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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of NANDI and LEBOHANG MORAKE.	B271144 (Los Angeles County Super. Ct. No. BD416832)
NANDI MORAKE, Respondent, v. LEBOHANG MORAKE, Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Marc D. Gross, Judge. Affirmed.

Law Office of Michael A. Younge and Michael A. Younge for Appellant.

Abrams & Heyn LLP and Michael L. Abrams for Respondent.

This appeal presents a straightforward issue of contract interpretation. Appellant Lebohang Morake (Husband) appeals the trial court's denial of his request for an order both terminating his alleged obligation to pay his former wife, respondent Nandi Morake (Wife), spousal support and requiring Wife to reimburse him for alleged overpayments of spousal support. The dispute turns on the proper interpretation of the parties' marital settlement agreement, which was negotiated by the parties and their counsel and incorporated into their final judgment of dissolution of marriage. As explained below, we conclude the trial court properly interpreted the marital settlement agreement and affirm.

BACKGROUND

The parties married in December 1992 and separated in May 2004. During their marriage, Husband and Wife acquired interests in a significant amount of intellectual property, including music Husband produced for The Lion King musical. We refer to these interests as the parties' community intellectual property. A final judgment of dissolution was entered on February 26, 2007. The parties' marital settlement agreement (Agreement) was incorporated into the judgment. Wife remarried in 2014, and in 2015 Husband unsuccessfully sought an order from the superior court terminating his alleged obligation to pay spousal support payments to Wife and requiring Wife to reimburse him for overpayments of spousal support.

The parties' dispute centers on the proper interpretation of the provisions of the Agreement addressing spousal support and division of community property.

1. Marital Settlement Agreement

The parties and their counsel negotiated and prepared the Agreement during mediation prior to the trial court's entry of judgment of dissolution of marriage.

A. Spousal Support

Section 4 of the Agreement addresses spousal support. Paragraphs 4.1 and 4.2 are relevant here. Paragraph 4.1 provides: "Husband shall not be currently obligated to pay Wife spousal support. However, the Court retains jurisdiction to award Wife spousal support upon appropriate circumstances in the future and in an amount determined by the agreement of the parties, or Order of Court, if they cannot agree." Paragraph 4.2 provides: "The parties have agreed upon certain payments as set forth in paragraph 5.[5]A[1] below which shall serve as a substitute for Wife's spousal support."

B. Division of Community Property

Section 5 of the Agreement details the division of the parties' community property. Paragraphs 5.1A(xx), 5.1E, and 5.5A are relevant here. Paragraph 5.1A(xx) awards to Husband "as his sole and separate property" "[a]ll right, title and interest in and to the Results and Proceeds (defined below), including, without limitation, copyrights, trademarks, patents, and/or other intellectual property rights (inclusive of all renewals and extensions of such rights), in and to the Results and Proceeds. Without limiting the foregoing, Husband shall be entitled to retain all Gross Earnings (defined below) derived from the Results and Proceeds, provided that the foregoing terms of this

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[1] The parties agree paragraph 4.2 mistakenly cross-references paragraph "5.4A" and instead should cross-reference paragraph 5.5A.

sentence shall not be construed to excuse Husband of his obligations to Wife in paragraph 5.5 below."

Paragraph 5.1E states: "The division of property set forth in this paragraph 5.1 and paragraph 5.5 below represents an agreement of the parties as to a division of their community property and a settlement of all claims involving comingled or contested separate property, or for reimbursement by either party to the other, or the community property."

Paragraph 5.5A addresses the division of the parties' community intellectual property. Specifically, paragraph 5.5A states: "Commencing forthwith upon the entry of this Judgment, Husband shall pay Wife 40% of the annual net after-tax amounts he receives from all Gross Earnings."

The Agreement defines "Results and Proceeds" as "any and all of the results and proceeds of Husband's Entertainment Activities," which include "any and all of Husband's activities in the entertainment industry during marriage . . . whether as a writer, composer, [etc.]." And "Gross Earnings" are defined as "the gross sums of money or other considerations . . . directly or indirectly earned by Husband or Husband's heirs, successors and assigns, or by anyone on Husband's behalf, from any and all of Husband's Entertainment Activities, including, without limitation, any and all royalties, fees and/or other consideration derived from exploitations of sound recordings for which Husband rendered services as a recording artist and/or producer in whole or in part during marriage and any and [*sic*] royalties, fees and/or other consideration derived at any time from exploitations of musical compositions created by Husband in whole or in part during marriage. . . . [¶] Husband's Entertainment Activities include, but are not limited to [The Lion King compositions]."

2. Husband's July 2015 Request for Order

On July 31, 2015, Husband filed a request for an order with the trial court. Husband explained Wife had remarried in December 2014 and, therefore, under Family Code section 4337 he was no longer obligated to pay spousal support to her under the terms of the Agreement. He asked the trial court to enter an order both terminating his obligation to pay spousal support and ordering Wife to reimburse him for spousal support he had paid to her after she remarried. Husband argued that, although paragraph 4.1 of the Agreement stated he was not obligated to pay spousal support to Wife, he actually had been paying her spousal support under paragraph 5.5A of the Agreement, which required him to pay Wife 40 percent of his annual net after-tax earnings from the community intellectual property. Husband explained paragraph 4.2 of the Agreement clearly stated his paragraph 5.5A payments to Wife "serve[d] as a substitute for Wife's spousal support." Thus, Husband claimed those payments should be treated the same as spousal support.

Wife opposed the request for order. Wife argued Husband's payments to her under paragraph 5.5A of the Agreement constituted a division of their community property and were not spousal support payments. According to Wife, Husband was misinterpreting the meaning of paragraph 4.2 of the Agreement, which stated her interest in the community intellectual property "shall serve as a substitute for Wife's spousal support." Wife explained paragraph 4.2 was included because, in light of the significant income she would receive from the community intellectual property, she had no need for additional support. She "never understood [paragraph 4.2] to mean that the payments were spousal support." Wife stated Husband had not paid her in

months and, as a result, she had no income, was living on government assistance, and her landlord threatened to evict her because she could not pay her rent.

3. Hearing and Order

The trial court held a hearing on Husband's request for order on February 3, 2016. After hearing argument, the trial court denied Husband's request to terminate spousal support payments and to order reimbursement for overpayments. The court stated, "I disagree with [Husband's] interpretation of the language in the agreement. . . . [¶] I don't feel that the payments were equivalent to spousal support such that they should be cut off upon remarriage." The trial court also explained, "The judgment indicates that the payments were a stream of income payments that are due under the judgment as a result of earnings from assets which had been community property which were transferred to [Husband] in the judgment as a division of the community property. [¶] So the fact that the judgment has the language the payments will be a substitute or in substitute of spousal support, I don't think entitles [Husband] to cut off the payments on [Wife's] remarriage, as he is arguing, under [Family Code section] 4337."

On March 17, 2016, the trial court entered its findings and order denying Husband's request to terminate payments to Wife. The court held "the 40% net income payable to [Wife] from the assets specified in [section] 5 of the Judgment, is not spousal support, but a division of property."

4. Appeal

On March 22, 2016, Husband filed a notice of appeal from the court's March 17 order.

DISCUSSION

1. Applicable Law

In construing the Agreement as incorporated into the judgment, we employ the statutory rules governing interpretation of contracts generally. (*In re Marriage of Hibbard* (2013) 212 Cal.App.4th 1007, 1012–1013.) " 'The interpretation of a written instrument is essentially a judicial function to be exercised according to the generally accepted canons of interpretation so that the purposes of the instrument may be given effect.' " (*In re Marriage of Facter* (2013) 212 Cal.App.4th 967, 978.) We conduct an independent review of the Agreement. (*Marriage of Hibbard*, at p. 1012.)

"A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." (Civ. Code, § 1636.) If possible, the intent is to be ascertained solely from the language of the contract itself. (*Id.*, § 1639.) And if reasonably practicable, the entire contract is to be construed so as to give effect to every part, using each clause to interpret the other. (*Id.*, § 1641.) "Particular clauses of a contract are subordinate to its general intent." (*Id.*, § 1650.) Language in a contract must be interpreted as a whole and in the circumstances of the case, and cannot be deemed ambiguous in the abstract. (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1265; see Civ. Code, §§ 1641, 1647.)

2. The trial court correctly held Husband's payments to Wife under paragraph 5.5A of the Agreement are not spousal support payments.

Husband argues the trial court misinterpreted the Agreement. According to Husband, his payments to Wife under

paragraph 5.5A of the Agreement constitute spousal support payments, which by law terminate upon Wife's remarriage. Husband's position hinges on his interpretation of paragraph 4.2 of the Agreement, which states: "The parties have agreed upon certain payments as set forth in paragraph 5.[5]A below which shall serve as a *substitute for Wife's spousal support*." (Italics added.) Paragraph 5.5A provides: "Commencing forthwith upon the entry of this Judgment, Husband shall pay Wife 40% of the annual net after-tax amounts he receives from all Gross Earnings." Husband argues that, because his payments under paragraph 5.5A are a "substitute for Wife's spousal support," those payments must be treated the same as spousal support. We disagree.

The Agreement is unambiguous and does not require Husband to pay spousal support to Wife. Section 4 of the Agreement addresses spousal support and, in particular, paragraph 4.1 states Husband is "not . . . currently obligated to pay Wife spousal support." In addition, under that same paragraph, the parties reserved the court's jurisdiction to award spousal support in the future if circumstances changed. Husband's payments to Wife are governed by section 5 of the Agreement, which addresses the division of the parties' community property. In his push to interpret the payments to Wife as spousal support, Husband entirely ignores the language of paragraph 4.1 of the Agreement, which in no uncertain terms states Husband is not obligated to pay spousal support unless later ordered to do so by the court. Thus, under the terms of the Agreement, Wife received no spousal support. Instead, Wife received a distribution of the parties' community intellectual property.

Husband's reliance on paragraph 4.2 is misplaced. Contrary to Husband's position, "a substitute for Wife's spousal support" is not the same as spousal support. Rather, a substitute for spousal support means it is *not* spousal support. It is something different; something instead of spousal support. This plain meaning interpretation is supported by other provisions of the Agreement. (See Civ. Code, §§ 1639, 1641.) First, as already noted, paragraph 4.1 states Husband was not obligated to pay spousal support. Second, although Husband points out paragraph 5.1A of the Agreement awarded certain community property "as his sole and separate property," Husband fails to acknowledge paragraph 5.1A(xx), which explicitly limits his right to the community intellectual property by his obligation to pay Wife 40 percent of the net after-tax Gross Earnings from the community intellectual property. Specifically, paragraph 5.1A(xx) states Husband shall "retain all Gross Earnings . . . derived from the Results and Proceeds, *provided that the foregoing terms of this sentence shall not be construed to excuse Husband of his obligations to Wife in paragraph 5.5 below*." (Italics added.) Third, paragraph 5.1E plainly states the division of property outlined in paragraphs 5.1 and 5.5 (i.e., the payments at issue here) "represents an agreement of the parties as to a division of their community property," not spousal support payments. Notably, in his briefs on appeal Husband entirely ignores the unambiguous language of paragraphs 4.1, 5.1A(xx), and 5.1E, all of which support the conclusion his payments to Wife were not spousal support payments. Given the plain language of the Agreement, we conclude the payments Husband is required to make to Wife under paragraph 5.5A of the Agreement are not spousal support payments.

In light of the above, Husband's transmutation argument is not persuasive. Although Husband argues the community intellectual property was transmuted to him such that it is now his separate property, he ignores the plain language of the Agreement that clearly limits any transmutation of the community intellectual property. As explained above, to the extent there was a transmutation of the community intellectual property, it was not as to the entirety of that community property. Rather, as detailed in paragraph 5.1A(xx) of the Agreement, any transmutation was unambiguously subject to Husband's obligation to pay Wife 40 percent of the net after-tax Gross Earnings from that community property. Finally, we find it irrelevant whether Wife sought to avoid taxes, as Husband claims.

DISPOSITION

The order is affirmed. Nandi Morake shall recover her costs on appeal.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.