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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of WENDY and RONALD RAY ROGERS.	2d Civil No. B261262 (Super. Ct. No. FL098546) (San Luis Obispo County)
WENDY BEVAN ROGERS, Respondent, v. RONALD RAY ROGERS, Appellant.	

"Family law courts," we have observed, "have a difficult task. They must characterize property, divide community property, and award spousal and child support. This undertaking becomes even more challenging when a party submits misleading or false information to the court" (*In re Marriage of Calcaterra and Badakhsh* (2005) 132 Cal.App.4th 28, 31), or when, as in this case, the party provides no information at all despite repeated orders to do so.

For the past seven years, appellant Ronald Ray Rogers (Rogers) and respondent Wendy Bevan Rogers (Bevan) have been engaged in marriage

dissolution proceedings of "unprecedented" contentiousness and acrimony.[1] Rogers repeatedly violated court orders to turn over discovery and pay child support. The trial court found him guilty of 25 counts of contempt. As sanctions for the contempt, the trial court jailed him for 30 days, struck his answer, and entered his default. In subsequent proceedings, the trial court took testimony from Bevan regarding the division of property but prohibited Rogers from participating because of his defaulted status. At the end of these proceedings, a default judgment was entered, from which he appeals.

Rogers contends that the trial court's default sanction deprived him of due process. He argues that the sanction was rendered without notice and was an overbroad remedy for his conduct. According to Rogers, the improprieties in the trial court's default sanction render its subsequent default judgment void. He further contends that Bevan's testimony regarding the division of property was false and the trial court's order that he pay half of certain debts discharged in federal bankruptcy court violates the supremacy clause of the United States Constitution.

We dismiss the appeal to the extent it challenges the trial court's sanction of default and its denial of Rogers's motions to set aside the default and default judgment. Rogers did not timely challenge the order issuing contempt sanctions by petition for extraordinary writ. We thus lack jurisdiction to review it. In addition, Rogers's continued refusal to comply with the trial court's orders disentitles him to have those orders reviewed on appeal. (See *In re Marriage of Hofer* (2012) 208 Cal.App.4th 454, 459.) To the extent Rogers challenges the factual basis for the default judgment and specifically the division of property, we conclude that the trial court's assignment of certain debts to Rogers was

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[1] A commissioner observed that they "'despise each other to an extent not often seen in this bench officer's nearly nine-year stint on the bench in a family law assignment and . . . 32 years as a family law lawyer.'" This is the second appeal in this matter. On April 9, 2012, we reversed the trial court's ruling denying Bevan's request to move with the children to Utah. (B227305 [nonpub opn.].)

computational error and we modify the judgment accordingly. In all other respects, we affirm.

FACTS AND PROCEDURAL HISTORY[2]

Ronald Rogers and Wendy Bevan were married for 17 years. Rogers was a very successful studio artist who created oil paintings that he sold in art galleries and directly to collectors. Bevan worked at home caring for their eight children, including five from Rogers's prior marriage.

Bevan petitioned to dissolve the marriage in 2009. The trial court entered a status only judgment of dissolution and reserved jurisdiction over all other issues.

In June 2010, the trial court ordered the parties to turn over the paintings that Rogers created during the community for sale by the "Just Looking" gallery, the proceeds from which were to be held by Rogers's attorney in a client trust account until the court ordered their distribution to the parties. The parties were ordered to turn over specified paintings in their possession and were enjoined from selling, transferring, giving away, encumbering, or otherwise disposing of them until the trial court determined their character as community or separate property. The parties were also ordered to "provide each other with a detailed accounting of the assets they have sold or given away since they separated."

During a July 2012 hearing regarding child support issues, Rogers disclosed the existence of Ronald Ray Rogers Art Incorporated (Rogers Inc.), a Wyoming corporation whose only officer was his 89-year-old father. He admitted that he had a contract with Rogers Inc. in which he had surrendered all of his past and future work, including images and copyrights. The trial court ordered him to provide a list of documents related to Rogers Inc. and his artwork by the end of the month. He did not do so.

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[2] The trial court helpfully "summarize[d] the record, explain[ed] the facts, and discuss[ed] the reasoning behind its rulings" in great detail. We take the facts from the trial court's summary.

Three months later, the trial court ordered Rogers to pay $10,000 towards Bevan's attorneys' fees in monthly installments of $500 starting in January 2013. Rogers requested reconsideration of both this fee order and various child support orders that are not at issue here. The Department of Child Support Services (DCSS), which was then enforcing child support, objected to his request. It submitted a declaration stating that Rogers had made no voluntary child support payments since August 21, 2012, and that an art gallery in Utah carrying his paintings was refusing to comply with an administrative subpoena. DCSS asked the trial to find that he was a contemptuous litigant by refusing to pay support and thwarting the collection of earnings (Fam. Code, § 5206) through the creation of a sham corporation. It sought orders joining Rogers Inc. as a party (Code Civ. Proc., § 389)[3] and enforcing his child support obligations (Fam. Code, § 290).

In June 2013 the trial court found that "Rogers has never been credible with respect to the ownership of his artwork." It determined that Rogers Inc. and a successor limited liability corporation (Rogers LLC) were sham entities and alter egos that he formed to facilitate the fraudulent transfer of his artwork and avoid paying his child support obligations. The trial court joined Rogers Inc. and Rogers LLC as parties. It ordered that any future sales, consignments, or conveyances of Rogers's artwork be undertaken only with prior notice to DCSS. Rogers was ordered, within five days of receiving any gross income from the sale of his art, to pay 30 percent to DCSS. He was further ordered to provide DCSS by July 2013 with a complete list (including photograph, title, and year produced) of all art possessed or controlled by him or his corporate entities, including art that was consigned to galleries. The trial court found that he was a "contemptuous litigant" due to his failure to make child support payments.

In a July 2013 hearing at which Rogers was in attendance, Bevan informed the trial court that he had still not complied with its orders from July 2012

[3] All further statutory references are to the Code of Civil Procedure unless otherwise stated.

and June 2013 to provide discovery regarding Rogers Inc. and his artwork. She asked the court to warn him that if he failed to provide the discovery by the end of the month, he could be held in contempt, jailed, and fined. The trial court stated, "[t]here[] [are] several things that can be done when a person fails to comply with a court order, and one of them is to strike the response, and . . . that person would no longer participate in the proceedings. And if that happened, Mr. Rogers'[s] response . . . was stricken for interfering with the process, then . . . you would be the only person that would provide information to the court about what kind of orders it ought to make referring to properties and debts."

Later that month, Bevan filed an order to show cause why Rogers should not be held in contempt for, among other things, his failure to pay child support and spousal support on an ongoing basis during 2012 and 2013 and his failure to produce the discovery that had been ordered. Rogers, represented by counsel, waived arraignment, time for trial, and further advisement of his rights regarding the contempt charges. Following a November 2013 bench trial, Rogers was found guilty of contempt on 25 counts for failure to comply with court orders. Specifically, the trial court found that he failed to make 23 support payments between August 2012 and July 2013, failed to turn over the discovery, and failed to provide Bevan with his new address after moving. The trial court concluded that his contumacious acts were "deceitful," "deviously conceived," and deployed "to hide his earnings behind a veil of corporate entities and arrangements with his family to conceal his earnings through loans and other arrangements that were then forgiven."

As punishment for the contempt, the trial court sentenced Rogers to jail for 30 days, struck his responsive pleading, and entered his default. He was immediately remanded into custody.

Between March and June 2014, the trial court held a series of default hearings at which Bevan provided testimony to prove up her allegations regarding

the reserved issues, including the division of property. Rogers attended these hearings but was prohibited from participating due to his defaulted status.

Rogers moved to set aside the default. (§ 473, subd. (b).) He claimed that the trial court did not have authority under section 1218 to enter his default as a contempt sanction. The trial court, concluding otherwise, denied the request. It further found that review of a contempt judgment was available only by writ and that it lacked jurisdiction to amend the contempt order. The trial court ruled that section 473 was inapplicable because Rogers did not claim there had been any mistake, inadvertence, surprise, or excusable neglect.

In ruling on the reserved issues, the trial court considered the "voluminous works of art that [Rogers] produced and sold (or otherwise disposed of) after the parties separated," which were "[p]erhaps the most significant tangible assets." The court determined that "this artwork was produced during the marriage and is all community property," which it valued at $260,000. It found that Rogers willfully "disposed of these assets (or, at the very least, sequestered them) in violation of the injunction and in breach of his fiduciary duties to [Bevan]." As a sanction, the trial court did not adhere to the presumption of equal division of assets (Fam. Code, § 2550), but instead awarded her 100 percent of the undisclosed artwork assets that he had concealed (*id.*, § 1101, subd. (h)). The trial court awarded her a total equalizing payment of $304,778.

The trial court entered a default judgment. Subsequently, Rogers moved to set aside the judgment and for a new trial. The trial court denied the motion. Rogers appeals the default judgment and the denial of his motion to set aside the default judgment and for a new trial.

DISCUSSION

Scope of Review

Rogers contends that the default judgment is void because it rests on an invalid sanction of default as punishment for his contempt. Bevan moves to dismiss the appeal for lack of appellate jurisdiction because Rogers did not timely

seek review of the contempt judgment through the appropriate procedure. We agree with Bevan and therefore do not reach the merits of Rogers's challenges to the default and default judgment.

Judgments and orders in contempt proceedings "are final and conclusive" (§ 1222) and nonappealable. (*Id.*, § 904.1, subd. (a)(1)(B).) Review may be had by extraordinary writ (*Conn v. Superior Court* (1987) 196 Cal.App.3d 774, 784), but "must usually be filed within 60 days." (*People v. Superior Court* (1992) 2 Cal.App.4th 675, 682.) A court's "discretion to hear a writ petition beyond the 60-day time limit following a trial court's order . . . will not normally be exercised" (*ibid.*) absent '"circumstances of an extraordinary character."' (*Scott v. Municipal Court* (1974) 40 Cal.App.3d 995, 997 [petition for writ of review challenging contempt sentence untimely after six-month delay].)

Rogers waited more than five months before moving to set aside the default and more than a year before seeking review of the contempt order in this court. He identifies no extraordinary circumstances that would justify consideration of his stale claims at this late date. Even if he could, we would still decline to review the contempt judgment. He did not provide the discovery ordered by the trial court—the very basis for his default sanction.

"A party to an action cannot, with right or reason, ask the aid and assistance of a court in hearing his demands while he 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.) "The disentitlement doctrine enables an appellate court to stay or to dismiss the appeal of a party who has refused to obey the superior court's legal orders. [Citation.] 'Dismissal is not "'a penalty imposed as a punishment for criminal contempt. It is an exercise of a state court's inherent power to use its processes to induce compliance'" with a presumptively valid order.' [Citation.]" (*In re Marriage of Hofer, supra*, 208 Cal.App.4th at p. 459.)

To the extent Rogers argues that the trial court exceeded its jurisdiction by imposing the default sanction without adequate notice or statutory authorization, rendering the order void, we disagree. "Where, as here, the court has jurisdiction over the party and the questions presented, but acts in excess of its defined power, the judgment is voidable, not void. [Citation.]" (*Lee v. Ji Hae An* (2008) 168 Cal.App.4th 558, 566.) "In this case, the court had fundamental jurisdiction over the parties and the subject matter, but [according to Rogers] acted in excess of its jurisdiction . . . . The resulting default and default judgment were thus voidable, not void. 'The difference between a void judgment and a voidable one is that a party seeking to set aside a voidable judgment or order must act to set aside the order or judgment before the matter becomes final.' [Citation.] [Rogers] failed to do so." (*Id.*, at pp. 565-566; see *Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control* (1961) 55 Cal.2d 728, 731 ["An act that may be in excess of jurisdiction so as to justify review by prerogative writ . . . will nevertheless be res judicata if the court had jurisdiction over the subject and the parties"].)

Relying on *Koshak v. Malek* (2011) 200 Cal.App.4th 1540 (*Koshak*), Rogers argues that writ proceedings "are neither the sole nor [the] appropriate [means of reviewing] terminating sanctions" imposed as punishment for a contempt judgment. In *Koshak*, the defendant was sentenced for contempt. At the end of the hearing, the trial court, pursuant "to its purported 'independent authority to make sure that its orders are enforced,' . . . 'ma[d]e a separate order'" requiring that the defendant pay restitution. (*Id.*, at p. 1544.) The defendant immediately appealed the restitution order. The Court of Appeal, holding that "the restitution order is appealable as a final, collateral order requiring the immediate payment of money," determined that it had appellate jurisdiction. (*Id.*, at p. 1542.)

The defendant "also filed a separate petition for a writ of certiorari challenging the contempt judgment." (*Koshak*, *supra*, 200 Cal.App.4th at p. 1542 fn. 1.) Rogers—evidently assuming that the defendant was seeking the same relief

via an alternative procedure, perhaps out of an abundance of caution—asserts that the Court of Appeal "had no difficulty choosing between [the two means of review]." There is no reason to assume, however, that the *Koshak* defendant's writ petition sought to challenge anything other than the contempt sentence of 50 days in jail and a $10,000 fine. The Court of Appeal did not address the writ petition in the appeal. "Cases do not stand for propositions that were never considered by the court. [Citation.]" (*Mares v. Baughman* (2001) 92 Cal.App.4th 672, 679.)

Regardless, *Koshak* had no reason to treat the restitution order as part of the contempt order because the trial court distinguished them as "separate" and pursuant to "independent" sources of authority. (*Koshak*, *supra*, 200 Cal.App.4th at p. 1544.) Rogers dismisses this as "a distinction without a difference," but it makes all the difference in the world. (Cf. *Nickell v. Matlock* (2012) 206 Cal.App.4th 934, 940 ["An order granting terminating sanctions is not appealable, and the losing party must await the entry of the order of dismissal or judgment *unless* the terminating order is inextricably intertwined with another, appealable order"].)

Because we lack appellate jurisdiction to consider Rogers's challenge to the contempt sanction of default, we will grant Bevan's motion to dismiss in part. In addition, we dismiss the appeal to the extent it challenges the denial of Rogers's motions to set aside the default and the default judgment. His notice of appeal specifies that he is challenging "only" the judgment on reserved issues "as to property items and property issues." "[A]n appeal from a portion of a judgment brings up for review only that portion designated in the notice of appeal. [Citation.]" (*Glassco v. El Sereno Country Club* (1932) 217 Cal. 90, 92.) Even if we were to consider the issue, we would affirm the trial court, which properly concluded that Rogers was not seeking to set aside the default and default judgment due to "mistake, inadvertence, surprise, or excusable neglect." (§ 473, subd. (b).)

Notwithstanding his default, Rogers is entitled to challenge the sufficiency of the evidence supporting the trial court's division of property. (See *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 288.) We will

uphold the trial court's division of property if supported by sufficient evidence, including Bevan's testimony at the prove-up hearings and any allegations in her pleadings that Rogers has admitted by virtue of his default. (See *Scognamillo v. Herrick* (2003) 106 Cal.App.4th 1139, 1150.)

Debts Discharged in Bankruptcy

Rogers contends that the trial court erroneously required him to pay half of certain community debts—$27,138 owed to Chase bank and $7,500 owed to Bevan's family—that were discharged in federal bankruptcy court, thus violating the supremacy clause. (U.S. Const., art. VI, cl. 2; see *In re Marriage of Cohen* (1980) 105 Cal.App.3d 836.) To the contrary, the default judgment acknowledges Rogers's bankruptcy discharge and purports to assign the debts in question solely to Bevan. There is, however, a computational error. The trial court's equalizing payment of $304,778 incorrectly imputes half of these debts to him as calculated in the "CFLR Propertizer 2014-2" worksheet attached to the judgment. Therefore, we will modify the judgment to reflect an equalizing payment of $287,459, which reflects a credit of $17,319 to Rogers for half of the discharged debts.

Veracity of Evidence Supporting Property Valuations

According to Rogers, at the prove-up hearings Bevan intentionally misrepresented the value of dining room furniture and provided "inaccurate, deceptive, and false testimony" regarding his artwork. Having defaulted, however, he forfeited his right to contest this testimony at the hearing and on appeal. (*Heathman v. Vant* (1959) 172 Cal.App.2d 639, 648.) As a general proposition, "[a]ppellate courts 'do not reweigh evidence or reassess the credibility of witnesses. [Citation.]' [Citation.]" (*In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1531.) Moreover, one whose wrongful conduct has made it difficult to ascertain the value of community property cannot complain because the trial court must estimate rather than calculate it exactly. (See *Fishbaugh v. Fishbaugh* (1940) 15 Cal.2d 445, 453.)

DISPOSITION

The appeal is dismissed to the extent Rogers challenges the trial court's entry of default as a contempt sanction and its denial of his motions to set aside the default and default judgment. The judgment is modified to reflect that Rogers's equalizing payment to Bevan is $287,459. In all other respects, the judgment is affirmed. Costs on appeal are awarded to Bevan.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Charles S. Crandall, Judge

Superior Court County of San Luis Obispo

John F. Hodges for Appellant.

Wendy Bevan Rogers, in pro. per., for Respondent.