Filed 11/7/12 Marriage of Gorin CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of YULIYA and ALEX GORIN.	B234766 (Los Angeles County Super. Ct. No. BD527864)
YULIYA GORIN, Respondent, v. ALEX GORIN, Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Elia Weinbach, Judge. Affirmed.

Alex Gorin, in pro. per., for Appellant.

No appearance by Respondent, Yuliya Gorin.

Appellant Alex Gorin challenges the denial of his request to modify child and spousal support, and an order that he pay respondent Yuliya Gorin's attorney's fees. Appellant has failed to demonstrate that the court abused its discretion in its rulings; accordingly, we affirm.

FACTUAL AND PROCEDURAL HISTORY

This matter began as a dissolution of marriage proceeding between Alex and Yuliya[1] filed on July 6, 2010. The couple had two children, one of whom was severely disabled. Pursuant to a custody stipulation between the parties, the court entered orders for child and spousal support on August 17, 2010, with Yuliya having primary custody of the children. Other issues in the dissolution remained pending, although an interim award of attorney's fees was made. On January 26, 2011, Alex filed an Order to Show Cause to modify the support payments, asserting that he had become disabled, could not return to work until April 2011, and would have income only from his disability payments in the interim period. He also, as of February 2011, began to make reduced payments based on his own calculations of what support should be.

The matter came on for hearing on March 7, 2011; both parties were represented by counsel. Yuliya disputed the amount of income available for the payment of support during the remaining period of disability, presenting evidence subpoenaed from Alex's employer. The court received the documents into evidence, set the matter for evidentiary hearing, and continued in effect the support orders made on August 17, 2010. Because Alex's counsel indicated that they had filed a motion to withdraw based on a breakdown in communications, set for April 18, the court continued the hearing on support to that date. The substitution of counsel was filed on March 15, 2011, leaving Alex self-represented.

On March 22, 2011, Yuliya filed an Order to Show Cause for attorney's fees; Alex responded, seeking a change in custody for the younger child only in his responsive

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[1] Because the parties share the same last name, and not out of disrespect, we will refer to each of them by his or her first name.

pleadings. Alex failed to appear for the hearing on April 18. The court continued the hearing to April 26, 2011. The court later continued the hearing to May 3, 2011.

On May 3, Alex appeared, representing himself, with a request that his uncle Robert Truthton, who is not an attorney, be permitted to "talk on his behalf" because Alex was ill and could not speak.[2] Yuliya, through counsel, objected, and disputed the claim that Alex was unable to speak, representing that Yuliya had spoken with him three days earlier. The court ordered Alex, under penalty of perjury, to write a note telling the court that he was physically unable to speak. The court also inquired whether Alex was under a doctor's care, and asked him to write the name and address of that doctor, along with the date of his last visit. Alex complied. Yuliya, through counsel, suggested that Alex write out his answers and allow his uncle to read them, but objected to the uncle representing Alex. The court continued the hearing on both orders to show cause, leaving the initial support order in place and ordering Alex to make those payments, without modification. The court further ordered Alex to pay the amounts owing for pre-school, and to produce a doctor's report stating a diagnosis, prognosis, and treatment plan relating to his inability to speak.

On July 6, 2011, the date to which the hearings were continued, all parties appeared in court. Yuliya was represented by counsel, and Alex was present with his uncle, again requesting that Mr. Truthton speak on his behalf. Yuliya's counsel represented that Yuliya had spoken with Alex by telephone the day before. The court inquired of Mr. Truthton whether Alex was able to speak; Mr. Truthton denied that he could. The court inquired of Alex whether he could speak and when Alex did not reply audibly, again ordered Alex to write that he could not speak and to include the reason. Alex's written response to the court read, in relevant part, "I, Alex Gorin, am unable to speak because of the following reasons: I am ill in my divorce and destruction of my family caused by my wife Yuliya, and her money-grabbing attorney Cynthia Berman is the reason for my condition." The court reviewed the letter from Alex's doctor, and

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[2] On April 8, 2011, Alex had filed a declaration with the court which included a request that his uncle speak for him as his counsel.

concluded that the letter did not establish a medical reason for Alex's inability to speak, and failed to indicate that Alex had been unable to speak to his doctor.

The court concluded, based on the letter, and from its own observation, including watching Alex speaking to his uncle in the courtroom, that Alex could in fact speak, and did not "credit the representation by Mr. Gorin that he is unable in effect to participate in these proceedings by answering questions or by stating his views without Mr. Truthton." In light of the stressful nature of the proceedings, the court indicated it would allow frequent breaks; the court then took a break in the proceedings.

When the court called the matter after the recess, neither Alex nor his uncle was present in the courtroom. Alex had left a note with the bailiff stating: "Your Honor, I have stated in paragraph 3 of my response to court order of 5/3/2011 dated 6/22/11, I ask that you either allow my uncle Robert Truthton to speak for me or postpone all proceedings until I am recovered. I cannot speak for myself in a courtroom setting and I'm unable to continue. And my condition is getting worse, so I must leave the court." The court declined to continue the proceedings indefinitely, and stated its belief that Alex had decided to absent himself from the proceedings after the court had denied his request for Mr. Truthton to speak for him and had expressed incredulity as to his claimed inability to speak. On the request of Yuliya's counsel, the court denied the modification, ordered the payment of arrears and attorney's fees, and ordered all amounts secured by a lien on Alex's property. Counsel was ordered to prepare the order, with Alex given an opportunity to object. The record contains no objection.

Alex subsequently filed a document which he describes as a motion to reconsider.[3] The court did not conduct a hearing related to the document, and Alex timely appealed the order of July 6.

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[3] The document, which was a declaration by Alex, asserted no change in facts or law, asserted no legal error, and failed to set forth any basis on which reconsideration would be proper. It consisted largely of accusations concerning the actions and motivation of counsel and the court. It did not attempt to secure a hearing date, nor was a proof of service attached.

DISCUSSION

A. The Standard of Review

"A trial court's award concerning child support is reviewed for abuse of discretion. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 282, 111 Cal.Rptr.2d 755 (*Cheriton*); see also *In re Marriage of Chandler* (1997) 60 Cal.App.4th 124, 128, 70 Cal.Rptr.2d 109; *In re Marriage of Wood* [(1995)] 37 Cal.App.4th [1059,] 1066, 44 Cal.Rptr.2d 236.) Likewise, a determination regarding a request for modification of a child support order will be affirmed unless the trial court abused its discretion, and it will be reversed only if prejudicial error is found from examining the record below. (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 62 Cal.Rptr.2d 466; see also *In re Marriage of McCann* (1996) 41 Cal.App.4th 978, 48 Cal.Rptr.2d 864.)" (*In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 555; see also *In re Marriage of Calcaterra and Badakhsh* (2005) 132 Cal.App.4th 28, 34.)

In a case, such as this one, where the standard of review is abuse of discretion, it is the burden of appellant to establish abuse in the face of a presumption that the trial court properly exercised that discretion. (*Mesler v. Bragg Management Co.* (1990) 219 Cal.App.3d 983, 991; see also *Forrest v. State of California* (2007) 150 Cal.App.4th 183, 194 [orders are presumed correct on appeal, and it is plaintiff's burden to overcome the presumption], disapproved on other grounds *Shalant v. Girardi* (2011) 51 Cal.4th 1164.)

B. Alex Has Not Demonstrated Any Abuse of Discretion

1. The Brief is Legally Inadequate

Other than a single general citation to the Family Code, Alex fails to cite any authority setting forth the legal principles governing the court's discretion in this case on the basis of which he contends the court abused that discretion. This Court could, as a result, view all issues as having been waived. "When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary. [Citations.]" (*Landry v. Berryessa Union School*

Dist. (1995) 39 Cal.App.4th 691, 699-700.) "[P]arties are required to include argument and citation to authority in their briefs, and the absence of these necessary elements allows this court to treat appellant's issue as waived." (*Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448.)

Despite appellant's failure to adequately address the issues, or to demonstrate the grounds on which abuse of discretion is claimed, we will reach the merits. The dissolution matter has not concluded, and the trial court will likely face on-going motion practice in this case.[4]

2. The Trial Court Did Not Abuse its Discretion

The support at issue in this matter included child support. To modify a child support order, the party seeking the modification must introduce admissible evidence of the change in circumstances, and meet the burden of demonstrating that the downward adjustment is warranted by the circumstances. (*In re Marriage of Williams* (2007) 150 Cal.App.4th 1221, 1234; *In re Marriage of Laudeman* (2001) 92 Cal.App.4th 1009, 1015.)

In this matter, Alex filed his Order to Show Cause approximately five months after the support orders were made. His assertion at that time was that he would be on disability for approximately four months, until April 2011. At the time of the initial hearing, in March 2011, there was a dispute as to whether Alex had any source of income other than his disability payments and the court, accordingly, set an evidentiary hearing. The court expressly ordered that the prior support order entered August 17, 2010 remained in effect, and that Alex was obligated to continue to pay in accordance with the terms of that order. It is undisputed that Alex did not do so, but instead continued to pay

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[4] We will not, however, address the claim that the court improperly placed a lien on Alex's property, as Alex failed to raise, either at this court, or at the trial court, a claim that there was no legal basis for such a lien. He has, accordingly, forfeited that claim on appeal. (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564.)

only the amount he had unilaterally determined to pay beginning on February 1, 2011, days after he filed the Order to Show Cause. Alex failed to appear for the hearing.

On the date of the scheduled evidentiary hearing, when Alex asserted that he was unable to speak, the court continued the matter again, to provide an opportunity for Alex to provide a medical report. The court ordered Alex to pay "forthwith" all sums owing for the pre-school, and further ordered that the original support order remained in effect. The new evidentiary hearing was set for July 6, 2011, approximately three months after the only medical documentation presented to the court indicated the disability would terminate. Alex failed to comply with the court's order concerning payments of support and tuition.

On July 6, after the court stated its determination that Alex was able to speak, Alex voluntarily left the courtroom prior to the hearing, and without presenting any evidence in support of the order he sought, or in opposition to Yuliya's order to show cause for attorney's fees. Alex's actions, and his subsequent declaration, support the court's conclusion that he did not agree with the court's rulings.

Alex sought affirmative relief from the court, but left the courtroom, without permission and with an inadequate explanation, before the necessary hearing could take place. He was at that time also in violation of the prior two orders of the court to continue paying support in the amount set on August 17, 2010, and to pay all arrearages for the pre-school. He had failed, without explanation, to appear at the hearing in April. When, as here, a party fails to comply with court orders, fails to appear, and then leaves the courtroom before the scheduled hearing in the matter, the court has discretion to determine that the party has abandoned his case and dismiss it. (*Larsson v. Cedars of Lebanon Hospital* (1950) 97 Cal.App.2d 704, 708 [plaintiff refused to produce evidence; "her persistent refusal to proceed as the court advised was necessary rendered it impossible for her to receive a favorable decision on the issue"]; see also *Lyons v. Wickhorst* (1986) 42 Cal.3d 911, 915 [recognizing that trial court may invoke discretionary power to dismiss claims with prejudice where the plaintiff fails to prosecute diligently].) In denying the order to show cause, determining the arrearages based on

undisputed evidence, and ordering what had become an undisputed request for attorney's fees, the court acted in the face of such persistent refusal and flagrant disobedience of the court's orders. Nothing in the record before this Court indicates that the order entered by the trial court was in any way an abuse of discretion.

DISPOSITION

The order of July 6, 2011, is affirmed. Each party shall bear its own costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.