

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of TERESA and
ROBERT EDGERTON.

ROBERT EDGERTON,

Respondent,

v.

TERESA EDGERTON,

Appellant.

D060209

(Super. Ct. No. ED77237)

APPEAL from an order of the Superior Court of San Diego County, Evan P.

Kirvin, Judge. Affirmed.

Teresa Edgerton appeals from an order denying her motion to set aside a particular paragraph in the judgment pertaining to the termination of spousal support upon the retirement of the parties. She contends the trial court had discretion to extend spousal support beyond the termination date agreed to by the parties, a change of circumstances required modification of the spousal support order, and the trial court erred in terminating

her spousal support because she was not self-supporting. We reject her contentions and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Teresa and Robert married in 1980 and separated almost 29 years later. The trial court entered a judgment of legal separation that attached a marital separation agreement (MSA) entered into by the parties. As relevant to this appeal, paragraph 3 of the MSA provided that Robert would pay Teresa 30 percent of his monthly gross income as spousal support, but that:

"c. The spousal support payments required by this section shall cease to be due on the earliest of (I) [*sic*] the death of the Husband, (ii) the death of the Wife, (iii) the remarriage of the wife[,] (iv) one half life of the marriage, or (v) once the parties commence the receipt of retirement benefits. After any of the aforementioned occurs spousal support shall be terminated."

About two years later, Robert announced that he planned to retire at age 55. Teresa estimated that her share of Robert's retirement benefits would be \$1,900 per month. Teresa filed a motion to, among other things, set aside paragraph 3c in the MSA pertaining to spousal support based on an alleged ambiguity. Teresa claimed she was not represented by an attorney when she signed the MSA and did not understand that the word "termination" could be interpreted to preclude her right to obtain spousal support. Teresa asked the court to delete paragraph 3c of the MSA, or to modify and extend spousal support. Robert stated that he and Teresa worked out the specific terms of their MSA, hired a paralegal to assist them in memorializing the agreement in an appropriate format, and requested the MSA be incorporated into the judgment. Robert asserted that

paragraph 3c was unambiguous, that the MSA represented a bargained-for exchange, and Teresa was fully competent and entered the MSA knowingly and willingly.

The trial court denied the motion and concluded that once Teresa began receiving retirement benefits, its jurisdiction over spousal support would terminate. It concluded that Teresa's motion was untimely filed under Code of Civil Procedure section 473 and Family Code section 2122, and that Family Code section 3691 did not provide a basis to set aside paragraph 3c. (Undesignated statutory references are to the Family Code.) It specifically found that (1) the MSA was a bargained-for agreement, with parts that favored each party, (2) Teresa was not misled, (3) there was no fraud, perjury, duress, mental incapacity, mistake or failure to comply with the disclosure requirements, or lack of notice, or excusable neglect, or inadvertence on behalf of Teresa as contemplated by Code of Civil Procedure section 473 or sections 2122 and 3691, (4) paragraph 3c is not ambiguous, and (5) there were no changed circumstances to justify a modification of spousal support.

DISCUSSION

I. *Changed Circumstances*

Teresa contends the trial court abused its discretion when it failed to modify spousal support because Robert's impending retirement constituted a change of circumstances. She argues that the trial court had jurisdiction to extend spousal support beyond the termination date and that the trial court abused its discretion when it failed to do so. Robert asserts his contemplated retirement did not constitute a change of circumstances because the parties considered the effect of a retirement on spousal support

in the MSA and expressly agreed that spousal support would end once the parties started to receive retirement benefits. We agree with Robert.

As a preliminary matter, Teresa did not request a modification of spousal support based on changed circumstances. Teresa filed an order to show cause application for spousal support, attorney fees and other things; however, she did not check the box regarding "modification." Teresa's supporting declaration stated that Robert planned to retire at the end of March 2011, thus triggering one of the contingencies contained in paragraph 3c of the MSA. Teresa requested a ruling that spousal support could continue beyond any date the parties may retire. Teresa wanted to maintain her current level of spousal support and asked the court to either set aside paragraph 3c or preserve its ability to modify and extend spousal support.

After the trial court issued its oral statement of decision, Teresa's counsel asked whether the court was ruling that spousal support was nonmodifiable. The trial court responded that it was not making such a ruling; however, once the parties did begin to receive retirement benefits, the support order would be nonmodifiable. Teresa's counsel then argued that Robert's voluntary retirement constituted a change of circumstance and requested that the trial court extend spousal support beyond the date Teresa began receiving retirement benefits. The trial court declined to do so, finding no change of circumstances. Because the trial court made such a finding, we examine the record to determine whether it abused its discretion. (*In re Marriage of Hoffmeister* (1987) 191 Cal.App.3d 351, 357–358 [modification of a spousal support order rests in the sound discretion of the trial court].)

A MSA is a contract between the parties. (*In re Marriage of Aninger* (1990) 220 Cal.App.3d 230, 238 (*Aninger*), superseded by statute on another point as indicated in *In re Marriage of O'Connor* (1997) 59 Cal.App.4th 877, 882–883.) "Modification of spousal support, even if the prior amount is established by agreement, requires a material change of circumstances since the last order." (*In re Marriage of McCann* (1996) 41 Cal.App.4th 978, 982.) In determining whether there have been sufficient changed circumstances to support a modification of a spousal support order, the trial court is bound to give effect to the parties' intent and reasonable expectations as expressed in an underlying MSA. (*Aninger, supra*, at p. 238.) Accordingly, when a support order is based on a MSA, "the trial court's discretion to modify the spousal support order is constrained by the terms" of the agreement. (*Ibid.*)

Paragraph 3c of the MSA provided that required spousal support payments would end upon the occurrence of certain contingencies, including when the parties started to receive retirement benefits. The trial court found the language of the MSA to be unambiguous, Teresa had not been misled, grounds to set aside the MSA did not exist, and that Teresa's request to set aside the paragraph constituted "buyer's remorse." Teresa does not challenge these findings on appeal.

Here, the parties expressly contemplated and agreed that spousal support payments would end when the parties started to receive retirement benefits. As the trial court impliedly found, the occurrence of an event expressly set forth in the MSA does not constitute a change of circumstances warranting a modification of spousal support. The parties could have agreed to a retirement date and included this as part of the contingency

listed in paragraph 3c. They failed to do so. The trial court lacked the power to disregard the stated intentions of the parties in their negotiated MSA. (*In re Marriage of Sasson* (1982) 129 Cal.App.3d 140, 147 [equity cannot compel a result in contravention of parties' intentions when they entered into a MSA].) Accordingly, the trial court did not abuse its discretion when it refused to modify the spousal support award.

An agreement to provide spousal support is severable from provisions relating to division of property. (§ 3590.) In her reply brief, Teresa asserts for the first time that the trial court abused its discretion when it failed to separate and sever the provisions of the parties' MSA relating to support from the provisions relating to property under section 3590. However, merely because the spousal support terms in the MSA could be severed or modified, does not mean the trial court was required to do so. Motions to set aside judgments involving spousal support may be granted only if the court finds prejudice to the moving party because of fraud, perjury, duress, mental incapacity, or mistake. (§ 2122.) Here, although the trial court found relief under section 2122 was untimely, it subsequently also concluded that grounds to set aside the judgment under section 2122 did not exist.

Teresa also points out that the marriage was of long duration and claims the trial court abused its discretion by not retaining jurisdiction over spousal support. We disagree. A trial court can divest itself of jurisdiction over spousal support issues in cases involving long term marriages if the parties agree to the termination or the court orders it. (§ 4336, subd. (a); *In re Marriage of Ostrander* (1997) 53 Cal.App.4th 63, 65–66.) Here, the trial court concluded that the MSA contained language divesting it of jurisdiction

upon Teresa's receipt of retirement benefits. Specifically, the court found that the unambiguous language of paragraph 3c provided that when one of the conditions set forth therein occurred, spousal support would be terminated, meaning that its jurisdiction "to award spousal support in the future" would be terminated. Because the parties agreed in the MSA to the termination, there was no abuse of discretion.

II. *Self-Supporting*

In a marriage of long duration, the court is required to retain jurisdiction to award or modify spousal support indefinitely, in the absence of evidence which "clearly indicates" that the supported spouse will be able to adequately meet his or her financial needs at the time selected for termination of jurisdiction. (*In re Marriage of Morrison* (1978) 20 Cal.3d 437, 453 (*Morrison*)). Citing *Morrison*, Teresa asserts the trial court's order must be reversed because the court erred when it terminated her spousal support without making a finding that she was self-supporting. *Morrison*, however, addressed former Civil Code section 4801, a precursor to section 4336. (*Morrison, supra*, 20 Cal.3d at p. 442; *In re Marriage of Beck* (1997) 57 Cal.App.4th 341, 344.) As we have already discussed, under section 4336, a trial court can divest itself of jurisdiction over spousal support issues in cases involving long term marriages where, as here, the parties agree to the termination. (*Ante*, part I) Accordingly, since the trial court terminated jurisdiction based on an agreement between the parties, there was no need for it to make a determination that Teresa was self-supporting.

In any event, the record contains sufficient evidence to support an implied finding that Teresa had the ability to be self-supporting by the time spousal support terminated.

Teresa claimed expenses of \$3,939 a month and gross wages of \$1,126 a month working 15 hours per week. Adding her expected share of Robert's retirement benefits at \$1,900 a month, her monthly expenses surpassed her monthly income by \$913. The trial court could have concluded that Teresa had the ability to make up this shortfall by increasing the number of hours she worked to 30 hours per week.

DISPOSITION

The order is affirmed. Robert is entitled to his costs on appeal.

McINTYRE, J.

WE CONCUR:

HUFFMAN, Acting P. J.

McDONALD, J.