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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of DAVID AND
CHARLOTTE BROWNELL.

DAVID BROWNELL,

Respondent,

v.

CHARLOTTE KENT,

Appellant.

E052588

(Super.Ct.No. HED000822)

OPINION

APPEAL from the Superior Court of Riverside County. John W. Vineyard,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Charlotte Kent, in pro. per., for Appellant.

No appearance for Respondent.

Charlotte Brownell Kent (appellant) appeals from an order entered October 28,
2010, vacating a money judgment in her favor entered June 26, 2006, which purportedly
represented the balance her former husband, David Brownell (Brownell), owed to her on

a \$49,983 equalization payment awarded to appellant in their marital dissolution proceeding.¹ The trial court found the June 26, 2006, judgment was improper and erroneously entered because the equalization award had been satisfied. Appellant, who represents herself in this appeal, raises various claims challenging the trial court's order vacating the judgment. We conclude her claims are meritless and therefore we will affirm.

SUMMARY OF FACTS

The pertinent facts are not disputed. Brownell petitioned for dissolution of his marriage to appellant. On April 9, 2002, at the conclusion of trial on distribution of the marital assets, the court awarded appellant \$49,983.84 as an equalization payment. The parties' seven children lived with their father, Brownell. Appellant had been ordered to pay child support but as of the date of the hearing, she owed Brownell \$20,333.99 in back payments. Brownell refinanced the mortgage on his residence in order to pay some or all of the money he owed appellant on the equalization payment. At a hearing on May 14, 2003, he represented to the trial court that he had obtained \$30,000 in cash from the refinance.² After extended discussions with counsel for Brownell, and counsel for the County of Riverside, which became involved in collecting child support from appellant

¹ Brownell did not file a respondent's brief and the time within which to do so is long past.

² Appellant takes issue with that figure, and claims in this appeal as she did in the trial court that Brownell obtained more cash than \$30,000 from refinancing the mortgage. The point, if true, nevertheless is irrelevant, and like the trial court, we will not address it.

after Brownell applied for and obtained financial assistance from the county, the trial court determined that \$21,000 should go to appellant, and \$4,300 should be paid to the county for child support arrearages. The court asked the parties to submit declarations addressing how the remaining \$4,700 should be distributed. At a hearing on June 5, 2003, the trial court released the \$4,700 to appellant.

In May 2006, appellant filed an order to show cause seeking a determination of the amount of money Brownell still owed to her on the equalization payment. In her supporting declaration, appellant stated in pertinent part that she had received \$30,000, which included money paid to reimburse the county, and that “[t]he court ordered that the remaining monies (\$19,983.84) were to be paid in full by [Brownell] within three years -- with [Brownell] ordered to pay the interest only and then a ballon [*sic*] payment. The three year period has terminated as of 04/09/05 and [Brownell] has not paid a dime towards these monies -- including payment of the legal interest during this entire time. He therefore owes me the entire principle of \$19,983.84 PLUS all of the interest at the legal rate for 3.25 years as of 04/09/05 for \$7,993.36 for a total owed, as of 04/09/06 of \$27,977.38.”³ At a hearing on June 26, 2006, a judge pro tempore awarded appellant a judgment in the amount requested—\$27,977.38. Brownell was not present at that hearing nor was he represented by counsel.⁴

³ The correct total is \$27,977.20.

⁴ After the hearing in May 2003, Brownell’s attorney withdrew and Brownell substituted himself in propria person. Brownell also apparently moved with his family to New Jersey.

In June 2007, Brownell moved to set aside the June 26, 2006, judgment on the ground that the trial court made the final award to appellant with respect to the equalization payment at the hearing on June 5, 2003, and as a result he did not owe appellant any money. Brownell asserted that appellant's claim was fraudulent and therefore the June 26, 2006, judgment should be set aside. Appellant filed opposition in which she asserted, among other things, that the trial court at the hearing on June 5, 2003, did not address the additional money Brownell owed to her on the equalization payment. After taking the matter under submission following a hearing on August 9, 2007, the trial court denied Brownell's motion to set aside the June 2006 judgment.⁵

In August 2006, appellant offered a stipulation, in response to an order to show cause regarding her delinquent child support payments, to pay Brownell \$20,000 in two payments of \$10,000. The trial court accepted that stipulation. In August 2008 appellant filed an order to show cause seeking to offset her June 26, 2006, judgment against her delinquent child support payments. Apparently because neither the court nor Brownell's counsel could recall who owed what to whom, the matter was eventually set for trial. Following a hearing in March 2010, the trial court requested further briefing from the parties on various issues. On May 12, 2010, the trial court found that the judgment

⁵ According to the clerk's minute order of August 27, 2007, the court's ruling should have been attached and incorporated into the minute order, but that ruling is not included in the record on appeal. Appellant apparently prepared a notice of ruling which the trial court signed on October 7, 2007, that reflects the trial court's ruling denying Brownell's motion to set aside the judgment. However, the actual ruling is not included in the record on appeal. The record on appeal also does not include the reporter's transcript of the August 27, 2007 hearing.

issued on June 26, 2006, was in error; the equalization payment with accrued interest had been paid (or “satisfied,” as the court put it) before the June 2006 judgment was entered. However, because it was untimely the trial court denied Brownell’s motion to reconsider the August 2007 order denying the motion to set aside that judgment. The trial court stayed enforcement of the judgment and collection of any child support arrears and requested further briefing on various issues including whether there were any remedies regarding the voidable judgment that were not time-barred.

In a ruling dated October 28, 2010, the trial court found, after considering the briefs of both parties, that the judgment entered on June 26, 2006, “was improper and entered in error; therefore, the judgment is ordered vacated.”

Appellant challenges that order in this appeal.

DISCUSSION

We begin our discussion with the principle that a judgment is presumed correct and the appellant has the obligation of showing error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [“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, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.”].)

Appellant has not met that obligation in this appeal. She did not include in the record on appeal any of the filings Brownell submitted to support the trial court's ruling.⁶ We must presume those filings include facts that support the trial court's ruling in this matter and for that reason alone we will affirm the judgment.

More significantly, we are persuaded from our review of the record not only that the facts support a finding that the June 26, 2006, judgment was erroneous but also that the trial court properly exercised its authority sitting as a court of equity to set aside the June 26, 2006, judgment on the ground that it was erroneous.

We begin with the principle that “[a]fter the time for ordinary direct attack has passed (see Code Civ. Proc., § 473 [allowing up to six months to challenge a judgment entered through the moving party's mistake, inadvertence, surprise, or excusable neglect]), a party may obtain relief from an erroneous judgment by establishing that it was entered through extrinsic fraud or mistake. [Citations.] To warrant relief on this ground, the moving party must establish: (1) facts constituting extrinsic fraud or mistake; (2) a substantial defense on the merits; and (3) diligence in seeking relief from the adverse judgment.” (*In re Marriage of Damico* (1994) 7 Cal.4th 673, 688.)

The controversy in this case is the result of an inadequate recitation of the trial court's findings at the hearing on May 14, 2003, at which the trial court ordered distribution of Brownell's \$30,000 mortgage equity check. In the course of discussing

⁶ Moreover, she did not include reporter's transcripts of each of the hearings at issue in this matter.

distribution of that money, appellant acknowledged she owed \$20,333.99 in back child support payments to Brownell per the trial court's order at an April 9, 2002 hearing. Appellant confirmed that Brownell owed her \$53,262.63 (the original equalization payment award plus accrued interest) and when the \$20,333.99 is deducted from the \$53,262.63, the difference, or balance, according to appellant of \$32,929.63⁷ was owed to her. This discussion reflects the parties' intent that appellant's child support obligation would be offset against the money Brownell owed to her. Unfortunately, that offset was not clearly articulated at the hearing, and therefore is not set out in the clerk's minute order.

In addition to acknowledging that she owed Brownell \$20,333.99, appellant also acknowledged that she owed the County of Riverside \$3,714.62 in delinquent child support payments. The trial court ordered that debt, which the trial court estimated to be \$4,300, be paid from the \$30,000, and then ordered \$21,000 released to appellant. As previously noted, the trial court later ordered the remaining \$4,700 of the \$30,000 be paid to appellant. Therefore, appellant received a total benefit of \$30,000. When that amount is subtracted from the \$32,929.63 appellant acknowledged was the balance owed to her on the equalization payment, only \$2,929.63 was unpaid as of June 5, 2003.

In her declaration in support of the order to show cause that resulted in the erroneous June 26, 2006 judgment, appellant incorrectly represented the facts. She stated, as set out above, that "[t]he court ordered that the remaining monies (\$19,983.84)

⁷ The correct amount is \$32,928.64.

were to be paid in full by [Brownell] within three years -- with [Brownell] ordered to pay the interest only and then a ballon [sic] payment.” The trial court did not make any such order at any hearing in this matter. It is apparent from the record, quoted above, that as far as the trial court was concerned the parties had extinguished their respective debts to each other as of June 5, 2003, after distribution of the \$30,000. Appellant apparently took the quoted three-year term of payment from the original April 9, 2002, order, as evidenced by her statement that “[t]he three year period has terminated as of 04/09/05.” Whether intentional or inadvertent, appellant misrepresented the facts. As a result of that misrepresentation, appellant obtained a judgment to which she is not entitled as the trial court correctly found in its May 12, 2010, and October 28, 2010 rulings. In short, as of June 2003, when the trial court awarded appellant the remaining \$4,700 of Brownell’s \$30,000 equity check, Brownell and appellant did not owe each other any money.⁸

Why it took such a long time for the trial court, or anyone else for that matter, to recognize the error is not entirely clear. A specific recitation of the trial court’s calculations at the May 14, 2003, hearing might have avoided the problem. Had Brownell been present or represented by counsel at the June 26, 2006, hearing, the mistake might not have occurred. Whatever the explanation, it is apparent from the record that appellant misrepresented the facts to the trial court in her declaration and as a result obtained a substantial judgment against Brownell to which she is not entitled.

⁸ Appellant did not owe Brownell \$20,000 in back child support in August 2006 when she stipulated to pay that amount.

Therefore, for both of the reasons discussed we affirm the trial court's order vacating that judgment.

DISPOSITION

The order vacating the June 26, 2006, judgment in favor of appellant and against David Brownell is affirmed. Appellant is to bear her own costs on appeal.

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MCKINSTER
Acting P.J.

We concur:

MILLER
J.

CODRINGTON
J.