Filed 2/7/17 Chollera v. Ray CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

BIJAL CHOLLERA, Plaintiff and Respondent, v. RAKESH RAY, Defendant and Appellant.	B263180 (Los Angeles County Super. Ct. No. KD082145)

APPEAL from a judgment of the Superior Court of Los Angeles County, H. Don Christian, Temporary Judge (Pursuant to Cal. Const., art. VI, § 21). Affirmed.

Law Offices of Charles O. Agege and Charles O. Agege for Defendant and Appellant.

Bruce Flamenbaum for Plaintiff and Respondent.

In this appeal from a final judgment of dissolution of marriage, appellant Rakesh Ray contends the trial court committed reversible error by holding trial in his absence. He also raises issues of insufficient evidence and abuse of discretion. For the reasons discussed below, the judgment is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

Rakesh Ray and respondent Bijal Chollera were married in February 2001. Their two children were born in 2006 and 2010. In July 2011, Ms. Chollera filed a petition for dissolution of marriage and requested an order to show cause regarding child custody, visitation, child support, spousal support and attorney fees and costs. Mr. Ray filed a response on September 14, 2011, seeking to nullify the marriage based on a prior existing marriage.

By stipulation of the parties, each of whom was represented by counsel, the trial court entered a temporary support order on September 14, 2011. The order required Mr. Ray to pay $1,646 per month in child support and $948 per month in spousal support.

Two years later, in July 2013, Mr. Ray sought to modify the temporary support payments. Before his request was heard, he filed a substitution of attorney indicating that he was now representing himself. Mr. Ray appeared telephonically at a November 20, 2013 hearing and requested a Hindi interpreter. Arguing that Mr. Ray was in arrears on the support payments and could not be shown any documents over the telephone, Ms. Chollera sought to take his request for modification off calendar. The trial court informed Mr. Ray that all prior orders remained in full force and effect, he was responsible for securing a Hindi

interpreter, and the matter would be reset after he refiled his request for modification.

The matter was next heard on January 30, 2014. At that hearing, Mr. Ray stated through a Hindi interpreter that he was not educated in English, which is his fourth language, and was unaware of what transpired at the earlier hearing when the support order was entered. He said that his former attorney had not been allowed to speak at the earlier hearing, but the trial court stated that was not true. Mr. Ray also asserted that after being out of work for several months, he found a job in March 2013 which provided a gross monthly income of $4,750. Based on this new income figure, the court entered a modified order for $1,368 per month in child support and $756 per month in spousal support.

On July 14, 2014, the parties appeared before the trial court with regard to missing bank funds. No interpreter was present. The court reminded Mr. Ray of its January ruling that an interpreter was necessary. Mr. Ray stated that the interpreter was not competent and he had let her go. He requested $7,500 for an attorney and accused Ms. Chollera of taking $80,000 from their safe deposit box. At the conclusion of the hearing, the court issued a minute order which stated: "It is stipulated that Commissioner H. Don Christian may hear this matter as Judge Pro Tem and for any future hearings. [¶] Parties are called and testify. [¶] The Court makes the following order: (1) Parties shall cooperate with discovery; (2) Parties shall cooperate in obtaining the bank records; (3) Petitioner [Ms. Chollera] shall subpoena all relevant bank records on or before 8/18/14; (4) Respondent [Mr. Ray] shall give an accounting of the 3 rentals by 9/1/14 at 4:00 p.m.; (5) Court reserves jurisdiction

over retroactivity; and (6) The Court will not proceed in this matter for any future matter without a Hindi interpreter for the respondent. [¶] . . . [¶] Matter is continued to 9/15/14 at 1:30 pm. in this Department."

On July 23, 2014, the trial court issued an order reaffirming "its order requiring a Hindi interpreter for the respondent [in] all future proceedings." The following month, Mr. Ray was served with a notice to appear and produce documents at trial on September 15 and 16, 2014, at 1:30 p.m. Later, those dates were vacated, and the trial was rescheduled for December 4, 5, 11, and 12, 2014 at 1:30 p.m. Mr. Ray filed court documents (including a trial witness list and exhibit list) reflecting his awareness of the December trial dates.

On November 24, 2014, Mr. Ray filed a motion to recuse the trial judge (Commissioner Christian). Mr. Ray alleged the commissioner deliberately violated his personal liberties, refused to provide due process and equal protection, and refused to provide a full, fair, impartial hearing.

Also on that date, Mr. Ray filed a motion to quash the subpoenas that Ms. Chollera had served on several banks in order to trace the missing funds. He also moved to continue the December 4, 2014 trial date, arguing that Ms. Chollera was hiding assets, including $200,000 deposited at a bank in London and $92,895 deposited at Citibank. His motions were set to be heard on January 23, 2015, which was after the December 4 trial date.

On December 4, 2014, Mr. Ray appeared in court and stated through an interpreter that he was not ready for trial, was unable to pay for an attorney, and was owed $900,000 by Ms. Chollera. He requested $30,000 to $40,0000 to hire an attorney.

When asked about his pending motion to quash the subpoenas that Ms. Chollera had served on various banks in order to trace the missing funds, Mr. Ray stated the funds were not accounted for, and the hearing on his motion to quash remained set for January 23, 2015. The court continued the trial to the following day, December 5, 2014, at 1:30 pm.

On December 5, 2014, Mr. Ray filed a notice to vacate the December 5 trial date. The notice stated: "I Rakash Ray, am the Respondent herein, give notice to all parties that my Hindi translator Fariyal Syed suddenly backed out yesterday on December 4th, 2014 at 6:00 PM PST stating that she will not be able to appear for the hearing scheduled for December 5th 2014, 1:30 p.m. I tried calling and arranging other Hindi Interpreter but in v[a]in. So I Rakesh Ray, respondent in this case hereby give notice to all parties involved the I will not be able to conduct the hearing scheduled on December 5th, 2014 at 1:30 PM due to unforeseen circumstances beyond my control and respectfully ask the court to vacate this hearing."

Due to an unrelated matter, the court canceled the December 5, 2014 trial date, which was continued to December 11, 2014, at 1:30 pm. The court ordered Ms. Chollera to give notice. That same day, Ms. Chollera's counsel informed Mr. Ray by telephone that the December 5 trial date had been canceled. Also on that date, Ms. Chollera's counsel mailed Mr. Ray the following notice: "NOTICE IS HEREBY GIVEN that the trial set for December 5, 2014, at 1:30 p.m. is trailed/continued due to the Court's unavailability. The scheduled trial dates of December 11 and 12, 2014, at 1:30 p.m. in Department EA 'C' of the above-entitled Superior Court shall remain in effect."

On December 10, 2014, Mr. Ray filed a notice of continuance of hearing which stated: "NOTICE IS HEREBY GIVEN that the hearing scheduled on December 5, 2014 at 1:30 PM, December 11, 2014 at 1:30 PM and December 12, 2014 at 1:30 PM for Transfer of Community Funds (Filed on 09/16/14) and removing Petitioner's name from Title of Home Mira Loma (Filed on 10/03/14) are continued due to Non availability of Hindi Interpreter Fariyal Syed. The new continuance date is not known to respondent and all parties will be informed as the new dates are available."

Also on that date, Mr. Ray filed a notice of unavailability: "NOTICE IS HEREBY GIVEN that the respondent and the attorney pro per for the above case KD082145, will not be available from December 15th, 2014 through January 22, 2015, and will not be available for any purpose whatsoever, including but not limited to receiving notices of any kind, responding to ex parte applications, appearing in Court or attending depositions. It is respectfully requested that all issues arising during the absence of said counsel be deferred until after said dates. Purposefully scheduling a conflicting proceeding without good cause is sanctionable conduct."

When trial resumed on December 11, 2014, Mr. Ray did not appear or contact the court clerk. The trial court was advised that in anticipation of Mr. Ray's presence, the court clerk had ordered a Hindi interpreter for that date. After making a number of statements—that it was 3 p.m., the trial was set for 2 p.m., and the court had not heard from Mr. Ray; that Mr. Ray had filed a purported dismissal of trial, but there was no court order dismissing the case; that the case had been trailed from December 5 to December 10 and 11, and there was a notice to

that effect; and that the trial setting and conference order remained in full force and effect—the court stated that it would proceed with the trial without Mr. Ray: "This will be considered an uncontested matter not in default. This is not a default."

Mr. Ray's pending motion to quash the subpoenas to the banks was set aside as untimely and taken off calendar by the trial court. The court also imposed an evidence sanction which precluded Mr. Ray from putting on any evidence due to his failure to appear and participate in the trial. The court found that his objections to Ms. Chollera's financial statements were not well-taken and appeared to be for purposes of delay.

Ms. Chollera testified at the December 10 trial as to the following:

The couple were married on February 18, 2001, and separated on May 25, 2011. Ms. Chollera was seeking sole legal and physical custody of their two minor children, Aryan age 8 and Akshar age 4, with Mr. Ray to have visitation. Since their separation, Mr. Ray had made three trips to India. Ms. Chollera was requesting to keep the children's passports; she wanted Mr. Ray to seek permission before taking the children abroad or outside Los Angeles, Orange, Riverside, and San Bernardino Counties. She would keep the Toyota Sienna, and Mr. Ray would keep the Honda Accord. Their Riverside real property has a fair market value of $320,000. Mr. Ray lives in their Mira Loma property, which has a fair market value of $550,000. Their San Diego property has a fair market value of $250,000, which is less than the mortgage of $280,000. Mr. Ray removed $80,000 from their safe deposit box, to which she did not have access after mid-November 2011.

The trial was continued to the following day. The next day, December 12, 2014, Mr. Ray did not appear in court or contact the court clerk. The court again found that Mr. Ray had chosen not to participate in the trial. Ms. Chollera resumed her testimony:

She stated that during the marriage, the couple transferred $205,750 to a bank in England, and Mr. Ray then transferred that money to a bank in India. He used the money to buy two properties in Mumbai, India. He told Ms. Chollera that her name could not be on title to the Indian properties because she is not a citizen of India. She was requesting a one-half interest in both properties in India.

Ms. Chollera testified that Mr. Ray was behind on his support payments. He owed $45,635.85 in child support and $37,038 in spousal support. Ms. Chollera paid her attorney $16,000, using money from her family. She owes her attorney an additional $31,615 plus costs. She testified that she thinks Mr. Ray has the ability to pay her attorney fees. Ms. Chollera does not work outside the home; she takes care of the children and her parents. Ms. Chollera requested that she be given her Roth IRA account with $35,645 and a Merrill Lynch account with $1,484.

At the conclusion of the December 12, 2014 trial, the court found the couple had a middle class to upper middle class standard of living, the existing orders were appropriate, and the orders were to remain in full force and effect. The marriage was ordered dissolved. The Riverside and Mira Loma properties were ordered sold forthwith. The San Diego property was awarded to Mr. Ray, with no offset. Each spouse was awarded a one-half interest in the India properties. Ms. Chollera was awarded

sanctions against Mr. Ray under Family Code section 271 plus attorney fees.

The trial court entered a judgment on March 10, 2015, which contained the following findings: Both parties were present at the commencement of trial at 1:30 p.m. on December 4, 2014. Mr. Ray received a written notice regarding the court's unavailability on December 5, 2014, and of the continued trial dates of December 11 and 12 at 1:30 p.m. Mr. Ray voluntarily absented himself without legal cause on December 11 and 12 and the trial proceeded in his absence. Mr. Ray filed a notice which stated his unavailability until January 23, 2015.

The judgment awarded Ms. Chollera sole legal custody and primary physical custody of the children, and granted Mr. Ray visitation. Mr. Ray was ordered to pay child support of $1,368 per month. His child support arrearage was found to be $46,635.85. Mr. Ray was ordered to pay spousal support of $756 per month. His spousal support arrearage was found to be $37,038. Each spouse was to receive one-half of the proceeds from the sales of the Riverside and Mira Loma properties. Each spouse was to receive a one-half ownership interest in the India properties. Mr. Ray was awarded the San Diego property. Mr. Ray was ordered to pay $40,000 to Ms. Chollera (half of the $80,000 in the safe deposit box), which the court found he had removed. Mr. Ray was awarded the other $40,000 from the safe deposit box. The remaining items found in the safe deposit box (6 rings, jewelry belonging to Ms. Chollera's mother, and 1 rupee) were awarded to Ms. Chollera. The Toyota Sienna was given to Ms. Chollera; the Honda Accord was given to Mr. Ray. The parties were to split the 2012 federal and state tax refunds. Ms. Chollera was awarded her Fidelity IRA. Mr. Ray was ordered to

pay $25,000 in attorney fees to Ms. Chollera's counsel. The court found this to be a complex litigation matter under Family Code section 270. Mr. Ray was ordered to pay $30,000 as sanctions under Family Code 271. The court found that he had brought meritless motions that increased the cost of litigation.

Mr. Ray moved to set aside the judgment and for new trial. In his declaration of December 29, 2014, Mr. Ray stated that the trial held on December 12, 2014 was without notice to him and that he was "defaulted." He stated that on December 4, 2014, he had given the court a set of documents to support his claim of rental property loss reimbursement. According to Mr. Ray, the court stated at the December 4 hearing that it would review his documents at home that night and would "continue with the reimbursement issue the next day on December 5th, 2014." The trial was "continued for the next day 5th December 2014 at 1:30 p.m." But on the evening of December 4, 2014, Mr. Ray's Hindi interpreter suddenly refused to appear at "future hearings scheduled on December 5th, 2014, December 11th, 2014 and December 12th, 2014." When Ms. Chollera's counsel telephoned Mr. Ray on December 5, 2014, she did so without an interpreter and "despite the court order to communicate with me in Hindi." Mr. Ray received a telephone message from Ms. Chollera's counsel on December 5, 2014, that "'ALL THE HEARING SCHEDULED FOR THIS CASE ARE CANCELLED DUE TO THE COURTS OWN MOTION.'" According to Mr. Ray, "In past the court had remained very 'STRICT' with me to make sure that I come with interpreter or he will not hear me and the hearing will be cancelled. Court had refused to talk with me even in 'Life Threading [*sic*] Emergency Situation' and had continued the matter. . . . Later on, ON MY BACK Petitioner and her attorney

went to the court and restarted as a 'TRIAL ON THEIR OWN AS AN UNCONTESTED TRIAL' and concluded the trial and the court granted the everything demanded BY THEM. [¶] . . . A notice of trial was sent by petitioner's attorney which was presumably mailed at a later date which I received after 'EVERYTHING WAS OVER' including 'THE TRIAL'. The foul proof of service was done for previously held trial date of September 15, 2014 as well. . . ."

Mr. Ray also filed a motion to recuse the trial judge. The court treated the latter as a motion under section 170.3, subdivision (c)(1) of the Code of Civil Procedure, and denied the motion on the ground that dissatisfaction with a court's rulings is not a basis for disqualification.

In February 2015, Mr. Ray filed a petition for writ of mandate in this court, seeking to disqualify Commissioner Christian. (Case No. B216868.) The petition was denied by this court on February 20, 2015. In March 2015, Mr. Ray filed an identical petition for writ of mandate. (Case No. B262888.) That petition was denied by this court on March 30, 2015.

On March 25, 2015, the trial court heard the motion to set aside the judgment and for new trial. Mr. Ray was represented by attorney David H. Heisler pursuant to a notice of limited scope representation. Mr. Heisler, who denied any knowledge of the then-pending petition for writ of mandate (case No. B262888), appeared only on the motion to set aside the judgment and for new trial. After consulting with the court's legal counsel, the trial court determined that it had jurisdiction to proceed while the writ was pending in the appellate court, as no stay had been issued.

The trial court then heard the motion on the merits. Mr. Heisler argued that the December 11 and 12, 2014 trial should not have proceeded in Mr. Ray's absence. He argued that Mr. Ray was defaulted; the trial court disagreed: "That's an incorrect statement for the record. He was not defaulted. It was an uncontested hearing. It was set for contested hearing, he did not appear. He was not defaulted." Mr. Heisler argued that under Code of Civil Procedure section 473, Mr. Ray was entitled to relief because the "minute order did not tell him to be here on 12-5. On 12-5, some way or another–on 9-5, petitioner was to give notice of the trial dates. That notice was sent on 12-5. It was not sent on 9-5 or anywhere near that date. And now there was a notice – and I will admit that – there was a notice sent on 12-5. And under CCP, five days for mailing, and presumably there would have been notice, except – if you will forgive me, Your Honor. I was just wondering if one of those days happened on a Saturday, but I am not sure if that would matter, or Sunday. And well, there was a weekend in there. So I believe Mr. Ray in his declaration states he did not actually have notice, written notice of the 12-11 and 12-12, so he did not show. And under 473 he's requesting that you consider the notice issue, consider the minute order issue, the fact he stated under penalty of perjury that he believed he did not have a translator – so presumably even if he showed up and without a translator, he would not have been able to participate in the proceedings. And for those reasons, we are requesting to set aside the orders made on 12-11 and 12-12 and, of course, that resulted in the judgment."

Ms. Chollera's counsel, Mr. Barnitt, argued that the requirements of inadvertence and surprise under section 473 had not been met. According to Mr. Barnitt, the notices of dismissal

and unavailability filed by Mr. Ray showed that he voluntarily chose not to appear at trial on December 11 and 12.

Mr. Heisler stated that the record was not clear that Mr. Ray had been ordered back. "I know the minute order from—12-5, I'm sorry. On 12-4 was he ordered back on 12-5. Because the previous, on the previous minute order 9-5-14 says 12-4 and then 12-15. And then on 12-11, I don't recall seeing on the minutes that there was a[n] interpreter here on that day. And that was part of what he was saying. There's no interpreter available. And I think that if there was an interpreter, he would have gone through that same procedure we went through today and it would be on the record. Thank you, very much."

The trial court disagreed: "First of all your representation is incorrect. I am reading from the December 4, 2014 minute order which is not prepared by the judicial officer. And it's prepared by the judicial assistan[t] which is totally independent of me, does not work for me, is not my employee. His purpose is to keep an independent record. And I direct yourself to the minute order. It's two pages. And it represents the fact that Patrick Barnitt was present. And Rakesh Ray was present in pro per. And it was called for trial. That's the minute order. And there was a certified Hindi interpreter present. The court ordered an accounting of the rental property for its review. Trial is continued to 12-5-14 at 1:30 p.m. in this department. Mr. Rakesh Ray had also subpoenaed several witnesses. They were in the hallway or present or called in. The witnesses are named. Sambara (phonetic), I hope I say this correctly, Huada (phonetic), and also a Saraj, S-A-R-A-J. They were witnesses. But they were excused from appearing because Mr. Ray had not paid their witness fees and they wanted to be excused. So they were

excused. So there was a substantial hearing with knowledge that the case was proceeding. We had already taken evidence. The matter was in trial. Not being continued. It was in trial. He was ordered back the next day. Yes, something did occur overnight that resulted in an emergency for the judicial officer. We had no problem contacting counsel for petitioner. Respondent did not appear on the 5th. Because had he, he would have talked to the clerk and that would have been the order of the court. Also, counsel, you are not aware of the fact that Mr. Rakesh Ray has often indicated he couldn't get an interpreter here, and that was not the reason. There's been past representations by the interpreters that the reason – before January of this year, interpreters had to be paid for by the parties. The law changed January 1st, 2015. And now the courts present or provide the interpreters such as the interpreter here. But prior to January 1st, 2015, if you didn't pay for the appearance of an interpreter, you didn't have an interpreter. One of the interpreters made it clear to the court that they would not appear again because Mr. Rakesh Ray had promised to pay them, but had not and would not. So that was [his] problem, not the court's problem. But there was an interpreter on the 4th of December when everyone was ordered back. There is no doubt about that in my mind. And witnesses were here an[d] excused."

The trial court denied the motion to set aside the judgment and orders, stating: "The court had read and considered the moving and responding papers and points and authorities cited and the basis for the requested set aside. And the court finds there is not good cause for the set aside. It was not a default. It was not a failure to notice. It was the fact that the respondent failed to participate in a trial that was in progress. As such, his

non-appearance is voluntary. And as such, the court declared it would be none or uncontested hearing. Not default, but uncontested. It was not anything other than a full hearing. The transcripts are available. Petitioner put on their case, their request and the basis for it, the court ordered. The judgment was entered."

On March 25, 2015, Mr. Ray filed a timely notice of appeal from the judgment.

On April 23, 2015, the trial court granted Ms. Chollera's request to set aside a deed of trust that Mr. Ray had recorded against the Riverside property.

DISCUSSION

"One of the essential rules of appellate law is that '[a] judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. [Citations.]' (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) It is the duty of the appellant to present an adequate record to the court from which prejudicial error is shown. (*Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1533.) Also, the appellant must present argument and authorities on each point to which error is asserted, or else the issue is waived. (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4.)" (*Kurinij v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 865.)

Here, the trial court provided a detailed explanation of its order denying relief under section 473: It found that Mr. Ray had actual notice of the trial dates and voluntarily absented himself from trial. But none of this is discussed in the factual recitation of the opening brief. Ignoring the trial court's actual findings, the

opening brief misleadingly states that "[b]ecause Appellant was not apprised of the new trial date of December 11, 2014, he was not present in court and the trial court conducted a 'default' trial in his absence." Contrary to the trial court's findings that notice of the December 11 and 12 trial dates was given to Mr. Ray, who elected not to appear, the opening brief states: "Notwithstanding the fact that Respondent was ordered to give notice, said notice was not given to Appellant . . . ."

The failure to discuss the trial court's adverse findings is a violation of established appellate rules. An opening brief must "[p]rovide a summary of the significant facts limited to matters in the record." (Cal. Rules of Court, rule 8.204(a)(2)(C).) It is beyond dispute that "[a]n appellant must fairly set forth all the significant facts, not just those beneficial to the appellant. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.)" (*In re S.C.* (2006) 138 Cal.App.4th 396, 402.) "'Where statement of decision sets forth the factual and legal basis for the decision, any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision.' (*In re Marriage of Hoffmeister* (1987) 191 Cal.App.3d 351, 358.)" (*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1531.)

I

Mr. Ray argues that the trial court conducted a default trial without affording him an opportunity to appear and participate in the trial. The contention lacks merit.

The record contains substantial evidence to support the trial court's finding that Mr. Ray was aware of the December 11 and 12 trial dates. Those trial dates were listed in his pretrial witness and exhibit lists, his notice of continuance, and his

declaration of December 29, 2014. His assertion that he was misled to believe the trial had been canceled was found to be not credible. Where, as here, a finding is supported by substantial evidence, we defer to the trial court's findings, including its finding on the credibility of witnesses. (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 364–365.)

A court possesses inherent authority to impose sanctions for litigation misconduct. (See *Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 763.) As a result of Mr. Ray's deliberate refusal to appear at trial, the court imposed an evidence sanction, which Mr. Ray does not mention in his brief on appeal. "The taking of such a calculated risk was willful conduct." (*Alliance Bank v. Murray* (1984) 161 Cal.App.3d 1, 11. Mr. Ray's reliance upon *In re Marriage of Carlsson* (2008) 163 Cal.App.4th 281 is misplaced. In that case, there was no willful failure to appear at trial.

Mr. Ray contends that even if he were present on December 11, 2014, the trial could not have gone forward because the court previously had ruled that the case could not proceed without a translator present. We are not persuaded. Because Mr. Ray absented himself from the December 11 hearing, the fact that a Hindi translator was not present for his benefit is irrelevant.

The contention that the trial court erred in dissolving the marriage when Mr. Ray was seeking an annulment of marriage is unavailing. The trial court did not err. Because Mr. Ray chose not to participate in the trial, the court was authorized to preclude him from presenting evidence to support his claim of annulment. (See Code Civ. Proc., § 594, subd. (a) [court may proceed to trial in absence of adverse party].) Moreover, the failure to participate at trial constitutes a forfeiture of the issue

on appeal. (See *Bell v. American Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1602 [appellate forfeiture].)

II

Mr. Ray argues the findings and orders by the trial court are not supported by substantial evidence. But because he has not provided a fair and accurate statement of Ms. Chollera's testimony and evidence at trial, he has not complied with his obligation of establishing the existence of reversible error. "'Instead of a fair and sincere effort to show that the trial court was wrong, appellant's brief is a mere challenge to respondents to prove that the court was right. . . . An appellant is not permitted to evade or shift his responsibility in this manner.' (*Estate of Palmer* (1956) 145 Cal.App.2d 428, 431.)" (*Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 505; see *In re Marriage of Arceneaux*, *supra*, 51 Cal.3d at p. 1133 [presumption of correctness of judgment].)

Under the circumstances, the decision to award child support and spousal support to Ms. Chollera, and to divide the marital property based on the evidence presented at trial was not an abuse of discretion. "Except where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact." (Evid. Code, § 411.) Through her testimony, Ms. Chollera provided substantial evidence to support the trial court's rulings and orders on custody, support, and division of property.

III

Mr. Ray contends the trial court abused its discretion in several matters. First, without citing any authority in support of his contention, Mr. Ray contends that it was an abuse of discretion to rule on his motion to set aside the judgment while

his petition for writ of mandate to disqualify the commissioner was pending in this court in case No. B262888. Because there was no stay issued, the trial court did not lack authority to proceed with the hearing and we find no abuse of discretion.

Second, he contends that the denial of his motion to set aside the judgment constituted an abuse of discretion. He takes issue with the trial court's finding that the trial commenced on December 4, 2014, and argues that the trial did not begin until December 11, 2014, in his absence. Regardless whether the first day of trial was December 4, 2014 or December 11, 2014, the fact remains that Mr. Ray was ordered back on December 11, 2014, and that he was found to be willfully absent from trial on December 11 and 12, 2014. For the reasons previously discussed, his contention that the trial court's finding of willful absence is not supported by substantial evidence lacks merit.

Finally, Mr. Ray challenges the April 23, 2015 order setting aside a deed of trust that he had allowed to be recorded against the Riverside property, which had been ordered sold. But the April 23, 2015 order is not mentioned in the notice of appeal, which was filed on March 25, 2015. Because the April 23 order was separately appealable, the March 25 notice of appeal did not encompass the subsequent order, and because the failure to file a separate notice of appeal is jurisdictional, we do not reach this issue. (See *Silver v. Pacific American Fish Co., Inc.* (2010) 190 Cal.App.4th 688, 694 [notice of appeal from judgment did not encompass subsequent and separately appealable order awarding attorney fees].)

DISPOSITION

The judgment is affirmed. Respondent is to have her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P.J.

We concur:

MANELLA, J.

COLLINS, J.