Appendix A

Court of Appeal, fourth Appellate District Div Three
Electronically Filed 9/20/23
Brandon L Henson, Clerk/Executive Officer

Filed Superior Court, County of Orange 9/20/2023

In the Marriage of Deborah
And Edward L Clark

DEBORAH l Clark
Respondent
Vs

Case # G061697

Sup. Ct No 05D000275

Edward L Clark
Appellate

OPINION

Appeal from orders of the Superior Court of Orange County, Yolanda V. Torres, Judge. Affirmed.

Edward L. Clark, Jr., in pro. per., for Appellant.

No appearance for Respondent,

INTRODUCTION

Edward Clark, representing himself, appeals from two orders entered in June and July 2022 in the family court. The effect of the first order is not entirely clear. It is a ruling on Edward's motion, but the relief he requests is uncertain. It is probably a motion to dismiss the dissolution action filed by his ex-wife, Deborah Clark, in 2005, in which judgment was entered in 2007. Edward based this motion on a settlement he received in a civil suit he filed against Deborah in 2019.

The family court denied this motion. The second order, probably a motion for reconsideration, was also denied.

Edward has been before this court in the past. The prior appeal (In re Marriage of Clark (Dec. 2, 2020, G058030/G058284) [non published opinion,]) involved a 2018 order from the family court requiring him to resume the equalization payments owed to Deborah pursuant to the dissolution judgment of 2007, which Edward claimed he no longer owed. The family court disagreed and found that he still owed her nearly $500,000, which he was ordered to pay in accordance with the marital settlement agreement of 2006. One of Edward's arguments in the 2018 trial of the equalization payments was that the family court no longer had jurisdiction in the dissolution action.

Edward did not appeal from the 2018 order requiring him to resume the payments. Instead he appealed from a ruling on a subsequent motion under Code of Civil Procedure section 473 to set it aside, which the family court denied. In the course of affirming that order in the prior appeal, we held that the family court still had jurisdiction over the

dissolution action and the judgment entered in 2007, despite Edward's arguments to the contrary.

Before we issued our opinion in the family court appeal, Edward filed a declaratory relief action against Deborah in civil court. This action subsequently settled and was dismissed. Edward then moved in the family court to dismiss the dissolution action, claiming that the civil settlement required this dismissal.

Although judicial officers have tried to explain to Edward that any modification of a family court judgment must take place in family court before a family court judge under family court rules, he still maintains that the family court must honor the civil court settlement agreement and dismiss the dissolution action on that basis.

We affirm the two orders from which Edward has now appealed. The family court correctly ruled that the civil settlement has no effect in family court. As Edward based both motions on the outcome of the civil suit, the family court properly denied both motions.

FACTS

We recite the facts from the prior appeal that are pertinent to this one.

"Edward and Deborah were divorced in 2007. The marital settlement agreement, which became part of the judgment in 2006, provided that in lieu of a lumpsum equalization payment to Deborah, Edward would pay her $250,000 at the and the rest ($ 1.7 million) in installments of $9,227 per month over

30 years, at five percent interest. The parties waived spousal support. Deborah later testified that the monthly payment was her sole source of income.

"Edward presented the court with an acknowledgement of satisfaction of judgment (full) ostensibly signed by Deborah on January 14, 2013, and recorded the same day. The register of actions in the divorce case does not reflect the filing of an acknowledgement of satisfaction of judgment or a demand for the filing of an acknowledgement.] Notwithstanding the acknowledgement of satisfaction of judgment, Edward continued to make the monthly payments mandated by the marital settlement agreement/judgment until 2016.

"In 2016, Edward still owed Deborah $1.3 million in equalization payments. He told Deborah he could no longer make the monthly payments because he

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[1] At trial in September 2018, Deborah testified that she had no memory of the document. In fact, it was recorded but never filed.

found himself in financial difficulties. If she would sign some papers, he could take $1 million in equity out of his house and put it in her bank account, then

use $150,000 of it to pay his taxes. She could live on the remaining $850,000 for the estimated two years that it would take Edward to reorganize his finances. He would then resume the monthly payments until the balance — some $300,000 plus the $150,000 he took for taxes — was finally paid off. Deborah largely because Edward told her that if she did not, she would get nothing.

"Deborah signed a debt settlement agreement on March 21, 2016. Under the terms of the debt settlement agreement, Deborah was supposed to receive the entire $1 million. Edward nevertheless took $150,000 of that amount, pursuant to the previously made oral agreement. He sent two text messages to Deborah acknowledging the agreement to pay her the balance of the equalization payment.

"In 2017, Deborah called Edward to find out when he was going to resume the monthly payments, assuming that his financial problems would be on the way to resolution. Edward told Deborah he was not going to pay her. He might repay her the $150,000 he took for his taxes, but nothing else.

"Deborah filed a request for order (RFO) on April 17, 2018, in the divorce case, asking for an order to enforce the judgment — in particular the remaining monthly payments. The moving papers included the debt settlement agreement and the acknowledgement of satisfaction of judgment as exhibits and a declaration from Deborah explaining how she had come to sign them. The RFO was personally served on Edward on May 7, 2018. Edward filed an opposition on August 22, 2018, denying that he owed Deborah any more money and giving his version of events.

"The case was tried to a family law commissioner over two days, September 18 and October 12, 2018. Both Edward and Deborah testified. At the end of trial, the court ruled in Deborah's favor. It found that she had been due $488,500 as of April 30, 2016, per the marital settlement agreement. The components of this amount were (1) the balance of the monthly payments due under the marital settlement agreement/judgment of 2006 ($388,500) and (2) the $150,000 that Edward had taken from the $1 million to pay his taxes. In other words, Edward

had to pay the full amount agreed to m the marital settlement agreement/judgment and was not entitled to discount that amount by means of the debt settlement agreement and the satisfaction of judgment? He received a credit for the $850,000 Deborah received from the home equity loan. But he had to pay the rest ($525, 137, including interest as of October 2018) in monthly installments, as mandated by the original judgment'" (In re Marriage of Clark, supra, G058030/G058284, at pp.2-*5.

Edward appealed, not from this order, but from an order denying his motion under Code of Civil Procedure section 473 to set it aside. We affirmed the denial of the set-aside motion, poin6ng out that a motion under this code section was not the proper vehicle to complain about the evidence presented at mal. (In re Marriage of Clark, supra, G058030/G058284, at p. *1.) We observed that the record belied one of his contentions — that he had not stipulated to the matter being heard by a commissioner. (In re Marriage of Clark, supra, G058030/G058284, at p. *10.) We also held that because the matter involved the enforcement of an executory family court judgment, the family court had

jurisdiction over the matter. (In re Marriage of Clark, supra,G058030/G058284, atp. *2.)

One of Edward's contentions in the 2018 trial was that, Deborah having signed a satisfaction of judgment in 2013, the divorce case was over. If Deborah wanted to complain about his failure to pay her the remainder of her equalization payments, then she had to sue him in civil court and serve a summons and complaint on him. We

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The court noted that the amount Edward proposed as his final payoff, $850,000, was an unreasonable 35.8 payment discount on the balance still owing, and even the total amount borrowed* $1 million, was a 24.5 percent discount, also unreasonable.

The ruling included a payment amortization schedule for monthly payments beginning November 1, 2018.explained in the prior opinion that this contention was incorrect', under Family Code section 290, the family court had the authority to enforce a family court judgment. (In re Marriage of Clark, supra, G058030/G058284, at p. *15.) Our prior opinion was issued on December 2, 2020.

Edward filed a declaratory relief action in civil court against Deborah on August 2, 2019. He made the same allegations regarding the 2013 satisfaction of judgment and the 2016 debt settlement agreement that he had made during the 2018 trial in the family

court.[4] The civil suit resulted in a settlement and a dismissal in July 2021.

On March 22, 2022, Edward filed a request for order (RFO) in the family court. He checked the "other" relief box and "specify[ied]" the following: "on. Attached Ex A; Satisfaction of Judgment filed by Petitioner [sic] in Orange county 1/14/2013, Ex B Contract Deb" [II] [II] "attached hereto and incorporated [sic] herein by reference is [Ill Exhibit 'A': Proof of Service 15 - day notice [T] Exhibit 'B' Contract entered (stipulation) witnessed and entered into the record by a superior court judge. [IT] Exhibit 'C > satisfaction [sic] of judgment entered by Petitioner in the county of orange 1/14/2013 [Il] Exhibit 'D' Contract entered and executed between the parties 3/21/2016" The supporting declaration stated, "I, Respondent, served Petitioner 15-day notice to enter satisfaction of judgment for case 05D000275 pursuant to ccp 724.030 and contract (via stipulation) entered and witnessed by a superior court judge July 12, 2021. To date Petitioner has failed to file satisfaction of judgment as requested." The register of actions in the dissolution case does not reflect the filing of a demand for acknowledgement of

satisfaction of judgment under Code of Civil Procedure section 724.050. Deborah did not file an opposition to the RFO.

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[4] As we pointed out in our prior opinion, the satisfaction of judgment was recorded but never filed with tlE court. Deborah had never filed an acknowledgement of satisfaction of judgment under Code of Civil Procedure section 724.030, and Edward had never filed a demand that she do so under section 724.050. The satisfaction of judgment was Therefore unenforceable- (In re Marriage of Clark, supra, G058030/G058284, at p.

Edward's RFO was heard on June 3, 2022. Deborah did not appear. The court ruled that the civil court had no jurisdiction over family court orders and denied the motion.

Although it is not clear from the RFO itself what Edward wanted the court to do, it appears from the oral argument that he wanted the court to dismiss the dissolution case pursuant to the stipulation and settlement entered in the civil action, now dismissed. The judge patiently tied to explain that what happened on the civil side had no bearing in family court, The parties had to use family law procedures in family court if they wanted a ruling from a family court judge. This explanation had no effect.

Edward filed another RFO on June 9, 2022. This time the relief requested was "Motion to Amend order entered 6/3/2022 to dismiss case 05D000275 in compliance with California rules of the court Rule 3.1385 (B)[.]" Edward attached an "objection to order entered 6/3/2022" and a "notice of motion and motion to amend order entered June 3, 2021 [sic]." The stated that Edward would move to amend the court's order refusing to dismiss the dissolution action pursuant to "California Rules of the Court 3.1385 (B). order entered 6/2/2022 [sic] pursuant to CCP 1008(a) on the grounds that said ruling was created with and entered based on Extrinsic Fraud, self serving to the court fabricating evidence in support of various judicial officers alleged to be engaged with racketeering and corrupt business practices in federal court." After accusing the court of fraud and other misdeeds, Edward stated that the court "must dismiss the entire case 45days after notice of settlement," pursuant to California Rules of Court, rule 3.1385. [1]Edward then continued to accuse

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[1] California Rules of Court, rule 3.1385(a) provides in pertinent part, "Noâce of settlement [I] (1) Court and other persons to be notified [T] If an entire case is settled or otherwise disposed of, each plaintiff or other party

the court of fraud "designed to fabricate, deceive and create evidence." Most of the remaining argument is either unintelligible or completely untethered to anything in the record . . . or both. One thing is clear, however. Edward accuses several judicial officers of fraud in refusing to dismiss the dissolution case.

The court heard this second RYO on July 22, 2022. The court deemed the motion, a motion for reconsideration under Code of Civil Procedure section 1008. It denied the motion because Edward had failed to provide any new or additional facts. (Code Civ. Proc., 1008, subd. (a).) During the hearing Edward berated the court for not following California Rules of Court, rule 3.1385 and dismissing the dissolution case.[6]

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seeking relief must immediately file written notice of the settlement or other disposition with the court and serve the notice on all parties and any arbitrator or other court-connected alternative dispute resolution (ADR) neutral imrolved in the case. Each plaintiff or other party seeking affirmative relief must also immediately give oral notice to all of the above if a hearing, conference, or trial is scheduled to take place within 10 days."

California Rules of Court, rule 3.13850) provides, "Dismissal of case [T] Except as provided in (c) or (d), each plaintiff or other party seelcing affirmative relief must serve and file a request for dismissal of the entire case within 45 days after the date of settlement of the case. If the plaintiff or other party required to erve and

Edward has appealed from the orders denying his RFOs entered on June 3 and July 22, 2022. Deborah did not file a respondent's brief.

DISCUSSION

Our first task is to determine whether the two orders from which Edward is appealing are appealable orders. This is difficult because Edward does not clearly identify the nature of the order in his moving papers or in his opening brief. From the first RFO itself, it would appear that Edward is applying to the court under Code of Civil Procedure section 724.050, subdivision (d), for an order requiring Deborah to file an acknowledgement of satisfaction of judgment with the court.[7] An order denying such an application is appealable. (Horath v. Hess (2014) 225 Cal.App,4th 456, 462.) In reality, however Edward seems to be appealing from an order denying his request to modify the final judgment of dissolution by dismissing the case. We will therefore regard the appeal as being from a post judgment order, appealable under Code of Civil Procedure section 904.1, subdivision (2). (Cf. In re Marriage of Olson (2015) 238 Cal.App.4th 1458, 1462

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file the request for dismissal does not do so, the court must dismiss the entire case 45 days after it receives notice of settlement unless good cause is shown why the case should not be dismissed."

5 "[Edward]: And the rule specifically states 'the court must dismiss.' [11] So I'm not sure what part of that rule the court doesn't understand."

The acknowledgement of satisfaction of judgment was recorded, but nothing in the dissolution case s register of actions indicates that it was ever filed with the court.

[post judgment order not. appealable if further proceedings contemplated].) That being so, the second order, denying Edward's motion for reconsideration, is also appealable under

Code of Civil Procedure section 1008, subdivision (g).

Edward represented himself in the family court below, and he is representing himself in this court. Although people are constitutionally entitled to represent themselves, doing so is generally a bad idea. It certainly has been in this case.

The same rules that apply to attorneys apply to parties representing themselves. (Rappleyea v. Campbell (1994) 8 Cal.4th 975, 984-985; Kobayashi v. Superior Couri (2009) 175 Cal.App.4th 536, 543; Barton v. New United Motor Manufacturing, Inc. (1996) 43 Cal.App.4th 1200, 1210.) For example, although he leans heavily on California Rule of Court,

rule 3.1385, Edward fails to observe California Rules of Court, rule 8.204, which specifies the content of briefs. This rule requires an appellant to support any reference to a matter in the record by citing the page number where the matter appears and limit statements of fact to matters in the record. The record in this case consists only of the RFO's, with exhibits, and the minute orders. Edward's opening brief frequently states facts either unsupported by references to the record or requiring m-formation outside the record.

In addition, Edward uses legal terms without evidently understanding what they mean. For example, he repeatedly refers to an "order to show cause" or "motion to show cause" that he issued, apparently unaware that a court, not a party, issues an order of this kind,[8] or that other sorts of documents are not orders to show cause. There is no reference in the register of actions to any order to show cause. He states that the two

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[8] Edward states that he provided Deborah: "[p]pursuant to CCP 724.010:" with a " 15-day notice to show cause if there was a reason for [the dissolution case not to be dismissed." Code of Civil Procedure section 724.010 establishes the conditions under which a

judgment creditor files a satisfaction of judgment The statute does not mention dismissal. He cites a republished case, Kurwa v. Kislinger (2012) 204 Cal,App.4th 21, to support his argument that the two orders are appealable, thereby violating California Rules of Court, rule 8.1115. (See People v. Williams (2009) 176 Cal. App-4th 1521, 1529.) He also relies exclusively on cases from the 11th Circuit Court of Appeals and the United States Supreme Court to support his contentions about the standard of review

orders from which he appeals are appealable because "denying the order [sic: motion?] extends the threat of extortion where the lower court ordered payments of $9,000/month on top of the $9,000 refinance payments to pay Respondent $850,000 cash payment for full settlement, exceeds the $5,000 threshold." There are no citations to the record for any of the monetary amounts, and Edward evidently believes that the $5,000 threshold for appealing a sanctions order under Code of Civil Procedure section 904.1, subdivisions (11) and (12), applies across the board. He thinks that a motion for reconsideration is "a motion that you file when you want the judge to take a second look at a decision that you feel is incorrect. A valid motion to reconsider when you believe the judge did not consider or properly examine certain evidence or correctly apply the law, Evidence Code 5452(a) and

(e)." [Sic.] Edward ignores the condition set out in Code of Civil Procedure section 1008, subdivision (a), that a motion for reconsideration requires "new or different facts, circumstances, or law." The relevance of the Evidence Code statute on judicial notice is unexplained.

Edward's chief contention is that the stipulation and settlement agreement he and Deborah entered in the civil case should be given effect in the dissolution matter; specifically, they should result in dismissing the dissolution judgment. [9] At least two judicial officers have fried to explain to Edward the crucial distinction between the civil court and the family court, to no avail. We will give it a shot.

The civil court and the family court are separate domains. They have separate judges, who have no working relationship with each other. Although the Code of Civil Procedure is sometimes used in family court, family law has its own procedures and rules. When there is a family law rule, the family court uses that rule and not the

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[9] Edward cites the stipulation, which was evidently entered into without benefit of counsel for either party, as rendering the commissioner's order of 2018 regarding Edward's payment of the

equalization payment "void." Whether a judgment or order is void is a legal conclusion that neither party is qualified to make.

Code of Civil Procedure- The California Rules of Court also has a separate section of rules governing family law matters: the 5 series.

It might help to think of the two courts as separate countries — for example, Norway and Kenya. While there are some similarities between them (streets, houses, supermarkets), Norwegian laws do not apply in Kenya, and Kenyan money is no good in Norway. Edward is, in essence, trying to spend civil court money in family court. That is why a civil court has no jurisdiction over a family law matter.

Edward was free to sue Deborah in civil court. But nothing occurring there had any effect whatsoever on the dissolution case in family court. To put it as simply as possible, as far as the family court is concerned, the civil action never happened. If Edward's purpose in suing Deborah in civil court was to get out of paying the arrears he owed her, he wasted his time and, if he was represented by counsel, his money.

Neal v. Superior Court (2001) 90 Cal.App.4th 22 (Neal), illustrates this point. In Neal, the judgment of dissolution required the husband to pay the wife $25,000, $21,000 of which was an equalization payment. He was to pay part of it immediately and to give a promissory note for the rest. He did not pay the balance of the note, and the wife sold it for half its value to a collection agency, She also enlisted the district attorney to assist her in collecting back child support. (Id. at pp. 23-24.)

The parties then stipulated to a payment of $11,500 as an accord and satisfaction, which the husband still had not paid as of six months later. So the wife moved in the family court to set the stipulation aside. (Neal, supra, 90 Cal.App.4th at p. 24.)

The husband then filed suit against the wife and the collection agency in civil court, for declaratory relief among other causes of action, alleging that he had paid everything he owed. The wife demurred, on the ground that this was a family law matter. The trial court overruled the demurrer, and we reversed. (Neal, supra, 90 Cal.App.4th at pp. 24-25, 26.)

As we stated in Neal, "[F]family law cases should not be allowed to spill over into civil law Almost all events in family law litigation can be reframed as civil law actions if a litigant wants to be creative with various causes of action. . . .[¶]
The instant case is a perfect example. [Husband] sued his ex-wife for breach of contract simply because she did not comply with the terms of a family law judgment. . . . He has sued her for declaratory relief based on the dispute in the family law case over whether he has paid what he owes under the family law judgment. In substance, this case is a family law OSC with civil headings. [Il] . . . [Ill . . . [Husband's] civil complaint is essentially about whether he paid the money that the family law judgment obligated him to pay."
(Neal, supra, 90 Cal.App.4th at pp. 25-26.)

Not only did we direct the civil court to enter an order sustaining the wife's demurrer for lack of jurisdiction, we also ordered the family court to award her attorney fees under Family Code section 271 "for having been dragged through this unnecessary excursion in the civil court." (Neal, supra, 90 Cal.App.4th at pp. 26-27; see also D 'Elia v. D 'Elia (1997) 58 Cal.App.4th 415, 432 [misrepresentation of value of community stock in

dissolution action litigated in civil court; "[W]hen the fraud claim is predicated on misrepresentations of value . . . made in the process of dissolution, the remedy is the traditional one of timely seeking to set aside the judgment . . . in the appropriate forum, not a securities fraud suit."]

Family Code section 290 provides, "A judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary." Family Code section 291, subdivision (a), provides, "A money judgment or judgment for possession or sale of property that is made or entered under this code, including a judgment for child, family, or spousal support, is enforceable until paid in full or otherwise satisfied." The family court ruled in 2018 that Edward still owed Deborah money under the dissolution judgment, and the family court is the one to decide whether that judgment has or has not been satisfied.

The only person who cm alter a family court judgment is a family court
judge. The parties themselves cannot do it, either by contract or by stipulation.

Martins v. Superior Court (1970) 12 Cal.App.3d 870, 876 [parties cannot agree to contempt for nonpayment; "contempt sanctions must . . . be based . . . on a court order."]) They can ask the family court judge to do it, by initiating process in family court, but they must follow the procedures set out for this purpose in family law, without reference to the outcome of any civil suit. A ruling or disposition from civil court cannot form the basis for a family court order.

The family court correctly denied Edward's first RFO on June 3, 2022, regardless of what it entailed, because there was no legal basis for relief. He never filed a request for an order requiring Deborah to file an acknowledgement of satisfaction of judgment, and it would not matter if he had made a proper request for such an order. As part of the trial in 2018, the commissioner found that the acknowledgement of satisfaction of judgment was without effect, and Edward never appealed from that order.

If what Edward wanted was to have the dissolution case dismissed, the court correctly denied that request as well. The sole basis for Edward's RFO was

a stipulation and settlement agreement that had no force in a family law case.

The family court also correctly denied Edward's second R.FO on July 22, 2022. Diagnosing the RFO as a motion for reconsideration, the court denied it on the ground that Edward had not presented any "new or different facts, circumstances, or law," the basic requirement of a motion for reconsideration under Code of Civil

Procedure section 1008, subdivision (a). There are no errors here.

DISPOSITION

The orders of June 3 and July 22, 2022, are affirmed.

BEDSWORTH, J

WE CONCUR.

O'LEARY, P. J.

MOORE, J.

Appendix B

Court of Appeal, fourth Appellate District Div Three
Electronically Filed 12/2/2020
Brandon L Henson, Clerk/Executive Officer

Filed Superior Court, County of Orange 12/3/2020

In the Marriage of Deborah
And Edward L Clark

DEBORAH L. Clark
Respondent

G058030
(Consol with G058284)

Vs

(Super. Ct. No 05D000275)

EDWARD L CLARK
Appellate

OPINION

Appellate

Appeals from orders of the Superior Court of Orange County, Barry S. Michaelson, Temporary Judge. (Pursuant to Cal. Const., art. VI, 21.) Affirmed.

Law Offices of Thomas M. McIntosh and Thomas M. McIntosh for Appellate

No Appearances for Respondent

INTRODUCTION

Edward Clark appeals from an order denying his motion made pursuant to Code of Civil Procedure section 473 (section 473), to set aside an order requiring him to resume equalization installment payments to his ex-wife, Deborah Clark. He has identified 13 issues on appeal, some of which duplicate each other.

We affirm the order. Edward has profoundly mistaken the purpose of a discretionary motion under section 473. It is to relieve a party or his counsel from the adverse consequences of mistake, inadvertence, surprise, or neglect. It is not to point out to the trial court where it has erred.. Edward has failed to explain how the trial court abused its discretion in denying his motion. Furthermore, Edward has for the most part failed to observe some basic principles of appellate review, in some cases with fatal results.

Only one issue survives: whether the family court had jurisdiction to hear and adjudicate the dispute between Edward and Deborah. We hold that it did. The rest of the issues relating to the set aside motion are not reviewable in this court.

Edward has also appealed from an order from the same day granting Deborah $3,000 in attorney fees under Family Code section 27 L We affirm that order as well, as we are unable to find that the family court abused its discretion in making the award.

FACTS

As we are required to do, we recite the facts in the manner most favorable to the judgment. (In re Marriage of Hokanson (1998) 68 Cal.App.4th 987, 990, ff. 1.)

Edward and Deborah were divorced in 2007. The marital settlement agreement, which became part of the judgment in 2006, provided that, in lieu of a lumpsum equalization payment to Deborah, Edward would pay her $250,000 at

the time and the rest ($1.7 million) in installments of $9,227 per month over 30 years, at five percent interest. The parties waived spousal support. Deborah later testified that the monthly payment was her sole source of income

Edward presented the court with an acknowledgement of satisfaction of judgment (full) ostensibly signed by Deborah on January 14, 2013, and recorded the same day. The register of actions in the divorce case does not reflect the filing of an acknowledgement of satisfaction of judgment or a demand for the filing of an acknowledgement. Notwithstanding the acknowledgement of satisfaction of judgment, Edward continued to

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reflect the filing of an acknowledgement of satisfaction of judgment or a demand for the filing of an acknowledgement. Notwithstanding the acknowledgement of satisfaction of judgment, Edward continued to make the monthly payments mandated by the marital settlement agreement/judgment until 2016.

In 2016, Edward still owed Deborah $1.3 million in equalization payments. He told Deborah he could no longer make the monthly payments because he found himself in financial difficulties. If she would sign some papers, he could take $1 million in equity out of his house and put it in her bank account, then use $150,000 of it to pay his taxes. She could live on the remaining $850,000 for the estimated two years that it would take Edward to reorganize his finances. He would then resume the monthly payments until the balance — some $300,000 plus the $150,000 he took for taxes — was finally paid off. Deborah agreed, largely because

Edward told her that if she did not, she would get nothing.

Deborah signed a debt settlement agreement on March 21, 2016. Under the terms of the debt settlement agreement, Deborah was supposed to receive the entire $1 million. Edward nevertheless took $150,000 of that amount, pursuant to the previously made oral agreement. He sent two text messages to Deborah acknowledging the agreement to pay her the balance of the equalization payment.

In 2017, Deborah called Edward to find out when he was going to resume the monthly payments, assuming that his financial problems would be on the way to resolution. Edward told Deborah he was not going to pay her. He might repay her the $150,000 he took for his taxes, but nothing else.

At trial in September 2018, Deborah testified that she had no memory of the document. 111 fact, it was recorded but never filed.

Deborah filed a request for order (RFO) on April 17, 2018, in the divorce case, asking for an order to enforce the judgment in particular the remaining monthly payments. The moving papers included the debt settlement agreement and the acknowledgement of satisfaction of judgment as exhibits and a declaration from Deborah explaining how she had come to Sigl them. The RFO was personally served on Edward on May 7, 2018. Edward filed an opposition on August 22, 2018, denying that he owed Deborah any more money and giving his version of events.

The case was fried to a family law commissioner over two days, September 18 and October 12, 2018. Both Edward and Deborah testified. At the end of trial, the court ruled in Deborah's favor. It found that she had been due $488,500 as of April 30, 2016, per the marital settlement agreement. The components of this amount were (l) the balance of the monthly

payments due under the marital settlement agreement/judgment of

2006 ($3 88,500) and (2) the $150,000 that Edward had taken from the $1 million to pay his taxes. In other words, Edward had to pay the full amount agreed to in the marital settlement agreement/judgment and was not entitled to discount that amount by means of the debt settlement agreement and the satisfaction of judgment. He received a credit for the $850,000 Deborah received from the home equity loan. But he had to pay the rest ($525, 137, including interest as of October 2018) in monthly installments, as mandated by the original judgment.

The court's judgment — light or — was fairly straightforward. It did not believe Edward's version of events, which was that Deborah was so desperate for money that she was willing to forego $488,000 over time if she could get $850,000 immediately

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2 The court noted that the amount Edward proposed as his final payoff, $850,000, was an unreasonable

35.8 percent discount on the balance still owing, and even the total amount borrowed, $ I million, was a 24.5 percent discount, also unreasonable.

3 The ruling included a payment amortization schedule for monthly payments beginning November 1, 2018.

On December 10, 2018, Edward filed an RFO styled "motion to vacate order," that is, the October 12 order. The memorandum of points and authorities referred to section 473, subdivision (b), as the basis for the motion, although no supporting case law was cited. The motion also referred to section 473, subdivision (d), the procedure for setting aside a void judgment, in this case for failing to serve Edward with a summons and complaint.

The motion had a large number of issues to support the request to vacate the order of October 12. These can be grouped into three categories. First, Edward asserted the court had no jurisdiction to hear the matter because the satisfaction of judgment ended the divorce case as of 2013. Any subsequent complaint Deborah had would have to be adjudicated in a civil court, not as part of the divorce. Second, Edward did not know that the debt settlement agreement would be at issue at the trial. Finally, he had 17

issues concerning the evidence presented at frial.5

The matter was heard on March 8, and the court issued the order denying the motion to vacate on April 15, 2019. At the same time, the court assessed $3,000 in attorney fees to pay Deborah's counsel for opposing the motion. Edward filed a notice of appeal from the April 15 order denying his motion

to vacate on July 17, 2019. He then filed a notice of appeal from the attorney fee award, also ordered on April 15, on September 6, 2019. The two appeals have been consolidated.

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4 Edward's counsel declared that she and Edward were surprised when they received an adverse ruling.

5 It is not easy to keep track of these issues because they are identified rather haphazardly. Edward begins with issues A through F, then switches to c. through h. , then begins over again with a, b., c. , d., and i.

6 Some proceedings took place after the entry of the April 15 order, but we have not considered them because the notices of appeal are restricted to the orders of April 15.

DISCUSSION

Before we discuss the 13 issues Edward has raised in this appeal, some basic features of appellate review need to be addressed. First, we rely entirely on the written record, the completeness of which is the appellant's responsibility; error is never presumed. (Southern California Gas Co. v. Flannery (2016) 5 Cal.App.5th 476, 483; In re Marriage of Arceneaux (1990) 51 Cal.3d 1130, 1133.) The appellant has the burden of demonstrating error. (In re Marriage of Gray (2002) 103 Cal.App.4th 974, 978.) There are two corollaries to this principle. One is that if it is not in the record, it did not happen. (Protect Our Water v. County of Merced (2003) 110 Cal.App.4th 362, 364 ["When practicing appellate law, there are at least three immutable rules: first, take great care to prepare a complete record; second, if it is not in the record, it did not happen; and third, when in

doubt, refer back to rules one and two."]) The other is that when the appellant refers to a matter in the record at any point in a brief, he or she must give the citation to the place in the record where the reference can be found. (Professional Collection Consultants v. Lauron (2017) 8 Cal.App.5th 958, 970.) Otherwise, we would have to search the record ourselves for corT0boration, and that is not our job. (See Nwosu v. Uba (2004) 122 Cal.App.4th 1229, 1246.)

Another feature of appellate review is that we review only the judgment or appealable order identified in the notice of appeal. We can review prior nonpeelable orders on an appeal from a judgment or an appealable order. But we cannot review subsequent orders not mentioned in the notice of appeal. A notice of appeal that fails to specify the judgment or order appealed from is insufficient to confer jurisdiction on a reviewing court. (See Sole

Enerv Co. v. Petro minerals Corp. (2005) 128 Cal.App.4th

212, 239, 240; Rudick v. State Bd. of Optometry (2019) 41 Cal.App.5th 77, 89-90; Faunce v. Cate (2013) 222 Cal.App.4th 166, 170 ["'Our jurisdiction on appeal is limited in scope to the notice of appeal and the judgment or order appealed from.' [Citation.]

We have no jurisdiction over an order not mentioned in the notice of appeal"]; Shiver, McGrane & Martin v. Littell (1990) 217 Cal.App.3d 1041, 1045 ["Despite the rule favoring liberal interpretation of notices of appeal, a notice of appeal will not be considered adequate if it completely omits any reference to the judgment being appealed."].)

In this case, the only order identified in the notices of appeal is the order denying Edward's motion to vacate, entered on April 15, 2019, and the order imposing attorney fees on Edward, also entered on April 15, We cannot review orders entered after that one. The

notices of appeal filed on July 17 and September 6, 2019, identify only the

April 15 order as the relevant one, and our review is restricted to that order.

Still another feature of appellate review is that, for the most part, for an issue to be preserved for appeal, it must have first been raised in the trial court. As a general rule, we do not review issues raised for the first time on appeal. (Nellie Gail Ranch Owners Assn. v. McMullin (2016) 4 Cal.App.5th 982, 997.) And we review only those issues that are raised in the opening brief. (State Water Resources Control Bd. Cases (2006) 136 Cal.App.4th 674, 836.) As error must be demonstrated, we assume that if the appellant did not identify a ruling as erroneous, he or she does not dispute the court's decision on that issue.

Finally, as a reviewing court we do not reweigh evidence, and we do not reassess credibility. (Johnson v. Pratt & Whitney

Canada, Inc. (1994) 28 Cal.App.4th 613, 622.) These matters are entrusted to the trial court. A challenge to the evidence supporting an order or a judgment must take into account the substantial evidence standard of review, under which we must affirm if any substantial evidence supports the trial court's decision, and we must disregard contrary evidence. (Orange County

Employees Assn, v. County of Orange (1988) 205

Cal.App.3d 1289, 1293.)

Edward's motion to vacate raised the following issues: the court lacked jurisdiction because (a) the family law case no longer existed after the satisfaction of judgment and (b) Deborah did not serve Edward with a summons and complaint; Edward did not know one of the issues would be fraud, so he was surprised when this turned out to be an issue; the debt settlement agreement was integrated and thus precluded consideration of parol

evidence. In his reply brief, Edward also complained that the court had refused to accept a written version of his oral motion for judgment under Code of Civil Procedure section 631.8. Edward made the motion orally after Deborah rested; he offered a written version at the end of trial, just before the court rendered its decision.8 On appeal, Edward has attempted to expand the issues to be considered. The new issues include Edward's purported failure to stipulate to a commissioner to hear the P&O, the court's purported entry of an order for spousal support after the panties had waived spousal support in the judgment, and several objections to the court's rulings on evidence at frial. Edward also argues several issues pertinent to the proceedings that took place after April 15, 2019, proceedings that we cannot consider because the relevant orders are not identified in the notices of appeal.

1. Stipulation to a Commissioner

Edward contends he never signed a stipulation to allow Commissioner Michaelson to hear his case and the court therefore lacked jurisdiction to issue the order of October 12 enforcing the judgment. Jurisdiction is a question of law that we review independently. (In re Marriage of Jensen (2003) 114 Cal.App.4th 587, 592 (Jensen).)

The minute orders of September 18 and October 12, 2018 (the two days of trial), do not record any objection by Edward to proceeding before a commissioner. Likewise, the reporter's transcripts for those two days do not reflect any objection. Instead, the parties appeared for trial, and Edward himself testified for part of the first day and most of the second.

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7 On appeal, however, Edward argues that the court "abused its discretion in its ruling to disregard any parol evidence as to the 2016 written contract . . ."

8 Although Edward included this issue in his list of 13 appellate issues, he presented no supporting argument or authority in his opening brief. An issue that is raised but not

argued is deemed waived. (Badie v, Bank of America (1998) 67 Cal.App.4th 779, 784-785 (Badie).)

Edward claims he refused to stipulate to a commissioner at a pretrial hearing on August 22, 2018. The minute order reflects no such objection. The reporter's transcript likewise includes no objection to the commissioner; on the contrary, Edward's counsel announced ready for trial and agreed to a September 18 trial date. The continuance was necessary because Edward had prepared an opposition to Deborah's RFO that had not made it into the courts file by August 22 and that Deborah's counsel had not had a chance to review, If it is not in the record, it did not happen.

A written and signed stipulation is not necessary to confer jurisdiction on a temporary judge. The parties can consent to jurisdiction orally or impliedly by conduct. (In re Richard S. (1991) 54 Cal.3d 857, 864 ["[I]t would

be ""intolerable to permit a party to play fast and loose with the administration of justice by deliberately standing by without making an objection of which he is aware and thereby permitting the proceeding to go to a conclusion which he may acquiesce in, if favorable, and which he may avoid, if not Estate of Fain (1999) 75 Cal.App.4th 973, 988-989; In re Lamonica H. (1990) 220 Cal.App.3d 634, 640.)

In this case, Edward participated in three pretrial hearings and a two-day trial, without bringing up the lack of a written stipulation. By that time he had consented by conduct to a decision by the commissioner, and he had waived any objection.

Edward argues that he objected to the commissioner at a hearing on July 1 1, 2018, by refusing to sign the stipulation allowing the commissioner to hear his case. The record does not include a reporter's transcript for a hearing on July 11, and the minute order of that date does not record an objection to the

commissioner. Nor could we find such an objection anywhere else. As stated above, if it is not in the record, it did not happen. Edward further argues that he continued to object "often and frequently" to the commissioner, but he presents no citations to these often and frequent objections in the record occurring before April 15, 2019. As stated above, factual assertions must be accompanied by citations to the record wherever they occur.

11.Continued Jurisdiction of the Family Court

Edward contends the divorce case was over with the 2013 satisfaction of judgment. If Deborah had some subsequent complaint about Edward's conduct, she had to bring a civil suit for breach of contract. The family court no longer had jurisdiction to hear a matter concerning the divorce. And because Edward was not served

with a summons and complaint, the court had no personal jurisdiction over him.

This argument raises two issues, both of which are questions of law. (Jensen, supra, 114 Cal.App.4th at p. 592.) First, did the family court have subject matter jurisdiction to try the matter? Second, did the court have personal jurisdiction over Edward, or did he have to receive a summons and a complaint? In other words, was the service of Deborah's RFO sufficient to bring Edward before the court? This issue is entwined with the first one; if the family court had no subject matter jurisdiction, then Deborah had to bring a civil suit and had to serve Edward with a summons and complaint. Family Code section 290 provides: "A judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary."

In this case, the divorce judgment of 2007 was still executory. Edward and Deborah had agreed that her equalization payments would be paid in installments, over 30 years, and the time period was not over. When Edward ceased paying before the final installment, or, as in this case, indicated that he was not going to keep paying the installments, the family court had jurisdiction to take the necessary measures to enforce the judgment. (See, e.g., In re Marriage of Justice (1984) 157 Cal.App.3d 82, 86; Brown v. Brown (1971) 22 Cal.App.3d 82, 84; Code Civ. Proc. , 128, subd. (a)(4).)

The 2013 acknowledgement of satisfaction of judgment was not filed with the court. Under Code of Civil Procedure section 724.030, Deborah, as judgment creditor, was supposed to file the acknowledgement. If she did not, Edward was entitled, under Code of Civil Procedure section 724.050, to demand that she do so. This is the sole statutory remedy for making a judgment creditor file an

acknowledgement of satisfaction of judgment. (Horath v. Hess (2014) 225 Cal.App.4th 456, 466.) Edward is, in effect, trying to enforce a satisfaction of judgment outside the statutory procedure set up in the Code of Civil Procedure for that purpose, which he cannot do.

In essence, then, the family court ordered Edward to comply with the portion of the judgment of divorce requiring him to pay Deborah the remainder of the monthly equalization payments, after he received credit for $850,000 paid in 2016.9

Pursuant to Family Code section 290, the court had jurisdiction to enforce that judgment.

Edward was served with the moving papers for Deborah's RFO and responded to them. His answer and appearance were sufficient to confer personal jurisdiction upon the family court. (See Via View, Inc. v. Retzlaff(2016) 1 Cal.App.5th 198, 210.) The record does not indicate that Edward ever made a motion to quash under

Code of Civil Procedure section 418.10, subdivision (a)(l) for lack of jurisdiction.

111. Motion to Vacate

On appeal, Edward contends his motion to vacate was brought pursuant to section 473, subdivision (b). Section 473, subdivision (b), provides in pertinent part: "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading

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9 Edward erroneously argues on appeal that these payments were for spousal support, an issue not raised in the motion to vacate. The payments were not spousal support. They were Deborah's equalization payments, which she had agreed to receive over time.

10 The motion to vacate also referred to section 473, subdivision (d), which provides: "The court may, on motion of either party after notice to the other party, set aside any void judgment or order." Edward contended that the order

of October 12, 2018, was void for lack of service of process or notice, i.e., a summons and complaint. He has not pursued this argument on appeal, and we regard it as abandoned. (See Badie, supra, 67 Cal.App.4th at pp. 784-785.)

proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken. . . Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (l) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or

neglect." We review a trial court's decision to grant or deny relief under section 437 for abuse of discretion. (Roberts v. Roberts (1966) 245 Cal.App.2d 637, 639.) It is
Edward's burden to show how the discretion was abused. (See ibid.)

Edward's explanation of how the trial court abused its discretion in denying his section 473 motion is simply incomprehensible. He cited to and quoted from several cases dealing with mandatory relief under the statute, apparently unaware that mandatory relief applies only in cases in which an attorney has acknowledged mistake, inadvertence, surprise, or neglect. Moreover, in the cases Edward cited the appellate courts reversed a trial court's grant of relief under the statute, holding that mandatory relief was available only in cases of default and not when other sorts of adverse consequences ensued from mistake and neglect. None of this applies to his case. There was no attorney declaration of fault attached to the motion, there

was no default, and the trial court denied the motion.

Edward also argues that his motion was timely — the court never said otherwise — and that the court had the power to enlarge the time for filing an answer.

How either argument applies to his case is a mystery we have not been able to solve.

Edward does not explain how the trial court abused its discretion in denying his motion to vacate, especially since the bulk of the motion dealt with the admission or exclusion of evidence. A section 473 motion is not the vehicle with which to challenge evidence. (Litvinuk v. Litvinuk (1945) 27 Cal.2d 38, 43-44 ["[l]the grounds upon which the party sought to have a judgment vacated existed before the entry of judgment and would have been available upon an appeal from the judgment, an appeal will not lie from an order denying the motion."].) As the court repeatedly told Edward's counsel, it was not going to retry the case on a motion to set

aside for a party's or counsel's mistake, surprise, or neglect.

Attorney Fees

In addition to opposing Edward's motion to vacate, Deborah asked the court to award $5,625 in attorney fees for opposing the motion. The court awarded $3,000.

Family Code section 271 permits a court to award fees when a party's conduct frustrates the policy of the law to reduce the cost of litigation. We review the award of fees for abuse of discretion. (In re Marriage of Burgard (1999) 72 Cal.App.4th

Inasmuch as Edward made a motion entirely without statutory foundation, forcing Deborah to oppose it and requiring an appearance of counsel at a hearing, we cannot see that the court abused its discretion in requiring Edward to reimburse

Deborah's attorney fees. Family Code section 271 allows the court to sanction a party for

increasing the cost of litigation, and that is what Edward's motion did.

Other Issues

As stated above, we cannot review the remaining issues. One reason is that section 473 motion is not the proper procedure for disputing the court's evidentiary rulings at trial (parol evidence, judicial notice). Another reason is that Edward failed to provide supporting argument and authority (Code of Civil Procedure section 631.8 issue). A third reason is that we cannot review orders subsequent to the ones identified in the notices of appeal (orders issued after April 15, 2018). A final reason is that the issue was not first raised in the trial court (spousal support).

DISPOSITION

The orders of April 15, 2019, are affirmed. Respondent is to recover her costs on appeal.

BEDSWORTH, ACTING PJ.

WE CONCUR:
MOORE, J.
IKOLA, J.

Appendix C

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT
DIVISION THREE

In re Marriage of DEBORAH L. and EDWARD L. CLARK, JR.	
DEBORAH L. CLARK, Respondent, v. EDWARD L. CLARK, JR., Appellant.	G061697 (Super. Ct. No. 05D000275) O R D E R

The petition for rehearing is DENIED.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.

Court of Appeal, Fourth Appellate District, Division Three - No. G0616997

S282641

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re the Marriage of DEBORAH L. and EDWARD L. CLARK, JR.

DEBORAH L. CLARK, Respondent,

v.

EDWARD L. CLARK, JR., Appellant.

The petition for review is denied.

GUERRERO

Chief Justice

APPENDIX E

SUPERIOR COURT OF CALIFORNIA

6/3/2022

Judge / Commissioner: YOLANDA V. TORRES

Dept.: L62 at 8:45 AM Clerk: C. CORONA

Bailiff: J. HERNANDEZ Reporter: P. STAMPER-TAYLOR 9917

Case Type: DISSOLUTION WITH CHILD

Case Number: 050000275

Case Name: CLARK V CLARK JR.

Appearances:
EDWARD CLARK JR, RESPONDENT

MOTION Filed on 03/22/2022
By RESPONDENT EDWARD L CLARK JR

This hearing is being conducted via remote video appearance pursuant to CA Civil Code of Procedures 367.75. Court informs the parties that photographing, recording, filming and/or broadcasting of these courtroom proceedings is not permitted pursuant to California Rules of Court 1.150 and Orange County Superior Court Rule 180.

On the record at 1:49 pm:

Respondent is appearing remotely via Zoom,

Issue before the Court today is Respondent's Motion.

Court notes Proof of Service was filed today and the Petitioner was served by mail on March 28, 2022.

Respondent answers ready to proceed with today's hearing.

Court notes the Petitioner did not appear this morning at Calendar call nor contacted the Courtroom.

Court also notes Petitioner has not appeared this afternoon nor contacted the Courtroom.

Court advises Respondent the file has been reviewed and research has been done.

Respondent is sworn and testifies.

Court notes there is extensive history in this case.

Court reviews file with Respondent,

Respondent offers oral argument.

Court finds the Civil Court has no jurisdiction over Family Law orders.

Respondent's Motion is denied without prejudice.

Minute Order shall be deemed the formal order of the Court.

IT IS SO ORDERED:

JUDGE YOLANDA V. TORRES
ORANGE COUNTY SUPERIOR COURT

7/22/2022

Judge / Commissioner: YOLANDA V. TORRES

Dept.: L62 at 8:45 AM Clerk: C. CORONA

Bailiff: N. SHIVELY Reporter: R. AVOLA 14324

Case Type: DISSOLUTION WITH CHILD

Case Number: 05D000275

Case Name: CLARK V CLARK JR.

Appearances:
EDWARD CLARK JR, RESPONDENT

MOTION - OTHER Filed on 6/9/2022
By RESPONDENT EDWARD L CLARK JR

This hearing is being conducted via remote video appearance pursuant to CA Civil Code of Procedures 367.75. Court informs the parties that photographing, recording, filming and/or broadcasting of these courtroom proceedings is not permitted pursuant to California Rules of Court 1.150 and Orange County Superior Court Rule 180 and California Penal Code Section 632.

On the record at 8:57 am:

Respondent is appearing remotely via Zoom.

Issue before the Court today is Respondent's Motion to reconsider the June 3, 2022 ruling.

Court notes Petitioner was served with overnight mail.

Matter was continued and notice was mailed to both Petitioner and Respondent.

Court's tentative is to deny the Motion for reconsideration.

No new facts or additional facts were provided.

Court notes other code sections provided by Respondent do not apply to this case.

Court finds requirements of code section 1000.8 have not been satisfied.

Respondent offers oral argument.

Discussion ensues.

Respondent's Motion is denied without prejudice.

Minute Order Shall be deemed the formal order of the Court.

IT IS SO ORDERED:

JUDGE YOLANDA V. TORRES
ORANGE COUNTY SUPERIOR COURT