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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of LIANE and ROBBERT  
OSTERHOLT.

B237348

(Los Angeles County  
Super. Ct. No. BD406002)

LIANE OSTERHOLT,

Appellant,

v.

ROBBERT OSTERHOLT,

Respondent.

APPEAL from an order of the Superior Court of Los Angeles County, B. Scott Silverman, Judge. Dismissed.

Linda S. Gross for Appellant.

Jaffe and Clemens, William S. Ryden and Mark E. Mahler for Respondent.

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Liane Osterholt appeals from the trial court's denial of her motion for compliance with fiduciary duty. We dismiss the appeal.

### **BACKGROUND**

Liane and Robbert Osterholt married on June 27, 1989, and separated on April 22, 2004, with one minor child of the marriage. Liane<sup>1</sup> filed for dissolution on the date of separation. The discovery cutoff in the case occurred in May 2009.

Trial began on June 23, 2009. On January 4, 2011, the parties entered into a written settlement agreement resolving the property issues in the case, and allocating community rental properties in Needles, California to Robbert. Subsequently, a stipulated judgment of dissolution entered on March 30, 2011, awarded the Needles properties to Robbert as his separate property.

Liane filed an ex parte motion to reopen discovery on June 30, 2011, three months after the stipulated judgment. Her motion stated that she needed extensive background documentation regarding the Needles properties for 2009, 2010, and 2011. The trial court denied the motion on that same date, ordering that Robbert provide Liane with bank statements for the Needles properties.

On August 1, 2011, Liane filed a "MOTION FOR COMPLIANCE WITH FIDUCIARY DUTY" (the motion which is the subject of this appeal). The motion requested essentially the same additional documentation regarding the Needles properties as Liane had requested in her June 30, 2011 ex parte motion to reopen discovery, with most of the requests limited to 2009 and 2010.

Trial resumed on the remaining issues (spousal and child support) on August 22, 2011; on that same date Liane filed another motion to reopen discovery, repeating her request for additional documentation regarding the Needles properties.<sup>2</sup>

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<sup>1</sup> Henceforward, and intending no disrespect, we use the first names of the parties for the purpose of clarity.

<sup>2</sup> We grant Liane's motion to augment the record on appeal to include complete copies of her motions to reopen discovery. We also grant Robbert's request for judicial

On September 14, 2011, the trial court heard Liane's motion for compliance with fiduciary duty. Noting that Liane sought books and records pertaining to the Needles properties for 2009 and 2010 (before dissolution), the court observed that Robbert already had provided Liane with the reports that had been ordered on February 3, 2009, when a court order transferred management and control of the Needles properties from Liane to Robbert. Liane was now requesting the supporting documents for all the reports. The court concluded that the property had been divided so that Robbert no longer owed a fiduciary duty to Liane, and that the question was whether there was "some good reason" why Liane was entitled to the additional documentation "as opposed to a back door way of doing the discovery that we've been arguing about in the [ongoing] spousal support case over and over again. And I have some concern about, that's what this is all about." The court rejected Liane's claim that she needed the additional documentation in case her 2009 and 2010 tax returns were audited, as the returns could be prepared on the existing documentation. Robbert had complied with the February 3, 2009 order, which satisfied his fiduciary duty to Liane, who had not requested modification of the order. Expressing frustration with the burden on the court and counsel, the court ordered Robbert to produce the rent rolls for 2009 and 2010, and otherwise denied Liane's motion. (Robbert produced the rent rolls on September 30, 2011.) Liane filed a timely notice of appeal.

After filing this appeal, Liane filed an ex parte motion to reopen discovery on November 29, 2011, requesting a ruling on the August 22, 2011 motion to reopen discovery. The motion incorporated the contents of the August 22, 2011 motion to reopen discovery, and represented that Liane needed to be able to subpoena the rent rolls and other bank documents related to the rental properties (among other documents related to Robbert's income for the purpose of calculating child support). Liane filed a third motion to reopen discovery on December 22, 2011, which also stated that she needed

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notice of the December 22, 2011, motion to reopen discovery and Liane's supporting declaration.

additional documentation regarding the Needles properties.<sup>3</sup> Trial was then set to resume in June 2012.

## DISCUSSION

We dismiss Liane’s appeal, because the trial court’s order denying her motion for compliance with fiduciary duty was not an appealable order.

Robbert argues that, as the trial court suggested at the hearing, Liane’s “MOTION FOR COMPLIANCE WITH FIDUCIARY DUTY” is in essence a motion to reopen discovery, and the order from which Liane appeals is a nonappealable discovery order. Liane demanded that Robbert produce the same documentation regarding the Needles properties in at least three *other* motions to reopen discovery filed after the May 2009 discovery cut-off date, and before and after the motion that is the subject of this appeal. All of the motions were denied.

“Normally, in civil cases, there can only be an appeal from a final judgment. . . . ‘An appeal from a judgment that is not final violates the one final judgment rule and must therefore be dismissed [citations] . . . .’ [Citation.]” (*Vivid Video, Inc. v. Playboy Entertainment Group, Inc.* (2007) 147 Cal.App.4th 434, 441.) “In determining whether a judgment is final, its substance governs, not its label or form. [Citations.]” (*Id.* at p. 442.) No appeal may be taken from an interlocutory judgment, with several exceptions not applicable here. (Code Civ. Pro., § 904.1, subd. (a)(1).) “[P]iecemeal disposition and multiple appeals in a single action would be oppressive and costly, and . . . a review of intermediate rulings should await the final disposition of the case. [Citations.]” (*Knodel v. Knodel* (1975) 14 Cal.3d 752, 760.) Generally, discovery orders are not appealable, and may be reviewed only on appeal from a final judgment. (*White v. Marciano* (1987) 190 Cal.App.3d 1026, 1029, fn. 1.)

Liane responds that whether the trial court should have granted her motions to reopen discovery “is a separate issue and is an issue which cannot be appealed until the

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<sup>3</sup> Liane represents that the court denied her November 29, 2011 ex parte motion, causing her to file the December 22, 2011 motion to reopen discovery, which was denied by the trial court on February 6, 2012.

trial is concluded,” and the order in issue in this appeal is appealable as an order after final judgment. (Code Civ. Pro., § 904.1, subd. (a)(2).) In this family law case, however, the record contains no final judgment on all issues. The stipulated judgment of dissolution made only temporary support orders “pending further hearing by the court,” and specifically “reserves jurisdiction over all issues pertaining to the permanent spousal support order.” Further, the parties waived the right to appeal the stipulated judgment, and trial continued on support issues.

The order appealed from was not a final determination whether Robbert was required to produce the supporting documentation on the Needles properties. That issue continued to be litigated in Liane’s multiple motions to reopen discovery. Liane argues that those motions to reopen, which seek the same documents denied her in the order from which she appeals, would be appealable when the trial is concluded (and a final judgment is entered). In other words, Liane seeks to appeal the issue now and perhaps once again, after the support trial ends and final judgment on all issues is entered. Such piecemeal disposition is prohibited by the final judgment rule.

Nor did Liane avail herself of the procedure pursuant to Code of Civil Procedure section 904.1, subdivision (a)(10), which permits an appeal “[f]rom an order made appealable by the provisions of . . . the Family Code.”<sup>4</sup> Family Code section 2025 provides: “Notwithstanding any other provision of law, if the court has ordered an issue or issues bifurcated for separate trial or hearing in advance of the disposition of the entire case, a court of appeal may order an issue or issues transferred to it for hearing and decision when the court that heard the issue or issues certifies that the appeal is appropriate. . . .”<sup>5</sup> In accordance with Family Code section 2025, California Rules of Court, rules 5.175 and 5.180 establish that the party seeking immediate appeal of a decision on a bifurcated issue must obtain from the trial court a certificate of probable

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<sup>4</sup> We requested supplemental briefing from the parties on this issue.

<sup>5</sup> Under California Rules of Court, rule 5.175(c)(4), an appropriate issue for bifurcation is “[w]hether property is separate or community.”

cause for appeal, and if the certificate is granted, must file in the court of appeal a motion to proceed with the appeal of the decision. This bifurcation and certification procedure is required to invoke appellate jurisdiction over an interlocutory order of the family court (*In re Marriage of Lafkas* (2007) 153 Cal.App.4th 1429, 1434), and it was not complied with in this case.<sup>6</sup>

We do not have jurisdiction over this appeal.

**DISPOSITION**

The appeal is dismissed. Costs are awarded to respondent.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

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<sup>6</sup> Liane does not request that we treat her appeal as a writ. (See *Oceanside Union School Dist. v. Superior Court* (1962) 58 Cal.2d 180, 185 & fn. 4.)