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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of AMY BRODO and  
ARIE ABO.

AMY BRODO,  
Appellant,

v.

ARIE ABO,  
Respondent.

A133153

(Alameda County  
Super. Ct. No. RF04163280)

Appellant Amy Brodo appeals from a post-judgment order modifying spousal support from respondent Arie Abo. Brodo contends that Abo's period of unemployment without severance pay following the dissolution of their marriage was anticipated, and therefore it cannot be considered a change of circumstances for the purpose of modifying the measure of monthly spousal support payable under their marital settlement agreement (MSA). She also argues that because Abo was unemployed when he signed the agreement, he cannot claim to have lost significant income when he was re-employed in a new job at a lower salary. We disagree, and affirm.

**I. BACKGROUND**

Arie Abo and Amy Brodo legally separated in 2003, ending their 11-year, 10-month marriage. The parties executed a marital settlement agreement that covered family support, community property division, and custody of their daughter. Although in April

2009 Abo was laid off from his job at which he earned approximately \$20,000 per month, he received six months' worth of severance pay through October 2009. In the MSA, Abo agreed to pay Brodo \$5,300 per month in family support until December 2015. The support is "nonmodifiable absent a significant loss of income" for Abo or Brodo, "as may be determined by the court." The agreement was signed in August 2009, notarized in October, and approved by the court on December 13, 2009. Although Abo was looking for a new job and had a job interview in October, he did not find one.

On December 31, 2009, Abo sought modification of the support order because he was no longer receiving severance pay. In March 2010, the trial court determined that the agreement was modifiable and that Abo's decrease in income was a change of circumstances that justified modification. As a result, it reduced Abo's family support to \$1,500 a month so long as he remained unemployed. In May 2010, Abo obtained new employment with a salary of \$158,004 per year. On June 4, 2010, Abo filed an order to show cause seeking to modify his monthly family support based on his new lower salary. In July 2011, the trial court modified Abo's spousal support to \$3,000 per month plus \$1,293 in child support for a total family support obligation of \$4,293 per month, reduced from \$5,300 specified in the MSA.

## II. DISCUSSION

In recognition of families' needs for stability and financial planning, courts prefer expeditious and final judgments in family and child support proceedings. We review an order modifying spousal support for abuse of discretion. (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 398 (*Dietz*.) A trial court abuses its discretion when it modifies a support order without substantial evidence of a material change of circumstances. (*Ibid.*)

This abuse of discretion standard applies when we review a trial court's modification of the support obligation provided in a marital settlement agreement. Where a marital settlement agreement permits modifications to family support, "those modifications require a showing of a change in circumstances." (*Dietz, supra*, 176 Cal.App.4th at p. 398.) In determining what constitutes a change of circumstances, the

court must consider the “ ‘intent and reasonable expectations of the parties as expressed in the agreement.’ ” (*Ibid.*)

Brodo relies heavily on *Dietz* in arguing that Abo’s period of unemployment was a circumstance anticipated by the parties when they signed the MSA and therefore not a “change of circumstances” justifying modification of his support obligation. In *Dietz*, the parties signed an agreement that in pertinent part required husband Park Dietz to pay his former wife Laura spousal support of \$16,500 a month and divided their community property retirement accounts in half. Laura Dietz eventually reached the age at which she could withdraw from the retirement accounts, and Park sought an order reducing his support. The trial court reduced Park’s support payment by \$3,000, the amount it expected that Laura could earn from interest on the accessible retirement funds. The appellate court reversed, holding that “[n]ecessarily included in [the Dietzes’] express division of the retirement accounts was the reasonable expectations that they both would reach the age at which they could access such accounts without a penalty.” (*Dietz, supra*, 176 Cal.App.4th at p. 399.) In other words, Laura and Park anticipated the circumstance that one day their retirement accounts would become useable and their agreement accounted for this eventuality when dividing their property. To order Park to pay spousal support less the amount of interest earned on the retirement money would be to reappropriate the property against the terms of their mutual agreement.

But *Dietz* is distinguishable. The length of time Abo would be unemployed following his last severance payment was uncertain, unlike access to the retirement accounts in *Dietz*, which routinely occurred when a spouse reached a specific age. Although Abo may have anticipated difficulty finding a job, when he signed the MSA it was uncertain whether he would have a regular source of income when his severance pay ended. Indeed, the fact that he interviewed for a new job in October suggests that he intended to quickly secure new employment.

Moreover, Abo demonstrated a “significant loss of income” justifying the court’s modification of the support obligation. We agree with Brodo’s point that “the only question the trial court should have considered . . . is whether there was evidence of any

substantial loss of income on [Abo's] part after entry of the Judgment of Dissolution in December, 2009." The trial court did not abuse its discretion when it determined that Abo's new \$13,167 per month salary demonstrated a significant loss of income compared to his \$20,000 monthly salary before losing his job.

Brodo argues essentially that Abo did not demonstrate a significant loss of income because when he signed the MSA he was unemployed and earning no salary. Because he lost his job in April, she argues, his "substantial loss of income" predated signing the agreement. In this interpretation, Abo's salary as of June 2010 represented a \$158,000 increase from zero, not a decrease from the income he was earning when employed in April 2009 and as severance for six months thereafter.

However, severance pay is equivalent to income earned through employment for the purpose of calculating spousal support. (*In re Marriage of Stephenson* (1995) 39 Cal.App.4th 71, 81 [affirming trial court's decision to treat severance pay as equivalent of eight and one-half months' salary to continue the support obligation during that time period].) Courts do not recognize the shift from employment income to severance pay as a material change in circumstances for the purposes of modifying support. (*Id.* at pp. 82–83 [modification of support before end of severance pay period was premature because there was no material change in circumstances].) In the eyes of the law, Abo was earning \$20,000 per month when the agreement was signed and his circumstances changed only when his severance payments ended.

The trial court was bound to consider the intentions and expectations of the parties "as expressed in the agreement" in determining whether Abo's unemployment was a material change in circumstances. Although Brodo may have intended and expected to receive the payments regardless of Abo's income, her expectation was unreasonable in light of the express language of the modification exception. It is clear that both Abo and Brodo thought it was possible that Abo would be unemployed at the end of his severance pay period; because of this, Abo insisted that the MSA include a provision allowing him to modify the agreement on demonstration of a significant loss of income. The plainest reading of the clause provides that Abo can request a modification of the support

obligation when his income significantly decreases, which the parties would not have included had they believed his income was zero. Accordingly, we hold that Abo's severance pay and prior income is the benchmark from which to assess whether his new employment demonstrated a significant loss of income. The trial court did not abuse its discretion when it modified family support payable on account of Abo's new salary.

### **III. DISPOSITION**

The judgment is affirmed. Respondent's Reply to the Reply Brief is stricken as not permitted by Rules of Court, rule 8.882(a).

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Siggins, J.

We concur:

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McGuinness, P.J.

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Pollak, J.