





The Petitioner's Motion to Reopen is made under Chapter III, section 5.g. of the Shakopee Mdewakanton Sioux (Dakota) Community Domestic Relations Code ("the Domestic Relations Code"), adopted by General Council Resolution No. 5-23-95-002 (May 25, 1995).

That Section provides:

**g. Modification of Property Award.**

All divisions of real and personal property provided by this Section (5) shall be final, and may be revoked or modified only where the Court finds the existence of one of the following:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under the Shakopee Mdewakanton Sioux (Dakota) Community Rules of Civil Procedure;
- (3) Fraud, whether denominated intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party;
- (4) The judgment and decree or order is void; or
- (5) The judgment has been satisfied, released, or discharged, or a prior judgment and decree or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment and decree or order should have prospective application.

A motion for modification must be made within a reasonable time, and for a reason under clause (1), (2), or (3), not more than one year after the judgment and decree, order, or proceeding was entered or taken. A motion under this subsection does not affect the finality of a judgment and decree or order or suspend its operation. This subsection does not limit the power of the Tribal Court to entertain an independent action to relieve a party from a judgment and decree, order, or proceeding or to grant relief to a party not actually personally notified as provided in the Shakopee Mdewakanton Sioux (Dakota) Community Rules of Civil Procedure, or to set aside a judgment for fraud upon the Court.

Under this section, the grounds asserted by the Petitioner in support of his Motion to



Reopen are two. First, he asserts that at the time of the dissolution the Respondent agreed, should she ever decide to sell a business named "Buffalo Spirit", which she was awarded under the Judgment, then she would first offer to sell the business to the Petitioner at "an agreed price" (Petitioner's Memorandum of Law, at 2 (filed Nov. 18, 1999)). Second, he asserts that he and the Respondent agreed that, should any court enforcement of the Judgment be sought, it would be sought in this Court. In an affidavit supporting his Motion, Petitioner alleges that Respondent has failed to comply with these two agreements or understandings. Specifically, he alleges that several months after the date of the Judgment she sold the "Buffalo Spirit" business to the Petitioner's son at a price which the Petitioner contends was inflated; and when, reacting to that sale, the Petitioner ceased making maintenance payments under the Judgment, the Respondent sought enforcement of the Judgment in the District Court for Scott County, Minnesota. (The record reflects that the Scott County District Court granted the Respondent's motion for relief, but stayed the effectiveness of its Order for sixty days pending this Court's consideration of the Petitioner's motion.)

The Respondent advances several arguments in opposition to the Petitioner's Motion. First, she contends that the Motion is not timely, under the above-quoted provisions of section 5.g., for several reasons. She asserts that section 5.g. should be interpreted to mean that the one-year reopening period began to run on August 19, 1998, when the original Judgment was filed -- noting that the November 18, 1998 amendment to the Judgment was unrelated to the portions of the Judgment which the Petitioner seeks to reopen by his present motion. She also asserts that, even if the one-year period commenced with the filing of the November 18, 1998 amended Judgment, still the Motion to Reopen was not timely brought because, although the



Motion was served on Respondent's counsel in the Scott County District Court proceeding on November 18, 1999, she herself was not served until several days later and, she contends, her counsel in the Scott County District Court proceedings had no authority to represent her or accept service in proceedings before this Court. Also, at oral argument, her counsel asserted that even if there had been authority in counsel to accept service, still service would not have been timely because, in computing the one-year period for the section the day of the filing of the Judgment should be counted, so the last possible day for service under section 5.g. would have been November 17, 1999. Lastly, the Respondent argues that, on the face of the Judgment and the agreements on which the Judgment was based, there are no grounds for reopening the matter.

Following the parties' oral argument, I ruled from the bench that the Respondent's last-described argument seemed to me to be correct, and that I therefore was not obliged to reach and decide her other arguments. This Memorandum memorializes that decision.

In my view, the Marital Termination Agreement is decisive both on the Petitioner's contention that the Respondent was obliged to offer the "Buffalo Spirit" business to him, and on his argument that this Court somehow was designated by the parties as the only forum for resolving disputes that might arise under the Judgment. Therefore, on the face of the Motion to Reopen there are not adequate grounds stated under Chapter III, section 5.g. of the Domestic Relations Code.

The Marital Termination Agreement says this:

10. **BUSINESS -- "BUFFALO SPIRIT"**. Wife is awarded all right, title, possession, interest and equity in and to the parties [sic] business, named "Buffalo Spirit", located at 2400 Mystic Lake Blvd., Prior Lake, Minnesota 55372.



Wife agrees to assume all liability associated with or related to the business and shall indemnify and hold husband harmless from any obligation to make payment of the same.

The Marital Termination Agreement also says this:

32. **COMPLETE AGREEMENT.** The parties have made this agreement intending that it be a full, complete and final settlement and satisfaction of any and all claims of any kind nature or description which involves issues addressed in the Agreement to which either party may be entitled or may claim to be entitled, now or in the future, against the other. Except as is expressly provided herein to the contrary, each is released from any and all further liability of any kind, nature or description whatsoever to the other.

And when the Judgment was amended by the parties Stipulation in November, 1998, substantially identical terms were included in the Stipulation and in the amended Judgment.

Under these circumstances, in my view it simply cannot be argued that there could be any legally enforceable understanding or agreement that conditioned or limited the Respondent's rights in "Buffalo Spirit". The Petitioner formally agreed, before this Court, not once but twice, that the Respondent was being given "all right, title, and interest" in the business, and that the agreements which were filed with the Court comprised the entirety of the parties enforceable bargains -- that neither party had any other agreement or obligation to the other. Therefore, on the face of the documents filed in this matter the Respondent had the right to sell "Buffalo Spirit" to any person at any price she chose. No oral agreements or understandings can properly be alleged to alter that right.

Similarly, the Marital Termination Agreement and the subsequent Stipulation are absolutely silent on the subject of enforcement. There is nothing within them that can be read to create exclusive jurisdiction in this Court. (Indeed, it is not clear to me that, if there were such a provision, it would be enforceable in all circumstances; but happily that question is not



before me).

Hence, I have concluded that the Petitioner's Motion to Reopen on its face does not state adequate grounds under Chapter III, section 5.g. of the Domestic Relations Code.

**ORDER**

For the foregoing reasons, and based on all pleadings and materials filed herein, the Petitioner's Motion to Reopen the Judgment in this matter is DENIED.

January 11, 2000

  
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John E. Jacobson  
Judge