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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Marriage of JONI HOFFMAN and  
JOSEPH HOFFMAN.

B235734

(Los Angeles County  
Super. Ct. No. BD413730)

JONI HOFFMAN,

Respondent,

v.

JOSEPH HOFFMAN,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Nancy Pogue, Temporary Judge. (Pursuant to Cal. Const., art. VI, §21.) Reversed.

Klapach & Klapach and Joseph S. Klapach for Appellant.

No appearance for Respondent.

I. INTRODUCTION

Joseph Hoffman appeals from a July 6, 2011 order granting the motion of Joni Hoffman, his former spouse, for an arrearage determination and order. The trial court

reinstated spousal support because it found Mr. Hoffman violated the terms of a February 23, 2009 stipulation by failing to pay three months of spousal support arrearages. Mr. Hoffman argues the trial court erred in applying the February 23, 2009 stipulation. Mr. Hoffman argues the relevant terms of the February 23, 2009 stipulation were modified by a July 14, 2010 stipulation. We conclude the parties modified the February 23, 2009 spousal support arrearage payment schedule in the July 14, 2010 stipulation. Accordingly, we reverse the trial court's order reinstating spousal support to Ms. Hoffman.

## II. BACKGROUND

The Hoffmans were married in 1987 and have three children together. Joshua, born January 23, 1989; Elyssa, born March 30, 1991; and Liza, born February 17, 1996. On September 21, 2004, Ms. Hoffman filed a marital dissolution petition. A marital dissolution judgment was entered on February 6, 2007. Mr. Hoffman agreed to pay \$2,000 per month in spousal and \$3,000 per month in child support (\$1,000 for each of his three children). Mr. Hoffman later fell behind in his support obligations and owed \$35,578.51 in child and spousal support arrearages as of May 31, 2008.

On February 23, 2009, the Hoffmans entered into a stipulation that addressed the arrearages and modified his spousal support obligation. Ms. Hoffman was represented by counsel who drafted the stipulation. Mr. Hoffman, who represented himself, reviewed and asked for explanations and changes to the stipulation before signing it.

Paragraph 3 of the February 23, 2009 stipulation provides: "Upon the execution of this Stipulation and payment by [Mr. Hoffman] of the sum designated in paragraph 4.B, [Mr. Hoffman's] Two Thousand Dollar (\$2,000) per month spousal support obligation shall be terminated, as of May 31, 2008, without prejudice to automatic reinstatement, which shall be retroactive to June 1, 2008, upon breach of any of the conditions contained in paragraphs 4.B, 4.C and 4.G below, and he shall only be required to pay, as and for child support, the sum of Two Thousand Dollars (\$2,000) per month to

[Ms. Hoffman], for a total monthly support obligation of Two Thousand Dollars (\$2,000). [¶] A. When [Mr. Hoffman's] child support obligation pertaining to Elyssa Sara Hoffman terminates pursuant to *Family Code* §3901, [Mr. Hoffman] shall still be obligated to pay the sum of Two Thousand Dollars (\$2,000) per month to [Ms. Hoffman], with One Thousand Dollars (\$1,000) per month being applied to reduce [Mr. Hoffman's] then existing child and/or spousal support arrearage obligation. [¶] B. When [Mr. Hoffman's] child support obligation pertaining to Liza Rose Hoffman terminates upon June 1, 2014, or pursuant to *Family Code* §3901, [Mr. Hoffman] shall still be obligated to pay the sum of Two Thousand Dollars (\$2,000) per month to [Ms. Hoffman], with said Two Thousand Dollars (\$2,000) per month payment being applied to reduce [Mr. Hoffman's] spousal support arrearage and child support arrearage, if any, owed to [Ms. Hoffman]. Such Two Thousand Dollar (\$2,000) per month payment to [Ms. Hoffman] shall continue until [Mr. Hoffman's] child and/or spousal support arrearage[s] are reduced to zero at which time all payments shall cease."

Paragraph 4.B of the February 23, 2009 stipulation provides in relevant part: "[Mr. Hoffman] shall pay Two Thousand Five Hundred dollars (\$2,500) in five payments of Five Hundred dollars (\$500) each, without interest thereon, as his contribution to [Ms. Hoffman's] attorney fees expended in enforcement of her child and spousal support orders and the creation of this agreement. . . . A default on any one of the Five Hundred dollar (\$500) payments is a default of the entire agreement as described in paragraph [No.] 6, below."

Paragraph 4.C of the February 23, 2009 stipulation states: "Commencing June 1, 2008, and continuing thereafter on the first day of each subsequent month, [Mr. Hoffman] shall pay Two Thousand Dollars (\$2,000) per month to [Ms. Hoffman], as and for child support for the minor children Elyssa Sara Hoffman, DOB 3-30-91, age 17 and Liza Rose Hoffman, DOB 12-17-96, age 12. The receipt of payments of \$2,000 for each of the months of June, July, August and September, 2008 are acknowledged. [¶] Child support is allocated \$1,000 per month for each minor child and is payable on the first day of each month. Should [Mr. Hoffman] be late on any payment, for the purposes of this

Stipulation, [Mr. Hoffman] will not be in default of this agreement if [State Disbursement Unit] receives his payment no later than the 5th day of the month following the month the payment is due. . . . By way of example, if [Mr. Hoffman] is required to pay \$2,000 on October 1, 2008, he will default on this Stipulation if his \$2,000 payment is not received by [State Disbursement Unit] on or before November 5, 2008.”

Paragraph 4.G of the February 23, 2009 stipulation provides: “Time is strictly of the essence for all payments to be paid to [Ms. Hoffman] by [Mr. Hoffman]. These monthly payments are to be paid in full during each calendar month. Accordingly, a monthly payment is delinquent and [Mr. Hoffman] is in material breach of this Stipulation if the payment was not delivered during usual business hours to a Federal Express Office or to a U.S. Post Office for overnight delivery not later than the 4th day of the month following the month the payment was due and missed. By way of example, if Joseph is required to pay \$2,000 on October 1, 2008, he will default on this Stipulation if his \$2,000 payment was not received by Federal Express or the United States Postal Service, during normal business hours, for overnight delivery to [State Disbursement Service] on or before November 4, 2008.”

Paragraph 6 of the February 23, 2009 stipulation states: “If a payment is not timely made pursuant to the provisions of paragraph 4.B, 4.C. and 4.G above, this Stipulation is terminated, its terms become null and void and the parties are returned to the status quo ante on the day before the execution of this Stipulation, wherein the previous spousal support order is reinstated, which the parties acknowledge will create additional spousal support arrearage, plus ten percent (10%) simple interest per annum per *Code of Civil Procedure* § 685.010 and the parties are released to pursue the claims and remedies each had prior to the execution and operation of this Stipulation including, but not limited to, accrued interest on the new spousal support arrearage, contempt, penalties and attorney fees that may be claimed by [Ms. Hoffman], save and except [Mr. Hoffman] shall be credited with any payments he made under this Stipulation.”

In May 2009, Elyssa graduated from high school and Mr. Hoffman’s monthly child support obligation was reduced to \$1,000 per month. Mr. Hoffman continued to

pay \$2,000 per month to Ms. Hoffman until January 2010. Mr. Hoffman failed to pay the \$1,000 arrearages payments in May, June and July 2010 as required by paragraph 3.A of the February 23, 2009 stipulation. However Mr. Hoffman paid more or equal to his \$1,000 per month child support obligation under paragraph 4.C of the February 23, 2009 stipulation by paying: \$1,204.14 in May 2010; \$1,000 in June 2010; and, \$1,200 in July 2010. Mr. Hoffman made these child support monthly payments before “the 5th day of the month following the month the payment is due” as required by paragraph 4.C of the February 23, 2009 stipulation.

On July 14, 2010, the parties modified the February 23, 2009 agreement because Mr. Hoffman experienced changed circumstances with his income. The July 14, 2010 stipulation expressly states, “All orders previously made in this action remain in full force and effect except as specifically modified below.” The July 14, 2010 stipulation modified the February 23, 2009 stipulation by reducing Mr. Hoffman’s child support level and the arrearage payment obligations. The monthly child support payment for Liza was reduced from \$1,000 per month to \$900 per month. As to the monthly arrearage payments, they were reduced from \$1,000 per month to \$350 per month beginning August 1, 2010. The July 14, 2010 stipulation stated defendant owed \$5,662.66 in child support arrearages and \$40,275.48 in spousal support arrearages as of that date.

On May 6, 2011, Ms. Hoffman filed a motion seeking to reinstate spousal support. Ms. Hoffman argued Mr. Hoffman breached the February 23, 2009 stipulation by failing to pay \$1,000 in arrearages in May, June and July 2010 as required by paragraph 3.A. of that agreement. At the July 6, 2011 hearing on Ms. Hoffman’s motion, the trial court found Mr. Hoffman violated the terms of the February 23, 2009 stipulation. The trial court ordered reinstatement of the \$2,000 per month spousal support obligation back to June 1, 2008, based upon the February 23, 2009 stipulation. On September 2, 2011, Mr. Hoffman filed his notice of appeal.

### III. DISCUSSION

### A. Standard of Review

Marital settlement agreements are construed under the statutory rules governing interpretation of contracts. (*In re Marriage of Smith* (2007) 148 Cal.App.4th 1115, 1123; *In re Marriage of Williams* (1972) 29 Cal.App.3d 368, 377.) We are not bound by the trial court's construction of a contract. Rather, we make an independent determination of the meaning of the writing where no extrinsic evidence was admitted to resolve any ambiguity or uncertainty in the stipulations. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865; *In re Marriage of Smith, supra*, 148 Cal.App.4th at p. 1120.)

### B. Modification of February 23, 2009 Stipulation

Under paragraph 3.A of the February 23, 2009 stipulation, Mr. Hoffman was required to pay \$1,000 per month on support arrearages after child support payment for Elyssa terminated. The parties later modified the monthly support arrearage payment amount from \$1,000 per month to \$350 per month in the July 14, 2010 stipulation. In July 2010, Ms. Hoffman knew that Mr. Hoffman had not paid the \$1,000 monthly support arrearages for May, June and July 2010. In addition, Ms. Hoffman accepted performance of the July 14, 2010 stipulation for nearly a year before seeking to enforce the February 23, 2009 stipulation. She argued Mr. Hoffman breached the February 23, 2009 stipulation by failing to make the \$1,000 support arrearage payment for May, June and July 2010. The July 14, 2010 stipulation modified the February 23, 2009 stipulation concerning arrearages. Thus, Ms. Hoffman released Mr. Hoffman from his obligation to make the \$1,000 monthly arrearages payments. Ms. Hoffman therefore is estopped from seeking to reinstate spousal support based on Mr. Hoffman's breach of paragraph 3.A of the February 23, 2009 stipulation. Ms. Hoffman agreed to accept \$350 in monthly support arrearage payment in the July 14, 2010 stipulation notwithstanding Mr. Hoffman's breach of the February 23, 2009 stipulation. (See *Kern Sunset Oil Co. v. Good Roads Oil Co.* (1931) 214 Cal. 435, 440 [acceptance of payment after contract

breach with full knowledge of all facts is waiver of breach]; *Hames v. Rust* (1944) 64 Cal.App.2d 70, 75-76 [modification of lease waiving unpaid installment payments is valid and binding].)

#### IV. DISPOSITION

The July 6, 2011 order reinstating spousal support by Joseph Hoffman to Joni Hoffman is reversed. Mr. Hoffman shall recover his costs incurred on appeal from respondent, Joni Hoffman.

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TURNER, P. J.

We concur:

MOSK, J.

KRIEGLER, J.