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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of MAX EDDY
MARTINEZ and MARIA ERIKA
RODRIGUEZ.

B279066

MAX EDDY MARTINEZ,

(Los Angeles County
Super. Ct. No. SD030729)

Petitioner and Appellant,

v.

MARIA ERIKA RODRIGUEZ,

Respondent.

APPEAL from a judgment of the Superior Court of
Los Angeles County, Matthew C. St. George, Temporary Judge.
Reversed and remanded with directions.

Javier Garibay, for Appellant Max Eddy Martinez.

No appearance by Respondent.

INTRODUCTION

Max Martinez appeals from a trial court judgment that, among other things, awarded his former wife Maria Rodriguez spousal support and divided the couple's community property. Martinez argues the trial court erred by ordering him to pay Rodriguez monthly spousal support he cannot afford to pay and by making the award retroactive. Martinez also contends substantial evidence does not support the trial court's finding that Rodriguez's health declined since the couple's separation or the court's valuation of certain community assets.

Martinez forfeited his contentions regarding retroactive support payments and Rodriguez's health because he submitted an incomplete record on appeal that precludes meaningful review. Martinez also forfeited his arguments regarding the valuation of certain items of community property because he did not make those arguments in the trial court.

On the merits of his remaining arguments, Martinez has not shown that the trial court ordered him to pay monthly spousal support he cannot afford to pay. He has shown, however, that substantial evidence does not support some of the trial court's valuations of certain community property assets and that the trial court abused its discretion by requiring Martinez to pay Rodriguez for her share of the value of those items. Therefore, we reverse the judgment and remand with directions for the trial court to recalculate the value of those items of community property to effect an equal division of community property.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Marriage and Divorce*

Martinez and Rodriguez married in 2005 but had lived together since the birth of their daughter in November 2000. Before their marriage Martinez and Rodriguez shared incomes and expenses, purchased a family home and other real estate, and acquired a neighborhood market where they both worked. After their separation in April 2012 Rodriguez moved out of the family home, stopped working at the market, and became dependent on public assistance. On April 23, 2012 Martinez filed a petition for dissolution of marriage, and on May 17, 2012 Rodriguez filed a response requesting spousal support.

B. *Trial and Decision*

A contentious trial began on June 26, 2015 and continued on September 18, 2015, December 4, 2015, and April 22, 2016.¹ Rodriguez was represented by counsel until December 28, 2015,

¹ The trial court stated: “The conduct of the parties has been extremely contentious and dysfunctional since the inception of this case. These difficulties have been exacerbated by the unprofessional behavior of [Martinez’s] counsel, Javier Garibay, throughout the course of this case,” although the trial court also noted “both counsel engaged in disruptive and contentious conduct.” During the trial, Mr. Garibay “used a profanity,” claimed the court had ruled against him “because he was Mexican,” and at one point stated, in response to an objection by counsel for Rodriguez, “Your Honor, you need to sanction this woman. If she was a child, I would get my belt and just whip her.” The clerk observed Martinez “‘give the finger’ to [Rodriguez] while she was on the stand.”

when she began representing herself. Contested issues included legal and physical custody of the couple's two children, visitation, spousal support, and the division of community property. This appeal concerns only the trial court's July 12, 2016 rulings on spousal support and division of community property.

Regarding spousal support, the trial court, considering the circumstances listed in Family Code section 4320,² found the couple lived a "middle-class existence" that allowed them to buy a three-bedroom home, property outside the United States, cemetery plots, two cars, and home furnishings. The court found Martinez "assumed ownership" of the family business and its revenue after the couple's separation and he received revenue from two residential rental units he and Rodriguez had purchased. The court found Rodriguez "worked diligently throughout the relationship," but had become dependent on public assistance since her "exile from the family home and business." The court determined she could work part time, but "[w]hether she is capable of full-time employment depends on her current health, which has declined since the separation." The court concluded Rodriguez should be able to live without public assistance and afford an apartment to share with her son. The court awarded Rodriguez \$2,500 in monthly spousal support retroactive to May 17, 2012, when she first requested spousal support.

Regarding the division of property, the court relied primarily on Martinez's April 23, 2012 community and separate property declarations (Judicial Council Forms, form FL-160). The court found the family business was community property but

² Statutory references are to the Family Code.

declined to determine its value because neither party had provided testimony or evidence on the value of the business. The court also declined to rule on the ownership and appropriate distribution of nine bank accounts and two financial services businesses the parties identified in their respective property declarations because neither party submitted any evidence of the value of those assets.

The court accepted the values of the real property identified in Martinez's form FL-160 and included as community property the family home, real property in El Salvador and Mexico, and cemetery plots in California. The court ruled each party was entitled to \$277,000 as his or her share of the real property owned by the community at the time of separation. The form FL-160 valued the furnishings in the family home at \$20,600, half of which the court awarded to Rodriguez because Martinez had excluded Rodriguez from the home. The court also found the value of the two cars was \$30,000 and ordered Martinez to pay Rodriguez half of that amount.

The court entered a judgment of dissolution on October 4, 2016. Martinez timely appealed.

DISCUSSION

A. Martinez Has Not Shown Any Error in the Trial Court's Spousal Support Award

Martinez argues the trial court erred in failing to consider his expenses in ordering spousal support, making spousal support retroactive to May 2012, and finding Rodriguez's health had declined since the couple separated. None of these arguments merits reversal.

1. *Applicable Law and Standard of Review*

“Permanent spousal support ‘is governed by the statutory scheme set forth in sections 4300 through 4360. Section 4330 authorizes the trial court to order a party to pay spousal support in an amount, and for a period of time, that the court determines is just and reasonable, based on the standard of living established during the marriage, taking into consideration the circumstances set forth in section 4320.’ [Citations.] The statutory factors include the supporting spouse’s ability to pay; the needs of each spouse based on the marital standard of living; the obligations and assets of each spouse, including separate property; and any other factors pertinent to a just and equitable award.” (*In re Marriage of Blazer* (2009) 176 Cal.App.4th 1438, 1442-1443, citing § 4320, subds. (c)-(e), (n); see *In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 207.)

“In making its spousal support order, the trial court possesses broad discretion so as to fairly exercise the weighing process contemplated by section 4320, with the goal of accomplishing substantial justice for the parties in the case before it. “The issue of spousal support, including its purpose, is one which is truly personal to the parties.” [Citation.] In awarding spousal support, the court must consider the mandatory guidelines of section 4320.” (*In re Marriage of McLain* (2017) 7 Cal.App.5th 262, 269; accord, *In re Marriage of Nelson* (2006) 139 Cal.App.4th 1546, 1559.) “In balancing the applicable statutory factors, the trial court has discretion to determine the appropriate weight to accord to each. [Citation.] But the “court may not be arbitrary; it must exercise its discretion along legal lines, taking into consideration the

applicable circumstances of the parties set forth in [the statute], especially reasonable needs and their financial abilities.”

[Citation.] Furthermore, the court does not have discretion to ignore any relevant circumstance enumerated in the statute. To the contrary, the trial judge must both recognize and *apply* each applicable statutory factor in setting spousal support.” (*In re Marriage of Nelson*, at p. 1559; see *In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 304.)

“[T]he trial court’s decision regarding the amount and duration of spousal support is subject to the abuse of discretion standard.” (*In re Marriage of Left* (2012) 208 Cal.App.4th 1137, 1150.) “We examine the challenged order for legal and factual support. ‘As long as the court exercised its discretion along legal lines, its decision will be affirmed on appeal if there is substantial evidence to support it.’ [Citations.] ‘To the extent that a trial court’s exercise of discretion is based on the facts of the case, it will be upheld “as long as its determination is within the range of the evidence presented.”’” (*In re Marriage of Blazer*, *supra*, 176 Cal.App.4th at p. 1443.)

2. *The Trial Court Did Not Order Martinez To Pay More Spousal Support Than He Could Afford*

Martinez argues his income tax returns “clearly demonstrate” he is unable to pay Rodriguez monthly spousal support of \$2,500. He contends his income taxes for the four years preceding trial showed he “never averaged more than \$3,048.16 in adjusted gross income per month, . . . leaving [him] with slightly over \$500 a month to live.” Martinez, however, admitted at trial he did not include on his June 25, 2015 income

and expense declaration approximately \$2,000 in monthly earnings from a financial services business, nor does that amount appear on his 2014 income tax return. At trial Martinez conceded his monthly income was actually \$4,956. Considering his (true) income, Martinez has not shown the trial court abused its discretion by ordering him to pay Rodriguez \$2,500 in monthly spousal support.

3. *Martinez Has Not Shown the Trial Court Erred in Finding Rodriguez's Health Had Declined*

As noted, the trial court found that Rodriguez could work part time but that whether she could work full time depended on her health, which the court found had declined since separation. Martinez argues this finding is “untrue as there was no evidence presented in court that [Rodriguez] was ill or [her] health had declined.” We cannot meaningfully review Martinez’s challenge to the trial court’s finding, however, because Martinez did not provide an adequate record.

A judgment or order is presumed correct and the appellant has the burden of demonstrating prejudicial error. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *In re Marriage of Marshall* (2018) 23 Cal.App.5th 477, 483.) “Failure to provide an adequate record on an issue requires that the issue be resolved against [the appellant].” (*Jameson v. Desta* (2018) 5 Cal.5th 594, 609; accord, *Rhue v. Superior Court* (2017) 17 Cal.App.5th 892, 897; see *Hotels Nevada, LLC v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348 “[b]y failing to provide an adequate record, appellant cannot meet his burden to show error and we must resolve any challenge to the order against him”).) “[I]f the record on appeal does not contain all of

the documents or other evidence considered by the trial court, a reviewing court will ‘decline to find error on a silent record, and thus infer that substantial evidence’ supports the trial court’s findings.” (569 East County Boulevard LLC v. Backcountry Against the Dump, Inc. (2016) 6 Cal.App.5th 426, 434, fn. 9; see *Jameson v. Desta*, at p. 609 [““if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed””].)

The trial court based its decision on “all pleadings submitted in preparation for the trial,” as well as the testimony and evidence introduced at trial. The record provided by Martinez, however, includes only two of Rodriguez’s many court filings: income and expense declarations filed June 24, 2015 and March 29, 2016. Martinez did not provide this court with any other documents submitted by Rodriguez, such as her response to his petition for dissolution, her trial brief, or her numerous declarations. (See *Gonzalez v. Rebollo* (2014) 226 Cal.App.4th 969, 977 [“[w]ithout a complete record, we are unable to determine whether substantial evidence supported the implied findings underlying the trial court’s order”]; *Christie v. Kimball* (2012) 202 Cal.App.4th 1407, 1412 [“[t]o the extent the court relied on documents not before us, our review is hampered,” and we “cannot presume error from an incomplete record”].) Without providing an adequate record, Martinez cannot meet his burden of showing substantial evidence does not support the trial court’s finding regarding Rodriguez’s health and ability to work.

4. *The Trial Court Did Not Err in Ordering
Martinez To Pay Spousal Support Retroactively*

Martinez argues the trial court abused its discretion by making the spousal support order retroactive to the filing of Rodriguez’s response to the petition for dissolution. Martinez contends the order is “unreasonable” because Rodriguez “had plenty of opportunity to seek a temporary order for spousal support during the litigation and chose not to do so.”

There is no indication in the record, however, Martinez raised this issue in the trial court. Therefore, he forfeited the argument on appeal. (See *In re Marriage of Campi* (2013) 212 Cal.App.4th 1565, 1572 [an appellant forfeits issues not raised at trial].) To the extent Martinez raised the retroactivity issue in a way that is not reflected in the record he designated for appeal, the record is inadequate for us to evaluate Martinez’s assertion that Rodriguez failed to seek temporary spousal support. Indeed, what record there is suggests Martinez’s assertion is incorrect: The trial court’s ruling reflects that Rodriguez sought spousal support as early as her May 17, 2012 response (which Martinez did not include in the record on appeal). Rodriguez’s request for support may have included a request for temporary support, which a court may award retroactively. (See *In re Marriage of MacManus* (2010) 182 Cal.App.4th 330, 337; *In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 166; see also *In re Marriage of Mendoza & Cuellar* (2017) 14 Cal.App.5th 939, 943 [“an order for temporary spousal support may, at the court’s discretion, be made retroactive to the date on which the petition for dissolution was

filed”].) Again, in the absence of an adequate record. Martinez cannot show error.³

B. *Martinez Has Shown Some Error in the Valuations the Trial Court Used To Divide the Community Property*

Martinez argues the trial court erred by improperly valuing certain items of community property the court divided between Martinez and Rodriguez. Although Martinez forfeited some of these arguments by not raising them in the trial court, others are preserved and warrant reversal.

1. *Applicable Law and Standard of Review*

We review a trial court’s division of community property for abuse of discretion. (*In re Marriage of Honer* (2015) 236 Cal.App.4th 687, 693; *In re Marriage of Campi, supra*, 212 Cal.App.4th at p. 1572.) Under “section 2550, the court must divide the community estate of the parties equally.” (*In re Marriage of Campi*, at p. 1572, fn. omitted.) “The trial court’s findings on the characterization and valuation of assets in a dissolution proceeding are factual determinations which are reviewed for substantial evidence.” (*Ibid.*; see *In re Marriage of Greaux & Mermin* (2014) 223 Cal.App.4th 1242, 1250 [the division of marital property is “a nondelegable judicial function [citation] which must be based upon substantial evidence”].) “In

³ Nor is the record adequate to evaluate Martinez’s argument that the trial court’s order requiring him to pay spousal support retroactively is barred under the doctrine of laches.

this regard, the court has broad discretion to determine the manner in which community property is divided and the responsibility to fix the value of assets and liabilities in order to accomplish an equal division. [Citations.] The trial court’s determination of the value of a particular asset is a factual one and as long as that determination is within the range of the evidence presented, we will uphold it on appeal.” (*In re Marriage of Campi*, at p. 1572; accord, *In re Marriage of Duncan* (2001) 90 Cal.App.4th 617, 632.)

2. *Martinez Forfeited His Arguments Regarding the Trial Court’s Valuations of the Furnishings, Foreign Real Property, and Cemetery Plots*

Martinez remained in the marital home with its furnishings and excluded Rodriguez from the home. Based on the form FL-160 Martinez filed in April 2012, the trial court valued the furnishings at \$20,600 and ordered Martinez to pay Rodriguez \$10,300 for her share of the furnishings. Martinez argues the trial court abused its discretion by relying on the April 2012 form FL-160 because it was more than four years old at the time of trial and furniture “depreciates through time.” Even if we accepted Martinez’s assumption regarding depreciation (in support of which he cites no evidence), Martinez forfeited this argument by not making it in the trial court. (See *In re Marriage of Schleich* (2017) 8 Cal.App.5th 267, 293 [husband forfeited his contention the trial court erred by considering “outdated information” and refusing to consider more recent income and expenses declarations because the husband did not object at trial]; *In re Marriage of Campi*, *supra*, 212 Cal.App.4th

at pp. 1572-1573 [husband forfeited valuation arguments by not raising them at trial].)⁴

Martinez similarly argues that, because the value of real property “will change through time,” the trial court abused its discretion by relying on Martinez’s April 2012 form FL-160 in determining the value of the properties in El Salvador and Mexico and the cemetery plots. Martinez, however, forfeited this argument as well by not making it in the trial court. And he cites no evidence in the record establishing the values of those properties at the time of trial or the rate of inflation or deflation for those properties between separation and the time of trial. (See *In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1529 [“contentions or theories raised for the first time on appeal are not entitled to consideration”].)

3. *Substantial Evidence Does Not Support the Trial Court’s Valuations of the Los Angeles Home or the Family Cars*

The court valued the family home in Los Angeles at \$400,000. As Martinez correctly points out, however, at the time of trial he and Rodriguez jointly owed \$416,155.05 on a loan secured by a deed of trust on the home, which the trial court did not take into account. “The trial court is generally required to “divide the community estate of the parties equally.” [Citation.] In satisfying this mandate, “the court must distribute both the assets and the obligations of the community so that the

⁴ At one point during the trial counsel for Rodriguez appears to have stipulated that the home furnishings were worth \$8,850. Martinez does not argue the trial court’s valuation of \$20,600 lacks substantial evidence for this reason.

residual assets awarded to each party after the deduction of the obligations are equal.”” (*In re Marriage of Walker* (2015) 240 Cal.App.4th 986, 991; accord, *In re Marriage of Peterson* (2016) 243 Cal.App.4th 923, 935.) A promissory note secured by a deed of trust on community property is a community debt. (See *In re Marriage of Oldfield* (1979) 94 Cal.App.3d 259, 263.) The trial court erred by failing to distribute this debt or consider it in valuing the home.

In addition, the trial court valued the couple’s two cars, a 2007 Toyota Prius and a 2007 Toyota Tundra, at \$30,000, based on Martinez’s 2012 form FL-160, in which he valued the Prius at \$10,000 and the Tundra at \$20,000. The court found “[Rodriguez] has no car,” awarded the value of the cars to Martinez, and ordered him to pay Rodriguez \$15,000 “as her share of” the value of the cars.

Martinez argues that substantial evidence does not support the trial court’s valuation of the Prius at \$10,000 and that the court abused its discretion by ordering him to reimburse Rodriguez for half the value of the Tundra. Martinez is correct on both counts. Martinez testified at trial that the value of the Prius was \$3,860.⁵ To support his valuation of the Prius, Martinez introduced a Kelly Blue Book estimate generated online on March 10, 2015. Rodriguez did not challenge Martinez’s valuation of the Prius, and the court acknowledged and questioned Martinez about the Kelly Blue Book estimate. Martinez also stated that he had an accident that left the Prius a total loss and that he did not receive any payment from the

⁵ This is the amount Martinez apparently listed on an updated schedule of assets and debts, which is not in the record on appeal.

insurance company for the car. Martinez also testified at trial that the value of the Tundra was still approximately \$20,000 but that Rodriguez had possession of that car. Rodriguez confirmed she had possession of the Tundra “because [Martinez] had a collision with [the Prius] in order to take it away from me.”

The court’s valuation of the Prius at \$10,000 based on Martinez’s 2012 form FL-160 lacks substantial evidence because Martinez testified without objection and provided supporting evidence that at the time of trial the Prius was worth only \$3,860. (See § 2552, subd. (a) [court shall value community assets “as near as practicable to the time of trial”]; *In re Marriage of Reuling* (1994) 23 Cal.App.4th 1428, 1435 [for purposes of making a division of community property, the court “shall value the assets and liabilities as near as practicable to the time of trial”].) The court also abused its discretion by requiring Martinez to pay Rodriguez half the value of the Tundra when Rodriguez admitted she had possession of it. There is no substantial evidence to support the trial court’s finding that Rodriguez did not have a car; it was undisputed she had the Tundra. Therefore, we remand for the trial court to reassess the value of the Prius and to determine whether either spouse should make an equalizing payment for the value of the cars.

DISPOSITION

The judgment is reversed and remanded with directions for the trial court to recalculate the value of the Los Angeles home, the Prius, and the amount either party must reimburse to the other to effect an equal division of the community estate. The judgment is otherwise affirmed. Martinez is to bear his costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.