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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Marriage of NADIA
AQUINO and GINO AQUINO.

B270795

(Los Angeles County
Super. Ct. No. MD042736)

NADIA AQUINO,

Appellant,

v.

GINO AQUINO,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Robert J. Palazzolo, Commissioner. Affirmed in part and reversed in part.

Kostas Law Firm, James S. Kostas, for Appellant Nadia Dickinson.

Law Office of Noelle M. Halaby, Noelle M. Halaby, Maria D. Houser, for Appellant Gino Aquino.

INTRODUCTION

Gino Aquino (Aquino) and Nadia Aquino (now Dickinson¹) (Dickinson) resolved their dissolution action by way of a stipulated judgment. Within one year, Aquino moved to vacate and set it aside. (Fam. Code, § 2122, subd. (f).²) The trial court granted the motion only as to the one-time spousal support payment and waiver of all future spousal support. Both parties appealed. We reverse that portion of the order vacating and setting aside the spousal support provisions and otherwise affirm.

BACKGROUND

Dickinson and Aquino were married April 26, 1997, and separated August 1, 2011. Dickinson, in pro per, initiated dissolution proceedings July 25, 2012.

Along with the dissolution petition, Dickinson filed an income and expense declaration, listing her employer as Morgan Stanley, Smith Barney; her occupation as wealth advisor; and her average monthly income as \$18,043. Dickinson claimed average monthly expenses of \$14,859, including a \$4,705 payment to her employer on an outstanding \$416,000 loan. Aquino, represented by counsel, filed a response and income and expense declaration. He was then unemployed with an unknown monthly income and average monthly expenses of \$2,820. Dickinson soon retained counsel and updated an October 2012 income and expense declaration.

¹ The trial court restored Nadia's Dickinson's maiden name during the proceedings.

² All statutory citations are to the Family Code.

Two weeks later, on October 23, 2012, Dickinson and Aquino mediated a child custody and support and spousal support agreement, reserving only the division of property and attorney fees. Under the agreement, Aquino received \$34,000 from a community bank account and both parties waived all right to spousal support.

Because the trial court's spousal support order would be permanent and with prejudice as to Aquino and Dickinson, the parties were sworn and testified on the record concerning their understanding of the agreement. Aquino and Dickinson confirmed they spoke with counsel, understood their long-term marriage entitled one or the other to spousal support until death or remarriage, and acknowledged they would be barred from receiving any future spousal support.

The matter was continued to December 11, 2012. At that hearing, the parties and their counsel signed and submitted a superior court form agreement resolving all dissolution issues. The court approved the agreement on the same date.

The settlement agreement/order provided for sole legal and physical custody of the parties' minor child to Dickinson and no child support to be paid by Aquino; Dickinson's payment of \$5,000 toward Aquino's attorney fees and costs; the division of property, debts, and pension and retirement plans; and a waiver of the section 2105, subdivision (a) final declaration of disclosure requirements. The pre-printed form also included the following waiver: "Petitioner and respondent both waive any and all rights to receive spousal support from the other at any time hereafter. No spousal support shall be paid by either party to the other and the court shall not retain jurisdiction to award spousal support to either party from the other at any time hereafter regardless of

the needs or ability to pay of either party or any other circumstances. The right to receive spousal support or alimony from the other is terminated forever.” Dickinson and Aquino initialed the boxes beneath this express waiver, confirming they read, understood, and agreed with it. With respect to the waiver of spousal support, the parties added the following to the settlement agreement: “Both parties waived any and all future spousal support by stipulation 10-23-12.”

Also on December 11, 2012, the trial court signed and filed an order memorializing the child custody and support and spousal support agreements placed on the record at the October 23, 2012, hearing. In relevant part, this order stated: “**THE COURT FINDS** and the parties stipulate that this is a marriage of long duration and the parties, with full acknowledgement, waive spousal support. **THE COURT ORDERS** that no court shall have jurisdiction to order spousal support for either party at any time. No court shall have the ability to make a future award of spousal support, regardless of when a party may bring a motion to do so and irrespective of any change in economic or other circumstances of the parties. The court finds that the parties understand that when a court has no jurisdiction over support, no support can be ordered regardless of the hardship that this might cause. The court finds that the parties have carefully bargained for the absence of support as provided in this order, and the provisions of this order are intended to comply with the requirements of In re Marriage of Vomacka (1984) 36 Cal.3 459, and In re Marriage of Brown (1995) 35 Cal.App.4th 785, to make clear that no court shall have authority to provide for support of any amount at any time.”

On March 1, 2013, Dickinson and Aquino filed a stipulation and waiver of the final declaration of disclosure requirements in section 2105, subdivision (a). In the stipulation and waiver, the parties agreed they exchanged current income and expense declarations and fully augmented the preliminary declarations of disclosure with respect to the characterization of all assets and liabilities and the valuation of all community assets, debts, and obligations. The parties acknowledged that noncompliance with their respective obligations would result in the court's setting aside the judgment.

The stipulated judgment of dissolution, consistent with the previously agreed-upon terms, was entered March 28, 2013.

On March 27, 2014, Aquino, represented by new counsel, filed a motion to vacate and set aside the entire stipulated judgment. Aquino claimed the stipulated judgment was "unequivocally unjust and one-sided, benefitting [Dickinson] by awarding her most of the parties' assets." He contended Dickinson, who handled the parties finances during the marriage, deceived him concerning the marital assets and debts. The motion focused on claimed deficiencies in Dickinson's preliminary declaration of disclosures and her failure to properly augment them. According to Aquino, the preliminary declaration "did not include [1] the value of [Dickinson]'s Pension, [2] did not attach an account statement for the Pension, [3] did not disclose all the stocks and bonds in my name and in [Dickinson]'s name that [Dickinson] purchased during our marriage; [4] did not disclose Morgan Stanley Smith Barney Stocks and Bonds, account xxx-032901-164, [5] did not disclose the Morgan Stanley Checking Account, ending 2901, [6] did not attach bank account statements, or [7] statements for the 401K plans, [8] did not

attach credit card statements or [9] the Promissory Note to Morgan Stanley.”³

Supplemental briefing and declarations followed. Aquino’s motion was argued August 17, 2015, and additional briefing was ordered. The trial court issued its ruling January 7, 2016, granting Aquino’s motion only as to the spousal support component of the stipulated judgment. (§ 2107, subd. (d).⁴)

The trial court found Dickinson’s October 2012 income and expense declaration was “current” when the parties signed the December 11, 2012 mutual waiver of final declarations of disclosure, but was “incomplete.” Specifically, the trial court concluded Dickinson’s October 2012 preliminary declaration of

³ In his memorandum of points and authorities, Aquino listed Dickinson’s failure to attach the latest lender statement for the family residence. We disregard this other claimed asset as it was not supported by evidence—i.e., Aquino’s declaration. (*Smith, Smith & Kring v. Superior Court* (1997) 60 Cal.App.4th 573, 578 [“The only evidence the trial court should have considered and which we may consider here is that contained in the declarations filed in support of and in opposition to the motion. The matters set forth in the unverified ‘Statement of Facts’ and in memoranda of points and authorities are not evidence and cannot provide the basis for the granting of the motion”].) In subsequent briefing, Aquino conceded Dickinson had provided him with a copy of the lender’s statement for the family residence from the lender.

⁴ Section 2107, subdivision (d) provides in relevant part: “Except as otherwise provided in this subdivision, if a court enters a judgment when the parties have failed to comply with all disclosure requirements of this chapter, the court shall set aside the judgment. The failure to comply with the disclosure requirements does not constitute harmless error.”

disclosure was deficient because it indicated the fair market value of Dickinson's pension was "TBD" and her income "varies" and failed to attach (1) pension plan documentation, (2) financial statements for other significant assets and debts, (3) a pay stub with a year-to-date income total, and (4) her last two tax returns. The trial court invalidated the parties' spousal support waiver. The trial court noted Dickinson cured the deficiencies concerning assets and debts with her November 9, 2012 interrogatory responses and attached financial documents. The responses were inadequate concerning income, however, because they did not include proof of income for the period from January 1, 2012, through August 2012.

DISCUSSION

I. Standard of Review

We review a trial court's ruling on a section 2122 motion to vacate a judgment for abuse of discretion. (*In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 696-697 (Rosevear).) "Discretion is abused in the legal sense "whenever it may be fairly said that in its exercise the court . . . contravened the uncontradicted evidence." (Id. at p. 683.)

II. Application of Relevant Principles

Section 2103 requires the parties in a dissolution proceeding to serve preliminary declarations of disclosure (§ 2104) and final declarations of disclosure (§ 2105). The preliminary declaration of disclosure must include tax returns for the two previous years. (§ 2104, subd. (a).) At the same time, the parties also must update their income and expense declarations unless there have been no changes since the most recent

submissions. (§ 2104, subd. (e).) The parties have a continuing duty to augment disclosures as soon as there are material changes. (§ 2100, subd. (c).) Unless waived in the form required by statute (§ 2105, subd. (a)), the parties must serve final declarations of disclosure and current income and expense declarations before settling property and support issues.

Section 2122 lists six statutory grounds for setting aside a dissolution judgment. Aquino relied on the sixth factor, Dickinson’s alleged failure to comply with the Family Code disclosure requirements. (§ 2122, subd. (f).) To prevail, he had the burden to establish both Dickinson’s violation and resulting prejudice as a result of the nondisclosures. (*Rosevear, supra*, 65 Cal.App.4th at p. 685, fn. 11; see also *In re Marriage of Dellaria & Blickman-Dellaria* (2009) 172 Cal.App.4th 196, 205 (*Dellaria*) [“nondisclosure is a legitimate basis for vacating a judgment only if the moving party shows that he or she was prejudiced by the nondisclosure”]; *In re Marriage of Steiner & Hosseini* (2004) 117 Cal.App.4th 519, 522, (*Steiner*) [“In this appeal we conclude that the failure on the part of two divorcing spouses to exchange final declarations of disclosure (Fam. Code, § 2105) does not constitute a ‘get-a-new-trial-free’ card, giving either one of them the automatic right to a new trial or reversal on appeal when there is no showing of a miscarriage of justice. (Cal. Const, art. VI, § 13.)”].)

A. *Aquino’s Appeal*

Aquino challenges the trial court’s denial of his motion to vacate all aspects of the stipulated judgment. Even assuming Dickinson’s preliminary declaration of disclosure was incomplete pursuant to section 2104, she supplemented the information with

formal discovery responses served one month before the stipulated judgment was entered. Aquino, having received all the asset and debt and income and expense information to which he was entitled, failed to demonstrate any prejudice. (*Dellaria, supra*, 172 Cal.App.4th at p. 205; *Steiner, supra*, 117 Cal.App.4th at p. 526.) Examining Aquino's claims seriatim, we find no prejudice and no error.

We turn first to Dickinson's pension. She identified the pension in her preliminary declaration of disclosure. Documents attached to her November 9, 2012 verified responses to Aquino's form interrogatories established its value and included a copy of the pension plan statement.

While parties in a dissolution action are required to identify stocks or bonds they currently hold, they need not identify stocks or bonds acquired during marriage but no longer owned. In her preliminary declaration of disclosure, Dickinson wrote "N/A" in the space provided to identify stocks and bonds, indicating neither she nor Aquino had a current interest in any stocks or bonds. Aquino did not contradict this evidence in the trial court. For this category, there was no failure to comply with the Family Code disclosure requirements.

Dickinson identified a Morgan Stanley checking account ending in 2901 on her preliminary disclosure and attached a copy of the account's transaction history to her November 9, 2012 verified interrogatory responses. This was sufficient compliance and caused no prejudice.

There was also a Morgan Stanley stocks and bonds account ending in 2901-164. Dickinson claimed this was the same account as the Morgan Stanley checking account discussed above, and Aquino did not demonstrate otherwise. Moreover, as noted

above, there was no evidence that either party owned any stocks or bonds when the disclosure was made.

Aquino complained Dickinson failed to provide all bank account statements, but did not identify any overlooked accounts. Dickinson attached statements for a Bank of America account ending in 1495 (identified in her preliminary disclosure and her November 9, 2012 interrogatory responses) and, as set forth above, the Morgan Stanley account ending in 2901. No more was required, and the timing, a month before the parties' stipulation, was sufficient to negate any prejudice.

Dickinson identified her 401(k) plan account in her preliminary disclosure, assigning a value of \$253,000. She attached a copy of the September 30, 2012 account statement to her November 9, 2012 interrogatory responses showing a balance of \$259,538.43.

Although Aquino did not identify the credit cards with alleged deficient disclosures, the record indicates Dickinson attached the following statements to her November 9, 2012 interrogatory responses: the October 14, 2012 statement for an American Express card ending in 2002, the October 17, 2012 statement for a Citibank card ending in 1510, and the October 25, 2012 statement for a Bank of America card ending in 4815. The supplemental information was sufficient.

The parties stipulated Dickinson would solely assume responsibility for the Morgan Stanley promissory note. Her preliminary disclosure indicated the monthly payment obligation. She provided a copy of the note itself to Aquino's attorney at the December 11, 2012 trial setting conference.

Based on the above, we find no error and affirm that portion of the trial court's order denying Aquino's motion.

B. Dickinson's Appeal

Dickinson contends the trial court erred in vacating the spousal support cash payment and waiver. Aquino failed to demonstrate prejudice by Dickinson's failure to comply with the technical requirements of the Family Code's disclosure provisions, and we agree this portion of the order must be reversed.

Aquino does not dispute that Dickinson's November 9, 2012 verified interrogatory responses advised her income for the previous 12 months—i.e., the period including January 1, 2012, through August 2012—was \$208,557. Although this figure was not provided in a formal disclosure under the Family Code, Aquino was fully informed of Dickinson's income for the disputed period and failed to establish prejudice.

DISPOSITION

The trial court's order vacating and setting aside the spousal support provisions in the stipulated judgment is reversed. The order is otherwise affirmed. Dickinson is awarded her costs on appeal.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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