Filed 9/4/12 Marriage of Clune CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Marriage of ELIZABETH ADRIENNE and GORDON CLUNE.	B234006 (Los Angeles County Super. Ct. No. BD393093)
ELIZABETH ADRIENNE CLUNE, Appellant, v. GORDON CLUNE, Respondent.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Stephen Moloney, Judge. Affirmed.

Reuben Raucher & Blum, Timothy D. Reuben, Stephanie I. Blum, Michelle H. Chen for Appellant.

Law Offices of Marjorie G. Fuller, Marjorie G. Fuller, Lisa R. McCall; Brandmeyer, Stanton, Dockstader & Davidson, Brian K. Brandmeyer for Respondent.

Elizabeth Adrienne Clune challenges a spousal support modification that includes automatic step-downs starting in 2014. Though appellant stipulated to step-downs when the dissolution judgment was entered in 2006, she now regrets the agreement she negotiated and wants it rewritten. The trial court decided to hold appellant to her goal of self-sufficiency and declined to eliminate the parties' agreed-upon step-downs. The burden remains on appellant to petition for modification in the future if she fails to achieve her goal. The court's ruling was not an abuse of discretion.

FACTS

The 2006 Dissolution Judgment

Gordon and Adrienne Clune married in 1982. In 2003, at the age of 41, Adrienne petitioned for divorce, after 21 years of marriage. They have three children. Adrienne stopped receiving child support in June 2010, when the youngest child reached 18. She was the primary caregiver during the marriage. Gordon was the primary custodial parent during and after dissolution, because Adrienne wanted to live with her boyfriend.

The parties stipulated to a dissolution judgment in April 2006. Adrienne received $578,758 as one-half of the net proceeds from the sale of the parties' residence in Malibu, which sold for $2.9 million. Gordon gave Adrienne a promissory note for $1 million, payable over 30 years at a 5 percent interest rate. The note represented an equalizing payment from the division of community property, as well as a buyout of Adrienne's interest in Klune Industries and her interests in real property. Gordon paid off the promissory note in three years, at a discounted rate of $697,881.

The parties stipulated to 19 years of spousal support. Gordon agreed to pay nonmodifiable support of $8,350 per month for four years, from 2005 to 2009. The parties agreed to subsequent spousal support, a modifiable obligation to be stepped down over 15 years. The step-down agreement lists monthly support of $7,000 (2009 to 2014); $5,000 (2014 to 2019); $2,000 (2019 to 2022); and $1,000 (2022 to 2024). Support terminates on December 15, 2024. The judgment states that this agreement is voluntary, and the parties are "completely aware" of its contents and legal effects.

Adrienne's Work History and Income

Adrienne earned a bachelor's degree in Home Economics at Trinity College in Ireland in 1982. From 1982 to 1992, she worked full time teaching in a private school and in the Clune family businesses, in which she was a co-owner/administrator. Adrienne took a one-year leave of absence after her second child was born. She resumed working, then stopped in 1996 to be a full-time mother.

After dissolution, Adrienne sought a teaching credential, but her college degree was deemed inadequate in the United States, and she needed more academic credits. She decided to attend a culinary school, at a cost of $48,577 for a 15-month program. In January 2009, she began working at Saddle Peak Lodge for 27-30 hours per week at an hourly rate of $9; she also teaches cooking classes and sells homemade foods.[1] From these jobs, she earns a total of about $1,000 per month.

Adrienne's income is capsized by her monthly expenses of $23,065. The bulk of this expense is a monthly mortgage of $14,985, stemming from Adrienne's purchase of a house in Malibu for $2.7 million in 2007. She later amended her declaration to show that she makes an "interest only" mortgage payment of $1,634 per month, and her total housing expenses (mortgage, property tax, insurance, maintenance, utilities) total $2,500 per month. Adrienne initially declared that her live-in boyfriend contributes nothing toward household expenses. She later amended her declaration to show that he pays $2,500 monthly to rent a guest house/studio on her property, though nothing toward the main house. Adrienne listed assets of $602,280 (from Gordon's equalization payment), stocks or bonds worth $188,698, and her Malibu home.

Gordon's Work History and Income

Gordon is vice-president of Klune Industries, an aerospace manufacturing business started by his father. He works over 50 hours per week at his job for $25,000 per month. Gordon's additional income (from interest, dividends, rents, etc.) is $35,000 per month.

---

[1] At the time of the hearing, Adrienne's pay had increased to $10.50 per hour.

In 2008, Gordon sold his interest in a family welding business for $9 to 10 million. His total assets are $18 million (gross) and $5 million (net of debt). Plus, he has other debts of $4.2 million. Gordon's monthly expenses are $39,997, most of which is spent on a $12,000 monthly mortgage on a $6.1 million house he purchased in 2009, property taxes, and children's education.

Adrienne's Request for a Modification

In January 2010, when the initial four-year period of nonmodifiable spousal support ended, Adrienne filed an OSC to modify support. She asked the court to increase her support, instead of allowing the first step-down stipulated in the dissolution judgment to take effect. At the hearing, Adrienne said she required monthly support of $16,000 to $30,000 to meet her expenses.

Adrienne argued that the parties enjoyed "an extravagant lifestyle" during marriage. They lived in a 7,000-square-foot home on 22 view acres in Malibu; took frequent vacations where they traveled first class and stayed in exclusive resorts; dined in expensive restaurants; and drove luxury cars. Adrienne complained that Gordon continues to live well in Brentwood, while she lives in a 2400-square-foot home in Malibu. Gordon lives and travels in style while Adrienne takes one trip annually—in coach class—to visit her parents in Ireland.

Adrienne asserted that the 2006 dissolution judgment "does not reflect that these spousal support orders meet the marital standard of living." She reasoned that because she lives below the marital standard, and she has been unable to become self-supporting, this is a change of circumstances warranting modification of the judgment. The termination of child support in 2010 is a further reason Adrienne gives to modify spousal support. The parties negotiated the terms of spousal support on the presumption that Adrienne would become self-supporting and earn enough income to maintain the marital lifestyle. Because of her obligations to her children, to Gordon, and to their family business, Adrienne did not further her education and was unprepared to return to the workforce in 2006.

Gordon countered that the marital standard of living is only one component for determining spousal support, and the critical factor is Adrienne's need for more support. Because she is cohabitating with a boyfriend, there is a presumption that support should be reduced. Further, Adrienne stipulated in 2006 that the support amounts recited in the dissolution judgment meet her reasonable needs. Gordon asked the court to deny Adrienne's request for a modification and retain the step-downs delineated in the 2006 dissolution judgment. He pointed out that in 2005, Adrienne's monthly living expenses were $10,822. In 2010, Adrienne declared monthly living expenses of $23,065. The primary culprit was Adrienne's housing cost, which rose from $4,000 to $14,985. Adrienne used poor judgment in purchasing a home that is beyond her means.

Gordon noted that the parties had a moderate standard of living when Adrienne petitioned for divorce in 2003: their joint tax returns reflect pre-tax income of $806,925 (2000), $90,969 (2001), $243,102 (2002), and $212,129 (2003). He argued that Adrienne did not make reasonable efforts to become self-supporting because she did not obtain a teaching credential and is working in a restaurant at close to minimum wage. Based on her ability to earn, plus rental and interest income, Adrienne should be making $10,576 per month, plus spousal support. Chefs with Adrienne's education and experience earn about $30,000 per year. Adrienne's boyfriend should be paying monthly rent of $3,250, in addition to other house and food expenses. Gordon supports his three adult children and three stepchildren with whom he and his new wife live.

THE TRIAL COURT'S RULING

The court conducted a hearing on the OSC re modification on January 7, 2011. At the hearing, the court focused on the 2006 dissolution judgment, which was negotiated by the parties with the assistance of "skilled lawyers." The court examined the parties' expense declarations. It noted that the loss of child support was anticipated and negotiated into the dissolution judgment, so it does not constitute a change in circumstances. Adrienne made a unilateral decision to greatly increase her housing expenses following the divorce. The dissolution judgment did not establish any need to

address the marital standard of living. The court suggested that Adrienne return to school to obtain a teaching credential, if she cannot increase her income as a chef.

The court directed Gordon to pay $8,350 per month from February 2011 until December 2014. In other words, it extended for four additional years the initial support rate stipulated to in 2006. Effective December 2014 to 2019, the court ordered that support be reduced to $7,000 per month. Finally, Adrienne will receive $2,000 monthly from 2020 to 2022, and $1,000 monthly in 2023 and 2024. Support terminates in 2024. This order is modifiable, but is not retroactive to the date of Adrienne's petition. Neither party requested a statement of decision, and none was rendered; hence, there are no factual findings, only the court's musings while voicing its tentative ruling.

DISCUSSION

Adrienne appeals from the postjudgment order modifying spousal support. A support order may be modified, even if based on a "private" agreement that merges into the judgment. (Fam. Code, § 3603; *In re Marriage of Maytag* (1994) 26 Cal.App.4th 1711, 1714-1715.) The 2006 dissolution judgment states that the amount of spousal support payable to Adrienne after the first four years is "modifiable." (Compare *In re Kilkenny* (1979) 96 Cal.App.3d 617, 620 [agreement that is "'absolute, unconditional and irrevocable'" is not subject to modification].)

A support order is modifiable "only upon a material change of circumstances since the last order. 'Change of circumstances' means a reduction or increase in the supporting spouse's ability to pay and/or an increase or decrease in the supported spouse's needs. It includes all factors affecting need and the ability to pay." (*In re Marriage of West* (2007) 152 Cal.App.4th 240, 246.) The trial court has discretion to fashion a modification order. (*Ibid.*) That discretion is abused "if no reasonable judge would have made a similar order under the same circumstances." (*In re Marriage of Winick* (1979) 89 Cal.App.3d 525, 528.) We "must resolve conflicts in the evidence and draw inferences from the evidence in the manner which best supports the trial court's judgment." (*Ibid.*)

Adrienne does not dispute the $8,350 per month in support that the court awarded her starting in February 2011.[2] Instead, she challenges the step-downs, which reduce monthly support to $7,000 starting in December 2014. The trial court has discretion to modify step-down orders. (*In re Marriage of Prietsch & Calhoun* (1987) 190 Cal.App.3d 645, 654-655.) In this instance, step-downs were negotiated by the parties with the help of their attorneys. In its ruling, the court declined to abrogate the parties' agreement by eliminating the step-downs. At the OSC hearing, the court noted that "spousal support shall remain at $7,000 per month *per the judgment*," which was a stipulated judgment. (Italics added.) The parties contemplated that Adrienne would work, as she no longer has children at home.

The trial court did not abuse its discretion by honoring the parties' intent that Adrienne become self-supporting. When considering a change in circumstances, "the trial court is bound to give effect to the intent and reasonable expectations of the parties as expressed in the [marital settlement] agreement." (*In re Marriage of Aninger* (1990) 220 Cal.App.3d 230, 238.) For example, the court cannot reevaluate spousal support stipulations reached during arm's-length negotiations, simply because the supporting party's income increased after the divorce was final. (*Modglin v. Modglin* (1966) 246 Cal.App.2d 411, 415.)

"The only change in circumstances that would open the door to modification of [a] support order would be a showing that despite her reasonable efforts she was unable to support herself. Other facts such as [respondent's] salary were irrelevant. [Citation.] These factors, presumably, were considered by [appellant] and her counsel in negotiating the marital settlement agreement. Now, four years later, the trial court could not simply discard the negotiated agreement and design a new one more to its liking." (*In re Marriage of Aninger, supra,* 220 Cal.App.3d at p. 241.)

---

[2] Gordon similarly does not challenge the temporary increase in support.

Here, the trial court considered that Adrienne spent 15 months and some $48,000 for a culinary degree, which diminished the amount of time she spent working and gaining experience. She now makes barely more than minimum wage at an expensive restaurant. (Adrienne does not mention whether there is tip sharing among employees.) The low wage justified the court's acquiescence to continuing Adrienne's support at $8,350 for four more years. Adrienne's current standing in the restaurant pecking order does not justify rewriting the terms of the parties' negotiated step-down agreement. Given her culinary degree—and the sterling commendations from her instructors at the culinary school saying that Adrienne "was a top student" with "leadership qualities" and "talent"—Adrienne gives no reason to presume that in four years she will still be preparing salads at minimum wage. Alternatively, she could use the money from Gordon to complete her degree in education, an area in which she has already worked as a private school teacher.

When the parties negotiated the terms of their dissolution agreement, Adrienne's monthly living expenses were $10,822, and she had partial custody of two children. The original spousal support of $8,350, plus several thousand dollars of child support, covered Adrienne's living expenses. One year after judgment, Adrienne purchased a Malibu home for $2.7 million, causing her monthly living expenses to soar to $23,065. The parties' family home in Malibu sold for $2.9 million. Adrienne's new home cost five times her net one-half interest ($578,000) in the marital abode.

In this regard, we refer to *In re Marriage of Aninger*, in which the parties negotiated a marital support agreement based on the wife's then-existing living expenses. The wife received $185,000 upon the sale of the family dwelling, and used it to purchase a condominium for $280,000, thereby increasing her living expenses. The court wrote, "It cannot be said the increased housing cost was an unanticipated occurrence justifying an increase in spousal support. . . . [I]t would defeat the intent and reasonable expectations of the parties that Ms. Aninger would achieve self-support if the court allowed her to manufacture a change in circumstances by going into debt far beyond her means." (220 Cal.App.3d at pp. 241-242.)

Adrienne made a deliberate choice to purchase a home for far more than her stake in the former family dwelling. Adrienne's expensive postdivorce choice of living arrangements is not a reason to rewrite the parties' marital settlement agreement. Obviously, the parties did not contemplate that Adrienne would elect to hike her monthly expenses from $10,000 to $23,000 when they negotiated their agreement. Gordon cannot be denied the benefits of his bargain owing to Adrienne's profligacy.

Adrienne asserts that she is only trying to maintain her former standard of living during marriage. Again, we consult *In re Marriage of Aninger*, where the same claim was made and rejected. "Even assuming a $280,000 condominium is more in keeping with Ms. Aninger's standard of living during marriage than a $185,000 condominium, the settlement agreement did not contemplate Ms. Aninger would be able to maintain her former standard of living. The level of support agreed to and its termination after 10 years clearly does not contemplate at the end of 10 years Ms. Aninger, a secretary, would be earning as much as Mr. Aninger, a corporate executive." (220 Cal.App.3d at p. 242.) The court added, "'When a court remakes a bargain at the request of one party for no other reason than that party's later dissatisfaction with the agreement, a court not only diminishes the bargaining process itself, but strays from the judicial restraint essential to a rational judicial process.'" (*Ibid.*)

"Limiting the duration of support so that both parties can develop their own lives, free from obligations to each other, is a commendable goal." (*In re Marriage of Morrison* (1978) 20 Cal.3d 437, 452; Fam. Code, § 4320, subd. (l) [court must consider the goal that a supported party become self-supporting within a reasonable period of time].) Step-downs "encourage [ ] supportive self- reliance, and [ ] discourage delay in preparation for or in seeking, or refusal of, available employment." (*In re Marriage of Richmond* (1980) 105 Cal.App.3d 352, 356.) Should the parties' expectations of Adrienne's earning capacity prove overly optimistic, Adrienne may come forward and try to prove changed circumstances, instead of placing Gordon "in the undesirable position of having to play detective on his former spouse in order to insure that she does not conceal an increase in her income. The order before us places the burden of seeking

modification on the party within whose knowledge the facts involved directly lies." (*In re Marriage of Winick, supra*, 89 Cal.App.3d at pp. 530-531.) The court did not abuse its discretion by maintaining the terms of the parties' negotiated marital settlement agreement, including its step-down provisions with a view to a termination of support in 2024.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

BOREN, P.J.

We concur:

DOI TODD, J.

ASHMANN-GERST, J.