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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of JENNY and FRANK B.	
JENNY M., Respondent, v. FRANK B., Appellant.	D053851 (Super. Ct. No. D481192)

APPEAL from orders of the Superior Court of San Diego County, Lorna A. Alksne, Gonzalo Curiel, Judges. Affirmed.

I

INTRODUCTION

Frank B. (Frank) and Jenny M. (Jenny) were married in 1984. During their marriage, Frank and Jenny had two children: E., born in 1990, and G., born in 1992. In 2003, Frank and Jenny ended their marriage by way of a written stipulation that was incorporated into a marital dissolution judgment.

On April 11, 2008, the trial court denied Frank's request that Jenny be ordered to pay him additional compensation in connection with the sale of his interest in the community residence to her. On September 10, 2008, the trial court directed Frank to pay child support arrears incurred prior to August 14, 2008, the date on which Jenny's current husband adopted E. and G. In addition, in the September 10 order, the trial court denied Frank's request that Jenny be ordered to reimburse him for certain attorney fees, and for dental expenditures that he made on behalf of E. In the same order, the trial court reserved jurisdiction over Jenny's request for information from Frank regarding certain trust funds that she believed existed and named E. and G. as beneficiaries.

On appeal, with respect to the April 11 order, Frank contends that he was entitled to a credit for closing fees and broker's fees that were not incurred in the November 2006 sale of his share of the community residence and/or interest on the value of his share. With respect to the September 10 order, Frank claims that the trial court erred in ordering him to pay child support during the time period after he consented to the adoption of the children, and prior to the finalization of the adoption. Frank also contends that the trial court erred in denying his request for an order requiring that Jenny reimburse him for attorney fees and dental expenditures. Finally, Frank maintains that the court erred in reserving jurisdiction over Jenny's request for information pertaining to the trust funds.[1] We affirm the orders.

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[1] Although Frank also appeals from an April 7, 2008 order, he does not raise any claims as to this order. In addition, while Frank's opening brief contains a section regarding the issue of parental alienation and Frank contends that Jenny engaged in

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FACTUAL AND PROCEDURAL BACKGROUND

In April 2007, Frank filed an order to show cause in which he claimed that Jenny owed him money in connection with the November 2006 sale of his interest in the community residence to her in November 2006. On April 11, 2008, the trial court entered a written order denying Frank's request.

On April 14, 2008, Frank's attorney filed an ex parte application seeking to continue a Family Court Services mediation that was scheduled for the following day. In the application, Frank's attorney requested that the court award Frank attorney fees and costs incurred in making the application.

In July 2008, Jenny filed an order to show cause requesting that the trial court order Frank to pay child support arrears in the amount of $7,143. Jenny also requested that Frank reimburse her for certain dental expenditures that she had incurred due to Frank's changing of E.'s dental insurance. In addition, Jenny requested that Frank provide her with information regarding certain trust funds that she believed existed, as to which E. and G. were the beneficiaries. At the hearing on Jenny's order to show cause, Jenny requested that the trial court order Frank to pay additional child support for the first

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parental alienation with respect to E. and G., he does not raise a distinct legal claim related to this assertion in his brief. Frank requests that this court provide guidance to our state's trial courts with respect to the issue of parental alienation. However, this court's role is limited to resolving discrete legal controversies. In the absence of the presentation of such a controversy on appeal, this court may not expound on issues, no matter how pressing they may be. We acknowledge Frank's time and effort in providing this information to the court. It is clear from the record that this case has been a difficult and painful experience for all involved.

two weeks of August 2008, prior to the August 14 adoption of E. and G. by Jenny's new husband.

In August 2008, Frank filed a declaration in which he requested that the court order Jenny to reimburse him for dental expenditures that he made on behalf of E. in 2008.

On September 10, 2008, the trial court entered an order granting Jenny's request for child support arrears, denying Frank's requests for attorney fees and reimbursement for dental care expenses, and reserving jurisdiction over the issue of Jenny's request for information pertaining to the trust funds.

Frank appeals from the trial court's April 11 and September 10 orders.

III

DISCUSSION

A. *Frank is not entitled to any additional funds based upon the sale of his interest in the community residence to Jenny*

Frank claims that he is entitled to an additional $13,864, above the $236,636 that Jenny paid him in November 2006, for his interest in the community residence. Frank maintains that in Frank and Jenny's dissolution stipulation, they estimated that the value of Frank's interest in the residence was $236,636, but that this estimate was based on the assumption that a sale would take place in which "closing and broker's fees" in the amount of $27,728 would be incurred. Frank argues that closing costs and broker fees were not in fact incurred in the sale that took place in November 2006, and that he is therefore entitled to an additional $13,864, representing one-half of the estimated amount

of these fees. Frank also contends that he is entitled to interest at the legal rate on the $236,636, for the time period between entry of the marital dissolution judgment and the sale of his share of the community residence, pursuant to *In re Marriage of Pollard* (1988) 204 Cal.App.3d 1380 (*Pollard*).

1. *Factual and procedural background*

The parties' dissolution stipulation provides in relevant part as follows:

> "The residence shall be listed for sale whenever Wife decides to sell the property or the year 2012, whichever comes first. The decision on all aspects associated with listing and selling the home and property, price, timing, [and] terms, will be the sole responsibility of Wife. The home's value was appraised in December 2003 as $710,000. After paying off remaining mortgage of $209,000 and subtracting out closing and broker fees, remaining net proceeds in the home equals $473,271, as of December 2003. Upon the sale of the home, Husband will receive one-half of these net proceeds, totaling $236,636. As of December 2003, Wife will be solely responsible for paying monthly mortgage costs and home maintenance costs."

In November 2006, Frank sold Jenny his interest in the community residence. Frank signed an interspousal transfer grant deed, transferring his interest in the community residence to Jenny, and Jenny paid Frank $236,636 for that interest.[2]

In April 2007, Frank filed an order to show cause and a brief in which he sought reimbursement for closing costs that were not incurred in the November 2006 sale and/or

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[2] The record indicates that there was some confusion with respect to whether the initial deed that Frank signed granted his interest in the residence to Jenny, or to Jenny and her current husband. In August 2007, the court ordered Frank to sign a corrected deed reflecting a transfer of his interest in the property to Jenny. In any event, any uncertainty as to the identity of the grantee(s) on the November 2006 deed is immaterial for purposes of our consideration of Frank's contentions.

interest at the legal rate of 10 percent from April 9, 2004—the date of entry of the stipulated judgment in the marital dissolution action—until November 7, 2006.[3] Frank claimed that he was entitled to interest at the legal rate on the $236,636 referred to in the dissolution stipulation because, he maintained, that amount constituted a money judgment under *Pollard*. With respect to closing costs, Frank argued that he should be "charged only 50 [percent] of *actual* closing costs[,] not an amount left to the discretion of [Jenny] and [the escrow company that handled the November 2006 transaction]." Jenny filed a declaration in opposition to Frank's order to show cause in which she claimed that Frank was not entitled to receive any additional funds from her arising out of the sale of his interest in the residence to her.

In a supplemental declaration, Frank reiterated his claim for interest under *Pollard*, and also clarified his argument with respect to his claim for closing costs, contending, "This was a not a 'sale' in the normal respects. Costs anticipated in a normal sale, where the sellers usually pay large real estate commissions and other fees were not incurred here and I should not be charged with imaginary costs." Jenny filed an opposition in which she claimed that *Pollard* was distinguishable because the stipulated judgment in this case set a date by which Frank was entitled to receive the value of his share of the community residence, and thus, "no interest accrued until Jenny actually owed Frank the money." Jenny also claimed that Frank was estopped from seeking

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3 Although Frank did not expressly state the reason for his selection of the November 7, 2006 date in his brief, he lodged a copy of an interspousal transfer grant deed transferring his interest in the residence to Jenny and her new husband that is dated November 7, 2006.

interest and costs based on his having signed the deed and accepting payment from Jenny.

In August 2007, Frank filed an additional brief in which he further discussed the application of *Pollard* to this case. Frank also filed an additional supplemental declaration in which he stated: "Although [Jenny] and I discussed the possibility of one party purchasing the other party's interest in the home, we rejected that idea, deciding that neither of us was or would financially be able to do so. Accordingly, we made no provision in the [marital dissolution stipulation] for the possibility of a buyout of the other party's interest, opting instead to confine our stipulation to sale of the home." Frank also stated, "[the marital dissolution] [j]udgment clearly contemplated the sale of the residence; it did not contemplate [Jenny's] refinancing the residence to purchase my interest, the latter event which would cause me to incur no closing costs or broker's fees."

In response to Frank's filings, Jenny filed an additional declaration in which she described the negotiations that led to the marital dissolution stipulation, and in particular the treatment of the sale of the community residence. Jenny stated: "With regards to the sale of the home, we set the final sale price that he would receive at $236,636.00 in a very simple way. [Frank] agreed to this amount since there was no way of knowing the other associated costs and terms or actual agreed sale price (repairs, lending, inspections, termite inspections, etc.) of potential buyers for that moment and how it would impact a speculated sale of the home and [Frank] simply did not care to try and figure those issues out." Jenny also stated, "[Frank] has lied about purchasing one party's interest in the house. This was never discussed." With respect to the eventual sale of Frank's interest,

Jenny stated that Frank had "harassed [her] frequently about getting his money out of the house."

On August 14, 2007, the trial court held a hearing at which the court heard argument from both parties' counsel regarding Frank's claims. The court took the matter under submission. In September 2007, the trial court issued an oral ruling denying Frank's request for interest, reasoning that "*Pollard* does not apply in this case . . . [because] there was a date certain that the money was due and before that time period there was no interest accruing." In December 2007, the trial court issued an ex parte order denying Frank's request that he receive an additional amount of money for closing costs that were not incurred. On April 11, 2008, the trial court issued a formal written ruling, stating "Respondent's request for interest on the equalizing payment for his equity interest . . . is herein denied."

2. *Frank is not entitled to an additional $13,864 for his share of the community residence*[4]

a. *Governing law and standard of review*

"Marital settlement agreements incorporated into a dissolution judgment are construed under the statutory rules governing the interpretation[] of contracts generally. (Civ. Code, § 1635 et seq.; [citations].)" (*In re Marriage of Iberti* (1997) 55 Cal.App.4th 1434, 1439 (*Iberti*).) Among these rules are that, "A contract must be so interpreted as to

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4 In her respondent's brief, Jenny claims that Frank forfeited this claim by failing to obtain a ruling on this issue in the trial court. In his reply appendix, Frank included the December 2007 ex parte order in which the court rejected his claim. Accordingly, we conclude that Frank adequately preserved this claim.

give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." (Civ. Code, § 1636.) "The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity." (Civ. Code, § 1638.)

The *Iberti* court specified the circumstances under which a court may admit extrinsic evidence in interpreting a contract:

> "Provided it supports a meaning to which the language is reasonably susceptible, extrinsic evidence is admissible to prove the parties' intent as to ambiguous terms in a marital settlement agreement. [Citations.] As a matter of substantive law, extrinsic evidence cannot be relied on to support a meaning to which the agreement is not reasonably susceptible. [Citations.] [¶] When the language of the judgment incorporating the marital settlement agreement is clear, explicit, and unequivocal, and there is no ambiguity, the court will enforce the express language. [Citations.] Extrinsic evidence of the parties' intentions is inadmissible to vary, alter, or add to the terms of an unambiguous agreement." (*Iberti, supra*, 55 Cal.App.4th at pp. 1439-1440.)

" '[T]he "interpretation of a contract is subject to de novo review where the interpretation does not turn on the credibility of extrinsic evidence." ' [Citations.] 'In contrast, "[i]f the parol evidence is in conflict, requiring the resolution of credibility issues, we would be guided by the substantial evidence test. [Citation.]" [Citation.] However, extrinsic evidence is not admissible to ascribe a meaning to an agreement to which it is not reasonably susceptible. [Citation.]' [Citations.]" (*People v. Paredes* (2008) 160 Cal.App.4th 496, 507 (*Paredes*).)

b. *Under the terms of the marital dissolution stipulated judgment, Frank received the full amount to which he was entitled for the value of his share of the community residence*

The April 2004 community residence sale provision sets an amount certain for the value of Frank's share of the residence—i.e., $236,636. The language of the provision indicates that the parties elected to provide Frank with a specific dollar amount for his share of the residence, rather than making the value of his share contingent upon the terms of an eventual sale. While the provision explains the basis upon which the value of Frank's share was calculated, including "subtracting out closing and broker fees," the provision neither states, nor in any fashion implies, that the value of Frank's share would be recalculated upon the determination of actual costs incurred—or not incurred—in an eventual sale. Further, the community residence sale provision reserves to Jenny sole control over the "listing and selling the home and property, price, timing, [and] terms. . . ." Under these circumstances, it is not reasonable to interpret this provision as providing that Frank would receive additional funds in the event that actual closing and broker fees were lower than the parties estimated in executing the marital dissolution stipulation.

We conclude that under the terms of the marital dissolution stipulation, Frank received the full amount to which he was entitled for his share of the community residence.[5]

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[5] Assuming that one could regard the community residence sale provision as ambiguous in terms of its applicability in the context of a buyout between the parties,

3. *Frank is not entitled to interest on the buyout amount specified in the marital dissolution stipulation*

In *Pollard*, *supra*, 204 Cal.App.3d at page 1382, the parties (James and Billie) agreed that Billie would have exclusive possession of the marital residence upon the dissolution of their marriage. The parties further agreed that Billie would pay James $33,429.50, for his share of the house when Billie sold the residence. (*Ibid*.) However, the marital dissolution agreement did not require that Billie ever sell the residence. (*Ibid*.) In 1987, James petitioned the court to force a sale. (*Ibid*.) Billie agreed to pay James the $33,429.50 by May 1, 1988. (*Id*. at p. 1383.) The trial court allowed Billie to defer payment until that date, and denied James's request that Billie be ordered to pay him interest on the $33,429.50, accruing from the date of their dissolution of marriage. (*Ibid*.)

On appeal, the *Pollard* court concluded "James's award is a money judgment which bears interest at the legal rate from March 9, 1981, when the judgment was entered." (*Pollard*, *supra*, 204 Cal.App.3d at p. 1383.) The *Pollard* court reasoned that

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Frank has not identified any relevant extrinsic evidence demonstrating the parties' intent as to this issue. To the extent that Frank argues that his declaration, in which he states that he and Jenny discussed and rejected the idea of including a provision in the marital dissolution stipulation contemplating a buyout, constitutes such evidence, Jenny stated in her declaration that the parties did not discuss such a buyout. Accordingly, even assuming the relevance of this extrinsic evidence, we apply the substantial evidence test, and conclude that the parties' did not discuss a buyout in drafting the community residence sale provision. (See *Paredes*, *supra*, 160 Cal.App.4th at p. 507 [reviewing court applies substantial evidence test to any conflicting parole evidence as to meaning of contractual provision].) We therefore conclude that Frank has not identified any uncontradicted extrinsic evidence in the record that would alter our analysis of the language of the community residence sale provision provided in the text.

to conclude otherwise would allow for an unequal division of the value of the parties' residence—a result that the *Pollard* court concluded the parties had not likely intended:

> "Billie's procurement of an agreement ostensibly giving her sole control over the disposition of the marital residence should it become necessary to use it as the vehicle to satisfy James's award, seems more the product of his confidence in Billie's good faith and his lack of legal counsel than an expression of his willingness to accept less than an equal property division. In economic terms, the value of his award over the years could be eroded almost completely by Billie's open-ended interpretation, rendering James's award illusory and permitting her to acquire James's community share without compensation." (*Id.* at p. 1385.)

Accordingly, the *Pollard* court held, "[T]hat part of a judgment of dissolution which awards money in lieu of an in-kind division of nonmonetary community property is a money judgment on which interest accrues from the date of its entry, *in the absence of an express or implied agreement by the parties to the contrary*." (*Id.* at p. 1382, italics added.)

In this case, in contrast to *Pollard*, Frank and Jenny expressly specified in the marital dissolution stipulation that Frank was to receive the specified value of his interest in the community residence upon Jenny's sale of the home, *or no later than 2012*. (See pt. III.A.1., *ante*.) Thus, Frank was not subject to Jenny's "good faith," or to a potentially "illusory" award, as in *Pollard*. (*Pollard, supra*, 204 Cal.App.3d at p. 1385.) Under these circumstances, we conclude that the parties' impliedly agreed that Frank would not receive interest on the value of his share of the community residence prior to the date on which that sum became due, which was 2012.

Accordingly, we conclude that *Pollard* is distinguishable, and that Frank is not entitled to interest on the buyout amount specified in the marital dissolution stipulation.[6]

B. *The trial court did not err in ordering Frank to pay child support during the time period after Frank consented to the children's adoption and prior to the finalization of the adoption*

Frank claims that the trial court erred in ordering him to pay child support during the time period after he provided his consent to adoption of the children by Jenny's current husband, and prior to the finalization of the adoption.

1. *Factual and procedural background*

In March 2008, Jenny filed an order to show cause requesting modification of the existing child custody and visitation orders. In an accompanying declaration, Jenny requested that the court modify an existing court order that gave Frank physical custody of E. and G. on alternate weekends and on one evening during the week, to instead give her sole physical custody of the children.

On May 14, 2008, Frank signed stepparent adoption consent forms, consenting to Jenny's husband adopting E. and G. The consent forms state in relevant part, "*I, the undersigned, being the parent of [name of child] do hereby give my full and free consent to the adoption of said child by [name of stepparent], the petitioner herein, it being fully understood by me that with the signing of this document my consent may not be*

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6 In light of our conclusion, we need not consider Jenny's claim that Frank forfeited his claim for interest under *Pollard* by failing to adequately brief the issue on appeal. Nor need we consider Jenny's claim that Frank should be estopped from prevailing on his claims because of his requesting that Jenny consummate a purchase of his interest and accepting her payment of $236,636 for that interest.

withdrawn except with court approval, and that with the signing of the order of adoption by the court, I shall give up all my rights of custody, services, and earnings of said child and that said child cannot be reclaimed by me." Although the adoption petition is not contained in the record, it is undisputed that Jenny's husband filed a petition to adopt E. and G. on June 25, 2008.

In July 2008, Jenny filed an order to show cause requesting that the trial court order Frank to pay child support in the amount of $7,143. In a supporting declaration, Jenny stated that the trial court had ordered Frank to pay child support in the amount of $2,381 a month, and that he had failed to pay any child support during the months of March, June, and July 2008. Jenny also requested that the trial court admonish Frank that he had a continuing legal obligation to pay child support until the adoption was finalized.

On July 30, 2008, Frank filed a declaration in which he argued that no child support was due because he had agreed to sign the stepparent adoption consent forms and to pay Jenny $8,028, in exchange for an end to further proceedings in this case. Frank attached to his declaration various correspondence and proposed stipulations between the parties that he claimed demonstrated such a settlement. Included in this correspondence was a May 12, 2008 letter from Jenny's counsel stating that the matter would proceed unless "the parties have a fully executed stipulation resolving all issues." Frank also attached a June 12, 2008 letter from his counsel to Jenny's counsel stating that Jenny had "agreed to the terms of settlement on Tuesday, May 13, 2008," and a June 17, 2008 letter from Jenny's counsel to Frank's counsel disputing the existence of a settlement, as well as

various settlement offers and unsigned stipulations exchanged between the parties thereafter.

In his declaration, Frank argued that Jenny should be ordered to prove that the petition for adoption had been filed "and/or . . . return [to Frank] the original [adoption] consent forms." Frank contended that Jenny "used the adoption consents to make [him] look bad to our children while [she and her husband] h[e]ld off filing [the petition for adoption] and sh[ook] [him] down for money by continuing the Family Court proceeding . . . ." Frank also requested that the trial court interview the children prior to considering Jenny's request for sole physical custody.

On August 4, the court held a hearing on Jenny's March 2008 order to show cause.[7] During the August 4 hearing, Jenny's counsel informed the court that Jenny's husband had filed the petition for adoption. The court asked Frank whether he had filed anything seeking to withdraw his consent to the adoption. Frank responded:

> "I have not yet, your honor. Because I asked that the court interview the children. And if the stepparent adoption is in the best interest and it's what my children truly want, then I will not stand in their way of getting what they truly want."

The court concluded that it did not have sufficient information to rule on Jenny's request for sole physical custody. The court ordered Family Court Services to interview E. and G., and their counselor.

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[7] The court had continued the hearing on the merits of Jenny's July 2008 order to show cause because Frank had had not received service of the pleading.

On August 25, Frank filed a declaration in which he claimed that the trial court no longer had jurisdiction to consider Jenny's orders to show cause, in light of the August 14 finalization of the stepparent adoptions of E. and G. Frank lodged copies of the adoption orders along with his declaration. Frank also contended that Jenny had failed to effectuate service of her July 2008 order to show cause until after the adoption had been finalized.[8] Frank contended that this delay was prejudicial to him, arguing, "Had he known the extent of the requests for relief being made by [Jenny] in the [July 2008 order to show cause] he may have requested a stay of the Family Court proceeding."[9] Frank also reiterated his argument that Jenny should be precluded from seeking child support for the period after he signed the consent forms, in light of the parties' alleged May 2008 settlement of this case.

On September 2, the court held a hearing on Jenny's July 2008 order to show cause. At the hearing, Jenny's counsel clarified that she was also seeking child support arrears up to August 14, the date of the adoption. The court heard argument from Jenny's counsel and Frank regarding the effect, if any, that the adoption orders had on the court's ability to order child support arrears for support that was due prior to the finalization of the adoption. The court also heard argument regarding whether any settlement in the case precluded the court from ordering Frank to pay the child support that Jenny was

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8 Frank lodged a letter from Jenny's counsel dated August 14, stating that her office had twice inadvertently sent Jenny's July 2008 order to show cause to the wrong address, and that the pleading had been resent to Frank on August 13.

9 By referring to the "Family Court" proceeding, it is unclear whether Frank intended to refer to this action or to the adoption proceeding.

requesting. The court rejected Frank's arguments that it lacked jurisdiction to order that he pay child support arrears, and that the parties had reached a settlement in the case that precluded such an award. The court ruled that Frank owed Jenny child support for March, June, and July, and the first two weeks of August 2008.

On September 10, the trial court entered a written order directing Frank to pay child support arrears in the amount of $7,143 for March, June, and July 2008, and to pay "child support arrears for 14 days of August 2008."

2. *The trial court had jurisdiction to order Frank to pay child support arrears incurred prior to the finalization of the adoption*

Frank contends that upon the finalization of E. and G.'s adoption on August 14, the trial court lost jurisdiction to make further child support orders, even as to periods of time prior to that date. This contention raises a question of law, which we review de novo. (See, e.g *Brierton v. Department of Motor Vehicles* (2006) 140 Cal.App.4th 427, 433.)

Frank cites no authority, and we are aware of none, that would support his contention that the August 14, 2008 adoption order divested the trial court of jurisdiction to order Frank to pay child support for the period of time prior to that date. Prior to the finalization of the adoption, Frank had a duty to support his children (§ 4053, subd. (a)),[10] and we are aware of no legal or logical reason why the August 14 order should be held to relieve him of that obligation for any time prior to that date. (Cf. § 8617 ["The birth parents of an adopted child are, *from the time of the adoption*, relieved of all

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10 Unless otherwise specified, all subsequent statutory references are to the Family Code.

parental duties towards, and all responsibility for, the adopted child, and have no right over the child," italics added].) The stepparent consent forms that Frank signed state that he agreed to relinquish various parental rights upon "*the signing of the order of adoption by the court*. . . ." We agree with the trial court that, "to have prior arrears extinguished by the act of adoption," would result in a "unjustifiable windfall . . . to a noncomplying parent."

We also reject Frank's argument that the August 14 adoption order relieved him of the obligation to pay the disputed child support because Jenny's husband filed the petition for adoption prior to Jenny's filing the July 28 order to show cause. Since Frank's obligation to support the children continued until the date of the finalization of the adoption, the fact that the petition for adoption was filed before the order to show cause seeking child support is irrelevant.[11]

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11 Frank also contends that Jenny's delay in serving him with the July 2008 order to show cause was prejudicial because he "would have sought a stay of the Family Court proceeding or . . . would have stepped up efforts to try and seek withdrawal of his consent [to the adoption]." We reject Frank's claims that he was prejudiced by the delay of service of the July 23 order to show cause. To begin with, the delay was not particularly lengthy—consisting of approximately three weeks. Further, even assuming that Frank had attempted to withdraw his consent for the adoption, such an attempt would not have relieved him of his duty to pay child support. Similarly, even assuming that Frank had sought to stay this proceeding or the adoption proceeding, Frank has not demonstrated why such an attempt would have affected his child support obligation.

3. *The trial court did not err in finding that the parties had not reached an agreement that would preclude Jenny from seeking the requested child support*

Frank also claims that the trial court erred in awarding the disputed child support because Jenny "retracted . . . [an] agreement," that she would end this case in exchange for Frank providing his consent to the stepparent adoptions of E. and G.

"Where the existence of a contract is at issue and the evidence is conflicting or admits of more than one inference, it is for the trier of fact to determine whether the contract actually existed." (*Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 208.)

The trial court found that the parties had not reached a settlement in this case. While Frank's counsel asserted in a June 12, 2008 letter that Jenny had agreed to settle the case, there is no written document in the record demonstrating such a settlement. In fact, all of the other correspondence between the parties that Frank offered in opposition to Jenny's order to show cause supports the conclusion that the parties had *not* reached a settlement of the case. Given that the evidence of the existence of an agreement between the parties was—at best—in conflict, we conclude that Frank has not established that the trial court erred in finding that the parties had not reached an agreement that precluded Jenny from seeking the requested child support. (See *Bustamante v. Intuit, Inc., supra*, 141 Cal.App.4th at p. 208.)[12]

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12 Frank also claims that it was "fundamentally and inherently unfair," for the trial court to award Jenny the disputed child support. Although the basis for this claim is not clear from Frank's brief, to the extent that this claim is premised on the notion that Jenny breached an agreement to settle the case, we reject that argument for the reasons stated in the text. Frank also asserts that "[Jenny's] conduct has been and continues to be

Accordingly, we conclude that the trial court did not err in ordering Frank to pay child support during the time period after he provided his consent to the children's adoption, and prior to the finalization of the adoption.[13]

C. *The trial court did not abuse its discretion in declining to award Frank $700 to reimburse him for the cost of his attorney appearing in court to request a continuation of a Family Court Services mediation*

Frank contends that the trial court erred in declining to award him $700 for the cost of his attorney appearing ex parte in court on April 14, 2008 to request a continuation of a Family Court Services mediation that was scheduled for the following day. Although the statutory basis for Frank's request is not clear from the record, Frank cites section 271 in his brief on appeal. We review a trial court's denial of an award of attorney fees pursuant to section 271 for an abuse of discretion. (*In re Marriage of Rothrock* (2008) 159 Cal.App.4th 223, 237.)

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egregious," and that the trial court, nevertheless, "reward[ed] [Jenny] monetarily at ever turn." The trial court's child support award was for the children's benefit, not Jenny's. (§ 3900 ["Subject to this division, the father and mother of a minor child have an equal responsibility to support their child in the manner suitable to the child's circumstances"]; accord *Kristine M. v. David P.* (2006) 135 Cal.App.4th 783, 789 ["[P]ublic policy also prohibits a parent from waiving or limiting, by agreement, *a child's right to support*," italics added].)

13 Frank also contends that the trial court erred in awarding Jenny $3,000 in attorney fees for fees incurred in enforcing the child support order, pursuant to section 3557. However, Frank does not advance any additional argument for reversing the attorney fee award, beyond the arguments that we reject in the text, as to the child support award. Accordingly, we reject Frank's claim that the court erred in awarding Jenny $3,000 in attorney fees.

1. *Factual and procedural background*

On April 14, 2008, Frank's attorney filed an ex parte application seeking to continue a Family Court Services mediation that was set for the following day. In her application, Frank's counsel stated that the reason for the request was that "[Frank] will be out of town on business and unavailable via telephone." The application stated that it was supported by an evidentiary declaration.[14] The application also stated "[Frank] seeks attorney fees and costs from [Jenny] in connection with the within application."

That same day, the trial court held a hearing on the application and entered an order thereon.[15] The order continued the mediation for 30 days. The order also provided that Frank agreed to the following restriction on contact with his children pending the mediation: "[Frank] agrees he shall not exercise his current time-share with the children (ordered by the Court at [a] hearing on November 27, 2008) until the earlier of thirty (30) days from the date of the entry of the within Order or completion of mediation with Family Court Services." However, the order stated that Frank would be permitted to have telephonic and text messaging contact during this period. The order reserved the issue of Frank's request for attorney fees and costs.

In an August 25, 2008 declaration, Frank reiterated his request for "ex parte fees." Frank argued that Jenny's counsel had verbally agreed to continue the mediation in light of Frank's counsel's pending surgery, but had later retracted that agreement unless Frank

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14 The accompanying declaration is not contained in the record.

15 There is no transcript from the hearing in the record.

would agree to "an unreasonable requirement as evidenced by [Jenny's counsel's] letter dated April 9, 2008." Frank attached a copy of this letter to his declaration. The letter stated that Jenny's counsel would agree to continue the mediation "conditioned upon Mr. Boyd's agreement to have no contact with the minor children pending further order of the court."

At a September 2, 2008 hearing, the trial court heard argument from Jenny's counsel and Frank regarding Frank's request for $700. Frank contended that Jenny's refusal to continue the mediation was based on the unreasonable demand that he have no contact with the children pending further order of the court. Jenny's counsel argued that the demand was not unreasonable, in view of the fact that Frank's counsel essentially agreed to the condition at the ex parte hearing.

The trial court orally denied Frank's request at the September 2 hearing. On September 10, the trial court entered a written order denying Frank's request.

2. *Governing law and standard of review*

Section 271 provides in relevant part:

> "(a) Notwithstanding any other provision of this code, the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this

> section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award.
>
> "(b) An award of attorney's fees and costs as a sanction pursuant to this section shall be imposed only after notice to the party against whom the sanction is proposed to be imposed and opportunity for that party to be heard."

3. *Application*

Frank has not included in the record on appeal the evidentiary declaration that his counsel submitted in support of the April 14 ex parte application, or the hearing transcript on the application. In addition, there is nothing in the record, beyond Frank's statements, to demonstrate that Jenny's counsel initially unconditionally agreed to continue the mediation. Jenny's counsel's April 9 letter states that her agreement to continue the mediation was conditioned on Frank having no contact with the children. Further, the April 14 ex parte order indicates that Frank agreed to a significant restriction on his ability to contact his children. Finally, although prior to making a section 271 sanction award, a trial court is required to "take into consideration all evidence concerning the parties' incomes, assets, and liabilities," Frank presented no argument in the trial court or on appeal with respect to this issue. (§ 271.)

Under these circumstances, we conclude that Frank has not demonstrated that the trial court abused its discretion in denying his request for $700 in attorney fees.

D. *There is substantial evidence to support the trial court's finding that Frank did not establish that he was entitled to reimbursement from Jenny for dental care expenditures that he incurred on E.'s behalf*

Frank claims that the trial court erred in denying his request that Jenny reimburse him for expenditures for E.'s dental care. The trial court's factual finding that Frank did

not establish his entitlement to reimbursement for this expenditure is reviewed to determine whether there is substantial evidence to support it. (See *In re Marriage of Chandler* (1997) 60 Cal.App.4th 124, 128.)

1. *Factual and procedural background*

The marital dissolution stipulation provides that Frank and Jenny would each be responsible for 50 percent of any dental expenses incurred on E.'s behalf that were not covered by insurance.

In March 2008, Jenny filed an order to show cause requesting that Frank be ordered to pay for dental care expenses incurred as a result of Frank's June 2007 change of the children's dental insurance plans. Jenny included with her order to show cause a letter from the United States Navy supporting her assertion that Frank had changed the children's dental insurance plans in June 2007.

In July 2008, Jenny filed an order to show cause in which she sought to be reimbursed $712 for dental expenditures that she incurred as a result of Frank's June 2007 change of the children's dental insurance plans. In an accompanying declaration, Jenny stated that Frank made the change without her consent, and that the new insurance plan that Frank provided was "an inferior policy. . . ." Jenny further stated, "As a result, orthodontia costs were incurred that would have been covered under the original policy."

In August 2008, Frank filed a responsive declaration in which he requested that the court order Jenny to reimburse him $131 for dental expenditures that he made on E.'s behalf in 2008. Frank claimed that Jenny owed him this amount under the marital dissolution stipulation for her share of dental expenses not covered by insurance. Frank

supported his claim by lodging bills from E.'s dentist, a cancelled check from Frank to E.'s dentist, and a statement of insurance benefits paid to E.'s dentist.

At a hearing on Jenny's order to show cause, Jenny's counsel reiterated her argument that Jenny was owed $712 for orthodontia expenditures that would have been covered but for Frank's unilateral decision to change the children's dental insurance plans. Frank contended that he had not changed the children's dental insurance plans, and maintained that he was entitled, pursuant to the marital dissolution stipulation, to be reimbursed $131 for Jenny's share of dental expenses not covered by insurance.

The court stated that it would deny both parties' requests, reasoning that it did not have "enough evidence before [it] as to the unilateral cancellation of the policy. . . ." On September 10, the court issued a written ruling denying both parties' requests for reimbursement.

2. *Application*

The record contains evidence that Frank changed the children's dental insurance plans in June 2007. Further, Jenny declared that Frank made this change without her consent, and that the change resulted in her incurring expenses that would have otherwise been covered by the prior dental insurance plan. Under these circumstances, we conclude that the record contains substantial evidence to support the trial court's finding that Frank was not entitled to reimbursement from Jenny for dental expenses incurred in 2008 that were not covered by insurance.

E. *The trial court did not err in reserving jurisdiction over the issue of the Jenny's request for information pertaining to trust funds in favor of the children that she believes exist*

Frank claims that the trial court erred in reserving jurisdiction over Jenny's request for information pertaining to trust funds that she believes exist, and which she believes name the children as beneficiaries.

1. *Factual and procedural background*

In a July 23, 2008 order to show cause, Jenny requested information regarding certain trust funds that she believes exist in favor of the children. In a supporting declaration, Jenny stated:

> "At the time of each child's birth [Frank's] parents established trust funds at Merrill Lynch. Based on the amount of money that was placed in the trust funds, I believe the current balances are significant. I request that [Frank] be ordered to provide me with current statements so that I may determine what funds are available for the children's college education. In the alternative, if [Frank] denies the existence of any trust funds designating the children as beneficiaries, I request that he be ordered to sign a consent/release to allow me to contact Merrill Lynch directly to verify the information."

In an August 25, 2008 declaration, Frank stated, "Point blank, there are no trust funds. I have no knowledge of any trust funds, now or ever. Additionally, I would have no authority to consent to anything that might inquire into my parent's finances."

At a September 2, 2008 hearing, the trial court heard argument from counsel regarding Jenny's request. The trial court asked Frank whether he "ha[d] any problem with executing a release, as far as any trust accounts that you may have . . . any authority

over . . . to enable [Jenny] to find out from Merrill Lynch whether or not there [are] any such account[s]?"

Frank responded in part:

> "I do object to that, yes, your honor. Because . . . there is no account. I will go down with an officer of the court and we can look through any financial records they want with respect to me. But I will not go and I cannot go and authorize financial looks into others' [accounts]."

The trial court subsequently issued the following oral ruling:

> "At this point, I'm going to deny the request for trust account information, based upon the lack of sufficient evidence to demonstrate that there is such a trust account in existence. The parties can conduct discovery, I take it, or seek to subpoena information. But at this time--"

In response to Jenny's counsel's request, the court stated that it would reserve jurisdiction over the issue. On September 10, the court issued a written ruling that states, "The court denied [Jenny's] request for information pertaining to the children's accounts due to a lack of sufficient evidence. The court shall reserve jurisdiction over the issue."

2. *Governing law and standard of review*

Section 2550 mandates that in a dissolution proceeding, the trial court shall divide the community estate in its judgment of dissolution "or at a later time if it expressly reserves jurisdiction to make such a property division." (§ 2550.) If the trial court is without requisite evidence regarding the value of particular property, it is appropriate for the court to retain jurisdiction to value the asset at a later date. (*In re Marriage of Kilbourne* (1991) 232 Cal.App.3d 1518, 1525.) We review the trial court's decision

whether to retain jurisdiction for abuse of discretion. (*In re Marriage of Munguia* (1983) 146 Cal.App.3d 853, 858-859.)

Section 2556 provides:

> "In a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court has continuing jurisdiction to award community estate assets or community estate liabilities to the parties that have not been previously adjudicated by a judgment in the proceeding. A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any community estate asset or liability omitted or not adjudicated by the judgment. In these cases, the court shall equally divide the omitted or unadjudicated community estate asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability."

3. *Application*

Although it is not entirely clear from the record, or from the parties' briefs, it appears that Jenny was seeking information regarding the trust funds as an order regarding an asset omitted from the parties' community estate. Given the uncertainty surrounding whether such funds exist, and if so, the ownership and value of such funds, the trial court did not abuse its discretion in retaining jurisdiction over potential future proceedings pertaining to the funds.[16]

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16 We are aware of no authority, and Jenny has cited none, that would allow the trial court to reach assets controlled by third parties in this dissolution proceeding. (Compare § 2550 [trial court to divide "community estate" of parties' to a dissolution proceeding].) Thus, in any potential future proceedings the trial court should ensure that Jenny has adequately demonstrated the statutory basis on which she seeks information pertaining to the alleged trust funds before authorizing any inquiry.

IV

DISPOSITION

The April 11, 2008 and September 10, 2008 orders are affirmed. Frank is to bear costs on appeal.

AARON, J.

WE CONCUR:

HALLER, Acting P. J.

O'ROURKE, J.