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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of JULIE and DAVID ROBB.	B270700 (Los Angeles County Super. Ct. No. BD496976)
JULIE ROBB, Respondent, v. DAVID ROBB, Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Tamara Hall, Judge. Dismissed.

David Robb, in pro. per.; and Terran T. Steinhart for Appellant.

Cuneo & Hoover and Sarah J. Hoover for Respondent.

David Robb appeals from a judgment entered on two written settlement agreements he and Julie Robb had negotiated related to their dissolution proceedings. David contends no contract was formed by the two September 2015 settlement agreements and that the trial court therefore erred when it entered judgment pursuant to the terms of the two settlement agreements.[1] Because we conclude that the parties did form contracts when they entered into the settlement agreements, and because the parties agreed to waive their appellate rights, we dismiss the appeal.

BACKGROUND

David and Julie Robb married on August 9, 1997. The couple had two children, a daughter born in January 1999 and a son born in October 2001.

David and Julie separated on December 8, 2008. Since then, they have been locked in a pitched battle over every conceivable aspect of their dissolution.

In June 2013, David and Julie signed a settlement agreement to dispose of the litigation. The trial court entered judgment on the settlement agreement on January 14, 2014, and the marriage was dissolved.

The June 2013 settlement agreement included a provision for payment of particular sums from David to Julie and David to Julie's attorney. David and Julie agreed that if David failed to make those payments, the settlement agreement would be "void and unenforceable." David did not make those payments, and the parties later agreed that the judgment was void and

[1] We use first names for ease of reading and to avoid confusion. We intend no disrespect.

unenforceable, except that the parties stipulated that marriage was dissolved on January 14, 2014.

The parties continued to litigate after their failed attempt to settle the case. At a trial setting conference on July 15, 2015, the trial court set the matter to begin trial on September 21, 2015. In the weeks leading up to trial, David and Julie, both through counsel, worked to settle the matter. On September 11, 2015, David and Julie signed a "partial" settlement agreement. At a hearing that day, both David and Julie verbally reported to the trial court that they had reviewed the agreement, understood it, were entering into it "freely, voluntarily[,] and knowingly," that nobody had forced them to enter into the agreement, that nobody had made any promises to them that were not in the agreement, and that they understood that the agreement and its terms would become the orders of the court. On the day trial was set to begin—September 21, 2015—David and Julie signed a document entitled "stipulation for settlement on reserved issues."

Each of the two settlement documents, one consisting of a completed Judicial Council form settlement agreement and the other a document drafted by David's and Julie's attorneys, contained language permitting entry of judgment consistent with the terms of the settlement agreements under Code of Civil Procedure section 664.6. The September 11, 2015 settlement agreement—the Judicial Council form settlement agreement—also contained a provision that "[a]ll parties waive the right to appeal, to request a statement of decision, and to move for a new trial."

The September 11 agreement stated that David's attorney would prepare a judgment according to the parties' agreement, submit it to Julie's attorney for approval as to form and content,

and then file it with the trial court. "If either party or attorney fails to prepare or approve the judgment, or file objections to it within 10 days of service," the agreement continued, "the other party or attorney may prepare and submit the judgment to the court with a proof of service on the other party or attorney." The September 21 agreement—the "stipulation for settlement on reserved issues—provided that "[t]he provisions of this agreement shall be included in the Judgment being prepared by [David]'s counsel as a result of the partial settlement agreement entered into by the parties on 9/11/15."

On September 21, 2015, the trial court called the matter for hearing, signed the parties' September 21 stipulation, vacated the trial date, and set the case for an order to show cause for submission of the judgment.

David and Julie were unable to agree on the terms of a judgment to submit to the trial court. On December 1, 2015, Julie filed a request for entry of judgment under Code of Civil Procedure section 664.6. David substituted into his matter in propria persona in mid-December 2015. He filed an opposition to Julie's request for entry of judgment on December 22. On December 29, Julie replied to David's opposition and submitted an amended proposed judgment that incorporated the documents David and Julie signed on September 11 and 21, 2015. David filed additional documents in response to Julie's reply and supporting documents on January 4 and 6, 2016—the morning of the trial court's hearing on Julie's request for entry of judgment.

The trial court heard Julie's request for entry of judgment on January 6, 2016 and entered judgment the next day. David filed a timely notice of appeal.

DISCUSSION

David raises a variety of challenges to the trial court's entry of judgment on Julie's Code of Civil Procedure section 664.6 motion. Citing *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793 (*Weddington Productions*), David contends he and Julie shared no mutual assent because they did not agree on a variety of what he argues are terms material to the settlement agreements. Consequently, he explains, no contract was formed on either September 11, 2015 or September 21, 2015. He also challenges the judgment because he says that the terms of the settlement agreements are insufficiently definite for a contract to have been formed. David further contends Julie breached the settlement agreements before they were reduced to judgments in any event, so he was allowed to rescind the contracts. And finally, David argues that the trial court lacked jurisdiction to enter judgment on Julie's motion because Julie served her reply papers by mail on what he contends was an old and invalid address, which he contends violated Code of Civil Procedure sections 1013, 1013a, and 1005.

Among other responses to David's arguments, Julie requests that we dismiss the appeal, citing the appeal waiver in the parties' September 11, 2015 settlement agreement. On reply, David points out that if no contract was formed, then there is no waiver clause to enforce. We must therefore determine whether David and Julie formed a contract.

A. Contract Formation

"A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts." (*Weddington Productions*, *supra*, 60 Cal.App.4th at p. 810.) "An essential element of any contract is 'consent.'

[Citation.] The 'consent' must be 'mutual.' [Citations.] 'Consent is not mutual[] unless the parties all agree upon the same thing in the same sense.' " (*Id.* at p. 811.) We determine the existence of mutual consent "by objective rather than subjective criteria, the test being what the outward manifestations of consent would lead a reasonable person to believe." (*Ibid.*) We consider "the reasonable meaning of [the parties'] words and acts, and not their unexpressed intentions or understandings." (*Alexander v. Codemasters Group Limited* (2002) 104 Cal.App.4th 129, 141, declined to follow on other grounds by *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 526.)

"Where the existence of a contract is at issue and the evidence is conflicting or admits of more than one inference, it is for the trier of fact to determine whether the contract actually existed. But if the material facts are certain or undisputed, the existence of a contract is a question for the court to decide." (*Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 208.) The material facts here are undisputed; the parties signed two settlement agreements that contain the terms they contain and do not contain some terms David contends they should.

"Mutual assent usually is manifested by an offer communicated to the offeree and an acceptance communicated to the offeror." (*Donovan v. RRL Corp.* (2001) 26 Cal.4th 261, 270-271.) "[O]rdinarily one who signs an instrument which on its face is a contract is deemed to assent to all its terms." (*Marin Storage & Trucking, Inc. v. Benco Contracting and Engineering, Inc.* (2001) 89 Cal.App.4th 1042, 1049.)

David contends that the September 11 and 21, 2015 settlement agreements, which he signed, do not constitute a contract, but rather are merely unenforceable agreements to

negotiate in the future about terms to which David and Julie could reach no agreement. David contends that the parties never agreed who would incur tax liability for certain distributions, never agreed on a specific method of accounting for (and therefore the value of) certain distributions, the priority of a security interest in Julie's favor the agreement purported to create in certain of David's assets, and various other terms David contends were material to the settlement.

David's argument, of course, is not that he did not agree to the terms contained in the documents entitled "settlement agreement," but rather that those documents did not contain terms sufficient from which a court could determine the parties' agreement. While David's argument blurs the line between contract formation and contract enforceability, there are cases, *Weddington Productions* included, that speak of formation in terms of definiteness. In any event, we find the settlement agreements to be sufficiently definite to be enforceable.

"Under California law, a contract will be enforced if it is sufficiently definite (and this is a question of law) for the court to ascertain the parties' obligations and to determine whether those obligations have been performed or breached. [Citations.] Stated otherwise, the contract will be enforced if it is possible to reach a fair and just result *even if, in the process, the court is required to fill in some gaps*." (*Ersa Grae Corp. v. Fluor Corp.* (1991) 1 Cal.App.4th 613, 623, italics added.)

The settlement agreements here are sufficiently definite for the trial court to enforce, likely without the need for the court to fill in any gaps. The September 11, 2015 settlement agreement, entitled "settlement agreement at time of trial (partial)," which both David and Julie signed, is a Judicial Council form

settlement agreement that contains detailed terms about child support, health care for the couple's children, physical and legal custody of the children, spousal support, whether parties can disclose the existence of assignments or assets to third parties, very specific property division orders, and a multitude of other specifically negotiated terms and conditions. The September 11 agreement reserved specific issues "for determination at a further hearing or trial." The September 21, 2015 settlement agreement was drafted by the parties' attorneys and contains eight more pages of attorney-drafted terms by which both parties agreed to be bound. The September 21 agreement expressly resolved each of the issues the parties' reserved for later determination in the September 11 agreement.

A contract need not contain every possible term that a person could choose to eventually disagree about. Nor must a contract spell out in detail exactly how its terms are to be executed or what obligations each party might individually have as a result of complying with its provisions. Were we to require that, settlement agreements would be reduced to a historical relic and litigation would last forever. A party inclined to do so will find something to fight about regardless of how detailed and exhaustive the settlement agreement is. At some point, however, the fight must turn to enforcing the settlement agreement through a breach of contract action or judgment enforcement proceedings. The settlement agreements here were sufficiently definite to inform the parties and the trial court of the terms upon which the parties based their settlement. The matters David raises are matters that he can raise with his accountants and attorneys. David's tax liability for particular distributions,

for example, is a matter that David can take up with his accountant, and Julie need not be part of that determination.

Weddington Productions presents a relatively unique factual scenario. During a day-long mediation, the parties in that case negotiated a single-page term sheet that included specific provision for other agreements to be negotiated later. The term sheet noted that the parties would enter into, for example, a licensing agreement for a sound library, but did not establish any of the terms of the licensing agreement. (*Weddington Productions*, *supra*, 60 Cal.App.4th at pp. 801-802.) Instead, through a process that one side participated in and the other did not, the mediator fashioned a 33-page document that "purported to impose upon appellants numerous material settlement terms to which appellants had never agreed." (*Id.* at p. 797.) The trial court then entered judgment on that 33-page document. (*Ibid.*) "By this method, a one-page memorandum which appellants signed after the initial mediation session became a thirty-five page judgment containing numerous material terms to which appellant had never agreed." (*Ibid.*)

The settlement agreements attached to and incorporated into the judgment here are far removed from the single-page term sheet in *Weddington Productions*. There is, indeed, no part of the judgment here to which David did not expressly agree.

The parties here *did* mutually consent to the terms of their settlement agreements, which became the trial court's judgment. And the contracts' terms are sufficiently definite to be enforced. We find no error in the trial court's entry of judgment on Julie's motion.[2]

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[2] David also argues that the parties' conduct after September 21 was evidence that no contract had been formed. By

B. Appeal Waiver

Based on our determination that David and Julie entered into contracts on September 11 and 21, 2015 that were reduced to a judgment on January 7, 2016, we consider whether David has waived his right to appeal the judgment. The parties' settlement agreement provides that "[a]ll parties waive the right to appeal . . . ."

"It is well-settled that a party may expressly waive its right to appeal subject to only a few conditions: 1. The attorney must have the authority to waive a party's right to appeal. 2. The waiver must be express and not implied. 3. The waiver must not have been improperly coerced by the trial judge." (*McConnell v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1985) 176 Cal.App.3d 480, 488.) Here, the parties both signed the settlement agreement waiving their appellate rights; the first and second conditions are obviously satisfied. Additionally, the trial court here was in no way aware of the waiver until the documents were presented to the trial court, and the trial judge here never discussed or brought up the appellate waiver with the parties or their attorneys. The waiver here was not coerced by the trial judge.

We conclude that David and Julie waived their right to appeal the January 7, 2016 judgment. On that basis, we will dismiss the appeal.

September 21, either a contract had been formed or it had not. Events after September 21 may have some bearing on contract interpretation in the event a court determines the contract is ambiguous (*Crestview Cemetery Ass'n v. Dieden* (1960) 54 Cal.2d 744, 754), but they have no bearing on whether a contract was formed in the first instance.

C. Jurisdiction

David also challenged on appeal the trial court's jurisdiction to hear the request for entry of judgment based on Julie's service of reply papers by mail on December 28, 2015 (filed on December 29, 2015) for a hearing on January 6, 2016.[3] David contends that mail service of the reply papers violated Code of Civil Procedure sections 1005, subdivision (c) and 1013, subdivision (a). *Dobrick v. Hathaway* (1984) 160 Cal.App.3d 913, 921 (*Dobrick*), states that "[e]ffective service of process by mail requires strict compliance . . ." with the Code of Civil Procedure's service provisions. "Strict compliance is required, and failure to comply deprives the court of jurisdiction." (*Dobrick*, at p. 921.)

" 'When courts use the phrase "lack of jurisdiction," they are usually referring to one of two different concepts, although, as one court has observed, the distinction between them is "hazy." ' " (*People v. Lara* (2010) 48 Cal.4th 216, 224.) One type of jurisdiction—"fundamental" jurisdiction—denotes jurisdiction over the subject matter or the parties. (*Ibid.*) " 'On the other hand, a court may have jurisdiction in the strict sense but nevertheless lack " 'jurisdiction' (or power) to act except in a

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[3] David argues that Julie served the papers on a Rodeo Drive address that she knew to be an old address for a closed office. Although we do not reach David's jurisdictional question, we note that David alternately used the Rodeo Drive address and a Las Vegas address on his trial court filings long after he claims the Rodeo Drive office was closed. David's substitution of himself in propria persona filed in mid-December listed the Rodeo Drive address as his address. His papers opposing the request for entry of judgment—filed on December 22, 2015—were captioned with an address in Las Vegas. But on January 4, 2016, David filed a declaration captioned with the Rodeo Drive address.

particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites." ' " (*Ibid.*) " '[F]undamental jurisdiction cannot be conferred by waiver, estoppel, or consent. Rather, an act beyond a court's jurisdiction in the fundamental sense is null and void' *ab initio*." (*Id.* at p. 225.) " 'In contrast, an act in excess of jurisdiction is valid until set aside, and parties may be precluded from setting it aside by such things as waiver, estoppel, or the passage of time.' " (*Ibid.*)

The timing issue David raises implicated neither subject matter nor personal jurisdiction. Rather, David's argument implicates a scenario in which the trial court *may* have acted in excess of its jurisdiction. We need not decide whether it did, however, because David expressly waived his right to appeal the judgment and with it, the right to argue that the trial court acted in excess of its jurisdiction (as compared to the absence of fundamental jurisdiction).

DISPOSITION

The appeal is dismissed. Respondent is awarded costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

BENDIX, J. CURREY, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.