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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of FRANCIS J. and
LORENZA VAIT.

ANNETTE VAIT, as Special Administrator,
etc.,

Respondent,

v.

LORENZA VAIT,

Appellant.

A133344

(Alameda County
Super. Ct. No. FF09473741)

Having concurred in the request for an order terminating her marriage, which the court entered before the death of her former husband, appellant Lorenza Vait (wife) now appeals from that interlocutory order. Wife failed to preserve this claim in the trial court, precluding her from raising it for the first time on appeal and, in all events, her contentions lack merit. We shall therefore affirm the status-only judgment terminating the marriage but dismiss the appeal insofar as it challenges other interlocutory rulings.

Factual and Procedural History

Francis Vait (husband) and wife were married on February 12, 1964. Husband and wife separated no later than early January 2001. In late 2009, husband filed for a divorce. Wife responded, also requesting that the parties' marriage be dissolved. Wife later amended her response, requesting a legal separation. After two status conferences and an unsuccessful settlement conference, the matter was set for a court trial on April 6,

2011. Trial did commence on April 6, with both parties appearing in propria persona. The court heard the testimony of both parties concerning their numerous differences, during which wife advised the court that she did “not want to stay married to this man.” The court also heard testimony addressed to wife’s motion requesting that community funds be released so she could pay for an attorney and dental work.

At the conclusion of the hearing, the court found that “irreconcilable differences have arisen between the parties that have led to the breakdown of the marriage” and granted a “judgment of dissolution as to status only,” restoring both parties to the status of unmarried persons. However, the court found that there was insufficient evidence to determine multiple property issues and, therefore, reserved jurisdiction over those issues and scheduled further proceedings on the reserved issues for July 27, 2011.

Prior to July 27, both parties retained counsel. On July 27, the attorneys for both parties appeared for trial, but husband was not present due to health issues and the matter was continued to September 8. On July 28 husband died. On September 28, wife filed a notice of appeal from the April 6 judgment of dissolution. Shortly thereafter the probate court appointed Annette Vait as special administrator “for the sole purpose of retaining counsel . . . to represent [husband’s] interests in [the] family law matter.”

Discussion

Although the April 6 order was interlocutory, insofar as it dissolved the marriage, it finally resolved a collateral issue and is appealable. (*In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 116; *In re Marriage of Lafkas* (2007) 153 Cal.App.4th 1429, 1433.) Because wife was not served with notice of the entry of the order or a file-stamped copy of the order, the notice of appeal filed 180 days after the order was entered is timely. (Cal. Rules of Court, rule 8.104(a)(3).)

Wife contends the trial court failed to comply with Family Code¹ section 2337 when it entered the interlocutory judgment of divorce because no notice had been given that the proceedings would be bifurcated and thereby denied her due process. She also

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

contends there was insufficient evidence to support the finding of irreconcilable differences justifying the divorce.² Wife has forfeited her right to challenge the order terminating the marriage because she made no such objection in the trial court. Section 2341 provides that “the filing of an appeal . . . does not stay the effect of a judgment insofar as it relates to the dissolution of the marriage status and restoring the parties to the status of unmarried persons, unless the appealing . . . party specifies in the notice of appeal . . . an objection to the termination of the marriage status. *No party may make such an objection to the termination of the marriage status unless such an objection was also made at the time of trial.*” (Italics added.) Wife failed to object to the termination at the time of trial. To the contrary, she stated explicitly that she did “not want to stay married to this man,” that she now had freedom, and that she “just want[ed] to be out of his control.” She is therefore barred from objecting to the dissolution of the marriage on appeal.

Moreover, we note that even if not forfeited, wife’s contentions lack merit. There was more than sufficient evidence for the court to find that irreconcilable differences had arisen between the married couple. Throughout the course of the proceedings wife accused husband of lying, being controlling, walking away from conflict, spending all of the money in their joint account, withholding community funds, breaking into her house while she was asleep, damaging property, being narcissistic, keeping their adult son a prisoner in husband’s home, stealing money from their son, alienating their son’s affection, stealing a check, and treating his daughter like a wife. Further, there was testimony from both parties that they no longer wished to be married to the other. Given

² Wife also contends the court erred in vacating the hearing date on her motion for the release of community funds and abused its discretion in refusing to join husband’s pension plan and to order certain relief authorized by section 2337. Insofar as the April 6 order encompasses these rulings, the rulings are not appealable. (§ 904.1, subd. (a).) “Insofar as this appeal has been taken therefrom, the appeal must be dismissed. The propriety of the court’s ruling, however, may be considered here upon review of whatever appealable judgment ensues.” (*In re Marriage of Fink* (1976) 54 Cal.App.3d 357, 360.) These rulings do not relate to the entry of the order terminating the marriage and their propriety may be considered only upon appeal from a final judgment.

“the strong policy in California in favor of granting final dissolution of marriage where the relationship of the parties has irretrievably broken down” (*In re Marriage of Gray* (1988) 204 Cal.App.3d 1239, 1254), the court had ample evidence to find that irreconcilable differences had arisen which led to the irreparable breakdown of the marriage.

Nor did the court err because it entered a status-only judgment without having given prior notice that there would be a bifurcation of issues. Wife contends the court failed to comply with section 2337, subdivision (a), which states in relevant part that “the court, upon noticed motion, may sever and grant an early and separate trial on the issue of the dissolution of the status of the marriage apart from other issues.” (See also Cal. Rules of Court, rule 5.175.) However, the court here did not sever and grant a separate trial on any issue. Trial was scheduled for April 6 with the understanding that all issues in the dissolution would be addressed, including marital status, property rights, and spousal support. Evidence was received relevant to both status and property rights. Because the court found that neither party had presented sufficient evidence for it to make a proper division of their marital assets, the court proceeded to make a finding of irreconcilable differences, as to which there was sufficient evidence, entered a status-only judgment, and reserved jurisdiction over the remaining property issues. This procedure was neither a bifurcation nor a severance in the normal sense and certainly is not prohibited by section 2337. The court was acting under the broad authority granted by section 2010, subdivision (a) to “render any judgment and make orders that are appropriate concerning . . . [¶] . . . [t]he status of the marriage.”

Nor did this procedure deny wife’s right to due process “on the issue of termination of marital status.” Procedural due process requires that a party have notice and an opportunity to be heard. (*Anderson v. Superior Court* (1989) 213 Cal.App.3d 1321, 1329 [“the United States Supreme Court [has] held that due process require[s] timely and adequate notice and an effective opportunity to be heard”].) Here, wife unquestionably had notice that the status issue would be considered at the April 6 hearing and full opportunity to prepare. The dissolution action had been pending for over two

years. It had previously been set for trial but continued several times at wife's request. When the last continuance was granted on December 8, 2010, the court specifically advised wife that there would be no further continuances and that trial would proceed on April 6. Wife participated in the proceedings on April 6 without objection, presented evidence on the status issue, and gave no indication that she was surprised or unprepared to address the issue. The court gave her ample opportunity to present evidence and did not prevent her from testifying, calling witnesses, or presenting evidence. (See *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 677 ["Denying a party the right to testify or to offer evidence is reversible per se."]) Wife's procedural due process rights were not violated.

Disposition

The judgment of dissolution is affirmed. Insofar as the appeal is taken from other issues (see fn. 2, *ante*), the appeal is dismissed.

Pollak, J.

We concur:

McGuinness, P. J.

Jenkins, J.