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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of NATALIA MOROZOVA and EDWARD CALLOW.	B232465; B231698
NATALIA MOROZOVA, Appellant, v. EDWARD CALLOW, Respondent.	(Los Angeles County Super. Ct. No. BD491565)

APPEALS from the orders of the Superior Court of Los Angeles County, Rafael A. Ongkeko, Judge. Affirmed.

Natalia Morozova, in pro. per., for Appellant.

Edward Callow, in pro. per., for Respondent.

Natalia Morozova appeals[1] from various orders entered to resolve issues relating to spousal support and the appointment of various therapists for her minor daughter, Frances Callow ("Frances"), in the post dissolution proceedings between appellant and respondent, Edward Callow. Before this court, appellant challenges various orders, some of which she did not properly appeal from, others from which she timely appealed and others which are moot. Specifically, as to appellant's challenges to orders appointing various therapists for Frances, her appeal is moot because all of the parties have moved out of state and California courts no longer have exclusive, continuing jurisdiction over child custody determinations. In addition, appellant also assails the trial court's modification of spousal support and child support from the parties' 2008 stipulated judgment and asks the court to order that she be reimbursed for two of Frances' therapy sessions. As we shall explain, we do not reach the merits of these contentions because appellant could have, but did not appeal from these matters, or as in the case of the reimbursement request, they relate to issues that were not decided by the lower court, nor were they part of the orders on appeal. As for the order from which she properly appealed, namely, the order capping spousal support, we conclude that sufficient evidence supported the court's findings as to those issues, and that the court did not abuse its discretion. Consequently we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant and respondent were married in 1996. Thereafter, appellant filed a petition for dissolution of marriage on August 21, 2008. The couple has one minor child, Frances Callow, born in 1997. On November 18, 2008, appellant and respondent filed a judgment of dissolution that included a stipulated judgment becoming effective February 23, 2009.

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[1] Appellant has filed two separate appeals (case Nos. B232465 & B231698) both relating to post dissolution orders. For the sake of convenience we consider the appeals together.

The stipulated judgment awarded full custody of Frances to appellant, but reserved to the respondent the right to spend time with Frances during holidays and when mutually convenient to the parties. Based on the respondent's salary of $23,333 per month as an attorney in Moscow, the parties stipulated that respondent would provide $5,500 per month in spousal support for appellant and $2,500 per month in child support, payable to the appellant, for the care of Frances. Spousal support was capped at $5,500 per month, irrespective of whether respondent's income increased post-judgment. At the time, respondent was unemployed and payment of spousal support and child support were to commence upon the respondent's employment.

When appellant sought enforcement of the November 18, 2008, stipulated judgment, Los Angeles County Child Support Services Department informed her it was unenforceable because its enforceability turned on the employment and income of respondent, who was currently unemployed, and thus modification was necessary to enforce the judgment.

On May 20, 2010, appellant filed a declaration requesting the trial court make findings that the spousal support and child support orders in the stipulated judgment commenced on November 11, 2008. Respondent filed a declaration in response, alleging he was unemployed until January 2010 and requesting that the court order guideline child support and zero spousal support. On September 1, 2010, the trial court found changed circumstances relating to respondent's employment and modified the spousal support and child support orders from the stipulated judgment, decreasing spousal support to $600 per month and child support to $729 per month retroactively commencing June 1, 2010.

Respondent then filed an OSC on October 28, 2010, requesting the court modify his child custody and visitation rights with respect to Frances and order that spousal support be capped at $5,500 per month. On January 19, 2011, in response to respondent's OSC, the court ordered the parties to confer and select a mutually agreed upon reunification therapist to determine the wishes of Frances. The court stated: "If the parties cannot agree, the parties shall each place the name of an evaluator on one sheet of paper to submit to the court."

Nevertheless, appellant took Frances to Dr. Cohen, a therapist, without first consulting respondent. Once notified, respondent expressed his desire to first meet with the therapist himself, but was not afforded the opportunity. On March 1, 2011, the court ordered a hearing on March 11, 2011, to select a child custody evaluator under Evidence Code section 730 and acknowledged that it had a report from Dr. Cohen, but refused to read it. The court also capped spousal support payable by respondent at $5,500 per month—the amount agreed upon in the stipulated judgment.

On March 11, 2011, the court appointed Dr. Schwartz as reunification therapist for Frances, giving appellant until March 28, 2011, to file an ex parte order to show cause as to why the appointment of Dr. Schwartz should be set aside. During the same hearing, the court acknowledged appellant's request for reimbursement of $980 for her visits with Dr. Cohen but did not decide the issue. Thereafter, on April 22, 2011, the court found that appellant, via Power of Attorney, gave respondent's mother, Susan Pettersson, who resides in the state of Washington, custody of Frances during her recovery from surgery. Since the minor child was no longer in California, the court set aside the appointment of Dr. Schwartz and stated that a reunification specialist in Washington could be appointed in lieu of Dr. Schwartz.

Appeals

Appellant appealed from the March 1, 2011, order placing a $5,500 cap on spousal support and refusing to consider the report of Dr. Cohen on April 19, 2011. She also appealed from the March 11, 2011, order appointing Dr. Schwartz as Frances' reunification therapist and the April 22, 2011, order allowing the appointment of a different therapist in Washington State on May 9, 2011.

Post-Appeal Litigation and Dismissal by the Trial Court

On July 1, 2011, the trial court dismissed the child custody proceedings for lack of subject matter jurisdiction, finding that the appellant, respondent, and the minor child, had moved to Washington State.

DISCUSSION

Appellant asserts a number of issues on appeal. Specifically, she challenges the order placing a cap on spousal support, the court's refusal to consider the report of Dr. Cohen, the order appointing Dr. Schwartz as minor child's reunification therapist, and the order allowing appointment of a different therapist in Washington State. She also, however, assails other court orders and findings that were not litigated below or appealed in a timely manner. For his part, respondent contends this court lacks jurisdiction to hear these appeals because all of the parties reside out of state and therefore the appeals should be dismissed as moot.

As we shall explain more fully herein, for a number of reasons several of appellant's claims are simply not reviewable by this court, while other claims are properly before us. However, before we reach these matters, we first address respondent's mootness claim.

I. Mootness

Respondent argues that these appeals are moot,[2] because on July 1, 2011, during the pendency of these appeals, the trial court found that both parties and Frances had

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[2] Respondent also contends that the court lacks jurisdiction to hear this appeal because appellant failed to properly serve her appellate briefs. However, this contention misses the mark. When a brief fails to conform to the Rules of Court, an appellate court, on motion or on its own, may order the brief stricken from the files with leave to properly file. A motion to strike a brief is directed to the discretion of the reviewing court, and public policy favors hearing appellate cases on the merits rather than depriving a party of his or her right to appeal because of technical noncompliance. (See *Litzmann v. Workman's Comp. App. Bd.* (1968) 266 Cal.App.2d 203, 205.) Respondent did not object to service of the appellate briefs through a motion to strike. Rather, he objected to service while simultaneously responding to the merits of the appeal in his brief. It follows that he waived his right to object to service of appellant's briefs. Moreover, in cases where the respondent is not prejudiced by a technical noncompliance and where no confusion or additional work is created for the court clerk's office, the reviewing court can simply disregard the defects and consider the brief as if it were properly filed. (See, e.g., *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 989 [sanctions for defective brief not warranted because it did not cause prejudice, confusion, or additional work for the court clerk's office].) We find this to be such a case, and thus proceed to the merits of the appeal.

moved to Washington State and dismissed the custody proceeding[3] for lack of subject matter jurisdiction.

"A case becomes moot when a court ruling can have no practical impact or cannot provide the parties with effective relief." (*Simi Corp. v. Garamendi* (2003) 109 Cal.App.4th 1496, 1503; see also *In re I.A.* (2011) 201 Cal.App.4th 1484, 1490 ["A judicial tribunal ordinarily may consider and determine only an existing controversy, and not a moot question or abstract proposition. . . . [As] a general rule it is not within the function of the court to act upon or decide a moot question or speculative, theoretical or abstract question or proposition, or a purely academic question, or to give an advisory opinion on such a question or proposition. . . ."].) We address jurisdiction and the question of mootness under spousal support and child custody below in turn.

A. Spousal Support

The Uniform Interstate Family Support Act ("UIFSA") governs the modification of spousal support awards. (See Fam. Code, § 4909, subd. (f).) It states, inter alia, "A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation." In other words, California "permits modification of a spousal support order only by the court issuing the order." (*Lundahl v. Telford* (2004) 116 Cal.App.4th 305, 317.) Here, California issued the spousal support order in question. Thus, California retains continuing, exclusive jurisdiction over modifications of the spousal support order and there is no issue of mootness, irrespective of the fact that the parties have left the jurisdiction.

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[3] The matter pending with the lower court at the July 1, 2011, hearing was a motion by respondent to modify the prior child custody order granting appellant custody of Frances. Neither party has appealed from the July 1, 2011, order in which the court dismissed the proceeding based on a finding that the court did not have jurisdiction because the parties no longer resided in this state.

B. Child Custody

The exclusive method of determining subject matter jurisdiction in custody cases is the Uniform Child Custody Jurisdiction Enforcement Act ("UCCJEA"). (Fam. Code, § 3421, subd. (b).) A court that properly acquires initial jurisdiction over the case retains exclusive, continuing jurisdiction unless one of two subsequent events occurs: (1) a court of the issuing state itself determines that "neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships," or (2) there is a judicial determination by either the issuing state or any other state that "the child, the child's parents, and any person acting as a parent do not presently reside in" the issuing state. (Fam. Code, § 3422, subds. (a)(1), (a)(2).)

With respect to child custody determinations, the UCCJEA "provides for exclusive continuing jurisdiction for the state that entered the decree until every party to the dispute has exited that state." (*In re Marriage of Nurie* (2009) 176 Cal.App.4th 478, 505.) Thus, the trial court determined that it lacked subject matter jurisdiction to modify child custody determinations when, on July 1, 2011, it found both parties and the minor child no longer resided in California.[4]

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[4] This determination may not be correct. Family Code Section 3422, subdivision (b) provides: "A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 3421." (Fam. Code, § 3422, subd. (b).) Family Code section 3421, subdivision (a) provides, in pertinent part: a court of this state has jurisdiction to make an initial child custody determination only if any of the following are true: (1) This state is the home state of the child on the date of the commencement of the proceeding. . . ." (Fam. Code, § 3421, subd. (a)(1).) Here, it appears that Frances resided in California on October 28, 2010, when respondent commenced the custody proceeding which resulted in the orders appellant seeks to challenge on appeal. This notwithstanding, because neither party appealed from the lower court's order dismissing the custody proceeding based on its conclusion that it lacked continuing jurisdiction, that order is now final and is binding on this court.

That the trial court now lacks jurisdiction to modify child custody determinations has implications for appellate review in this case. Respondent cites *Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129 in support of his contention that this appeal should be dismissed on the grounds of mootness. There, the trial court denied enjoining a milk processor and distributor from selling milk at a price below that allowed under the Milk Stabilization Act. (See *id.* at p. 132.) After the plaintiff appealed, the defendant's distributor's license was revoked on other grounds, the defendant creamery declared bankruptcy, and the order imposing liability on the defendant was repealed—making any continued operation by defendant's successor in interest completely legal. On appeal, the Supreme Court instructed the trial court to dismiss the case on the grounds of mootness, because it was impossible, regardless of whether they decided for or against the plaintiff, "to grant him any effectual relief whatever." (*Ibid.*)

Paul and its progeny stand for the proposition that where "pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for [the appellate] court, if it should decide the case in favor of plaintiff, to grant him any effectual relief whatever, the appeal is moot." (*Californians For An Open Primary v. McPherson (*2006) 38 Cal.4th 735, 783; accord *Consol. etc. Corp. v. United A. etc. Workers* (1946) 27 Cal.2d 859, 863; *Simi Corp. v. Garamendi* (2003) 109 Cal.App.4th 1496, 1503.)

The instant appeal presents a situation where this court cannot grant effective relief to appellant. Indeed, California now lacks subject matter jurisdiction over child custody determinations in this case. Thus, there is simply no relief available for appellant that could be enforced in the lower court. This result is consistent with the jurisdictional demands of the UCCJEA. Consequently, because California courts now lack jurisdiction to modify child custody under the UCCJEA, appellant's challenges to: (1) the trial court's refusal to read the report rendered by Dr. Cohen; (2) appointment of Dr. Schwartz as reunification therapist instead of Dr. Cohen; and (3) subsequent appointment of multiple therapists for Frances in Los Angeles and Washington State are moot.

II. Appellant's Claims That Are Not Cognizable on This Appeal

Appellant complains the trial court erred in modifying the parties' stipulated judgment and reducing spousal support and child support on a finding of changed circumstances and in not ordering that respondent reimburse her for Frances' visits to Dr. Cohen. Since these matters are not properly before this court, we cannot reach their merits on this appeal.

Our discussion is guided by the general principles and rules governing notices of appeal, appealable orders and appellate review. The notice of appeal confers jurisdiction to the appellate court as to the matters on appeal. Failure to file a proper notice of appeal deprives the appellate court of the power to review the challenged order or judgment and requires the dismissal of the appeal. (See *DeZerega v. Meggs* (2000) 83 Cal.App.4th 28, 43.)

Pursuant to the rules of court, a notice of appeal must specifically identify the order and/or judgment from which the appellant seeks appellate review. (California Rule of Court, rule 8.100(a).) The notice of appeal is sufficient "if it identifies the particular judgment or order being appealed." (Cal. Rules of Court, rule 8.100(a)(2).) "'[W]here several judgments and/or orders occurring close in time are separately appealable . . . , each appealable judgment and order must be expressly specified-in either a single notice of appeal or multiple notices of appeal-in order to be reviewable on appeal.'" (*DeZerega v. Meggs, supra*, 83 Cal.App.4th at p. 43.) Although notices of appeal are, in general, liberally construed, they will not be interpreted to include an appeal from an order that is directly and independently appealable. "If an order is appealable, an aggrieved party must file a timely notice of appeal from the order to obtain appellate review." (*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 212, 239.) A notice of appeal specifying a judgment alone does not encompass other judgments or other separately appealable orders: "'The law of this state does not allow, on an appeal from a judgment, a review of any decision or order from which an appeal might previously have been taken.' [Citation.]" (*Ibid.*)

Further, an appeal reviews the correctness of a judgment or order as of the time of its rendition, upon a record of matters that were before the trial court for its consideration. (*In re Brittany H.* (1988) 198 Cal.App.3d 533, 554.) As a general rule matters occurring subsequent to judgment and during the pendency of the appeal are irrelevant to an appeal from the judgment and are not properly before the appellate court. (*Grassilli v. Barr* (2006) 142 Cal.App.4th 1260, 1292, fn. 11; *Lewis v. Hankins* (1989) 214 Cal.App.3d 195, 200.) With these concepts in mind, we turn to appellant's specific challenges.

A. The Spousal Support and Child Support Modification Order Entered on September 1, 2010

Appellant complains the trial court erred when on September 1, 2010, it entered an order modifying the parties' stipulated judgment and reducing spousal support and child support on a finding of changed circumstances. This September 1, 2010, order was a separately appealable order. (See *In re Schmir* (1996) 134 Cal.App.4th 43, 47 [reviewing on direct appeal an order granting husband's motion to modify spousal support ordered in the judgment of dissolution].) Appellant, however, did not file an appeal from the September 1, 2010, order modifying spousal support and child support, and thus she cannot seek appellate review of the order in this appeal.

Once the court entered the order modifying spousal support, appellant's avenue of redress was to file a direct appeal. Appellant's failure to appeal from the September 1, 2010, order deprives this court of jurisdiction to consider whether the court erred in modifying the support orders.

B. Reimbursement For Visits With Dr. Cohen

Appellant also contends that respondent should be ordered to reimburse her for two therapist visits with Dr. Cohen she paid for, because she relied upon the trial court's order that respondent pay for a mutually selected reunification therapist for minor child. However, per the record before us, this issue was not resolved during trial.

Generally, matters occurring after judgment and during the pendency of the appeal are irrelevant to an appeal from the judgment and are not properly before the appellate court. (*Grassilli v. Barr*, *supra*, 142 Cal.App.4th at p. 1292, fn. 11.) As noted earlier, the

trial court refused to read the report of Dr. Cohen on March 1, 2011, and appointed Dr. Schwartz on March 11, 2011. During the March 11 hearing, the court did not decide the issue of reimbursement for Dr. Cohen. Appellant's appeal from the orders on March 1 and March 11 could not encompass the issue of payment of Dr. Cohen, which had not yet been entered. In fact, nothing before this court indicates the trial court ever ruled upon the issue of reimbursement. It follows that we lack jurisdiction to review the issue.

Nevertheless, if we did reach this issue on appeal, we would not order reimbursement. The court ordered appellant and respondent to mutually agree upon a reunification therapist, who would be paid by respondent. Appellant disregarded the court's order that the therapist be mutually selected, and instead brought Frances to Dr. Cohen, despite clear objection by respondent. Given that appellant did not follow the court's order, any denial of her reimbursement request would not constitute error.

III. Appellant's Claim Properly Asserted in this Court

With respect to the cap on spousal support, appellant argues a number of points, many of which are not properly before the court. Her only salient argument on appeal is that the cap was not supported by sufficient evidence presented at trial.

Appellant complains that the trial court erred in capping spousal support at $5,500 per month in its March 1, 2011, order. This complaint appears to be an attempt to parlay the modification of spousal support and child custody from the September 1, 2010, order into a timely appeal of the March 1, 2011, order. However, we address only appellant's contention that the evidence did not support capping spousal support at $5,500 per month.

"A party who challenges the sufficiency of the evidence to support a particular finding must *summarize the evidence on that point, favorable and unfavorable*, and *show how and why it is insufficient.* [Citation.]" (*Huong Que, Inc. v. Luu* (2007) 250 Cal.App.4th 400, 409, italics added.) "[I]t is [appellant's] duty to set forth a fair and adequate statement of the evidence which is claimed to be insufficient. He cannot shift this burden onto respondent, nor is a reviewing court required to undertake an independent examination of the record when appellant has shirked his responsibility.

. . .'" (*Ibid*.) Appellant's recitation of the evidence focuses almost exclusively on the facts that surround the September 1, 2010, order and support only her position. However, as was discussed above, the September 1, 2010, order was a separately appealable order that appellant failed to appeal in a timely manner.

Even setting aside these deficiencies, "the trial court's order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order." (*In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1478.) "[W]e must indulge all reasonable inferences to uphold the court's order." (*Ibid.*) Properly applying that standard to the case before us, we cannot say the trial court abused its discretion in ordering spousal support be capped at $5,500 per month.

Section 6.2 of the Stipulated Judgment states: "Respondent shall pay proportionally more spousal support to be entered in the subsequent judgment, such amount not to exceed five thousand five hundred dollars ($5,500.00) per month in the event the Respondent's salary reaches its pre-divorce level." The parties had already agreed to cap spousal support at $5,500 per month, inclusive of any modifications or fluctuations in respondent's pay. Before this court, appellant makes no argument as to why reinstating the original spousal support agreement was unjustified or supported by the evidence. The trial court did not err in merely re-instating the $5,500 cap on spousal support agreed upon by the parties' in the stipulated judgment.

DISPOSITION

The orders are affirmed. Respondent is entitled to costs on the appeals.

WOODS, Acting P. J.

We concur:

ZELON, J. **JACKSON, J.**