IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:	)	**No. 29847-7-III**
MELISSA ZEIDMAN BRONSTEIN,	)	
Appellant,	)	**Division Three**
and	)	
SEYMOUR MAYNARD BRONSTEIN,	)	
Respondent.	)	**UNPUBLISHED OPINION**

Siddoway, J. — Melissa Bronstein challenges the trial court's summary resolution of a dispute over the meaning of a property settlement agreement incorporated into her and Dr. S. Maynard Bronstein's dissolution decree. The agreement provided that the parties would "equally pay" a debt owed to Providence St. Mary Medical Center, where Dr. Bronstein serves on the medical staff. The parties dispute the extent of Ms. Bronstein's financial responsibility if, as anticipated, the loan is forgiven by the hospital based on the husband's continued performance of services.

The trial court summarily determined that the result of forgiveness—earned

through what it termed the husband's "sweat equity"—was that the wife's obligation would thereby be transformed into a liability to the husband. It ordered her to make payment, on an accelerated basis, of the amount of debt projected to be forgiven. We find the provision of the property settlement agreement ambiguous and inappropriate for summary interpretation on the limited evidence available to the court. We reverse and remand for further proceedings.

FACTS AND PROCEDURAL BACKGROUND

Melissa and Dr. S. Maynard Bronstein were married in 1990. They relocated to Walla Walla, where Dr. Bronstein joined the medical staff of Providence St. Mary Medical Center as an oncologist around June 2007. This case centers on a physician recruitment agreement entered into between him and the hospital incident to his moving to Walla Walla, identified in the record as a "Letter of Understanding" dated July 1, 2007. Clerk's Papers (CP) at 128. No copy of the agreement appears in the record, so we must infer its terms from later correspondence that does appear. Our description of its terms is our best estimation, and one that the trial court should disregard if it is contradicted by more reliable evidence produced on remand.

It appears that in order to induce Dr. Bronstein to practice at the hospital, St. Mary offered him an income support agreement. Under the terms of the agreement, it appears that St. Mary guaranteed Dr. Bronstein first-year net earnings from his practice of

$365,000. To the extent his $365,000 guaranteed earnings were subsidized by St. Mary, the subsidy would be a loan to Dr. Bronstein, repayable by him to St. Mary. He could earn forgiveness of the loan, however, through continued service for three years following the first year; in other words, for the period from July 1, 2008 through June 30, 2011.[1]

Dr. and Ms. Bronstein separated in March 2008. In late June and early July 2009, they executed a property settlement agreement. "[I]n contemplation of the finalization of [their] dissolution of marriage action," they settled their "respective rights as to child custody, support, property, homestead, inheritance and all other rights of and to property otherwise growing out of the marriage relationship." CP at 9-10. The agreement

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[1] In a letter dated March 11, 2010, the chief executive of the hospital recapped the agreement as follows:

> St. Mary Medical Center agreed to provide you with financial assistance in the form of income support to relocate to . . . Walla Walla[.] The income support was for a period of one year and then there was to be loan forgiveness if you stayed in the community providing services. Otherwise you were required to pay back the loan. It is this requirement that needs clarification. It was intended that you would be provided income support for one year and then in order to get loan forgiveness you needed to stay in the community for an additional 3 years. Therefore, if you remain in the community until June 30, 2011 then the entire amount of the income support will be forgiven and you will be issued [an Internal Revenue Service (IRS) Form] 1099 for the total amount of the loan forgiven. If you chose to leave the community you will be required to pay back the amount of the loan and be issued a 1099 on a prorated basis for those months you remained in the community from July 1, 2008 to the date of departure.

CP at 127.

formalized a mediation agreement earlier executed by the parties on April 29, 2009.

Evidently in anticipation of the April 29 mediation, Dr. Bronstein obtained a letter from St. Mary's vice-president of finance on April 28, setting forth the current balance of the doctor's liability for the forgivable loan. A schedule attached to the letter recapped St. Mary's subsidization of Dr. Bronstein's paychecks, which apparently continued from only June 2007 until the end of November 2007. The subsidy totaled approximately $169,464.36. The letter represented that Dr. Bronstein had already repaid $42,476.13 of the obligation, "leaving a reimbursable balance of $126,988.23." CP at 125. Later correspondence from St. Mary implies that the parties had originally agreed that the obligation would be forgiven pro rata for service performed from July 1, 2008 through June 30, 2011, at which point it would be entirely forgiven. CP at 127 (referring to the fact that Dr. Bronstein would be issued IRS Form 1099 "on a pro rated basis," presumably to reflect an income consequence of the hospital cancelling his indebtedness).

Whatever the amount of the obligation in April 2009, the parties' mediated agreement and property settlement agreement included identical provisions addressing the forgivable loan liability. Each provides:

> The parties shall equally pay the $170,000 debt to Providence Saint Mary Medical Center, provided, Husband agrees to pay Wife's share of this obligation at $2,000 per month commencing June 1, 2009 so long as she remains in Walla Walla with the children, provided, Wife shall have no obligation to pay said $170,000 if Husband moves from Walla Walla prior to the Wife.

CP at 11, 17.

A decree of dissolution was entered dissolving the Bronsteins' marriage on July 24, 2009. It provided, as to liabilities to be paid by the parties, that each "shall pay the community or separate liabilities as set forth in the Property Settlement Agreement referenced above." CP at 56.

Ms. Bronstein moved with the couple's children to Rochester, New York, on August 19, 2010. On the following day, Dr. Bronstein filed a motion in Walla Walla County Superior Court seeking an order requiring Ms. Bronstein to pay her half of the St. Mary debt directly to him, reduced by the amount she should be credited for the months she remained in Walla Walla. He claimed this amount to be $51,500.[2] In essence, Dr. Bronstein construed the provision of the property settlement agreement addressing the forgivable loan to provide that Ms. Bronstein had traded what would have been her community property share of a contingent obligation on the forgivable loan for a fixed obligation to her husband that she could reduce only by remaining in Walla Walla.

Ms. Bronstein's response revealed a very different understanding of the provision.

[2] The $51,500 figure proposed by Dr. Bronstein and ultimately adopted by the trial court was calculated as follows: $170,000 / 2 = $85,000, Ms. Bronstein's half share, less $2,000 multiplied by 14 months, the amount of time she remained in Walla Walla from June 1, 2009, for a total of $28,000, and less $5,500, the value of a timeshare interest that she signed over to Dr. Bronstein. CP at 135.

She did not read it as creating an independent, absolute obligation to her husband, but as depending in the first instance on the balance of the financial obligation to St. Mary, which she expected to decline as it was forgiven. She acknowledged that some amount might be owed if Dr. Bronstein had actually been required to make monetary payments toward the debt, and requested discovery and an accounting of anything he had paid. But she questioned whether any claim under the provision was ripe since, according to her understanding, the loan was not yet due and it would be unfair to require her to prepay Dr. Bronstein rather than St. Mary, for a debt that might never become payable to St. Mary. Ms. Bronstein requested an accounting of the loan, served discovery, and argued that "[a] ruling on this debt without a full response to the discovery request would be inappropriate." CP at 111.

In response, Dr. Bronstein argued that the April 2009 letter from St. Mary that he provided at the time of the divorce mediation was sufficient to prove the $126,988.23 balance of the obligation at that time. He also testified by declaration that negotiations toward retirement of the obligation were ongoing.[3]

[3] He did not contest that the Letter of Understanding referred to in the record was in place since the outset of the arrangement, as would be required if the physician recruitment agreement is the sort we assume it to be. *See, e.g.*, 42 C.F.R. § 411.357(e)(1)(i) (a recruitment agreement by a hospital receiving Medicare reimbursement that provides remuneration to induce a physician to relocate his medical practice must be "set out in writing and signed by both parties").

In a letter opinion dated January 6, 2011 the trial court ruled:

> When the trial court is asked to interpret a property division in a decree and/or property settlement agreement, it must ascertain the parties' intent at the time of the agreement. If the language of the document(s) is (are) unambiguous, there is no room for interpretation.
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> . . . .
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> The Court is of the opinion that the language at issue here is unambiguous. It clearly says each party will equally repay the $170,000 debt to the hospital. The parties' intent, it seems, was that subject to the relocation restrictions, there would be equal responsibility and possibly benefit for the debt. The Court is satisfied Respondent has made the payments he claims.

CP at 169. The court concluded that Ms. Bronstein's decision to relocate "triggered the relocation and repayment clause in the settlement agreement." *Id.* at 170. After calculating certain credits to which Ms. Bronstein was entitled the court concluded,

> [Ms. Bronstein's] amount owed to [Dr. Bronstein] as a result of her voluntary relocation is $51,500. [Dr. Bronstein] is not being paid twice. The terms of his repayment to the hospital may be cash or sweat equity for a specified period of time (whatever he and the hospital agree to).

Id.

Ms. Bronstein appeals.

ANALYSIS

Ms. Bronstein argues that in deciding a disputed claim summarily, as the trial court did here, it was inherently subject to the requirements of CR 56, and should have rendered the requested judgment only if "the pleadings, depositions, answers to

interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). Her first assignment of error is that the trial court erred in not applying a summary judgment standard. No one at the trial court level couched the proceedings in summary judgment motion terms, nor were they required to. Having the authority to enforce the decree and its incorporated property settlement, the trial court had the authority to use any suitable process or mode of proceeding to settle disputes over which it has jurisdiction, provided no specific procedure is set forth by statute and the chosen procedure best conforms to the spirit of the law. *In re Marriage of Langham*, 153 Wn.2d 553, 560, 106 P.3d 212 (2005).

The trial court did recognize, however, that the dispute over the meaning of the provision should be resolved summarily only if the property settlement agreement was unambiguous and the issue was therefore one of law. In its letter decision, the trial court initially observed that the parties had inquired into whether a trial was needed. It concluded that a trial was not needed because "[w]hen the trial court is asked to interpret a property division in a decree and/or property settlement agreement, it must ascertain the parties' intent at the time of the agreement," and "[i]f the language of the document(s) is (are) unambiguous, there is no room for interpretation." CP at 169.

The dispositive issue on appeal, then, is not whether the trial court failed to

recognize that the provision, if ambiguous, should not be resolved summarily—it did recognize that summary disposition would be inappropriate in that case. Rather, the dispositive issue is framed by Ms. Bronstein's remaining assignments of error challenging the trial court's interpretation and the adequacy of the record to decide the issue.

Well-settled law contradicts Dr. Bronstein's argument that the property settlement agreement, being included in the decree, is res judicata and forecloses Ms. Bronstein's challenge to the trial court's interpretation. It is clear that a property settlement agreement incorporated into a dissolution decree that was not appealed cannot be later modified. *Byrne v. Ackerlund*, 108 Wn.2d 445, 453, 739 P.2d 1138 (1987). But in the trial court and on appeal, Ms. Bronstein is only advancing what she contends is the intended meaning of the forgivable loan provision; she is not asking that it be modified. Interpretation does not amount to modification and is permissible. *Stokes v. Polley*, 145 Wn.2d 341, 350-51, 37 P.3d 1211 (2001); *Byrne*, 108 Wn.2d at 453 (a decree, or agreement merged therein, may be subject to a declaratory judgment action to ascertain the rights and duties of the parties).

Nor is Ms. Bronstein foreclosed from appeal by her lawyer's entry into an agreed order setting a briefing schedule for Dr. Bronstein's "Motion on the Settlement Agreement" and agreeing that the court would decide the motion without oral argument. Ms. Bronstein's submissions to the trial court clearly contested Dr. Bronstein's

interpretation of the property settlement agreement and the adequacy of the record to decide the motion. It is the trial court's resolution of these two matters, clearly raised below, which she appeals.

The parties correctly agree that review of a trial court's interpretation and enforcement of the settlement agreement is de novo. *See Langham*, 153 Wn.2d at 559 (taking de novo review of a postdissolution judgment since only documentary evidence was relied upon by the trial court); *Lavigne v. Green*, 106 Wn. App. 12, 16, 23 P.3d 515 (2001) (applying de novo review to a ruling on a motion to enforce a settlement agreement); *In re Marriage of Thompson*, 97 Wn. App. 873, 877, 988 P.2d 499 (1999) (applying de novo review to interpretation of the terms of a divorce decree).

Based on our independent review of the record, we disagree with the trial court's conclusion that the provision is unambiguous. Given the forgivable character of the loan and the property settlement agreement's total failure to address how its expected partial or total forgiveness would affect the parties' liabilities, the provision is inherently ambiguous. Dr. Bronstein's interpretation has no textual support in the provision. Ms. Bronstein's obligation provided by the property settlement agreement is to "equally pay the $170,000 debt *to Providence Saint Mary Medical Center*"; it makes no mention of an obligation to make a payment to Dr. Bronstein under any circumstance. CP at 11 (emphasis added). Moreover, Dr. Bronstein presented no evidence that there continued to

be any "debt to Providence Saint Mary Medical Center."

But the trial court was not required to, and should not, view the provision in isolation. A court's primary goal in interpreting a contract is to give effect to the parties' intent. *Berg v. Hudesman*, 115 Wn.2d 657, 663, 801 P.2d 222 (1990). Parol evidence is admissible to show the situation of the parties and the circumstances under which a written instrument was executed, for the purpose of aiding in the interpretation of its meaning, whether or not the language in the contract is ambiguous. *Id*. at 669. This includes the interpretation of property settlement agreements. *In re Marriage of Sievers*, 78 Wn. App. 287, 302, 897 P.2d 388 (1995). The interpretation does not turn on what the trial court or we believe is fair or will turn out to be fair; it turns on what the parties agreed to at the time they entered into the property settlement agreement.

Based upon the limited evidence available to the trial court, the language in the provision might be susceptible to the meaning attached to it by the trial court. The loan might never be owed, but it was within Dr. Bronstein's exclusive control to leave Walla Walla and accelerate the liability. Ms. Bronstein might have agreed to go along with the provision as understood by Dr. Bronstein for that reason. On the other hand, it is equally susceptible to the meaning attached to it by Ms. Bronstein. The obligation had already been reduced by $43,000 by the time of mediation, yet only Ms. Bronstein's interpretation—by tying her liability to the actual loan balance—gives her the benefit of

that reduction. In addition, Dr. Bronstein's interpretation of her obligation and earn-out is sufficiently unfavorable to Ms. Bronstein as to raise questions whether she would go along, even if *not* going along placed her at risk of his leaving Walla Walla.[4]

The discovery requested by Ms. Bronstein into the underlying Letter of Understanding and any monetary payments made by Dr. Bronstein should be allowed. The Letter of Understanding—as to whose specific forgiveness terms we can only guess—is essential evidence. Depending on the amount of the liability to St. Mary as of April 2009 and the rate at which it was being forgiven, it bears on the reasonableness of the parties' respective interpretations. The reasonableness of the respective interpretations advocated by the parties must be considered by the fact finder in determining the contracting parties' intent, as must the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, and the subsequent acts and conduct of the parties to the contract. *Scott Galvanizing, Inc. v. Nw. EnviroServices, Inc.*, 120 Wn.2d 573, 580-81, 844 P.2d 428 (1993).

[4] Given Dr. Bronstein's position that Ms. Bronstein's liability was not being reduced by his continued practice of medicine in Walla Walla, but only by the $2,000 per month beginning in June 2009 at which he agreed to satisfy her share of the obligation if she stayed, it would take Ms. Bronstein 42.5 months ($85,500/$2,000), or until mid-November 2012, to retire her asserted $85,000 liability to her husband. By comparison, it appears that the liability to St. Mary—already materially diminished through forgiveness by the time Ms. Bronstein moved in August 2010—would be entirely retired by July 1, 2011.

While we agree with Ms. Bronstein that the provision is ambiguous and requires more evidence to be interpreted, we disagree with her position that the dispute is not ripe. A claim is ripe for judicial determination if "'the issues raised are primarily legal and do not require further factual development, and the challenged action is final.'" *Bellewood No. 1, LLC v. LOMA*, 124 Wn. App. 45, 50, 97 P.3d 747 (2004) (quoting *Neighbors & Friends of Viretta Park v. Miller*, 87 Wn. App. 361, 383, 940 P.2d 286 (1997), *review denied*, 135 Wn.2d 1009 (1998)), *review denied*, 154 Wn.2d 1004 (2005); *see also Thun v. City of Bonney Lake*, 164 Wn. App. 755, 767, 265 P.3d 207 (2011) (recognizing that "[r]ipeness is a hurdle that requires the basic facts underlying a dispute to be resolved before the dispute reaches court"), *petition for review filed* No. 86935-9 (Wash. Jan. 27, 2012). Cases not sufficiently ripe for judicial review must be dismissed. *Grandmaster Sheng-Yen Lu v. King County*, 110 Wn. App. 92, 96, 38 P.3d 1040 (2002). Dr. Bronstein seeks a determination that the forgivable loan provision transformed Ms. Bronstein's contingent liability to St. Mary into an absolute obligation to pay him. While deciding the issue requires more evidence, it does not require further factual development.

When faced with an ambiguous property settlement agreement, "[i]t [is] incumbent upon the trial court to consider all of the evidence in light of the conflicting theories presented at the time of trial, and to determine which of several possible meanings these parties intended when they signed the [property settlement agreement]." *Sievers*, 78 Wn.

App. at 303. The property settlement agreement is ambiguous and the terms and performance under the 2007 Letter of Understanding are essential evidence. We therefore reverse the trial court's order and judgment and remand for proceedings consistent with this opinion.

Dr. Bronstein requests attorney fees on appeal pursuant to RCW 4.84.330 and an attorney fee provision included in the property settlement agreement. The provision allows reasonable fees and costs to the prevailing party. Dr. Bronstein has not prevailed. His request for fees is denied.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Siddoway, J.

WE CONCUR:

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Kulik, C.J.

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Sweeney, J.