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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of JUDY L. and
RICHARD A. SHAPIRO.

JUDY L. SHAPIRO,

Respondent,

v.

RICHARD A. SHAPIRO,

Appellant.

D060236

(Super. Ct. No. DN155009)

APPEAL from an order of the Superior Court of San Diego County, Sim von Kalinowski, Judge. Affirmed.

Appellant Richard A. Shapiro (Richard) appeals from a June 2, 2011 order denying his motion to set aside a restraining order issued on April 29, 2009, in favor of Judy L. Shapiro (Judy), his former wife. In the June 2, 2011 order, the trial court also (1) indicated it would set an evidentiary hearing on Richard's motion to set aside the default judgment of dissolution of marriage on the grounds that Judy in her declaration in support

of her petition for dissolution allegedly did not properly disclose the existence of community assets; and (2) set for evidentiary hearing on September 8, 2011, the determination of "whether or not to set aside that portion of the judgment [of dissolution] relating to community property."

Richard elected to proceed in this appeal without a record of the June 2, 2011 oral proceeding (e.g., either a reporter's transcript or settled statement). "It is well settled, of course, that a party challenging a judgment [or order] has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) " 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent' [Citation.]" (*Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712.) In the absence of a proper record on appeal, the judgment is presumed correct and must be affirmed. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296.) A proper record includes a reporter's transcript or settled statement of any hearing leading to the order being challenged on appeal. (See *Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1532; *Berg v. Investors Real Estate Loan Co.* (1962) 207 Cal.App.2d 808, 817–818; *Utz v. Aureguy* (1952) 109 Cal.App.2d 803, 806–807.)

Without a proper record, we can neither determine what findings, if any, the trial court made, nor evaluate its reasoning, in connection with its denial of Richard's motion to set aside the April 29, 2009 restraining order. (See *Ballard v. Uribe, supra*, 41 Cal.3d at pp. 574-575 ["It is well settled, of course, that a party challenging a judgment [or

order] has the burden of showing reversible error by an adequate record," and when a party fails to do so "we have no occasion to consider further the merits" of the appeal].)

DISPOSITION

That portion of the June 2, 2011 order denying Richard's motion to set aside the April 29, 2009 restraining order is affirmed.¹ Judy to recover her costs of appeal.

BENKE, Acting P. J.

WE CONCUR:

NARES, J.

AARON, J.

¹ Our decision in the instant proceeding has *no* affect on the remainder of the June 2, 2011 order (e.g., "whether or not to set aside that portion of the judgment [of dissolution] relating to community property").