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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of INDU and RANJIT S.
CHANA.

B237132

(Los Angeles County
Super. Ct. No. BD008570)

INDU CHANA,

Respondent,

v.

RANJIT S. CHANA,

Appellant.

APPEAL from a postjudgment order of the Superior Court of Los Angeles County, Mark A. Juhas, Judge. Affirmed.

Law Offices of Anju Multani and Anju Multani, for Respondent and Appellant.

Law Offices of George L. Sellers and George L. Sellers, for Petitioner and Respondent.

Appellant Ranjit Chana (Ranjit)¹ contends he has been denied due process, and that the trial court abused its discretion when it denied his motion to vacate a default judgment entered against him in this marital dissolution action. We affirm due to Ranjit’s failure to provide an adequate record to permit appellate review.

BACKGROUND

Our review of this action is severely impeded by the serious deficiencies in both parties’ briefs and a wholly insufficient appellate record. Ranjit’s opening—and only—brief is far from compliant with the California Rules of Court.² First, Ranjit failed to paginate his brief. (Rule 8.204(b)(7) [consecutive pagination required].) Second, in violation of rule 8.204(a)(1)(C) Ranjit’s lengthy brief contains a mere three record citations, one of which is incorrect. (Rule 8.204(a)(1)(C) [Each brief must “[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears”]; *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 800–801 [failure to include citations to appellate record in brief may result in forfeiture of claim].) Indu Chana’s (Indu) response brief is similarly deficient: it does not include a single record citation. Third, and most significantly, both parties make liberal references to documents and events which are not contained or reflected in the appellate record and as to which it is unclear whether these matters or materials were before the trial court. We will disregard any factual assertion which is not reflected in the record, and will disregard references to materials if we cannot determine that those documents were part of the record below. (Rule 8.204(a)(2)(C); *Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1; *McOwen v. Grossman* (2007) 153 Cal.App.4th 937, 947; *Dodd v. Henkel* (1978) 84 Cal.App.3d 604, 606–607, fn. 1

¹ Because the parties share a surname we will, for the sake of clarity, refer to each party by his or her first name.

² Further rule references are to the California Rules of Court.

[appellate court will disregard statements in briefs based on matter improperly included in appellate record].)

Based on the wholly deficient nature of Ranjit's brief, it would be appropriate for this court to disregard his contentions of error as having been forfeited on appeal (*State Comp. Ins. Fund v. WallDesign Inc.* (2011) 199 Cal.App.4th 1525, 1528–1529, fn. 1), or to order the parties to file new compliant briefs. (Rule 8.204(e)(2)(B).) Here, however, although the briefs are noncompliant, the matter is fully briefed and we are able to glean Ranjit's essential claims of error relative to the order from which he appeals.

Therefore—without minimizing the significance of the parties' noncompliance with appellate procedures—in the interest of resolving an action approaching its 25th anniversary, we exercise our discretion to “[d]isregard the noncompliance” and will address the merits. (See Rule 8.204(e)(2)(C).)

Our recitation of the factual and procedural background is drawn from the emaciated clerk's transcript designated by Ranjit, and the trial court's September 7, 2011 “RULING ON SUBMITTED MATTER” (Order).

Indu and Ranjit married in January 1959, and separated on June 1, 1990. In July 1990, Indu filed a petition seeking dissolution of marriage. Judgment dissolving the marriage was entered thereafter, and the court reserved issues regarding the division of property. Indu then moved out of the country for several years. After Indu returned to the United States, she attempted to set a trial on the reserved property issues in 2001 but the file had been archived and could not be retrieved. A new petition was filed in April 2002.

Indu was unable to locate Ranjit in Los Angeles County, where the parties had lived at the time they separated. After Indu received leave of court to do so, Ranjit was served by publication. Subsequently, a default judgment was entered against Ranjit.

On October 5, 2007, the trial court entered “Judgment on reserved issues” (Judgment), dividing specific assets and awarding Indu: (1) real property in Kern County, valued at \$15,000; (2) \$50,234 in proceeds from the sale of a community-owned business; and (3) \$42,500, as a portion of the pension/retirement benefits earned by

Ranjit during the marriage, plus interest from the date of the parties' separation, for a total of \$150,100. At that time, Indu had control of the real property and the proceeds from the sale of the couple's business.

Indu remained unable to locate Ranjit, who was served with the Judgment by publication. In late 2007 Indu retained new counsel, who learned Ranjit had moved to San Bernardino County. On May 12, 2009, Ranjit was served by mail with the Judgment and notice of entry of judgment. Ranjit acknowledged receipt of the Judgment in a letter to Indu's counsel on May 20, 2009. On July 19, 2010, Indu filed an application seeking to have Ranjit pay her attorney fees and costs. An order to show cause (OSC) was apparently issued, and the trial court set a hearing on the OSC for October 26, 2010.

On June 6, 2011, Ranjit moved to vacate the Judgment. He claimed that service of the Judgment by publication in Los Angeles county was improper, and the Judgment was void. Ranjit insisted Indu had known his whereabouts or, at a minimum, could have located him by asking one of the couple's adult daughters with whom both parents allegedly remained in contact. Ranjit also requested that the court exercise its discretion to declare the Judgment voidable because he had been "clinically depressed" and "remained under the care of physicians for this ailment." As a result, Ranjit claimed he had been "unable to tend to his affairs," or "to move expediently to have the default set aside" He also asserted that "[a]s soon as he [became] aware of the default judgment, he moves [sic] the court to have it set aside, and to allow for adjudication on the merits."

Following a hearing, the trial court denied Ranjit's motion to set aside the Judgment. Ranjit was ordered to pay Indu \$42,500 in pension/retirement benefits, plus interest at the legal rate, from June 1, 1990. He appeals.

DISCUSSION

Ranjit contends he was denied due process, rendering the Judgment void, and that the trial court erred when it issued the order denying his motion to vacate the default judgment. He insists that "[Indu] knew where [he] was," and "presented false information to the court to obtain an order to publish the summons" in 2003.

Specifically, he claims Indu presented a declaration from one of the couple's two daughters who admittedly refused to reveal Ranjit's whereabouts to Indu, but failed to explain why she had not asked the other daughter or any of the parties' many mutual acquaintances how she could contact Ranjit. Ranjit also argued that Indu abandoned the petition she filed in 1990. Accordingly, she had to start the dissolution process anew when the petition at issue here was filed in 2002, but committed fraud by presenting both an incomplete listing of the community's assets and false valuations of the assets she did disclose in order to deprive Ranjit of his rightful share. Finally, Ranjit claims he "testified, under oath, that he was clinically depressed and . . . unable to tend to his affairs." He insists the court had no reason to suspect the veracity of his claim that he was "under psychiatric care and unable to comprehend the true extent of what he was served with in 2009," and that it should have exercised its discretion to set aside the Judgment to decide the matter on the merits.

The trial court found that Ranjit had been served by mail with the Judgment and notice of entry of judgment on May 12, 2009. Although Ranjit acknowledged receiving those documents in May 2009, he did not file a motion to vacate for over two years, until June 2011. The court found that no relief was available pursuant to Code of Civil Procedure section 473.5 because Ranjit's motion had not been filed within: (1) a reasonable time after service of the judgment; (2) 180 days of the May 2009 service of written notice of entry of the default judgment; or (3) two years of entry of the October 2007 Judgment.

The court also found that Ranjit was not entitled to relief under Code of Civil Procedure section 473, subdivision (b) and Family Code section 2122, because his motion was not timely under those statutes. In addition, Ranjit was not entitled to equitable relief on the ground of either extrinsic fraud or mistake, because he failed to demonstrate any meritorious defense to the Judgment, and failed to demonstrate diligence in seeking to set aside the default once it was discovered.

Ranjit takes issue with these findings. However, Ranjit's failure to procure an adequate record precludes us from adequately reviewing his challenge to the trial court's

Order. “Error is *never presumed* on appeal. To the contrary, appealed judgments and orders are *presumed correct* [citation]; and appellant has the burden of overcoming this presumption by affirmatively showing error on an *adequate record*.” (Eisenberg et al., Cal. Practice Guide: Civil Appeals & Writs (The Rutter Group 2012) ¶ 4:2, pp. 4-1–4-2, citing *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140–1141.) It is Ranjit’s burden to establish that the Order lacks sufficient evidentiary support. (*Adoption of Allison C.* (2008) 164 Cal.App.4th 1004, 1011.) To satisfy that burden, Ranjit is charged with presenting an inadequate record from which the error is demonstrated. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296.) Preparation of a sufficient record is pivotal to an appellant’s potential for success on appeal. And, when assessing whether the trial court’s factual conclusions find sufficient evidentiary support, we consider the evidence most favorable to the party below. (*Plumas County Dept. of Child Support Services v. Rodriguez* (2008) 161 Cal.App.4th 1021, 1026.)

Although Ranjit requested that his motion to vacate be included in the appellate record, he failed to request that the record also include his declaration in support of that motion. The record contains only the motion and an accompanying three-paragraph unsigned document entitled “Declaration of Ranjit Chana in Support of Motion to Set Aside and Vacate.” Similarly, although Ranjit designated Indu’s opposition to motion to vacate and his reply thereto for inclusion in our record, he did not indicate that the record should also contain the declarations and accompanying exhibits of Indu, her daughter and Indu’s attorney that were submitted to the trial court in support of Indu’s opposition. None of those declarations or exhibits—on which the trial court’s ruling is clearly premised—are before us, nor is Ranjit’s reply.³ Nothing in the record supports Ranjit’s

³ Ranjit had ample opportunity to review and seek to correct and/or augment the record. In May 2012, the clerk notified Ranjit that various documents designated for inclusion in the appellate record were missing, and Ranjit’s counsel apparently supplied some of those documents to the clerk. In July 2012 the clerk provided notice again that numerous documents designated for the appellate record still remained missing.

assertions that he was improperly served or that Indu committed fraud. Nor do any documents shed light on Ranjit's claim that the court abused its discretion by refusing to set aside the Judgment. Appellate review is not possible without an adequate record explaining what occurred. It is Ranjit's burden to demonstrate prejudicial error on an adequate record. He has not satisfied that burden here.

In *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, the court found an appellant unable to carry his burden on appeal to demonstrate that the trial court erred when it granted a motion to strike portions of a complaint when the only record on appeal was appellant's appendix containing notice of that ruling. (*Id.* at p. 502.) In the absence of the pivotal motion and other relevant documents, the court was unable to review the basis of the trial court's ruling. (*Ibid.*) This appeal is similarly doomed by Ranjit's provision of an inadequate clerk's transcript. (See also *Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435 [inadequate record may be ground for default if appellant predicates error on selective record, and fails to present portions of the proceedings below which may provide grounds to affirm trial court's decision].) Nor may an appellant, as Ranjit does here, with regard to Indu's alleged improper service of the Judgment, assert defects in documents filed in the trial court unless the record includes copies of those documents. (*Cosenza v. Kramer* (1984) 152 Cal.App.3d 1100, 1102; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1143.)

The record is wholly inadequate to enable us to determine whether the trial court abused its discretion by refusing to vacate the Judgment. Where "the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed." (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) Ranjit has failed to meet his burden to provide an adequate record demonstrating the errors he alleges. That failure dooms his appeal.

Apparently Ranjit conducted no additional investigation to ensure that the record was as complete as possible.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.