

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ESTRELLITA S. ADA,
Petitioner-Appellee,

v.

PATRICK M. CALVO,
Respondent-Appellant.

SUPREME COURT NO. 2010-SCC-0011-FAM
SUPERIOR COURT NO. 99-0171-FCD

Cite as: 2012 MP 11

Decided September 5, 2012

Robert Tenorio Torres, Saipan, MP, for Petitioner-Appellee Estrellita S. Ada
George Anthony Long, Saipan, MP, for Respondent-Appellant Patrick M. Calvo

BEFORE: F. PHILIP CARBULLIDO, Justice Pro Tem; ROBERT J. TORRES, Justice Pro Tem; EDWARD MANIBUSAN, Justice Pro Tem¹.

PER CURIAM:

¶ 1 Respondent-Appellant Patrick M. Calvo (“Calvo”) appeals the trial court’s order requiring him to transfer fee simple title in the family residence to his former spouse, Petitioner-Appellee Estrellita S. Ada (“Ada”), as trustee for the parties’ children in accordance with Section 4 of the parties’ Agreement for Divorce (“Agreement”). On appeal, Calvo argues that the trial court erred in: (1) interpreting Section 4 to involve solely a distribution of marital property and not the provision of child or spousal support; (2) holding that it did not have authority under 8 CMC § 1311 to consider equity when enforcing the terms of Section 4; and (3) holding that it may not modify a property distribution integrated into a divorce decree over the objection of one party to the agreement in the absence of statutory authority or exceptional circumstances. For the reasons stated herein, we affirm the trial court on all grounds.

I

¶ 2 Ada and Calvo married in July 1988. During their marriage they had three children. In 1999, Ada filed for divorce in Commonwealth Superior Court.

¶ 3 In December 2000, Ada and Calvo signed the Agreement. The parties agreed to “live separately and apart” and stated that “the parties do not wish to contest the divorce.” Appellant’s Excerpts of Record (“ER”) at 37. Section 4 of the Agreement, entitled “Division of Property,” separated the parties’ personal property.² Pursuant to Section 4, Calvo agreed to pay Ada \$20,000 in four annual installments of \$5,000, the last of which was due in December 2004, “in return for [Ada’s] release of interest in the family residence constructed on [Calvo’s] father's property and the transfer of all of [Ada’s] interest and outstanding stock in Calvo's Development Inc. and to satisfy any further claims [Ada] may have against any other properties contained in the marital estate or the separate property of [Calvo].” ER at 39. The Agreement also stipulated that if Calvo failed to make the first installment payment by December 2001, Calvo would be required to obtain fee simple title to the family residence³ and transfer title in the family residence “to the parties’ children as tenants in common to be held in trust by [Ada] as trustee” until the youngest child reaches the age of eighteen. ER at 39. Section 14 of the Agreement, entitled “Modification of Agreement”, states that “[t]he failure of either party to insist upon strict performance of any of the

¹ Justice Pro Tem Manibusan sat as a panel member at the time the appeal was heard and determined. Prior to the issuance of the Opinion, Justice Pro Tem Manibusan recused himself because he was elected an officer in a political party.

² On appeal, the parties do not contest the separation of their personal property.

³ The family residence is located on property owned by Calvo’s father.

provisions of this Agreement *shall not* be construed as a waiver of any subsequent breach or default of the same or similar nature.” ER at 44 (emphasis added).

¶ 4 Later in December 2000, the parties filed a stipulated decree of divorce (“Decree”) in the Superior Court. The Decree explicitly incorporates and merges the Agreement by reference and calls for child support, child custody, and marital property distribution in the same manner as provided for in the Agreement. Section 7 of the Decree also provides that the trial court retains jurisdiction “for the purpose of making such further orders and judgments with respect to requiring compliance with the terms of this judgment as from time to time will seem proper in equity and good conscience.” ER at 35.

¶ 5 Thereafter, the parties reconciled and cohabited from 2001 through 2005. During this period, although Calvo did not make any of the installment payments required by the Agreement, he did routinely provide Ada with money. While the record is unclear, it appears that the parties separated again sometime after this period of reconciliation.

¶ 6 In November 2009, Ada filed a petition seeking: (1) modification of child custody and visitation; and (2) enforcement of Section 4 of the Agreement. Ada argued that she should be given sole custody of the parties’ minor children and that Calvo’s visitation rights should be revoked. The basis for this petition was Calvo’s conviction of two counts of sexual abuse against one of the parties’ minor children. ER at 29-30. Ada’s petition also included a motion to enforce Section 4 of the Agreement. Ada alleged Calvo never made any of the installment payments required by Section 4 and sought an order from the trial court forcing Calvo to obtain fee simple title to the family residence and place it in trust for the parties’ children. In a separate filing, Ada also claimed that Calvo failed to pay child support from October 2009 to December 2009.

¶ 7 After the trial court conducted three hearings on Ada’s petition and motion, but before the court released its order on the matter, Calvo filed a “Post Hearing Memorandum.” Calvo argued that the trial court should not order him to transfer title to the family residence because, although he had not strictly complied with Section 4, the Decree compelled the trial court to consider equity and give Calvo credit for payments he made to Ada during their period of reconciliation. Calvo claimed that these payments totaled more than \$20,000 and argued that these payments satisfied his requirements under Section 4. Alternatively, Calvo argued that he should be entitled to a setoff in the amount of these payments.

¶ 8 In March 2010, the trial court issued its order on Ada’s petition and motion. *Ada v. Calvo*, Civ. No. 99-0171 (NMI Super. Ct. Mar. 20, 2010) (Order Granting Petitioner’s Petition to Modify Custody and Visitation Rights, etc.) (“Order”); ER at 3-7. The trial court granted Ada’s petition to revoke Calvo’s custody and visitation rights. Regarding Section 4, the court ordered Calvo to transfer fee simple title in the family residence to Ada to hold as trustee for the parties’ children. The court rejected Calvo’s argument that the payments he made to Ada during their period of reconciliation should be credited

against the \$20,000 owed per Section 4. Rather than payments toward the \$20,000 owed, the court found credible testimony by Ada that the payments reflected “commonly shared expenses of a cohabiting couple” and should have no bearing on Calvo’s duties under the Agreement and Decree. Order at 2. The court then noted that while “the equitable solution” would be to provide Calvo with another opportunity to pay the \$20,000, “the power to modify agreements under equity does not extend to this particular situation” since 8 CMC § 1311 (“section 1311”)⁴ “only allows the Court to modify decrees as to custody or support.” Order at 3. Calvo timely appealed the trial court’s order.

II

¶ 9 The Supreme Court has appellate jurisdiction over all final judgments and orders of the Superior Court. 1 CMC § 3102(a). The trial court’s order is a final order within the meaning of 1 CMC § 3102(a).

III

A. *Types of Marital Property Settlement Agreements and Classification of Section 4*

¶ 10 In its Order, the trial court stated that “the power to modify agreements under equity does not extend to this particular situation.” Order at 3. The court continued that “8 § [sic] CMC 1311 only allows the Court to modify decrees as to custody or support.” *Id.* From this, we conclude that the trial court interpreted Section 4 to solely involve the distribution of marital property and not the provision of spousal or child support. The trial court’s interpretation of the Agreement, which is a contract between Ada and Calvo, is a question of law, reviewable de novo. *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 23. “[L]anguage in a contract is to be given its plain grammatical meaning unless doing so would defeat the parties’ intent.” *Commonwealth Ports Auth. v. Tinian Shipping Co.*, 2007 MP 22 ¶ 17. To determine the parties’ intent, this Court looks “only within the four corners of the agreement to see what is actually stated, and not at what was allegedly meant.” *Id.*

¶ 11 Marital property settlement agreements can be separated into three categories based on the level of connection between property distribution provisions and provisions for spousal or child support. *Adams v. Adams*, 177 P.2d 265, 267 (Cal. 1947). The first type of marital property settlement agreement includes agreements where property distribution provisions are entirely separate from support provisions. *Id.* When the support and distribution provisions are entirely separate, the trial court retains authority to

⁴ 8 CMC § 1311 states:

In granting or denying an annulment or a divorce, the court may make such orders for custody of minor children for their support, for support of either party, and for the disposition of either or both parties’ interest in any property in which both have interests, as it deems justice and the best interests of all concerned may require. While an action for annulment or divorce is pending, the court may make temporary orders covering any of these matters pending final decree. Any decree as to custody or support of minor children or of the parties is subject to revision by the court at any time upon motion of either party and such notice, if any, as the court deems justice requires.

modify the support provisions but not the property distribution provisions. *Id.* In the second type of agreement, “the support and maintenance provisions are not in the nature of alimony but are part of the division of property.” *Id.* (internal quotation marks omitted). When support provisions are part of the property distribution, the trial court may not modify the terms of the agreement without the consent of the parties unless there was fraud in the creation of the agreement. *Id.* The third category of agreement involves agreements where one spouse waives entitlement to support in return for a more favorable property distribution. *Id.* at 268. Like agreements that fall within the second category, a court may not modify the terms of this third type of agreement since to do so would “chang[e] basically the agreement of the parties as to the division of their property.” *Id.* Since the trial court held that Section 4 concerned solely a distribution of property, it found that the Agreement falls within the first category of marital property settlement agreements.

¶ 12 In *Reyes v. Reyes*, 2001 MP 13, this Court analyzed a provision similar to Section 4 to determine whether the provision dealt with only property distribution or with property distribution and the provision of spousal or child support. There, the trial court ordered marital property consisting of several properties and the accounts receivable from a company to be placed in trust for the parties’ children, “to be divided equally when the youngest child reache[d] 22 years of age.” *Id.* ¶ 5. On appeal, one issue was whether the distribution order provided solely for property distribution or for property distribution as well as child or spousal support. *Id.* ¶ 18. This Court held that the distribution order solely concerned the distribution of marital property since: (1) the trustee was not directed to make spousal or child support payments; and (2) a separate part of the distribution order discussed custody and support. *Id.* ¶¶ 18-19.

¶ 13 Turning to the Agreement, Section 4 requires Calvo to make certain payments to Ada but does not mention child or spousal support. Additionally, other sections of the divorce decree which do address child and spousal support suggest that the parties did not intend for Section 4 to involve support issues. Another section of the Agreement, entitled “Child Support and Visitation,” details the child support and visitation agreement between the parties. ER at 41. As for spousal support, the parties specifically waived any entitlement thereto in section 8 of the Agreement, entitled “Spousal Support.” ER at 43 (“Each of the parties waives any claims to spousal support.”). Though the labels used by the parties are not dispositive as to the character of Section 4, the separation of support from property distribution suggests that Section 4 solely concerns property distribution. *Helvern v. Helvern*, 294 P.2d 482, 487 (Cal. Ct. App. 1956). The only suggestion that Section 4 could involve child support comes from the default clause, which required Calvo to transfer fee simple title to the family residence in trust to his children if he failed to make the agreed upon payments to Ada. However, when read in light of the rest of Section 4 and the Agreement as a whole, the language in the default clause is insufficient to find that Section 4 concerns child support. Thus, based on the plain language of the Agreement, we find that Section 4 only concerns the distribution

of marital property and does not involve child or spousal support, meaning that the Agreement falls within the first category of marital property settlement agreements.

B. Modification of Marital Property Settlement Agreements

¶ 14 Calvo argues that the trial court had the power to modify Section 4 even if that section involved only a property distribution. Calvo cites two sources of authority as support for this proposition: (1) 8 CMC § 1311; and (2) Section 7 of the Decree. We will address each source of authority in turn.

1. Section 1311

¶ 15 Section 1311 provides the trial court with the authority to issue orders for property distribution, as well as child and spousal support. Once a divorce decree is entered, section 1311 states: “[a]ny decree as to custody or support of minor children or of the parties is subject to revision by the court at any time upon motion of either party and such notice, if any, as the court deems justice requires.” 8 CMC § 1311. Calvo makes contradictory arguments regarding the trial court’s jurisdiction pursuant to section 1311. He first contends that section 1311 does not preclude trial courts from considering equity in determining whether to modify the terms of a property distribution agreement. Calvo Opening Br. at 8. However, on the next page Calvo concedes that section 1311 “does not, [sic] allow for post judgment modification of a property division order.” *Id.* at 9 (citing *Reyes v. Reyes*, 2001 MP 13 ¶ 19). Ada argues that the trial court correctly “recognized its inability to modify” the specific remedy laid out in Section 4 since “the court lacked the power and authority to modify the property settlement agreement” Ada Opp’n Br. at 8.

¶ 16 The trial court’s decision that section 1311 did not allow it to modify the marital property distribution is a question of statutory interpretation reviewable *de novo*. *Reyes*, 2001 MP 13 ¶ 3. This Court’s decision in *Reyes* is directly on point. As discussed above, the property distribution in *Reyes* involved the creation of a trust for the benefit of the parties’ children. *Id.* ¶ 5. Almost one year after the court entered its property division order, the former husband objected to the court’s distribution order. *Id.* ¶ 6. The trial court refused to modify the order, concluding that “pursuant to 8 CMC § 1311, property divisions are final and not subject to modification.” *Id.* ¶ 7. On appeal, this Court affirmed the trial court’s decision, reasoning that although section 1311 specifically permits a court to revise a decree as to custody or child or spousal support, the language of section 1311 related to modification of court orders is “noticeably silent as to modification of property division orders.” *Id.* ¶ 17.

¶ 17 We see no reason to depart from the holding in *Reyes*. The first clause of section 1311 deals with the initial granting of a divorce and gives the trial courts discretion to make orders related to custody, support, and property distribution. 8 CMC § 1311. However, when discussing revision of divorce orders, section 1311 only provides authority to revise any “decree as to custody or support of minor children or of the parties” When a law does not address a specific issue, that silence can be significant. *Bank of Saipan v. Carlsmith Ball Wichman Case & Ichiki*, 1999 MP 20 ¶ 14. Moreover, “[o]ne may not construe a

statute on the basis of a mere surmise as to what the legislature intended and to assume that it was only by inadvertence that it failed to state something other than what it plainly stated.” *Id.* (internal quotation marks omitted). We find the silence of section 1311 as to the modification of property distribution orders significant. The Legislature could have easily included language vesting the trial court with authority to modify marital property distribution provisions. Without any indication that the Legislature intended to provide such authority, we refuse to break with the precedent set in *Reyes* and reaffirm its holding that section 1311 does not provide the trial court with authority to modify a marital property distribution integrated into a divorce decree.

2. Section 7 of the Decree

¶ 18 Calvo argues that the trial court could modify Section 4 of the Agreement over the objection of Ada and in the absence of express statutory authority because the parties expressly granted that authority to the court. He contends that the Decree gives the trial court authority to modify the terms of Section 4. He relies upon language in Section 7 of the Decree that the trial court retains jurisdiction “for the purpose of . . . requiring compliance . . . as from time to time will seem proper in equity and good conscience.” ER at 35. Ada counters that the trial court properly concluded that it did not have authority to modify the Agreement since, as a “binding contract,” the Agreement is “fixed and final.” Ada Opp’n Br. at 7 (quoting *Weathersby v. Weathersby*, 693 So.2d 1348, 1352 (Miss. 1997)). Since the parties filed a stipulated decree, it is a contract between the parties. Interpretation of contracts is a question of law, which we review de novo. *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 23. Since no Commonwealth opinion has considered whether parties to a marital property settlement agreement can provide the trial court with authority—in addition to that conferred by statute—to modify the agreement, we seek guidance from other jurisdictions. See *Santos v. Santos*, 2000 MP 9 ¶ 18 (citing 7 CMC § 3401).

¶ 19 Parties to a divorce are encouraged to enter into and file agreements regarding the distribution of marital property; and courts, while not bound by the terms of such agreements, may accept and integrate them into a divorce decree. *Ettlinger v. Ettlinger*, 44 P.2d 540, 543 (Cal. 1935) (“Though not binding in the first instance on the court . . . such contract [distributing marital property] may be approved and confirmed by the court”); *Bell v. Bell*, 572 So. 2d 841, 844 (Miss. 1990) (“[S]ettlement agreements entered into by divorcing spouses and judicially approved . . . become a part of the decree and enforceable as such as though entered by the court following contested proceedings.”). Once entered, marital property settlement agreements are enforceable as contracts. *Bell*, 572 So. 2d at 844 (noting that marital property settlement agreements are “the product of arms length bargaining and thus are in the nature of court-approved contracts.”).

¶ 20 As contracts, trial courts generally may not unilaterally modify marital property settlement agreements in response to a request from one party. *Bell*, 572 So. 2d at 844 (Courts should “take as dim a

view of efforts to modify [marital property settlement agreements], as we ordinarily do when persons seek relief from their improvident contracts.”). However, trial courts may modify the property distribution terms of a marital property settlement agreement over the objection of one of the parties to the agreement when presented with evidence of exceptional circumstances including: (1) fraud, *Weathersby*, 693 So. 2d at 1351; (2) a contractual provision allowing modification, *id.*; (3) overreaching, *id.*; or (4) a scrivener’s error, *Ivison v. Ivison*, 762 So. 2d 329, 335-36 (Miss. 2000). Calvo does not claim any fraud, overreaching, or scrivener’s error regarding the formation of the Agreement. Calvo does claim, however, that the Decree presents a contractual provision authorizing the trial court to modify the Agreement notwithstanding Ada’s objection.

¶ 21 Calvo argues that Section 7 of the Decree, which states that the trial court retains jurisdiction “for the purpose of . . . requiring compliance” with the Decree, allows the trial court to unilaterally modify Section 4. ER at 35. Calvo’s argument is without merit because, rather than providing authority to modify the Agreement, Section 7 provides the court only with the authority to *enforce* the terms of the Agreement. The Illinois Appellate Court for the Fifth District analyzed the difference between modification provisions and enforcement provisions in divorce decrees. *Brickey v. Brickey*, 358 N.E.2d 406 (Ill. App. Ct. 1976). In *Brickey*, the divorce decree at issue included sections addressing child custody, child support, and property distribution. *Id.* at 407-08. After the court entered the decree, the plaintiff sought an order distributing a tax refund that the defendant received as a result of the overpayment of taxes by the couple in the previous year. *Id.* at 407. The plaintiff styled her petition as one to enforce rather than modify the divorce decree. *Id.* at 408. The trial court agreed, granted her request, and ordered the defendant to pay the plaintiff half of the tax return. *Id.* at 407. On appeal, the court noted that while trial courts have authority to enforce property settlements integrated into divorce decrees, they have no authority to modify them in the absence of statutory authority.⁵ *Id.* at 408. Because the tax return was not mentioned in the divorce decree and the plaintiff had an opportunity to raise the issue prior to entry of the decree, the court reversed the trial court and concluded that plaintiff’s petition was an impermissible attempt to modify the divorce decree. *Id.* at 408-409.

¶ 22 Applying these principles to the case at bar, Calvo’s argument that Section 7 of the Decree authorized the trial court to modify Section 4 is without merit. Section 7 states that the court retains jurisdiction “for the purpose of . . . *requiring compliance*” with the terms of the judgment. ER at 35 (emphasis added). Neither the term “modification” nor any synonym is ever mentioned in Section 7.

⁵ Like section 1311, the statute at issue in *Brickey* authorized courts to modify support and custody provisions of divorce decrees but did not authorize the modification of property settlement agreements. *Id.* at 408 (“Section 18 of the Divorce Act (Ill. Rev. Stat. 1973, ch. 40, par. 19) . . . does confer a limited power to make orders touching alimony and maintenance of the parties and the custody, care and support of children . . . [but] cannot be extended beyond its terms to permit an alteration of the provisions of the decree relating to property rights.”).

Instead, this provision is solely concerned with enforcing the terms of the Agreement and Decree. As such, we find no error in the trial court's recognition of the limits of its authority and refusal to modify Section 4 of the Agreement.⁶

IV

¶ 23 For the foregoing reasons, we AFFIRM the trial court's holding that: (1) Section 4 involved solely a distribution of marital property and not the provision of child or spousal support; (2) it did not have authority under 8 CMC § 1311 to consider equity when enforcing the terms of Section 4; and (3) it may not, over the objection of one party to the agreement, modify a property distribution integrated into a divorce decree in the absence of statutory authority or exceptional circumstances not present in this case.

SO ORDERED this 5th day of September, 2012.

/s/
F. PHILIP CARBULLIDO
Justice Pro Tem

/s/
ROBERT J. TORRES
Justice Pro Tem

⁶ Because Section 7 of the Decree concerns enforcement rather than modification of the Decree and Agreement, Calvo's additional contention—that the trial court's refusal to consider equity modified the Decree in violation of the rule of *Reyes*, 2001 MP 13 ¶ 19—is without merit.