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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

CECILIA M. SCROGGS,
Plaintiff-Appellee,

v.

RICHARD D. SCROGGS,
Defendant-Appellant.

Supreme Court Case No.: CVA13-002
Superior Court Case No.: DM0705-09

OPINION

Cite as: 2014 Guam 2

Appeal from the Superior Court of Guam
Argued and submitted on July 18, 2013
Hagåtña, Guam

Appearing for Defendant-Appellant:

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

MARAMAN, J.:

[1] Defendant-Appellant Richard D. Scroggs (“Richard”) appeals the trial court’s order denying his motion to modify spousal support. The trial court previously entered a final divorce decree which incorporated a settlement agreement between Richard and his ex-wife, Cecilia M. Scroggs (“Cecilia”). In denying Richard’s motion for modification, the trial court found that the provision Richard sought to modify, requiring him to make payments of \$1,400.00 every two weeks, was ‘integrated and not a modifiable provision for the division of the parties [sic] property.’ Record on Appeal (“RA”), tab 17 at 6 (Dec. & Order, Dec. 17, 2012).

[2] While we disagree with the reasoning laid out by the trial court, we nevertheless hold that the agreement constituted an agreement involving property division and was not spousal support, and that the agreement is non-modifiable absent the mutual agreement of the parties. The decision of the trial court is affirmed.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Richard and Cecilia were married in 1990. The couple separated, and Cecilia filed for divorce in 2009. At that time, they had one minor child and two adult children. In the Settlement Agreement, the parties identified one of the children as a “disabled” adult. RA, tab 4 at 1 (Marital Separation, Child Custody and Property Settlement Agreement, Oct. 28, 2009) (“Settlement Agreement”).

[4] Along with the complaint, Cecilia filed a copy of the Settlement Agreement that the parties had reached. This agreement stated first that:

The parties intend and it is the purpose of this Agreement to provide for the custody and maintenance of their minor child and their [disabled adult son]; to memorialize the separation of the parties and their agreement to remain permanently apart; and provide for the equitable and fair division of the common property of the parties.

Id. at 1-2.

[5] Among other things, the agreement stated that both Cecilia and Richard waived any right to spousal support from each other. It also stated that “[Cecilia] has agreed to said waiver based upon [Richard’s] agreement set forth in § 13.” *Id.* at 2. Likewise, the parties agreed to waive child support, excepting that if one of the children were to pursue higher education, the parties would share the cost. That waiver also stated that it was based on “[Richard’s] agreement set forth in § 13.” *Id.* at 3. In turn, Section 13, entitled “Community debts/obligations, etc.,” stated that to “continue as they have always done in the past,” Richard would deposit \$1,400.00 into the parties’ joint checking account every pay period. *Id.* This sum was “to be used towards the payment of the parties’ monthly debts and financial obligations, including all cost-of-living expenses which the family incurs each month.” *Id.* at 3-4. Richard agreed to “continue to make said payments throughout the life of [Cecilia].” *Id.* at 4 (emphasis omitted). The parties agreed to continue to own the home as joint tenants, except that Cecilia had the “sole and exclusive right to occupy said property for as long as she lives.” *Id.* at 3.

[6] The trial court entered an Interlocutory Judgment of Divorce and a Final Decree of Divorce in November 2010. The final decree stated that the Settlement Agreement was “hereby made binding on the parties.” RA, tab 7 at 2 (Final Decree of Divorce, Nov. 3, 2010). It further provided that if Richard failed to make payments as stated in Section 13 of the Settlement Agreement, his employer, Guam Waterworks Authority, was ordered to deliver the money, or, if he retired, the Government of Guam Retirement Fund.

[7] In June 2012, Richard filed a Motion for Modification of Spousal Support. He stated that when he entered into the Settlement Agreement, he was not represented by counsel. He also claimed that the mortgage on their home had become delinquent. Richard then argued that he had been “providing an unjust amount of support to [Cecilia], rendering him unable to provide support for himself.” RA, tab 14 at 3 (Notice Mot., Mot. Modification Spousal Supp. and Mem. P. & A., June 28, 2012). He stated that he was eligible to retire, but could not because of the support payments. Richard requested that the court modify the current support payments “to reflect a just amount, based upon the needs of [Cecilia] and abilities of [Richard].” *Id.*

[8] Cecilia opposed the motion, arguing that the Settlement Agreement was a contract, and that absent fraud, mutual mistake, or a unilateral mistake seized upon by her, there was no legal basis for revising it. She argued that the agreement at issue was a “mutually negotiated marital separation contract” not subject to court modification. RA, tab 15 at 3 (Opp’n Def. Mot. Modification Spousal Supp., July 12, 2012). Further, she argued that even if the court could revise it, Richard could not demonstrate a “substantial and material change of circumstances.” *Id.* Cecilia filed documents to demonstrate that Richard was making about \$10,000.00 more per year than at the time of the agreement.

[9] The trial court heard the motion. It first asked the parties the nature of the community debts and obligations for which the payments were intended, asking what went towards the mortgage and what “in essence, is—really—spousal support.” Transcript (“Tr.”) at 3 (Hr’g Mot. Modification, July 26, 2012).

[10] Richard argued that while Section 6 of the Settlement Agreement stated that there would be no spousal support, Section 13 in effect acted as spousal support. He emphasized that the section did not reference the mortgage specifically, but instead guaranteed payment “throughout

the life of [Cecilia].” *Id.* at 7-8. Because he considered the obligation to be spousal support rather than a payment of debts, Richard claimed that it was subject to modification. Continuing his alimony analogy, he argued that because Cecilia was now living with another person, she was no longer entitled to the payments.

[11] Cecilia disputed that any of the money was spousal support. She responded that the language providing for payment to continue “throughout the life of [Cecilia]” was made to reflect her lifetime right to occupy the house. *Id.* at 11. She argued that the payment ultimately concerned property and that therefore, the agreement was not subject to modification absent fraud. Cecilia also argued that there was no substantial change of circumstances, and that Richard was earning more at that time than at the time of the divorce. She claimed that the divorce decree must have anticipated that Cecilia would move on to a new relationship, and that this cannot constitute a change in circumstances. Lastly, regarding Richard’s lack of counsel during the divorce proceedings, Cecilia stated that there was no evidence that he “had one pulled over on him.” *Id.* at 13.

[12] The court issued a decision and order denying Richard’s motion. The court first sought to determine if the payments were intended to be a part of the parties’ property division, in which case they were not modifiable, or spousal support, in which case they were subject to modification. It noted that the agreement called for the payments to be used for “monthly expenses,” and that while much of that money was to pay off community debts, there was a surplus and it was unclear for what purpose the surplus money was intended. RA, tab 17 at 5 (Dec. & Order). Next, the court found that if the payments were spousal support, it must determine if the support payments were severable or integrated with the provisions for the division of property. Citing to this court’s opinion in *Lujan v. Lujan*, 2012 Guam 7, it stated

that where provisions for support and provisions for division of property constitute reciprocal consideration, the agreement is integrated.

[13] The trial court based its decision that the provisions were integrated on distinctions between the present case and *Lujan*. It read *Lujan* as finding that because a husband was paying the mortgage on a home in which he lacked an interest, the payment was spousal support. Here, by contrast, Richard maintained a one-half interest in the house, and the payment was “to maintain his own undivided interest in the community home.” *Id.* at 6. Therefore, the trial court found that the section of the agreement at issue went to the parties’ division of property, and was therefore integrated and non-modifiable. The court further mentioned that Cecilia only waived her rights to child and spousal support, and so Richard was still obligated to pay the community debt. Finally, the court concluded that Richard might be entitled to modification upon paying off the loans, but that the matter was not before the court.

[14] Richard filed a timely notice of appeal.

II. JURISDICTION

[15] We have jurisdiction over an appeal from a final judgment of the Superior Court of Guam pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 113–36 (2013)) and 7 GCA §§ 3107(b) and 25102(b) (2005).

III. STANDARD OF REVIEW

[16] “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 consent decrees 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)); *Blas*, 2009 Guam 12 ¶ 11.

IV. ANALYSIS

[17] On appeal, Richard argues that the trial court erred by distinguishing the present case from *Lujan*, because in both this case and *Lujan* the husband maintained an interest in the property at issue as a joint owner. Appellant's Br. at 6-7 (Apr. 23, 2013). Richard takes the position that the parties' agreement was a spousal support arrangement rather than a division of property. *Id.* at 8-10. He contends that there is nothing in the agreement that establishes that assumption of the mortgage was made in consideration for some other property distribution, and that therefore there can be no integration of property division and support payments. *Id.* at 10-11. In addition, Richard asserts that the agreement was "unjust" because he did not have counsel when it was negotiated, and instead relied on the good faith dealing of Cecilia and her attorney. *Id.* at 7-8.

[18] A husband and wife may contract to divide property rights, and their mutual consent serves as consideration. 19 GCA § 6111(a), (c) (2005); *Lujan*, 2012 Guam 7 ¶ 20. When such an agreement is entered by the court as part of a divorce decree, the decree is not modifiable in the absence of fraud or gross inequity. *Leon Guerrero*, 2000 Guam 28 ¶ 9. By contrast, a provision for support and maintenance is subject to modification by the court. 19 GCA § 8405 (2005); *Lujan*, 2012 Guam 7 ¶ 23.

[19] This court applies contract principles to the interpretation of property settlement agreements. *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 settlement agreement. *Leon Guerrero*, 2000 Guam 28 ¶ 8 (citing 18 GCA § 87102 (1992)). Because the settlement agreement in this case was reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible. *Id.*

[20] There are three types of post-separation agreements. *Lujan*, 2012 Guam 7 ¶ 24 (citing *Adams v. Adams*, 177 P.2d 265, 267 (Cal. 1947)). First, an agreement may relate to alimony, and provide for lump sum or periodic payments which are separate from the division of property. *Id.* Second, support provisions may not be in the nature of alimony, but rather part of a division of property, in which payments are given in lieu of community property. *Id.* ¶ 25. Third, a spouse may waive all maintenance and support, or waive it as provided in an agreement, in exchange for a more favorable settlement of the community property. *Id.* ¶ 26.

[21] The type of agreement determines whether it is subject to later modification by the court. The first category, an agreement in the nature of alimony, is subject to modification. 19 GCA § 8405; *Lujan*, 2012 Guam 7 ¶ 24. The second category, a division of property, is non-modifiable absent a showing of fraud or violation of the parties' confidential relationship. *Lujan*, 2012 Guam 7 ¶ 25. The third, "hybrid" category involves situations where the property and support provisions are integrated and not severable, and may not be modified without the consent of both parties. *Id.* ¶ 40; *Plumer v. Plumer*, 313 P.2d 549, 552 (Cal. 1957). This is so because an agreement involving an amount for support, or a waiver of support, in consideration for an arrangement of property renders the support "part and parcel" of the property division, which itself is not modifiable. *Lujan*, 2012 Guam 7 ¶ 41.

[22] As an initial matter, we find that the trial court mischaracterized our holding in *Lujan* when it distinguished it from the present case. The court found that we held the agreement in *Lujan* to be one for support. RA, tab 17 at 6 (Dec. & Order). In fact, we did not make a determination on the nature of the agreement, but remanded the case to the trial court for further consideration. *Lujan*, 2012 Guam 7 ¶¶ 37, 46. More critically, the trial court erroneously found that in *Lujan* we looked to the fact that the husband was paying a mortgage on a home in which

he lacked an interest, rendering such payments spousal support. RA, tab 17 at 6 (Dec. & Order). The court contrasted *Lujan* with the present case, where it found that Richard's payments were "to maintain his own undivided interest in the community home." *Id.* However, as in this case, the Lujans preserved their joint interest in the home, with the wife entitled to the exclusive right to occupy the home during her lifetime. *Lujan*, 2012 Guam 7 ¶ 32.

[23] The provisions of this agreement are not ambiguous, and so extrinsic evidence need not be considered. When reading the Settlement Agreement, it was the clear intent of the parties to divide their property, permanently and finally. The agreement specifically states that its purpose is to "provide for the equitable and fair division of the common property of the parties." RA, tab 4 at 2 (Settlement Agreement). Section 3 disposes of all property, including property acquired before and after separation. *Id.*

[24] Next, the property division is conditioned upon a waiver of support. Section 6 expressly acts as a waiver by both parties of spousal support, indicating an intent to resolve this issue. It states that Cecilia's waiver is "based upon [Richard's] agreement" to pay the \$1,400.00 per pay period. *Id.* This sum is thus part of the property division, and not a provision for support. The agreement places no limitations on Richard's obligation to make the periodic payments during Cecilia's lifetime. *Id.* at 3-4. In *Lujan*, we recognized that the absence of limitations on the husband's obligation to pay the mortgage, such as remarriage, a changed financial situation, or death, was a factor that made the agreement more like property division than spousal support. *Lujan*, 2012 Guam 7 ¶¶ 35-36.

[25] Therefore, we conclude that the Settlement Agreement falls into the third *Lujan* category of a property settlement agreement in exchange for waiver of spousal support.¹ The agreement provided Cecilia with a more favorable property settlement – exclusive occupation of the house and Richard’s monthly payments – in exchange for her waiver of all spousal support.

[26] At the same time, there was additional consideration for Richard’s payments, such that any spousal support provisions would be “part and parcel” of the property division and thus still non-modifiable. *Id.* ¶ 41. Although Richard gave up his right to occupy the home while Cecilia lives, he retains some interest in the house as an owner in joint tenancy. Next, Richard did not have to pay any monetary support for the parties’ children, one of whom was a minor at the time of the Settlement Agreement. RA, tab 4 at 3 (Settlement Agreement). Even though the parties’ children are now adults, Richard and Cecilia may have been mutually obligated to provide support for their disabled son pursuant to 19 GCA § 4105.1. In addition, the agreement places no obligation upon Richard to pay for the insurance, maintenance, and other expenses of the home, and apparently leaves this to Cecilia. Finally, Richard kept the full value of his retirement plan, which is presumably community property.² Thus, Richard received consideration for his payments of \$1,400.00 every two weeks.

[27] Richard argues that he was not represented by counsel and that therefore the agreement was inequitable. Even if the agreement is one-sided or unfair to Richard, we need not speculate as to the fairness of the consideration. The agreement may be modified only if it was grossly

¹ The fact that the parties mutually agreed to this arrangement constitutes sufficient consideration. 19 GCA § 6111(c).

² Although Richard argues that the agreement does not provide for division of all community property, including retirement funds, Section 3 specifically states that “all property, either currently in [the parties’] possession or acquired *after* the separation of the parties, of every kind, nature, and description, and wherever situated, will be considered “separate” property. RA, tab 4 at 2 (Settlement Agreement).

inequitable or if there was fraud. *See Leon Guerrero*, 2000 Guam 28 ¶ 9. There are no facts which demonstrate either circumstance here. As discussed, there was consideration for Richard's monthly payments. The fact that Richard chose not to hire an attorney does not alter our conclusion.

[28] We find that the agreement in this case constituted a division of property with a waiver of support as consideration. To the extent that the agreement provides for any support to Cecilia, we find that it is integrated with the provisions for property division. Therefore, the Settlement Agreement is non-modifiable by the court. Although our analysis differs from that of the trial court, we may affirm on any basis apparent from the record. *See, e.g., Ramos v. Docomo Pac., Inc.*, 2012 Guam 20 ¶ 25. Therefore, we affirm the decision of the trial court.

V. CONCLUSION

[29] We find that the Settlement Agreement was a non-modifiable division of property in exchange for waiver of spousal support. Although we find that the trial court erred in its analysis, we may uphold its decision on other grounds. Accordingly, the decision of the trial court is **AFFIRMED**.

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

ROBERT J. TORRES
Associate Justice

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

KATHERINE A. MARAMAN
Associate Justice

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

F. PHILIP CARBULLIDO
Chief Justice