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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

CHARLES SCHWAB & CO., INC.,

Plaintiff and Respondent,

v.

JORY A. JOVAAG,

Defendant and Appellant.

H038494

(Santa Clara County

Super. Ct. No. CV217900)

This appeal is one in a series of appeals brought by Jory A. Jovaag related to the termination of her 29-year purported common-law marriage to Donald Ott, and Ms. Jovaag's action against Mr. Ott over the division of the couple's jointly held property.¹

The present appeal is of the trial court's order to release funds to Mr. Ott that were deposited with the court by Charles Schwab & Co., Inc. (Schwab). Ms. Jovaag, who is proceeding in propria persona, asserts on appeal that the trial court erred in ordering the funds released to Mr. Ott, and in denying her request to stay the proceedings pending a federal district court action related to this case.

¹ *Jovaag v. Ott*, Santa Clara County Superior Court No. CV-119884.

STATEMENT OF THE CASE

The underlying action for division of Ms. Jovaag and Mr. Ott's jointly held property was tried in May 2011. The court ruled in favor of Mr. Ott, and issued an injunction freezing all of Ms. Jovaag's accounts. Ms. Jovaag and Mr. Ott appeared for a further hearing on the matter on May 16, 2011, and entered into a global settlement of all issues.

On June 16, 2011, Ms. Jovaag and Mr. Ott entered into a Stipulation and Order for the immediate transfer of Ms. Jovaag's \$370,000 in securities held in the Janus account to Mr. Ott to partially fulfill the terms of the settlement agreement.

On June 30, 2011, the court entered judgment against Ms. Jovaag, and ordered her to pay Mr. Ott \$967,800, with post-judgment interest in the amount of 10 percent per year. Ms. Jovaag did not transfer the funds as required under the settlement agreement.

On July 26, 2011, a writ of execution and notice of levy were forwarded to Schwab, along with other investment account providers in the amount of \$895,034.41.

In August 2011, the court denied Ms. Jovaag's claim of exemptions. Ms. Jovaag promptly filed a notice of appeal of the judgment with this court. On December 6, 2011, this court granted Mr. Ott's motion to dismiss Ms. Jovaag's appeal. On January 4, 2012, this court denied Ms. Jovaag's motion to set-aside the dismissal of the appeal. The California Supreme Court denied Ms. Jovaag's petition for review on February 15, 2012, and this court issued the remittitur.

In February 2012, Schwab filed a complaint for interpleader against Ms. Jovaag and Mr. Ott in superior court case No. CV-217900. Schwab liquidated funds in Ms. Jovaag and Mr. Ott's account and deposited them with the clerk of the court in the amount of \$424,921.91.

In March 2012, Mr. Ott filed a motion to release funds deposited with the court by Janus.

In May 2012, the court ordered payment of \$411,448.01 to Mr. Ott from the Schwab deposit. The court ordered the remaining \$13,473.90 to be paid to Schwab for attorney fees and costs. Ms. Jovaag filed a notion of appeal of the order to release funds.

DISCUSSION

Ms. Jovaag asserts on appeal that the trial court erred and abused its discretion in granting Mr. Ott's motion to release funds. The primary basis for Ms. Jovaag's argument is that the court did not consider her "substantial evidence" in making the order. In addition, Ms. Jovaag asserts the trial court erred when it denied her motion to stay the proceedings pending federal district court actions related to this case.

One of the fundamental rules of appellate review is that an appealed judgment is presumed to be 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." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) The appellant has the burden of overcoming the presumption of correctness. "To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error." (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) These requirements apply with equal force to parties, like Ms. Jovaag, who represent themselves. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984.) "When a litigant is appearing in propria persona, he [or she] is entitled to the same, but no greater, consideration than other litigants and attorneys. [Citations.] Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney [citation]." (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639, fn. omitted.)

Here, Ms. Jovaag has elected to proceed with this appeal on a limited clerk's transcript; there is no reporter's transcript provided for the May 1, 2012 hearing during which the court ordered the funds released. As a result, we must consider this appeal to be on the judgment roll. "In a judgment roll appeal based on a clerk's transcript, every

presumption is in favor of the validity of the judgment and all facts consistent with its validity will be presumed to have existed. The sufficiency of the evidence is not open to review. The trial court's findings of fact and conclusions of law are presumed to be supported by substantial evidence and are binding on the appellate court, unless reversible error appears on the record." (*Bond v. Pulsar Video Productions* (1996) 50 Cal.App.4th 918, 924.)

Ms. Jovaag's arguments on appeal center on her belief that the court erred by failing to consider additional evidence at the hearing on the motion to release funds. We cannot consider these arguments, because here is no record of the hearing to review to determine if such error occurred. Because error has not been affirmatively shown, the order is presumed correct, and will be affirmed. (*Denham v. Superior Court, supra*, 2 Cal.3d at p. 564.)

Moreover, we find no error in the trial court's refusal to grant Ms. Jovaag's request to stay the proceedings pending federal district court actions related to this case. "It is black letter law that, when a federal action has been filed covering the same subject matter as is involved in a California action, the California court has the discretion but not the obligation to stay the state court action." (*Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co.* (1993) 15 Cal.App.4th 800, 804.) The record shows Ms. Jovaag had not filed her federal action prior to the May 1, 2012 hearing on the motion to release funds. Therefore, there was no federal action in existence at time Ms. Jovaag made her stay request. The trial court did not abuse its discretion.

DISPOSITION

The order appeal from is affirmed.²

² Counsel for Schwab filed a motion to dismiss the appeal. We ordered the motion considered with the appeal. The motion to dismiss is denied.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.