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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

CATHERINE ADELE LAM,
Plaintiff-Appellee,

v.

ALFRED KAM YUNG LAM,
Defendant-Appellant.

OPINION

Cite as: 2015 Guam 6

Supreme Court Case No.: CVA14-004
Superior Court Case No.: DM0359-02

Appeal from the Superior Court of Guam
Argued and submitted on August 7, 2014
Hagåtña, Guam

Appearing for Defendant-Appellant:

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

CARBULLIDO, J.:

[1] Alfred Kam Yung Lam appeals from the trial court's Decision and Order denying his Motion to Eliminate or Modify Spousal Support. He argues that the trial court erred in finding that the alimony provision in the parties' Marital Settlement Agreement can never be eliminated or reduced for any reason whatsoever without the mutual consent of the parties. He also argues that sound public policy requires reversal of the trial court's Decision and Order.

[2] For the reasons set forth below, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Defendant-Appellant Alfred Kam Yung Lam ("Alfred") and Plaintiff-Appellee Catherine Adele Lam ("Catherine") were married on October 17, 1972.

[4] Both parties agreed that during the marriage Catherine would devote herself to staying home full-time to raise the couple's four children, both in Guam and in the United Kingdom.

[5] After almost 30 years of marriage, the parties separated. Catherine filed a complaint for divorce against Alfred on grounds of extreme mental cruelty and adultery. The parties were granted an absolute divorce in the Superior Court of Guam.

[6] The parties executed a Marital Settlement Agreement ("the Agreement") as part of the divorce proceeding. The Agreement was incorporated into the Interlocutory Decree of Divorce, and the trial court found the terms of the Agreement to be fair and reasonable. The Agreement was also incorporated into the Final Decree of Divorce. Under the Agreement, the parties agreed to divide and distribute all of their personal and real property as follows: Catherine obtained a

house in South Wales, U.K., and a house in San Diego, California; all of the household furnishings and appliances in both houses; all of her clothing, jewelry, and personal effects; and 13,000 shares of stock in Ambyth Shipping and Trading Inc. (“Ambyth”). Catherine was also given the right to possess and occupy the Royal Gardens Townhouse No. 32-1, Tamuning, Guam, rent-free for a three-year period.

[7] Alfred obtained the Royal Gardens Townhouse No. 32-1, Tamuning, Guam, and a house located in Tumon, Guam; all of the household furnishings and appliances in both houses; a 1995 Mercedes Benz motor vehicle; all of his clothing, jewelry, and personal effects; 12,000 shares of stock in Ambyth; Ambyth dividends from December 2002 through May 2003; and two bank checking accounts.

[8] Catherine and Alfred agreed that Catherine would not be responsible for any of the community debts, and that Alfred would pay all such debts, including several credit card accounts, a line of credit, and mortgages on the San Diego house and the Royal Gardens townhouse.

[9] Alfred also agreed to pay spousal support to Catherine as follows:

Husband shall pay to Wife the amount of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) per month, with an annual four percent (4%) increase for cost of living allowance with the first increase to commence on September 1, 2003 and annually thereafter.

RA, tab 63, Attach. at 11 (Marital Settlement Agreement, May 23, 2003). The Agreement did not specify a date of termination of the monthly support payments to Catherine.

[10] On May 14, 2013, Alfred filed a Motion for Elimination or Modification of Spousal Support in the Superior Court of Guam. Alfred argued that the following material changes in the parties’ circumstances warrant a modification of the spousal support: Catherine’s income had

increased substantially since the time of the award; she had the ability to work but declined to do so; he was of an advanced age; and his income had been reduced.

[11] Catherine filed her opposition to Alfred's motion to modify spousal support, arguing that Alfred's waiver of future claims and her waiver of the right to receive higher support or seek additional or other property distribution barred Alfred's ability to modify the spousal support award. She argued that even if Alfred is entitled to have the spousal support modified, her increased expenses warranted an increase in the amount of spousal support. She also argued that she should be awarded attorney's fees and costs for the enforcement and maintenance of the Agreement, pursuant to 19 GCA § 8402.

[12] The trial court issued a Decision and Order denying Alfred's motion. The court found that the support and property division provisions of the Agreement were integrated and may not be modified absent consent by both parties. Alfred timely appealed.

II. JURISDICTION

[13] This court has jurisdiction over an appeal from an order made after final judgment pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 113-234 (2014)) and 7 GCA §§ 3107 and 25102(b) (2005).

III. STANDARD OF REVIEW

[14] "A divorce decree incorporating a settlement agreement is simply a consent decree." *Blas v. Cruz*, 2009 Guam 12 ¶ 18 (quoting *Leon Guerrero v. Moylan*, 2000 Guam 28 ¶ 8). "Decisions interpreting a consent decree and the agreements underlying them are reviewed *de novo*." *Leon Guerrero*, 2000 Guam 28 ¶ 8 (citing *Richardson v. Edwards*, 127 F. 3d 97, 101 (D.C. Cir. 1997)); see also *Blas*, 2009 Guam 12 ¶ 11.

[15] The trial court's interpretation of a statute is a question of law and allows for a *de novo* review. *Guerrero v. Santo Thomas*, 2010 Guam 11 ¶ 8 (citing *Apana v. Rosario*, 2000 Guam 7 ¶ 9).

IV. ANALYSIS

A. Whether Spousal Support Provision is Modifiable

[16] The primary issue to be decided in this case is whether under the parties' Agreement, Alfred's spousal support payments are severable from the parties' division of property, and thus can be modified.

[17] Title 19 GCA § 6111 allows a husband and wife to contract with one another with respect to the support of each other and with respect to their property rights. *Lujan v. Lujan*, 2012 Guam 7 ¶ 20; 19 GCA § 6111 (2005). Specifically, section 6111 provides:

(a) Either husband or wife may enter into any engagement or transaction with the other, respecting property subject, in transaction between themselves, to the general rules which control the actions of persons occupying confidential relations with each other.

(b) A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

(c) The mutual consent of the parties is a sufficient consideration for such an agreement.

19 GCA § 6111.

[18] When parties enter into such "property settlement agreements," courts are reluctant to disturb the agreement. *See Lujan*, 2012 Guam 7 ¶ 21 (quoting *Adams v. Adams*, 177 P.2d 265, 267 (Cal. 1947)). Thus, where parties to a divorce action, represented by counsel, voluntarily execute a property settlement agreement which is then approved by the court and incorporated

into a divorce decree, the property provisions in such a decree may not thereafter be vacated or modified absent fraud or gross inequity. *Id.* ¶ 22 (citations omitted).

[19] “While the trial court is generally without jurisdiction to modify a divorce decree as to the division of the parties’ property, the court retains the authority to modify the decree as to spousal support.” *Id.* ¶ 23. Title 19 GCA § 8405 provides:

When a dissolution of marriage is granted, the tribunal shall . . . make such suitable allowance to the other spouse for that person’s support, during that person’s life or for a shorter period, as the Court may deem just, having regard to the circumstances of the parties respectively; and the Court may, from time to time, modify its order in these respects.

19 GCA § 8405 (2005). Section 8405 is derived from former California Civil Code section 139. *See Lujan*, 2012 Guam 7 ¶ 24. “The California cases construing section 139 hold that modification of support provisions in a divorce decree is available only when the support provisions are severable from the provisions dividing property.” *Id.*

[20] We have recognized that settlement agreements between a husband and wife to provide for support and maintenance generally fall into three categories, and the type of agreement determines whether it is subject to later modification by the court. *Id.* ¶ 24 (citing *Adams*, 177 P.2d at 267); *see also Scroggs v. Scroggs*, 2014 Guam 2 ¶ 21. The first category “includes agreements in which the support provisions are in the nature of alimony, whether in lump sum or periodic payments, and are ‘separable from the provisions that divide the property.’” *Lujan*, 2012 Guam 7 ¶ 24 (quoting *Adams*, 177 P.2d at 267). In this situation, “the court has the power to modify the provisions for alimony . . . in accord with its power over alimony generally.” *Id.* (quoting *Adams*, 177 P.2d at 267).

[21] “The second category includes contracts in which the support provisions are not in the nature of alimony but are part of the parties’ division of property, including agreements that provide solely for the payment of periodic or lump sums in ‘lieu of community property.’” *Id.* ¶ 25 (quoting *Adams*, 177 P.2d at 267). These contracts are treated like other property settlement agreements dealing solely with division of property, so that absent fraud or violation of the parties’ confidential relationship, the payments cannot be modified after judgment without the consent of the parties. *Id.* (citing *Adams*, 177 P.2d at 267).

[22] The third category includes “hybrid” agreements, which contain both provisions for division of property and provisions for support. *Id.* ¶¶ 26, 40. These include agreements “in which the husband or wife waives all support and maintenance, or all support and maintenance except as provided in the agreement, in consideration of receiving a more favorable division of the community property.” *Id.* ¶ 26 (citing *Adams*, 177 P.2d at 268). The ability to modify an order for support based on such an agreement turns on “whether the provisions relating to the division of property and those relating to support are severable rather than integrated.” *Id.* ¶ 40 (citing *Plumer v. Plumer*, 313 P.2d 549, 552 (Cal. 1957)). If they are integrated, the order for support may not be modified unless the parties have provided for or agreed to such a modification. *Id.* (citing *Plumer*, 313 P.2d at 552).

[23] “An agreement is ‘integrated’ if the parties have agreed that the provisions for the division of property and the provisions for support constitute reciprocal consideration.” *Id.* ¶ 41 (citing *Plumer*, 313 P.2d at 552). The support provisions are then necessarily part and parcel of the property division. *Id.* (citing *Plumer*, 313 P.2d at 552). Factors deemed conclusive evidence of the parties’ intent to enter into an integrated agreement include:

(1) a statement of the purpose of the parties to reach a final settlement of their rights and duties with respect to both property and support; (2) a statement that the property and support provisions are each consideration for the other; and (3) an express waiver of all rights arising out of the marital relationship except those expressly set out in the agreement.

Id. (citing *Plumer*, 313 P.2d at 552).

[24] In order to determine under which of the *Adams* categories the present agreement falls, this court applies contract principles to the interpretation of the Agreement. *See id.* ¶ 30 (citing *Blas*, 2009 Guam 12 ¶ 11). Effect must be given to the mutual intention of the parties as it existed at the time of entering into the Agreement. *Id.* (citing *Leon Guerrero*, 2000 Guam 28 ¶ 8). Because the Agreement was reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible. *See id.* (citing *Leon Guerrero*, 2000 Guam 28 ¶ 8).

[25] After review of the entire agreement and under the foregoing rules, we conclude that (1) the Agreement falls under the third *Adams* category, a hybrid agreement to settle not only the parties' property rights but their rights and duties as to spousal support; and (2) the parties intended an integrated agreement.

[26] Neither party disputes that the Agreement deals both with rights to marital property and rights to support. The Agreement clearly and distinctly lays out the provisions relating to the division of property, *see* RA, tab 63, Attach. at 4-7 (Marital Settlement Agreement) (paragraph 6, "Division of Community Property"; paragraph 7, "Division of Community and Separate Property"; paragraph 10, "After Acquired Property/Debts"), and the provisions relating to spousal support, *see id.* at 11 (paragraph 26, "Husband's Waiver of Spousal Support"; paragraph

27, “Spousal Support for Wife”). Where the parties disagree is on whether the property division provisions and the support provisions are integrated rather than severable.

[27] Alfred argues that the Agreement is not integrated because it does not meet all three factors identified in *Lujan*. Appellant’s Br. at 9 (Apr. 29, 2014). Alfred concedes that factors one (a statement of the purpose of the parties to reach a final settlement of their rights and duties with respect to both property and support) and three (an express waiver of all rights arising out of the marital relationship except those expressly set out in the Agreement) are met. *Id.* He contends that the Agreement fails to satisfy factor two, as the Agreement lacks a statement that the property and support provisions are each consideration for the other. *Id.* He argues that “[a]ll three factors must be satisfied in order for integration to occur.” *Id.*

[28] Catherine argues that all three factors have been met. Appellee’s Br. at 11 (May 29, 2014). She states that factor one is met by paragraph 5 on page 1 and paragraph 5 on page 3 of the Agreement. Appellee’s Br. at 11-12. Page 1 of the Agreement provides that the Agreement is made with reference to certain facts, the fifth being:

Whereas, it is the desire of both Husband and Wife finally and for all time to settle, adjust, compromise and determine their property rights, all rights of support and maintenance by either party against the other by reason of their marriage, all dower, curtesy, alimony, and homestead rights, and any and all other rights existing between the parties growing out of the marriage relation.

RA, tab 63, Attach. at 1 (Marital Settlement Agreement). The Agreement then states that “in consideration of the promises, considerations, and covenants found [in the Agreement], the parties agree as follows,” and proceeds to list the remaining parts of the Agreement in paragraphs numbered 1 through 34. *Id.* Paragraph 5 provides:

PURPOSE OF AGREEMENT. Except as otherwise provided in this Agreement, its purpose is to make a final and complete settlement of all rights and obligations between the parties, including all property rights and all rights and obligations concerning child custody and visitation, child support, and spousal support.

Id. at 3.

[29] Catherine also argues that the Agreement contains several waivers of all of the parties' rights arising out of the marital relationship except those expressly set out in the Agreement, thereby satisfying factor three. Appellee's Br. at 14. Specifically, she points to paragraph 2 of the Agreement, entitled "Acceptance and Mutual Release," which provides:

Each of the parties receives the property set apart to each of them and the undertakings hereof in full and complete settlement of all claims and demands of every kind, name and nature against the other party hereto, including all liability now or at anytime hereafter existing or accruing on account of support, maintenance, alimony, statutory or arising at common law, incident to the marriage relation, and after this settlement the Husband and Wife shall require nothing whatever of the other, except as herein provided, as though the marriage between them had never existed.

Id. at 15 (quoting RA, tab 63, Attach. at 2 (Marital Settlement Agreement)). She also points to: (1) each party's waiver of the right to receive any property or rights whatsoever on the death of the other, unless such right is created or affirmed by the other under a will or other written document executed after the effective date of the Agreement; (2) each party's waiver of their rights under the Guam Probate Code, Chapters 9 and 10, including but not limited to, the right to a family allowance, a probate homestead, the setting aside of exempt property, and proceeds as beneficiary of any type of insurance policy; and (3) each party's waiver and relinquishment of all rights, title and interest in all income, earnings, or other property of the other acquired after the date of separation, including "forever" waiving, releasing and relinquishing all rights, title and

interest in all future earnings, income and acquisitions on or after the date of the Agreement. *Id.* (citing RA, tab 63, Attach. at 2-3, 7 (Marital Settlement Agreement)).

[30] While in *Lujan* we did identify three factors as those deemed conclusive evidence of intent to form an integrated agreement, we did not hold, contrary to Alfred's assertion, that all three factors must be satisfied in order for an agreement to be deemed integrated. An agreement does not necessarily fail the integration test if it lacks an explicit statement that the property and support provisions are each consideration for the other. See *Plumer*, 313 P.2d 552-53 ("Even absent one or more of the foregoing provisions, there may be other proof that the parties intended an integrated agreement."). In any event, the Agreement has language that can be deemed to satisfy this second factor. Specifically, the introductory section of the Agreement states "in consideration of the promises, considerations, and covenants found [in the Agreement], the parties agree as follows," and then proceeds to list the substantive parts of the Agreement, including the division of the parties' property and the provision requiring Alfred to pay spousal support to Catherine. RA, tab 63, Attach. at 1 (Marital Settlement Agreement). In the context of the entire agreement, this statement satisfies the second factor, "a statement that the property and support provisions are each consideration for the other." *Lujan*, 2012 Guam 7 ¶ 41 (citing *Plumer*, 313 P.2d at 552).

[31] Accordingly, it is clear from the Agreement as a whole that the parties intended an integrated agreement. The Agreement deals both with rights to marital property and rights to support. The parties have set forth their purpose "to make a final and complete settlement of all rights and obligations between the parties, including all property rights and all rights and obligations concerning . . . spousal support." *Id.* at 3. They have released each other from all

claims arising out of the marital relationship except as provided in the Agreement. *Id.* at 2 (paragraph 2, “Acceptance and Mutual Release”). It is not necessary that the parties expressly recite an intent to create an integrated agreement when, as here, the agreement itself makes such an intent clear. *Plumer*, 313 P.2d at 553 (citing *Dexter v. Dexter*, 265 P.2d 873, 876 (Cal. 1954) (en banc)).

[32] Because the Agreement is integrated, the support payments may not be modified unless the parties have provided for or agreed to such a modification. The Agreement lacks such a provision. Instead, the Agreement allows for amendment or modification “only by an instrument in writing executed by both parties.” RA, tab 63, Attach. at 11 (Marital Settlement Agreement). In the absence of such a written instrument, the support provision stands.

B. Whether Public Policy Requires Reversal

[33] In addition to Alfred’s arguments concerning the integration of the Agreement, he urges this court to move away from the *Adams* reasoning adopted in *Lujan*, which he submits is an antiquated approach of little relevance in today’s vastly different social landscape from when *Adams* was decided in 1947. Appellant’s Br. at 12-13. Instead, he believes the court should hold that all alimony is modifiable based on a material change of circumstances, with the only exception being in cases where the language of a marital settlement agreement “makes it clear that the alimony is permanent and final, and that it is never modifiable due to any change of marital circumstances.” Appellant’s Br. at 14.

[34] In support of his public policy argument, Alfred cites to an American Law Reports annotation which considers the question of the power of a court to modify a decree for alimony or support which was based upon a pre-divorce agreement of the parties. *Id.* (citing John J.

Michalik, Annotation, *Divorce: Power of Court to Modify Decree for Alimony or Support of Spouse which was Based on Agreement of Parties*, 61 A.L.R.3d 520 (1975)). He argues that according to this annotation,

where the allowance in question is in the form of periodic payments limited in duration to the joint lives of the parties and the decree is sought to be modified as to future payments, the courts in most jurisdictions have ruled that they have the power to modify a decree for alimony based upon an agreement between the parties.

Id. (citing 61 A.L.R.3d 520 § 2[b]).

[35] However, section 2[b] of the annotation summarizes the jurisprudence in cases where the parties' agreement provides for alimony or support alone. In section 19[a] of the annotation, the author states:

The discussion in §§ 3-18, *supra*, of the power to grant a prospective modification of a decree for alimony or support based on an agreement of the parties, has been confined to the question of the existence, *vel non*, of that power where the agreement provides for alimony or support alone. In many instances, however, the parties to a divorce make one agreement which not only settles claims for alimony or support, but also effects a disposition or settlement of their property rights. . . .

Thus, the rule has been developed that where an agreement's provisions for support are an integral and inseparable part of the property settlement, as where the payments are in consideration for a transfer of property, a decree based on that agreement cannot be modified with respect to support. Conversely, if the provisions for support and for the settlement of property rights are clearly separable, though contained in one instrument, the court has the power to modify the support provisions of the decree even though it cannot alter the settlement of property rights.

61 A.L.R.3d 520 § 19[a] (emphasis added).

[36] As discussed above, the Agreement in this case involves both provisions for the division of property and provisions for spousal support. Thus, our analysis concerning the ability to modify the Agreement focuses on the relationship between the property division and support

provisions, ultimately turning on whether the provisions are integrated. While this analysis may be based on decades-old California case law, we find no compelling reason to deviate from the *Adams* and *Plumer* lines of reasoning. We do note, however, that since *Adams* and *Plumer* were decided, the California statutes from which those decisions stem have been drastically amended, such that now, in California, an agreement by the parties for spousal support is, in general, subject to subsequent modification or termination by court order unless the parties specifically agree to the contrary. California Family Code section 3590 provides:

The provisions of an agreement for support of either party shall be deemed to be separate and severable from the provisions of the agreement relating to property. An order for support of either party based on the agreement shall be law-imposed and shall be made under the power of the court to order spousal support.

Cal. Fam. Code § 3590 (West 2004). Section 3591 of the Family Code provides, in pertinent part:

- (a) Except as provided in subdivisions (b) and (c), the provisions of an agreement for the support of either party are subject to subsequent modification or termination by court order.

. . . .

- (c) An agreement for spousal support may not be modified or revoked to the extent that a written agreement, or, if there is no written agreement, an oral agreement entered into in open court between the parties, specifically provides that the spousal support is not subject to modification or termination.

Cal. Fam. Code § 3591 (West 2004).

[37] While it appears that these statutory amendments have eliminated the need of the California trial courts to examine each agreement to determine if it is integrated, no similar statutory revisions have been made in Guam. Thus, while there may be compelling arguments in support of a new approach to the issue of modification of a spousal support provision based upon

an agreement of the parties, we believe that this is a policy decision best left to the Legislature to decide in the first instance.

V. CONCLUSION

[38] It is clear from the four corners of the Agreement that the parties intended an integrated agreement. Thus, the provision requiring Alfred to pay monthly spousal support to Catherine may not be modified unless both parties agree in writing. For these reasons, we **AFFIRM**. We **REMAND** to the trial court to determine the issue of Catherine's entitlement, if any, to attorney's fees for the defense of this appeal.

Original Signed : **F. Philip Carbullido**
By

F. PHILIP CARBULLIDO
Associate Justice

Original Signed : **Katherine A. Maraman**
By

KATHERINE A. MARAMAN
Associate Justice

Original Signed : **Robert J. Torres**
By

ROBERT J. TORRES
Chief Justice