Filed 2/13/18 Marriage of Reed CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of CHRISTINE and MARTIN S. REED.	B276352
CHRISTINE CARR REED, Petitioner and Respondent, v. MARTIN S. REED, Appellant.	(Los Angeles County Super. Ct. No. BD555764)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rolf M. Treu, Judge. Affirmed.

Reed & Reed and Darren G. Reed; Tracey Hom; and Ryan D. Golds for Appellant.

Alder Law, Michael Alder, and Mary Lee Caruso; Brian Carlin for Petitioner and Respondent.

Appellant Martin S. Reed appeals from the trial court's May 16, 2016 order adjudicating Respondent Christine Carr Reed's April 11, 2016 Request for Order on certain issues related to their marital dissolution proceeding.[1] In this appeal, Martin seeks to challenge the validity of the trial court's January 26, 2016 statement of decision and modification of an order for child support, and specifically contends the court's order went beyond the scope of remand as directed by this Court. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY[2]

I. Judgment of Dissolution

The parties were married on August 20, 2000, and have two minor children. A judgment of dissolution of the marriage was entered on June 16, 2012. Among other terms, the judgment provided that Martin would pay Christine spousal support and child support.

II. November 12, 2013 Order Modifying Child Support

On June 13, 2013, Martin filed a request for an order reducing his monthly child support payment from $7,000 to

---

[1] As is customary in dissolution proceedings, we refer to the parties by their given names for clarity of reference, and not out of disrespect. (*In re Marriage of Schmir* (2005) 134 Cal.App.4th 43, 46, fn. 1.)

[2] This case has been the subject of three prior appeals, which were consolidated under Case Numbers B253728 and B255233. A portion of the factual and procedural background in the current appeal is taken from this Court's opinion in those prior appeals. (*Reed v. Reed* (Oct. 21, 2015, B253728, B255233) [nonpub. opn.].)

approximately $4,000. Martin argued the modification was justified because his monthly income had decreased during the prior 12-month period, primarily due to a reduction in profits from his law firm. Martin also asserted Christine's monthly income had increased over the past 12 months because she had been receiving spousal support.

Christine opposed the modification request, arguing that Martin had significantly understated his self-employment income by deducting numerous "business expenses" from his law firm's revenue that were actually "personal expenses." Christine also asserted Martin had substantially overstated her own income by including the spousal support payment and an equalization payment owed to her under the judgment.

At a hearing on the matter, the trial court granted Martin's modification request. The court concluded Christine had not shown any of Martin's business expense deductions were improper. The court also elected to include Christine's spousal support payment and equalization payment as part of her income. After the court announced its ruling, Christine's counsel requested a "statement of decision" on several issues related to the modification request, including the "change of circumstance" that warranted a reduction in the child support, the "calculation of [Martin's] income," and the "calculation of [Christine's] income." The court denied the request, explaining that it did not believe a statement of decision was required. On November 12, 2013, following the hearing, the court issued an order reducing the child support owed by Martin to $4,061 per month.

III. Christine's Appeal from the November 12, 2013 Order

In Case Number B253728, Christine appealed from the trial court's November 12, 2013 order modifying the child support owed by Martin. Christine contended the trial court committed several errors that required reversal of the order, including: (1) treating her spousal support payment as part of her income; (2) failing to provide a statement of decision; (3) failing to include Martin's claimed business expenses as part of his income; and (4) failing to include Martin's withdrawals from his retirement plans as part of his income.

In an opinion filed on October 21, 2015, this Court reversed the November 12, 2013 order.[3] (*Reed v. Reed* (Oct. 21, 2015, B253728, B255233) [nonpub. opn.].) We concluded the trial court erred in treating Christine's spousal support payment as part of her income. We also concluded the trial court erred in failing to provide a statement of decision, and remanded the matter for the rendering of a statement of decision on the issues requested by Christine. In light of our conclusion that remand was necessary, we did not address Christine's remaining arguments regarding the trial court's alleged errors in calculating Martin's income. Our disposition accordingly stated: "The order modifying the child support payment is reversed and remanded for a rendering

---

[3] The opinion also addressed two other appeals that were filed by Christine and consolidated under Case Number B255233: (1) an appeal from an order denying Christine's motion to quash writs of execution Martin had obtained to enforce prior attorney's fees awards; and (2) an appeal from an order requiring Christine to return property she had removed from Martin's residence. Neither of these prior appeals is relevant to the current appeal.

of the statement of decision and a recalculation of the child support payment."

IV. January 26, 2016 Statement of Decision and Modification to the Order for Child Support

On January 26, 2016, following the issuance of the remittitur in Case Number B253728, the trial court issued its statement of decision and modification to the order for child support.[4] The statement of decision set forth the basis for the court's ruling on the principal contested issues in Martin's June 13, 2013 modification request, including the calculation of each party's income and change of circumstance justifying the modification. In calculating Christine's income, the court excluded her spousal support payment. In calculating Martin's income, the court included certain claimed business expenses that Martin had deducted from his self-employment income, and certain contributions that his law firm had made to his profit sharing plan. Based on its revised calculations of the parties' respective incomes, the court ordered Martin to pay child support in the amount of $4,341 per month for the period from June 13, 2013 to July 23, 2013, and $4,926 per month effective July 24, 2013.

---

[4] Martin's appendix on appeal does not include the January 26, 2016 statement of decision. Rather, it includes the tentative decision issued by the trial court on January 7, 2016, which Martin claims was adopted by the court as its statement of decision on that same date. This is incorrect. The statement of decision (which was attached to Martin's case information statement) indicates that it was signed and filed by the trial court on January 26, 2016, following a hearing on the objections filed by each party to the January 7, 2016 tentative decision.

V. Martin's Appeal from the January 26, 2016 Order

On March 25, 2016, in Case Number B271318, Martin filed an appeal from the trial court's January 26, 2016 order.[5] On July 15, 2016, following the issuance of a notice of default, this Court dismissed the appeal due to Martin's failure to file an opening appellate brief. Remittitur was issued on September 15, 2016.

VI. Martin's Current Appeal

On May 16, 2016, while Martin's appeal in Case Number B271318 was still pending, the trial court issued an order adjudicating an April 11, 2016 Request for Order filed by Christine. According to the court's order, one of Christine's requests was for an order directing Martin "to pay [Christine] "$32,422.74 in back child support, which amount includes interest . . ., to pay the child support awarded by the trial court on 1/26/16." In granting that request, the court concluded Christine "was entitled to interest on the amount of the increase in child support . . . from the date of the entry of the order modifying child support, 11/12/13, since the appellate court decision is a modification of the amount awarded, not a reversal." On July 15, 2016, Martin filed this appeal from the trial court's May 16, 2016 order.

---

[5] On its own motion, this Court augments the record with the documents filed in Case Number B271318.

DISCUSSION

Although Martin appeals from the trial court's May 16, 2016 order adjudicating Christine's April 11, 2016 Request for Order, he does not identify any alleged errors made in that order. Rather, Martin's sole contention on appeal is that the trial court erred in issuing its January 26, 2016 statement of decision because its ruling went beyond the scope of remand as directed by this Court in its October 21, 2015 opinion. Martin specifically argues the trial court was limited on remand to rendering a statement of decision and recalculating Christine's income to exclude her spousal support, and asserts the court exceeded its authority when it also recalculated Martin's income to include certain business expenses and retirement plan contributions. Based on these alleged errors in the statement of decision, Martin requests this Court reverse, in part, the "Order of May 16, 2016, memorializing the child support obligations as set out in the Statement of Decision," and remand the matter to the trial court "for a proper Statement of Decision."

In light of the argument raised by Martin on appeal, we requested the parties submit supplemental briefing addressing whether the dismissal of Martin's prior appeal in Case No. B271318 precludes him from challenging the validity of the trial court's January 26, 2016 order and statement of decision in the current appeal. In his supplemental brief, Martin contends he is not precluded from challenging the January 26, 2016 statement of decision because it was not a final appealable order, and thus, his prior appeal from that ruling was premature. Martin also claims the trial court did not issue a "final order" in the matter until May 16, 2016, and that he "self-correct[ed]" his premature

appeal by filing the current appeal from that order. Based on the record before us, we conclude this argument lacks merit.

A. The January 26, 2016 Order is Final and is Deemed Affirmed

Although "[t]he general rule is that a statement or memorandum of decision is not appealable," a reviewing court has discretion to treat a statement of decision as an appealable order when it "is signed and filed and does, in fact, constitute the court's final decision on the merits." (*Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 901; see also *Pangilinan v. Palisoc* (2014) 227 Cal.App.4th 765, 769 [statement of decision was appealable where it was "signed and filed, and given its wording, was clearly intended to constitute the court's final decision on the merits"]; *Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892, 904 [where trial court "clearly intended the statement of decision to constitute its final decision on the merits," appellate court had discretion to treat it "as the appealable, final judgment"].) Here, the statement of decision was signed and filed by the trial court on January 26, 2016. It set forth the factual and legal basis for the court's decision to modify the order for child support, including its calculation of each party's income and its finding that a change of circumstance justified a modification. The statement of decision also included an order directing Martin to pay the modified amount of child support: "[T]he court orders child support payable by [Martin] for the period of June 13, 2013 through July 23, 2013 in the amount of $4,341 monthly. For the period effective July 24, 2013, the monthly child support is $4,926. Child support shall be payable on the first of each month." Given its wording, the statement of

decision clearly constituted the trial court's final decision on the merits of Martin's June 13, 2013 request for an order modifying his child support obligation.[6]

Despite the plain language of the January 26, 2016 statement of decision, Martin contends it cannot be treated as an appealable order because it was followed by a "formal order" issued by the trial court on May 16, 2016. (See *Alan v. American Honda Motor Co., Inc.*, *supra*, 40 Cal.4th at p. 901 ["a statement of decision is not treated as appealable when a formal order or judgment does follow"].) The record, however, does not support this contention. According to the May 16, 2016 order, it was an adjudication of an April 11, 2016 Request for Order filed by Christine. It appears one of Christine's requests was for an order directing Martin to pay her $32,422 in "back child support, which amount includes interest . . ., to pay the child support awarded by the trial court on 1/26/16."[7] In granting that request, the trial

---

[6] In her supplemental brief, Christine asserts the statement of decision was accompanied by a January 26, 2016 order signed and filed by the trial court, and attaches a copy of that order to support her argument that the statement of decision was a final appealable order. The order cited by Christine, however, does not pertain to the statement of decision or to the issue of child support. Rather, it concerns a separate issue addressed by this Court in its October 21, 2015 opinion regarding Christine's motion to quash writs of execution Martin had obtained to enforce certain attorney's fee awards.

[7] Christine's other requests in her April 11, 2016 Request for Order were for an order directing Martin: (1) to reimburse her for the monies he had obtained from her bank account via writs of execution; (2) to open a 529 college savings plan for their two minor children; and (3) to execute a quitclaim deed transferring an interest in certain real property.

court concluded that Christine was entitled to interest on the retroactive child support previously awarded to her, and that such interest began to accrue on the date of entry of the original order modifying child support. There is no indication in the record that this ruling was intended to constitute a "final order" on Martin's June 13, 2013 modification request. Rather, the ruling itself reflects it was intended to enforce a portion of the January 26, 2016 statement of decision and order modifying child support by directing Martin to pay the retroactive child support, including interest, that had been awarded in that prior order. Therefore, on this record, the January 26, 2016 statement of decision was an appealable order, and Martin's prior appeal from that order in Case Number B271318 was not premature.

Ordinarily, the involuntary dismissal of an appeal operates as an affirmance of the order appealed, leaving it intact. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 413 ["[n]ormally the involuntary dismissal of an appeal leaves the judgment intact"]; *County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1005 ["involuntary dismissal of an appeal operates as an affirmance of the judgment below"].) Here, the record reflects that Martin's appeal in Case Number B271318 was dismissed by this Court on July 15, 2016 due to his failure to file an opening brief, and that a remittitur was issued on September 15, 2016. The involuntary dismissal of the appeal thus operated as an affirmance of the January 26, 2016 order and statement of decision, and upon issuance of the remittitur, that order became final. Consequently, Martin is precluded from challenging its validity in the current appeal. (See *City of Santa Paula v. Narula* (2003) 114 Cal.App.4th 485, 491-492 [dismissal of prior appeal operated as an affirmance of the judgments rendered below and barred a collateral attack on

those judgments in a subsequent appeal]; *Lyons v. Security Pacific Nat. Bank* (1995) 40 Cal.App.4th 1001, 1017-1018 [where prior appeal was dismissed for mootness, the judgment became final upon the issuance of a remittitur and precluded appellant from relitigating its validity in a subsequent appeal].)

B. The January 26, 2016 Order is Within the Scope of Remand

Even if we were to consider the merits of Martin's challenge to the January 26, 2016 order and statement of decision, we would conclude that the trial court did not exceed the scope of its authority in issuing that order on remand. In our October 21, 2015 opinion, we issued the following disposition for Case Number B253728: "The order modifying the child support payment is reversed and remanded for a rendering of the statement of decision and a recalculation of the child support payment." On remand, the trial court complied with these directions by recalculating the child support payment and by rendering a statement of decision on the contested issues requested by Christine, including the calculation of each party's income for purposes of determining the amount of child support.

Contrary to Martin's claim on appeal, our opinion did not direct the trial court to recalculate the child support payment solely by revising its calculation of Christine's income to exclude her spousal support. Nor did our opinion preclude the trial court from making any revisions to its calculation of Martin's income as part of its recalculation of the child support payment. Indeed, in light of our conclusion that remand was necessary for the rendering of a statement of decision, we declined to rule on the specific arguments that Christine had raised about the trial

court's alleged errors in calculating Martin's income. We did, however, explain that Christine's primary contention in opposing any child support modification was that, according to her expert, Martin had understated his income by improperly deducting certain categories of claimed business expenses that were in fact personal expenses. We also concluded that "the trial court's assertion that it was 'not persuaded' by [the expert's] declaration or the evidence she had relied on is not sufficient to inform the parties of the factual or legal basis for its ruling," and that, on remand, the court would need to render a statement of decision on this issue as well as the other issues requested by Christine. Given the language of our disposition and opinion as a whole, the January 26, 2016 order and statement of decision clearly was within the scope of our directions to the trial court on remand. (See *Ducoing Management, Inc. v. Superior Court* (2015) 234 Cal.App.4th 306, 313 [reviewing court's "disposition is construed according to the wording of its directions, as read with the appellate opinion as a whole"]; *Ayyad v. Sprint Spectrum, L.P.* (2012) 210 Cal.App.4th 851, 859 [when "reviewing court remands the matter for further proceedings, its directions must be read in conjunction with the opinion as a whole"].)

C. Martin Has Not Demonstrated Error With Respect to the May 16, 2016 Order

As discussed, the sole order that could be subject to challenge in the current appeal is the trial court's May 16, 2016 order. However, a fundamental rule of appellate review is that an appealed judgment or order is presumed correct, and error must be affirmatively shown. (*Denham v. Superior Court of Los Angeles County* (1970) 2 Cal.3d 557, 564.) The appellant also has

the burden of providing an adequate record to demonstrate error, and the failure to do so on an issue requires that the issue be resolved against the appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296*; Randall v. Mousseau* (2016) 2 Cal.App.5th 929, 935.)

In his appeal, Martin does not contend the trial court committed any error in issuing the May 16, 2016 order. Indeed, Martin's only reference to that order in both his opening and reply briefs is a vague, conclusory statement that the order should be reversed because it "memorializ[ed] the child support obligations as set out in the Statement of Decision."

Martin also has failed to provide an adequate record on appeal for a review of the May 16, 2016 order. Although Martin included a copy of the order in his appendix on appeal, he chose to omit Christine's underlying Request for Order and any other papers filed by the parties in support of, or opposition to, that request. While the order itself reflects that it was based, in part, on Christine's request for the payment of accrued interest on retroactive child support, Martin does not assert on appeal that the trial court erred in granting that request or in calculating the amount of interest owed.

Accordingly, because Martin has failed to affirmatively demonstrate any error in the May 16, 2016 order, we presume the order is correct, and on that basis, affirm.[8]

---

[8] In her supplemental brief, Christine requests this Court impose monetary sanctions against Martin for filing a frivolous appeal. We deny the request because Christine has not filed a motion for sanctions along with a declaration supporting the amount sought. (Cal. Rules of Court, rule 8.276(b); *Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4th 837, 858-859.)

DISPOSITION

The trial court's May 16, 2016 order is affirmed. Christine shall recover her costs on appeal.

ZELON, Acting P. J.

I concur:

BENSINGER, J.*

---

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

SEGAL, J., Concurring.

I agree with majority that the trial court's rulings in its January 26, 2016 statement of decision were within the scope of our directions on remand and that we should affirm the May 16, 2016 order because Martin has not demonstrated any error in that order. (Maj. opn., pp. 11-13.) I do not think, however, the January 26, 2016 statement of decision is a final, appealable order.

In my view, the January 26, 2016 statement of decision is not an order, let alone a final and appealable one; it is a statement of decision. It looks like a statement of decision, reads like a statement of decision, and purports to be a statement of decision. According to its author, the statement of decision "sets forth the legal and factual basis for [the court's] decisions and rulings" and makes "findings of fact and conclusions of law on the issue of child support under the Family Code and the decisional law construing it." It contains 14 pages of procedural background, factual findings, reasons for the court's rulings. It resolves issues relating to Christine's and Martin's income, summarizes and makes credibility determinations on declarations submitted by expert witnesses, analyzes Martin's business expenses, calculates taxable and imputed income, decides issues relating to retirement accounts, calculates monthly interest payments, and makes adjustments for Martin's self-employment income. The statement of decision does exactly what a statement of decision is supposed to do: It explains "the factual and legal basis for [the court's] decision as to each of the principal controverted issues at trial" (Code Civ. Proc., § 632) and it provides the trial court's "'view of the facts and the law of the

case'" (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 982). (See *A.G. v. C.S.* (2016) 246 Cal.App.4th 1269, 1282-1283 ["'a statement of decision is a formal legal document containing the factual and legal basis for the court's decision on each principal controverted issue for which a statement is requested'"]; *Onofrio v. Rice* (1997) 55 Cal.App.4th 413, 425 ["[t]he purpose of the statement is to provide an explanation of the factual and legal basis for the court's decision"].)

The majority correctly points out that the last paragraph of the statement of decision reads as follows: "Accordingly, the court orders child support payable by [Martin] for the period June 13 2013 through July 23 [2013] in the amount of $4,341 monthly. For the period effective July 24 2013, the monthly child support is $4,926. Child support shall be payable on the first of each month." I acknowledge that one of the sentences in the paragraph contains the word "orders." But I do not think that lone reference, in a section titled "Calculation of Guideline Child Support," transforms a statement of decision into a final, enforceable, appealable order. (Cf. *Estate of Reed* (2017) 16 Cal.App.5th 1122, 1126 [statement of decision included a section entitled "Orders"]; *Pangilinan v. Palisoc* (2014) 227 Cal.App.4th 765, 769 ["statement of decision ended: 'ORDER [¶] 1. Husband of Petitioner is the presumed father of H[.]. [¶] 2. Petitioner's OSC requesting Child Support from Respondent is denied'"]; *Morgan v. Imperial Irrigation District* (2014) 223 Cal.App.4th 892, 904 ["statement of decision included a part entitled 'Order on Causes of Action asserted by Plaintiff, Interested Party'"].) It is only a line in a statement of decision that most trial judges would write as "the court will order" or "the court will enter an order." I have seen a lot of statements of decision (and written a

few) and a lot of orders (and signed a few), and to me this document is a statement of decision, not an order. (See *Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 901 (*Alan*) ["courts typically embody their final rulings not in statements of decision but in orders or judgments"]; accord, *Estate of Reed*, at p. 1126; *Pangilinan v. Palisoc*, at p. 769.)

The majority also cites the rule that statements of decision are not appealable, and the exception to the rule that gives a reviewing court the "discretion to treat a statement of decision as an appealable order." (Maj. opn., p. 8.) (See *Alan*, *supra*, 40 Cal.4th at p. 901 ["[t]he general rule is that a statement or memorandum of decision is not appealable," but "[r]eviewing courts have discretion to treat statements of decision as appealable when they must, as when a statement of decision is signed and filed and does, in fact, constitute the court's final decision on the merits"]; accord, *Pangilinan v. Palisoc*, *supra*, 227 Cal.App.4th at p. 769.) As reflected in the cases cited by the majority, courts use the exception to the rule that statements of decision are not final orders to reach the merits of an appeal from an order of questionable appealability. (See, e.g., *Alan*, at p. 901; *Pangilinan v. Palisoc*, at p. 769; *Morgan v. Imperial Irrigation District*, *supra*, 223 Cal.App.4th at p. 904.) To the extent the majority is relying on the exception to avoid reaching the merits of Martin's appeal by treating the January 26, 2016 statement of decision as an appealable order and deeming it affirmed (maj. opn., p. 8), I would not apply the exception in this case. (See *Alan*, at p. 901 ["the desire to cut off a litigant's right to appeal cannot justify creating an exception to the general rule" that a statement of decision is not appealable because "[s]uch an exception would directly contravene 'the well-established policy,

based on the remedial character of the right of appeal, of according that right in doubtful cases "when such can be accomplished without doing violence to applicable rules""]; accord, *Dhillon v. John Muir Health* (2017) 2 Cal.5th 1109, 1115; *Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 674; *In re Marriage of Mosley* (2010) 190 Cal.App.4th 1096, 1103.)

SEGAL, J.