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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of ERIC MICHAEL and  
DARCY LYNN PAPP.

ERIC MICHAEL PAPP,

Appellant,

v.

DARCY LYNN PAPP,

Respondent.

G045874

(Super. Ct. No. 02D004538)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,  
Linda Lancet Miller, Judge. Affirmed.

Eric Michael Papp, in pro. per., for Appellant.

Linda K. Ross for Respondent.

Eric Michael Papp (Petitioner) appeals from the trial court's order denying his motion to terminate his responsibility to make mortgage payments on the family home from July 24, 2006 through July 24, 2010. He contends the payments actually constitute spousal support that should have terminated by operation of law on the remarriage of his former wife Darcy Lynn Papp (Respondent). We conclude the trial court correctly interpreted the couple's marital settlement agreement – which contained an express mutual waiver of spousal support – not to include these payments and affirm the order.

### FACTS

Petitioner and Respondent married in March 2000 and separated in May 2001. A dissolution judgment was filed on July 24, 2006 in accordance with a nine-page marital settlement agreement prepared by Petitioner. The record does not reflect whether Respondent was represented by counsel.

In pertinent part, the agreement included the following mutual waiver of spousal support: “In consideration of the other terms of this marital settlement agreement, and whereas both parties are fully self-supporting, we each waive all right or claim which we may now have to receive support from the other. Commencing upon date of separation, 05/01/01, no court shall have jurisdiction to award spousal support at any time regardless of any circumstances that may arise. We understand that either of us could ask the court to retain jurisdiction over the subject of spousal support, but we choose not to ask the court to retain jurisdiction over the subject of spousal support, preferring instead to mutually terminate the right forever.”

The “other terms” included a division of specified community property and debts and stated, “Title shall be held 50%/50% between Petitioner and Respondent in [the house or family residence] . . . .” Under the heading “OTHER AGREEMENTS,” the parties agreed “Petitioner shall pay Mortgage on Residence . . . for 4 years from the date of Final Divorce Decree. Whereupon, the home shall be sold or Petitioner's 1/2 equity, if

any, will be tendered by Respondent within 90 days, unless said period is extended or another agreement in writing is executed.” The parties also agreed the court would retain general jurisdiction “to make whatever orders may be necessary or desirable to carry out this agreement and to divide equally between the parties any community assets or liabilities omitted from division under this agreement.”

In June 2011, Petitioner filed a noticed motion to terminate the existing order to pay the mortgage, force a sale of the property, and receive reimbursement for any money paid after Respondent’s remarriage. In his supporting declaration, Petitioner claimed Respondent had remarried within days of the entry of judgment, and that she did not disclose this fact to him until July 2009. At that point, he ceased making the mortgage payments and requested she and her spouse sell or refinance the existing loan. Due to an adverse real estate market, Petitioner claimed he had “been severely prejudiced” by Respondent’s undisclosed remarriage, and he claimed an inability to obtain financing for his business or personal needs because of their shared interest in a devalued asset. In his attached points and authorities, Petitioner claimed the mortgage payments constituted support and maintenance pursuant to Family Code section 4337 (section 4337)<sup>1</sup> and *In re Marriage of Benjamins* (1994) 26 Cal.App.4th 423, 430, and therefore should have terminated upon Respondent’s remarriage.

Respondent relied on the agreement to argue the parties had expressly waived spousal support at the same time they imposed the mortgage payment obligation. Consequently the mortgage payments could not be construed as a support obligation that terminated by operation of law under section 4337. She claimed Petitioner decided to keep an interest in the residence “with the hope . . . it would be sold in the future” for a profit. When his financial risk failed, she claimed Petitioner sought to recover all

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<sup>1</sup> Section 4337 states, “Except as otherwise agreed by the parties in writing, the obligation of a party under an order for the support of the other party terminates upon the death of either party or the remarriage of the other party.”

payments and ensure his former wife was evicted from a home that was worth less than the amount of their mortgage. She pointed to the fact Petitioner drafted the agreement, arguing any ambiguity should be interpreted against him, and claimed the terms of the marital settlement agreement demonstrated a clear intent to waive spousal support and continue joint ownership of their home for four years after which she would have the option to sell and share the proceeds or buy out his interest.

Petitioner countered his former wife and new husband had lived rent free in the “so called ‘investment’ property,” which meant he had paid support regardless of how it was characterized. In the alternative, he relied on the terms of the agreement to force a sale because the four-year period expired on July 24, 2010.

The trial court denied Petitioner’s motion to deem the mortgage payments as support and maintenance pursuant to section 4337, but also ordered the home “put up for sale forthwith” or that Respondent pay Petitioner one-half the home’s equity as of July 24, 2010, less any amounts she had paid toward the mortgage principal between July 2009 and July 2010. Petitioner filed a timely appeal.

#### DISCUSSION

Despite the clear language of the marital settlement agreement, Petitioner argues the mortgage payments he agreed to pay constitute spousal support notwithstanding the parties express waiver of the right to spousal support and the court’s jurisdiction over this subject. He is incorrect.

“‘Marital settlement agreements incorporated into a dissolution judgment are construed under the statutory rules governing the interpretations of contracts generally.’” (*In re Marriage of Simundza* (2004) 121 Cal.App.4th 1513, 1518.)

“‘Interpretation of a written instrument becomes solely a judicial function only when it is based on the words of the instrument alone, when there is no conflict in the extrinsic evidence, or when a determination was made based on incompetent evidence.

[Citations.]” (*City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th

375, 395.) When the intent of the parties at the time the contract was executed depends on the credibility of extrinsic evidence, those credibility determinations and the interpretation of the contract are questions of fact properly resolved by the court or the jury. (*Ibid.*) The same standard of review applies to the interpretation of section 4337, if necessary, and its application to the facts of this case. (See *In re Marriage of Thornton* (2002) 95 Cal.App.4th 251, 254.) We conclude section 4337 does not apply.

The parties' mutual waiver of spousal support is unequivocal and made with full consideration of other benefits. The parties stated they were self-supporting, and the agreement contained an express waiver of the court's jurisdiction over the "subject of spousal support" while both recognized that such jurisdiction could have been retained. We see no reason to ignore an express spousal support provision and recast Petitioner's obligation to make mortgage payments.

The cases on which Petitioner relies are inapposite. In *In re Marriage of Benjamins, supra*, 26 Cal.App.4th 423, the parties agreed the wife would receive spousal support payments for a specified time period. In addition, her former husband consented to pay medical insurance premiums in two lump sum payments, one on or before December 1, 1990 and the other on or before September 1, 1991. When the wife died on April 11, 1991, her husband did not dispute the termination of his support obligation under section 4337, but he did refuse to pay the second lump sum payment for her medical insurance. (*Id.* at p. 428.) And the appellate court concluded "payment of medical insurance premiums to provide for proper health care for a supported spouse necessarily is in the nature of spousal support. [Citation.]" (*Id.* at p. 430.) But here, there was no preexisting obligation to pay support. Rather, the parties definitively decided to waive spousal support. We do not disagree with the *Benjamin* court's holding; we simply find it inapplicable here.

Similarly, *In re Marriage of Cesnalis* (2003) 106 Cal.App.4th 1267 provides no basis for reversal. There, the parties agreed husband would pay spousal

support until the death of either party or wife's remarriage. The wife insisted the words "the remarriage of Wife" be removed. (*Id.* at p. 1270.) When the husband learned of the wife's remarriage he moved to terminate support. The trial court denied his motion and the judgment was upheld on appeal. (*Id.* at pp. 1271, 1276.) Petitioner quotes one portion of *Cesnalis*, i.e., "Section 4337's remarriage termination is not waived simply because the written agreement fails to include remarriage among the terminating events," as if the omission of an express waiver of section 4337 is required *even in cases where the parties have expressly waived spousal support.* (*Id.* at p. 1272.) The case does not stand for this proposition and we reject Petitioner's attempt to form it into an ill-shaped mold.

The settlement agreement is clear. Nothing has happened to transmogrify the mortgage payments into support. The judgment is affirmed. Respondent to recover her costs.

BEDSWORTH, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

MOORE, J.