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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Marriage of NADER and SABA
YOUSEFZADEH.

B239527

(Los Angeles County
Super. Ct. No. BD 470144)

NADER YOUSEFZADEH,

Appellant,

v.

SABA YOUSEFZADEH,

Respondent.

APPEAL from a judgment of the Superior Court of Los Angeles County, B. Scott Silverman, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed in part; reversed in part and remanded.

Nader Yousefzadeh, in pro. per., for Appellant.

Law Offices of Robert J. Waters and Robert J. Waters for Respondent.

* * * * *

Appellant Nader Yousefzadeh (father) and respondent Saba Yousefzadeh (mother) married in 1998 and had three daughters. On August 2, 2007, father filed a petition for dissolution of the marriage. As of that date, the couple's three daughters were ages six, two, and one. Father appeals from the judgment on reserved issues in this matter. He contends the family law court erred in finding he waived his right to past and future "nanny care" expenses. Father's argument has merit and requires a limited reversal with directions to strike the portion of the judgment that states father waives his right to future and past due child care expenses, which the parties refer to as nanny care. We also direct the court to (1) conduct further proceedings to determine what reasonable nanny care expenses, if any, father is owed, and (2) enter an amended judgment based on those proceedings.

FACTS AND PROCEDURE

On December 26, 2008, the court entered a status only judgment that also addressed child custody and visitation. The judgment incorporated a written stipulation between father and mother. In relevant part, the court ordered the parents shall have joint legal custody of the minor children and awarded primary physical custody of the minors to father. The stipulation did not reflect an order for child support. A later "Stipulation re Settlement" filed on December 9, 2010, stated the "[c]urrent child support amount [was] \$1,750." Moreover, father "agree[d] to waive his right to future and past due payment for fees for 'nanny care' for the minor children" and "[c]urrently waive[d] [his] request for \$750.00."

In January 2011, mother filed an order to show cause regarding modification of child support. She also moved the court to enforce the December 9, 2010 stipulated settlement in March 2011. The court granted mother's motion to enforce the settlement agreement, finding "that the parties[] voluntarily executed the Settlement Agreement, and that the Settlement Agreement is enforceable as to those terms contained therein only." The court ordered mother's counsel to prepare a judgment memorializing the parties' stipulated settlement agreement. The court also lowered mother's child support payment from \$1,750 to \$1,363 per month.

Section 3.1 of mother's proposed judgment on reserved issues was entitled "child care expenses" and stated: "The Court finds [father] waives his right to future and past due payment of fees for 'nanny care' for the minor children. The Court further finds [father] currently waives his request for \$750.00." The proposed judgment also found mother owed child support arrears in the amount of \$35,000, which the court offset by \$25,000 for spousal support arrears father owed. Thus, the proposed judgment found mother owed a net total of \$10,000 in child support arrears.

Father filed an objection to mother's proposed judgment on the ground that child care was "part and parcel of . . . child support" and could not be waived as a matter of public policy. Despite father's objection, the court entered mother's proposed judgment on reserved issues on January 23, 2012. Father filed a timely notice of appeal.

STANDARD OF REVIEW

We review child support awards for abuse of discretion. The standard is whether any judge reasonably could have made the order at issue. (*In re Marriage of Chandler* (1997) 60 Cal.App.4th 124, 128.)

DISCUSSION

Father's sole contention on appeal is the court erred in finding he waived the right to child support for nanny care expenses. We agree with father. The court abused its discretion in making this finding and entering judgment based on it.

California has a strong public policy in favor of adequate child support that is expressed in statutory uniform child support guidelines. (*In re Marriage of Sorge* (2012) 202 Cal.App.4th 626, 640.) The statutory scheme for child support consists of two components -- basic support and "additional" support. (*In re Marriage of Lusby* (1998) 64 Cal.App.4th 459, 472.) Family Code sections 4061 and 4062 provide for additional support beyond the basic guideline amount in appropriate cases.¹ (*Lusby*, at p. 467.) These additional forms of child support are commonly referred to as "add-ons." (*In re Marriage of Alter* (2009) 171 Cal.App.4th 718, 723.) One of the add-ons the court "shall

¹ Further statutory references are to the Family Code except where otherwise noted.

order” is “[c]hild care costs related to employment or to reasonably necessary education or training for employment skills.” (§ 4062, subd. (a)(1).) The Family Code does not further define “child care costs.” We conclude day care, nanny care, and other similar arrangements for care of children qualify as child care costs. (See *In re Marriage of Tavares* (2007) 151 Cal.App.4th 620, 627-628 [considering day care a child care cost for purposes of child support order].)

Parties to pending litigation may stipulate to settle a case, and the court, upon motion, may enter judgment pursuant to the terms of the settlement. (Code Civ. Proc., § 664.6.) Section 664.6 applies in a dissolution action to parties’ settlement agreements, including such agreements regarding child support. (*In re Marriage of Armato* (2001) 88 Cal.App.4th 1030, 1038.) When the court incorporates an agreement for child support into a child support order, “the obligation created is deemed court-imposed rather than contractual.” (*Armstrong v. Armstrong* (1976) 15 Cal.3d 942, 947.)

However, to the extent settlement agreements purport to restrict the court’s jurisdiction over child support, they are void as against public policy. (*In re Marriage of Bereznak* (2003) 110 Cal.App.4th 1062, 1069.) “Children have the ‘right to have the court hear and determine all matters [that] concern their welfare and they cannot be deprived of this right by any agreement of their parents.’ [Citation.] Thus, these agreements are not binding on the children or the court, and the court retains jurisdiction to set child support irrespective of the parents’ agreement.” (*Ibid.*)

Moreover, parents cannot, by agreement, limit or waive a child’s right to support. (*Kristine M. v. David P.* (2006) 135 Cal.App.4th 783, 786; *In re Marriage of Buzzanca* (1998) 61 Cal.App.4th 1410, 1426.) Nor does a court have discretion to absolve an obligor of child support arrearages, and parents cannot agree to settle child support arrearages without a bona fide dispute concerning the debt. (*In re Marriage of Sabine & Toshio M.* (2007) 153 Cal.App.4th 1203, 1215; *In re Marriage of Tavares, supra*, 151 Cal.App.4th at p. 626.) Public policy protects a child’s continued right to support. (*Kristine M. v. David P., supra*, at p. 786.) A judgment terminating the obligation to

support a child “is void as a breach of public policy and as an act in excess of the court’s jurisdiction.” (*Ibid.*)

In the present case, the court erred in entering a judgment that father waived child support payments for nanny care costs. Father may have agreed to the waiver term in the stipulated settlement, but he had no power to limit or waive his children’s right to support, including child care costs such as nanny care. Likewise, the court did not have the power to terminate the obligation of mother to pay child support in the form of nanny care costs. A limited reversal and remand to the trial court is warranted to determine the amount of support, if any, mother owes for nanny care costs. The judgment refers to a “currently waive[d] . . . request for \$750.00” in the section regarding child care expenses, and \$10,000 in child support arrears in another section. It is unclear from the record to what extent these amounts included nanny care costs, either for the past or for that point going forward. We need not try to divine these answers. The determination of reasonable nanny care costs is a matter within the province of the family law court in the first instance.

DISPOSITION

The judgment is reversed with directions to strike in its entirety section 3.1 of the judgment on reserved issues regarding father’s waiver of “nanny care” costs. The court is directed to conduct further proceedings, consistent with this opinion, to determine what reasonable nanny care expenses, if any, father is owed, whether for arrears or for nanny care going forward. The court shall enter an amended judgment based on those proceedings. Father to recover costs on appeal.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.