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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of NORBERTO and
MELISSA JOANNA COLON.

NORBERTO COLON,

Appellant,

v.

MELISSA JOANNA COLON,

Respondent.

E058859

(Super.Ct.No. SWD018119)

OPINION

APPEAL from the Superior Court of Riverside County. John M. Monterosso, Judge, and James T. Warren (retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.).¹ Dismissed.

Norberto Colon, in pro. per., for Appellant.

Attorneys for the Family, Michelle R. Penna, for Respondent.

¹ Judge Monterosso presided over the July 14, 2010, hearing that addressed the validity of the prenuptial agreement. Judge Warren presided over the January 8, 2013, hearing that finalized all remaining issues between the parties.

I. INTRODUCTION

Norberto Colon (Norberto) and Melissa Joanna Colon (Melissa) were married for almost nine years and had two children.² On June 16, 2009, Norberto filed for dissolution and moved to enforce the terms of a prenuptial agreement that contained a waiver of spousal support. Melissa asserted the agreement was invalid because she had no idea that she was signing a premarital agreement, she had neither seen nor reviewed it prior to the morning of her wedding day, and she was not given the opportunity to have the agreement translated into Spanish, her native language, prior to signing it. On July 14, 2010, following a three-day evidentiary hearing, Judge Monterosso ruled the agreement was invalid because Melissa had not been represented by independent counsel at the time she signed it. In so ruling, Judge Monterosso applied Family Code sections 1612 and 1615, retroactively. Norberto appealed the court's ruling; however, the appeal (case No. E052495) was dismissed pending entry of a final judgment on reserved issues.

On January 8, 2013, a final hearing was held on the reserved issues. At that time, Norberto challenged Judge Monterosso's prior order determining the prenuptial agreement to be invalid; however, Judge Warren stated that the "ruling was entered into the record and there's been no motion for reconsideration" and "I'm bound by that ruling." Judgment was entered on April 8, 2013.

² We refer to the parties by their first names for the sake of clarity only; we intend no disrespect. (*In re Marriage of James & Christine C.* (2008) 158 Cal.App.4th 1261, 1264, fn. 1.)

Norberto appeals, contending the trial court “should have validated the prenupt [*sic*] agreement and not retroactively applied laws that were not in effect at the time the parties drafted and executed the prenupt [*sic*] agreement.”

II. DISCUSSION

Before reviewing Norbert’s claim, Melissa urges us to first determine whether he lacks standing to appeal because he has not been personally aggrieved by the trial court’s action.

“The right to appeal is purely statutory. [Citation.] Code of Civil Procedure section 902 defines ‘Who May Appeal’ from a judgment. [Citation.] The statute provides “‘Any party *aggrieved*’ may appeal from an adverse judgment. [Citation.] The test is twofold—one must be *both a party of record to the action and aggrieved* to have standing to appeal.’ [Citation.] Thus, notwithstanding an appealable judgment or order, ‘[a]n appeal may be taken only by a party who has standing to appeal. [Citation.] This rule is jurisdictional. [Citation.]’ [Citation.] It cannot be waived. [Citation.]

““‘One is considered ‘aggrieved’ whose rights or interests are injuriously affected by the judgment.” [Citation.] Conversely, “A party who is not aggrieved by an order or judgment has no standing to attack it on appeal.” [Citation.]’ [Citation.]

“Injurious effect *on another party* is insufficient to give rise to appellate standing. A ‘party cannot assert error that injuriously affected only nonappealing coparties.’ [Citation.] This is ‘no mere technicality, but is grounded in the most basic notion of why courts entertain civil appeals. We are here to provide relief for appellants who have been wronged by trial court error. Our resources are limited and thus are not brought to bear

when appellants have suffered no wrong but instead seek to advance the interests of others who have not themselves complained.’ [Citation.]” (*Conservatorship of Gregory D.* (2013) 214 Cal.App.4th 62, 67-68.)

Here, Norberto’s opening brief raises only one assignment of error with respect to the judgment of dissolution, namely, that the trial court erred in finding the premarital agreement to be invalid. However, according to Melissa, even if the trial court erred in its finding, “the court’s ruling on this issue did not change the outcome of the case which was determined by stipulation of the parties” Melissa contends that the “stipulated judgment is in conformity with the very Premarital Agreement that the trial court found to be invalid”

Turning to the record before this court, we observe that the Judgment of Dissolution provides for spousal support and property division as set forth in a settlement agreement. The settlement agreement provides that spousal support terminated on January 1, 2013, and that any and all spousal support arrears owed by Norberto were waived. The community property was divided, and Melissa retained no interest in Norberto’s separate property. (Fam. Code, § 752.) Norberto was awarded all of his military retirement benefits, including his military income, along with all investment accounts in his name.

Norberto failed to respond to Melissa’s claim that the judgment conformed to the premarital agreement. Further, he failed to include the premarital agreement in the record on appeal. Absent the premarital agreement, we are unable to assess whether Norberto is an aggrieved party, i.e., whether the judgment was less favorable to him than the

premarital agreement. Failure to provide an adequate record requires that the issues on appeal be resolved against the appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.) When the appellate record is devoid of necessary documents, the appellant cannot affirmatively demonstrate error by the trial court. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141 [“It is the burden of the party challenging a judgment on appeal to provide an adequate record to assess error”]; *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502 [appellant challenged trial court’s order granting a motion to strike but failed to include copies of the motion and opposing papers and only had the notice of ruling in the record].) Since Norberto failed to provide an adequate record for determining whether he is an aggrieved party, 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; see also Cal. Rules of Court, rule 8.163.)

Given the favorable terms of the judgment, Melissa’s contention that the judgment conformed to the premarital agreement, and Norberto’s failure to challenge such contention, we conclude that Norberto failed to show how his rights and interests were affected by the trial court’s ruling finding the premarital agreement to be invalid. As such, he was not an aggrieved party and, therefore, was not entitled to challenge the court’s order.

III. DISPOSITION

Norberto's appeal is dismissed. Melissa shall recover her costs on appeal.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

MILLER

J.