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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of JOAN
WALDMAN and SHAWN
CLEMENT.

B271467

(Los Angeles County
Super. Ct. No. PD049268)

JOAN WALDMAN,

Appellant,

v.

SHAWN CLEMENT,

Respondent.

APPEAL from a judgment of the Superior Court of
Los Angeles County, Susan Lopez-Giss, Judge. Reversed with
directions.

Leslie Schwaebe Akins LC and Leslie Schwaebe Akins for
Appellant.

Fortis, Matthew A. Berliner and Adam P. Harris, for
Respondent.

Joan Waldman and Shawn Clement married in 2000 and separated in 2011. After protracted litigation Waldman and Clement agreed in January 2016 to terms for the division of their community assets, which were then read into the record before the family court. When the parties later disagreed on the meaning of a principal term of the settlement—the allocation of copyrights to music composed by Clement during the marriage—the family court ruled in favor of Clement and entered judgment pursuant to Code of Civil Procedure section 664.6 (section 664.6), with the further provision that Waldman could appeal the disputed copyright issue to this court. Because the record and governing law support Waldman’s position, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

Waldman, a lawyer, and Clement, a musician, began working together to market Clement’s compositions in 1997.¹ In 1998 Waldman helped Clement establish Clemistry Music, LLC, and in 1999 incorporated the business as Clemistry Music, Inc. (Clemistry) with Clement as 100 percent shareholder. Waldman and Clement were married in 2000 and continued to work together through Clemistry to provide composing services to studios and production companies for use in motion pictures and television productions. Waldman managed the business and

¹ Waldman also filed a related lawsuit against Clement asserting a claim for breach of express/implied contract based on her contributions prior to the marriage. (See *Waldman v. Clement* (Super. Ct. L.A. County, 2015, BC599635.) In that action Waldman alleged the couple had met in 1995 at Sony Pictures Entertainment while Clement was working as a mailroom clerk and Waldman worked in the business affairs department of a Sony subsidiary.

negotiated contracts; Clement composed the music that generated the couple's income.

Typically, composer fees for writing new pieces of music (music cues) are paid directly to the composer. As described by Clement, a music cue may consist of a few notes or sounds or a complete song used for opening and closing themes in films and television shows, as well as background music. If the music cue is not used, it becomes part of the composer's catalog of music available for further licensing. To control the rights to his or her own music cues (or cues the composer has acquired from others), the owner may register copyrights for the music cues with a performing rights organization such as BMI or ASCAP. Those registered cues are included in the composer's music library, which is a subset of the composer's music catalog. Through Clemistry, Clement registered copyrights for many of the music cues, but not all. During the litigation Clement estimated Clemistry's music catalog contained more than 20,000 music cues, of which 2,500 to 3,000 were part of its music library. Clemistry is also a music publishing company that acquired the publishing rights from music written by Clement and others.

Waldman petitioned for dissolution of the marriage on February 18, 2010, and the couple separated on March 11, 2011. After five years of litigation the parties agreed to terms that were read into the record at a mandatory settlement conference (MSC) on January 11, 2016. With respect to the division of the community's interest in the music cues, as to which Waldman had claimed a 50 percent community property interest, she agreed to accept a 25 percent interest, coupled with a \$1 million equalization payment. As first read into the record by Clement's representative, this provision of the parties' agreement was

described in the following language: “With regard to the community property royalties, Petitioner shall receive 25 percent of all copyrighted royalties for musical cues written and/or owned by [Clement and companies associated with him] . . . prior to January 11, 2016.”

After a short discussion of measures to ensure Clement did not encumber, transfer or assign any cues without Waldman’s agreement, Waldman’s counsel asked to review the notes read by Clement’s representative. He first pointed out the 25 percent royalties were not to be paid only from copyrighted [that is, registered] material; instead, the term was intended to apply to all music cues “created, registered or written,” “adapted,” “acquired or owned prior to January 11, 2016.” Clement agreed; and Waldman’s counsel continued, “The way that it’s written is slightly different in the first sentence. Petitioner shall receive 25 percent of all *copyrights and royalties* for music cues written and/or owned by Respondent.” (Emphasis added.) The court asked the parties whether that was the correct language, and Clement paused first to confer with his representative. The court again asked, “That’s your understanding, so you agree?” Clement answered, “Yes.”

At the close of the MSC both parties stated they were satisfied with the agreement. The court advised the parties the agreement was now on the record and effective forthwith. Clement’s representative was instructed to prepare the judgment and an order to show cause re enforcement of the judgment was set for January 27, 2016, later continued to February 3, 2016.²

² In reliance on the agreement Waldman dismissed her breach of contract action, and Clement made the \$1 million equalization payment.

The parties, however, were unable to agree on the text of the proposed judgment prepared by Clement's representative. Waldman served objections to the proposed judgment and requested the matter be set for hearing under section 664.6. A principal objection was the draft's use of the term "copyright royalties" instead of the phrase "copyrights and royalties" as had been specified at the settlement conference. Waldman agreed Clement would have 100 percent of the copyright administrative rights (allowing him to manage the copyrights), but argued joint ownership would prevent Clement from selling copyrighted material without her consent.

At the February 3, 2016 hearing to review the proposed judgment, Waldman's counsel pointed out the difference between the language agreed to at the MSC and Clement's proposed judgment. The court, however, insisted the agreement reached had contemplated only that Waldman receive a portion of the money generated from the copyrights: "It's the 25 percent of the royalties and copyrights. She doesn't own it. Just 25 percent of the money." When Waldman's counsel continued to object to the court's interpretation, the court stated: That "was not my understanding. . . . I'm clarifying what I was talking about. She's not getting 25 percent of his copyrights. She's getting 25 percent of anything that's generated out of those copyrights."

After discussing other issues, which were ultimately resolved, Waldman declined to sign the stipulated judgment because of the court's copyright ruling and requested the matter be set for a further section 664.6 hearing. Citing *In re Marriage of Worth* (1987) 195 Cal.App.3d 768 (*Worth*) as authority for the proposition the copyrights are divisible community property, Waldman's counsel advised the court the 25 percent ownership

would prevent Clement from transferring the music to someone else and emphasized Waldman had already agreed Clement would retain all administrative management rights. The court answered, “That’s not the deal and that’s not what this court is ordering I’ll sign it, you want to take it up, fine, but that was not the agreement.” In the end, the parties signed the stipulated judgment, which contained the copyright royalties clause preferred by Clement and the court but permitted Waldman to appeal the copyright ownership issue to this court. The court ordered the marriage terminated and entered judgment.

CONTENTIONS

Waldman contends the trial court erred by refusing to enforce the stipulated settlement agreement term governing the division of music cue copyrights or, in the alternative, abused its discretion by entering the dissolution judgment over her objection and refusing to set the issue for trial.

Clement contends Waldman may not prosecute this appeal because she has already accepted the \$1 million equalization payment from Clement. We do not address that issue in light of Clement’s stipulation allowing Waldman to pursue the appeal of the copyright issue.

DISCUSSION

1. Section 664.6 and Standard of Review

Section 664.6 provides, “If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the

parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.” This section grants authority to a trial court to enforce settlement agreements without the need to file a new lawsuit. (*In re Marriage of Assemi* (1994) 7 Cal.4th 896, 905, 911 [§ 664.6 creates summary procedure to enforce settlement agreements when certain prerequisites satisfied]; see *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1125; *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809 (*Weddington*).)

In general, ordinary principles of contract interpretation apply to settlement agreements; and the trial court must give effect to the mutual intention of the parties as it existed at the time the agreement was entered. (See Civ. Code, § 1636; *Weddington, supra*, 60 Cal.App.4th at p. 797.) The parties’ mutual intent is determined according to objective, rather than subjective, criteria. (*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1126; *Weddington*, at p. 811; see also Civ. Code, § 1638 [the “language of a contract is to govern its interpretation”].) “Although a judge hearing a section 664.6 motion may receive evidence, determine disputed facts, and enter the terms of a settlement agreement as a judgment [citations], nothing in section 664.6 authorizes a judge to *create* the material terms of a settlement, as opposed to deciding what terms *the parties themselves* have previously agreed upon.” (*Weddington*, at p. 810; accord, *Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1360; see *California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664 [“[a]lthough a court may not add to or make a new stipulation without mutual consent of the parties [citation], it may reject a stipulation that is

contrary to public policy [citation], or one that incorporates an erroneous rule of law”].)

“The trial court’s factual findings on a motion to enforce a settlement pursuant to section 664.6 ‘are subject to limited appellate review and will not be disturbed if supported by substantial evidence.’” (*Osumi v. Sutton, supra*, 151 Cal.App.4th at p. 1360; accord, *Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1182.) We review the trial court’s legal conclusions de novo. (*Weddington, supra*, 60 Cal.App.4th at p. 815.)

2. *Waldman Has a Community Property Interest in the Music Cue Copyrights Under California Law That Is Consistent with the Parties’ Express Agreement at the Settlement Conference*

In *Worth, supra*, 195 Cal.App.3d 768, the case relied on by Waldman, the First District held that not only royalties and profits generated by copyrights, but also ownership of the copyrights themselves belong to the marital community. (*Id.* at pp. 773-774.) In that action, a couple had agreed to divide equally the royalties from trivia books written by the husband during the marriage. When the husband later filed a copyright infringement action against the producers of the “Trivial Pursuit” board game claiming that the producers had plagiarized certain questions from his books, the wife sought an order from the superior court declaring she was entitled to one-half of any proceeds obtained from the husband’s lawsuit based upon the terms of their interlocutory decree. (*Id.* at p. 771.) The trial court granted the wife’s request and ordered the husband restrained from disbursing the proceeds of any verdict or settlement of his lawsuit until he accounted for the wife’s share. (*Ibid.*) The court of appeal affirmed, holding that, if the books constituted community property, by extension, the

copyrights to the books were community property as well.
(*Id.* at p. 774.)

Although *Worth* has been consistently criticized by copyright practitioners and commentators,³ there are no California cases rejecting this holding. In fact, there are remarkably few cases discussing it. Although the Fifth Circuit reached a similar conclusion under Louisiana civil law using a different rationale (see *Rodrigue v. Rodrigue* (5th Cir. 2000) 218 F.3d 432, 439-442), the Hawai'i Supreme Court has rejected *Worth* entirely and held any community property interest in copyright ownership is preempted by the federal Copyright Act's protection of authorship. (See *Berry v. Berry* (2012) 127 Hawai'i 243, 261-262 [discussing 17 U.S.C. § 201].)

Clement invites us to revisit *Worth* and adopt *Berry*'s approach, but that issue is not properly before us. The judgment here resulted from a settlement; and we are concerned only with the interpretation of the party's agreement, that is, whether the record confirms Waldman and Clement agreed to apportion the copyrights at the settlement conference. The transcript of the

³ See, e.g., Gibbons, *Then, You Had It, Now, It's Gone: Interspousal or Community Property Transfer and Termination of an Illusory Ephemeral State Law Right or Interest in a Copyright* (2013) 24 Fordham Intell. Prop. Media & Ent. L.J. 97, 107-110; Comment, *Divorcing Ideas* (2012) 43 McGeorge L.Rev. 487, 498-499; Nevins, *To Split or Not to Split: Judicial Divisibility of the Copyright Interests of Authors and Others* (2006) 40 Fam. L.Q. 499, 514-516; Polacheck, *The "Un-Worth-Y" Decision: The Characterization of a Copyright as Community Property* (1995) 17 Hastings Comm. & Ent. L.J. 601; Nimmer, *Copyright Ownership by the Marital Community: Evaluating Worth* (1988) 36 UCLA L.Rev. 383.

settlement hearing establishes that, when Waldman's counsel corrected the language used by Clement's representative to describe the provision agreed to during the negotiation, Clement conferred separately with his representative and agreed to give Waldman a 25 percent interest in the "copyrights and royalties," a position consistent with the holding in *Worth*. That language alone should have governed the trial court's resolution of the dispute between Waldman and Clement regarding this term of their agreement. However, the trial court disputed Waldman's interpretation of the term, and, notwithstanding counsel's attempt to explain the holding of *Worth*, insisted community property dispositions always allocate only royalties not ownership. That is not the state of the law in California and not what the parties agreed to. The trial court's imposition of its understanding of the agreement at the settlement conference was erroneous.

Accordingly, we find substantial evidence does not support the trial court's conclusion Waldman was entitled to receive only royalties and other profits generated by the copyrights. Instead, the parties also agreed to confer on Waldman a 25 percent ownership share in the copyrights.

DISPOSITION

The stipulated judgment is vacated. The cause is remanded to the family court for correction of the judgment to reflect Waldman's 25 percent ownership interest in the copyrights created or acquired before January 11, 2016 and for entry of judgment thereon. Waldman is to recover her costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.