintenance for a 5 year period subject to what they both thought was a valid *Karon* waiver. The decree included the following:

> *"(Wife) expressly waives her right to receive any spousal maintenance from (husband) after December 31, 2012. (Wife's) waiver is based on a Karon waiver, the length of the marriage and (husband's) ability to earn a level of income sufficient to support herself and the minor children."*

In addition, the wife, before signing the J & D, made a clear and definitive acknowledgement on the record stating she understood and agreed to be bound by the following:

> *"You (wife) understand that you'll be receiving…temporary maintenance for a term of five years at a set amount, but after that five years you won't be able to receive any more maintenance for whatever reason whatsoever, and the court wouldn't even have jurisdiction to entertain a claim for maintenance, is that correct?"*

Three days before maintenance was scheduled to terminate, wife brought a motion to extend her maintenance arguing that the *Karon* waiver was defective and therefore not enforceable. The district court agreed with wife and extended her maintenance award another 5 years.

HOLDING: The Court of Appeals upheld the District Court order stating that the *Karon* waiver was defective and not enforceable because:

    a. The decree did not include language expressly divesting the district court of jurisdiction (see #2 & 3 of General Rule above), and
    b. The decree did not include a specific finding that the stipulation was fair and equitable (see #4a of General Rule above).

NOTE: The court further held that because of the significant limitations a *Karon* waiver places not only on a party's ability to modify spousal maintenance but also on a court's jurisdiction, merely titling the agreement a "*Karon* waiver" is insufficient to remedy language missing from the judgment and decree.

Resources: *Gossman v. Gossman*, 847 N.W.2d 718 (Minn.App.2014); M.S. 518.552 subd 5; Attorney Jaime Driggs; Attorney Steve Yasgur; Attorney David L. Olson; *McDaniel v. McDaniel, 2008 WL 495670 (Unpub. Minn.App.2008).*