NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 2436

MELISA A. DILLENKOFFER

VS.

DENNIS JAY DILLENKOFFER

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JUDGMENT RENDERED: MAY 2, 2008

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ON APPEAL FROM THE
FAMILY COURT
DOCKET NUMBER 156,278, DIVISION A
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

THE HONORABLE JENNIFER LUSE, JUDGE

****

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APPELLANT
MELISA A. DILLENKOFFER

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ATTORNEY FOR DEFENDANT/
APPELLEE
DENNIS JAY DILLENKOFFER

BEFORE: GAIDRY, McDONALD AND McCLENDON, JJ

Gaidry, J concurs
McClendon, J. dissents and assigns reasons.

McDONALD, J.

Melisa A. Dillenkoffer and Dennis Jay Dillenkoffer had one child together, Dennis Jay (D.J.) Dillenkoffer, born April 30, 2002. They were thereafter married on May 17, 2003, and lived in Livingston Parish, Louisiana. In 2004, the Dillenkoffer family moved to Fort Worth, Texas. Melisa and Dennis Dillenkoffer physically separated on September 1, 2005. Melisa Dillenkoffer moved back to Louisiana and filed a petition for divorce in East Baton Rouge Parish on November 2, 2005.

After a hearing on November 22, 2005, the trial court awarded Melisa Dillenkoffer sole custody of D.J., awarded Melisa Dillenkoffer $607.11 monthly child support from Dennis Dillenkoffer, ordered Dennis Dillenkoffer to carry Melisa Dillenkoffer and D.J. on his health insurance policy, granted an injunction to restrain Dennis Dillenkoffer from harassing Melisa Dillenkoffer and D.J., granted Dennis Dillenkoffer exclusive use of the family home in Fort Worth, Texas, and ordered Dennis Dillenkoffer to pay Melisa Dillenkoffer $832.00 rent per month for the home. Melisa Dillenkoffer reserved the right to an assessment of spousal support in this judgment. Dennis Dillenkoffer was not present at the hearing. This judgment was signed on February 21, 2006.

On March 31, 2006, Dennis Dillenkoffer filed a declinatory exception of lack of jurisdiction over the subject matter, asserting that Melisa Dillenkoffer was not domiciled in Louisiana at the time of the filing of the petition for divorce and that Dennis Dillenkoffer was domiciled in Fort Worth, Texas at that time.

On July 28, 2006, the judge signed a stipulated judgment entered into by Melisa Dillenkoffer and Dennis Dillenkoffer. This stipulated judgment awarded joint custody of D.J. to the parties with Melisa Dillenkoffer as the

domiciliary parent, with month-to-month custody exchanges; and decreed that D.J. would continue to see his paternal grandparents, that the parties and their attorneys would attempt to create a custody order with more detail, that in the interim, D.J. would spend the majority of the summer with Dennis Dillenkoffer in Texas, with visitation awarded to Melisa Dillenkoffer over the summer, that during holidays, custody would be split between Melisa Dillenkoffer and Dennis Dillenkoffer, that a more detailed schedule would be worked out by the parties, that the parties would exchange the necessary financial information to address the issues of child support, spousal support and community property, and that if the parties could not work out those issues they would seek clarification from the trial court. On August 29, 2006 a judgment of divorce between Melisa Dillenkoffer and Dennis Dillenkoffer was rendered.

A second judgment rendered on August 29, 2006, and signed on September 14, 2006, dismissed Dennis Dillenkoffer's declinatory exception of lack of jurisdiction over subject matter, awarded Melisa Dillenkoffer $1,200.00 from Dennis Dillenkoffer for attorney's fees and costs for having to oppose the declinatory exception, found that the judgment of February 21, 2006, was vacated by the stipulated judgment signed on July 28, 2006, and pretermitted a rule for contempt filed by Melisa Dillenkoffer.

Melisa Dillenkoffer appealed that judgment. In her sole assignment of error, she asserts that the trial court erred in ruling that the July 28, 2006 stipulated judgment served to vacate the February 21, 2006 judgment in its entirety.

Our review of the record shows that the July 28, 2006 stipulated judgment addressed the same issues as the February 21, 2006 judgment, and that those issues that were not immediately resolved by the July 28, 2006

stipulated judgment were left to be resolved by the parties, or by the court if the parties and their attorneys could not reach an agreement. Thus, we cannot say that the trial court committed manifest error or legal error in finding that the July 28, 2006 stipulated judgment vacated the February 21, 2006 judgment.

Therefore, the trial court judgment is affirmed. Costs are assessed against Melisa Dillenkoffer. This summary opinion is rendered in accordance with the Uniform Rules, Court of Appeal Rule 2-16.1.B.

AFFIRMED.

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VERSUS

DENNIS JAY DILLENKOFFER

****

McCLENDON, J., dissents and assigns reasons.

I respectfully dissent from the result reached by the majority. While it is clear that the July 28, 2006 stipulated judgment modified the prior considered decree regarding custody and visitation of the minor child, said judgment makes no reference to the fair market rental value of the family home, and the only reference with regard to child support is as follows:

> IT IS FURTHER, ORDERED ADJUDGED AND DECREED that the parties will exchange financial information necessary to address the issues of child support, spousal support and community property matters that were addressed previously in judgments that were rendered in this matter. The parties will exchange financial information within the next ten (10) days so this can be attempted. If the parties cannot work out these issues then they will seek clarification from This Honorable Court.

I do not believe that this language is a sufficient basis for vacating the previous child support award of $607.11 per month or the rental award of $832.00 per month for the husband's use of the family home. The above language signifies nothing more than an agreement by the parties to attempt to reach a future compromise. Further, the July 28, 2006 stipulated judgment does not contain any language specifically vacating the February

21, 2006 judgment or terminating or reducing the payment obligations set forth in the previous judgment.

While child support awards are always subject to modification, see LSA-C.C. art. 142, the general rule in Louisiana is that a child support judgment remains in full force until the party ordered to pay it has the judgment modified, reduced or terminated by a court. **Halcomb v. Halcomb**, 352 So.2d 1013, 1015-16 (La. 1977); **Serrate v. Serrate**, 96-1545, p. 4 (La.App. 1 Cir. 12/20/96), 684 So.2d 1128, 1130-31.

Further, it is well-settled that a compromise extends only to those differences that the parties clearly intended to settle. LSA-C.C. art. 3076; **Brown v. Drillers, Inc.**, 93-1019 (La. 1/14/94), 630 So.2d 741, 748-49.

In this matter, the agreement of the parties was memorialized in the July 28, 2006 judgment and approved by the trial court. Nothing in that judgment indicates an intent to vacate the existing child support award for an *undetermined length of time* until a new child support amount could be agreed upon. Nor were all the issues addressed in the February 21, 2006 judgment subsequently addressed in the stipulated judgment of July 28, 2006, such that the later judgment would have superseded the previous judgment in toto.

The evidence in this matter fails to establish that the parties' stipulation vacates the February 2006 judgment in its entirety. Thus, I believe that the majority erred and respectfully dissent.