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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of SANDRA and  
RANELL JONES.

SANDRA S. JONES,

Respondent,

v.

RANELL C. JONES,

Appellant.

A138395

(Alameda County  
Super. Ct. No. HF09443873)

In this appeal arising out of a marital dissolution action, Ranell C. Jones (Ranell)<sup>1</sup> acting in propria persona (pro. per.) appeals from the trial court's ruling denying his motion to vacate a judgment of dissolution. We reject his claim of error and affirm the trial court's order.

**FACTUAL AND PROCEDURAL BACKGROUND**

Ranell married Sandra S. Jones (Sandra) in 1968. Sandra filed a pro. per. petition for dissolution of marriage in March 2009. After Ranell failed to make an appearance in the action, Sandra sought to have a default judgment of dissolution entered. The court entered a default judgment on August 24, 2009 that included a division of property. The parties' marital status was set to terminate on October 27, 2009.

<sup>1</sup>We refer to the parties by their first names, as is customary in family law matters. No disrespect is intended by this practice. (See *In re Marriage of Witherspoon* (2007) 155 Cal.App.4th 963, 967, fn. 2.)

Shortly after the default judgment was entered, Sandra noticed an error in the judgment's division of property. She claimed that, due to her confusion about the legal form used to itemize property interests, the judgment erroneously recited that a Jeep Wrangler owned by her was the separate property of Ranell. In October 2009, the court issued an order to show cause why the judgment should not be set aside. The court directed Sandra to the "help center" for assistance in making the requested change to the existing judgment.

Ranell made an initial appearance in the action in late October 2009 when he moved in pro. per. to vacate the default judgment. He claimed he was under medical care at the time he was served with the dissolution petition and that his medical condition prevented him from responding to legal matters.

Ranell and Sandra were each represented by counsel at a hearing conducted in January 2010. Ranell's counsel informed the court that the most serious issue affecting his client was how to reinstate Ranell's health care coverage, which Sandra had chosen not to renew based upon her belief that she was no longer able to keep him on her health plan after the divorce. At the time of the hearing, counsel for the parties were still exploring whether it was necessary to set aside the judgment and restore the parties' marital status in order to reinstate health care coverage for Ranell. The court agreed to continue the matter to allow the parties to pursue a resolution that would permit Ranell to be covered by health insurance.

At a further hearing in February 2010, Ranell's counsel explained to the court that the parties had reached an agreement regarding the termination of marital status. Ranell was not present at the hearing. His counsel told the court that the parties had agreed to enter an amended judgment that would extend the parties' marital status through August 23, 2010. It was also agreed Ranell would waive all remaining property division issues and that the amended judgment would reflect that the Jeep Wrangler was awarded to Sandra. Sandra was required to take steps to reinstate Ranell's medical coverage retroactive to November 2009. Ranell agreed to prepay the additional premium associated with adding him to Sandra's health coverage. Although the court was willing

to accept the parties' stipulation as represented by counsel, it noted that Ranell was not present at the hearing and would need to sign the amended judgment to reflect his consent to its terms. Ranell's counsel assured the court that his client was in "total agreement" with the stipulation and would sign the necessary paperwork.

In October 2010, Ranell filed a pro. per. motion to vacate the judgment. The record contains no indication that an amended judgment had been filed at that point in time, as contemplated by counsel for the parties at the February 2010 hearing. In his motion, Ranell sought an order "vacating the stipulated judgment" on the ground that Sandra had breached the judgment by failing to permit him to use the medical benefits to which he was entitled.

The hearing on Ranell's motion to vacate was ultimately heard on April 4, 2011. Ranell was present at the hearing. Sandra appeared with her counsel. The minute order for that hearing reflects that the court ordered the judgment of dissolution amended so that the parties' marital status would end on October 31, 2011. The division of property was amended "as recited on the record." The court directed Sandra's counsel to prepare a written agreement for Ranell's signature. Ranell was required to return the written agreement by April 29, 2011.

Notably, the transcript of the April 4, 2011 hearing is not a part of the record before this court. Ranell designated that hearing for inclusion in the record on appeal but later withdrew the designation. Consequently, the only record this court has of that hearing is the court's minute order. In a declaration subsequently filed by Sandra, she stated that the parties had stipulated to the terms of the amended judgment in open court at the April 2011 hearing.

In October 2011, Ranell filed yet another pro. per. motion to vacate the judgment of dissolution. He claimed that Sandra was "unable to stipulate" with him "to make a full settlement [sic] regarding the dissolution of this case" and consequently requested the court "to vacate the default Judgment, Amended Judgment, Post Judgment Orders" and set a date for him to contest the dissolution petition. In her response to the motion,

Sandra claimed that Ranell had refused to execute the stipulation to which he had agreed in open court in April 2011 and instead sought to unilaterally change its terms.

The trial court continued the matter on a number of occasions. At a continued hearing on June 4, 2012, Ranell was absent. The minute order for that hearing reflects that the court affirmed the validity of the judgment of dissolution, requested a transcript of the April 2011 hearing, and continued Ranell's request to set aside the judgment until the next court date.

In September 2012, Ranell filed a request to continue the hearing again for a minimum of 60 days. He claimed he was under a doctor's care in a licensed community care facility and could not attend the hearing. At further hearing in October 2012, the court noted that the matter had been continued numerous times due to Ranell's medical issues. The court's minute order reflect that it would rule against Ranell if he failed to appear at the next scheduled court date.

After further lengthy continuances, Ranell's October 2011 motion to vacate was ultimately heard on March 18, 2013. Ranell was present at the hearing but claimed he was unable to proceed because of continuing medical issues. The court denied Ranell's request for a further continuance. The court recited the lengthy history of the matter and concluded by denying Ranell's motion to vacate and maintaining in effect the amended judgment entered on April 4, 2011. Ranell timely appealed from the court's order denying his motion to vacate the judgment.

#### **DISCUSSION**

It is not entirely clear what relief Ranell seeks on appeal. On the one hand, in his legal argument he claims the parties entered into a stipulated judgment and that Sandra refused to sign the formal stipulation. He argues that he is entitled to have the terms of the stipulated judgment enforced, citing Code of Civil Procedure section 664.6. Presumably, he is referring to the April 2011 stipulation to amend the judgment, although he sought to vacate the amended judgment in the trial court and, contrary to his claim on appeal, he was the one who refused to sign the amended judgment when it was reduced to writing. On the other hand, in the conclusion to his appellate brief he asks this court to

vacate the trial court's March 2013 order. Yet, the court affirmed its previous orders at the March 2013 hearing, including the April 2011 order accepting the parties' stipulation to amend the judgment. Consequently, it is unclear whether Ranell seeks to vacate or enforce the amended judgment that was the subject of a stipulation in April 2011. As we explain, Ranell's appeal lacks merit regardless of how we interpret his request for relief.

It is a fundamental principle of appellate review that a judgment is presumed correct on appeal, "and a party attacking the judgment, or any part of it, must affirmatively demonstrate prejudicial error." (*People v. Garza* (2005) 35 Cal.4th 866, 881.) The appellant bears the burden of providing a record sufficient to assess error. (See *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.) "A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed." (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051, fn. 9.)

Although we are aware that Ranell brings this appeal without the benefit of legal representation, his status as a pro. per. litigant does not exempt him from the rules of appellate procedure or relieve him of his burden on appeal. (See *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247.) We treat pro. per. litigants like any other party, affording them " 'the same, but no greater consideration than other litigants and attorneys.' " (*Id.* at p. 1247.)

In this case, Ranell failed to provide this court with a transcript of the April 2011 hearing at which the parties purportedly stipulated to enter an amended judgment providing that the parties' marital status would terminate on October 31, 2011.<sup>2</sup> Regardless of whether Ranell seeks to enforce or vacate that stipulation, it was his obligation to provide this court with a copy of the transcript to enable informed appellate review. In the absence of an adequate record, we are bound to affirm the challenged

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<sup>2</sup>Ranell asked this court to take judicial notice of the entire trial court file as well as all oral proceedings held in this action. We denied the judicial notice request because Ranell did not provide this court with a copy of any documents or transcripts that he sought to add to the record. (See Cal. Rules of Court, rule 8.155(a)(2).)

decision. (*Mountain Lion Coalition v. Fish & Game Com.*, *supra*, 214 Cal.App.3d at p. 1051, fn. 9.)

Our conclusion would be no different even if Ranell had provided us with the missing transcript. Ranell does not dispute that the parties reached a stipulation at the April 2011 hearing to amend the judgment. Civil Procedure Code section 664.6 provides, in relevant part, that a court may enter a judgment pursuant to the terms of a settlement when the parties stipulate to the terms of the settlement in open court. Because Ranell stipulated to the amended judgment on the record, the trial court properly chose to enforce the amended judgment and deny Ranell's motion to vacate. It is immaterial that Ranell refused to sign the amended judgment. (Code Civ. Proc., § 664.6 [judgment is enforceable if writing is signed by the parties outside of court *or* parties orally stipulate before the court].)

We observe that Ranell's counsel had previously stipulated to an amended judgment in open court in February 2010 at a hearing at which Ranell was absent. The court properly observed at the time that Ranell would have to sign the amended judgment to reflect that he consented to its terms. Because Ranell never agreed to sign the February 2010 amended judgment, and because he did not orally agree to its terms in court, it was not enforceable under Code of Civil Procedure section 664.6. The same is not true of the April 2011 amended judgment because Ranell orally stipulated to its terms in open court.

Insofar as Ranell seeks to vacate the default judgment originally entered in September 2009, that claim also fails. The default judgment was superseded by the amended judgment, which was the subject of the parties' stipulation in April 2011. Consequently, his request to vacate the default judgment is technically moot. Further, when Ranell stipulated to the terms of the amended judgment, he necessarily agreed to the terms of the original, default judgment to the extent those terms were unchanged in the amended judgment. Even if he had some colorable claim to vacate the default as a result of inadvertence or neglect, he waived those claims by agreeing to the entry of an amended judgment.

Ranell states at one point in his appellate brief that he is entitled “to the terms of the stipulated judgment.” We agree. However, he did not seek to enforce the stipulated amended judgment in the trial court. Instead, Ranell sought to vacate the amended judgment. The trial court properly denied his request.

**DISPOSITION**

The court’s order of March 18, 2013 is affirmed. Respondent shall recover her costs on appeal.

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McGuinness, P.J.

We concur:

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Pollak, J.

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Siggins, J.