Filed 8/17/16 Marriage of Castellon CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re the Marriage of CARMEN and ABRAHAM CASTELLON.	B260979 (Los Angeles County Super. Ct. No. KD073008)
CARMEN AMEZCUA CASTELLON, Appellant, v. ABRAHAM CASTELLON, Respondent.	

APPEAL from an order of the Superior Court of Los Angeles County, Susan L. Lopez-Giss, Judge. Affirmed.

Daniel G. McMeekin for Appellant.

Weisberg Law Group and Devin Weisberg for Respondent.

INTRODUCTION

In this dissolution action, Carmen Amezcua Castellon (Wife) appeals from an order requiring her to sell the family home in which she was living and to give Abraham Castellon (Husband) his community property share of the proceeds, in compliance with the terms of the parties' stipulated judgment of dissolution. Wife challenges the procedures by which the trial court conducted the hearing on Husband's request for an order to compel compliance with the judgment. Husband contends this appeal must be dismissed on various grounds and, in any event, the order should be affirmed on its merits. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Stipulated Judgment of Dissolution*

On October 4, 2010, the trial court entered a stipulated judgment of dissolution of the parties' marriage. The judgment granted the parties joint legal custody of their two minor sons. It gave Wife primary physical custody of the two boys, contained provisions for child support, and reserved jurisdiction to the court over child and spousal support.

The stipulated judgment awarded each party one-half of the net equity of the family residence in Covina and awarded the property to both parties as tenants in common. It awarded Wife the exclusive use of the property "until the happening of the first of the following future events: [¶] 1. There being no then minor children of the parties living at the premises; [¶] 2. Dec[ember] 31, 2012; [¶] . . . [¶] 5. Any attempt by [Wife] to transfer, encumber or convey their interest in the said real property without prior order of this Court or prior written agreement of the parties; [¶] . . . [¶] 7. Further order of Court." Once the first of those events occurred, the parties were ordered to sell the property as soon as possible for the best price possible, with the balance of the proceeds to be divided equally between the parties.

The stipulated judgment also provided, however, that prior to listing the property for sale, Wife would have the right to purchase Husband's interest in the property for a mutually agreed upon market value. If the parties could not agree on the market value,

the stipulated judgment provided that each party would have to obtain a letter appraisal of the value. The court reserved jurisdiction over the parties, the property and the proceeds from its sale in order to enforce the terms of the judgment. The parties waived their right to appeal the judgment.

B. *Husband's Request for an Order To Compel Compliance with the Judgment*

On July 29, 2014, Husband filed a request for an order to compel compliance with the stipulated judgment and for attorney's fees and costs. He sought to compel Wife to comply with the judgment by purchasing his interest in the property and paying him his share of the community property interest.

In his supporting declaration, Husband stated that on August 17, 2012, he signed a quitclaim deed removing his name from the title to the property based on Wife's stated desire to buy him out. Once he signed the deed, however, Wife stopped communicating with him and paid him nothing. She also refused to comply with his attorney's requests to have the property inspected and appraised. Husband believed Wife took advantage of the fact that he was on disability and had limited income and ability to protect his rights to deprive him of his share of the community property. In support of the motion, Husband's attorney submitted a declaration documenting his attempts to get Wife to cooperate in the appraisal and sale of the property and her response that Husband executed the quitclaim deed of "his own free will."

In her responsive declaration, Wife stated that Husband told her he had been involved in a serious car accident on August 3, 2012, because he failed to take his anti-seizure medication. He contacted her on August 10 and told her he wanted to sign over his interest in the property to her to take care of their sons.[1] She drove him to the escrow company on August 17, and he signed the documents necessary to transfer the property to

[1] One of their sons has a congenital heart defect which has required multiple open heart surgeries and may require additional surgery and possibly a heart transplant.

her. He signed both the quitclaim deed and accommodation instructions to escrow stating that the transfer of his interest in the property was a bonafide gift.

However, Wife stated, on September 16, 2012, Husband told her that he only signed the property over to her so he could qualify for Medi-Cal coverage related to the car accident. Afterwards, he thought about it and decided he wanted his interest in the property back. Wife told Husband "that he had gifted his interest to [her and the children] for the benefit of [their] children, for the health care of [their] sons, and that he [could not] arbitrarily take it away from [them]." She also told Husband he was committing fraud "by trying to conceal his property in order to avoid Medi-Cal placing a lien on the property, and then asking for return of the property after his medical treatment was finished."

On October 6, 2012, Wife was driving Husband home from their son's birthday party when he again asked for the property back. Wife told him no for the same reasons she previously had stated. One of their sons videotaped the conversation from the backseat of the car because he was afraid for his mother's safety. Then on October 19, Husband gave Wife escrow documents to sign, demanding that she sign the entire property over to him. Wife did not sign the documents, and she did not hear from Husband again on the matter until June 2014, when Husband's attorney wrote to Wife requesting that Wife obtain an appraisal on the property.

C. *Hearings on Husband's Request*

On September 18, 2014, the court held a hearing on Husband's request for an order to compel compliance with the judgment. During the hearing, the trial court reviewed the provisions of the judgment and the parties' positions. It asked Wife's counsel whether there was anything in writing regarding Husband's transfer of his interest in the property to Wife. Wife's attorney stated there was nothing in writing other than the deed stating that the transfer of Husband's interest was a gift.

The court stated, "So the judgment is clear that . . . the property has to be sold, and the money divided. Anything other than that not in writing is not acceptable. To me, in

terms of the interpretation of the judgment, [Husband] may have come to [Wife] and told [Wife] all that. That doesn't mean he's giving up his community property share, it just means he's playing a game with Medi-Cal. . . . [Wife] went along with it, really don't know, but I'm not governed by that. I'm governed by the judgment."

When Wife's counsel again attempted to argue Husband's share in the property was a gift, the trial court stopped her, explaining that "[t]he law is different. The law says it is the obligation of the person who was benefitting, which is [Wife], to rebut the presumption . . . that this judgment shouldn't be followed. Somehow there was a gift, there was transmutation. . . . It was not specifically stating, 'I'm giving up my right,' it was just a gift. But there's nothing about [Husband], his quitclaim, that would indicate that he wasn't entitled to his share of the judgment." The court refused to take parol evidence on the issue. When Wife's counsel again argued the quitclaim deed made Husband's share of the property a gift to Wife, the court responded, "[n]o. The law states the quitclaim deed is not enough when you're transmuting property and you're giving up your community property." However, the court did grant the parties a continuance to brief the issues.

At the continued hearing held on October 23, 2014, the trial court reversed its tentative decision, acknowledging that because the parties were no longer married, principles of good faith and fair dealing and transmutation did not apply. It found Husband signed the quitclaim deed post-judgment and, as such, Husband and Wife "are just two parties that entered into an agreement." The court then questioned Husband as to why he signed the quitclaim deed, finding it hard to believe that Wife "duped" him. Husband responded that Wife "said she was going to refinance and do whatever she had to do to give me my half. Nothing has happened since." The court asked why Husband asked Wife to quitclaim the property back to him two months later, "four months before she ostensibly has to make a decision about what to do." Husband said, "I seen nothing happened. I hadn't heard that she had refinanced or done anything to give me my half of the property."

The court questioned Husband regarding Wife's claim that he quitclaimed his interest in the property to Wife to qualify for Medi-Cal. Husband said he had not yet applied for Medi-Cal and did not know what the requirements for Medi-Cal were. He explained he was "very slow on thinking . . . since my operation."

The court then questioned Wife about refinancing. Wife said she went to the bank before August 2012 to attempt to refinance the property but was told that she did not qualify. In response, the court stated that it found Husband's "testimony persuasive. . . . I think the house has to be sold." Wife's counsel asked the basis for the court's finding. The court responded that it "believe[d] that [Husband] thought that the house was going to be refinanced." Wife had consulted with the bank about refinancing prior to August 2012 and knew "[s]he wasn't going to be able to qualify to buy him out, and I believe [Husband]." The court also indicated that it was not going to find bad faith or impose sanctions, suggesting, instead, that the parties view the matter as a misunderstanding between the parties. The court stated that there did "not appear to have been any consideration for this whatsoever. And [Husband]—I believe in good faith thought [Wife] was refinancing [the home]."

Thereafter, counsel discussed the issues of valuation of the property and attorney's fees. Wife interrupted and explained that her former attorney placed a lien on the house for the balance she owed him, and "[t]hat's why [she] sought either a refinance or an equity loan." Wife did not seek refinancing "to pay [Husband] off." The court stated that Wife "had absolutely no right to put a refinance on the property unless she was buying [Husband] out. And she may not have understood that, but that's a fact. And so come December 2012, she either had to buy him out or put the house on the market. I know [Wife] doesn't want to leave this house. That's clear in this file. The court is taking judicial notice of the file. The bottom line, this is a community residence that has to be sold, and that is the order I am making today."

The court further explained that, while the quitclaim deed was valid on its face, the circumstances surrounding its execution indicated it was not executed in good faith. There was no evidence to support Wife's testimony that Husband executed it to engage in

Medi-Cal fraud. There was no evidence of a gift. Rather, the court found Wife "acted with false pretenses."

When Wife's counsel protested that "[t]he court then is basically putting its own facts into this case," the court questioned Wife further regarding the circumstances surrounding the quitclaim deed. Wife stated that Husband had called her and told her he wanted to sign the property over to her. Wife did not ask why Husband wanted to do so because she did not want to know why. When the court asked Wife to explain the reason why she did not ask Husband why he would want to give her $200,000, Wife responded, "[h]e said he loved me . . . and he loved my kids" and stated that she and Husband had been talking about getting back together. Husband stated that Wife's reason was not true.

In response to further questioning, Wife told the court that she never told Husband that she would be unable to purchase the house. She also never told him she would get back together with him, but stated they "were working things out." Wife added that she was having trouble with the daycare business that she operated out of the house and stated that Husband knew she needed the house for her children and her work.

Wife's counsel argued that there was nothing in the stipulated judgment that prevented Husband from signing his interest in the house over to Wife. The court responded that the law of California required full disclosure. "There is an obligation of good faith and fair dealing in every contractual situation. In this situation, signing over a deed is a contract." The court found that Husband signed the quitclaim deed "not being told all of the facts."

Counsel raised the issue of the sick child with a congenital heart defect who would probably need a heart transplant. The court pointed out that the parties knew about the child's condition at the time the parties agreed to the stipulated judgment. There was nothing new about the situation. Similarly, Husband told the court that he was on Social Security disability and Medi-Cal at the time of the judgment.

Husband's counsel then raised the issues of attorney's fees and sanctions. The court denied the request for sanctions. It awarded Husband $1,000 in attorney's fees to be paid out of Wife's portion of the proceeds from the sale of the property.

Wife's counsel then added, "just one other thing that I did include, filed with the court, is that there was an admission made by [Husband] on a video [recording] regarding his Medi-Cal, the transfer of the property because of Medi-Cal." Wife's counsel stated that she gave Husband's counsel a transcript of the video. The court pointed out that "[t]here was never any proffer of a video in any of the moving papers" and no "offer to authenticate it," so the court disregarded the video. The court added, "I have no idea what [Husband] told [Wife]. I believe there was an issue of Medi-Cal. I don't dispute that. But I don't know the terms of it. . . . But based on [Husband's] testimony in this court, unless there is a Jekyll and Hyde going on, the way [he] presents in this court is not a quick thinking individual."

The court acknowledged to Wife that it knew Wife was worried about her children and her business, and that was the reason it would not impose sanctions. The court told Wife, "I don't think you are a fraud. Okay? . . . But I think you used the circumstances based on your own testimony to make sure that you didn't lose this house." The court stated that the house would have to be sold, that the Wife would have six more months, and that the house would have to be listed for sale no later than March 31, 2015.

On October 23, 2014, the court entered an order for the sale of the house. Wife timely filed her notice of appeal on December 22, 2014.

DISCUSSION

A. *Husband's Motion To Dismiss Appeal*

Husband filed a motion to dismiss the appeal, contending that because the stipulated judgment was nonappealable, so too are any postjudgment orders, including the order from which this appeal is taken. We conclude Wife's appeal was taken from an appealable final order on a collateral matter and, accordingly, Husband's motion to dismiss is denied.

Code of Civil Procedure section 904 et seq. governs the right to appeal civil actions, including family law judgments and orders. (See Cal. Rules of Court, rule 5.2(d).) Code of Civil Procedure section 904.1, subdivision (a)(1), provides that an

appeal "may be taken from any of the following: [¶] . . . From a judgment, except . . . an interlocutory judgment" unless it is of the type specified by the statute; "From an order made after a judgment made appealable by paragraph (1)" (*id*., subd. (a)(2)). This provision in Code of Civil Procedure section 904.1, subdivision (a)(1), "codifies the fundamental principle known as the '[one] final judgment rule.'" (*Kinoshita v. Horio* (1986) 186 Cal.App.3d 959, 962-963.) Under this rule, an appeal may be taken only from a final judgment in actions or proceedings, from orders after judgment that affect the judgment or its enforcement, and from certain other orders specified within the statute. (*Lester v. Lennane* (2000) 84 Cal.App.4th 536, 560.)

Family law cases do not fall neatly within the general rules of appealability for a number of reasons. One reason is that for family law cases, courts will reserve jurisdiction over certain issues and bifurcate discrete issues for separate trials. (See, e.g., *In re Marriage of Wolfe* (1985) 173 Cal.App.3d 889, 894; see also *In re Marriage of Schaffer* (1999) 69 Cal.App.4th 801, 807-808 ["family law cases often do not end at the 'final' judgment of dissolution"; "the successive modifications possible in a family law proceeding can make the case resemble an unruly desert caravan strung out upon the sands"].) Thus, "'[w]hen bifurcation of issues requires two or more separate trials, particular issues are tried at separate times, with each subject to a separate and distinct judgment.'" (*Wolfe*, *supra*, at p. 894.) If a separate judgment conclusively resolves the bifurcated issues, that judgment is separately appealable. (See, e.g., *In re Marriage of Nicholson & Sparks* (2002) 104 Cal.App.4th 289, 291, fn. 1 [judgment resolving last remaining issues as to property division constituted final appealable judgment].)

Additionally, while Code of Civil Procedure section 904.1 specifies that an appeal may be taken only from a judgment, or from an order made after an appealable judgment, "an exception is recognized when there has been a final determination of a collateral matter which is distinct and severable from the general subject of the litigation." (*In re Marriage of Laursen & Fogarty* (1988) 197 Cal.App.3d 1082, 1086, fn. 4.) "When a court renders an interlocutory order collateral to the main issue, dispositive of the rights of the parties in relation to the collateral matter, and directing payment of money or

performance of an act, direct appeal may be taken. [Citations.] This constitutes a necessary exception to the one final judgment rule. Such a determination is substantially the same as a final judgment in an independent proceeding. [Citations.]" (*In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368; *In re Marriage of Gruen* (2011) 191 Cal.App.4th 627, 637-638)

Thus, in family law cases, orders for payment of spousal support and attorney's fees are considered appealable collateral final orders because they possess the essential elements of a final judgment: nothing remains to be done other than enforcement of the orders, and they are not affected by—and do not affect—the remainder of the proceedings. (*In re Marriage of Skelley*, *supra*, 18 Cal.3d at pp. 368-369; see also *In re Marriage of Freitas* (2012) 209 Cal.App.4th 1059, 1069 [temporary spousal support orders "'are immediately appealable as "collateral final orders"'"]; *Rao v. Campo* (1991) 233 Cal.App.3d 1557, 1568 ["the word 'judgment' in subdivisions (a) and (k) of [Code Civ. Proc., §] 904.1 encompasses only judgments and those final orders on collateral matters which historically have been considered to be 'a necessary exception to the one final judgment rule'"].)

In this case, the trial court's order that the parties' property be sold as mandated by the stipulated judgment possessed the elements of a final judgment on a collateral matter. It fell within the scope of matters over which the trial court reserved jurisdiction. (Cf. *In re Marriage of Schaffer*, *supra*, 69 Cal.App.4th at pp. 807-808; *In re Marriage of Wolfe*, *supra*, 173 Cal.App.3d at p. 894.) It had no effect on the matters determined in the stipulated judgment. (See *Smith v. Smith* (2012) 208 Cal.App.4th 1074, 1084 ["'[i]n determining whether an order is collateral, "the test is whether an order is 'important and essential to the correct determination of the main issue'"'"]; see also *In re Marriage of Skelley*, *supra*, 18 Cal.3d at pp. 368-369; *In re Marriage of Freitas*, *supra*, 209 Cal.App.4th at p. 1069.) Finally, it compelled the performance of an act—the sale of the property. (*Skelley*, *supra*, at p. 368; *Muller v. Fresno Community Hospital & Medical Center* (2009) 172 Cal.App.4th 887, 901, fn. 19.) The order thus was separately

appealable as a final order on a collateral matter.[2] (*Skelley*, *supra*, at p. 368; *Smith*, *supra*, at p. 1084.) Further, as a separate appealable order, it is not subject to the parties' waiver of the right to appeal the underlying stipulated judgment. (Cf. *In re Marriage of Thornton* (2002) 95 Cal.App.4th 251, 253 [appeal from order requiring continued spousal support payments after entry of stipulated judgment]; *Washburn v. City of Berkeley* (1987) 195 Cal.App.3d 578, 581-582 [appeal from order awarding attorney's fees following stipulated judgment].)

B. *Wife's Challenge to Hearing on Husband's Request for an Order To Compel Compliance with the Judgment*

Wife complains that the October 23, 2014, proceeding "was not conducted with any semblance of traditional trial protocols as mandated by *Elkins v. Superior Court*"

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[2] *City of Gardena v. Rikuo Corp.* (2011) 192 Cal.App.4th 595, upon which Husband relies, does not change our conclusion. That case involved a consent judgment in an eminent domain action. The defendant purported to appeal from two post judgment orders "awarding and releasing to the City certain funds from the court-controlled deposit that was made under the judgment to cover the costs of remediation of the subject property." (*Id*. at p. 599.) However, the consent judgment entered into by the parties recited that its purpose "was to resolve 'all claims and issues' arising from the eminent domain" actions, "including claims and issues relating to the cost of the ongoing remediation on the subject property." (*Id*. at p. 600.) The court concluded that because the parties "manifested their intent to settle their dispute fully and finally," the consent judgment was not appealable. (*Id.* at pp. 600-601.) It also concluded that "[b]ecause the consent judgment is nonappealable, it is not 'a judgment made appealable' by [Code of Civil Procedure] section 904.1, subdivision (a)(1)." (*Id.* at p. 601.)

That holding is not applicable in the present case for the reasons set forth above regarding family law cases and because the judgment in this case expressly reserved to the trial court "jurisdiction over the parties and over the said real property and the proceeds thereof to carry out and enforce the terms of these orders." Thus, the order at issue, which was entered after the consent judgment in the exercise of the court's reserved jurisdiction, is appealable. (See *Water Replenishment Dist. of Southern California v. City of Cerritos* (2012) 202 Cal.App.4th 1063, 1069-1070 [holding that an order entered after the consent judgment could be appealed because the consent judgment reserved jurisdiction to "'redetermine'" matters].)

(2007) 41 Cal.4th 1337 (*Elkins*). In particular, she complains that there is nothing in the record to suggest that she and Husband were sworn and gave testimony under oath. She also complains that the trial court gave "numerous preliminary indications of what the rulings were going to be" before it heard all of the evidence and prevented the introduction of evidence. We conclude Wife waived any objection to the trial court's conduct of the hearing, that the trial court did not err in making tentative rulings, and that the trial court did not abuse its discretion in preventing the introduction of evidence.

1. *Wife Waived Objection to Trial Court's Conduct of the Proceedings*

Elkins addressed a local court rule requiring "that in dissolution trials, parties must present their cases by means of written declarations. The testimony of witnesses under direct examination was not allowed except in 'unusual circumstances,' although upon request parties were permitted to cross-examine declarants." (*Elkins*, *supra*, 41 Cal.4th at p. 1344.) The Supreme Court noted that "[a]lthough some informality and flexibility have been accepted in marital dissolution proceedings, such proceedings are governed by the same statutory rules of evidence and procedure that apply in other civil actions," with exceptions the high court found inapplicable to that case. (*Id*. at p. 1354.) The court further stated that "[t]he Family Code establishes as the law of the state—and superior courts are without authority to adopt rules that deviate from this law—that except as otherwise provided by statute or rule adopted by the Judicial Council, 'the rules of practice and procedure applicable to civil actions generally . . . apply to, and constitute the rules of practice and procedure in, proceedings under [the Family Code].' (Fam. Code, § 210 . . . .)" (*Ibid*.)

The Supreme Court found the local court rule at issue in *Elkins*, which called for the admission of declarations in lieu of direct testimony at trial, was inconsistent with the well established rule that "declarations constitute hearsay and are inadmissible at trial, subject to specific statutory exceptions, unless the parties stipulate to the admission of the declarations or fail to enter a hearsay objection. (Evid. Code, § 1200 . . . .)" (*Elkins*, *supra*, 41 Cal.4th at p. 1354.) The court noted that although one of the statutory

exceptions to the hearsay rule, under Code of Civil Procedure section 2009, authorized affidavits or declarations in certain *motion* matters, it did not authorize their admission at contested marital dissolution *trials* leading to judgment. (*Elkins*, *supra*, at p. 1355.) Rather, this "'section only applies to matters of procedure[]—matters collateral, ancillary, or incidental to an action or proceeding[]—and has no relation to proof of facts the existence of which are made issues in the case, and which it is *necessary to establish to sustain a cause of action.*' [Citations.]" (*Ibid*.) The Supreme Court concluded "consistent with the traditional concept of a trial as reflected in provisions of the Evidence Code and the Code of Civil Procedure, [the local rule] . . . calling for the admission and use of declarations at trial conflict[s] with the hearsay rule." (*Id.* at pp. 1359-1360.) It thus held that courts may not prohibit oral testimony or require parties to present their case at trial by written declarations. (*Id.* at pp. 1355-1357.)

Subsequent to the decision in *Elkins*, the Legislature enacted Family Code section 217 (Stats. 2010, ch. 352, § 3), which effectively extends to the parties at hearings in family law proceedings the rights that *Elkins* concluded must be afforded the parties at contested marital dissolution trials. It provides in pertinent part: "(a) At a hearing on any order to show cause or notice of motion brought pursuant to this code, absent a stipulation of the parties or a finding of good cause pursuant to subdivision (b), the court shall receive any live, competent testimony that is relevant and within the scope of the hearing and the court may ask questions of the parties."[3]

The October 23, 2014, proceeding at issue in the present case does not involve a contested marital dissolution trial, as was the issue in *Elkins*, but, instead a hearing that falls under Family Code section 217. Regardless of whether the principles of *Elkins* or requirements of section 217 are applied, the parties had the right to present live testimony

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[3] Wife does not acknowledge Family Code section 217 in her brief, but, instead, advocates that, "[g]iven the stakes, the [trial] court should have adhered to *Elkins*[,] even if [the October 23] proceedings was technically 'post-judgment.'" We conclude, however, the result under either *Elkins* or Family Code section 217 is the same. Wife waived the objection.

during the October 23 hearing. However, as Wife acknowledges and this court has previously concluded in *Mendoza v. Ramos* (2010) 182 Cal.App.4th 680, the right to present live testimony can be waived.

Mendoza involved a child support action, in which the father argued that the trial court improperly denied him the right to cross-examine the mother at a hearing on his petition. We noted that while the father was "correct that *Elkins*[] confirms the rights of litigants in family law matters to the protections afforded in other civil proceedings ([*Elkins*], *supra,* 41 Cal.4th at p. 1345) [the father's] argument [was] misplaced in [that] case." (*Mendoza v. Ramos*, *supra*, 182 Cal.App.4th at p. 687.) We reasoned that "[n]either [party] requested live testimony at the hearing, nor did [the father] indicate to the court that he wished to have the opportunity to examine [the mother]. Instead, the parties relied on their filings, and on the arguments of counsel." (*Ibid*.) Thus, because the father failed to request testimony, this court concluded he forfeited his right to obtain relief. (*Ibid*.) This is because "issues not raised in the trial court may not be raised for the first time on appeal." (*Ibid*.)

In the present case, there is no question that the court's conduct of questioning Wife and Husband during the hearing without first placing them under oath was irregular. Nevertheless, Wife never requested that the trial court take live testimony, under oath, despite having the opportunity during the hearing to do so. Wife also did not object that Wife and Husband had not been sworn or their oath taken. Nor did Wife request the opportunity to cross-examine Husband or present other witnesses. (See *In re Marriage of Shimkus* (2016) 244 Cal.App.4th 1262, 1270-1271 [under Fam. Code, § 217, party at hearing must request admission of evidence and it is subject to objections]; *Chalmers v. Hirschkop* (2013) 213 Cal.App.4th 289, 312-313 [party must comply with statutory requirements in order to present testimony from witnesses other than the parties at hearing].) In addition, Wife has not argued on appeal that any objection to the trial court's irregular procedure during the hearing would have been futile. Thus, as in *Mendoza*, Wife has forfeited her right to raise these issues on appeal. "It is a well-recognized proposition that '[a] person is free to waive any or all procedures required and

designed to safeguard fundamental rights' . . . . [Citation.] Such waiver may be express, i.e., by stipulation of the parties, or implied. [Citation.] It is also a fundamental principle of appellate review that objections must be raised in the trial court to preserve questions for review. Appellate courts will not consider objections that were not presented to the trial court. [Citation.]" (*In re Marriage of S.* (1985) 171 Cal.App.3d 738, 745; see also *Mendoza v. Ramos*, *supra*, 182 Cal.App.4th at p. 687; *In re the Marriage of Kerry* (1984) 158 Cal.App.3d 456, 466 [even if affidavit in support of motion is objectionable, failure to object "waives the defects, and the affidavit becomes competent evidence"].)

It follows that Wife's failure to object to the procedures employed by the trial court impliedly waived any objection. She therefore has failed to preserve any objection she may have had for review on appeal.

2. *The Trial Court Did Not Err In Making Tentative Rulings*

Wife's complaint about the trial court's "numerous preliminary indications of what the rulings were going to be" before it heard all of the evidence is based on the principle, enunciated in *Elkins*, that "'a trial [court] should not determine any issue that is presented for [its] consideration until [it] has heard all competent, material, and relevant evidence the parties desire to introduce.'" (*Elkins*, *supra*, 41 Cal.4th at pp. 1357-1358; accord, *In re Marriage of Carlsson* (2008) 163 Cal.App.4th 281, 291.)

However, a trial court is free to make a tentative ruling on a matter and then permit the parties to argue the matter, and then adopt the tentative ruling as its final ruling if it believes the ruling to be correct. (See, e.g., *Kircher v. Kircher* (2010) 189 Cal.App.4th 1105, 1110; *Foundation for Taxpayer & Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1375, 1389.)

Here, the trial court made tentative rulings, heard argument, at times heard additional evidence, and changed those tentative rulings it believed to be incorrect. No possible prejudice resulted. (See *Conservatorship of Maria B.* (2013) 218 Cal.App.4th 514, 532-533 [the appellant bears the burden of showing both error and prejudice]; *In re*

Marriage of Falcone & Fyke (2008) 164 Cal.App.4th 814, 830 [the appellant bears the burden of showing reversible error].)

3. *The Trial Court Did Not Abuse Its Discretion In Refusing to Admit the Video of Husband*

Wife argues the trial court abused its discretion in refusing to admit the video taken by her son in which Husband allegedly discusses possible Medi-Cal fraud. Wife claims the trial court "refused to listen to evidence contrary to the conclusions it was prepared to make." We disagree.

As the trial court noted, "[t]here was never any proffer of a video in any of the moving papers," and no "offer to authenticate it." Wife cites no authority to suggest the trial court was required to consider evidence never offered or authenticated. (See *O'Laskey v. Sortino* (1990) 224 Cal.App.3d 241, 249-250 [no foundation laid for introduction of tape recording, so no error in refusing to admit transcript of recording], disapproved on another ground in *Flanagan v. Flanagan* (2002) 27 Cal.4th 766, 776, fn. 4.)[4] The trial court therefore did not abuse its discretion in refusing to admit the video.

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[4] Wife makes no challenge to the trial court's order on its merits. Accordingly, the correctness of the order is not before us. (*San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal.4th 643, 658, fn. 9; accord, *PR/JSM Rivara LLC v. Community Redevelopment Agency* (2009) 180 Cal.App.4th 1475, 1486 [where the "opening brief does not challenge this factual finding, it is presumed to be correct on appeal"].)

DISPOSITION

The order is affirmed. The parties are to bear their own costs on appeal.

GARNETT, J.*

We concur:

PERLUSS, P. J.

SEGAL, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.