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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of MARIA
and FRANCISCO EDGARDO
PAREDES.

JANET PAREDES et al.,

Appellants,

v.

MARIA PAREDES,

Respondent.

B268732

(Los Angeles County
Super. Ct. No. VD56450)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Michelle Williams Court, Judge. Vacated
with directions.

Levy, Small & Lallas and Tom Lallas for Appellants.

Brandmeyer Gilligan & Dockstader and John J. Gilligan for
Respondent.

Janet Paredes, Alice Parades, Mercedes Paredes, and Elizabeth Paredes appealed from a judgment entered after the court granted their request for an order to enforce a settlement agreement. Thereafter, the court filed an amended judgment that corrected certain clerical errors in the judgment. Appellants contend that the amended judgment still fails to reflect the terms of the settlement agreement by omitting language requiring all parties execute mutual and general releases. We agree, and will direct the court to issue a further amended judgment to include the appropriate text.

FACTUAL AND PROCEDURAL SUMMARY

The appellants are daughters of Francisco Edgardo Paredes (Edgardo Paredes). Edgardo was married to Maria Paredes (not appellants' mother).¹ In Edgardo and Maria's marital dissolution proceeding, appellants sued Edgardo and Maria seeking, among other relief, to quiet title to certain real property.

At a mediation held on May 29, 2013, appellants, Edgardo, and Maria reached a settlement, which was memorialized in a handwritten, two-page "Deal Memo." Among other provisions, it provides: "(1) mutual & general releases," and requires Maria to transfer title to certain properties to appellants.

On June 23, 2014, appellants filed a request for order (RFO) to enforce the settlement agreement, and lodged a proposed order that: (1) called for the court to enter judgment in the form attached to the order as exhibit 1; and (2) required the parties to execute a mutual general release in the form attached to the proposed order as exhibit 2. Paragraphs 7E and 7G of the proposed judgment provide that Maria shall deposit quitclaim deeds

¹ We refer to Edgardo and Maria Paredes by their first names for the sake of clarity, and not out of disrespect.

to specified properties, but does not mention that Edgardo would also deposit such deeds.² The proposed judgment also included, in paragraph 14C, a provision stating that “the parties have entered into an agreement to sign and execute Mutual General Release[s] of all Complaints and Claims, in a form approved by [Maria and Edgardo] that shall be, and is, binding on each of them.”

At the hearing on the RFO held on July 30, 2014, the court announced its tentative ruling to grant the RFO, indicating that it would enter judgment in the form attached to the appellants’ proposed order. During argument, counsel for appellants announced that he would submit on the tentative ruling, but added that there were “two omissions in the proposed order that [he could] deal with later on.” Edgardo and Maria, through their respective counsel, then made various arguments opposing the RFO. When appellants’ counsel responded, he concluded by addressing the omissions in the proposed judgment. Specifically, “where it says, ‘Maria shall transfer,’ ” it should say, “. . . Maria and [Edgardo] shall transfer.” Otherwise, counsel explained, “the tentative ruling by the court is correct and accurate” and “consistent with the settlement agreement.”

At the conclusion of the hearing, the court stated that it was granting the RFO “subject to the corrections that [appellants’

² Paragraph 7E provided: “Maria D. Paredes shall deposit into escrow the quitclaim deeds, without warranty, described herein transferring title to the Gage property, the California street property, the Stafford property, the Live Oak property and the Firestone property.”

Paragraph 7G provided: “Consistent with the settlement agreement, Maria D. Paredes shall transfer by quitclaim deed, without warranty, any and all right, title, and interest, whether community or separate, that she may have in the following real properties.”

counsel] has indicated he's going to make." The court directed appellants' counsel "to resubmit a proposed judgment."

In September 2014, appellants submitted a proposed order and judgment that included corrections to the legal descriptions and the addition of Edgardo's name to paragraphs 7E and 7G. The proposed order also included changes to paragraph 7J. Paragraph 7J originally ordered appellants to sign a "full release of all claims and liabilities" against Edgardo and Maria, but did not require Edgardo or Maria to sign a release of claims they had against appellants. In the revised proposal, paragraph 7J is modified to order Maria and Edgardo to sign releases on the same terms as appellants' releases.

On April 16, 2015, the court rejected the proposed judgment for reasons that, while not clear from our record, appear to have been procedural and unrelated to the substance of the document. On May 29, 2015, the court again directed appellants to "resubmit the judgment" in accordance with its prior instructions.

As of June 15, 2015, appellants had not served Maria with a new proposed judgment or resubmitted one to the court. Maria then served on appellants a proposed judgment. Maria's proposed judgment included the correct legal descriptions of the properties, but was otherwise identical to the proposed judgment that appellants had *originally* proposed; that is, it did not add Edgardo's name to paragraphs 7E or 7G and did not include any changes to paragraph 7J. After the expiration of the time provided by rule 5.125(d)(2) of the California Rules of Court for other parties to object to the proposed judgment, Maria submitted it to the court.

On September 21, 2015, the court entered the judgment that Maria submitted.

On November 18, 2015, appellants filed a motion to "correct" the judgment in two respects. First, they argued that the court should modify paragraphs 7E and 7G to add Edgardo's name as a

transferor of the properties. Second, the judgment should include the changes regarding the mutual releases they had sought to paragraph 7J. The appellants stated in the motion that the corrections that needed to be made in the legal descriptions “have in fact been made.”

On November 20, 2015—two days after they filed the motion to amend the judgment—appellants appealed from the judgment. Maria filed a respondent’s brief. Edgardo did not.

On December 28, 2015, the trial court issued a minute order granting in part appellants’ motion to correct the judgment. The court stated: “As ordered by Judge Court at the July 30, 2014 hearing, [appellants are] ordered to file an amended judgment with two corrections: 1) the previously stipulated legal description of two properties and 2) adding [Edgardo’s] name to two places in the judgment.”

On May 11, 2017, the trial court filed an amended judgment that added Edgardo’s name to paragraphs 7E and 7G as appellants had requested, but did not include the language appellants sought regarding mutual releases.³

At oral argument, appellants’ counsel stated that the issues regarding paragraphs 7E and 7G and the legal descriptions had been resolved by the amended judgment. The only issue remaining is whether the judgment should include the requirement that Maria and Edgardo execute releases.

³ Appellants requested that we take judicial notice of the amended judgment. During oral argument, Maria’s counsel stated that Maria did not oppose the request, and we granted it.

DISCUSSION

Initially, we note that the trial court was not precluded from amending the judgment while this appeal was pending in order to add Edgardo's name to paragraphs 7E and 7G. Although the commencement of an appeal generally "stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby" (Code Civ. Proc., § 916), the trial court retains the power to correct clerical errors, but not judicial errors, in a judgment. (*In re Candelario* (1970) 3 Cal.3d 702, 705; *Bed, Bath & Beyond of La Jolla, Inc. v. La Jolla Village Square Venture Partners* (1997) 52 Cal.App.4th 867, 883.) A clerical error is one that causes the form of the order or judgment to misstate "the actual intent of the court." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2016) ¶¶ 7:17-7:18, p. 7-10.) When a clerical error in the form of an order is corrected, the corrected order "truly reflects the order actually made." (*Estate of Eckstrom* (1960) 54 Cal.2d 540, 545.)

The addition of Edgardo's name to paragraphs 7E and 7G, we conclude, corrected clerical errors. At the conclusion of the July 30, 2014, hearing on the appellants' RFO to enforce the settlement, the court stated that it was granting the RFO "subject to the corrections that [appellants' counsel] has indicated he's going to make." It is plain from the record that the corrections counsel indicated he would make are the addition of Edgardo's name to paragraphs 7E and 7G of the judgment. The trial court thus had the power to order the requested change, which it exercised by granting the appellants' motion to correct the judgment in that respect.

Turning to the remaining substantive issue on appeal, we agree with appellants that the judgment does not sufficiently reflect the parties' agreement with respect to mutual and general releases. In enforcing a settlement under Code of Civil Procedure

section 664.6, the court may not enter a judgment that varies in a material way from the terms of the settlement agreement without the consent of the parties. (*Leeman v. Adams Extract & Spice, LLC* (2015) 236 Cal.App.4th 1367, 1375.) Where, as here, no extrinsic evidence was offered to aid in the interpretation of any ambiguity in the agreement, construction of the instrument is a question of law, which we consider independently. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865; *Winet v. Price* (1992) 4 Cal.App.4th 1159, 1166.)

Here, the parties agreed to “mutual [and] general releases.” This agreement is reflected in paragraph 14C of the amended judgment, which recites that the parties have *agreed* to sign mutual general releases. This recital, however, does not have the force and effect of an order to sign such releases. Accordingly, the judgment must be amended to provide that the parties are ordered to sign such releases. (See Code Civ. Proc., § 906.)

Appellants submitted their proposed changes to paragraph 7J in September 2014, and Maria and Edgardo did not object. We therefore adopt that language, which we set forth in our disposition.

DISPOSITION

Upon remand, the court shall vacate the amended judgment entered on May 11, 2017, and enter an amended judgment nunc pro tunc that is identical in all respects to the May 11, 2017, amended judgment except that paragraph 7J of the amended judgment shall be deleted and the following inserted in its place:

J. Claimants (JANET PAREDES, ELIZABETH PAREDES, MERCEDES PAREDES, and ALICE PAREDES) are ordered to sign a full release of all claims and liabilities approved by Maria D. Paredes and Edgardo F. Paredes, releasing Maria D. Paredes and Edgardo F. Paredes and all other parties of all claims by Claimants (JANET PAREDES, ELIZABETH PAREDES, MERCEDES PAREDES, and ALICE PAREDES), past and present, against all parties (“Claimants’ Release”), and are ordered to deposit the Claimants’ Release into Escrow, Maria D. Paredes is ordered to sign a full release of all claims and liabilities approved by Claimants (JANET PAREDES, ELIZABETH PAREDES, MERCEDES PAREDES, and ALICE PAREDES) releasing Claimants (JANET PAREDES, ELIZABETH PAREDES, MERCEDES PAREDES, and ALICE PAREDES) of all claims, past and present (the “Maria Release”) and is ordered to deposit the Maria Release into Escrow, Edgardo Paredes is ordered to sign a full release of all claims and liabilities approved by Claimants (JANET PAREDES, ELIZABETH PAREDES, MERCEDES PAREDES, and ALICE PAREDES) releasing Claimants (JANET PAREDES, ELIZABETH PAREDES, MERCEDES PAREDES, and ALICE PAREDES) of all claims, past and present (the “Edgardo Release”) and is ordered to deposit the Edgardo Release into Escrow, Claimants (JANET PAREDES, ELIZABETH PAREDES, MERCEDES PAREDES, and ALICE PAREDES) are ordered to deposit a signed request for dismissal with prejudice of the civil

complaint and the complaint in joinder, dismissing all parties and all causes of action (“Claimants’ Dismissals”). Concurrently with Escrow’s receipt of the Claimants’ Release and the Claimants’ Dismissals, Escrow shall deliver to Claimants (JANET PAREDES, ELIZABETH PAREDES, MERCEDES PAREDES, and ALICE PAREDES) the Quitclaim Deeds. Escrow shall also deliver the executed Maria Release and Edgardo Release to Claimants (JANET PAREDES, ELIZABETH PAREDES, MERCEDES PAREDES, and ALICE PAREDES) upon written request therefor by Claimants.

The parties shall bear their own costs on appeal.

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ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.