

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

MICHELLE MONTALBAN,
Plaintiff and Respondent,
v.
VINCENT BROWN,
Defendant and Appellant.

A132819
(Marin County
Super. Ct. No. FL092258)

Vincent Brown, appearing in propria persona, appeals from a final judgment entered on April 15, 2011, in an action to dissolve the parties' approximately four-year marriage. He contends the court erred in finding that certain debts were his separate responsibility. He also contends the court erred by denying his request that his former wife, Michelle Montalban, be ordered to return documents pertaining to her immigration to the United States and to pay for an annulment of their marriage from the Catholic Church.¹ We shall affirm.

DISCUSSION

1. Standard of Review

A trial court's order is presumed correct, and the appellant bears the burden of establishing error. (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591.) This burden to establish error includes presentation of a record on appeal that is sufficient to support the argument the trial court erred. (*Ballard v. Uribe* (1986) 41 Cal.3d 564,

¹ Montalban has not filed a brief on appeal.

574–575.) The appellant has the further duty to present arguments supported by record citations and legal authority—the appellate court is not required to discuss or consider points that are not adequately presented. (*Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979.) “Pro. per. litigants are held to the same standards as attorneys.” (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.)

Generally, in dissolution proceedings, our review is limited to determining whether the trial court’s factual findings are supported by substantial evidence and whether the court acted reasonably in exercising its discretion. (*In re Marriage of deGuigne* (2002) 97 Cal.App.4th 1353, 1360.) In this case our review is even more limited due to the state of the appellate record. Brown elected to proceed on appeal without a reporter’s transcript of the lower court proceedings. His designation of the appellate record acknowledges that “without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.” Absent a reporter’s transcript, the trial court’s order is not subject to evidentiary challenge and we must presume the evidence supports the judgment and the court’s findings. (*In re Marriage of Stutz* (1981) 126 Cal.App.3d 1038, 1042.)

2. Separate Property Debt

Brown contends the court erred in finding that a second mortgage taken on his separate property home during the parties’ marriage was not a community debt. In an attachment to the judgment, the court explained: “During marriage the parties took out a second mortgage with Bank of America, secured by Mr. Brown’s separate property home . . . [in] Petaluma. Mr. Brown contends that this is a community obligation because Ms. Montalban signed the deed of trust. Notwithstanding Ms. Montalban’s signature on the deed of trust, the Bank of America loan was at the outset Mr. Brown’s separate obligation because it was secured by his separate property home. [Family Code, § 770.] Thus, the proceeds of the loan were Mr. Brown’s separate property. If Mr. Brown spent those loan proceeds for community purposes during marriage, he has no right to reimbursement from the community for such expenditures. (*Marriage of Lucas* (1980) 27 Cal.3d 808,

816.) At trial, Mr. Brown testified that during marriage he spent over \$200,000 on litigation expenses in a case involving his first marriage . . . ; thus, the Bank of America loan proceeds in all likelihood were spent for separate purposes in any event.” The trial court’s analysis is sound and Brown’s arguments to the contrary are not persuasive.

Brown argues that the court ignored evidence of an email dated December 23, 2010, in which Montalban allegedly agreed to pay one-half of the \$65,000 mortgage.² The final judgment makes no reference to the alleged promise. However, a minute order from a hearing on December 27, 2010, contained in the register of actions, indicates that Montalban informed the court that she had offered to pay one-half of the second mortgage but that Brown rejected her offer and made other demands so that no agreement was reached. The court properly gave no consideration to the settlement proposal. (See Evid. Code, § 1119.)

Brown also argues that the court incorrectly assumed, without evidentiary support, that he used the proceeds of the second mortgage to support his litigation with his first wife. The court’s conclusion does not rest on its observation that the funds “in all likelihood were spent for separate purposes.” Even if the funds were used to pay community expenses, as the court explained, Brown was not entitled to reimbursement. (*Marriage of Lucas, supra*, 27 Cal.3d at p. 816; see also Fam. Code, § 770, 850, subd. (b).)³

Following the issuance of the final judgment, Brown moved for a new trial on the ground that the email was given to the court clerk prior to the hearing and “may/may not

² In the email, Montalban states, “after seeing the document you showed outside the courtroom, I will agree to have you add half of the second mortgage from Bank of America Home Loans amounting to \$32,500 to the Western Union reimbursements that you claim I owe you.”

³ Brown also argues that the court erred in finding that three payments on the mortgage, made on a joint credit card, were not a community debt. The court found, however, that the parties agreed in a stipulated judgment entered in March 2010 that Brown would be responsible for that debt. Neither the judgment nor the stipulation are included in the appellate record. Accordingly, we will presume the evidence supports the trial court’s finding.

have been given to the trial judge and/or lost.” On June 14, 2011, the court denied Brown’s motion for new trial, noting only that he had “not made a showing under Civil Procedure 657 to support his request for a new trial.” Although the matter was heard and argued before the court, no reporter’s transcript has been provided on appeal. The absence of a sufficient record precludes our review of this issue.

3. Annulment

The court denied Brown’s request for an order requiring Montalban to pay for an annulment through the Catholic Church, explaining, “The court is unaware of any legal authority for such an order and believes that to make it would run afoul of the First Amendment to the California and United States Constitutions. Moreover, there is no reason why Ms. Montalban (as opposed to Mr. Brown) should be ordered to bear such an expense. The decision of how to pay for a church annulment is left to the parties’ agreement.” Brown argues that the court erred in failing to enforce Montalban’s promise, made in the December 2010 email referenced above, to pay for the annulment.⁴ Like the trial court, we have found no authority that would allow the court to order Montalban to obtain and pay for a church annulment. And without a complete record, we cannot determine whether Montalban’s email gave rise to an enforceable agreement to pay for the annulment.

4. Immigration Documents

Brown contends the trial court erred in not ordering Montalban to return to him certain immigration documents that he claims he had prepared in preparation for her entry into the country. The record before us does not reflect any request made in the trial court for the return of the documents or a ruling on any such request by the court. We cannot consider the request for the first time on appeal.

DISPOSITION

The judgment is affirmed.

⁴ In the email, Montalban writes, “I will also pay for the church annulment. But it won’t be anytime soon since I don’t have the money to pay for it.”

Pollak, Acting P.J.

We concur:

Siggins, J.

Jenkins, J.