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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

COUNTY OF ORANGE,

Plaintiff and Respondent,

v.

AYMAN FAYEK SAADALLA,

Defendant and Appellant.

G049283

(Super. Ct. No. 11FL105991)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Duane T. Neary, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Law Office of Ronald B. Funk and Ronald B. Funk for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Ayman Fayek Saadalla (Father) appeals from an order modifying his child support obligations. Father contends the court erred by failing to make required findings to support an order imputing income to him, and failed to make required findings to support a departure from the guideline amount of child support. Father did not request a statement of decision, however, and thus we presume the court did make all appropriate findings. Moreover, Father did not provide a reporter's transcript, nor any other record of what occurred at the relevant hearings. Thus, even in the absence of a presumption, we cannot know whether the trial court failed to make the appropriate findings. For both reasons, we must affirm the order of the trial court.

FACTS

In December 2011, the County of Orange (the County) filed this lawsuit against Father to establish child support for his three children. The County sought support payments of \$1,139 based on the allegation that Father earned \$2,500 per month. Father answered the complaint, admitting that he is the parent of the three children. In an income and expense declaration, Father claimed to have an average monthly income of \$1,950 and estimated monthly expenses of \$2,839.

At a hearing in April 2012, all parties were present, and witnesses were sworn and testified, but no court reporter was present. There was apparently no request for a statement of decision. Nor is there any other record of what transpired at the hearing, such as a settled statement. (See Cal. Rules of Court, rule 8.137.) We were provided only a minute order.

The result of the hearing was that the court imputed \$2,400 per month in income for the father, stating, “Father was fired from his job because of his own actions.” The court “depart[ed] downward from guideline child support for the purposes of a temporary support order.” The guideline child support would have been \$1,488 per month. The court ordered \$500 per month.

The same day, the court issued an order requiring Father to appear in court in July 2012 with various financial documents, including tax returns, a profit and loss statement, and documents relating to credit. He was ordered to produce the documents to the Orange County Department of Child Support Services at least 21 days prior to the hearing.

On the scheduled hearing date in July, Father did not appear, nor had he produced the documents as ordered. Witnesses were sworn and testified, but there was no court reporter present, nor were we provided any other record of what occurred at the hearing. We again have only a minute order. The court ordered Father’s child support payment increased to \$1,488 per month based on the guideline amount as calculated at the April 2012 hearing.

In January 2013, Father filed a request for order to modify his child support payments. He filed an income and expense declaration claiming he was unemployed with monthly income of \$1,050, and expenses of \$1,695. He also filed a declaration explaining that he did not recall receiving notice of the July 2012 hearing, but that if he did receive notice he mistakenly failed to calendar the date. The County opposed the motion.

The motion was heard in March 2013 by a different judge. All parties were present and witnesses were sworn and testified. Again, there was no court reporter, nor was any other record of the hearing provided to us. We have only the minute order. The court granted the motion and set aside the order from the July 2012 hearing that increased the child support payments. The court cited Code of Civil Procedure section 473, subdivision (c)(2), attorney mistake or neglect, and ordered Father's attorney to pay \$250 to the state bar security fund.

Another hearing was held in September 2013, this time before the original judge. The record is unclear about what precipitated the hearing. All parties were present and the parties were sworn and testified. Once again, there was no court reporter, and no record of the hearing has been provided to us. The court issued a terse minute order, stating, "Court finds that there is a failure to find a change in circumstances. [¶] Court finds Father's testimony is not credible. [¶] Court orders the prior child support order of \$1,488.00 per month be reinstated commencing 01/01/2012." There is no indication in the record that any party requested a statement of decision. Father appealed from the court's September 2013 order.

DISCUSSION

Father raises two arguments on appeal. First, he claims the court abused its discretion by failing to make any findings in support of the imputation of income to him. Second, he claims the court abused its discretion by expressly deviating from the child support guidelines without making required findings. Father's appeal, however, suffers from two fatal procedural deficiencies.

First, there is no indication in the record before us that Father requested a statement of decision. Father certainly could have: "At the request of either party, an order modifying, terminating, or setting aside a support order shall include a statement of

decision.” (Fam. Code, § 3654; see *In re Marriage of McHugh* (2014) 231 Cal.App.4th 1238, 1248 [applying this section to a child support order].) His failure to request a statement of decision results in a presumption that the court *did* make all required findings: “The doctrine of implied findings provides that, if the parties . . . waive a statement of decision, then on appeal the appellate court will presume that the trial court made all factual findings necessary to support the judgment for which substantial evidence exists in the record; i.e., the necessary findings of ultimate facts will be implied, and the only issue on appeal is whether the implied findings are supported by substantial evidence.” (*McMillin Cos., LLC v. American Safety Indemnity Co.* (2015) 233 Cal.App.4th 518, 532, fn. 21.) “A party who does not request a statement of decision may not argue the trial court failed to make any finding required to support its decision.” (*In re Marriage of McHugh*, at p. 1248.)

Second, even in the absence of the doctrine of implied findings, Father failed to provide us an adequate record to review his claims. “When practicing appellate law, there are at least three immutable rules: first, take great care to prepare a complete record; second, if it is not in the record, it did not happen; and third, when in doubt, refer back to rules one and two.” (*Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 364.) “Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant].” (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187.)

Here, the court may well have made the findings at issue during the hearing. In the absence of a reporter’s transcript or a settled statement, we cannot adequately review whether the court made the findings or not. Accordingly, we must resolve the issue against Father.

DISPOSITION

The order is affirmed. No appearance having been made by the County, no costs on appeal are awarded.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.