Filed 4/9/20 Marriage of K.R. and A.P. CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of K.R. and A.P..	
K.R., Petitioner and Respondent, v. A.P., Respondent and Appellant.	A151036, A149624 (Alameda County Super. Ct. No. VF07356209)

INTRODUCTION

In these consolidated appeals, A.P. (Husband) seeks reversal of two post-dissolution judgments in marital dissolution proceedings with his former wife, K.R. (Wife). In case A149624, Husband argues the trial court failed to divide the community property assets in certain bank accounts as required by Family Code, section 2550,[1] erroneously calculated *Watts/Espstein* credits,[2] and erroneously imposed a constructive trust. In case A151036, Husband

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1 All statutory references are to the Family Code, unless otherwise stated.

2 *In re Marriage of Watts* (1985) 171 Cal.App.3d 366 (*Watts*); *In re Marriage of Epstein* (1979) 24 Cal.3d 76 (*Epstein*).

challenges the trial court's spousal and child support determinations. Husband also purports to appeal from the denial of his motion to vacate the judgment in case A149624, as well as the denial of his request to stay the judgment without bond. We conclude Husband's contention that the trial court failed to divide assets in the bank accounts has merit, but his remedy is a motion or to seek an order to show cause in the trial court pursuant to section 2556. Husband forfeited his other contentions by failing to follow the rules governing appellate review. Furthermore, even if we were to address those contentions, Husband has failed to demonstrate reversible error. We affirm both judgments.

BACKGROUND

Husband and Wife were married in May 1999 and separated in November 2007. A July 2010 judgment terminated their marital status and reserved the family court's jurisdiction over all other issues, including child support of their two minor children. Trials on the reserved issues encompassed 10 days over three months from October 2015 to February 2016.

The trial court entered judgment on the division of the parties' property on June 21, 2016 (property judgment). Husband moved to set aside and vacate the property judgment on July 5, 2016, on the grounds that Wife failed to disclose her remarriage and her interest in a $1.4 million home that she shared with her new husband. Husband filed a notice of appeal on October 3, 2016, while the motion to vacate was still pending. The court heard the motion to vacate on October 27, 2016. Husband failed to appear at the hearing and the motion was dismissed without prejudice.

The trial court entered judgment on the child and spousal support issues on December 1, 2016 (support judgment). Husband moved vacate the support judgment on January 20, 2017. The trial court denied the motion on

March 21, 2017. Husband filed an amended notice of appeal on March 28, 2017.

On August 17, 2017, while the instant appeals were pending, Husband filed another request to vacate the property judgment based on the same grounds as his prior motion to vacate. The trial court denied the request as untimely.

DISCUSSION

A. Standard of Review

We review the trial court's judgment dividing marital property for an abuse of discretion. (*In re Marriage of Dellaria & Blickman-Dellaria* (2009) 172 Cal.App.4th 196, 201 (*Dellaria*).) Spousal support and child support awards are also reviewed for an abuse of discretion. (*In re Marriage of Wittgrove* (2004) 120 Cal.App.4th 1317, 1327; *In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 282–283.) We review the trial court's factual findings under the substantial evidence standard. (*Dellaria, supra,* 172 Cal.App.4th at p. 201; *In re Marriage of Ettefagh* (2007) 150 Cal.App.4th 1578, 1584.) The interpretation of a statute presents a question of law that we review de novo. (*Dellaria, supra,* 172 Cal.App.4th at p. 201; *In re Marriage of Rothrock* (2008) 159 Cal.App.4th 223, 230.)

B. The Property Judgment (A149624)

1. Division of Community Assets in Wife's Individual Accounts

Absent an agreement by the parties, section 2550 imposes on the trial court a mandatory, nondelegable duty to value and divide equally the parties' community property estate in martial dissolution proceedings. (See § 2550; *In re Marriage of Cream* (1993) 13 Cal.App.4th 81, 89; *In re Marriage of Knickerbocker* (1974) 43 Cal.App.3d 1039, 1044; see also *In re Marriage of Walrath* (1998) 17 Cal.4th 907, 924.) The trial court must first "characterize"

the property by determining which property owned by the parties is part of the community property estate. "Characterization of property, for the purpose of community property law, refers to the process of classifying property as separate, community, or quasi-community. Characterization must take place in order to determine the rights and liabilities of the parties with respect to a particular asset or obligation and is an integral part of the division of property on marital dissolution." (*In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 291.)

In general, a spouse maintains as his or her separate property all property acquired prior to marriage; property acquired during the marriage that can be traced to a separate property source; and property acquired during the marriage by gift, bequest, devise or descent. (§ 770, subd. (a); see *In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 484.) Other property acquired by a married person during the marriage presumptively is community property. (§ 760; *In re Marriage of Bonds* (2000) 24 Cal.4th 1, 12.) The party claiming that property acquired during the marriage is his or her separate property has the burden of overcoming this presumption by a preponderance of the evidence. (*In re Marriage of Ettefagh*, *supra*, 150 Cal.App.4th at pp. 1585, 1591.)

Husband argues the trial court failed to divide community assets in Wife's individual bank account and related certificate of deposit (CD) in violation of section 2550. The bank account and CD were issues addressed at trial. Neither the trial court's statement of decision nor the property judgment purports to characterize, value or divide the assets in the bank account and CD. Husband objected to the trial court's failure to do so in his objections to the proposed statement of decision.

The bank account and CD were apparently assets of the community estate before the trial court. The trial court was obligated to characterize, value, and divide them when it divided the remainder of the community estate. But the court's omission does not require reversal of the property judgment. The property judgment does not improperly characterize, value or divide these assets. Instead, it omits them entirely. A party's remedy in such cases is to move or seek an order to show cause in the trial court pursuant to section 2556.

Section 2556 authorizes a party in a marital dissolution action to "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." Pursuant to section 2556, "even where there is an ostensible, final and complete judgment the parties may nonetheless litigate issues of property rights that are not expressly adjudicated by that judgment." (*In re Marriage of Dunmore* (1996) 45 Cal.App.4th 1372, 1379, fn. 6; see also *Brunson v. Brunson* (1985) 168 Cal.App.3d 786, 788 [mention of omitted asset in judgment "is not an adjudication of property rights"].) It would make little sense for us to reverse a judgment that omits some assets when there is an equivalent and statutory avenue of relief available to Husband in the trial court. Although we affirm the judgment, we do so without prejudice to Husband's rights to move under section 2556 with respect to the bank account and CD.

2. Forfeiture of Other Issues

" '[T]he most fundamental rule of appellate law is that the judgment challenged on appeal is *presumed correct*, and it is the appellant's burden to affirmatively demonstrate error.' [Citation.]" (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383, italics added; accord, *In re Marriage*

of Arceneaux (1990) 51 Cal.3d 1130, 1133.) " 'To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.]' [Citation.] 'Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review.' [Citation.] 'Hence, conclusory claims of error will fail.' [Citation.]" (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1457.)

Moreover, an appellant who challenges the sufficiency of the evidence is required " 'to demonstrate that there is *no* substantial evidence to support the challenged findings.' [Citations.] A recitation of only [appellant's] evidence is not the 'demonstration' contemplated under the above rule. [Citation.] Accordingly, if, as [appellant] here contend[s], 'some particular issue of fact is not sustained, [he is] required to set forth in [his] brief *all* the material evidence on the point and *not merely [his] own evidence.* Unless this is done the error [assigned] is deemed to be waived.' [Citations.]" (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; accord, *In re Marriage of Rothrock, supra,* 159 Cal.App.4th at p. 230; *Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp.* (2007) 148 Cal.App.4th 937, 951; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

Husband's 68–page opening brief is a scattershot, one-sided representation of the proceedings. Husband's brief "ignores the precept that all evidence must be viewed most favorably to [the prevailing party] and in support of the [judgment]." (*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1531 (*Davenport*).) This precept applies equally where the trial court issued a statement of decision: " 'Where [a] statement of decision sets forth the factual and legal basis for the decision, any conflict in the

evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision.' [Citation.]" (*Ibid.*)

Husband essentially asks this court to reweigh the evidence, which is not the function of the reviewing court. (*In re E.M.* (2014) 228 Cal.App.4th 828, 839.) When an appellant attempts merely to reargue the "facts," the argumentative presentation violates established appellate principles, and also "disregards the admonition that [he] is not to 'merely reassert [his] position at . . . trial.' [Citation.]" (*Davenport,* at p. 1531.) This "factual presentation" is an improper attempt "to reargue on appeal those factual issues decided adversely to [the party] at the trial level, contrary to established precepts of appellate review." (*Ibid.*)

"While we are mindful that [Husband] is representing himself on appeal, his status as a party appearing in propria persona does not provide a basis for preferential consideration. A party proceeding in propria persona 'is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.' [Citation.] Indeed, ' "the in propria persona litigant is held to the same restrictive rules of procedure as an attorney." ' [Citation.]" (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1.) Therefore, except for the issue discussed in part B., *ante,* Husband has forfeited his right to appellate review of the remaining issues, and we affirm the judgment on that basis.

3. No Error

Even if we were to consider the merits of Husband's claims, we would conclude on this record that he has failed to demonstrate reversible error.

a. Watts Charges and Epstein Credits

Husband contends the trial court erred in awarding Wife *Watts* charges and denying him *Epstein* credits. " 'Where one spouse has the exclusive use

of a community asset during the period between separation and trial [on distribution of marital property], that spouse may be required to compensate the community for the reasonable value of that use.' " (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 978.) "The right to such compensation is commonly known as a '*Watts* charge.' " (*Ibid.*; see *Watts, supra,* 171 Cal.App.3d at pp. 373–374.) Conversely, when a spouse uses separate property funds after separation to pay a preexisting community obligation, the paying spouse may seek an " '*Epstein* credit' " for those payments upon division of the community estate. (*In re Marriage of Jeffries* (1991) 228 Cal.App.3d 548, 553 (*Jeffries*); see *Epstein, supra,* 24 Cal.3d at pp. 84–85.) "*Watts* charges" are in essence " 'usage charges,' " and *Epstein* credits are " 'payment credits.' " (*Jeffries, supra,* at p. 552.)

The trial court has discretion, based on equitable considerations, whether to allow *Watts* charges or *Epstein* credits. (*Epstein, supra,* 24 Cal.3d at pp. 83–85; *Watts, supra,* 171 Cal.App.3d at p. 374; see *In re Marriage of Hebbring* (1989) 207 Cal.App.3d 1260, 1272.)

Here, the trial court considered all of the surrounding circumstances and concluded "the equities . . . clearly favor[ed] [Wife]." The house was "clear and free of any mortgage and [Husband] had exclusive use and control of the property for over eight years except for seven months in 2012." Wife "left the residence with the children in 2007 after years of what she credibly testified was abuse by [Husband] . . . ." Except for seven months in 2012, Husband resided by himself in the residence, while Wife lived in various locations throughout the Bay Area, "renting or sharing a residence with third parties, the whole time maintaining custody" of the parties' two children. On this record, the trial court's fair and sensible decision can hardly be characterized as an abuse of discretion.

b. Constructive Trust

Husband contends the trial court erred in imposing a constructive trust which was "against the law." The court determined Husband breached his fiduciary duties under section 721, subdivision (b), as well as his duties of disclosure under sections 1100 and 2100 when he transferred the assets of Komsoft, a community business asset, with the intent to conceal and deprive Wife of her share of the assets and income. Then, in direct violation of court orders prohibiting him from changing its corporate structure, Husband dissolved Komsoft. Husband failed to advise Wife and the court about: 1) the creation of Maremarks, a new entity; 2) the transfer of assets from Komsoft to Maremarks; and 3) the dissolution of Komsoft.

An appraisal expert appointed by the trial court (Evid. Code, § 730) opined there was "no question that Maremarks is a continuation . . . of Komsoft." Maremarks had the same vendors, clients, and employees as Komsoft.

The trial court determined that due to Husband's fraudulent conduct, it was an "appropriate case" to find that Husband had held Wife's interest in Komsoft/Maremarks in constructive trust. Substantial evidence supports this finding.

c. Motion to Vacate

The trial court did not err in denying Husband's August 17, 2017 motion to vacate as untimely. Time for challenging the property judgment (entered June 21, 2016) had long since passed.

C. The Support Judgment (A151036)

1. Sale of the Marital Residence

Husband argues the trial court erred by "ordering his eviction" and authorizing sale of the marital residence after he perfected this appeal.

Husband claims reaching "property . . . after entry of judgment" was an act in excess of jurisdiction.

The court granted a temporary stay of the sale on the condition that Husband provide security. After Husband failed to post the security, the court lifted the stay and ordered the marital residence be sold to satisfy the support judgment. The trial court did not interfere with appellate review (cf. *Smith v. Smith* (1941) 18 Cal.2d 462, 464–465) or otherwise exceed its jurisdiction.

As a court of equity, a family court retains inherent jurisdiction to oversee and enforce execution of its decrees. This includes the broad powers under Code of Civil Procedure sections 128 and 187, which permit a court to compel obedience by all means necessary, and by any suitable process or mode of proceeding. (See, e.g. *Bonner v. Superior Court* (1976) 63 Cal.App.3d 156, 164-165 [court had power to order sale of property where one spouse failed to make equalizing payment to other]; *In re Marriage of Economou* (1990) 224 Cal.App.3d 1466, 1475-1476 [court had power to enter default judgment against non-compliant husband].)

It was within the court's discretion to order the sale of the marital residence to satisfy Husband's support obligations. (§ 4610.)

2. Spousal Support

Husband contends the trial court erred when it denied his October 18, 2011 motion to modify spousal support. The trial court determined it lacked jurisdiction to modify its temporary support order. "[A] trial court lacks jurisdiction to retroactively modify a temporary support order to any date earlier than the date on which a proper pleading seeking modification of such order is filed (*In re Marriage of Gruen* [(2011)] 191 Cal.App.4th [627,] 631), unless the trial court expressly reserves jurisdiction to amend the support

order such that the parties' clear expectation is the original support award is not final (*In re Marriage of Freitas* [(2012) 209 Cal.App.4th [1059,] 1062, 1075)." (*In re Marriage of Spector* (2018) 24 Cal.App.5th 201, 210.)

The record reflects that a commissioner declined to rule on the Husband's October 18, 2011 motion and instructed him to refile his motion in the proper trial department. The motion was never refiled. Indeed, at an April 18, 2015 hearing, Husband's attorney acknowledged that the only pending support issue pertained to child support. Nothing in the record supports Husband's argument that the court reserved jurisdiction to amend the temporary spousal support order. The trial did not err in refusing to modify the temporary spousal support.

3. Child Support

Husband argues the trial court erred when it ordered him to pay child support after March 13, 2013. He also contends the imputation of income to him is "counter to the evidence." Not so.

The court found Husband's testimony in the multi-day trial was "often vague, evasive, and simply less than credible[.]" The court determined that Husband had not made a good faith effort to comply with job search orders. The court imputed income of $80,000 per year to Husband, which was the amount he reported making when he laid himself off in 2010. The court imputed an additional $3,359 per month based on the average of Husband's reported personal and living expenses. The court calculated Husband's combined annual income as $120,308 ($80,000 + $40,308 [$3,359 x 12 months]). The court noted this amount was less than the previously calculated income available for support. The findings are supported by substantial evidence. We will not reweigh Husband's conflicting evidence and will not redecide the court's factual findings.

4. Motion to Vacate

The trial court did not err in denying Husband's January 20, 2017 motion to vacate the support judgment. Husband's claim that Wife had remarried and had acquired real property worth $1.4 million had already been considered and rejected by the trial court.

DISPOSITION

The judgment is affirmed.

Siggins, P.J.

WE CONCUR:

Fujisaki, J.

Jackson, J.

A151036, A149624

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ABHIJIT PRASAD, Defendant.	CASE NO. 18-368 CRB STIPULATION AND [PROPOSED] ORDER

The United States respectfully advises that defendant Abhijit Prasad was hospitalized over the weekend, with a diagnosis of myocardial infarction (heart attack), resulting in the placement of stents. Prasad has returned to FCI Lompoc (Camp), and his BOP medical records indicate that he reports feeling better. BOP medical records also note a list of Prasad's new medications.

Meanwhile, Prasad has been designated by the BOP to serve the remainder of his sentence on home confinement. His BOP records indicate a date of August 20, 2020, for transfer to the residential reentry center for processing to home confinement. The August 20 date accommodates a 14-day period of quarantine at the BOP before transfer.

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Because Prasad has been designated to serve the remainder of his sentence on home confinement, the parties hereby stipulate to continue the status conference to August 21, 2020. The parties will provide a further status update on that date.

Respectfully submitted,

Dated: July 21, 2020

David L. Anderson
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/s/ Audrey B. Hemesath

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Dated: July 21, 2020

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Additional material from this filing is available in the Clerk's Office.