NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 CA 0911

STACI BAKER

VERSUS

JOCK NALTY BAKER

Judgment rendered April 26, 2013.

* * * * * *

Appealed from the
Family Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 122,047
Honorable Lisa Woodruff-White, Judge

* * * * * *

KEITH B. NORDYKE
BATON ROUGE, LA

ATTORNEYS FOR
PLAINTIFF-APPELLEE
STACI BAKER McKENZIE

SCOTT P. GASPARD
BATON ROUGE, LA

ATTORNEYS FOR
DEFENDANT-APPELLANT
JOCK NALTY BAKER

* * * * * *

BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

PETTIGREW, J.

In this child support action, a father sought to annul a college tuition provision contained in an earlier stipulated judgment on the ground that said clause is vague and ambiguous and therefore unenforceable. Following the family court's maintenance of various peremptory exceptions filed on behalf of the mother, the father has appealed. We reverse in part, affirm in part, and remand for further proceedings.

FACTS

The record in this matter reflects that Staci Baker (now McKenzie) and Jock Nalty Baker were married in East Baton Rouge Parish in September of 1993. Of this marriage, one child was born, namely, Ruby Baker, whose date of birth is March 16, 1994. The parties thereafter separated on October 27, 1995.

Ms. Baker later filed a petition for divorce based upon having lived separate and apart for six months pursuant to the former provisions of La. Civ. Code art. 103. In her petition, Ms. Baker stated that neither party was seeking alimony, and that the parties agreed Ms. Baker would have sole custody of the minor child and receive child support of $600.00 per month. The petition further stated that Mr. Baker would further "assume all tuition expenses incurred as a result of the child's schooling from kindergarten through college." Mr. Baker subsequently executed a waiver of service and citation, and both parties signed notarized affidavits attesting to the truth of the facts set forth in Ms. Baker's petition.

The family court, after considering the pleadings and the affidavits filed by the parties, confirmed a previously-entered default judgment and granted a divorce by judgment dated November 26, 1996.

In 2005, Mr. Baker filed a rule seeking joint custody with increased visitation. Ms. Baker responded with a demand for increased child support. Thereafter, the parties entered into a stipulated judgment providing for increased visitation. In addition, Mr. Baker agreed to pay a total of $2,475.00 in child support each month, with $2,000.00 as Mr. Baker's base child support obligation and $475.00 as Mr. Baker's 75-percent share of medical and dental insurance, bus fees, before and after care, resource fees, lunch

fees, and orthodontic services. Lastly, Mr. Baker agreed to "pay 75% of college tuition fees for Ruby Baker payable when due and to the college or university which Ruby Baker chooses" (hereinafter known as the "college tuition provision"). Said judgment was approved as to substance and form by each party's attorney, and signed by the judge on December 14, 2005.

On January 26, 2011, Mr. Baker filed a Rule to Modify Custodial and Financial Obligations Related to Minor Child, alleging that the child's admission to a substance abuse facility in Utah, constituted a change of circumstances justifying a modification of the previously-ordered child support award, retroactive to the date of his filing of the rule. Mr. Baker further claimed that "the legal presumption requiring child support should be overcome by his payments to the treatment facility which provides all material needs of the minor child."[1]

On June 2, 2011, Mr. Baker filed a Petition For Nullity of Judgment wherein he claimed that the college tuition provision in the 2005 stipulated judgment was unenforceable and should be annulled for the reason that it is vague, ambiguous, and "contains a never-ending suspensive condition, no extinctive term, and no determined object." In response, various peremptory exceptions were filed on behalf of Ms. Baker. Specifically, Ms. Baker filed peremptory exceptions raising objections of prescription, peremption, no cause of action, res judicata, and estoppel. In addition, Ms. Baker set forth a demand for reasonable attorney fees in connection with her defense of this action to annul, pursuant to La. Code Civ. P. art. 2004(C).

At the conclusion of a hearing on August 16, 2011, the family court sustained Ms. Baker's peremptory exceptions objecting to prescription, peremption, res judicata, no cause of action, and estoppel, and accordingly dismissed Mr. Baker's Petition for Nullity of Judgment at his costs. A judgment to this effect was later signed by the family court on September 2, 2011.

---

[1] Mr. Baker alleged therein that the Utah substance abuse facility to which Ms. Baker admitted the couple's minor child provided room and board as well as a full-time academic curriculum. Mr. Baker claimed that the cost of said facility is approximately $12,000.00 a month.

Mr. Baker thereafter applied for supervisory writs from this court seeking review of the family court's September 2, 2011 judgment. This court subsequently granted Mr. Baker's writ application, for the limited purpose of remanding this matter to the family court, with instructions, to grant Mr. Baker an appeal.[2] From the family court's September 2, 2011 judgment, Mr. Baker now appeals.

ERRORS ASSIGNED ON APPEAL

In connection with his appeal in this matter, Mr. Baker claims the family court erred in the following respects:

1. By failing to apply the correct legal principles in its analysis of the December 14, 2005 judgment, which orders payment of college tuition beyond the time allowed by statutory law;
2. By sustaining a peremptory exception as to no cause of action;
3. By sustaining a peremptory exception as to res judicata;
4. By sustaining a peremptory exception as to prescription;
5. By sustaining a peremptory exception as to peremption; and
6. By sustaining an exception as to estoppel.

LAW AND ANALYSIS

Initially, we note that the family court's judgment of September 2, 2011, only addressed the peremptory exceptions raised by Ms. Baker in response to Mr. Baker's Petition for Nullity of Judgment. The judgment of September 2, 2011, did not address the issues raised by Mr. Baker's earlier Rule to Modify Custodial & Financial Obligations Related to Minor Child due to material changes in circumstances. According to the record, the rule to modify is still pending before the family court, and this opinion does not address any issues concerning same because said issues are not before this court. We further note the family court gave no oral or written reasons why it sustained all of Ms. Baker's peremptory exceptions.

The initial error assigned by Mr. Baker is that the family court failed to apply the correct legal principles in analyzing the stipulated judgment at issue in this case.

---

[2] **Staci Baker v. Jock Nalty Baker**, 2011CW1706 (La. App. 1 Cir. 12/19/11).

In Louisiana, fathers and mothers, by the very act of marrying, contract together the obligation of supporting, maintaining, and educating their children. The obligation is conjoint upon the parents and each must contribute in proportion to his or her resources. La. Civ. Code art. 227; **Stogner v. Stogner**, 1998-3044, p. 5 (La. 7/7/99), 739 So.2d 762, 766. This obligation may not be renounced or set aside. **Richardson v. Richardson**, 2002-2415, p. 7 (La. App. 1 Cir. 7/9/03), 859 So.2d 81, 90 (Gaidry, J., concurring and quoting **Megison v. Megison**, 1994-152, p. 4 (La. App. 5 Cir. 9/14/94), 642 So.2d 885, 888). A parent generally has no legal duty to support his or her children beyond the age of 18. See La. Civ. Code arts. 227 and 230. Some financially able parents willingly assist their adult children in obtaining a higher education; any duty to do so is a moral rather than a legal one, absent a binding contractual agreement by the parent to pay such support. **Miller v. Miller**, 44,163, pp. 2-3 (La. App. 2 Cir. 1/14/09), 1 So.3d 815, 817.

As a complement to the child support obligation, La. R.S. 9:315-315.15 provides a detailed set of guidelines that the courts are mandated to follow in setting the amount of support in "any proceeding to establish or modify child support filed on or after October 1, 1989." La. R.S. 9:315.1(A); **Stogner**, 1998-3044 at pp. 5-6, 739 So.2d at 766. These child support guidelines are intended to fairly apportion between the parents the mutual financial obligation they owe their children, in an efficient, consistent, and adequate manner. **Id.** at 766-67.

The judgment in this matter is not merely a judicial decree, but a consent judgment reached by the parties. The court may review and approve a stipulation between the parties entered into following the enactment of said guidelines as to the amount of child support to be paid. La. R.S. 9:315.1(D). Therefore, regardless of language in a consent judgment to the contrary, child support judgments are always reviewable where a material change of circumstances has been shown. Thus, an exception raising the objection of no cause of action or res judicata in response to a rule to reduce child support or set child support, where a material change in circumstances

has been pled, cannot be properly maintained. See La. R.S. 9:311(A)[3]; See also **Richardson**, 2002-2415 at p. 7, 859 So.2d at 90 (Gaidry, J. concurring). Since child support can always be reviewed by a trial court if there is a material change in circumstance, it was error for the family court to grant the objections as to res judicata or estoppel, the latter being a common law doctrine which is not favored in Louisiana. **Bunge North America, Inc. v. Board of Commerce & Industry and Louisiana Department of Economic Development**, 2007-1746 (La. App. 1 Cir. 5/2/08), 991 So.2d 511, writ denied, 2008-1594 (La. 11/21/08) 996 So.2d 1106.

In addition, the family court granted Ms. Baker's peremptory exception that raised the objection as to peremption. Ms. Baker evidently filed this exception in the mistaken belief that Mr. Baker was seeking to annul the stipulated judgment at issue on grounds of fraud or ill practices pursuant to La. Code Civ. P. art. 2004. The pleadings in the record reveal that Mr. Baker has not alleged fraud or ill practices, but seeks instead to annul the stipulated judgment based upon an error of fact (La. Civ. Code art. 1950, formerly, La. Civ. Code art. 1841) or of the principal cause of the agreement (La. Civ. Code arts. 1950 and 1967, formerly, La. Civ. Code art. 1824 et seq.)[4]; **Stroscher v. Stroscher**, 2001-2769, p. 5 (La. App. 1 Cir. 2/14/03), 845 So.2d 518, 524, citing **State, Department of Transportation and Development v. K.G. Farms, Inc.**, 402 So.2d 304, 307 (La. App. 1 Cir.), writ denied, 406 So.2d 625 (La. 1981). Inasmuch as Mr. Baker is not seeking to annul the stipulated judgment on grounds of fraud or ill practice, the peremptive period

---

[3] La. R.S. 9:311(A) was amended pursuant to Acts 2001, No. 1082, § 1 to insert "material" preceding "change in circumstances." Section 2 of the same act inserted "materially" preceding "change" in La. Civ. Code art. 142. These amendments legislatively overruled the holding in **Stogner**, 1998-3044 at pp. 10-13, 739 So.2d at 769-770, that any change in circumstances is sufficient to justify modification of child support. La. R.S. 9:311, Comment (a)-2001. The amendments implicitly restored the validity of prior appellate jurisprudence requiring that a change in circumstances justifying modification of child support be "substantial." The latter term used in the pre-**Stogner** jurisprudence should therefore for all practical purposes be considered synonymous with the term "material" in the statute. Apart from the holding legislatively overruled, the other holdings in the **Stogner** decision remain valid. **Richardson**, 2002-2415 at p. 2, 859 So.2d at 87 (Gaidry, J., concurring).

[4] Louisiana Civil Code articles 1950 and 1967 became effective on Jan. 1, 1985, following the amendment and reenactment of the articles on Obligations pursuant to Acts 1984, No. 331, § 1. According to the Disposition Table contained within the Exposé des Motifs, said articles contain the subject matter found in former La. Civ. Code arts. 1841 and 1824(1870). In this court's 2003 opinion in **Stroscher**, we incorrectly cited former La. Civ. Code arts. 1841 and 1824(1870), et seq. Said articles were pre-revision code articles cited in our earlier 1981 decision in **KG Farms.**

set forth in La. Code Civ. P. art. 2004 does not apply. The family court erred in granting Ms. Baker's peremptory exception which raised the objection as to peremption.

The family court also granted Ms. Baker's peremptory exception that raised the objection of no cause of action. The objection of no cause of action is properly raised by the peremptory exception and questions whether the law extends a remedy to anyone under the factual allegations of the petition. **Stroscher**, 2001-2769 at p. 3, 845 So.2d at 523 citing **Richardson v. Home Depot USA**, 2000-0393, p. 3 (La. App. 1 Cir. 3/28/01), 808 So.2d 544, 546. Having previously determined that Mr. Baker seeks to annul the stipulated judgment based upon an error of fact (La. Civ. Code art. 1950, formerly, La. Civ. Code art. 1841) or of the principal cause of the agreement (La. Civ. Code arts. 1950 and 1967, formerly, La. Civ. Code art. 1824 et seq.), we find on first examination that Mr. Baker may have stated a cause of action; however, this does not end our inquiry. We must further scrutinize the allegations that form the basis of his petition to annul. In particular, Mr. Baker alleges that the college tuition provision is vague as to the elements of the obligation. Additionally, Mr. Baker alleges that the college tuition provision is vague and ambiguous as it contains a never-ending suspensive condition, no extinctive term, and no determined object.

It is well settled that a consent (stipulated) judgment is a bilateral contract wherein the parties adjust their differences by mutual consent and thereby put an end to a lawsuit with each party balancing the hope of gain against the fear of loss. **Stogner**, 1998-3044 at p. 9, 739 So.2d at 768; **Leonard v. Reeves**, 2011-1009, p. 16 (La. App. 1 Cir. 1/12/12), 82 So.3d 1250, 1261. See also La. Civ. Code art. 3071. Its binding force arises from the voluntary acquiescence of the parties, rather than the adjudication by the court. Leonard, 2011-1009 at p. 16, 82 So.3d at 1261. Thus, a consent judgment, as opposed to other final judgments rendered against a party without their consent, may be annulled or rescinded for an error of fact or error of the principle cause of the agreement. La. Civ. Code arts. 1950 and 1967; **Stroscher**, 2001-2769 at p. 5, 845 So.2d at 524.

Consent to a contract may be vitiated by error, fraud, or duress. La. Civ. Code art. 1948. Error vitiates consent only when it concerns a cause without which the obligation

would not have been incurred and that cause was known or should have been known to the other party. La. Civ. Code art. 1949. Error may concern a cause when it bears on the thing that is the contractual object or a substantial quality of that thing. La. Civ. Code art. 1950. Cause is defined as the reason why a party obligates himself. La. Civ. Code art. 1967. **Horrigan v. Horrigan**, 2010-1377, pp. 5-6 (La. App. 1 Cir. 6/14/11), 70 So.3d 111, 115, writ denied, 2011-1596 (La. 10/7/11), 71 So.3d 325.

Interpretation of a consent judgment, i.e., a contract between parties, is a determination of the common intent of the parties; each provision in the contract is interpreted in light of other provisions so that each is given meaning suggested by the contract as a whole, and when the words of the contract are clear and explicit and lead to no absurd consequences, the intent of the parties is to be determined by the words of the contract. **Richardson**, 2002-2415 at p. 4, 859 So.2d at 84-85; see also La. Civ. Code arts. 2045 and 2046. Such intent is to be determined in accordance with the plain, ordinary, and popular sense of the language used, and by construing the entirety of the document on a practical, reasonable, and fair basis. **Freeport-McMoran, Inc. v. Transcontinental Gas Pipe Line Corp.**, 2004-0031, p. 7 (La. App. 1 Cir. 10/14/05), 924 So.2d 207, 212, writ denied, 2005-2358 (La. 3/31/06), 925 So.2d 1256. Although a contract is worded in general terms, it must be interpreted to cover only those things it appears the parties intended to include. La. Civ. Code art. 2051.

The applicable standard of review for contractual interpretation was set forth by this court in **Borden, Inc. v. Gulf States Utilities Company**, 543 So.2d 924, 928 (La. App. 1 Cir. 1989), writ denied, 545 So.2d 1041 (La. 1989):

> Whether a contract is ambiguous or not is a question of law. Where factual findings are pertinent to the interpretation of a contract, those factual findings are not to be disturbed unless manifest error is shown. However, when appellate review is not premised upon any factual findings made at the trial level, but is, instead, based upon an independent review and examination of the contract on its face, the manifest error rule does not apply. In such cases, appellate review of questions of law is simply whether the trial court was legally correct or legally incorrect. [Citations omitted].

Thus, the threshold issue in this matter is whether the terms of the contract are explicit or ambiguous. If the language of the contractual provisions is determined to be explicit and unambiguous, no additional evidence may be considered.

There was no hearing in connection with the initial 1996 divorce decree, which was rendered through a confirmation of default based upon Mr. Baker's waiver of citation and affidavits from both parties. In his notarized affidavit, Mr. Baker attested to the truth of the facts set forth in Ms. Baker's previously-filed petition, and expressly stated:

> Both parties have agreed to child support for the minor child [sic] shall be SIX HUNDRED AND NO/100 ($600.00) DOLLARS per month and defendant will also assume all tuition expenses incurred as a result of the child's schooling from kindergarten through college.

Thereafter, in 2005, the parties entered into a stipulated judgment providing for increased visitation and increased child support. The court minutes from August 23, 2005, state:

> A stipulation was entered into the record by counsel and agreed to by both parties. The court, after considering the stipulations read into the record by counsel and agreed to by the parties. [sic] The court rendered judgment in accordance with the stipulations.
>
> . . . .
>
> Both parties being personally present and having been duly sworn, signified to the Court their understanding of and agreement with the stipulations.
>
> Judgment to be approved as to the substance and form by counsel for both parties prior to submission to the Court for signature.

As part of this most recent judgment, Mr. Baker agreed to the college tuition provision at issue, which provides that Mr. Baker will "pay 75% of college tuition fees for Ruby Baker payable when due and to the college or university which Ruby Baker chooses." Said judgment was approved as to substance and form by each party's attorney and signed by the judge on December 14, 2005.

Mr. Baker now moves to annul the college tuition provision on the grounds that it is unenforceable on the basis of vagueness and ambiguity. In support of this position, Mr. Baker cites **Miller**, 44,163 at pp. 7-8, 1 So.3d at 819, in which the second circuit held that a tuition provision in a joint custody agreement was too vague and ambiguous to be enforceable and had no determinable period.

In **Miller**, the second circuit found invalid a provision where the father agreed "to begin setting funds aside for the minor children to attend post-secondary education necessary to pay tuition, books, supplies, and room and board not to exceed four (4) years." **Miller**, 44,163 at p. 2, 1 So.3d at 817. The second circuit stated that the provision failed to set forth when, how much, and where the funds were to be placed or invested, and more importantly, whether the father would be solely responsible for the entire costs of the children's education. Finding that because the tuition provision failed to clearly and explicitly set forth the parties' intent, the second circuit concluded that it was vague and ambiguous and must be set aside.

We cannot agree with Mr. Baker and conclude that the facts presented by the instant case are not analogous to the facts presented in **Miller**. The pleadings contained within the record in this matter leave no doubt that the parties intended that Mr. Baker would pay at least 75 percent of the college tuition fees at the college or university chosen by Ruby Baker. Mr. and Mrs. Baker reviewed and signified their assent on multiple occasions that Mr. Baker would be primarily responsible for Ruby Baker's college tuition fees. As the second circuit observed in its opinion in **Gray v. Gray**, 37,884, p. 4 (La. App. 2 Cir. 12/12/03), 862 So.2d 1097, 1099, "[i]t is not within the purview of this court to relieve an able party such as [Mr. Baker] of his obligation which he freely and voluntarily entered into absent evidence of a vice of consent."

This court believes a common sense interpretation of "college tuition fees" is very clear and very specific – it means "college tuition fees," no more, no less. The term is not vague or ambiguous.

Mr. Baker also claims that the college tuition provision at issue is vague and ambiguous in that it establishes support for Ruby Baker well beyond the age of majority and for an indeterminate period. We disagree. Louisiana Civil Code article 1778 provides:

> A term for the performance of an obligation is a period of time either certain or uncertain. It is certain when it is fixed. It is uncertain when it is not fixed but is determinable either by the intent of the parties or by the occurrence of a future and certain event. It is also uncertain when it is not

> determinable, in which case the obligation must be performed within a reasonable time.

The foregoing article makes it plain that Mr. Baker's obligation to pay 75 percent of college tuition fees for Ruby Baker is not open-ended, but must instead "be performed within a reasonable time."

Accordingly, we hereby reverse the family court's maintenance of the peremptory exceptions objecting to peremption, res judicata, and estoppel. Under the unique facts of this case, we affirm the family court's granting of the objection of no cause of action as to Mr. Baker's Petition for Nullity of Judgment only. We pretermit any discussion of the issue of prescription, and we remand to the family court for further proceedings relative to Mr. Baker's pending Rule to Modify Custodial & Financial Obligations Related to Minor Child due to material changes in circumstances.

CONCLUSION

For the reasons set forth above, we hereby reverse in part, affirm in part, and remand for further proceedings. All costs associated with this appeal shall be assessed equally against Jock Nalty Baker and Staci Baker.

REVERSED IN PART, AFFIRMED IN PART, AND REMANDED.