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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

KAREN BORG,

Plaintiff and Respondent,

v.

BRYSON BORG,

Defendant and Appellant.

A141607

(Solano County
Super. Ct. No. FFL115719)

Appellant Bryson Borg appeals from trial court orders ordering him to sell investment securities to satisfy obligations owed to his former wife, Karen Borg, arising under their marital settlement agreement (MSA). We affirm.

I.

FACTUAL AND PROCEDURAL
BACKGROUND

After having been married for about thirteen years, the Borgs¹ separated and initiated marriage dissolution proceedings. A judgment of dissolution incorporating the MSA was entered by the trial court on February 8, 2011 (the February 2011 judgment). Among other obligations, the MSA required Bryson to pay spousal support and mortgage-and-related expenses for a residence awarded to Karen. The MSA specifically provided that the property division was not subject to modification by any court or by one party without the express written consent of the other party. Bryson did not timely appeal from the judgment, and he does not contend otherwise.

¹ The Borgs will be “refer[red] to . . . by their first names for purposes of clarity and not out of disrespect.” (*Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

On April 6, 2012, Bryson filed a pleading in which he requested relief from the February 2011 judgment. The parties dispute how this request should be characterized: Karen contends that it should be characterized as a motion to modify the MSA based on “mistake, inadvertence, surprise, or excusable neglect” under Code of Civil Procedure section 473, subdivision (b); Bryson contends that it should be characterized as a motion to set aside the judgment based on fraud under Family Code section 2122. But regardless of how the request should be characterized, at the time this appeal was initiated, no evidentiary hearing had been held on it and it had not been decided.

In October 2013, Karen obtained a writ of execution to sell securities owned by Bryson in a Charles Schwab account to satisfy arrears in Bryson’s spousal-support obligations. Charles Schwab, however, claimed that it needed a separate court order before it could act on the writ. In November 2013, Bryson filed a motion to quash the writ and stay enforcement of the February 2011 judgment. His motion was denied two months later, in January 2014. Karen then sought two court orders that would accompany two new writs of execution and allow Charles Schwab to sell Bryson’s securities to satisfy arrears in both spousal-support and mortgage payments.

The trial court issued the two orders in April 2014 while the status of Bryson’s request for relief from the February 2011 judgment remained unresolved. Recognizing the possibility that the amount of Bryson’s obligations could change with the eventual resolution of Bryson’s request for relief, the trial court inserted in each of the two orders a requirement that proceeds procured by the sale were to be kept in trust by Karen’s counsel pending the resolution of Bryson’s request for relief and used only to pay past obligations. It is these orders from which Bryson appeals.² The new writs of execution supposedly attached to these orders do not appear in our record.

Bryson filed his notice of appeal on April 14, 2014.

² Bryson filed a separate appeal from a judgment entered by the trial court on September 5, 2015, which apparently resolved his request for relief from the February 2011 judgment. (*Borg v. Borg* (Sept. 21, 2015, A146361) [nonpub. opn.])

II. DISCUSSION

A. *The Orders Requiring Bryson to Sell Securities to Satisfy Obligations Imposed by the February 2011 Judgment Are Appealable.*

Karen argues that the orders giving rise to this appeal are nonappealable.³ We disagree. Postjudgment orders are appealable under Code of Civil Procedure section 904.1 when they affect the judgment in some manner or bear some relation to it “by either enforcing it or staying its execution.” (*Redevelopment Agency v. Goodman* (1975) 53 Cal.App.3d 424, 429; see also *Phillips, Spallas & Angstadt, LLP v. Fotouhi* (2011) 197 Cal.App.4th 1132, 1139, fn. 5 [postjudgment order extending a judgment entered against a partner to a partnership is appealable]; *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651-652 [postjudgment order is appealable if it raises issues different from an appeal from the judgment and it affects the judgment or relates to it by enforcing it or staying its execution].) These principles apply to postjudgment orders entered in dissolution proceedings. (*In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 497.) The orders here relate to the February 2011 judgment by enforcing it and are therefore appealable.

B. *The Standard of Review.*

Having concluded that the orders are appealable, we next consider our applicable standard of review. We presume the correctness of the trial court orders and indulge all intendments and presumptions to support them on matters as to which the record is silent. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) The party appealing from an order has the burden to affirmatively show error. (*Ibid.*)

In this appeal, the basis of Bryson’s challenges to the orders is unclear. To the extent he argues that the orders were entered without authority, the issue is a “pure question[] of law, such as procedural matters or interpretations of rules or statutes, [to which] we exercise our independent judgment. [Citations.]” (*Gordon’s Cabinet Shop v.*

³ We deny Karen’s motion filed August 11, 2015, to strike portions of Bryson’s reply brief referring to facts not within the appellate record, but we disregard all facts that are immaterial to our disposition.

State Comp. Ins. Fund (1999) 74 Cal.App.4th 33, 38.) To the extent he argues that the orders should not have been entered as a matter of discretion while his request for relief from the February 2011 judgment was pending, we review them for an abuse of discretion.

C. *The Trial Court Did Not Act Improperly in Ordering Bryson to Sell Securities While His Request for Relief from the February 2011 Judgment Was Pending.*

Bryson contends that the trial court put “the proverbial cart before the horse” by requiring him to sell his investment securities to satisfy obligations required by the February 2011 judgment before deciding his request for relief from that judgment. He claims that he “would be prejudiced if Karen were permitted to enforce those writs before he has a fair opportunity to show the underlying judgment should be set aside.” We disagree.

At the time the orders giving rise to this appeal were issued, the February 2011 judgment had not been appealed and was enforceable. Family law judgments remain enforceable until paid. (*Messenger v. Messenger* (1956) 46 Cal.2d 619, 630; *Bonner v. Superior Court* (1976) 63 Cal.App.3d 156,167.) True enough, the obligations imposed by the February 2011 judgment were subject to possible change depending on the trial court’s eventual rulings on Bryson’s request for relief.⁴ But, contrary to Bryson’s argument, this possibility did not preclude the trial court from enforcing the February 2011 judgment, and Bryson provides no controlling or persuasive authority to the contrary.

⁴ As we previously mentioned, Bryson contends that his request for relief was a motion to set aside the judgment under Family Code section 2122, while Karen contends the request was a motion to modify under Code of Civil Procedure section 473, subdivision (b). In their briefs, the parties argue extensively for their respective characterization of the request and their respective positions on the merits. But for purposes of this appeal, we need not and do not decide whether Bryson’s request for relief was a motion to modify the judgment under Code of Civil Procedure section 473, subdivision (b) or a motion to set aside the judgment under Family Code section 2122, and we similarly need not and do not decide the merits of the request however characterized.

Bryson largely relies on *Airfloor Co. of California Inc. v. Regents of University of California* (1979) 97 Cal.App.3d 739, 741 (*Airfloor*), in which the court of appeal held that the trial court abused its discretion by refusing to stay execution of a judgment in a case in which the judgment debtor had a separate action pending against the judgment creditor and the judgment creditor was financially unlikely to be able to satisfy any judgment that might be rendered against him in that separate action. The case is not controlling here for at least three reasons.

First, there is no separate action between Bryson and Karen as there was between the parties in *Airfloor, supra*, 97 Cal.App.3d 739. There is only one action, and it resulted in a years-old, nonappealed judgment that remained unaltered as of the date of the trial court's orders giving rise to this appeal. Bryson's argument suggests that trial courts categorically lack the authority to enforce a judgment—regardless of when entered or whether appealed—if the judgment creditor has filed a request to set it aside. We decline to adopt such a categorical rule. It would mean that judgment debtors could easily avoid satisfying judgments by simply filing repeated motions to set them aside.

Second, Karen's financial status matters far less than did the judgment creditor's in *Airfloor, supra*, 97 Cal.App.3d 739. The subsequent proceedings that will decide Bryson's request for relief, unlike the separate action in *Airfloor*, do not give rise to the possibility of the imposition of a separate financial obligation on the part of the judgment creditor, Karen. Instead, they are likely, at most, to *reduce* the spousal-support and mortgage obligations of the judgment debtor, Bryson. If the February 2011 judgment were to be set aside and replaced with less onerous obligations, the obligations could presumably still be offset by any excess amounts that Karen was determined to have received under the old judgment. Stated another way, Bryson is far more likely to realize potential financial gains resulting from subsequent proceedings than was the judgment debtor in *Airfloor*.

Finally, *Airfloor, supra*, 97 Cal.App.3d, 739 emphasizes the discretionary nature of a trial court's decision on whether to stay an execution of judgment. "In exercising its discretion, the court must consider the likelihood of the judgment debtor prevailing in the

other action and the financial ability of the judgment creditor to satisfy a judgment on the disputed claim if such should be rendered.” (*Id.* at p. 741.) Here, the court considered exactly what is urged in *Airfloor* by recognizing the possibility that the obligations imposed on Bryson by the February 2011 judgment might change, and by requiring the proceeds from any sale of the securities to be held in trust pending the resolution of Bryson’s request for relief. In our view, the court’s approach demonstrated careful and proper discretion, and certainly no abuse of it.

III. DISPOSITION

The trial court’s April 8, 2014 orders are affirmed. Respondent Karen Borg shall recover her costs on appeal.

Humes, P.J.

We concur:

Margulies, J.

Banke, J.

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