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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of NINOOSH ASKARI and HOSSEIN YAGHMAI.	B271802 (Los Angeles County Super. Ct. No. BD613207)
HOSSEIN YAGHMAI, Appellant, v. NINOOSH ASKARI, Respondent.	

APPEAL from an order of the Superior Court of Los Angeles County, Tamara E. Hall, Judge. Affirmed.

Hossein Yaghmai, in pro. per., for Appellant.

No appearance by Respondent.

Ninoosh Askari (Ninoosh) filed for divorce from Hossein Yaghmai (Hossein) more than three years ago. The two have been locked in battle over the trial court's support orders ever since. In the present appeal, Hossein contends that the trial court abused its discretion when it ordered the sale of the family residence and charged him with the distribution to Ninoosh of $150,000 in proceeds for her living and relocation costs. Finding no error by the trial court, we affirm.

BACKGROUND[1]

Hossein and Ninoosh married on August 20, 1999. Their union produced one child. During their marriage, Hossein and Ninoosh established several businesses. In 2002, they opened Allied Health Products, Inc., which sold and distributed pharmaceutical products. In 2008, they opened EVO 33, LLC, a graphic and web design business. In 2011, they opened Clear Innova, LLC, which sold dental and medical supplies. That same year, they opened Velplex (also known as Top Pro Deal, LLC), an online business that distributed dental and medical supplies. Hossein and Ninoosh also opened eight business bank accounts. The accounts were with California Bank & Trust and Wells Fargo. Hossein and Ninoosh had equal access to the accounts, and usually kept hundreds of thousands of dollars in the accounts. They also maintained several business credit cards, which Ninoosh used to pay for household expenses or for expenses associated with their child. In 2012, Hossein and Ninoosh purchased their family home in Mandeville Canyon in Los Angeles for $2.85 million. They made a down payment of

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[1] The following facts have been taken our previous unpublished opinion in this case, *In re Marriage of Askari and Yaghmai* (Aug. 9, 2017, B269776) [nonpub. opn.].

$850,000 and financed the rest with a mortgage. The mortgage payments were approximately $9,500 a month.

On December 23, 2014, Ninoosh filed for divorce. According to Ninoosh, Hossein reduced the balances in the business bank accounts and quickly withdrew any deposits made to the accounts. As a result, there was not enough money in the accounts to pay the mortgage or family living expenses. The mortgage went unpaid and the outstanding balance as of June 2015 totaled approximately $30,000. Hossein also limited Ninoosh's use of the business credit cards by lowering their credit limits, which substantially limited Ninoosh's ability to pay for routine household expenses. On July 10, 2015, Ninoosh filed a request for order (RFO-1) seeking relief from these actions.

On August 13, 2015, the trial court granted nearly all the requested relief and issued the following orders: (1) Hossein was to immediately contact Wells Fargo and arrange to pay the outstanding mortgage and bring the payments current; (2) Hossein was to immediately bring up to date all payments associated with maintaining the house, including but not limited to, utilities, property tax, gardener, pool man, homeowner's insurance and security services; (3) going forward, Hossein was to immediately pay family support to Ninoosh, which would also include $20,000 per month in child support; (4) going forward, Ninoosh was to pay all the payments associated with maintaining the house, including but not limited to utilities, property tax, gardener, pool man, homeowner's insurance, and security services from the family support; (5) Hossein was to take steps to transfer to Ninoosh all accounts associated with maintaining the house, including but not limited to utilities, property tax, gardener, pool man, homeowner's insurance and security

services; (6) Hossein was to give Ninoosh access to all existing and all the new bank accounts, credit card accounts and any and all financial accounts he had opened for the businesses, although Ninoosh was not allowed to access those accounts and credit cards for personal use; and (7) Hossein was to provide Ninoosh with monthly profit and loss sheets including back up financial documents, including but not limited to bank statements, canceled checks and paid invoices. Ninoosh's request for Hossein to restore and maintain the credit limits on her credit card was denied. The trial court's order was reduced to findings and an order after hearing and filed on November 18, 2015.

According to Ninoosh, Hossein did not comply with the trial court's orders. He did not pay the family support ordered by the trial court, contact Wells Fargo about the mortgage, make arrangements to pay the outstanding mortgage, or bring up to date all payments associated with maintaining the house. Nor did he give Ninoosh access to the business accounts or provide her with monthly profit and loss sheets. In response, Ninoosh filed a second request for order (RFO-2), requesting that Hossein restore her access to the business credit cards so that she could pay living expenses. Ninoosh also requested permission to sell the family residence.

On November 5, 2015, the trial court held a hearing addressing RFO-2. During the hearing, the court repeatedly commented on Hossein's seemingly willful noncompliance with the court's previous order. In addition to reiterating that the previous order remained in full force and effect, the trial court issued the following additional relevant orders: (1) Hossein was to immediately restore Ninoosh's ability to use the business credit cards; (2) the family home was to be sold and Ninoosh

would have full discretion over the sale; and (3) once the house was sold, $150,000 was to be set aside to pay Ninoosh's attorney and accountants. Another $150,000 was to be set aside to assist with Ninoosh's relocation costs and living expenses. The trial court's order was reduced to findings and an order after hearing and filed on February 23, 2016.[2]

In separate appeals to this court, Hossein challenged the trial court's November 18, 2015 order and the February 25, 2016 order. In our previous opinion, *In re Marriage of Askari and Yaghmai*, *supra*, B269776, we addressed Hossein's appeal of the November 18, 2015 order. In that case, we found that the trial court had failed to make the explicit findings mandated by Family Code sections 4055, 4056, 4057 or 4320.[3] Given that this omission effectively deprived the trial court of legal basis to impose its support orders, we reversed the judgment and remanded for further proceedings in conformity with those statutes.

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[2] The house was put on the market on November 8, 2015, for $3,999,000. It sold on March 16, 2016, for $3,500,000. See <www.trulia.com/homes/California/ Los_Angeles/sold/4329913-1783-Mandeville-Canyon-Rd-Los-Angeles-CA-90049> (as of May 31, 2018).

[3] All further statutory references are to the Family Code unless otherwise indicated.

CURRENT APPEAL[4]

With respect to the trial court's February 25, 2016 order, Hossein contends that the court lacked the pretrial power to order the sale of the home over his objection and to charge him with the distribution to Ninoosh of $150,000 in proceeds for her living and relocation costs.[5] We review the trial court's order for an abuse of discretion. (*In re Marriage of Dellaria & Blickman–Dellaria* (2009) 172 Cal.App.4th 196, 201; *In re Marriage of Quay* (1993) 18 Cal.App.4th 961, 966.)

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[4] As in the previous appeal, Ninoosh has not responded to the opening brief. We do not consider this to be a concession and reach the merits of the appeal. (See *In re Marriage of Riddle* (2005) 125 Cal.App.4th 1075, 1078, fn.1; *In re Bryce C.* (1995) 12 Cal.4th 226, 232–233.) We determine the appeal based on the record provided and the opening brief. (Cal. Rules of Court, rule 8.220(a)(2).) As appellant, Hossein retains the burden of demonstrating prejudicial error. (*Ruttenberg v. Department of Motor Vehicles* (1987) 194 Cal.App.3d 1277, 1282.)

[5] Hossein also contends that the trial court's order for attorney fees and costs must be reversed and remanded. However, that portion of the trial court's February 25, 2016, order addressing attorney fees has been superseded by a trial court order filed on August 15, 2016. The notice of appeal provided to this court states that Hossein is appealing the February 25, 2016 order. Hossein has not provided us with a notice of appeal from the August 15, 2016 order. A timely notice of appeal from an appealable order is essential to vest this court with jurisdiction to review the order. (See *Adoption of Alexander S.* (1988) 44 Cal.3d 857, 864; Cal. Rules of Court, rule 8.100(a).) Given that Hossein has not provided a filed notice of appeal from the August 15, 2016 fee award, we lack jurisdiction to consider this claim. (See Cal. Rules of Court, rule 8.104(a).)

When before the trial court, Hossein conceded the home was community property and agreed that it should be sold.[6] However, Hossein disagreed with the method of sale as well as the distribution of sale proceeds. Citing *Lee v. Superior Court* (1976) 63 Cal.App.3d 705 (*Lee*), Hossein asked that the trial court impound the proceeds pending further hearing if the court intended to order the property sold. Section 2045 permits a court to restrain any person from disposing of any separate or community property during the pendency of a dissolution proceeding, except in the usual course of business or for the necessities of life. Although a statute prohibiting the disposition of property before final judgment could also imply authority to permit such a disposition, *Lee* reached a contrary conclusion when construing section 2045's predecessor statute.

In *Lee*, *supra*, 63 Cal.App.3d 705, the husband in a dissolution proceeding moved the court to authorize the sale of an apartment building claimed by the wife to be community property, to pay the debts of a business which the husband claimed was his separate property. The wife did not oppose the sale but wanted the proceeds to be held in a joint bank account. The trial court found that the sale of the building was necessary to preserve the business and ordered the sale proceeds distributed to the husband's lawyer to pay the debts of the business. The court did not determine whether the building or the business were community or separate property. In authorizing the sale of the building to pay the business debts, the

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[6] To that end, Hossein expressly informed the trial court: "I agree that the former family residence should be sold. I, through my attorney, has [sic] proposed that the residence be sold for quite some time."

trial court in *Lee* relied on former Civil Code section 4359. Like current section 2045, former Civil Code section 4359 authorized the court in a dissolution proceeding to restrain any person from disposing of any separate or community property except in the usual course of business or for the necessities of life. However, *Lee* concluded that: "Civil Code section 4359 provides no authority for the trial court to order that a disputed asset be sold and the proceeds distributed to one spouse, over the objections of the other spouse. [¶] . . . [¶] The very language of section 4359 makes clear that it is intended to apply only to prevent a transfer—to maintain the status quo—and does not authorize the trial court . . . to change the status quo by authorizing the sale of property involved in a dissolution proceeding and the transfer of the proceeds to one of the parties without adequate safeguards for the other." (*Id.* at pp. 709–710.)

According to *Lee*, *supra*, 63 Cal.App.3d 705, the problem with the trial court's order was that although the nature and extent of the community property were in dispute, the trial court effectively settled a part of the parties' property rights without a trial. The court did so without knowing whether it was, in fact, permitting the husband to pay his separate business debts with money that belonged to the wife, and without assurances that the wife would have an adequate remedy if the money did belong to her. (*Id.* at pp. 710–711.) The trial court could have conducted a partial trial to determine the community or separate character of the apartment building and the existence of other community assets sufficient to offset any loss the wife might incur from the loss of proceeds from the building. Alternatively, the trial court could have ordered the sale of the building without making any factual determinations beyond the value of the building, provided

it required security sufficient to protect the wife. (*Ibid.*) The trial court could not, however, make a de facto determination, on disputed and unresolved facts, that the wife would not be prejudiced by the release of the proceeds to the husband or his creditors. By so doing, the trial court effectively disabled itself from fully performing its statutory duty to determine and divide the community property. (*Ibid.*)

Here, the threat of possible foreclosure as well as Hossein's failure to comply with the trial court's prior order that he pay Ninoosh $20,000 per month so that she could pay the mortgage, taxes, and insurance on the home, left the trial court with only one remedy—to order the sale of the home. Further, the trial court ordered,"[b]ased on [Hossein's] credibility issues, his failure to cooperate with [Ninoosh] in the sale of the home, the court's lack of confidence that he is going to cooperate in the sale of the home, his threats to turn off heat as we approach winter, his claims that he cannot make mortgage payments, and his refusal to agree on a listing agent, [Ninoosh] shall have unilateral decision making on the listing, the offers and the sale of the home."

Pursuant to the trial court's order, the proceeds from the sale of the house were to be handled in the following manner: "First, reasonable cost of sale commissions, mortgage and other secured debts shall be paid from the proceeds. Second, out of the balance . . . [Ninoosh] shall receive a $150,000 distribution from those proceeds to assist in relocation and living costs; $150,000 shall be received by [Ninoosh's] attorney . . . for [the attorney] fees and forensic accounting fees. This amount is to be allocated to [Hossein] and shall be deducted from any share of the proceeds from the sale of the family residence that [Hossein] may be

awarded."[7] Lastly, "[t]he balance shall be deposited into the Client Trust Account of the attorney for [Ninoosh] and shall remain in that account pending a written agreement between the parties as to the distribution of the proceeds or further court orders."

We first note that although section 2045 does not authorize a sale order, such authority is not totally lacking. (*Lee*, *supra*, 63 Cal.App.3d at p. 710.) Rather, the requisite authority is found elsewhere. (*Ibid*.) For example, section 2010 provides that the court has jurisdiction to make such orders as are appropriate concerning the settlement of the property rights of the parties. (*Lee*, at p. 710 [discussing the predecessor provision, former Civ. Code, § 4351].) Section 2550 "requires the trial court to divide the community property equally in its interlocutory judgment and provides the court with latitude to carry out the purposes of the statute." (*Lee*, at p. 710 [discussing the predecessor provision, former Civ. Code, § 4800].) In light of these provisions, "nothing in the Family Law Act would [ ] prevent[ ] the trial court from ordering the sale of a claimed community asset—particularly where, as here, the opposing spouse has no objection to the sale itself—without making any factual determinations beyond the value of the asset to be sold, provided it required security sufficient to protect the objecting spouse." (*Id*. at p. 711; see *Bonner v. Superior Court* (1976) 63

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[7] According to Hossein, the trial court's reference to "this amount" might have referred to the entire $300,000 distribution or it could have referred to the $150,000 earmarked for fees and costs. However, it is clear from subsequent hearing transcripts that "this amount" referred only to the $150,000 allocated for attorney fees and forensic accounting fees.

Cal.App.3d 156, 164–165 [under former Civ. Code, § 4800, court may order sale of homestead].)

Thus, the only issue is whether the trial court required security sufficient to protect Hossein, the opposing spouse. At the outset, we observe that the $150,000 distributed to Ninoosh for living and relocation costs represented only 4.2 percent of the home's $3,500,000 sale amount. However, in *Lee supra*, 63 Cal.App.3d at page 708, where the trial court erroneously authorized the sale of claimed community property to pay the debts of the husband's admitted separate property business, the business had accounts payable in excess of $56,000, while the community property was to be sold for $47,500. In other words, the amount to be distributed *exceeded* the sale amount. Thus, it is not surprising that *Lee* reversed the trial court's determination that the wife would not be prejudiced by the sale of the community property. (See *id*. at p. 711.) In short, *Lee*, which involved the sale of a community asset and the payment of 100 percent of the proceeds to one party, is readily distinguishable. We also note that the trial court in this case ordered the balance of the considerable proceeds from the sale be deposited into a trust account and that they remain in this account pending a written agreement between the parties as to the distribution of the proceeds or further court orders. Given that Hossein agreed that the home was community property, expressly supported the sale of the property, and does not contend that all sale proceeds belonged to him, we conclude that the trial court's order provided security sufficient to protect Hossein as required by *Lee*. In sum, because the trial court had the authority to order the sale of the home and provided

sufficient security to Hossein, the court did not abuse its discretion here.

Hossein also contends that section 2108 prohibited the trial court's sale and distribution order. Section 2108 provides that: "At any time during the proceeding, the court has the authority, on application of a party and for good cause, to order the liquidation of community or quasi-community assets so as to avoid unreasonable market or investment risks, given the relative nature, scope, and extent of the community estate. However, in no event shall the court grant the application unless . . . the appropriate declaration of disclosure has been served by the moving party." Hossein notes that Ninoosh neither filed such a declaration nor offered evidence on the statute's requisite conditions. Given that Ninoosh did not apply for a liquidation order pursuant to section 2108, Hossein's reliance on the statute is inapt, as is his complaint that Ninoosh failed to comply with the statute's requirements. In any event, section 2108 does not govern the analysis here. That particular section relates to the parties' fiduciary duties to disclose assets and liabilities. In that context, and considering its express language, section 2108 cannot reasonably be read as strictly confining a court's authority to order liquidation to situations of market risk *only*. In other words, section 2108 does not restrict a court's power to liquidate an asset for reasons other than market risks, such as the parties' stipulation to do so.[8]

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[8] Hossein also contends that California's no-fault divorce policy barred the trial court from depriving him of an equal division of the community property. The trial court did not deprive Hossein of half the sale proceeds; rather, the court distributed 4.2 percent to Ninoosh pending a written agreement

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

ROTHSCHILD, P. J.

CHANEY, J.

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between the parties as to the distribution of the proceeds or further court orders. Moreover, Hossein never disputed that Ninoosh needed $150,000 to assist with relocation and living costs. Indeed, according to Hossein, Ninoosh needed a total of $300,000 when factoring in litigation costs. Instead, Hossein simply contended that he should receive $300,000 as well. Given that a final distribution of all the community property remains pending, this claim is premature.