"A Trap For the Unwary: How Confidential Understandings in Family Law Mediation May Become Judicially Enforced Settlement Agreements"

A. Out Of Court Settlement Agreements May Be Judicially Adopted As Terms of a Final Court Order

It is well established in Iowa that a court may order the adoption of a written or oral settlement agreement as a final order in a family law matter. "A stipulation and settlement in a dissolution proceeding is a contract between the parties. Therefore, it is enforceable like any other contract, and a party may not withdraw or repudiate the stipulation prior to entry of judgment by the court." *In re Marriage of Jones*, 653 N.W.2d 589, 593 (Iowa 2002) (internal citations omitted). Like other contracts "The party seeking to establish the existence of a contract, oral or otherwise, bears the burden of proving the existence of a contract." *In re Marriage of Veit*, 797 N.W.2d 562, 564 (Iowa 2011). See also, *In re Marriage of Briddle*, 756 N.W.2d 35, 40 (Iowa 2008); *Lamberts v. Lillig*, 670 N.W.2d 129, 134 (Iowa 2003); *In re Marriage of Ask*, 551 N.W.2d 643, 644 (Iowa 1996); *In re Marriage of Johnson*, 350 N.W.2d 199 (Iowa 1984) and *In re Marriage of Hansmann*, 342 N.W.2d 495, 496 (Iowa 1984).

The court must consider a written settlement agreement in determining the distribution of property. Iowa Code 598.21(5)(k). The court may also consider an oral agreement under § 598.21(5)(m) as an "other factor the court may determine to be relevant." *In re Marriage of Johnson*, 350 N.W.2d 199, 201-02 (Iowa 1984). Conversely, because it is permissive, the court may also decline to consider an oral agreement. Finally, while a settlement agreement is treated as a contract for purposes of formation, the court is not necessarily bound by the terms of the settlement agreement. The presence of a legal contract is not conclusive as the court may still modify or disregard the settlement or stipulation if it does not "constitute an appropriate and legally approved method of disposing of the contested issues." *In re Marriage of Jones*, 653 N.W.2d 589, 593 (Iowa 2002).

B. Specific Factors Considered By the Courts When Determining the Enforceability of an Oral Settlement Agreement

1. Because Contract Principles Control, Courts Look for a Meeting of the Minds

Like any contract, for an oral settlement agreement to be enforceable there must be a meeting of the minds. In *In re Marriage of Barker*, 786 N.W.2d 874 (Iowa Ct. App. 2010), the parties entered their oral settlement agreement on the record, and the judge advised one of the attorneys to draft a document reflecting the parties' agreement. After two drafts failed to properly capture the oral agreement a third agreement was drafted. Id. By that point, one party determined that she no longer wanted to sign the agreement. *Id.* That party's attorney testified that the third draft reflected the terms of the oral agreement. *Id.* The court found that a meeting of the minds occurred at the time of the initial oral agreement, and the agreement was incorporated into the decree via the third draft of the written agreement. *Id.*

Similar to the meeting of the minds is the so called "mirror image rule." While this rule has been abrogated by the UCC, it still applies in other contractual settings. *In re Marriage of Masterson*, 453 N.W.2d 650 (Iowa Ct. App. 1990) provides an example of how this principle applies:

William's attorney's letter of April 24, 1984, did not unequivocally accept Janet's proposition of April 17th, but instead interjected a qualification. As such, William rejected Janet's April 17th offer, and by his letter of the 24th of April, he submitted a counteroffer. Since William had previously rejected Janet's offer, his letter of May 2nd accepting Janet's offer of April 17th was a nullity because there was no longer an offer outstanding which he could accept. We thus deem this correspondence to be in the nature of an offer by William to settle the appeal. Janet's response, by including a new term, again fails to constitute an acceptance. It, too, is in the nature of a counteroffer. Id at 653.

In Treimer, the Court of Appeals overturned a district court finding that the parties reached an oral agreement. *In re Marriage of Treimer*, 752 N.W.2d 453 (Iowa Ct. App. 2008) following a review of post settlement conference correspondence. The court noted that the faxed writing memorializing the alleged oral agreement was referred to as the "proposed Settlement

Agreement," that the documents were to be forwarded to the drafting attorney's client for "review and approval" and that the non-drafting attorney sought changes to the proposed agreement and accepted with "very minor reservations." *Id.* The court found that due to all of the hedging language used throughout the process of formalizing the oral agreement that the parties never in fact reached an agreement during the settlement conference. *Id.* Similarly, if the parties "interpreted the original agreement differently" then the parties do not have a valid agreement. *In re Marriage of Hansmann*, 342 N.W.2d 495, 496 (Iowa 1984).

So, in determining if an oral settlement agreement is enforceable as a contract it is important that the proponent be able to show a meeting of the minds, not a rejection and a counter offer or anything indicating less than full acceptance.

2. Whether the Parties Contemplate That the Proposed Agreement Would be Reduced to Writing

When determining if an oral agreement exists it is important to determine if the parties agreed that the proposed oral agreement would be reduced to writing. *In re Marriage of Eubank*, 725 N.W.2d 659 (Iowa Ct. App. 2006); see also *In re Marriage of Masterson*, 453 N.W.2d 650, 654 (Iowa Ct. App. 1990) (" It goes without saying that whether preliminary negotiations actually ripen into an oral contract depends upon the intention of the parties as gleaned from the facts of the case." If the parties agreed that the agreement would not be final until reduced to writing then the court will likely not enforce the oral agreement. *In re Marriage of Eubank*, 725 N.W.2d 659 (Iowa Ct. App. 2006).

Courts consider several factors in determining whether parties intended to be bound before the execution of a written document: Factors to be considered include whether the contract is of a class usually found to be in writing, whether it is of a type needing a formal writing for its full expression, whether it has few or many details, whether the amount is large or small, whether the contract is common or unusual, whether all details have been agreed upon or some remain unresolved, and whether the negotiations show a writing was discussed or contemplated. *In re Marriage of Masterson*, 453 N.W.2d 650, 654

(Iowa Ct. App. 1990). Consequently, when important terms of the dissolution are omitted from the oral agreement it is less likely to be enforced by the court.

3. Whether Counsel Have Authority to Settle

If the oral agreement is reached between the attorneys it is vital that both attorneys had the authority to bind the parties to the dissolution. In Eubank the court declined to enforce an oral agreement between the parties. In re Marriage of Eubank, 725 N.W.2d 659 (Iowa Ct. App. 2006). The court noted that the attorney for Mr. Eubank testified that he "thought" he had authority to enter into the settlement. Id. However, the attorney provided no factual basis for this belief. Id. Further, the client adamantly denied giving his attorney the authority to settle. Id. The court determined that the attorney did not have authority, and consequently the oral settlement agreement was not valid. Id.

On the other hand, in Oehler the court determined that the party seeking to avoid the settlement agreement did in fact give authority to his attorney to settle. *In re Marriage of Oehler*, 1999 WL 710820 (Iowa Ct. App. Aug. 27, 1999). In that case the attorney testified that his client gave him authority to make the settlement offer, and that the attorney discussed the terms of the counter offer with his client before the client ultimately accepted. *Id.* In that case the court found that the party "had agreed to the joint stipulation and only later recanted." *Id.* Clearly, the existence of actual authority is a factually sensitive issue. Further, it often relies heavily on the courts determination of the credibility of the party testifying. In practice, it would be beneficial for the attorney to memorialize either through recording or written document the authority granted to the attorney by the client.

4. Whether the Parties Were Represented by Counsel

Courts often note the presence of counsel during negotiations of settlement agreements. This is likely because the presence of counsel is seen as an insulating factor against pressures that may otherwise render the agreement invalid. *See generally Lemke v. Lemke*, 206 N.W.2d 895, 898 (Iowa 1973). Courts have pointed to the presence of counsel during negotiation as a factor in favor of upholding an oral settlement agreement that was dictated to the court. *In re Marriage of Shanks*, 2001 WL 246358 (Iowa Ct. App. Mar. 14, 2001); *In re*

Marriage of Tolson, 2001 WL 57991 (Iowa Ct. App. Jan. 24, 2001). In *Ask* the court, in upholding the oral settlement, pointed out "before the hearing started, *the parties and their attorneys discussed settlement* for several hours." *In re Marriage of Ask*, 551 N.W.2d 643, 644 (Iowa 1996).

On the other hand, in refusing to uphold a written relinquishment of parental rights, one factor the court relied on was the party giving up the right was not represented at the mediation where he agreed to the settlement. *Lamberts v. Lillig*, 670 N.W.2d 129, 134 (Iowa 2003). So, in determining the validity of an oral settlement it is relevant whether counsel was present, and the presence of counsel weighs in favor of upholding the oral agreement.

5. Whether Parties Had Full Information Prior to Entering the Settlement

Similar to representation by counsel, the availability of information is relevant because it undermines defenses to the agreement. Again, in *Shanks* the court noted in upholding the oral settlement dictated to the court that "Randall made full disclosure to permit Lora and her counsel to undertake valuation of the law practice" and Randall had "not engaged in concealment of material information, fraud, misrepresentation, wrongdoing, or unconscionable behavior." *In re Marriage of Shanks*, 2001 WL 246358 (Iowa Ct. App. Mar. 14, 2001). So, in determining the validity of an oral agreement the proponent should stress to the court that full disclosures were made in the process leading up to the agreement.

6. Establishing the Terms of the Oral Settlement

If the court determines that the parties reached an oral settlement agreement the next step is to determine what the terms of that agreement are. The easiest cases occur when the parties dictate the terms of the oral settlement in court on the record. *See In re Marriage of Tolson*, 2001 WL 57991 (Iowa Ct. App. Jan. 24, 2001); *In re Marriage of Shanks*, 2001 WL 246358 (Iowa Ct. App. Mar. 14, 2001); *In re Marriage of Hall*, 2002 WL 1586167 (Iowa Ct. App. July 19, 2002). Unfortunately, this does not always happen, or one party attempts to repudiate the agreement before it can be entered into the record. In these cases, the court faces the difficult task of determining the terms of the agreement when one party denies its existence and both witnesses are interested in the outcome of

the decision. The two issues that are frequently relevant in these cases are the applicability of Iowa Code 679C and its provisions regarding the privileged nature of mediation, and whether counsel will be forced to withdraw so he or she may testify as to the terms of the agreement.

Attorneys should be cognizant of situations which may force the attorney to testify. In several cases regarding the enforcement of oral settlement agreements one of the parties' attorney was called to testify about the existence or terms of the oral settlement agreement. *In re Marriage of Eubank*, 725 N.W.2d 659 (Iowa Ct. App. 2006); *In re Marriage of Dawson*, 2002 WL 531532 (Iowa Ct. App. Mar. 27, 2002); *In re Marriage of Barker*, 786 N.W.2d 874 (Iowa Ct. App. 2010); *In re Marriage of Stanbrough*, 695 N.W.2d 505 (Iowa Ct. App. 2005); *In re Marriage of Curnes*, 690 N.W.2d 701 (Iowa Ct. App. 2004). The fact that many of these cases refer to the testifying attorney as the former counsel indicates that due to ethical considerations the testifying attorney frequently needed to withdraw in order to testify. As an attorney it makes good sense to avoid situations where the attorney may become a witness and be forced to withdraw.

7. Avoidance of an Otherwise Valid Settlement

Similarly, the court applies general contract principles in determining whether an otherwise valid settlement agreement can be avoided. The same defenses available to avoid a contract are available to avoid a settlement agreement i.e. "one may repudiate the agreement because of actual or supposed defenses thereto-lack of consideration, fraud, duress, and the like-such as would be available against any other contract. *In re Marriage of Tolson*, 2001 WL 57991 (Iowa Ct. App. Jan. 24, 2001) *see also In re Marriage of Curnes*, 690 N.W.2d 701 (Iowa Ct. App. 2004) (party to settlement agreement seeking to withdraw from agreement due to duress and undue influence); *In re Marriage of Briddle*, 756 N.W.2d 35, 40 (Iowa 2008) (party to settlement seeking to avoid enforcement of settlement agreement due to fraudulent inducement by former spouse); *In re Marriage of Shanks*, 2001 WL 246358 (Iowa Ct. App. Mar. 14, 2001) (party to settlement agreement sought to withdraw the agreement due "fraud, misrepresentation, unconscionable behavior, or mistake").

C. Because Oral Settlement Agreements May Be Judicially Adopted And Enforced, A Basic Understanding of Mediation Privilege And Its Limit Is Crucial

In 2005, Iowa became one of the first states to adopt the Uniform Mediation Act (the "Act").[1] Iowa Code § 679C.101. The Act was developed following a thirty year expansion of the role of mediation in "dispute resolution in the courts, public agencies, community dispute resolution programs, and the commercial and business communities, as well as among private parties engaged in conflict". See the Model Act, Prefatory Note at p.1. By 2003, when the Model Act was approved by the National Conference of Commissioners on Uniform State Laws, hundreds of state statutes had been enacted across the nation to establish mediation programs in a wide variety of contexts and to encourage their use. Id. It is not coincidental that the 30 year expansion of mediation before 2003 occurred following the enactment of no fault divorce legislation in 1970.

At the time the Act was developed, it was well understood that confidentiality is essential to effective mediation process and needed to encourage its use. A primary benefit of family law mediation is the opportunity for participants to engage in a candid and informal exchange regarding events in the past as well as their perceptions of and attitudes toward these events. Equally important, parties are encouraged to think constructively and creatively about ways in which their differences might be resolved. As noted in the Model Act Prefatory Note, more than 250 mediation privilege statutes had been enacted by state legislatures by 2003. Therefore, one of the central reasons for adoption of the Act was to provide a privilege that assures confidentiality in legal proceedings for mediation communications (*see* Sections 4-6). The Model Act clearly identifies the creation of a statutory privilege to protect mediation communication from judicially compelled disclosure as it's "major contribution". See Model Act Prefatory Note, Promoting Candor.

The Act specifically outlines the available privileges as follows:

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[1] At present the Act has been adopted by twelve states, and is being considered by two more. http://www.uniformlaws.org/Act.aspx?title=Mediation%20Act

a. A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

b. A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.

c. A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant. Iowa Code § 679C.104(2).

A mediator shall not "make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation." Iowa Code § 679C.107(1). While the communications made during mediation are privileged, the mediator may disclose "Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance." Iowa Code § 679C.107(2)(a).

Iowa Code Section 679C.103(3) permits parties to voluntarily opt out of mediation privilege. If the mediation parties agree in advance in a signed record, or a record of proceeding reflects agreement by the mediation parties, that all or part of a mediation is not privileged, the privileges under sections 679C. 104 through 679C.106 do not apply to the mediation or part agreed upon. However, sections 679C.104 through 679C.106 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made. Id.

Iowa Code § 679C.104(1) provides that a mediation communication is privileged and not subject to discovery or admissible in evidence "in a proceeding" unless privilege has been waived or is precluded by section 679C.105. Pursuant to Iowa Code Section 679C.105(1) A privilege under section 679C.104 may be waived in a record or orally during a proceeding if it is expressly waived by all mediation parties and if all of the following apply:

> a. In the case of the privilege of a mediator, the privilege is expressly waived by the mediator.

b. In the case of the privilege of a nonparty participant, the privilege is expressly waived by the nonparty participant.

In addition, [a] person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under section 679C.104, but only to the extent necessary for the person prejudiced to respond to the disclosure or representation. See Section 679C.105(2) A "proceeding" is defined as: a. a judicial, administrative, arbitral, or other adjudicative process, including related prehearing and post hearing motions, conferences, and discovery; or b. a legislative hearing or similar process. Iowa Code § 679C.102(7).

Finally, it is important to note that the privilege granted by the Act is a limited privilege. Iowa Code Section 679C.106 delineates the limits of the privilege and those situations in which mediation confidentiality must give way to other justice system values. Most attorneys and mediators are familiar with the limitations on privilege that exist for written agreements, public mediations, threats or plans of criminal activity and in cases of alleged malpractice arising out of a mediation. See Iowa Code Section 679C.106 (1) (a)-(g). Attorneys and mediators may be surprised to learn, however, that:

> "**2. There is no privilege under section 679C.104 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in any of the following situations:**
>
> **a. A court proceeding involving a felony or misdemeanor.**
>
> **b. Except as otherwise provided in subsection 3, a proceeding to prove a claim to rescind or reform a contract or a defense to avoid liability on a contract arising out of the mediation.**
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> Iowa Code Section 679C.106(2). (Emphasis Added).

As can be seen, a court has authority under section 2(b) to overrule a mediation privilege claim if necessary for the proponent of the evidence to establish a defense to a contract arising out of the mediation. How a judge is to decide if the need for the evidence "substantially outweighs the interest in protecting confidentiality" is not specified and is therefore open to interpretation. While the language of section 2(b) may limit initial, offensive use by a party of mediation communications to establish an agreement, the assertion of privilege waiver under the section is likely to open up all mediation communications for examination.

D. Family Law Mediation in Iowa

An understanding of the scope of the Act is critical to the current discussion because of the way in which family law mediation has developed in Iowa. Before 1996, family law mediation was a voluntary process provided through mediators associated with private agencies such as the Iowa Peace Institute, Iowa Mediation Service, Inc. and the Polk County Bar District Court Mediation Program. See Final Report of the Supreme Court's Mediation Study Group pp.10- 13 (3-14-2000) available at Iowa Judicial Branch/Administration/Reports. In 1996, pilot programs for court ordered mediation in family law cases were created in Iowa's 2nd and 6th (1996) Judicial Districts. In January 2000, District 5C moved to a court ordered mediation program as well. Id.

In 2009, the Iowa Supreme Court requested the eight Iowa judicial districts to provide information on the use of mediation in family law proceedings. While there has been no comprehensive report from court to date, the author has gathered information from the Iowa Judicial Branch website and the offices of the various district court administrators that was developed in response to this directive. That information was compiled and presented at the 2014 ISBA Annual Meeting in an outline titled "Improved Access to Family Court Through Uniform Rules and Forms" The compilation establishes that court ordered mediation provided by private mediators has become the predominant approach to the delivery of mediation services in Iowa. There are still districts, or areas in districts, in which mediation is not court ordered.

Because of their history and ability to be self-supporting, the family law mediation programs in the 5th and 6th judicial districts are the most well established programs. For purposes of this outline, the most significant difference between the 6th District and the Polk County program is in the timing of mediation. This difference impacts who is most likely to provide mediation service, who attends mediation, and the type of mediation techniques that are employed. Because these two programs have become models for the programs offered in the other districts, it is important to appreciate these differences when it comes to understanding how confidential understandings in family law mediation may become judicially enforced settlement agreements"

In the 6th District, mediation is ordered at the time a family law case is filed. If a request for temporary custody is made or the matter is a contempt, a hearing date can be set at the time of filing but a mediation must occur before the hearing takes place. Otherwise, mediation is mandated to take place within 45 days of filing the action. The 45-day requirement is usually not judicially enforced unless the failure to complete mediation is brought to the Court's attention. Family law cases are not set for trial, however, until a mediation session is completed.

It is common for parties to attend mediation in the 6th District without their attorneys. Mediation in face to face joint session with the mediator rather than in private caucus or "settlement conference" format with party's lawyers in attendance is the exception not the rule. In the 6th District, more mediation work is done by mediators who are not lawyers than in Polk County. For ease of reference, this approach is hereafter identified as the "early mediation" model i.e. other than for temporary orders or contempt hearings, mediation occurs before a trial date is assigned. No binding agreements are signed at mediation by program rule. Voluntary "settlement conferences" are available after trial assignment with private mediators or senior judges from the District.

In Polk County, mediation is court ordered in connection with applications for temporary custody, after pre-trial conferences which generally occur approximately 120 days after a case is filed, and on all contempt matters except those raising financial issues only. It is not necessary to complete mediation to

obtain a trial date and mediations generally occur shortly before hearing or trial. The prevailing form of mediation in Polk County is joint session followed by private caucus. 95% of the mediations are conducted by private mediators with parties and lawyers present. A heavy percentage (90-95%) of this work is being performed by lawyer mediators. This model is referred to hereafter as the "pretrial mediation" model i.e. court ordered mediation occurs shortly before the scheduled hearing or trial .

It is beyond the scope of this outline discuss all the ways in which family law mediation programs around the state may differ. The following is the author's conclusion with regard to where each district falls in the early versus pretrial mediation continuum. Early mediation districts appear to be the 1st, 2nd (Boone and Story County Pilot Projects), 4th, 6th and 8th Districts. The 3rd District has not adopted a family law mediation program so participation in mediation remains entirely voluntary as it is in the 2nd District outside of Boone and Story Counties. The 5th and 7th Districts are Pretrial mediation districts. In the case of the Seventh District, a settlement conference conducted by a judge other than the trial judge is the required form of court ordered mediation.

8. Summary and Practical Conclusions

Given the prevalence of mediation in family law matters and the general belief that settlement discussion is confidential and non-binding, it is extremely important for lawyers, mediators, and their clients to be aware that claims of a judicially enforceable settlement agreement can be based on oral agreements made in a mediation. This is the most critical takeaway from this program.

Attorneys should use care that client expectations for confidentiality are met. The process should begin when first meeting with clients. Clients should be advised that settlement communications with the other party facilitated by non-professional mediators such as pastors, friends or relatives, may not be confidential. They should also be advised that agreements reached with such assistance may later be adopted by a court as a final order or refused enforcement as a result of verbal agreements made in such mediations that were then acted upon. Even if a client is attending mediation with a

professional mediator, the client should be advised that nothing is to be signed at the mediation regarding settlement until it has been reviewed by counsel.

Attorneys and mediators should become familiar with program documents describing the mediation program in the district ordering the mediation. They may have an effect on whether a binding settlement can actually be reached in mediation. In the Sixth Judicial District this is less likely because a program rule makes clear as follows: "Parties do not sign any agreement in mediation. The memorandum of understanding is a draft and shall not be considered an agreement unless both parties have signed it outside of the mediation session and, preferably, after consultation with counsel. The parties and their lawyers, if any, shall prepare all documents submitted to the Court, incorporating any agreement." See Sixth Judicial District Family Mediation Program and Policy Document (Nov. 2011) at p. 5 available at http://www.mediateiowa.org/divorce-custody-mediation/policies-procedures.aspx. rding settlement. The Attorney should also be aware of mediator or district practice with regard to reporting of settlements reached in mediation to the court.

There is a greater risk of binding oral settlements occurring in mediations that take place in other Iowa districts, particularly the 5th and 7th, because of the way their programs operate. In temporary order mediation in all districts and final mediation in the 5th and 7th District, care should be exercised in deciding whether unconditional oral assent to settlement is given before a final settlement document is available for review. The level of detail typically incorporated in dissolution settlement agreements suggests oral agreements to full settlement in mediation should be the exception not the rule. Unconditional cancellation of trials or hearings based on oral mediation settlements may also be risky. If time is tight, a better practice may be to seek mutual continuance of the hearing or trial to permit preparation of the final settlement documents and prevent a later suprise. Attorneys and clients should also be aware that a helpful trial judge's offer to facilitate settlement negotiations immediately before a trial or hearing may result in a binding, non-confidential understanding that later becomes an order.

Finally, all participants to mediation must understand that the informality of the process does not allow either party to take license with the truth and deliberately misrepresent factual matters or use otherwise wrongful conduct to secure a settlement. The limits on mediation communication privilege contained in the Uniform Mediation Act are designed to address wrongful conduct of this sort. When claims of binding out of court settlement a are made, party and mediator privilege may be implicated because the factors Iowa judges must consider in deciding whether to adopt or avoid the out of court settlement may be best found in evidence of otherwise privileged mediation communications.

While there is a tendency to think that mediation privilege is absolute, attorneys and clients need to be aware that mediation privilege may be circumvented both before and after a dissolution judgment is entered if necessary to avoid fraud or other unfairness. One or both parties may seek to waive privilege as a result and the mediator's information may become the deciding factor. In fact, it is surprising there are not more reported Iowa cases of this kind but it should be expected that the number is will grow as mediation in family law matters becomes more prevalent across the state.

Table of Cases

Supreme Court

In re Marriage of Ask, 551 N.W.2d 643, 644 (Iowa 1996)

In re Marriage of Hansmann, 342 N.W.2d 495, 496 (Iowa 1984)

In re Marriage of Johnson, 350 N.W.2d 199 (Iowa 1984)

In re Marriage of Jones, 653 N.W.2d 589 (Iowa 2002)

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In re Marriage of Barker, 786 N.W.2d 874 (Iowa Ct. App. 2010)

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In re Marriage of Dawson, 2002 WL 531532 (Iowa Ct. App. Mar. 27, 2002)

In re Marriage of Eubank, 725 N.W.2d 659 (Iowa Ct. App. 2006)

In re Marriage of Hall, 2002 WL 1586167 (Iowa Ct. App. July 19, 2002)

In re Marriage of Masterson, 453 N.W.2d 650 (Iowa Ct. App. 1990)

In re Marriage of Oehler, 1999 WL 710820 (Iowa Ct. App. Aug. 27, 1999)

In re Marriage of Shanks, 2001 WL 246358 (Iowa Ct. App. Mar. 14, 2001)

In re Marriage of Stanbrough, 695 N.W.2d 505 (Iowa Ct. App. 2005)

In re Marriage of Tolson, 2001 WL 57991 (Iowa Ct. App. Jan. 24, 2001)

In re Marriage of Treimer, 752 N.W.2d 453 (Iowa Ct. App. 2008)

Digests

Oral Agreement Adopted

In re Marriage of Johnson, 350 N.W.2d 199 (Iowa 1984)

The court enforced an oral property settlement agreement for two reasons. First, the parties actions in disposing of property and transferring funds after the alleged agreement confirmed the terms of the alleged agreement. Second, although must give consideration to written agreements that does not preclude the court from giving weight to oral agreements.

In re Marriage of Ask, 551 N.W.2d 643, 644 (Iowa 1996)

The Iowa Supreme Court upheld an oral agreement dictated onto the record regarding alimony. The agreement was the product of several hours of settlement discussions between the parties and their attorneys. The court ordered the parties to draft a consent decree embodying the terms dictated into the record. One of the parties refused sign. The Court found that the agreement disposed of the entire issue of alimony, which gave it the same effect as a consent decree. Consequently, the Court enforced the agreement.

In re Marriage of Briddle, 756 N.W.2d 35, 40 (Iowa 2008)

Parties negotiated in front of a mediator. The mediator summarized the terms of the alleged agreement in a letter the parties' counsel. However, the parties were unable to agree on a proposed decree. The former wife did not dispute that the parties reached an agreement, instead she alleged that her former husband misrepresented his earnings in the mediation session. The Iowa Supreme Court enforced the oral agreement reached at the mediation because the former wife had full access to relevant records of former husband's income. Consequently, the court found that the parties had entered into a valid contract that the district court should have enforced.

In re Marriage of Hall, 2002 WL 1586167 (Iowa Ct. App. July 19, 2002)

Parties to the dissolution reached an oral agreement during trial. The terms of the agreement were dictated into the record, but the court recommending that counsel draft a stipulation and order. Both parties disputed contents of agreement, and six versions of the stipulation were drafted. One party filed a motion to enforce the terms of the settlement as dictated. Court granted the motion and drafted the order based on the terms of the agreement dictated on the record.

In re Marriage of Stanbrough, 695 N.W.2d 505 (Iowa Ct. App. 2005)

The parties and their attorneys participated in a voluntary mediation session. The mediation resulted in an agreement signed by all parties, their attorneys,

and the mediator. However, one of the parties subsequently refused to sign the consent decree which incorporated the settlement. The Court of Appeals upheld the district court ruling which held that the agreement was enforceable, but also awarded one party a supplemental monetary award in addition to the enforceable mediation agreement.

In re Marriage of Barker, 786 N.W.2d 874 (Iowa Ct. App. 2010)

The parties reached an oral agreement during a break in trial. The parties informed the Court that they had reached an agreement. The attorney for one party drafted three written agreements attempting to commit the oral agreement to writing. The other party refused to sign third draft. The court adopted the third draft based on testimony by attorney for party attempting to repudiate.

In re Marriage of Dawson, 2002 WL 531532 (Iowa Ct. App. Mar. 27, 2002)

The parties had a settlement conference with the attorneys and the judge. The parties reached an oral agreement. The attorneys drafted a proposed dissolution decree. Before the decree was finalized in court, one party claimed she no longer consented to the agreement. That party's former attorney testified that he believed that the parties had reached a final agreement. The court found that the parties agreed and the agreement was supported by consideration. However, the Court of Appeals ultimately remanded the case because the district court did not discuss whether the agreement was fair.

Oral Agreement Not Adopted

In re Marriage of Hansmann, 342 N.W.2d 495, 496 (Iowa 1984)

Court upheld district court ruling that there was no property settlement agreement between the parties. The two parties each attributed different meanings to a term of the alleged oral agreement. Consequently, there was no meeting of the minds so no contract formed between the parties.

Lamberts v. Lillig, 670 N.W.2d 129, 134 (Iowa 2003)

Court refused to uphold a document signed during an informal mediation where the parties were not represented by counsel. Court found that informal agreement that did not mention the consenting party's constitutional parenting rights was not sufficiently "voluntary, knowing, and intelligently made."

In re Marriage of Dietz, 814 N.W.2d 623 (Iowa Ct. App. 2012)

Where there were two written agreements determining the property distribution the court declined to enforce an alleged oral settlement agreement. The proponent of the oral agreement could not present satisfactory evidence as to why the oral agreement was not reduced to writing like the other two agreements, and she had already received an equitable share of property from the two prior written agreements.

In re Marriage of Eubank, 725 N.W.2d 659 (Iowa Ct. App. 2006)

The Court of Appeals overturned the district courts finding that there was an enforceable agreement. Although one party's attorney communicated that his client accepted the proposed written settlement the court found that there was not enough evidence to prove that the attorney actually had the authority to accept. The court noted that the attorney testified that the "thought" that he had authority, and there were ongoing negotiations about certain parts of the real property settlement even after the alleged acceptance. Also, the court found that the parties had agreed that the final agreement would be reduced to writing, which weighed against the enforcement of the oral agreement.

In re Marriage of Masterson, 453 N.W.2d 650 (Iowa Ct. App. 1990)

The court declined to enforce an alleged written agreement, the terms of which were embodied in a series of settlement letters between the parties. The court

noted that settlement agreements are contracts, and that neither party ever unequivocally accepted the offer of the other party. Consequently, no binding settlement arose from the series of settlement negotiations.

In re Marriage of Oehler, 1999 WL 710820 (Iowa Ct. App. Aug. 27, 1999)

The Court of Appeals affirmed district court's decisions to uphold alleged oral agreement. Court relied heavily on district court's finding of fact that repudiating party was not a credible witness, and that he had in fact given his attorney authorization to make the settlement offer and to agree to proposed modifications by the other party.

In re Marriage of Tolson, 2001 WL 57991 (Iowa Ct. App. Jan. 24, 2001)

Parties dictated agreement into record. District Court adopted oral agreement into a consent judgment. Court of Appeals vacated consent judgment because at the time the court entered the judgment one of the parties had withdrawn consent, and the court had not heard evidence on the enforceability of the agreement as a contract.

In re Marriage of Treimer, 752 N.W.2d 453 (Iowa Ct. App. 2008)

The court declined to uphold alleged oral agreement. The proponent of agreement stated that counsel for opposing party sent his attorney a proposed settlement agreement, that his attorney made minor revisions, and that the opposing attorney agreed to the revisions. The court declined to uphold the agreement because proponent could not meet his burden of proof. The court noted that the written agreement contained the word "proposed" as well as a reservation that the agreement would also be sent to the client for review. Further, the attorney for the party attempting to enforce did not unequivocally accept the agreement, but rather counteroffered by making revisions to the proposed settlement.

Disclaimer

While a small number of cases make clear under what circumstances the parties reached the agreement, the majority do not. Even when the court states that the agreement arose from a settlement conference or mediation, it is

unclear exactly what procedures were used. For that reason, it is not viable to distinguish the enforceability of oral settlement agreements based on the setting in which the parties came to the agreement.