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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of GREG TALLMAN
and KAREN TALLMAN/SMITH.

GREG TALLMAN,
Plaintiff and Appellant,
v.
KAREN TALLMAN/SMITH,
Defendant and Respondent.

A141047

(Contra Costa County
Super. Ct. No. D10-03595)

This appeal arises out of the dissolution of a five-year marriage between appellant Greg Tallman and respondent Karen Tallman/Smith, both of whom appear in this proceeding in propria persona. Following a six-day trial on the date of separation and the division of the parties' tangible personal property, the trial court issued a proposed/tentative statement of decision. Neither party filed an objection, and on December 30, 2013, the court entered judgment consistent with the statement of decision.

On appeal, Greg challenges two issues the trial court decided in Karen's favor. First, he contends the court erred in awarding Karen \$6,000 in Family Code section 271 sanctions for Greg's disposition of a 2005 Silverado 2500 truck and its tires and rims, all of which the court determined was community property subject to an automatic temporary restraining order. Second, he contends the trial court erred in awarding Karen

*Watts*¹ credit of \$21,956.50² for the rental value of the truck from the date of separation to the date Greg sold it.

As the appellant, Greg bears the burden of affirmatively showing error on an adequate record. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140–1141; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *In re Kathy P.* (1979) 25 Cal.3d 91, 102; *Hughes v. Wheeler* (1888) 76 Cal. 230, 234.) He failed, however, to include in the record any evidence from the trial below that would allow us to evaluate the trial court’s decisions.

The reporter’s transcript contains only the transcript of a hearing on a contempt charge against Greg. The hearing occurred on January 24, 2014, which was after the December 30, 2013 judgment Greg challenges here. It thus can have no bearing on the issues on appeal.

The clerk’s transcript contains the following eight documents: (1) the register of actions; (2) the December 30, 2013 judgment on reserved issues, appended to which was the trial court’s proposed/tentative statement of decision after trial; (3) notice of entry of judgment filed December 30, 2013; (4) minutes of the January 24, 2014 contempt hearing; (5) notice of appeal ; (6) proof of service of the notice of appeal; (7) notice designating record on appeal; and (8) proof of service of the notice designating record on appeal.

As can be seen, the record contains *no evidence* from the trial that gave rise to the challenged judgment. Seemingly aware of this deficiency, Greg offers the following explanation: “The predominant proof in this matter was the testimony of the parties. Beyond that, Appellant produced substantial documentary proof which is not a part of the record, but which was produced. [Citations.] When Appellant ordered the transcript in this matter, he ordered all that was available. No one disputes trial of this matter occurred over six non-contiguous days. For some of the trial, no court reporter was present, and no transcript exists. Appellant was told that the court reporters were not

¹ *In re Marriage of Watts* (1985) 171 Cal.App.3d 366.

² Greg claims the court assessed a reimbursement value of \$52,044.96, when the assessed value was in fact \$43,913.

available due to budget cuts, thus, he cannot provide all of the transcript. He believes that the exhibits he introduced were appended to the portions of the testimony which were not recorded, and further believes the District Judge did not consider them in confecting his decision. Appellant, as a pro se litigant, is at a loss to find a way to provide the missing portions. He was forced to pursue this appeal without them.” To this, we have the following response:

First, we cannot overlook the inadequacy of the record simply because Greg appears in propria persona. “ ‘When a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys [citations]. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney [citation].’ [Citations.]” (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444; see also *Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267.)

Second, Greg’s notice of designation of the record designated only the reporter’s transcript of the January 24, 2014 contempt hearing. To the extent any days of the trial were reported, as Greg suggests was the case, he did not designate them as part of the record.

Third, and most significantly, “if it is not in the record, it did not happen” (*Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 364; see also Eisenberg et al., *Cal. Practice Guide: Civil Appeals and Writs* (The Rutter Group 2014) ¶¶ 4:45 to 4:47, p. 4-12 [“Absence of a record of oral proceedings (a) bars appellant from claiming the evidence was insufficient to support the judgment or raising any other evidentiary issues and (b) also precludes a determination that the trial court abused its discretion.”]; *Hiser v. Bell Helicopter Textron Inc.* (2003) 111 Cal.App.4th 640, 656–657 [appellant cannot argue trial exhibits undermine the judgment when those exhibits are not transmitted to the appellate court]; *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1002–1003 [appellant’s claim considered abandoned where appellant failed to provide reporter’s transcript of relevant proceeding].) There is no authority permitting us to disregard this rule.

In light of the deficient record, we have no ability to assess the merits of Greg's claims. We must presume the judgment is correct (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133), and it is therefore affirmed.

Karen shall recover her costs on appeal.

Richman, Acting P.J.

We concur:

Stewart, J.

Miller, J.