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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re the Marriage of ELIZABETH and  
MICHAEL CODEUS.

ELIZABETH CODEUS,

Respondent,

v.

MICHAEL CODEUS,

Appellant.

E061739

(Super.Ct.No. FAMRS802103)

OPINION

APPEAL from the Superior Court of San Bernardino County. David A. Williams, Judge. Affirmed.

Law Offices of Loida D. Tellez, Loida D. Tellez; and Linda Chapin for Appellant.

No appearance for Respondent.

This is a marital dissolution case, which still has issues pending in the family court. In January 2011, the family court, specifically Judge Bennett, issued a “Ruling

on [a] Submitted Matter” which included the finding that a residence on Pitassi Way in Upland (Pitassi Property) was community property shared by respondent Elizabeth Codeus (Wife) and appellant Michael Codeus (Husband), and that Husband failed to trace the money used for the down payment on the property to his separate funds. On July 9, 2012, Judge Bennett issued “Findings and Order After Hearing,” which reflected the same ruling *ante*—that the Pitassi Property was community property and Husband was not entitled to reimbursement for any portion of the down payment on the property.

Approximately nine days later, on July 18, 2012, Judge Williams issued a bifurcated judgment reflecting Husband had a right of reimbursement for the separate property funds he used for the down payment on the Pitassi Property (Fam. Code, § 2640); the amount of reimbursement being \$243,639.91. In February 2014, Judge Williams found he had made a clerical error and set aside the portion of the July 18, 2012, bifurcated judgment that concerned the Pitassi Property. A new bifurcated judgment was entered reflecting Husband did not have a right of reimbursement for any portion of the down payment money related to the Pitassi Property.

Husband raises two issues on appeal. First, Husband contends there is a lack of substantial evidence to support the finding that he is not entitled to a reimbursement for the down payment on the Pitassi Property. Second, Husband asserts there was no clerical error that would justify Judge Williams’s act of setting aside the Pitassi Property portion of the July 18 judgment. We affirm the judgment.

## **FACTUAL AND PROCEDURAL HISTORY**

The following facts are taken from Judge Bennett's "Ruling on [a] Submitted Matter." There were three real properties at issue in the dissolution: (1) a Los Angeles property; (2) an Upland property; and (3) the Pitassi Property. The Los Angeles and Upland properties were purchased by Husband prior to Husband and Wife's marriage. The Pitassi Property was purchased during the marriage, with title taken by Husband and Wife as joint tenants. Husband added Wife's name to his checking account.

During the marriage, Husband refinanced the Los Angeles and Upland properties. In May 2005, Husband withdrew equity from those two properties in order to provide a down payment for the Pitassi Property. Husband placed the equity monies into the checking account that bore Husband's and Wife's names. Husband also deposited his community property paychecks into the same account.

Judge Bennett found the equity monies were commingled with the community property monies in the checking account, and that Husband failed to properly trace the equity monies to demonstrate how they were segregated in the account, such that the monies remained Husband's separate property when the down payment was made on the Pitassi Property. The foregoing facts were set forth in Judge Bennett's January 2011 "Ruling on [a] Submitted Matter."

On June 6, 2012, Husband's attorney sent a letter to Wife's attorney. In the letter, Husband's attorney explained a draft bifurcated judgment was included with the letter. The draft judgment changed the court's finding concerning the Pitassi Property. In the letter, Husband's attorney explained the court made a "factual error" concerning

the Pitassi Property; in particular, the down payment came from Husband's separate property because the money was from Husband's money market account, not the joint checking account.

Wife's attorney prepared the "Findings and Order After Hearing." On July 9, 2012, Judge Bennett issued the "Findings and Order After Hearing," which again reflected Husband had failed to sufficiently trace to his separate property the funds used to make the down payment on the Pitassi Property. Thus, Judge Bennett found the Pitassi Property was community property, and ordered that Husband was not entitled to a reimbursement. (Fam. Code, § 2640.)

Approximately nine days later, on July 18, Judge Williams signed the judgment prepared by Husband's attorney. That judgment reflected the \$243,639.91 down payment for the Pitassi Property came from Husband's equity monies that had been deposited in Husband's money market account, and were therefore separate property. The judgment awarded Husband a reimbursement for his separate property down payment in the amount of \$243,639.91.

In February 2013, Wife filed a Request to Enforce the Judgment. Wife requested the family court order the Pitassi Property sold and the sale proceeds, if any, be equally divided between the parties. Husband opposed Wife's request. Husband asserted the July 18 judgment was final, and that the July 18 judgment took precedence over the "interim" July 9 Findings and Order After Hearing.

In May 2013, Judge Bennett issued a tentative ruling reflecting (1) the court did not ask either party to prepare a judgment; (2) the court had ordered Husband to prepare

the Findings and Order After Hearing; (3) the Judgment signed by Judge Williams did not conform to the January 2011 Ruling on Submitted Matter; and (4) Husband did not file a motion for reconsideration following the January 2011 Ruling on Submitted Matter. The May 2013 tentative ruling reflected Wife's attorney "argued that [Judge Williams] indicated that he had not read [Judge Bennett's] ruling." Judge Bennett's tentative ruling was to set aside the portion of the judgment concerning the Pitassi Property due to clerical error. Judge Bennett asserted the court "has the inherent power to set aside and vacate any judgment that was entered based on clerical error." (Code Civ. Proc., § 473, subd. (d).)

Husband opposed the court's tentative ruling. Husband asserted the July 9 Findings and Order After Hearing was never served on the parties or their counsel, and that Wife's attorney discovered the signed Findings and Order After Hearing in February 2013. Husband contended he was deprived of his right of due process because he did not have timely notice of the Findings and Order After Hearing such that he could dispute the alleged errors contained in the factual findings. Husband contended there is no evidence supporting a finding that the equity monies were deposited into a joint checking account; the evidence only reflected the equity monies were deposited into Husband's separate money market account. Further, Husband contended any errors in the July 18 judgment were judicial errors, not clerical errors, and therefore, could not be set aside by the family court. Husband argued it had been over six months since the judgment was issued, and therefore, the family court lacked jurisdiction to set aside or vacate the judgment.

The hearing on Wife's Request to Enforce the Judgment was transferred from Judge Bennett to Judge Williams. After a hearing, Husband's attorney prepared the Findings and Order After Hearing for Judge Williams to sign. The Findings and Order After Hearing reflected: (1) the down payment for the Pitassi Property was Husband's separate property, coming from funds deposited in his money market account; (2) Wife was seeking to vacate and set aside the judgment, not enforce the judgment; (3) to the extent Wife was seeking to vacate the judgment, her request was untimely; (4) to the extent Wife was seeking to set aside the judgment, the request was untimely; and (5) to the extent Wife was seeking to set aside the judgment due to clerical error, there was no clerical error. Judge Williams signed the Findings and Order After Hearing on September 10, 2013.

On November 4, 2013, Wife filed a Request for an Order to Set Aside the Judgment. Wife asserted Husband's attorney prepared a judgment that Husband's attorney knew included findings that had never been made by the court, and were directly opposite to the findings made by the court. Wife asserted Husband's attorney committed fraud. Wife further asserted Judge Williams made a clerical error, not judicial error, in signing the July 18 judgment. Wife contended the error was clerical because Judge Williams's error was inadvertent in that he was unaware of Judge Bennett's prior ruling. Husband opposed Wife's request. Husband asserted Wife was relitigating issues that had already been decided.

Wife's attorney prepared the Findings and Order After Hearing, which reflected: (1) the court made a clerical error; (2) the July 18 judgment, as it pertained to the Pitassi

Property, was set aside; and (3) Wife's attorney was ordered to prepare a new judgment regarding the Pitassi Property, conforming to Judge Bennett's order of July 9, 2012.

Judge Williams signed the Findings and Order After Hearing on February 27, 2014.

Also on February 27, Judge Williams signed a judgment reflecting: (1) Husband failed to properly trace the down payment to his separate property, and therefore, did not have a right of reimbursement for the Pitassi Property down payment; (2) Judge Williams committed clerical error by signing the July 18 judgment because (a) he relied on a portion of the reporter's transcript reflecting the monies came from Husband's money market account; (b) he did not understand that Judge Bennett had already made a finding reflecting Husband did not trace the money to his separate property funds; and (c) "he failed to consider the Findings and Order After Hearing signed by Judge Bennett on July 9, 2012."

## **DISCUSSION**

### **A. SUBSTANTIAL EVIDENCE**

Husband contends substantial evidence does not support the finding that the down payment monies for the Pitassi Property were commingled in a joint checking account.

We cannot resolve Husband's contention because he has not provided this court with an adequate record. Husband's Appellant's Opening Brief provides, "Reviewing the reporter's transcript of the trial testimony, it is clear there was absolutely no support for Judge Bennett's factual finding that [Husband] had deposited his separate property loan proceeds into a joint bank account . . . ." Husband has provided only select pages

of the reporter's transcript, bound together with various other documents, such as the judgments and the parties' family court motions/requests. The text on the copied pages of the reporter's transcript is slanted, so some of the reporter's transcript page numbers are not visible; however, from what can be seen, the first page of the reporter's transcript included in the record is page No. 42, the record then jumps to reporter's transcript page Nos. 99 and 100; there are several other reporter's transcript pages that appear to be in the 100 series, although the complete page numbers cannot be seen.

The party challenging the judgment on appeal bears the burden of providing an adequate record for the appellate court to assess the claimed error. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.) If the appealing party fails to provide an adequate record, then his claim on appeal must be resolved against him. (*Id.* at pp. 1295-1296.) ““When a finding of fact is attacked on the ground that there is not any substantial evidence to sustain it, the power of an appellate court begins and ends with the determination as to whether there is any substantial evidence contradicted or uncontradicted which will support the finding of fact.” [Citation.] [¶] ‘It is well established that a reviewing court starts with the presumption that the record contains evidence to sustain every finding of fact.’” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.)

Husband has provided only select pieces of evidence. Since this court begins with the assumption that the record contains the necessary evidence, we cannot perform a substantial evidence analysis that concerns trial testimony if we are given only pieces of the trial testimony—the complete reporter's transcript must be examined. (*Bowers v.*

*Bernards* (1984) 150 Cal.App.3d 870, 873.) As a result of Husband providing an inadequate record, his claim must be resolved against him. (See *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502 [failure to provide an adequate record requires the issue be resolved against the appellant].)

B. CLERICAL ERROR

Husband contends any error committed by Judge Williams was judicial error, not clerical error, and therefore, Judge Williams did not have the authority to set aside the portion of the July 18 judgment concerning the Pitassi Property.

A clerical error may be corrected at any time, while a judicial error can only be corrected via the appropriate statutory procedure. (*People v. Jack* (1989) 213 Cal.App.3d 913, 915; *In re Marriage of Kaufman* (1980) 101 Cal.App.3d 147, 151.) Generally, a clerical error is an inadvertent error, while a judicial error is an error made in the exercise of judgment or discretion. (*Jack*, at p. 915.)

“When a signed judgment does not reflect the express judicial intention of the court, the signing of the judgment involves clerical rather than judicial error. [Citation.] Counsel who fail to correctly record the terms of a court-ordered judgment commit clerical error, and their error is correctable as such.” (*In re Marriage of Kaufman, supra*, 101 Cal.App.3d at p. 151.) Further, if a judge incorrectly assumes a judgment reflects the approved orders of the court and signs a judgment under that incorrect assumption, the error is clerical in nature because the court did not exercise discretion in signing the judgment. (*Ibid.*) We apply the abuse of discretion standard of review. (*Conservatorship of Tobias* (1989) 208 Cal.App.3d 1031, 1035.)

In January 2011, Judge Bennett issued a “Ruling on Submitted Matter.” In that ruling, Judge Bennett (1) found Husband failed to sufficiently trace the down payment monies used to purchase the Pitassi Property; (2) found Husband did not have a right of reimbursement for the down payment monies used to purchase the Pitassi Property; and (3) ordered Husband to prepare the Findings and Order After Hearing. Instead, Husband prepared a bifurcated judgment reflecting he sufficiently traced the down payment monies and was entitled to a reimbursement. Judge Williams signed the judgment unaware of Judge Bennett’s prior ruling, and after viewing only select portions of the reporter’s transcript.

The July 18 judgment did not reflect the express judicial intention of the court because (1) the court found the money was not properly traced, while the judgment reflected the monies were traced to Husband’s separate money market account; (2) the court found the down payment monies were community property, while the judgment reflected the monies were separate property; (3) Husband was ordered to prepare the Findings and Order After Hearing, but Husband prepared a bifurcated judgment. Since the judgment did not reflect the express judicial intention of the court, the error is clerical in nature. (*In re Marriage of Kaufman, supra*, 101 Cal.App.3d at p. 151.)

Husband contends Judge Williams exercised discretion when signing the judgment because “Judge Williams reviewed [Husband’s] letter and the transcript pages attached to it before signing the Bifurcated Judgment.” Husband provides no record citation reflecting Judge Williams read the letter wherein Husband’s attorney admitted to unilaterally altering Judge Bennett’s findings. (Cal. Rules of Court, rule

8.204(a)(1)(C) [briefs must contain record citations].) Contrary to Husband’s position, the record reflects Judge Williams was unaware of Judge Bennett’s prior contradictory ruling. That fact indicates Judge Williams did *not* read Husband’s attorney’s letter because if Judge Williams had read the letter, then he would have been aware of Judge Bennett’s prior conflicting ruling. Instead, the inference to be drawn from the record is that Judge Williams incorrectly assumed the judgment was an accurate reflection of the express judicial intention of the court, and thus, the error was clerical.

**DISPOSITION**

The judgment is affirmed. Appellant is to bear all costs on appeal.

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MILLER  
J.

We concur:

McKINSTER  
Acting P. J.

KING  
J.