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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of KENNETH and JULIE  
KASSOUF.

KENNETH KASSOUF,

Appellant,

v.

JULIE KASSOUF,

Respondent.

G046290

(Super. Ct. No. 98D007972)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Clay M. Smith, Judge. Affirmed.

Hughes and Hughes, Bruce A. Hughes and David Wald for Appellant.

Law Offices of Michael Devitt, R. Michael Devitt and Brian L. Sederberg for Respondent.

Kenneth Kassouf (Kenneth)<sup>1</sup> appeals from the trial court’s order denying his motion to terminate his spousal support obligation to Julie Kassouf (now remarried and called Julie Wolfenberger). We conclude the trial court correctly interpreted the couple’s final dissolution judgment, containing the parties’ express stipulation spousal support would not terminate until 2020 (except for in limited circumstances not present in this case). In denying Kenneth’s motion, the court concluded Kenneth had waived his right under Family Code section 4337<sup>2</sup> (stating spousal support terminates by law upon supported spouse’s remarriage unless the parties have agreed otherwise in writing). We affirm the order.

## I

Kenneth and Julie were married on March 20, 1986, and separated almost 12 years later. On January 25, 2000, Kenneth and Julie were represented by counsel when they entered into a marital settlement agreement (MSA) that was incorporated into the court’s final judgment.

The MSA is 32 pages long. Relevant to this appeal are sections 2 and 3. Section 2, titled “Child Support,” stated Kenneth established Uniform Gift to Minors Accounts (UGMA) for the benefit of the three minor children. The MSA stated Julie would receive \$1,500 per month for all three children, and “along with spousal support set forth [in Section 3 of the MSA]” the amount was “more than sufficient at this time to provide for the reasonable support, care, maintenance, and education of the minor children . . . .”

Section 3, titled “Spousal Support,” is nearly five pages long and contains seven subparts describing a comprehensive plan of spousal support spanning a period of

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<sup>1</sup> We refer to the parties by their first names for ease of reading and to avoid confusion, not out of disrespect. (*In re Marriage of James M.C. and Christine J.C.* (2008) 158 Cal.App.4th 1261, 1264, fn. 1.)

<sup>2</sup> All further statutory references are to the Family Code.

20 years (from February 1, 2000, to January 31, 2020). We have endeavored to summarize the main points, but we also included specific language if it related to the issue raised on appeal, i.e., what did the parties agree to with respect to termination of spousal support.

Section 3.1., titled “Amount and Payment of Support” stated, “Husband shall pay Wife for her support and maintenance as follows:” (1) \$3,000 per month starting on February 1, 2000 “and terminating January 31, 2020” (Section 3.1.1); (2) \$3,643.66 per month to cover the mortgage on the family residence “commencing February 1, 2000[,] and terminating January 31, 2020” (Section 3.1.2); (3) “a lump sum payment to wife payable on January 31, 2020,” representing what would be required to pay off the mortgage on the family residence (Section 3.1.3); (4) premiums to purchase an annuity for Julie’s benefit, having a cash value of \$500,000 on January 31, 2020 (Section 3.1.4); and (5) any state and federal taxes incurred by Julie as a result of having to report income from the 2020 lump sum payment or the annuity described above.

It was agreed that the \$3,643.66 mortgage payment could be modified in the event Julie refinanced the current mortgage or moved someplace that had a lower mortgage or rent amount (Sections 3.1.2.1 and 3.1.2.2.). There was no similar provision regarding modification of the \$3,000 monthly payment, the 2020 lump sum payment, or \$500,000 annuity.

The next subpart of Section 3 specifically addressed the intended duration of spousal support: “3.2 Term of Spousal Support [¶] The spousal support payments required by Section 3.1 herein and its subparts shall terminate upon the sooner of Wife’s death or January 31, 2020, the payment in full of Husband’s obligation under said Section or its subparts, or as earlier provided for in such Section or its subparts.” Thus, support terminates upon Julie’s death, Kenneth’s payment “in full,” or the start of 2020.

The third subpart of Section 3 specified the limits to modification of spousal support, and addressed both nonmodification of the *amount* and the *duration* of

support. “3.3 Limited Modification of Spousal Support. [¶] Pursuant to Section 3591, [subdivision] (c) . . . and except as otherwise provided herein, the Parties expressly declare that the spousal support payable to Wife as set forth in Section 3.1 and its subparts shall not be subject to *modification, extension, or revocation* by any court, except as follows:” (1) spousal support shall be adjusted in accordance with the cost of living index figures shown in the consumer price index (Section 3.3.1) or (2) establishment of a child support order (Section 3.3.2). (Italics added.)

With respect to the latter event (the establishment of the child support order) the parties referred back to Section 2, regarding the UGMA accounts established for the children. Section 3.3.2, explained, “The parties agree that the spousal support paid to Wife under the terms of this agreement, along with the allowance to be made to Wife from the UGMA accounts for the support of the children, are more than sufficient to support Wife and the minor children in the lifestyle enjoyed by the family during marriage. In the event an order is made by a court of competent jurisdiction for child support to be paid by Husband to Wife for the parties’ minor children, Husband may, at his discretion, and without the necessity of a court order reduce his obligation to pay spousal support set forth in [Section] 3.1.1 [the \$3,000 payment], [Section] 3.1.2 [the \$3,643.66 payment], and [Section] 3.1.3 [the 2020 lump sum payment] by \$1 for each \$1 he is ordered to pay as and for child support.”

The fourth subpart of Section 3 announced there was no need for a wage assignment because “Husband has consistently met his support obligations in a timely manner” (Section 3.4). The fifth subpart addressed the issues of “waiver and jurisdiction.” The parties agreed Husband waived any right to current spousal support (Section 3.5.1). As for Julie’s support, the parties expressly stated, “No court shall have jurisdiction to order or extend spousal support for Wife beyond the first to occur of a terminating event in Section 3.2 [i.e., death, full payment of the obligation, or the happening of the termination date January 1, 2020].”

In addition to precluding the court from extending spousal support beyond a terminating event, Section 3.5.3 provided the amount and duration were nonmodifiable for any reason except those listed in Section 3. It stated, “The Parties agree that except as otherwise provided in this agreement, the spousal support provided for Wife in this Agreement is nonmodifiable. No court shall have jurisdiction to award, modify, or extend support for Wife beyond that provided in Section 3.

“Notwithstanding any other Sections in this Agreement, no court shall have the ability to extend its jurisdiction over support beyond the time set for jurisdiction to end, as provided above, regardless of when a Party may bring a motion to do so and irrespective of any change in economic or other circumstances of the Parties. The Parties understand that when a court has no jurisdiction over support, no support can be ordered regardless of the hardship that this might cause.

“The Parties have carefully bargained for the amount of support, its limited modifiability, and its termination as provided in this Agreement, and the provisions of this Section 3.5 are intended to comply with the requirements of *In re Marriage of Vomacka* (1984) 36 Cal.3d 459, and *In re Marriage of Brown* (1995) 35 Cal.App.4th 785, to make clear that no court shall have authority to modify the amount or duration of support.”

In the sixth subpart of Section 3 of the MSA, the parties reaffirmed statements contained in Section 2, regarding how the support and property division “provide[s] Wife with sufficient assets and income to support her and the children in the marital lifestyle enjoyed by the parties.” The final provision of Section 3 provides that if Kenneth should die “prior to the completion of *payment of the spousal support set forth in Section 3.1 and its subparts*, it is the intent of the parties that Husband’s remaining obligation(s) for spousal support shall be paid through Husband’s life insurance policy(ies), as required in Section 6 and its subparts of this Agreement. In the event that Husband’s insurance pays Husband’s remaining obligation(s) for spousal support, Wife’s

right to spousal support terminates and she shall have no further right to claim support against Husband's estate or assets." (Italics added.)

This final subpart relates back to Section 3.2's "Term of Spousal Support" provision, which repeats spousal support shall terminate upon "the payment in full of Husband's obligation under [Section 3 and its subparts]." Thus, the parties agreed that if Kenneth should predecease Julie, the support payments would terminate after she was paid from his life insurance proceeds the total sum remaining on the \$3,000 and \$3,643.66 monthly payments (scheduled to terminate in January 1, 2020), the lump sum payment remaining on the mortgage triggered on January 1, 2020, and the \$500,000 annuity also due in 2020.

Julie married John Wolfenberger on May 19, 2001. Approximately two years later, on June 30, 2003, Kenneth wrote a letter to "Julie Wolfenberger" alleging that pursuant to section 3.1.2.1, he was owed a reduction in spousal support because the family residence was refinanced. Julie filed an order to show cause (OSC), asserting she was entitled to a cost of living increase pursuant to section 3.3.1. In 2004 these issues were resolved by the parties and the court. However, neither Julie's 2001 remarriage nor the potential application of section 4337 were discussed.

It was not until four years later, on March 2, 2011, that Kenneth filed a motion to terminate spousal support because Julie had remarried, based upon the provisions of section 4337. At this point, Julie had been remarried for nearly 10 years and Kenneth had continued to timely pay spousal support. Julie filed a response.

The trial court heard argument and then took the matter under submission on November 4, 2011. A few days later it issued an order denying Kenneth's motion. The court made several evidentiary rulings, but it also noted the denial was based on the text of the MSA and therefore the evidentiary rulings did "not figure in the [c]ourt's decision." The court concluded, "Upon careful review of the entire record,

. . . the clear intent of the parties, as expressed in and determined by the four corners of the [j]udgment/[MSA], was that spousal support would continue upon the remarriage of [Julie].” In its order, the court discussed several cases and found *In re Marriage of Cesnalis* (2003) 106 Cal.App.4th 1267 (*Cesnalis*), to be controlling. After providing a lengthy legal analysis, the court denied Kenneth’s motion to terminate spousal support by operation of law due to Julie’s remarriage. On December 14, 2011, the final order was entered, and Kenneth filed an appeal.

## II

“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.) And finally we note, the trial court’s order is presumed to be correct, and it is appellant’s burden to affirmatively show error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

### A. General Legal Principles Regarding Spousal Support

Generally, “Spousal support awards and agreements, temporary as well as ‘permanent,’ are modifiable throughout the support period . . . except as otherwise provided by agreement of the parties. (§§ 3603, 3651, subd. (c)(1), 4333.)” (Hogboom

& King, Cal. Practice Guide: Family Law (The Rutter Group 2012) ¶ 17:90, p. 17-32.5, italics omitted.) “Unlike child support jurisdiction, spousal support jurisdiction does not necessarily continue postjudgment and may be divested by the terms of the order. Unless jurisdiction to award spousal support has been either expressly reserved by the order or impliedly reserved . . . postjudgment spousal support is limited by the stated duration of the order. [Citations.]” (*Id.* at ¶ 17:91, p. 17-32.5, italics omitted.)

There is an implied statutory retention of jurisdiction in cases where there has been a lengthy marriage. “In marriages of ‘long duration’ (presumptively 10 years or longer), the court is deemed to retain spousal support jurisdiction ‘indefinitely’ (notwithstanding the absence of an express reservation of jurisdiction) absent written agreement of the parties to the contrary or a court order terminating spousal support. [Citations.]” (Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, ¶ 17:92, p. 17-32.6, italics omitted.) “Even so, a retention of spousal support jurisdiction after a ‘lengthy’ marriage does not limit the court’s discretion to terminate spousal support in later proceedings on a showing of changed circumstances. [(§ 4336, subd. (c).)] [¶] Indeed, the policy of the law is that spousal support orders be made in a manner that encourages the supported party to become self-supporting within a ‘reasonable period of time’; and the failure to make good faith efforts toward self-support may be a factor considered by the court as a basis for modifying or terminating support. [(§§ 4320, subd. (l) (‘reasonable period of time’ to become self-supporting generally is deemed to be one-half the length of the marriage), 4330, subd. (b).)] [Citations.] [¶] Thus, where the supported party is capable of self-support in accordance with the marital standard of living, an indefinite-term order will rarely be appropriate. [Citations.]” (Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, ¶ 17:93, pp. 17-32.6 to 17-32.7, italics omitted.)

Generally, fixed term spousal support orders, such as the one in this case, terminate at the end of the period specified, unless the court retained jurisdiction to

extend the obligation such as where the marriage has been a long duration. (Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, ¶ 6:1100, p. 6-409.) However, termination can be triggered by other events set forth in the statutory scheme. For example, unless the parties have “otherwise agreed” 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.” (§ 4337.) Unless waived by the parties, a section 4337 termination is self executing. (Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, ¶ 6:1103.1, p. 6-410.) No motion to terminate or court action is required. (*Ibid.*)

### *C. Waiver of Section 4337*

The question raised in this appeal is whether the parties had “otherwise agreed” in writing to waive section 4337’s automatic termination of spousal support in the event of Julie’s remarriage. There is no bright line rule or magic words required for a waiver. Not surprisingly, Kenneth relies on several cases he claims take a hard line approach requiring parties who intend to waive section 4337 to expressly state support would not terminate on the supported spouse’s remarriage. We conclude those cases are distinguishable, and Kenneth’s five-page MSA is more like the agreement analyzed by the court in *Cesnalis*, *supra*, 106 Cal.App.4th 1267, the case relied on by the trial court in denying Kenneth’s motion to terminate spousal support.

Kenneth cites to *In re Marriage of Glasser* (1986) 181 Cal.App.3d 149, 150-151, in which the parties stipulated the wife would receive support for three years and their agreement was nonmodifiable “for any reason whatsoever.” When the wife remarried within that time, the court ordered support terminated by operation of law since the parties did not specifically agree in writing that the wife would continue to receive support after she remarried. (*Id.* at p. 151.) The court distinguished between an agreement that spousal support is not modifiable and an agreement that it is not terminable. The court stated, “[L]anguage showing intent not to modify the agreement

does not establish that the parties intended that Wife would continue to be supported after she remarried. A husband's obligation to his former wife ends by operation of law when she marries another. If the parties intend that support is to be 'nonterminable for any reason whatsoever,' they must say so in their agreement. No particular words are required. [Citation.] On the other hand, silence will not do. [Citation.] Language stating that the support is not modifiable also will not do." (*Ibid.*) The court added, "To say that a termination due to remarriage is nothing more than a modification flies in the face of the clear legislative intent" as shown by the fact there are different statutes governing termination of support as opposed to modification. (*Id.* at p. 152.)

Kenneth also relies on *In re Marriage of Thornton* (2002) 95 Cal.App.4th 251 (*Thornton*). In that case, the parties stipulated the wife would be paid support until further order of the court, the death of either party, or until March 1, 2003, whichever occurred first. They further agreed spousal support would be nonmodifiable. (*Id.* at p. 253.) The husband unsuccessfully moved for an order to terminate spousal support following the wife's remarriage. The appellate court reversed, holding absent an express waiver, upon remarriage spousal support terminates by operation of law under section 4337. (*Id.* at p. 257.) The court explained, "A written agreement to waive its provisions must be specific and express. An agreement making support 'non-modifiable' is not the same as an agreement making support *non-terminable* upon the statutorily specified events." (*Id.* at p. 254.)

In addition, the *Thornton* court concluded the provision of the agreement containing a list of terminating factors, not including remarriage, could not be interpreted as an express waiver of section 4337's provisions. (*Thornton, supra*, 95 Cal.App.4th at p. 257.) It stated, "If the parties wish to make a written agreement to waive the remarriage provision of section 4337, they must at a minimum expressly state that the supported spouse's remarriage will not terminate spousal support. [¶] The stipulated judgment in this case does not include the word 'remarriage' and does not mention

section 4337. It does not state that terminating events it does include (death or the date of March 1, 2003) are the *only* events that can terminate spousal support, nor does it state spousal support is ‘non-terminable,’ as opposed to ‘non-modifiable.’ Accordingly, the stipulated judgment cannot possibly satisfy wife’s burden of proving, by clear and convincing evidence, a written agreement to waive the supporting spouse’s statutory right to cease spousal support upon remarriage of the supported spouse. [Citation.]” (*Thornton, supra*, 95 Cal.App.4th at p. 257.)

The trial court found dispositive the case of *Cesnalis, supra*, 106 Cal.App.4th 1267. In that case, the stipulated judgment at issue provided: ““4. SPOUSAL SUPPORT. Husband shall pay spousal support in the amount of \$4,000.00 per month *for a period of three years*, . . . beginning November 1, 2000, and continuing until either party’s death, or October 30, 2003, whichever occurs first, at which point spousal support will terminate absolutely. The duration of spousal support will not be modifiable under any circumstances, and the termination date stated herein is absolute, and no court shall have jurisdiction over the issue of spousal support, regardless of whether any motion is made on, before or after October 30, 2003. The parties stipulate that the marriage was one of short duration, and otherwise have bargained carefully for the termination of support contained herein.”” (*Id.* at p. 1271.)

The *Cesnalis* court, relying on *Glasser* and *Thornton*, stated there were basic principles governing how a written agreement may waive the remarriage termination provision of section 4337. (*Cesnalis, supra*, 106 Cal.App.4th at p. 1271.) It surmised from those cases the general rule that “[n]o particular words are required to waive section 4337 and make spousal support continue upon remarriage, but silence will not do.” (*Id.* at p. 1272.) The court further summarized the basic principles decided in *Glasser* and *Thornton* as follows: The “remarriage termination is not waived simply because the written agreement fails to include remarriage among the terminating events that are expressly mentioned. [Citation.] [¶] Nor is section 4337 overcome if the written

agreement simply makes the spousal support provision ‘nonmodifiable’ in general. [Citations.] This is because ‘termination’ and ‘modification’ are distinct concepts describing different ways to alter a support obligation. [Citations.]” (*Ibid.*)

However, the *Cesnalis* court criticized language in the *Thornton* case that suggested particular words are required to waive section 4337 terminating provisions. (*Cesnalis, supra*, 106 Cal.App.4th at pp. 1271, 1276.)<sup>3</sup> The court concluded the statute did not require particular words. Moreover, it reasoned such a requirement would conflict with established authority permitting admission of extrinsic evidence to resolve whether a written agreement waived the section 4337 remarriage provision. (*Id.* at p. 1276.) It noted several other cases had evidenced that parties can “‘otherwise agree’” in writing to waive a section 4337 termination without an express statement to that effect. (*Ibid.*)

The *Cesnalis* court concluded “the decisions display a dichotomy. On one side are those decisions, such as *Glasser* and *Thornton*, that do not find their written agreements susceptible to the admission of extrinsic evidence or sufficient to waive section 4337; on the other side are those decisions that do” such as *Steele v. Langmuir* (1976) 65 Cal.App.3d 459, 462-463 (*Steele*), and *In re Marriage of Sherman* (1984) 162 Cal.App.3d 1132, 1137 (*Sherman*). (*Cesnalis, supra*, 106 Cal.App.4th at pp. 1272-1273.)

The *Cesnalis* court offered the following explanation for the dichotomy: “The written agreements in *Glasser* and *Thornton* stated, in boilerplate fashion, that

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<sup>3</sup> We agree with the *Cesnalis* court’s well-reasoned analysis and criticism regarding the language in the *Thornton* case suggesting particular words are required to waive the provisions of section 4337. If the Legislature had intended for the parties to use specific words, it would have crafted and provided the “magic words” within the text of the statute for parties to follow. Section 4337, like many provisions in Family Code, simply requires the parties to have “otherwise agreed” in writing to waive termination for the grounds stated in section 4337. We see no mandate requiring particular words for a valid waiver.

spousal support payments were to be made over a designated term, and added, generally, that spousal support was nonmodifiable. [Citations.] The agreements in *Steele* and *Sherman*, while they contained similar boilerplate, were more tailored in critical ways. In *Steele*, the agreement provided that spousal support would continue until death, remarriage or the expiration of 20 years, and was ‘to be deemed non-modifiable, regardless of any change of circumstances, except for the contingencies contained herein.’ [Citation.] And in *Sherman*, the agreement stated that “‘the amount of support, the method of payment and the terms and conditions of termination of support, all as [previously specified], shall not be modifiable by the parties or by any court on any ground.’” [Citation.] As we shall explain, the written agreement here comes down on the *Steele* and *Sherman* side of things.” (*Cesnalis, supra*, 106 Cal.App.4th at p. 1273, fn. omitted.)

Applying the above principles, the *Cesnalis* court determined paragraph 4 of the stipulated judgment was more specific than the agreements in *Glasser* and *Thornton*. It explained, “The specificity is centered on the duration of support and the limited circumstances that can end it. Under the wording of Paragraph 4, [husband] ‘shall pay spousal support . . . for a period of three years . . . beginning November 1, 2000, and continuing until either party’s death, or October 30, 2003, whichever occurs first, at which point spousal support will terminate absolutely.’ For good measure, Paragraph 4 adds that ‘[t]he duration of spousal support will not be modifiable under any circumstances, and the termination date stated herein is absolute[.]’” (*Cesnalis, supra*, 106 Cal.App.4th at p. 1273.) The court recognized the paragraph failed to specifically recognize remarriage, “[b]ut it does say that the only way spousal support can end before the three-year duration elapses is if one of the parties dies. Paragraph 4 reiterates that the three-year duration cannot be changed under any other circumstances; it is no stretch to say that a supported spouse’s remarriage would generally be considered one of the most prominent of such circumstances. Viewed in this light, Paragraph 4 cannot be said to be

altogether silent on remarriage as a terminating event.” (*Id.* at p. 1273.)

Moreover, unlike the nonmodifiability provision in *Glasser* and *Thornton*, the provisions in the *Cesnalis* case were more tailored and did not “broad[ly] . . . apply to the spousal support provisions generally.” (*Cesnalis, supra*, 106 Cal.App.4th at p. 1274.) The court explained, “The nonmodifiability provision of Paragraph 4 . . . is expressly limited to the three-year ‘duration of spousal support’ which ‘will not be modifiable under any circumstances’ and which will end only if the three years are up or one of the parties dies. (Italics added.) . . . With this focus on a definitive three-year duration, the ‘nonmodifiability’ provision in Paragraph 4, in contrast to such provisions in *Glasser* and *Thornton*, relates more to termination than to modification.” (*Ibid.*)

Finally, the *Cesnalis* court concluded the trial court properly admitted extrinsic evidence on the meaning of Paragraph 4. (*Cesnalis, supra*, 106 Cal.App.4th at p. 1274.) On this point, the court concluded, “The trial court reasonably determined that [wife] would not agree to the stipulated judgment if the remarriage termination language was not removed, and that the removal of that language from Paragraph 4, in light of the language that remained, was clear and convincing evidence that the parties had agreed in writing that [wife’s] remarriage would not terminate spousal support. Consequently, substantial evidence supports the trial court’s determination that [husband] waived section 4337’s remarriage termination provision.” (*Ibid.*)

#### *E. Analysis*

Turning now to the case before us, we agree with the trial court’s determination the parties’ MSA’s lengthy support provisions comes down on the *Cesnalis, Steele, and Sherman* “side of things” and can easily be distinguished from the less tailored, boilerplate-type language used in *Glasser* and *Thornton*. Like the trial court, we need not resort to extrinsic evidence because the parties’ intent is clear from the language contained within the four corners of the agreement.

Similar to the agreement in *Cesnalis*, the MSA stated the amount *as well as the duration* of support was nonmodifiable. However, unlike the single provision in paragraph 4 described in *Cesnalis* that was devoted to this point, the MSA in this case contains multiple references to the parties' intent to have an absolute 20-year support period. In addition, they bargained for a pre-agreed upon maximum monetary value for those 20 years.

Language clearly stating the 20-year duration could not be modified can be found in the following sections: (1) Section 3.5.2 stated no court has jurisdiction to "extend spousal support" beyond January 1, 2020, an earlier full payment, or Julie's death; (2) Sections 3.1.1 and 3.1.2 stated monthly payments were scheduled to terminate in 20 years on January 31, 2020; (3) Section 3.5.3 specified the Section 3 terms of spousal support were "nonmodifiable" and no court had authority to "award, modify, or extend" support; (4) That same section later repeated "no court shall have the ability to extend its jurisdiction over support beyond the time set for jurisdiction to end[;]" (5) Section 3.5.3 also stated the parties carefully bargained for "[t]he amount of support, its limited modifiability, and its termination as provided" in the agreement and "no court shall have authority to modify the amount or duration of support."

The MSA also reflects the parties' bargain for a specific maximum amount of support, indicating the parties understood Julie's remarriage would not be a terminating event. For example, Section 3.2 (Term of Spousal Support) stated support shall terminate on January 31, 2020, or "payment in full of Husband's obligation under said Section or its subparts . . ." As described earlier in the factual summary, Kenneth's "obligation" was more than a monthly payment terminating in 2020. He also agreed to make the mortgage payment until 2020, give Julie a lump sum payment representing the balance owed on the mortgage in 2020, and give her a \$500,000 annuity in 2020. Section 3.7 explained that if Kenneth were to predecease Julie, and if his death was "prior to the completion of payment of the spousal support set forth in Section 3.1 and its subparts"

then the “remaining obligations” would be paid through his life insurance policy. Thus, although some aspects of Kenneth’s support obligation was not scheduled to take place until 2020, the parties agreed that if Kenneth should die before that date, Julie would be entitled to the full amount of his promised 20-year support obligation. As stated repeatedly in the agreement, “the Parties carefully bargained for” a specific duration and amount of support that was absolute “irrespective of any change in economic or other circumstances of the Parties. The Parties understand that when a court has no jurisdiction over support, no support can be ordered regardless of the hardship that this might cause.”

To maintain the benefit of their bargain, the parties spelled out in excruciating detail the limited circumstances in which Kenneth’s multi-layered support obligation could be modified. The “obligation” could be changed (1) if the mortgage payment was lowered; (2) Julie conveyed her interest in the family home; (3) if there was a cost of living adjustment required using the parties’ pre-agreed upon formula; (4) establishment of a child support order; or (5) a taxable event created by income from the annuity or lump sum payment. Given the express language forbidding modification of the duration or amount for any other circumstance not stated above, it is no stretch to say that then 39-year-old Julie’s potential remarriage would be considered the most obvious of such circumstances. Thus, it cannot be said the MSA was silent on the circumstance of her remarriage as a modifying or terminating event.

Finally, we note the MSA in this case has one additional paragraph not contained in the agreement at issue in the *Cesnalis* decision, but lends further support for the conclusion the nonmodification language referred also to an agreement of nontermination. Section 3.3 specified spousal support was not subject to “modification, extension, or *revocation* by any court” for purposes of section 3591, subdivision (c). (*Italics added.*) Revocation and termination are terms used interchangeably. Section 3591 contains the general rule that support agreements are subject to “subsequent

modification or termination by court order.”<sup>4</sup> The statute lists two exceptions to the rule and the parties in this case expressly invoked the exception listed in section 3591, subdivision (c), permitting parties to enter into an agreement that spousal support is not subject to “modification or termination.” The Law Revision Comment to this section noted the wording was essentially the same as the prior statute except “[r]eferences to ‘terminate’ and ‘termination’ have been substituted for ‘revoke’ and revocation.’ These are not substantive changes.” (Cal. Law Revision Com. com., 29E West’s Ann. Fam. Code (2004 ed.) foll. § 3591, p. 440.) The trial court properly focused on this express language as additional evidence the parties intended support not to be modified or terminated by a court except for the specific grounds stated in their MSA.

In summary, the MSA shows the parties agreed Kenneth’s obligation to Julie and the children would last for a definitive period of 20 years, equaling a specific sum of money. Kenneth and Julie specified there could be only a handful of circumstances under which either one of them could seek modification of the amount, and they repeatedly declared the *duration* of support was nonmodifiable and support was not *revocable*. With the focus on a definitive unrevocable 20 years of support, we conclude the MSA fully addressed the limited circumstances of termination and did not include the supported spouse’s remarriage. The trial court correctly concluded the parties agreed in writing that Julie’s remarriage would not terminate spousal support.

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<sup>4</sup> Section 3591 provides: “(a) Except as provided in subdivisions (b) and (c), the provisions of an agreement for the support of either party are subject to subsequent modification or termination by court order. [¶] (b) An agreement may not be modified or terminated as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate. [¶] (c) An agreement for spousal support may not be modified or revoked to the extent that a written agreement, or, if there is no written agreement, an oral agreement entered into in open court between the parties, specifically provides that the spousal support is not subject to modification or termination.”

III

The judgment is affirmed. Respondent shall recover her costs on appeal.

O'LEARY, P. J.

WE CONCUR:

MOORE, J.

IKOLA, J.