

Finding of Implied Waiver of Fees Contained in Marital Settlement Agreement Trumps Fee Claims

January 12, 2012 by [David J. McMahon](#)

In *Marriage of Guilardi*, 2011 DJDAR 16245 (2011), the [California Court of Appeal for the Sixth Appellate District](#) decided a fee petition related to so-called [pendente lite attorney fees](#). The fees were generated from the efforts of a party to set aside a marital settlement agreement (hereinafter the “MSA”).

A couple made the decision to separate and executed a MSA. The MSA addressed the division of money, property and custody of the husband and wife’s daughter.

After the MSA was negotiated, it was incorporated into a final judgment which was approved by the court. Subsequently, the wife moved to set aside the judgment and the MSA on numerous grounds, including the alleged non-disclosure of key facts by the husband. The family court denied the motion, even though it concluded that the MSA was inequitable as applied to the wife’s financial situation. However, the court concluded that the mere fact that the MSA was not equitable was insufficient to invalidate the agreement in its entirety. The court was influenced by the fact that the wife had allegedly willingly entered into the MSA.

In subsequent proceedings, the wife sought attorney fees for the prosecution of her claims under the Family Code and for the fees attributable to the work concerning attacking the judgment of dissolution and the MSA. The trial court granted the husband’s motion to dismiss the claim for fees. The court found that there was an “implicit waiver” of the fee claim for statutory fees in the MSA.

The wife appealed the decision of the trial court and the court of appeal affirmed the decision of the trial court. The court of appeal noted that [Family Code Section 2030](#) authorizes an award of pendent lite attorney fees to one party in a dissolution proceeding to the extent the award is “reasonably necessary” to compensate the party for maintaining the proceeding.

However, the court of appeal agreed with the trial court’s conclusion that the MSA contained an implicit waiver of any claims that either party might bring against the other arising out of the agreement. Accordingly, the court of appeal concluded that the family court properly granted the husband’s motion to dismiss the petition for attorney fees.