

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Marriage of Anastasiya Volovik
and Pavel Parchin.

B269566

(Los Angeles County
Super. Ct. No. BD585783)

ANASTASIYA VOLOVIK,

Respondent,

v.

PAVEL PARCHIN,

Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Kathleen O. Diesman, Judge. Affirmed.

Pavel Parchin, in pro. per., for Appellant.

Anastasiya Volovik, in pro. per., for Respondent.

The family law court made at least two mistakes in this marriage dissolution action between Anastasiya Volovik (Volovik) and her former husband Pavel Parchin (Parchin). But the question we decide is whether Parchin took timely and appropriate steps to seek correction of the errors such that reversal of the judgment against him is required.

I. BACKGROUND

Just over three years after marrying Parchin, Volovik filed a petition to dissolve the marriage.¹ During the ensuing proceedings, Parchin flouted court orders to pay temporary spousal support (plus attorney fees and sanctions) and to provide adequate responses to certain of Volovik's discovery requests. This had two consequences.

First, as to the discovery non-compliance, the family law court struck his response to the marriage dissolution petition and entered his default; in response, Parchin filed a timely motion to set the entry of default aside. Second, as to the failure to pay spousal support and other court-ordered amounts, the court proceeded with two rounds of contempt proceedings against Parchin, ultimately finding him in contempt each time.

When commencing contempt proceedings, the court ordered pending matters in the case—including Parchin's motion to set aside the entry of default—would trail resolution of the contempt proceedings. Nevertheless, before the contempt proceedings had concluded, and before his motion to set aside the entry of default was heard, the family law court entered a default *judgment*

¹ Both parties were represented by counsel during the proceedings at the family law court.

against Parchin in a form as proposed by Volovik. The default judgment included a final award of spousal support to her in the amount of \$11,473, and it did not include a division of assets between the parties. Parchin did not take an appeal from the judgment after its entry.

After the conclusion of the first round of contempt proceedings, but while the second round was still pending, Parchin moved under Code of Civil Procedure section 473, subdivision (d) to set aside the default judgment the court entered almost ten months earlier.² He argued, among other things, that the court had wrongly calculated the judgment's final spousal support award using a computer-generated temporary support calculation rather than based on consideration of the factors set forth in Family Code section 4320.

At a hearing, the family law court decided both Parchin's motion to set aside the entry of default, which he had filed months earlier, and Parchin's more recent motion to set aside the default judgment. As to the motion to set aside the entry of default, the court concluded Parchin's discovery responses were the product of intentional strategy, not mistake, and he could not show that any mistakes of law on his part were reasonable and justified. As to the motion to set aside the default judgment, the family law court conceded the final support award in the default judgment did not result from consideration of the factors set forth in Family Code section 4320 and "may very well have been an error of law." But the court found Parchin was not entitled to

² In relevant part, the statute provides a court "may, on motion of either party after notice to the other party, set aside any void judgment or order." (Code Civ. Proc., § 473, subd. (d).)

relief because any error rendered the judgment merely voidable, not void.

II. DISCUSSION

The question before us is whether the default judgment the family law court entered was void and therefore vulnerable to being set aside at any time. Our answer is no.

We recognize the family law court made certain errors: entering a default judgment before ruling on Parchin's motion to set aside the entry of default was one, and making a final spousal support order without consideration of the Family Code section 4320 factors was another. But binding authority holds that, generally, a judgment is void only if the court issuing it lacks fundamental jurisdiction, which is not the case here: the family law court had jurisdiction over the issues being litigated and over the parties (both of whom appeared and vigorously litigated the case). There was accordingly no proper legal basis for Parchin's motion to set aside the judgment under Code of Civil Procedure section 473, subdivision (d), which can be invoked only to attack a void judgment.

A. *Standard of Review*

We review de novo a trial court's determination that a default judgment is not void. (*Dhawan v. Biring* (2015) 241 Cal.App.4th 963, 968 (*Dhawan*); *Talley v. Valuation Counselors Group, Inc.* (2010) 191 Cal.App.4th 132, 146 (*Talley*).)

*B. Parchin’s Motion to Set Aside the Default Judgment
Properly Failed Because the Judgment Was Not Void*

Section 473, subdivision (d) of the Code of Civil Procedure allows a court to set aside any void judgment or order upon the motion of an injured party at any time.³ (*Dhawan, supra*, 241 Cal.App.4th at p. 973.) On the question of distinguishing void from voidable judgments, our Supreme Court has explained: “[I]t is helpful to observe that jurisdictional errors can be of two types. A court can lack fundamental authority over the subject matter, question presented, or party, making its judgment void, or it can merely act in excess of its jurisdiction or defined power, rendering the judgment voidable.” (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56.) Courts have relied on this rationale to conclude various errors, including seemingly serious errors depriving a litigant of adequate notice, do not render a judgment void. (*People v. American Contractors Indem. Co.* (2004) 33 Cal.4th 653, 662-663 [premature entry of summary judgment does not effect a fundamental loss of jurisdiction and judgment was therefore voidable, not void]; *Johnson v. E-Z Brokerage, Inc.* (2009) 175 Cal.App.4th 86, 98-99; *Lee v. An* (2008) 168 Cal.App.4th 558, 565 [“In this case, the court had fundamental jurisdiction over the parties and the subject matter, but acted in

³ Other provisions of section 473 allow a court to relieve a party from a judgment attributable to the party’s “mistake, inadvertence, surprise, or excusable neglect” so long as the challenge is brought within six months of the date of judgment. (Code Civ. Proc., § 473, subd. (b).) But a court has no authority to set a judgment aside under Code of Civil Procedure section 473, subdivision (d) unless it is void, not merely voidable. (*Talley, supra*, 191 Cal.App.4th at p. 146.)

excess of its jurisdiction by imposing terminating sanctions without adequate prior notice. The resulting default and default judgment were thus voidable, not void”].)

Here, there is no dispute the family law court had fundamental jurisdiction over the nature of the suit and the parties. And no other basis exists to hold the default judgment is void. The judgment did not award Volovik relief in excess of that which she requested in her marriage dissolution petition. (Compare *In re Marriage of Kahn* (2013) 215 Cal.App.4th 1113, 1117 [default judgment in marital action was void to the extent it awarded spouse more than requested].) Nor has Parchin argued he could not have earlier challenged the default judgment because he was concerned he would have risked incriminating himself in the pending contempt proceedings. In fact, if he had made such an argument, the record would refute it—his request to set aside the default judgment was filed while contempt proceedings were still pending.

The default judgment is not void. If Parchin wished to challenge the judgment, his remedy was to take an appeal from it, which he did not do.⁴

⁴ Indeed, even if we were to conclude Parchin had some legal basis to seek relief under the separate provisions of section 473, subdivision (b), notwithstanding his failure to move for such relief within six months of judgment, it is difficult to see how that motion would have succeeded. His argument was not that the default judgment was attributable to his own “mistake, inadvertence, surprise, or excusable neglect” (Code Civ. Proc., § 473, subd. (b)), but rather that the judgment should be vacated because of errors made by the family law court.

DISPOSITION

The judgment is affirmed. Respondent shall recover her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

TURNER, P. J.

KIN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.