

# Daily Journal

www.dailyjournal.com

VOL. 127 NO. 133

FRIDAY, JULY 11, 2014

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## Intent to restrict adult child support modifications

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In *In re Marriage of Rosenfeld and Gross*, 225 Cal. App. 4th 278 (2104), the 2nd District Court of Appeal, Division 3, concluded that the parties' stipulation to pay their minor children's college expenses, contained in their judgment for dissolution of marriage, resulted in a child support order. In addition, because the parties did not expressly restrict the court's authority to modify the parties' obligation to pay college expenses, the resulting order was subject to the court's jurisdiction to modify, as would any child support order.

Both Rosenfeld and Gross were practicing attorneys when they executed a marital settlement agreement (MSA) in June 2001, wherein they agreed Mark would pay child support, spousal support, and that each party would pay equally for the future college expenses of their three minor children: Joshua, Lila and Noah.

Ultimately, the specific language setting forth the parties' financial support obligations dictated the court's decision on appeal. The agreement stated, under the heading "FAMILY SUPPORT," specific obligations detailed in subparagraphs A through D. Subparagraph A refers to "non-modifiable, non-taxable family support," while the obligations set forth in subparagraphs B and C are referred to as "additional child support." Subparagraph D, the most relevant for this discussion, does not contain a similar specific reference to "family support" or "child support," and states as follows: "D. Each party shall be responsible for payment of one-half of all costs incurred on behalf of each minor child, for undergraduate California state college or university expenses, trade or other school or schools' costs incurred by such minor child, or other schools approved by the parties, so long as such minor child is continuing to reasonably matriculate at such school."

In August 2011, Mark filed an order to show cause requesting modification of child support, as well as requesting that the court enforce the college expense provision of the agreement. Specifically, Mark sought an order requiring Lenore to pay half of what it would cost for Lila to attend college in California, regardless of whether Lila ultimately enrolled in an in-state or out-of-state school.

In response, Lenore argued any modification in child support should take into account the vast

disparity in the parties' incomes that had developed over the past 10 years. She presented evidence showing that she was permanently disabled and unable to work in any capacity, and that she was supporting herself on disability payments and child support. During the same period she claimed Mark's income had increased to over \$400,000 a year. She also argued she could not be compelled to pay for Lila to attend an out-of-state school because the provision was limited to costs incurred for "undergraduate California state college or university expenses."

In November 2011, the trial court entered an order modifying the child support Mark paid for Lila and Noah, and found Lenore was disabled, unable to work, and received an annual income of \$22,908, while Mark earned approximately \$421,000 per year. The court granted Mark's request to enforce the college expense provision of the judgment, requiring each party to pay on behalf of Lila one-half of the maximum annual costs of a California college, university, trade or other school, regardless of whether Lila attended a California or non-California school.

In June 2012, Lenore filed an order to show cause requesting modification of the college expense provision of the judgment, asking the court to reallocate 91 percent of the shared support obligation to Mark and 9 percent to Lenore, based on the disparity in incomes. Mark opposed the request, arguing the court had no authority to modify the provision because college expenses are not child support, and the parties' stipulation to pay their children's college expenses was entirely contractual. While Lenore's request for modification was pending, Mark brought a competing order to show cause seeking payment from Lenore of approximately \$8,800 for her share of tuition and living expenses incurred through September 2012 on behalf of Lila, who was now attending the University of Missouri.

In November 2013, the trial court denied Lenore's request to modify the judgment and granted Mark's request for reimbursement of college expenses incurred on Lila's behalf. With respect to the modification, the court concluded, as matter of contract interpretation, that it lacked jurisdiction to modify because the parties had not intended the college expense provision to be treated as child support. The court reasoned that nothing in the language of the agreement indicated the parties intended "shared expenses for adult children to be treated as equivalent to statutorily

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mandated child support," citing the fact that "the MSA specifically identified certain items as child support but the college expense provision is not among them." Because Lenore had not presented extrinsic evidence of the parties' intent, the trial court concluded the language of the agreement controlled and it lacked jurisdiction to modify the provision.

On appeal, the court stated that nothing in Family Code Section 3901 limits a parent's ability to agree to provide additional support beyond their statutory obligation. Consistent with this qualification, Section 3587 authorizes the court to order adult child support, as follows: "Notwithstanding any other provision of law, the court has the authority to approve a stipulated agreement by the parents to pay for the support of an adult child or for the continuation of child support after a child attains the age of 18 years and to make a support order to effectuate the agreement."

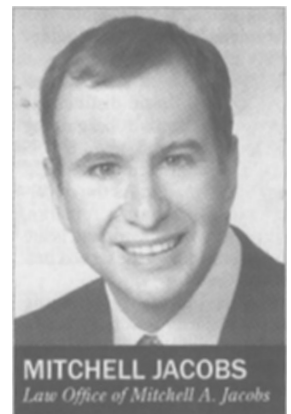
The appellate court reasoned that unlike the authority to order support for a minor child, which derives from the parents' law-imposed duty to support children until adulthood under Sections 3900 and 3901, or the authority to order support for an incapacitated adult child, which derives from the parents' law-imposed duty to "maintain ... a child of whatever age who is incapacitated from earning a living and without sufficient means" under Section 3910, the court's authority to order adult child support under Section 3587 derives entirely from the parties' agreement to pay such support. Because the court's authority is rooted in the parents' contractual agreement, it follows that the parents' agreement also may restrict the court's authority to modify an order for adult child support made under Section 3587.

Because Lenore and Mark referred to some support obligations as "child support" but not the provision concerning college expenses, the trial court inferred they must not have intended the resulting order to be modifiable; however, the appellate court found the statutory scheme requires a more explicit statement of intent to restrict the court's jurisdiction where matters of support are concerned. The appellate court compared the analogous relationship to a spousal support order: "We have concluded that adult child support ordered pursuant to Section 3587 can be made non-modifiable to effectuate the parents' agreement. The parties are similarly permitted to contractually restrict the court's jurisdiction to modify spousal support. Section 3651(d) requires a written or oral agreement made in open court that "specifically provides the spousal support is not subject to modification or termination." The appellate court then concluded the same rule should apply in the context of adult child support orders.

Family law attorneys should be aware that the parties may restrict the court's jurisdiction to modify adult child support, but to do so they must expressly and specifically state in their agreement that the adult child support order made under Section 3587 shall not be subject to modification or termination by the court. In the instant matter, the absence of an express and specific statement in the agreement was alone sufficient to conclude the trial court had jurisdiction to modify the adult child support order pertaining to college expenses.

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