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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of MARGEE KOVAC
DE LEVIN and DAVID RODRIGUEZ.

MARGEE KOVAC DE LEVIN,

Appellant,

v.

DAVID RODRIGUEZ,

Respondent.

E055679

(Super.Ct.No. RID189631)

OPINION

APPEAL from the Superior Court of Riverside County. L. Jackson Lucky IV,
Judge. Dismissed.

Margee Kovac De Levin, in propria persona, for Appellant.

Law Offices of Robert A. McCarty, Jr., Robert A. McCarty, Jr., and Robert A.
McCarty, Sr., for Respondent.

On February 21, 2012, the trial court filed findings and amended notice of ruling in this spousal support case. Appellant Margee Kovac De Levin appeals.¹ Our notice, mailed July 27, 2012, stated: “Appellant’s attention is directed to the *requirement that the opening brief contain a statement explaining why the judgment or order is appealable.*” Nevertheless, appellant failed to include such a statement.

I

STATE OF THE RECORD

Our record contains a transcript of proceedings on December 14, 2011, and January 24, 2012. On December 14, 2011, the parties discussed trial issues, but no witnesses were called. On January 24, 2012, the court announced its decision.

Respondent advises us that there were two days of trial on January 10 and 11, 2012. Appellant has not provided a transcript of those proceedings. We, therefore, have no means of determining whether the trial court’s ruling was based on the evidence presented. For example, appellant argues that there was no substantial evidence to support the trial court’s conclusion that she failed to notify respondent that she had returned to work. She states that she produced witnesses to an oral notification. However, since the witness testimony is not in our record, we obviously cannot determine if it is substantial or not.

¹ The notice of appeal was filed on February 14, 2012. It appeals a judgment entered on January 24, 2012. On February 21, 2012, the trial court filed an amended notice of ruling. Although the amended notice was not appealed, the parties treat it as the operative document.

Appellant's first issue on appeal is whether a stipulation for judgment filed in 2007 applied an incorrect standard of living pursuant to Family Code section 4320. The stipulation for judgment is not in our record, and we cannot simply accept appellant's statement of its contents.²

We must, therefore, accept the trial court's findings on the contents of the stipulation and on the notice issue. In other words, appellant has not met her burden of producing a record on appeal that would allow us to consider the issues she raised.

Appellant's third argument is that "damage to [appellant] was excessive as to the 4320 standards. The Trial Judge in the Superior Court failed in his xspouse [*sic*] support calculations." Appellant argues that the court used the wrong income figures in an attachment to the stipulated judgment but fails to demonstrate how the calculations were wrong. Neither the judgment nor the calculations are in our record.

Because the record is inadequate, we are forced to agree with respondent that this inadequacy provides a basis to dismiss the appeal. (*In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498.)

Respondent also appropriately cites *Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435: "[T]he record does not include a reporter's transcript of the change of custody hearing, which severely impairs analysis of father's assertions. "A judgment or order of

² This is why California Rules of Court, rule 8.204(a)(1)(C) requires each brief to "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears."

the [trial] court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent” (Orig. italics.) [Citation.]’ [Citation.] It is the appellant’s affirmative duty to show error by an adequate record. [Citation.]”

The failure to provide a trial transcript is particularly egregious. As our Supreme Court has said, “The record before this court does not reveal the precise words used by Lawrence, because defendants elected not to provide a reporter’s transcript of the trial proceedings. We reject defendants’ claim, therefore, because they failed to provide this court with a record adequate to evaluate this contention. [Citation.]” (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132.)

“The Family Law Act vests broad discretion in the trial court to decide the propriety of a spousal support award. [Citation.] A reviewing court will not disturb this exercise of discretion unless ‘it can fairly be said that no judge would reasonably make the same order under the same circumstances.’ [Citation.]” (*In re Marriage of Watt* (1989) 214 Cal.App.3d 340, 347.)

When the trial court has exercised its broad discretion, it is up to appellant to demonstrate error. Appellant has not provided a proper record, and we cannot act on this appeal without it.

II

DISPOSITION

The appeal is dismissed. Respondent is awarded costs on appeal.

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RICHLI _____ J.

We concur:

HOLLENHORST _____
Acting P. J.

MILLER _____
J.