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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of MICHELLE LEE and  
JOSEPH ERNEST FANT.

MICHELLE LEE FANT,

Respondent,

v.

JOSEPH ERNEST FANT,

Appellant.

D060890

(Super. Ct. No. DN164970)

APPEAL from a judgment of the Superior Court of San Diego County, Tamila E. Ipema, Judge. Reversed and remanded with directions.

Joseph Ernest Fant (Husband) appeals a default judgment awarding Michelle Lee Fant (Wife) relief exceeding that requested in Wife's petition for dissolution of their marriage. On appeal, he contends the trial court erred by awarding Wife relief not requested in her petition.

## FACTUAL AND PROCEDURAL BACKGROUND

In 1989 Husband and Wife married. In January 2011, they separated. On April 26, 2011, Wife filed a petition for dissolution of their marriage (Petition). In the Petition, Wife requested certain assets and debts be confirmed as separate property. She requested the real property on Ranchwood Lane in Fallbrook (Property) and the 2005 Yukon truck be confirmed as her separate property, and the 2008 Toyota Tundra truck be confirmed as Husband's separate property. She also requested the assets and debts listed on her property declaration (Form FL-160) be confirmed as separate property. The Petition also stated that all community assets and debts were listed on her property declaration (Form FL-160).

Contrary to the printed instructions of Form FL-160, Wife filed a property declaration setting forth separate and community assets and debts of the parties, but without specifying whether particular assets or debts were separate or community.<sup>1</sup> Furthermore, contrary to Form FL-160's printed instructions, Wife checked *both* boxes indicating her Form FL-160 was both her community and quasi-community property declaration *and* her separate property declaration. However, in listing the Property and the two trucks on Form FL-160, Wife did not specify whether each item was separate or community property. Wife stated the gross fair market value of the Property was \$465,907.27 and the amount of debt (presumably encumbering the Property) was

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<sup>1</sup> The printed instructions on Form FL-160 states in part: "Do not list community, including quasi-community, property with separate property on the same form."

\$465,907.27. Although she apparently proposed that the Property's \$465,907.27 value be awarded to her, she made no express proposal for award or division of the apparent \$465,907.27 debt associated with the Property. Wife left blank Item 12 of Form FL-160, which allows a party to list other assets and debts of the parties and propose division thereof.

On or about July 13, 2011, Wife filed a request to enter Husband's default to the Petition and also filed an accompanying declaration for default, declaring under penalty of perjury that "[t]he default of [Husband] . . . is being requested, and *I am not seeking any relief not requested in the [P]etition.*" (Italics added.) On August 9, 2011, the trial court's clerk entered Husband's default.

On September 22, 2011, the trial court entered a judgment of dissolution (Judgment), dissolving Husband and Wife's marriage as of November 3, 2011. The Judgment also divided the parties' property as set forth in the attached Form FL-345, which apparently confirmed the Property as Wife's separate property and stated she would be responsible for certain community property debts, including the mortgage on the Property.<sup>2</sup> Form FL-345 further provided that Husband would be responsible for certain community property debts, including: "\$23,781 repayment to [Wife] for repayment of items refinance[d] in home mortgage." Form FL-345 also provided: "To

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<sup>2</sup> Although Item 4 of Form FL-345 confirmed the Property as Wife's sole separate property, the trial court apparently struck language in Item 1(c) that would have stated Wife was to receive the Property as her sole property as part of the division of the parties' community property assets.

equalize the division of community property assets and debts, [Husband] must pay to the other [i.e., Wife] the sum of: \$23,781, payable as follows . . . : monthly payments of \$396.35 over [five] years payable by the 15th of [the] month." Finally, the Judgment included the trial court's handwritten language stating it was reserving jurisdiction over the issues of spousal support and "over the home located at 1608 Ranchwood Lane, Fallbrook, CA."

Husband timely filed a notice of appeal challenging the Judgment. He filed an appellant's opening brief in propria persona. Wife did not file a respondent's brief in this appeal.

## DISCUSSION

### I

#### *Default Judgments Generally*

"It is a fundamental concept of due process that a judgment against a defendant cannot be entered unless he was given proper notice and an opportunity to defend. [Citations.] California satisfies these due process requirements in default cases through [Code of Civil Procedure] section 580." (*In re Marriage of Lippel* (1990) 51 Cal.3d 1160, 1166 (*Lippel*)). Code of Civil Procedure section 580, subdivision (a), provides: "The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint . . . ." "[T]he primary purpose of [section 580] is to guarantee defaulting parties adequate notice of the maximum judgment that may be assessed against them." (*Greenup v. Rodman* (1986) 42 Cal.3d 822, 826 (*Greenup*)). The California Supreme Court has "long interpreted section 580 in accordance with its plain language . . . [i.e.,]

that a plaintiff cannot be granted more relief than is asked for in the complaint." (*Lippel*, at p. 1166.) Alternatively stated, "in all default judgments the [complaint's] demand sets a ceiling on recovery." (*Greenup*, at p. 824.) A default judgment that awards relief greater than the amount specifically demanded in the complaint is void as beyond the court's jurisdiction to the extent of that excess and can be challenged and set aside at any time. (*Id.* at pp. 826, 829; *Lippel*, at p. 1163; *Simke, Chodos, Silberfeld & Anteau, Inc. v. Athans* (2011) 195 Cal.App.4th 1275, 1286; *Stein v. York* (2010) 181 Cal.App.4th 320, 326; *Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 862, 864 (*Heidary*); *Janssen v. Luu* (1997) 57 Cal.App.4th 272, 275; *Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.* (1984) 155 Cal.App.3d 381, 386.) For example, a judgment is void to the extent it orders a defendant in a marital dissolution proceeding to pay community debts or other obligations when that relief was not requested in the complaint and the matter is heard as a default matter. (*Valenzuela v. Valenzuela* (1959) 168 Cal.App.2d 565, 566-567.)

## II

### *Default Judgment in This Case*

Husband contends the trial court erred by awarding Wife relief not requested in the Petition by ordering him to pay Wife \$23,781 over five years "for repayment of items refinance[d] in home mortgage." Neither the Petition nor the Form FL-160 filed by Wife specifically listed a \$23,781 separate debt of Husband, a \$23,781 or \$47,562 community debt, or, for that matter, *any* community debts. Furthermore, neither the Petition nor the Form FL-160 requested any relief other than awarding the Property and Yukon truck to Wife as her separate property and the Toyota Tundra truck to Husband as his separate

property. The trial court erred by entering the Judgment after Husband's default to the extent it awarded Wife relief in excess of that requested in the Petition and its related Form FL-160.<sup>3</sup> (*Lippel, supra*, 51 Cal.3d at pp. 1163, 1166; *Greenup, supra*, 42 Cal.3d at pp. 824, 826, 829; *Simke, Chodos, Silberfeld & Anteau, Inc. v. Athans, supra*, 195 Cal.App.4th at p. 1286; *Stein v. York, supra*, 181 Cal.App.4th at p. 326; *Heidary, supra*, 99 Cal.App.4th at pp. 862, 864; *Janssen v. Luu, supra*, 57 Cal.App.4th at p. 275; *Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc., supra*, 155 Cal.App.3d at p. 386.) The court erred by ordering Husband to pay Wife \$23,781 over five years. Accordingly, the Judgment is void to the extent it awarded Wife that excessive relief.

Although it may be possible to merely modify the Judgment to strike the relief that is excessive, we believe the interests of justice would be better served in this case by allowing Wife the opportunity to file, within 30 days after our remittitur of this case, an amended petition for dissolution that specifically requests relief against Husband as awarded in the Judgment or any other specific relief she seeks. In the event Wife timely files such an amended petition, the trial court shall vacate Husband's default to the Petition and Husband shall then have the opportunity to file an answer or other responsive pleading opposing that amended petition. If, however, Wife does not timely

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<sup>3</sup> We caution trial courts not to enter default judgments (especially those drafted or proposed by plaintiffs or petitioners) without first closely comparing the relief granted to the relief sought in the complaint or petition. "It is imperative in a default case that the trial court take the time to analyze the complaint at issue and ensure that the judgment sought is not in excess of or inconsistent with it." (*Heidary, supra*, 99 Cal.App.4th at p. 868.)

file an amended petition, the trial court shall enter a new judgment awarding the parties the relief set forth in the Judgment to the extent it does not exceed the relief requested in the Petition, as discussed in this opinion. (Cf. *Greenup, supra*, 42 Cal.3d at pp. 830-831; *Julius Schifbaugh IV Consulting Services, Inc. v. Avaris Capital, Inc.* (2008) 164 Cal.App.4th 1393, 1395, 1398.)

#### DISPOSITION

The judgment is reversed and the matter is remanded with directions that the trial court enter a new judgment consistent with this opinion 30 days after issuance of our remittitur, unless Wife first files an amended petition for dissolution of marriage. In the event Wife timely files an amended petition within that 30-day period, the trial court shall vacate Husband's default and allow him to answer or otherwise respond to that petition. Husband is awarded his costs on appeal.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

HALLER, J.