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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of MAUD and MAY
RISSAS.

MAUD RISSAS,
Appellant,

v.

MAY RISSAS,
Respondent.

A140692

(Contra Costa County
Super. Ct. No. D04-04257)

Maud Rissas (appellant) and May Rissas (respondent)¹ were divorced in 2007. Now, more than eight years later, litigation related to the dissolution of their marriage continues. In this appeal, appellant, in propria persona, challenges a 2013 order, contending the trial court erred when it (1) ruled that a 2009 stipulation related to the parties’ joint real property holdings should not be set aside, and (2) denied appellant’s request for spousal support. We shall affirm the trial court’s order.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant and respondent separated in 2004, after over 14 years of marriage and, on August 26 of that year, appellant filed for dissolution of marriage.

On July 26, 2007, in the course of the dissolution proceedings, the trial court issued a statement of decision in which it dealt with the status of four real properties

¹ In the record, respondent is at times referred to as May Otaibi.

owned by the parties, including the family home (the Escobar property) and three rental properties (the Frisbie, Pacheco, and Sunset properties).² The court found that all four of the properties were community property.

The court also denied appellant's request for spousal support after determining that he "ha[d] not been forthcoming about his assets, source of spending or real need," and that he seemed "not to have taken seriously the court's 'seek work' orders."

On October 29, 2007, the trial court filed a judgment of dissolution of marriage.

In a July 31, 2008 stipulation and order, the parties agreed that appellant would transfer title to the Escobar property to respondent, with appellant to discharge all existing obligations owed on the property before transfer. Respondent was to transfer title to the Frisbie, Pacheco, and Sunset properties to appellant, upon appellant's payment of \$70,000 to respondent. Appellant was permitted to refinance the three rental properties in order to clear title to the Escobar property or enable payment to her of the \$70,000 sum.

A July 7, 2009 stipulation and order (the 2009 stipulation), modified the 2008 stipulation and order. In it, the parties agreed that appellant would keep the Frisbie, Pacheco, and Sunset rental properties, but would refinance the properties if respondent's name was on any obligation or encumbrance, removing her from any indebtedness on the properties. Respondent was to retain the Escobar property, and would be solely responsible for the first mortgage on the property upon receiving possession. Appellant, however, was responsible for payment of the home equity line of credit (HELOC) on the property, which was his separate property debt. Appellant also would pay the \$70,000 owed to respondent by September 1, 2009. Once completed, the actions agreed to would "be a complete and final resolution of all financial matters in this action . . . , with the exception of child support."

On February 2, 2010, following a hearing, the trial court found, despite the parties' attempts to settle the real property issues, that neither the 2008 nor the 2009 stipulation

² Each property is described by the name of the street on which it is located.

had been fully complied with in a timely fashion. The court acknowledged the parties' intent to provide clear title to the Escobar property to respondent, with appellant to be awarded the three rental properties. The court then awarded the Sunset property to appellant, with the provision that he pay respondent \$20,000 from either the sale or refinance of the property. Appellant would also have until March 16, 2010, to refinance either or both of the other two rental properties (Frisbie and Pacheco) in order to provide clear title to the Escobar property to respondent, as required by the earlier stipulations.³ The court stated that if appellant satisfied this provision, "the terms of the July 2009 stipulation shall be deemed satisfied in full with all issues resolved."

The court then stated that if appellant "fails to comply with the terms and conditions of [the present] order; then, the court makes the following orders: [¶] a. Effective March 17, 2010, [respondent] is awarded full management and control of both the Frisbie property and the Pacheco property. She will be solely responsible for the listing and sale of the properties to the extent necessary to clear the encumbrances on the Escobar property." To the extent respondent was "c. required to sell one or more of the properties to satisfy the terms and conditions of this order, and there are any excess proceeds after the payment of the encumbrances [and other expenses], she is to remit the remaining seller's proceeds to [appellant], and to account for such proceeds." The court further ordered: "d. To the extent [respondent] takes over the management and control of the [Frisbie and Pacheco] rental properties . . . , she may retain any income that she receives over and above the month to month cost of maintaining such properties To the extent that the properties operate at a loss during the course of her management, she shall be responsible solely for the funds necessary to meet such obligations."

³ The court noted that the additional \$70,000 appellant had been ordered to pay to respondent had been paid.

Finally, the court “specifically reserve[d] jurisdiction over the sale of the properties, accounting between the parties, and any other issues otherwise unresolved between the parties on and after March 16, 2010.”⁴

On November 27, 2012, appellant filed a motion requesting a reduction in child support,⁵ an award of spousal support, and relief related to the Escobar, Frisbie, and Pacheco properties.⁶ Specifically, as to those three properties, appellant requested that the court order respondent to (1) “produce the accounting of income and expenses for the community property rentals, including the accounting for rental income for the Frisbie property,” and (2) “list the sale of the residence [the Escobar property], and rental properties or to buy me out.”

Following several days of hearings, the trial court addressed the property division issue: “So it’s this court’s position regarding the Pacheco property that it is a property that had originally [been] intended to be sold. It was initially awarded to [appellant]. Obviously, over the course of multiple years there was actually a point where . . . title had to be given to [respondent], and I believe she . . . took the appropriate action in not selling

⁴ On March 30, 2010, the trial court issued an order clarifying and making minor modifications to the February 2 order.

Among the various other orders after hearing contained in the record related to the real properties at issue here, many of which are not referred to by the parties, a March 7, 2012 order stated that “the clerk of the court is to execute a grant deed on behalf of [appellant] to transfer all right title and interest in the [Pacheco] property . . . to [respondent].” In another order, filed a day later on March 8, 2012, the court stated that appellant “has failed to provide a timely sworn declaration of the disposition of the \$80,000.00 that he wrongfully took out of the Pacheco property upon refinancing and failed to turn over to [respondent] as ordered . . . on July 15, 2010.”

⁵ On appeal, appellant has not raised any issue related to the request for a reduction of child support.

⁶ According to respondent’s testimony at the July 16, 2013 hearing on appellant’s motion, she sold the Frisbie property in October 2010, and used the proceeds of the sale to pay off an attorney fees lien on the Escobar property that was appellant’s separate property debt.

it so that she could actually get the refi[nance] on the Escobar property, which was hers from the beginning.

“And I will add to this, it’s truly the actions of [appellant] that has made this case go on for so long. Had he followed through with his obligations as was agreed to in the stipulations and orders from, basically, four years ago, we would not be here today. But having looked at everything, it does appear that the intent was obviously initially for . . . the Pacheco property to be awarded to [appellant]. He didn’t follow through.

“Ultimately title was turned over to [respondent] with the understanding that the property would be put on the market. I do think it needs to be appraised now . . . and I’m going to order that it’s sold consistent with what was contemplated before.” The court then said to appellant: “[H]ad you done what you agreed to do several years ago, we would not be here now. . . . There is a reason why there have been challenges for the court in your credibility Because you have not followed through with what you have been told to do.” The court also discussed the HELOC and the attorney fees lien on the Escobar property, both of which were appellant’s separate property debt and which respondent “was saddled with that you never—to this day have ever truly satisfied. And she . . . had to draw from her own retirement, which was awarded as her separate property . . . to just refinance that home. So while I’m ordering the sale of the Pacheco property, whatever proceeds would ultimately—or how they would be split, we really now need to know what the appraisal amount is and things of that nature.”

Regarding the issue of spousal support, the trial court stated: “[T]he only potential change from 2007 has been [appellant’s] obtaining [social security] disability [income]. And, honestly, the reasons for that are entirely unclear. He testified that he has difficulties with moving his arm, but he also did testify that he actually has the ability to somewhat manage and control these properties. ¶ In fact, his position was [the Pacheco property] could be He thinks he could make it quite profitable. That was his testimony. He still has capabilities of doing limited work, and that’s something that was discussed in Judge Good[e]’s [July 26, 2007] statement of decision.

“I don’t believe that there has been a material change of circumstances. [Appellant] is still more than capable of doing what he does really well, and that is to manage property. So I’m denying spousal support at this time.”

The court issued its written findings and order after hearing on November 5, 2013. As relevant to the issues raised on appeal, the order stated: “The court agrees with both parties that the court’s Statement of Decision filed herein on July 26, 2007, does not divide the parties’ assets, but the statement of decision does make findings regarding . . . reimbursement issues, etc. The court finds that the Sunset property in Antioch, CA is [appellant’s] sole and separate property. Further, the court orders that the Pacheco Street property in Martinez, CA, shall be re-appraised and sold. The court reserves jurisdiction with regard to how much, if anything [appellant] shall receive from the sales proceeds. The equalization of property between the parties shall relate back to the order filed 07/07/09, not back to the Statement of Decision.

“With regard to the requests for Spousal Support of [appellant], the court denies said request as it finds that there has been no material change in [appellant’s] circumstances justifying an award of spousal support payable by Respondent.”

On, December 30, 2013, appellant filed a notice of appeal challenging the trial court’s November 5, 2013 order.

DISCUSSION

I. *Real Property*

As a preliminary matter, respondent argues that appellant has appealed from a nonappealable order. We disagree.

Under Code of Civil Procedure section 904.1, subdivision (a), an appeal may be taken from, inter alia, “a judgment” or “an order made after a judgment.” (Code Civ. Proc., § 904.1, subd. (a)(1) & (2).) Nonappealable orders include those “that, although following an earlier judgment, are more accurately understood as being preliminary to a later judgment, at which time they will become ripe for appeal.” (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 652 (*Lakin*).) In *Lakin*, our Supreme Court held that an order denying award of attorney fees was appealable, explaining that such an

order “is a postjudgment order that affects the judgment or relates to its enforcement because it determines the rights and liabilities of the parties arising from the judgment, is not preliminary to later proceedings, and will not become subject to appeal after some future judgment.” (*Id.* at pp. 654, 656.)

Here, as in *Lakin*, the 2013 order was *not* preliminary to a later judgment, but was a postjudgment order that affected or related to enforcement of the judgment because it determined appellant’s right to spousal support as well as the parties’ rights and liabilities arising from the 2007 statement of decision and subsequent orders with respect to the division of their real property. (See Code Civ. Proc., § 904.1, subd. (a)(2); *Lakin, supra*, 6 Cal.4th at p. 656.)⁷ We therefore find that the 2013 order is presently appealable. (See *ibid.*)

Appellant contends the trial court erred when it ruled that the 2009 stipulation regarding the parties’ joint real property holdings should not be set aside. Specifically, appellant asserts that “a condition precedent” to enforcement of the 2009 stipulation, “i.e., obtaining financing was not met.” Thus, according to appellant, allowing the “2009 stipulation to remain [in] effect precludes appellant from receiving anywhere near an equal division of community assets” Appellant therefore requests that we reverse the order confirming the 2009 stipulation and remand for retrial on the issue of division of community property assets. Appellant’s short—and somewhat confusing—argument on this issue seems to be that, because the original division of real property was unfair, we should now require that it be divided anew. Appellant’s claim, which we review for an abuse of discretion (*In re Marriage of Dellaria & Blickman-Dellaria* (2009) 172 Cal.App.4th 196, 201), fails for two reasons.

First, appellant did not request this relief in his November 2012 motion. Rather, he asked the court for very specific relief: to order respondent to “produce the

⁷ As with previous orders, that the trial court reserved jurisdiction regarding the amount of money, if any, appellant will receive from the sale of the Pacheco property does not preclude the present appeal of the issues resolved in the 2013 findings and order.

accounting of income and expenses for the community property rentals, including the accounting for rental income for the Frisbie property,” and to “list the sale of the residence [the Escobar property], and rental properties or to buy me out.” Second, the time to challenge the basic division of property has long passed. Appellant agreed to the terms of the 2009 stipulation, and any subsequent modifications—in both the 2010 order and the 2013 order at issue here—resulted from the court’s effort to enforce the earlier stipulation, particularly in light of appellant’s continued noncompliance.⁸

Moreover, the court’s reservation of jurisdiction in its 2013 order “with regard to how much, if anything [appellant] shall receive from the sales proceeds,” with an “equalization of property between the parties [that] relate[s] back” to the 2009 stipulation, reflects its intent to ensure a fair distribution of the property in question, pursuant to the parties’ earlier agreement.⁹

The order appealed from thus constituted a reasonable plan on the part of the trial court to finally put an end to the years-long attempts to divide the parties’ real property, pursuant to the 2009 stipulation. There was no abuse of discretion. (See *In re Marriage of Dellaria & Blickman-Dellaria* (2009) 172 Cal.App.4th at p. 201.)

⁸ It is also likely that additional orders were made between February 2010 and November 2013 related to these properties, to which the parties have not cited on appeal.

⁹ There is a great deal of evidence in the record regarding the tangled state of finances in this case, including the fact that appellant had encumbered the family residence (the Escobar property) with significant separate property debts, including a HELOC and an attorney fees lien, both apparently paid off at least in part by respondent, and that, as of July 2013, appellant had not paid respondent over \$100,000 that the court had ordered him to pay her, including an \$80,000 reimbursement related to his unauthorized refinance of the Frisbie property. It should therefore be no surprise to appellant that the question of whether he is entitled to any of the funds received from the sale of the Pacheco property will have to be determined once the sale price is known, based on all of the financial circumstances existing at that time.

II. Spousal Support

In its November 2013 order, the trial court denied appellant's request for spousal support, finding that there had been no material change in appellant's circumstances justifying an award of spousal support.

“[M]odification of a spousal support order is a matter for the sound exercise of the court's discretion, based upon a showing of a material change of circumstances since the last spousal support order. [Citations.] On appeal, this court must accept as true all evidence tending to establish the correctness of the trial judge's findings, resolving all conflicts in the evidence in favor of the prevailing party and indulging in all legitimate and reasonable inferences to uphold the judgment. When a finding of the trial court is attacked as being unsupported, our power begins and ends with a determination of whether there is any substantial evidence which will support the conclusions reached by the trial court. [Citation.]” (*In re Marriage of Meegan* (1992) 11 Cal.App.4th 156, 161.)

Here, appellant argues that, in light of his changed circumstances—i.e., his current poor health, which precludes him from working and for which he receives social security disability income—the trial court abused its discretion when it denied his request for spousal support.

In the July 26, 2007 statement of decision, which addressed appellant's initial request for spousal support, the trial court conducted a detailed analysis under Family Code section 4320 before determining that an award of spousal support was not warranted. With respect to appellant's earning capacity, the court found that he “has two years of post-graduate work and an M.B.A. degree. He has considerable experience in real property management. . . .” The court concluded that appellant was “well qualified in a field which should afford him an opportunity to work,” and that he “has provided no explanation for his continuing unemployment.” After weighing all of the factors, the court denied appellant's request for spousal support, explaining, in particular, that he “has not been forthcoming about his assets, source of spending or real need. He seems not to have taken seriously the courts ‘seek work’ orders.”

The only purported change in circumstances since that 2007 order is appellant's claim that his poor health now precludes him from working at all. At the July 3, 2013 hearing on his motion, appellant testified that the federal government had declared him disabled due to several medical conditions, including arthritis, severe lower back disk damage, diabetes, and cholesterol issues. He further testified that his sole source of income is approximately \$1300 per month in social security disability income.

Appellant also testified, however, that he did not feel that managing the parties' rental properties would be too much of a strain on him, mentally or physically, because he had people working for him who helped out. When asked what it took to manage rental properties, appellant testified: "What do I have to do? [¶] I look at things, and I put recommendation [sic]. And the people who are helping [respondent], they work for me. I tell them what to do, what not to do. I have an engineering background. I have time, so they could call me, I could call them, and I could take care of it. And I did take care of it for the last 20-plus years." When asked whether he was able to manage the Sunset property, appellant said, "As owner, yes." When asked whether he would also be able to manage the Pacheco property, appellant said, "I think so." He testified that he would hire people to maintain the property, but that he would be able to manage the books, pick up checks, and follow up on evictions. He also confirmed that his disability did not affect his ability to think, calculate, or make decisions.

The trial court observed that, despite the fact that appellant had "obtain[ed] disability"—the reasons for which the court found were "entirely unclear"—he had testified that he could manage the properties and make them profitable. The court therefore found that, despite appellant's health issues, he "is still more than capable of doing what he does really well, and that is to manage property." Based on this evidence, the court concluded that there had not been a material change of circumstances justifying modification of spousal support. The court's findings are supported by substantial evidence. (*In re Marriage of Meegan*, *supra*, 11 Cal.App.4th at p. 161; see *Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1121 [it is for the trial court, not Court of Appeal, to weigh disputes in evidence and assess credibility of witnesses].)

Accordingly, the court did not abuse its discretion when it determined, in light of all of the evidence presented, that there had not been a material change in appellant's circumstances warranting an award of spousal support. (See *In re Marriage of Meegan*, *supra*, 11 Cal.App.4th at p. 161.)¹⁰

DISPOSITION

The order appealed from is affirmed. Costs on appeal are awarded to respondent.

Kline, P.J.

We concur:

Stewart, J.

Miller, J.

¹⁰ Appellant claims, in a single paragraph in his opening brief, that he “has felt throughout these proceedings that there has been discrimination,” whether “by virtue of his Jordanian heritage or because he is the man” He asserts that his equal protection rights have thus been violated. In addition to appellant’s failure to offer more than a conclusory argument on this point, the record reflects the trial court’s ongoing efforts to fairly resolve the lingering real property issues in this case, despite appellant’s repeated failure to comply with its orders. The record as a whole demonstrates that the various orders in this case have resulted, at least in large part, from appellant’s unwillingness or inability to comply with prior orders. The evidence plainly does not support appellant’s cursory equal protection claim.