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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

NORMAN J. MASTERS,

Plaintiff and Appellant,

v.

DANA DEAN,

Defendant and Respondent.

C071404

(Super. Ct. No. 08FL01395)

Appellant Norman J. Masters (father), appeals from an order wherein he was ordered to pay \$50 each month toward the balance of his child support arrears. On appeal, father contends the order was in error because he cannot afford to pay that amount; he asks this court to reverse the order. We affirm the order.

FACTS AND PROCEEDINGS

Father has elected to proceed with his appeal on an appellant's appendix. (Cal. Rules of Court, rule 8.124.) Thus, the appellate record does not include a reporter's transcript of the hearing in this matter.

The limited record we have establishes that father and respondent mother, Dana Dean, have one minor child together. In September 2009, father was ordered to pay \$226 each month for the support of that child.

In March 2012, the Department of Child Support Services (DCSS) moved to modify the September 2009 order for support, asking the trial court to reduce father's child support obligation to zero and ordering him to make monthly arrear payments of \$50. In support of its motion, DCSS noted that father was "on aid in Sacramento County with other children and has no other known income."

Father responded to the motion, asking the trial court to reduce his child support to zero and that his arrears, including principal and interest, be dismissed. In support of his response, father declared that in September 2009 he was supporting three children on a total monthly income of \$526. Father also said that one of his children was critically ill, suffering from acute lymphoblastic leukemia. Father explained he failed to appear at the hearing in September 2009 because he was in the hospital with his son. Father said his financial situation had not improved since September 2009 and he could not afford the monthly payments of \$50.

In April 2012, father, mother, and counsel for DCSS were present at the contested hearing on DCSS's motion. Following the hearing, the trial court ordered father's ongoing child support obligation reduced to zero. The trial court also ordered father to pay \$50 each month to the "California State Disbursement Unit," the amount to be applied to the balance of child support arrears. The total amount of arrears was yet to be determined.

Father failed to name DCSS, a real party in interest, in this appeal.

DISCUSSION

On appeal, we must presume the trial court's judgment is correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Thus, we must adopt all inferences in favor of

the judgment, unless the record expressly contradicts them. (See *Brewer v. Simpson* (1960) 53 Cal.2d 567, 583.)

It is the burden of the party challenging a judgment to provide an adequate record to assess claims of error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) Without a reporter's transcript of the relevant hearing (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082-1083), we must conclusively presume evidence was presented that is sufficient to support the court's findings. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) Our review is limited to determining whether any error "appears on the face of the record." (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521; Cal. Rules of Court, rule 8.163.)

These restrictive rules of appellate procedure apply to father even though he is representing himself on appeal. (*Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121; see also *Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639; *Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795.)

Father contends the child support order made in 2009 violated Family Code sections 4070 and 4071 because he was entitled to the hardship relief provided for in those statutes. (Statutory references that follow are to the Family Code.) He contends it was error to order him now to pay \$50 each month toward the arrears accrued as a result of that order because his financial situation remains unchanged.

Father's claim is, in essence, that the 2009 support order was in error. The time to appeal that order is long past. (Cal. Rules of Court, rule 8.104 [the latest possible date for filing a notice of appeal is 180 days after entry of judgment].) Accordingly, the question of whether that order was properly issued is not cognizable on this appeal.

Further, by asking the trial court to reduce his child support to zero and his arrears, including principal and interest, dismissed, father was effectively requesting an impermissible retroactive modification of child support. (See §§ 3651, 3653.) Except under circumstances not present here, section 3651 provides that "a support order may

not be modified or terminated as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate.” (§ 3651, subd. (c)(1).) “Although a decree for support ‘may be modified as to installments to become due in the future[,] [a]s to accrued installments it is final.’ ” (*In re Marriage of Perez* (1995) 35 Cal.App.4th 77, 80; see also *County of Santa Clara v. Perry* (1998) 18 Cal.4th 435, 441.) Thus, the trial court did not err in denying his request and ordering him to make monthly payments.

Furthermore, without a reporter’s transcript of the hearing on DCSS’s motion, we must presume the court made sufficient findings to support its decision. We must also conclusively presume the evidence admitted was sufficient to sustain the court’s findings. (*Ehrler v. Ehrler, supra*, 126 Cal.App.3d at p. 154.) On the face of this record, we find no error; we must affirm the trial court’s decision.

DISPOSITION

The order of the trial court is affirmed. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2), (5).)

_____ HULL _____, J.

We concur:

_____ BLEASE _____, Acting P. J.

_____ BUTZ _____, J.