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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re the Marriage of NICOLE GREY
and JAMES TAGGART.**

JAMES TAGGART,

Appellant,

v.

NICOLE GREY,

Respondent.

A136000

**(Marin County
Super. Ct. No. FL 055386)**

Appellant James Taggart filed a postjudgment motion in a dissolution proceeding between himself and respondent Nicole Grey. The trial court — sua sponte, without advance notice to the parties, and before the completion of the briefing and submission of evidence — struck the motion on the ground that it lacked jurisdiction. We conclude the trial court’s action violated Taggart’s due process right to notice and an opportunity to be heard on his motion, and therefore reverse.

BACKGROUND

Judgment in the dissolution proceedings between James Taggart and Nicole Grey was entered in January 2006. The judgment provided, among other things, for Taggart to pay Grey monthly spousal support.

In November 2011, Taggart filed a motion in the dissolution proceeding for reimbursement of spousal support overpayments. Taggart claimed that after judgment

was entered, the parties agreed that Grey would have access to a bank account containing Taggart's funds, from which he authorized her to withdraw for her personal use only her monthly spousal support payments. He subsequently determined that Grey had withdrawn for her personal use a substantial amount of unauthorized additional funds. His motion sought reimbursement of these funds.

In advance of the hearing on Taggart's motion, the parties engaged in discovery. A discovery dispute arose; and, in March 2012, Taggart filed a motion to compel certain discovery responses. In her opposition to the motion to compel, Grey submitted postjudgment writings from Taggart to Grey in which Taggart agreed to pay certain of Grey's personal debts and obligations. In the argument section of her opposition to the motion to compel, Grey did not contend the trial court lacked jurisdiction over Taggart's reimbursement motion. Grey had not yet filed her opposition to the reimbursement motion at the time of the hearing on the motion to compel.

The trial court's tentative ruling on the motion to compel stated only that the parties were to appear. The court opened the hearing by announcing that it had reviewed the underlying motion for reimbursement and "it sounds like this is an action for accounting and an action, arguably, for breach of fiduciary duty, maybe an action for conversion." The trial court expressed concern that Taggart was "contorting the factual situation in order to make it fit into the family law context; whereas, it really belongs simply in a civil lawsuit." Without providing the parties an opportunity to submit evidence or briefs on the issue, the trial court concluded "that family court does not have jurisdiction of this claim" and struck Taggart's motion for reimbursement. This appeal followed.

DISCUSSION

Taggart argues the trial court's sua sponte dismissal of his motion, without notice and an opportunity to be heard, constituted a denial of his right to due process. We agree.

"It is a cardinal principle of our jurisprudence that a party should not be bound or concluded by a judgment unless he has had his day in court. This means that a party must be duly cited to appear and afforded an opportunity to be heard and to offer

evidence at such hearing in support of his contentions. [¶] . . . [¶] An order or judgment without such an opportunity is lacking in all the attributes of a judicial determination. [Citations.] . . . [Citation.]” (*Bricker v. Superior Court* (2005) 133 Cal.App.4th 634, 638 (*Bricker*); accord, *In re Marriage of Straczynski* (2010) 189 Cal.App.4th 531, 538 [“The constitutional guarantee of due process requires that a court give notice to a party and an opportunity to respond before sua sponte dismissing an action.”].)

Neither the trial court nor Grey provided Taggart with notice the trial court’s jurisdiction over his motion for reimbursement would be at issue in the hearing on his motion to compel. Taggart had no opportunity to submit evidence on the matter and was permitted only a brief opportunity to argue an issue for which he had no notice that argument would be held. Accordingly, the trial court’s order striking Taggart’s motion for reimbursement constituted a denial of his right to due process.

Grey argues that Taggart failed to object in the trial court on due process grounds and thereby failed to preserve this argument. We “ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court. [Citation.]” (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) “However, even where a legal argument was not raised in the trial court, we have discretion to consider it when the theory raised for the first time on appeal is a pure question of law applied to undisputed facts. [Citations.]” (*San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 436.) There is no dispute the trial court’s order issued without advance notice or a full opportunity to argue and submit evidence. Whether such conduct violated Taggart’s due process rights is a pure question of law which we have exercised our discretion to consider.

Although the parties have submitted briefs on the merits of the jurisdictional issue to this court, it is appropriate for the trial court to resolve it in the first instance after a full and fair hearing. (*Bricker, supra*, 133 Cal.App.4th at p. 639 [“Although the parties’ briefs and evidentiary submissions in this court discuss the merits of the dismissal question, it would plainly be inappropriate for this court to pass on this question in first instance. The parties never had the opportunity to litigate this issue before [the] superior

court, and it appears resolution of the dismissal issue may require rendition of factual findings on conflicting evidence.”].) We note, for example, the facts underlying Taggart’s reimbursement motion are disputed, and resolution of the jurisdictional question may depend on whose version of the facts the trial court credits. Accordingly, we remand for the trial court to consider the issue after affording the parties the opportunity to submit evidence and argument.

DISPOSITION

The order is reversed. The trial court is directed to conduct further proceedings consistent with this opinion. Taggart is awarded his costs on appeal.

SIMONS, J.

We concur.

JONES, P.J.

BRUINIERS, J.