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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re Marriage of KIRAN and HEMANT
RAMI.

KIRAN RAMI,

Respondent,

v.

HEMANT RAMI,

Appellant.

B230454

(Los Angeles County
Super. Ct. No. VD070332)

APPEAL from a judgment of the Superior Court of Los Angeles County,
William A. Allen, Judge. Affirmed.

Frank A. Weiser for Appellant.

Law Offices of Kersten & Associates, William C. Kersten and Brandon R. Creel
for Respondent.

Hemant Rami (Hemant) appeals from portions of a judgment entered following a contested trial for dissolution of his marriage to Kiran Rami (Kiran).¹ He challenges the trial court’s denial of the fourth continuance after he fired his attorney on the day of trial, the judgment dividing real property as not supported by substantial evidence, and the denial of his motion for new trial. In a separate procedural challenge to the dissolution judgment, Hemant contends that he did not stipulate to the commissioner acting as judge pro tempore for purposes of the trial proceedings. We affirm.

BACKGROUND

Kiran and Hemant were married for almost 18 years, and have three minor children. In July 2009, Kiran filed her petition for dissolution of marriage. During a hearing in September 2009 in which Kiran sought a restraining order, Hemant, represented by counsel, stipulated that a commissioner of the Los Angeles Superior Court would hear “all subsequent hearings as Judge Pro Tempore.”²

1. *Trial*

Trial was initially set for April 6, 2010. The trial was continued three times: July 7, August 31, and October 5, 2010. Early in the morning on October 5, the day set for trial, Hemant terminated his trial counsel and instructed her not to appear at trial. Hemant asked the court to “give [him] time so I find another attorney?” The court declined the request and began the trial.

After the trial court granted judgment of dissolution, Hemant stated: “Excuse me, sir. My English is not proper, so my attorney comes. So they gonna explain everything because I am not prepared for this.” The court responded, “Today is the day for trial. They want a divorce. Sir, they’re here today and represented by counsel. You dismissed your attorney, so here we are.” Hemant also told the court that he was not prepared because he was sick.

¹ We refer to the parties by their first name for purposes of clarity and intend no disrespect. (*Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

² The request was denied, but the court issued personal conduct orders.

Addressing the distribution of property, the court was informed that the couple had approximately \$267,000 of equity in the family residence, and the estimated fair market value was \$482,000. Kiran wanted the family residence, and requested an offset. She told the court that Hemant spent approximately \$20,000 to \$30,000 to improve his separate property interest in a house in Ahmedabad, India, and the couple owned a lot in Navasari, India valued at \$150,000 based upon information she obtained from a real estate agent in India. Kiran and Hemant also purchased a lot in Lancaster, California, which their former real estate agent stated could be sold for \$50,000. Additionally, Hemant withdrew \$181,000 in funds deposited in a joint account during their 17-year marriage that he transferred overseas after the date of separation. Kiran acknowledged that she withdrew approximately \$83,000 from their joint bank account after the date of separation.

The court divided the real property. Kiran received the family home as her sole and separate property, and Hemant was awarded the Navasari and Lancaster lots. The court equalized the division by awarding Hemant the \$181,000 in his possession, along with other personal property.

Judgment of dissolution was entered on November 3, 2010.

2. *Motion for New Trial*

Hemant obtained counsel who filed a motion for new trial. Hemant sought a new trial because he was deprived of his right to counsel, he had limited command of the English language, was jet lagged from a trip to India, and was not prepared or qualified to proceed. Additionally, Hemant contended that there was no evidence to support the court's appraisal of the community real property, specifically the family residence and the Lancaster lot.

In his declaration supporting the motion for new trial, Hemant stated that he had a disagreement with his attorney "that lead [sic] to a complete breakdown in the attorney-client relationship. [¶] I wanted my attorney to at least appear and get the matter continued and she refused. The breakdown in the attorney-client relationship left me without counsel and in need for the continuance of the trial."

Kiran’s counsel submitted a declaration in opposition, attesting that Hemant “stated to me that he had terminated his attorney, and instructed her not to appear for trial.”

The trial court denied the motion for new trial. Hemant substituted in new counsel who timely filed a notice of appeal.

On appeal, we consider Hemant’s contentions that (1) the trial court abused its discretion in denying a continuance of the trial, (2) there is insufficient evidence to support the court’s findings on the value of the real property, and (3) based upon his first two contentions, the trial court should have granted a new trial. Although Hemant also contends that he did not stipulate to the judge pro tempore, his attorney stipulated in writing to the superior court commissioner’s jurisdiction. (*In re Julio N.* (1992) 3 Cal.App.4th 1120, 1122-1123.)³

DISCUSSION

1. *No Abuse of Discretion in Denying the Fourth Trial Continuance*

Hemant contends that the trial court’s denial of his request for a fourth continuance of the trial was reversible error because the court should have given him “more time to find new counsel in order to have a *meaningful* opportunity to defend this case.” “The decision to grant or deny a continuance is committed to the sound discretion of the trial court. [Citation.] The trial court’s exercise of that discretion will be upheld if it is based on a reasoned judgment and complies with legal principles and policies appropriate to the case before the court. [Citation.] A reviewing court may not disturb the exercise of discretion by a trial court in the absence of a clear abuse thereof appearing

³ At oral argument, Hemant cited *Nierenberg v. Superior Court* (1976) 59 Cal.App.3d 611, for the first time, to support his argument that his attorney’s stipulation at the hearing did not give the commissioner the authority to conduct the trial. *Nierenberg* is distinguishable because the contempt proceeding held at the conclusion of the criminal trial did not involve the same “parties litigant,” and unlike here, it did not involve a stipulation that the commissioner had the authority to “hear this matter and all subsequent hearings” in the case. (*Id.* at pp. 617-618.) Hemant’s counsel also presented arguments that had not been briefed. We need not address these arguments and deem them waived. (*Bonfigli v. Strachan* (2011) 192 Cal.App.4th 1302, 1311, fn. 4.)

in the record.” (*Forthmann v. Boyer* (2002) 97 Cal.App.4th 977, 984-985.) A trial court abuses its discretion when its decision exceeds the bounds of reason by being arbitrary, capricious, or patently absurd. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) This type of abuse must be clearly established in order to merit reversal on appeal. (*Id.* at p. 318.)

California Rules of Court, rule 3.1332(d) provides that in ruling on a request for a continuance, “the court must consider all the facts and circumstances that are relevant to the determination.” Among the facts and circumstances relevant in this case are, the unavailability of trial counsel, the substitution of counsel on an affirmative showing, an unanticipated change in the status of the case, the proximity of the trial date, whether there were previous trial continuances, the length of the requested continuance, and the prejudice that parties or witnesses would suffer as a result of the continuance. (Cal. Rules of Court, rule 3.1332(c)(3), (4), (7), (d)(1), (2), (10), (11).)

Considering these factors, we find no abuse of discretion in the trial court’s denial of a fourth continuance of the trial. Trial continuances are disfavored and may be granted only on an affirmative showing of good cause. (Cal. Rules of Court, rule 3.1332(c).) Hemant told the trial court on the day of trial that he had terminated his relationship with his attorney that morning, without further explanation. Opposing counsel informed the court that Hemant had fired his attorney and instructed her not to appear. Hemant had no explanation for his behavior and did not state when he might be able to proceed to trial. The trial court also noted the prejudice to Kiran, who had requested a trial date on December 4, 2009 and was ready to proceed on the day set for trial. It was not until Hemant moved for a new trial that he explained he fired his attorney because he had a disagreement that led to a “breakdown in the attorney-client relationship.” But, his declaration gave no explanation when the rift occurred, and why he waited until the scheduled date of trial to inform the court. Litigants do not enjoy an absolute right to insist upon a change of counsel at the last moment before a trial if the change of counsel requires a continuance. (*County of San Bernardino v. Doria Mining & Engineering Corp.* (1977) 72 Cal.App.3d 776, 781.) “ ‘[I]f a [trial] must be continued . . . every time

an attorney withdraws from the case, there would be no end to the matter.’ ” (*Id.* at p. 784, quoting *Estate of Bollinger* (1905) 145 Cal. 751, 753.) Given the timing of Hemant’s action and the explanation presented to the court, the trial court in its discretion could have concluded that Hemant’s conduct was a delay tactic to disrupt the proceedings. We hold there was no abuse of discretion in the denial of the continuance.

2. *Substantial Evidence Supports the Real Property Division*

Hemant challenges the valuation of the real property, contending the trial court adopted the values testified to by Kiran and represented to the court by Kiran’s attorney during the proceedings. Hemant claims the valuation is based upon inadmissible evidence and is not sufficient to support the distribution of real property. We review the trial court’s judgment for substantial evidence. “ ‘[T]he power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,’ to support the findings below. [Citation.]” (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.)

Hemant challenges the valuation of the family residence, which he valued much higher than Kiran, and the value of the Lancaster lot. As to the family residence, Hemant asks that we reject Kiran’s testimony and accept his testimony. This constitutes a request that we reweigh the evidence and reject the credibility determinations of the trial court. This, we cannot do.

Kiran testified regarding the value of the Lancaster lot. Kiran is competent to testify as to the value of her own property. (Evid. Code, § 813, subd. (a)(2).) Her opinion as to the value of the property “is limited to such an opinion as is based on matter perceived by or personally known to the witness or made known to the witness at or before the hearing, whether or not admissible . . . unless a witness is precluded by law from using such matter as a basis for an opinion.” (Evid. Code, § 814.) In arriving at her opinion of the value of the Lancaster lot, Kiran relied upon her own personal knowledge, as well as information obtained from the real estate agent that sold the couple the property. Hemant has cited no authority for the proposition that, as a matter of law, information obtained from a real estate agent cannot be used as a basis for her opinion.

Hemant also challenges the trial court's distribution of property, and the equalization of community assets. Specifically, he contends that there is no evidence to support the trial court's conclusion that Kiran is entitled to an \$181,000 offset because those funds were his separate property. But, based upon representations at trial, these funds were held in a joint account. The trial court concluded that even if the \$181,000 had been Hemant's separate property, the money was commingled with community earnings during the course of their 17-year marriage. We cannot reweigh this evidence or assess the credibility of the witnesses.

In ruling on the motion for new trial, the trial court reserved jurisdiction of the characterization of these funds, should Hemant present sufficient evidence that the money he withdrew was his separate property. We find no grounds for reversal.

3. *New Trial Motion Was Properly Denied*

A trial court's decision to grant or deny a motion for new trial rests so completely within the court's discretion, and its action will not be disturbed unless a manifest abuse of discretion clearly appears in the record. (*Romero v. Riggs* (1994) 24 Cal.App.4th 117, 121.) As previously stated, Hemant has not demonstrated any grounds for a new trial. (Code Civ. Proc., § 657.) The court's decision to deny the motion to continue the trial was within its discretion, and the judgment is supported by substantial evidence in the record. Hemant did not present any evidence in support of his motion that the trial court's conclusions as to the value of the real property or the characterization of property were erroneous. Thus, he has not overcome the presumption that the trial court properly denied his motion for a new trial.

DISPOSITION

The judgment is affirmed. Kiran Rami is entitled to costs on appeal.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.