

FILED

Jun 29, 2020

DANIEL P. POTTER, Clerk

JLozano Deputy Clerk

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of
GUNTHER and LILY SHIA.

B290859

(Los Angeles County
Super. Ct. No. LD071307)

GUNTHER SHIA,

Respondent,

v.

LILY SHIA,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Shirley K. Watkins, Judge. Affirmed in part, reversed in part, and remanded with directions.

Horvitz & Levy, Jeremy B. Rosen, Garen N. Bostanian, and Phillip Shaverdian for Appellant.

Gunther Shia, in pro. per. for Respondent.

Appellant Lily Shia (Lily) challenges the family law court's spousal support order in a marital dissolution action brought by respondent Gunther Shia (Gunther).¹ Lily contends the family law court erroneously interpreted the parties' earlier settlement agreement to bar her from introducing evidence of Gunther's purported acts of domestic violence in support of her claim for additional spousal support.

We agree with Lily that the plain language of the settlement agreement demonstrates that its limitations on evidence of domestic violence apply to proceedings regarding restraining orders, and not proceedings to determine spousal support. We also conclude that the family law court's erroneous exclusion of evidence of domestic violence in determining spousal support was prejudicial. Accordingly, we reverse the spousal support order and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

We limit our summary to the facts relevant to the issues on appeal.

Lily and Gunther were married in May 2011. Lily gave birth to their daughter in July 2013. In May 2015, Gunther filed a petition for dissolution of the marriage.

1. Settlement regarding domestic violence restraining order

On December 16, 2015, Lily filed a request for a domestic violence restraining order against Gunther. In her supporting

¹ We will refer to the parties by first name for clarity, not out of familiarity or disrespect. (See *In re Marriage of Schaffer* (1999) 69 Cal.App.4th 801, 803, fn. 2.)

declaration, Lily claimed, among other things, that during their marriage, Gunther had “push[ed] me against the wall, threatened to kill himself if I left him, shoved me into furniture (beds and couches), and pulled me forward by my hair while I was breastfeeding our daughter.” Lily further claimed that Gunther had thrown objects at her, had left banana peels near the stairwell in order to make her fall, and on one occasion yanked their daughter out of Lily’s arms, causing Lily to “smash[]” her hand against the wall. On another occasion, Gunther had pointed his finger at Lily “like a gun” and said, “ ‘I should have killed you when I had the chance.’ ”² (Boldface omitted.)

The family law court partially granted a temporary restraining order against Gunther and set a hearing on Lily’s request for a permanent restraining order.

On February 19, 2016, a few days before the date set for the hearing on the restraining order, the parties reached a settlement agreement (agreement) concerning child custody and visitation.

Section III(1) of the agreement (Section III(1)) addressed Lily’s request for a domestic violence restraining order, which she agreed to dismiss with prejudice.

Section III(1) also limited the future admissibility of evidence of Gunther’s alleged acts of domestic violence predating

² Lily submitted several other declarations for various purposes throughout the dissolution proceedings asserting that Gunther had engaged in abusive conduct towards her or their daughter. Given our disposition, we do not summarize these other declarations, and express no opinion as to the sufficiency of the assertions therein to entitle Lily to additional spousal support.

the agreement. Specifically, Section III(1)(A) provided that “[n]o act or event prior hereto, including but not limited to those alleged in [Lily’s] domestic violence RFO [request for order], may be alleged to, disclosed to or considered by the Court in connection with any request by [Lily] for a temporary domestic violence restraining order (“TRO”).”

Section III(1)(B) further provided that, “[i]f any TRO requested by [Lily] is granted, then at the hearing on the permanent restraining order [Lily] can present evidence of acts prior to the effective date of this [agreement], provided[,] however, that the Court cannot consider the evidence of past acts and cannot issue the permanent restraining order if: [¶] (1) The Court determines that [Lily] did not prove by a preponderance of the evidence that the act(s) alleged to have taken place after the effective date of this [agreement] (‘the alleged recent act(s)’) occurred; or, [¶] (2) That [the] . . . alleged recent act(s) do (does) not warrant a permanent restraining order.”³

³ On October 3, 2017, Lily again requested a domestic violence restraining order against Gunther. The family law court denied the request, declining to consider any evidence of domestic violence predating the agreement, and finding that Lily failed to meet her burden of proving more recent acts of domestic violence. We affirmed in an unpublished decision. (*In re Marriage of Gunther & Lily Shia* (Mar. 26, 2019, B286864) [nonpub. opn.].) That decision did not address the issue presented in the instant appeal, namely whether the agreement precluded introduction of evidence of domestic violence for purposes of determining spousal support.

2. Trial on dissolution petition

Trial on the dissolution petition began on August 7, 2017. During Gunther's cross-examination, Lily's counsel asked if Gunther had taken an anger management course during the marriage. Gunther's counsel objected, arguing that Lily had dismissed her claims of domestic violence with prejudice when she entered into the agreement on February 19, 2016, and was barred from relitigating them now. Lily's counsel countered that the agreement barred Lily from introducing evidence in support of restraining orders, but did not preclude her from introducing the evidence as a factor in determining spousal support under Family Code section 4320. The family law court understood Lily's position to be that, "because she was subjected to domestic abuse during her marriage, she needs time and money to be supported in order for her to overcome the emotional trauma having suffered domestic abuse."

After further colloquy, the family law court orally ruled that for purposes of determining spousal support, Lily could not introduce evidence of domestic violence covered by the agreement. The court stated, "If the purpose of the settlement agreement was to buy peace between the parties, then allowing [Lily] to basically try the issue of domestic violence outside the . . . restraining order hearing doesn't buy anybody peace. It's basically saying I may have dismissed it with prejudice, but I still get to argue all those facts and prove that he committed domestic violence for some other reason [apart from] the restraining order."

The family law court concluded the intent of the agreement was to put the domestic violence issue to rest, "whether it's for a restraining order or otherwise," and that it would not be "fair to

litigate an issue that has been dismissed with prejudice after it's already been handled by the settlement agreement." "Raising the whole issue again in trial, even though the ultimate result is not a request for a restraining order, it's still the same issue because if you had gone through the hearing on the request for a restraining order and obtaining a restraining order, you'd be using those factors in support of permanent spousal support. So it's for the same purpose even if it wasn't exactly the same route."

3. Judgment

The family law court entered judgment of dissolution on April 19, 2018, granting Lily \$7,500 per month in spousal support, retroactive to January 15, 2016. The court ordered that the amount be reduced to \$5,500 per month on December 1, 2017, and that the court's jurisdiction over spousal support would terminate on December 1, 2018.

The family law court found that Lily "had the ability to work and earn \$9,000 per[] month as an [o]ptometrlist," and "that a significant motivating factor for her refusal to work was to maximize the amount of support she received." The court also found that Gunther "has limited ability to pay spousal support" given his earnings, living expenses, and "over \$235,000 of credit card debt."

The family law court stated that it "does not deem credible [Lily's] testimony that she is unable to work because of emotional distress as a result of domestic abuse. Her position is unsupported by any evidence other than her testimony and the court has previously found that her testimony has been discredited during trial on numerous issues. The court's evaluation of [Lily's] demeanor in the courtroom reflects a woman who was extremely involved in the prosecution of her claims, who

came to court every day with detailed notes and notebooks of evidence and who actively participated in the decision making with her attorney of the case. She was noted to continually be engaged in conversation with her attorney during examination of [Gunther]. It was clear to the court that she appeared in control of herself and her emotions, she intelligently participated in the trial, her attention never wavered and she interjected herself into the process. If the trial was a full-time job, the court would venture to say that she did an excellent job in the courtroom. There is no reason that this court finds which would prevent her from working full-time in her profession.”

Lily timely appealed.

DISCUSSION

Lily argues the family law court erred in interpreting the agreement to bar her from introducing evidence of domestic violence to establish her entitlement to additional spousal support. We agree.

“‘A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts.’” (*Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781, 789.) “‘The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties.’ [Citations.] ‘Such intent is to be inferred, if possible, solely from the written provisions of the contract.’” (*State of California v. Continental Ins. Co.* (2012) 55 Cal.4th 186, 195.) “‘It is the parties’ expressed objective intent, not their unexpressed subjective intent, that governs.” (*Koenig v. Warner Unified School Dist.* (2019) 41 Cal.App.5th 43, 58.)

The family law court concluded that the intention of Section III(1) of the agreement was to resolve Lily’s claims of

domestic abuse for all purposes, including in setting spousal support. This interpretation is contrary to the language of Section III(1), which pertains solely to requests for domestic violence restraining orders.

The only claim Lily agreed to dismiss was “her domestic violence [request for order] against [Gunther].” The agreement limited the admissibility of evidence of acts of abuse predating the agreement “in connection with any request by [Lily] for a temporary domestic violence restraining order,” and set forth the limited circumstances in which the evidence would be admissible at a hearing on a permanent restraining order. There is no language in Section III(1) or elsewhere in the agreement extending these evidentiary limitations beyond proceedings for restraining orders.

To the extent the trial court concluded that it would defeat the purpose of the settlement to allow Lily to introduce evidence of domestic violence outside the context of requests for restraining orders, we disagree. The first page of the agreement stated that “[i]t is the mutual wish and desire of both [Gunther] and [Lily] to immediately effect, by way of this Partial Stipulated Judgment[,] to fully and completely resolve any and all issues relating to child custody and visitation.” Later, it stated, “This Partial Stipulated Judgment does not contain terms relating to the issues of termination of status of marriage, division of property, child support, spousal support and/or attorneys’ fees and costs.” Thus, to the extent the agreement was intended, in the words of the family law court, to “buy peace between the parties,” it was solely on “issues relating to child custody and visitation.” Allowing Lily to introduce evidence of domestic

violence in determining spousal support, therefore, would not undermine the purpose of the agreement.

The family law court’s erroneous exclusion of evidence requires reversal. Family Code section 4320 (section 4320) lists “circumstances” the family law court “shall consider” when ordering spousal support. Consideration of the listed circumstances is mandatory (*In re Marriage of Grimes & Mou* (2020) 45 Cal.App.5th 406, 424), and “[f]ailure to consider each applicable factor is reversible error” (*In re Marriage of Deluca* (2020) 45 Cal.App.5th 184, 195).

At the time the family law court entered judgment in the instant case, one of the listed circumstances under section 4320 was “[d]ocumented evidence . . . of any history of domestic violence . . . between the parties . . . including . . . consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party” (§ 4320, former subd. (i) (Stats. 2015, ch. 137, § 1).)⁴

Although the family law court addressed this factor in its ruling setting spousal support, it did not permit Lily to introduce any evidence of domestic violence that predated the agreement. That evidence was not before the family law court when it was considering Lily’s ability to work and how much spousal support to award. Instead, the family law court concluded, primarily based on Lily’s demeanor in the courtroom, that she did not appear to be suffering from emotional distress that would limit her ability to work. In short, the family law court’s erroneous

⁴ Almost identical language appears in the current version of section 4320, subd. (i)(2).

interpretation of the agreement prevented it from fully considering a mandatory factor under section 4320.

Gunther argues that the family law court has found Lily not to be credible and there is no evidence of domestic violence. He quotes the family law court's final statement of decision and findings of fact, which noted numerous instances the court found Lily to be "untruthful" or not credible.

To the extent Gunther suggests that the family law court's erroneous exclusion of evidence was harmless—that is, that there is no "reasonable probability of a different result had the error not occurred" (*In re Marriage of E. & Stephen P.* (2013) 213 Cal.App.4th 983, 995)—we disagree. Without considering Lily's evidence of domestic abuse, the family law court could not evaluate her credibility as to how, if at all, emotional distress from domestic violence inhibited her ability to earn a living.

We recognize that Lily has already offered evidence of purported domestic violence in declarations throughout the proceedings, including in support of her original request for a restraining order. Because the family law court has not considered that evidence, we decline at this stage to opine as to its sufficiency or admissibility, apart from our conclusion that the agreement did not render evidence of domestic violence inadmissible for purposes of determining spousal support pursuant to section 4320.

DISPOSITION

The portion of the judgment awarding spousal support is reversed and the matter remanded. The family law court shall conduct further proceedings consistent with this opinion. In all other respects the judgment is affirmed. The parties are to bear their own costs on appeal.

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BENDIX, Acting P. J.

We concur:


CHANEY, J.


WHITE, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.