Filed 7/26/18 In re Marriage of Roches CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Marriage of EDNA and RAOUL ROCHES	B284706 (Los Angeles County Super. Ct. No. BD605498)
EDNA ROCHES, Respondent, v. RAOUL ROCHES, Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Marc D. Gross, Judge. Affirmed.

Tera D. Lee for Appellant.

Holstrom, Block & Parke, Ronald B. Funk for Respondent.

INTRODUCTION

Edna Roches filed for dissolution of her marriage with Raoul Roches.[1] In her form petition, Edna did not include a list of the parties' community assets and debts, stating that she would later amend the petition once the assets and debts had been determined. However, in her petition Edna did request an order that she "have exclusive use and possession of the marital residence." Edna later served Raoul with a declaration of community property assets and debts, which included the residence.

Raoul defaulted, and the court entered a judgment dividing the community assets and debts. At the time of judgment, more than two years after the petition was filed, the residence had a net value of $0. The judgment stated that Edna "shall retain the marital residence."

Raoul moved to have the judgment set aside, arguing that notice of the issues to be adjudicated was insufficient to satisfy due process requirements. The court partially granted Raoul's motion relating to the parties' timeshare and their retirement accounts, holding that Edna's petition and later community property declaration did not provide Raoul sufficient notice of the potential adjudication of those assets. However, the court denied the portion of Raoul's motion asking the court to reverse its ruling regarding the residence, noting that a request for adjudication of rights to the residence was included in the petition. Raoul appealed, arguing that the trial court should have also vacated the portion of the judgment awarding the residence to Edna.

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[1] Because the parties share a last name, we refer to them by first names for clarity. We intend no disrespect.

We affirm. In a dissolution action, "the due process requirement of notice is satisfied if the spouse seeking dissolution of the marriage identifies the community assets to be divided in his or her petition and requests that the court divide those assets." (*Van Sickle v. Gilbert* (2011) 196 Cal.App.4th 1495, 1527 (*Van Sickle*).) Edna's request for exclusive use of the residence in her petition and inclusion of the residence in the property declaration provided Raoul with adequate notice that rights to the residence would be adjudicated in the dissolution action.

FACTUAL AND PROCEDURAL BACKGROUND

A. Dissolution petition and judgment

On July 22, 2014, Edna filed a petition for dissolution of marriage on a Judicial Council form. In section 5 of the form, titled "Declaration regarding community and quasi-community assets and debts as currently known," Edna stated, "The complete nature and extent of such assets and debts have yet to be determined. Petitioner will seek leave of court to amend upon ascertainment of same." In section 7 of the form, an area in which the petitioner requests court orders, Edna checked box 7h, thus requesting an order that "[p]roperty rights be determined." She also checked box 7j, marked "Other," and wrote, "Petitioner to have exclusive use and possession of the marital residence." On July 30, 2014, Edna filed a proof of service stating that the petition and summons were personally served on Raoul on July 28, 2014.

On May 18, 2015, Edna filed declarations listing community and separate property on Judicial Council forms. On the community property declaration Edna listed the residence, along with a statement of its net fair market value of $10,777, and a proposal that it be divided equally. The community

property declaration also included the couple's timeshare, its net fair market value, and a request that it be divided equally. In the "retirement and pensions" section of the community property declaration, Edna listed a Los Angeles County Employees Retirement Association (LACERA) pension with parenthetical stating, "partial sep property." Edna also included a line stating, "401K (Respondent)." No additional information or value was included for the LACERA pension or the 401(k). In her separate property declaration, Edna also listed the LACERA pension, with a parenthetical notation, "community interest." In the "date acquired" column, Edna stated "BM," or before marriage. Edna's attorney filed a declaration stating that the property declarations were served on Raoul on May 8, 2015.

Edna says in her respondent's brief on appeal that a request for entry of default was also filed on May 18, 2015 but it is not included in the record on appeal. The docket summary from the trial court included in the clerk's transcript states that the court received a request to enter default on May 18, 2015.

On September 6, 2016, Edna filed an amended community property and quasi community property declaration. In it, she listed the residence with a negative net fair market value, and proposed that it be awarded to her. She also included the timeshare and its net fair market value, and proposed that it be divided equally. The amended declaration included the LACERA pension and 401(k) as they had been in the original declaration, with no values listed and no proposals for division. The same day, Edna's declaration of default was filed, with a box checked stating, "The community and quasi-community assets and debts are listed on the completed current Property Declaration (form FL-160), which includes an estimate of the value of the assets

and debts that I propose to be distributed to each party." No proof of service for these documents is included in the record.

On October 24, 2016, the court entered a judgment of dissolution. The judgment noted that Raoul had been served and did not appear. The court also entered a property order stating that Edna would "receive her [LACERA] pension . . . as her sole and separate property." Raoul was to receive his 401(k). The order also stated, "Petitioner [Edna] shall retain the marital residence." The court noted that the appraised value of the residence was slightly less than the debt on the residence, and stated, "Therefore, there is no equity in the property, thus no equalization payment. Upon signing of the Judgment of Dissolution, Respondent [Raoul] must vacate the residence." The court ordered Raoul to sign a transfer deed within 30 days, and stated that if he did not, the clerk of the court "may sign the Judgment on his behalf." The court also stated that the timeshare was to become Edna's sole separate property. Notice of entry of judgment was filed the same day, stating that the clerk mailed notice to both parties.

On December 22, 2016, Raoul filed a response to Edna's petition for dissolution of marriage. On March 24, 2017, Edna filed a request for the clerk of the court to sign an interspousal transfer deed. Edna submitted a declaration stating that Raoul had vacated the residence, but had refused to sign the interspousal transfer grant deed.

B. Raoul's motion to vacate the judgment

On May 3, 2017, Raoul filed a motion to vacate or set aside the judgment. He argued that the judgment violated Code of Civil Procedure section 580, subdivision (a) (section 580(a)), which states in part, "The relief granted to the plaintiff, if there

is no answer, cannot exceed that demanded in the complaint." Raoul asserted that the judgment "grants relief not sought in the Petition for Dissolution." Raoul noted that in the portion of the petition relating to community and separate property, Edna stated that she would amend the petition to include relevant separate and community assets—but she never did. Raoul asserted that he had never been served with several documents Edna filed, including the revised community property declaration from September 2016, in which Edna proposed that the residence be awarded solely to her.

Raoul also asserted that Edna had "failed to disclose her percentage of [her] LACERA pension" in her property declarations, in violation of Family Code section 2104, subdivision (c)(2), which requires that a preliminary declaration of disclosure include the declarant's percentage of ownership in each asset and percentage of obligation for each liability. He argued that as a result, the judgment must be set aside under Family Code section 2107, subdivision (d), which states in part, "[I]f a court enters a judgment when the parties have failed to comply with all disclosure requirements of this chapter, the court shall set aside the judgment. The failure to comply with the disclosure requirements does not constitute harmless error."

Raoul also asserted that Edna did not appropriately request that the residence, timeshare, or LACERA pension be awarded to her as her sole and separate property. He argued that in Edna's petition, her request regarding the residence in the "other" section on the form "cannot serve as a prayer for relief on any specific issue for which a box, such as the box for separate property awards, exists." He contended that as a result, the judgment could not be valid under section 580(a), since the

judgment awarded more than Edna requested in the petition. In a declaration filed with the motion, Raoul stated that he never received the September 2016 amended property declarations.

Edna opposed Raoul's motion. She asserted that the petition did seek the remedies requested, because it asked that property rights be determined, and "[t]he fact that properties are shuffled in division for the purpose of equalization does not mean that the distribution is not consistent with the prayer in the Petition or in Petitioner's disclosures." She argued that the judgment was not inconsistent with the petition, and every asset the judgment awarded, including the residence, the timeshare, and the LACERA pension, was included in the property declarations. She also asserted that Raoul knew the values of the residence and timeshare. In addition, Edna argued that any error was harmless because Raoul knew of the parties' assets and knew they would be divided in the divorce.

At the hearing on the motion, the court said that Edna mentioned the residence in her petition, but she did not include any other property. The court also noted that the property disclosure stated that the timeshare should be divided equally, "but the judgment doesn't do that." The court said the judgment was not wholly void "because some of these things were disclosed. The petition does raise the issue of the residence, for example." The court ruled, "The court is going to grant the motion in part, based upon the property disclosures that were made and comparing those with the actual judgment that was entered, the court does not feel there was an adequate disclosure as to the time share and the pension plans of both parties. And that is because the judgment seems inconsistent with the property disclosure on those assets." The court continued, "The time share

was supposed to be equally divided, and the pension plans in the judgment just went to each party without any attempt to determine what the community interest was or the values were." The court also said, "[T]here's no persuasive evidence to justify setting aside the rest of the judgment." The court directed the parties to prepare an order regarding the retirement accounts.

The court also considered Edna's motion for the clerk to sign a grant deed, and noted that no opposition to the motion had been filed. It granted the motion and directed the clerk to sign the grant deed.

Raoul timely appealed.

DISCUSSION

Raoul asserts that the trial court erred by not vacating the portion of the judgment awarding the residence to Edna, and by ordering the clerk to sign the grant deed. Specifically, he argues that "the petition's prayer for relief did not provide [him] with adequate notice regarding the marital residence." He also contends that the May 2015 property declaration only requested that the residence be divided equally, and therefore "[t]he Judgment awarded [Edna] greater relief than the May [2015 property declaration] requested—the entirety of the Marital Residence." "'[W]hether the default and default judgment complied with constitutional and statutory requirements are questions of law as to which we exercise independent review.'" (*Warren v. Warren* (2015) 240 Cal.App.4th 373, 377.)[2]

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[2] Raoul asserts that to the extent the court's order relied on facts, there was insufficient evidence to support the ruling. Because the question before us is whether the relevant documents provided sufficient notice as a matter of law and the

"It is fundamental to the concept of due process that a defendant be given notice of the existence of a lawsuit and notice of the specific relief which is sought in the complaint served upon him. The logic underlying this principle is simple: a defendant who has been served with a lawsuit has the right, in view of the relief which the complainant is seeking from him, to decide not to appear and defend." (*In re Marriage of Lippel* (1990) 51 Cal.3d 1160, 1166 (*Lippel*).) "California satisfies these due process requirements in default cases through section 580." (*Ibid.*) As noted above, section 580(a) states in part, "The relief granted to the plaintiff, if there [is] no answer, cannot exceed that . . . demanded in the complaint." The purpose of section 580(a) is "to insure that defendants in cases which involve a default judgment have adequate notice of the judgments that may be taken against them." (*Becker v. S.P.V. Construction Co.* (1980) 27 Cal.3d 489, 493.)

"In a marital dissolution action, notice sufficient to support a default judgment dividing the community's property (including any equalizing payment necessary to achieve an equal division) may be provided by checking the appropriate boxes on a form petition and listing the property to be divided in the petition." (*Van Sickle, supra,* 196 Cal.App.4th at p. 1527.) Parties in a marital dissolution action are also required to serve declarations disclosing individual and community assets and liabilities. (See Fam. Code, §§ 2103, 2104.) Parties are normally required to serve preliminary and final declarations of disclosure, but when one party defaults, a final declaration is not required. (See Fam. Code, § 2110 ["In the case of a default judgment, the petitioner

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relevant facts are not disputed, we do not consider Raoul's substantial evidence arguments.

may waive the final declaration of disclosure requirements provided in this chapter, and shall not be required to serve a final declaration of disclosure on the respondent."].)

These property disclosures also provide notice sufficient to meet the notice requirements of section 580(a). "The complaint or petition is not necessarily the sole statement of relief that forms the boundaries of relief granted in a default judgment. Section 580 specifies two other plaintiff-generated documents which limit certain default judgments: a [Code of Civil Procedure] section 425.11 statement of damages in personal injury and wrongful death actions, and written notice of the exact amount of punitive damages plaintiff seeks, as required by section 425.115. A petitioner's list of assets and debts in a property declaration, preliminary declaration, and disclosure declaration fulfill the same notice function in a marital dissolution as do a statement of damages and punitive damages notice, provided the declarations are served on the respondent before entry of default." (*In re Marriage of Eustice* (2015) 242 Cal.App.4th 1291, 1304.)

Here, the residence was listed in the marital dissolution petition, which was served on Raoul in July 2014. Raoul did not file a response or make an appearance. The residence was also listed in Edna's May 2015 community property declaration, which was served on Raoul in May 2015. Again, Raoul did not make an appearance or file a response. When the court entered its judgment in October 2016, it assigned rights to the residence to Edna, as she had requested in her petition.

Raoul asserts that these documents failed to meet the standards required by section 580(a), because in the petition Edna did not list the residence as a community asset, and instead

she only mentioned the residence in the "other" section relating to requests for court orders. Raoul asserts that as a result, Edna "fail[ed] to specifically request the Marital Residence be confirmed as [her] sole and separate property." He also asserts that because Edna proposed in the May 2015 property declaration that the residence be divided equally, it "did not make [Raoul] aware of the maximum judgment that may be assessed against him." Notice does not require such a formalistic reading of the petition.

Raoul's arguments are similar to the ones made by the husband in *In re Marriage of Andresen* (1994) 28 Cal.App.4th 873 (*Andresen*). In that case, the wife filed a form petition for dissolution, and in her property declaration she "listed 10 separate items which she claimed to be community assets. She also listed numerous creditors under the caption 'debts.' However, she did not attach any values to any of the items identified as community assets or community debts, nor did she request that the court divide the alleged community in any particular manner." (*Id*. at p. 877.) The husband defaulted and judgment was entered. Two years later, the husband moved to set aside default, arguing that "the wife's petition did not allege the specific kind and amount of relief she obtained by way of the judgment." (*Ibid*.)

The trial court denied the husband's motion, and the husband appealed. The Court of Appeal affirmed, noting that "the wife requested the parties' property rights be determined because she checked the appropriate box on the petition," and "attached to her petition a property declaration which listed certain assets and liabilities." (*Andresen, supra*, 28 Cal.App.4th at p. 879.) The court held that this was sufficient to provide

notice under section 580(a). The court discussed the nature of a dissolution proceeding: "[T]he trial court, in its judgment of dissolution . . . must value and divide the community estate of the parties equally. [Citation.] This task constitutes a nondelegable judicial function [citation] which must be based upon substantial evidence. . . . [T]he family law court possesses broad discretion to determine the manner in which community property is awarded in order to accomplish an equal allocation. [Citation.] If the circumstances warrant, the court may award one or more items of the property to one party and require that party to make an equalizing payment to the other." (*Id*. at p. 880.)

The *Andresen* court continued, "Thus, when a petitioner asks the court to determine the rights of the parties as to specified property, the respondent is necessarily on notice that the court will undertake to assess and then divide the alleged community equally between the parties. If the respondent is willing to rely upon the trial court's independent obligation to accurately value and fairly allocate the community estate as a protection against any attempt by the petitioner to overreach, the respondent need not file a response to the petition. If the respondent disagrees with any allegation of the petition or is concerned about how the court will value an asset or liability identified in the petition or divide the whole of the property placed in issue under the petition, then he or she must file a response to preserve the right to appear before the court and present evidence and argument on such matters." (*Andresen supra,* 28 Cal.App.4th at p. 880.)

Raoul asserts that this case is different: "Whereas in *Andresen* [the] husband was at least aware of what property may

be subject to division vis-a-vie [*sic*] the property declaration attached to the petition, [Raoul] could not reasonably ascertain what property may have been subject to division based on the Petition's request for leave to amend at a later date." However, Raoul does not assert on appeal that the court failed to properly divide the community assets; instead, he contends only that the court should not have awarded Edna the residence due to lack of notice.

Both the petition and the property declaration made clear that the ownership of the residence was at stake in the dissolution proceeding. Although Edna stated in the petition that she would later amend it to include community property, she asked that the court determine the parties' property rights. Thus, Raoul was on notice that property rights would be determined. The single item of community property mentioned in the petition—the residence—is the only one Raoul contends the trial court improperly distributed. That the residence was listed in item 7 of the petition under "other" rather than as property in item 5 did not deprive Raoul of notice that adjudication of the residence would be at issue in the dissolution proceeding. Moreover, as noted above, a property declaration may suffice to provide notice in a dissolution action, and Raoul does not dispute that he received the May 2015 property declaration, which listed the residence. Thus, as in *Andresen*, Raoul was on notice that that rights to the community property, including the residence, would be adjudicated in the dissolution proceeding. If Raoul wished to influence how the community assets and debts were distributed upon dissolution, he could have appeared in the action rather than defaulting.

Raoul compares this case to *Lippel*, *supra*, 51 Cal.3d 1160 and *In re Marriage of Kahn* (2013) 215 Cal.App.4th 1113, in which judgments were reversed under section 580(a) because they awarded more than the petitioning party requested. In *Lippel*, the wife petitioned for dissolution and requested custody of the couple's daughter. (*Lippel, supra*, 51 Cal.3d at p. 1163.) The wife checked various boxes on the form petition, but left blank the box requesting child support. The petition was served on the husband, who defaulted. (*Ibid*.) Although the wife had not requested child support, the court awarded it. For the next 16 years, the husband maintained a relationship with the child, paid for portions of her upbringing, and at times had custody of the child. (*Id*. at p. 1164.) More than 16 years after the dissolution judgment, the husband discovered the child support order after the City and County of San Francisco, which had been providing financial assistance for the child, commenced proceedings against the husband for unpaid child support. (*Id*. at p. 1164.) The husband moved to vacate the child support provision of the judgment, arguing that the underlying support order was void because it gave the wife relief she had not requested in violation of section 580. (*Id*. at pp. 1164-1165.) The trial court denied the husband's motion, and the Court of Appeal affirmed.

The Supreme Court reversed. It held that the husband's "right to notice and an opportunity to be heard, embodied in section 580, was clearly violated by the judgment ordering child support. [The wife's] petition simply did not request child support. In reliance on this petition, [the husband] allowed a default judgment to be entered against him. This award, as we have seen, violated the plain language of section 580. To hold

otherwise would be to deprive [the husband] of his statutory and constitutional right to notice of the claims to be litigated against him." (*Lippel, supra*, 51 Cal.3d at p. 1167.)

Raoul argues that *Lippel* compels the conclusion that the court's order here was erroneous because there was a specific box regarding property on the petition, and although the box was checked, "there is no property listed to be confirmed as separate property." Raoul concludes that as a result, "[t]his Court is compelled to hold that the prayer for general relief did not give sufficient notice to satisfy section 580, [so] the portion of the Judgment regarding the division of the Marital Residence must be set aside."

However, in *Lippel* the wife never requested child support, and the court awarded it without notice to the husband. Thus the judgment in *Lippel* squarely presented a scenario barred by section 580(a), in which the court awarded more than the petition requested, thereby depriving the responding party adequate notice in deciding whether to respond or default. Here, by contrast, Raoul does not dispute that he was served with the petition and the May 2015 property declaration, both of which provided notice that rights to the residence were at issue in the dissolution proceeding. Raoul disagrees with the court's judgment awarding the $0 net value residence to Edna, but disagreement with the result of an adjudication is not tantamount to lack of notice that the issue would be adjudicated.

Raoul also compares this case to in *In re Marriage of Kahn, supra,* 215 Cal.App.4th 1113. There, the husband failed to comply with court orders regarding discovery, and as a sanction the court struck the husband's responsive pleading and entered default. (*Id*. at p. 1115.) In her form petition, the wife had

checked the "[o]ther" box in the section for relief requested (as Edna did here), and wrote, "Relief for [husband's] breach of fiduciary duty pursuant to Family Code sections 1100 et seq."[3] The wife did not include any factual grounds or specify an amount sought. (*Id.* at p. 1116.) In its judgment, the court awarded the wife $275,000 for breach of fiduciary duty. (*Id.* at p. 1115.) The husband argued on appeal that this award was void under section 580(a) because it exceeded the relief requested. The Court of Appeal held that the wife's petition did not provide the husband with sufficient notice: "[T]he checkbox for '[o]ther' relief is distinguishable from the checkboxes for a division of community property. It is a catch-all category; it could encompass practically any kind of relief, including relief that is not statutorily required in a marital dissolution action. The respondent is therefore entitled to notice of the specific nature and amount of any '[o]ther' relief sought before defaulting." (*Id.* at p. 1119.)

Raoul argues that *Kahn* compels us to hold that the default judgment is void because "[h]ere, akin to *Kahn*, [Edna] made a request in the other relief checkboxes" and that "request failed to specify the type of relief requested." However, the court ordered the relief Edna requested in the petition: exclusive rights to the marital residence. In addition, as Edna points out, "checking the box on the Petition for 'property division' and serving property declarations identifying the various property items . . . satisfy section 580 regarding sufficiency of notice to the other party." Because adjudication of property rights and rights to the residence were clearly placed at issue in the petition and May

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[3] Family Code, sections 1100 et seq., address the management and control of marital property.

2015 property declaration, Raoul had sufficient notice that rights to the residence would be determined by the court. We find no support for Raoul's assertion that the court was without power to effect the division of property that it did without further notice to Raoul. "Given that an equal division [of community assets] is required by law, the due process requirement of notice is satisfied if the spouse seeking dissolution of the marriage identifies the community assets to be divided in his or her petition and requests that the court divide those assets." (*Van Sickle, supra,* 196 Cal.App.4th at p. 1527.)

Raoul also asserts that because the trial court erred in denying his motion to set aside the judgment, it also erred in directing the clerk to sign the quitclaim deed to the residence. Because we find that the court did not err, the order that the clerk sign the quitclaim deed was appropriate in light of the judgment awarding the residence to Edna. We therefore find no error.

DISPOSITION

The order is affirmed. Edna is entitled to costs on appeal.

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COLLINS, J.

We concur:

WILLHITE, Acting P. J. MANELLA, J.