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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

PIOTR ANDRZEJEWSKI, Defendant and Appellant, v. ELKE LESSO, Plaintiff and Respondent.	B231833 (Los Angeles County Super. Ct. No. GD041694)

APPEAL from a judgment of the Superior Court of Los Angeles County, Amy Pellman, Judge. Appeal dismissed.

Piotr Andrzejewski, Defendant and Appellant, in propria persona.

Law Office of Thomas H. Edwards, Thomas H. Edwards, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Piotr Andrzejewski (husband) appeals from a judgment of dissolution entered against him in favor of plaintiff and respondent Elke Lesso (wife). Husband contends that the trial court abused its discretion by denying his request to continue the trial and proceeding to trial without him; that wife contradicted herself during the pendency of the action and therefore her purported lack of credibility undermined the evidentiary basis for the judgment, requiring reversal of that judgment; and that the trial court abused its discretion in issuing a support order in the judgment. Wife contends that the judgment of dissolution is not appealable because it is not a final judgment disposing of all issues between the parties. We dismiss the appeal because the judgment of dissolution was not appealable, and even if the judgment were appealable, we would dismiss the appeal pursuant to the disentitlement doctrine.

FACTUAL AND PROCEDURE BACKGROUND

On September 28, 2007, wife filed a petition against husband for marital dissolution. Husband resided in Poland during various periods of the pendency of the dissolution proceeding.

Trial in the dissolution proceeding was set for October 28, 2010. Instead of husband personally appearing at the trial, attorneys specially representing him requested that the trial be continued. The trial court denied husband's requests to continue the trial.

Without the presence of husband, on October 28 and 29, 2010, the trial court conducted a "prove up" trial regarding the termination of the marriage and property division. A judgment of dissolution was filed on January 21, 2011, in wife's favor, and provided, inter alia, that the marital status was terminated effective October 29, 2010; wife may request that her birth name or former name prior to marriage be restored; the June 2009 temporary spousal support order "is in full force and effect . . . ;" wife was the sole and separate owner of a parcel of residential property located in Altadena, California—the subject of a prior judgment allowing wife to sell the property; a parcel of commercial property that was the subject of a prior order allowing sale by the wife

without the husband's consent was community property; and "confirms" that wife is the sole and separate owner of a dog and a company by the name of Zoe Fashion Designs. The judgment of dissolution also provided that a vehicle was a community property asset that was taken by husband in violation of court orders, and that the title to the vehicle be in wife's name only and immediately be sent back to the United States. The judgment of dissolution reserved the trial court's jurisdiction over the issue of permanent spousal support and over additional issues of debt and property division, because there was "insufficient evidence" introduced on these issues.

DISCUSSION

A. Appealability

Wife contends that the judgment of dissolution is not appealable because it is not a final judgment disposing of all issues between the parties. We agree.

An appellate court lacks jurisdiction to entertain an appeal from a nonappealable judgment or order. (*Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1432; *Canandaigua Wine Co., Inc. v. County of Madera* (2009) 177 Cal.App.4th 298, 302; *In re Mario C.* (2004) 124 Cal.App.4th 1303, 1307 ["a reviewing court is 'without jurisdiction to consider an appeal from a nonappealable order, and has the duty to dismiss such an appeal upon its own motion. . .'"]; *Lavine v. Jessup* (1957) 48 Cal.2d 611, 613 ["no appeal can be taken except from an appealable order or judgment, as defined in the statutes and developed by the case law. . ."].) An appellate court ordinarily dismisses an appeal from such an order or judgment. (*Harrington-Wisely v. State of California* (2007) 156 Cal.App.4th 1488, 1490, 1494-1495, 1498; *Marsh v. Mountain Zephyr, Inc*. (1996) 43 Cal.App.4th 289, 297.)

Code of Civil Procedure section 904.1, subdivision (a)(1) provides that an appeal may be taken from a judgment other than an interlocutory judgment. An interlocutory judgment occurs when further judicial action is essential to a final determination of rights of parties. (*Bessinger v. Grotz* (1942) 52 Cal.App.2d 379, 381.)

Generally, the "final judgment rule" applies to civil cases and provides that unresolved issues prevent a judgment from being final for purposes of appealability. (*Griset v. Fair Political Practices Com* (2001) 25 Cal. 4th 688, 697; *Vivid Video, Inc. v. Playboy Entertainment Group, Inc.* (2007) 147 Cal.App.4th 434, 441.) Under the "final judgment rule," an appeals lies only from a final judgment—one that effectively terminates the litigation. (*Olson v. Cory* (1983) 35 Cal.3d 390, 399 ["where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory"].) The "one final judgment rule" is "'"a fundamental principle of appellate practice in the United States. The theory is that piecemeal disposition and multiple appeals in a single action would be oppressive and costly, and that a review of intermediate rulings should await final disposition of the case."' [Citations.]" (*Degnan v. Morrow* (1969) 2 Cal.App.3d 358, 362.) "The term 'final judgment' [however] is not limited to those decrees or decisions which finally determine all the issues presented by the pleadings. The term is equally applicable to a decree, order or decision which finally determines a collateral matter distinct or severable from the general subject of the litigation." (*Carradine v. Carradine* (1946) 75 Cal.App.2d 775, 777.)

The one final judgment rule does not always apply in family law cases because of the prevalent practice of bifurcating discrete issues for separate trials. "'All issues incident to marital termination need not be tried in a single family law proceeding. The court may, on proper motion or at the request of the pretrial judge, order the trial *bifurcated*, allowing early disposition of the dissolution issue and subsequent litigation of the property, support and custody issues (or any other combination of issues and trials). [Citations.]' [Citations.]" (*In re Marriage of Wolfe* (1985) 173 Cal.App.3d 889, 894.) Family Code section 2337 provides, "(a) In a proceeding for dissolution of marriage, the court, upon noticed motion, may sever and grant an early and separate trial on the issue of the dissolution of the status of the marriage apart from other issues. [¶] . . . [¶] (f) A judgment granting a dissolution of the status of the marriage shall expressly reserve jurisdiction for later determination of all other pending issues." (Fam. Code, § 2337,

subds. (a) and (f).) "On noticed motion of a party, the stipulation of the parties, or its own motion, the court may bifurcate one or more issues to be tried separately before other issues are tried." (Cal. Rules of Court, rule 5.175(a).)

When the trial court orders that the issues of marital dissolution be bifurcated from all other issues—ascertainment and division of community property, spousal support and attorney fees—a judgment of dissolution resolving the issue of marital dissolution and reserving jurisdiction over the other pending issues is immediately appealable. (*In re Marriage of Fink* (1976) 54 Cal.App.3d 357, 359, 360-366 ["The general rule is that where portions of a judgment are truly severable, an appeal from one portion will bring up for review only that portion, leaving all other parts of the judgment in full force and effect"]; see 3 Hogoboom and King, Cal. Practice Guide: Family Law (The Rutter Group 2012) ¶ 16:273, p. 16-82.1 (Hogoboom and King).)

According to husband's statement of appealability, the judgment of dissolution is appealable because it is a judgment on a collateral matter. "An interim judgment or order is directly appealable as a 'collateral' final judgment or order if it finally determines the rights of the parties in relation to that matter, leaving no further judicial acts to be done in regard thereto. In effect, such a decision is equivalent of a final judgment in an independent proceeding. [Citations.]" (3 Hogoboom & King, *supra*, ¶ 16:268, p. 16-80.3.) Husband contends in his reply brief that judgment of dissolution is appealable because, "'When bifurcation of issues requires two or more separate trials, particular issues are tried at separate times, with each subject to a separate and distinct judgment.'" Husband argues that when "a separate judgment conclusively resolves the bifurcated issues, the judgment is appealable."

The record does not show that the trial court ordered that the issue of the dissolution of the status of the marriage, or any issue for that matter, was to be bifurcated and tried separately from other issues, nor did the trial court treat any issue as distinct or severable. At the October 28 and 29, 2010, "prove up" trial, evidence was presented regarding the termination of the marriage *and* property division. The judgment of dissolution was not a "status only" judgment, solely resolving the issue of the dissolution

of the marriage. It resolved several property division issues, including that wife was the sole and separate owner of a parcel of residential property located in Altadena, California, a dog, and a company by the name of Zoe Fashion Designs. It also resolved that a parcel of commercial property was community property, and that a vehicle was community property and ordered that the title to the vehicle be placed in wife's name only. The trial court reserved jurisdiction over the issue of permanent spousal support and numerous additional issues of debt and property division because, as stated in the judgment, there was "insufficient evidence" introduced at trial on those issues.

There can be an appeal from a pendente lite monetary order—e.g., a temporary support order. (*In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368.) Here, there were such orders in 2009, but no appeal was taken from those orders. The time for appealing from those orders has expired. In the nonappealable judgment, the trial court stated that the 2009 temporary spousal order "is in full force and effect." Thus, no new order for spousal support was made, nor was there any modification of the earlier order. Accordingly, there was no pendente lite monetary order from which an appeal could be taken.

The judgment of dissolution is not appealable; it did not terminate the litigation or resolve a distinct or severable issue. We therefore dismiss the appeal.

B. Disentitlement Doctrine

After the matter was fully briefed, we requested that the parties submit letter briefs addressing whether we should dismiss the appeal pursuant to the disentitlement doctrine. We have reviewed the parties letter briefs and conclude that even if the judgment was appealable, we would dismiss the appeal pursuant to the disentitlement doctrine.

Under the disentitlement doctrine, "A reviewing court has inherent power to dismiss an appeal when the appealing party has refused to comply with the orders of the trial court. [Citation.]" (*In re Z.K.* (2011) 201 Cal.App.4th 51, 63.) The doctrine "extends to conduct that . . . frustrates the ability of another party to obtain information it

needs to protect its own legal rights." (*In re C.C.* (2003) 111 Cal.App.4th 76, 85; see *In re E.M.* (2012) 204 Cal.App.4th 467, 474.)

The doctrine prevents a party from seeking assistance from the court if that party "stands in an attitude of contempt to legal orders and processes of the courts of this state. [Citations.]" (*MacPherson v. MacPherson* (1939) 13 Cal.2d 271, 277.) "Appellate disentitlement 'is not a jurisdictional doctrine, but a discretionary tool that may be applied when the balance of the equitable concerns make it a proper sanction.' [Citation.]" (*In re Z.K.*, *supra*, 201 Cal.App.4th at p. 63.) The rule applies even if there is no formal adjudication of contempt. (*TMS, Inc. v. Aihara* (1999) 71 Cal.App.4th 377, 379.) The disentitlement doctrine "is particularly likely to be invoked where the appeal arises out of the very order (or orders) the party has disobeyed." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2012) ¶ 2:340, p. 2-172 (rev. # 1, 2012).)

Wife contends that husband's appeal should be dismissed pursuant to the disentitlement doctrine because husband "repeatedly disobeyed the trial court's orders, and his behavior in connection with the matters involved in his most recent appeal follows the same ongoing pattern of contemptuous behavior." Wife asserts that husband "is seeking assistance from the court while continuing to display an attitude of contempt to the legal orders and processes of the courts in this state."

On December 2, 2009, almost three years ago, a bench warrant was issued for husband's arrest, and less than two months later, on January 26, 2010, the bail amount for the bench warrant was increased from $25,000, to $35,000. Husband appeals from the judgment of dissolution contending, inter alia, the trial court abused its discretion by denying his request to continue the trial, made by counsel specially representing him, and proceeding to trial without him. At the time of the trial of this matter, the bench warrant for husband's arrest was still outstanding. The outstanding bench warrant bears directly on defendant's appeal.

On May 3, 2010, husband was sanctioned $300,000 under Code of Civil Procedure section 2023.030 for discovery abuse, Family Code section 2107 for

noncompliance with mandatory disclosure requirements, and Family Code section 271, for uncooperative conduct frustrating the policy of the law to promote litigation settlement and reduce litigation costs. The sanctions order was based on husband's, (1) continued failure to appear at his deposition and to produce documents showing the location and use of more than $800,000 in community assets and his repeated failure to produce bank statements, stock account statements and other documents reflecting his financial transactions through 2009; (2) continued failure an refusal to provide complete and accurate disclosures regarding the sale of 11 different parcels of community real property in Poland and the disposition of the proceeds from those sales; (3) the creation of stock accounts in the name of another person which husband used to trade stocks in violation of the trial court's orders; (4) the transfer of $700,000 to his mother without disclosure to wife. The sanctions order stated that husband has "willfully refused to comply with the Court's order on numerous occasions. [Husband] has not offered any explanation whatsoever for his willful disobedience."

Although we do not opine as to whether the orders were correct, husband's response to them has been such that the disentitlement doctrine applies. (*MacPherson v. MacPherson, supra*, 13 Cal.2d at p. 277.) That doctrine is another ground for dismissing the appeal.

DISPOSITION

The appeal is dismissed. Each party is to bear his or her own costs on appeal.

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MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.