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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re the Marriage of PAMELA
KATHERINE STUART and STEVEN
JOSEPH DUCA STUART.

PAMELA KATHERINE STUART,

Respondent,

v.

STEVEN JOSEPH DUCA STUART,

Appellant.

A132079

(Marin County
Super. Ct. No. FL072432)

I.

INTRODUCTION

Appellant Steven Joseph Duca Stuart, acting in propria persona, appeals from several orders of the family court, including: (1) a May 10, 2011 order regarding child support and denial of a motion to set aside a stipulated judgment (May 10 Order); (2) a January 7, 2011 order regarding a request to modify support and reinstatement of licenses (January 7 Order); and (3) a March 29, 2011 order denying relief under Code of Civil Procedure section 473 and denying reconsideration of the January 7 Order (March 29 Order).

The appeal from the January 7 Order is untimely, and is hereby dismissed (Cal. Rules of Court, rules 8.104, 8.108).¹ As to the March 29 Order, that order is not

¹ All further rule references are to the California Rules of Court.

appealable, and is hereby dismissed (Code Civ. Proc., § 1008, subd. (g); *Powell v. County of Orange* (2011) 197 Cal.App.4th 1573 (*Powell*)). Furthermore, as to all of the orders appealed from, appellant has failed to comply with rule 8.204(a)(1)(C), and for this additional reason, we dismiss the entire appeal.

II.

PROCEDURAL AND FACTUAL BACKGROUNDS

In late 2010, appellant made a motion to reduce his monthly child support payment of \$983, originally ordered in September 2008, to zero. That motion was made on two grounds. Firstly, appellant claimed that his California driver's license had been suspended for nonpayment of child support. He asserted in his motion that if the court reduced his child support obligation to zero, he then would be able to have his license reinstated. This action, in turn, would lead to greater employment opportunities for appellant. Secondly, he contended that because he was participating in San Francisco's Personal Assisted Employment Services (PAES) program, as a matter of law he was entitled to a reduction of his child support payments to zero under *Barron v. Superior Court* (2009) 173 Cal.App.4th 293 (*Barron*) and *Mendoza v. Ramos* (2010) 182 Cal.App.4th 680 (*Mendoza*).

In its January 7 Order, after ruling on certain evidentiary objections made by the parties, the court denied appellant's motion to reduce his child support obligation to zero. The motion was denied after the court had granted appellant a continuance to submit documentation demonstrating that the PAES program was the functional equivalent of the CalWORKs (California Work Opportunity and Responsibility to Kids) program that was at issue in both *Barron* and *Mendoza*. The court concluded that absent a legal requirement to reduce support, appellant had failed to meet his burden of showing changed circumstances sufficient to merit reducing his support obligation from the amount ordered in September 2008. Accordingly, the court ordered that appellant continue to pay monthly child support in the amount of \$983. The court also found that appellant was \$36,800 in arrears, and that he had made no meaningful effort to make up these unpaid support obligations.

In addition, the trial court concluded that appellant had shown no special need entitling him to judicial review of his driver's license suspension under Family Code section 17520,² finding instead that his case for reinstatement was no more meritorious than any other child support obligor who was in default on payments, and that "[r]espondent is unusually well educated and that he has made no meaningful effort to pay even a portion of his child support."

Appellant filed a motion for reconsideration and from relief of default (Code Civ. Proc., § 473) several weeks later. In its March 29 Order, the court first excused late filed papers by appellant, but nevertheless denied his motions for reconsideration and for relief from default. It noted first that the motion was a repeat of his earlier arguments and "[h]is remedy is to seek appropriate appellate review, not to repeat his arguments in the form of a motion for reconsideration and a [Code of Civil Procedure section] 473 motion." In treating appellant's motions as including a motion for modification of child support, the court denied that relief because appellant failed to file with his motion the requisite forms set by local rules as a prerequisite for such relief.

On April 15, 2011, appellant filed another motion with the family law court raising the same points that were raised in connection with his earlier two motions in addition to several new arguments. These included that: (1) he had no income because any money he was receiving came from public sources, citing Family Code section 4058, subdivision (c); (2) the court could not attribute any income to him for child support purposes; (3) *Barron* and *Mendoza* applied equally to his participation in San Francisco's PAES program; (4) imputation of income to appellant would violate public policy; and

² Section 17520 outlines an elaborate procedure by which a child support obligor can be denied driving privileges until support arrearages are paid. Pertinent to the lower court's ruling, subdivision (k)(4)(C) allows for judicial review and relief of suspension under this section: ". . . If the judicial review results in a finding by the court that the needs of the obligor warrant a conditional release, the court shall make findings of fact stating the basis for the release and the payment necessary to satisfy the unrestricted issuance or renewal of the license without prejudice to a later judicial determination of the amount of support arrearages, including interest, and shall specify payment terms, compliance with which are necessary to allow the release to remain in effect."

(5) there were changed circumstances, both as it related to his continued unemployment and the fact that one of the dependent children had turned age 18.

On the same day, appellant filed a second motion. This motion sought to set aside a stipulated judgment that apparently had been agreed to by appellant and respondent Pamela Stuart, his former spouse, in January 2010. He contends the settlement should be set aside because he was misled into believing that if he agreed to its terms, respondent would agree to a temporary reduction in child support sufficient to allow appellant to regain his driver's license.

Respondent opposed the motions, stating she had earnings totaling \$2040 per month. As to appellant, respondent contended that he was living in his parents' rental apartment rent free, and that there were many job opportunities in the legal field available to him that paid between \$58,000 and \$75,000, despite the fact that he had resigned his membership in the State Bar of California.³ Based on the prior imputation of \$48,000 in earnings, respondent noted that the Supportax calculation showed that appellant should pay child support in the amount of \$1,000 per month.

As to the motion to set aside the 2010 stipulated judgment, respondent also noted that the face of the settlement agreement provided that she would agree to a temporary reduction in child support *only if* the Department of Child Support Services (DCSS) agreed to the reduction, and DCSS had refused to so agree. Respondent also pointed out that since she no longer was receiving government assistance, the sole means of support for her minor child was appellant's support obligation. Attached to her declaration was a copy of the hearing transcript at which the settlement was put on the record, as well as a copy of the stipulation for judgment agreed to on January 28, 2010.

The motions came on for hearing on May 10, 2011.⁴ The written ruling issued by the trial court granted appellant's motion to modify child support. It concluded that as one of the minor children had reached the age of majority, appellant was entitled to a

³ Appellant has a law degree and was a member of the State Bar of California for some years before his resignation.

⁴ No transcript of that hearing appears as part of the record on appeal.

reduction of his support obligation by \$368 per month. Also, because appellant provided certain documentation supporting his claim of “diminished income,” the court agreed that only minimum wage income would be imputed to appellant. Therefore, his monthly child support obligation was ordered reduced to \$308. It was further ordered that the parties would thereafter share equally in the cost of all reasonable medical and dental expenses incurred on behalf of the remaining minor child.

The same ruling denied appellant’s related motion to set aside the parties’ stipulated judgment. The court found that respondent’s agreement to temporarily reduce child support to zero was conditioned upon the approval of the reduction by DCSS, which would not agree to the reduction. Also, there were no grounds justifying appellant’s claim that the entire agreement should be voided, or that it otherwise violated public policy. All objections made by appellant in his reply brief were overruled.

III.

DISCUSSION

A. Any Appeal from the January 7 Order is Untimely

Respondent’s brief correctly points out that, to the extent appellant is seeking appellate review of the family court’s January 7 Order, it is untimely. Rule 8.104(a) provides that a notice of appeal, not subject to extension under rule 8.108,⁵ must be filed within 60 days after the superior court serves a copy of the judgment from which appeal is being made. In this case, the register of actions accompanying the record on appeal shows that the January 7 Order was duly filed on January 7, 2011, and served on the parties on January 10, 2011. Therefore, appellant’s time to appeal from that order expired on or about March 11, 2011. Since appellant did not file his notice of appeal until May 19, 2011, it is untimely as to the January 7 Order.

⁵ This section extends the time to appeal in certain cases, none of which are applicable here.

B. The March 29 Order Denying Appellant’s Motion to Reconsider and for Relief from Default Is Not an Appealable Order

The March 29 Order denied appellant’s related motions to reconsider its January 7 Order, or from relief from default under Code of Civil Procedure section 473. A ruling on a motion to reconsider under Code of Civil Procedure section 1008 is not appealable.

In *Powell, supra*, 197 Cal.App.4th 1573, the court observed: “The majority of courts addressing the issue have concluded an order denying a motion for reconsideration is not appealable, even when based on new facts or law. [Citations.] ‘These courts have concluded that orders denying reconsideration are not appealable because “Section 904.1 of the Code of Civil Procedure does not authorize appeals from such orders, and to hold otherwise would permit, in effect, two appeals for every appealable decision and promote the manipulation of the time allowed for an appeal.” ’ [Citation.]” (*Powell*, at pp. 1576-1577; accord, *Crotty v. Trader* (1996) 50 Cal.App.4th 765, 769.) We agree.

The fact that the motion to reconsider was accompanied by a motion for discretionary relief under the provisions of Code of Civil Procedure section 473 does not make the order appealable. As explained in *Powell, supra*, 197 Cal.App.4th 1573: “Powell labeled the Motion for Reconsideration alternatively as a motion to set aside the dismissal. The name of a motion is not controlling, and, regardless of the name, a motion asking the trial court to decide the same matter previously ruled on is a motion for reconsideration under Code of Civil Procedure section 1008. [Citation.]” (*Powell*, at p. 1577.)

Likewise here, the fact that appellant asked for the same relief by couching his request as an alternative motion to set aside his default, is simply another attempt to attack the refusal of the family court to reconsider its denial of his motion to modify support and for relief from the suspension of his driver’s license under Family Code section 17520, subdivision (k)(4)(C). For these reasons, we conclude that the March 29 Order is not appealable.

C. This Appeal is Dismissed For the Additional Reason that Appellant’s Brief Filed on Appeal Does Not Comply With Rule 8.204(a)(1)(C)

Among other requirements, rule 8.204(a)(1)(C) requires that each appellate brief submitted by all parties on appeal contain specific page citations to the record supporting each reference to the appellate record: “Support any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.”

Appellant’s brief commences with a three-page section entitled “PROCEDURAL HISTORY AND STATEMENT OF FACTS.” Rather than follow the requirements of the above-quoted rule, appellant instead refers this court generally to “declarations” in the record at various pages, and he “respectfully request[s] that the Court of Appeal review and consider all of the facts set forth in all of the declarations as part of the factual background in this case.”

This is not our job. “The appellate court is not required to search the record on its own seeking error. Again, any point raised that lacks citation may, in this court’s discretion, be deemed waived. (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115)” (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768 (*Del Real*).) “Further, the failure to provide citation to the record is a violation of . . . rule 15(a). A violation of the rules of court may result in the striking of the offending document, the waiver of the arguments made therein, the imposition of fines and/or the dismissal of the appeal. [Citations.]” (*Del Real*, at p. 768.)

Appellant’s status as an in propria persona litigant does not excuse him from the duty to comply with the rules. An appellant in propria persona is held to the same standard of conduct as that of an attorney on appeal. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

Therefore, we exercise our discretion and dismiss the entire appeal for this additional reason.

IV.
DISPOSITION

The appeal is dismissed.

RUVOLO, P. J.

We concur:

RIVERA, J.

SEPULVEDA, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.