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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Marriage of SONDRA and HERMAN
RODRIGUEZ.

B237757

(Los Angeles County
Super. Ct. No. MD035455)

SONDRA RODRIGUEZ,

Respondent,

v.

HERMAN RODRIGUEZ,

Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.

Michael Terrell, Judge. Affirmed.

Michael I. D. Mercy for Appellant.

No appearance for Respondent.

Herman Rodriguez appeals from a judgment ordering his former wife Sondra Rodriguez to pay him \$150 per month to purchase his interest in the family residence.¹ Herman complains that the court improperly altered the terms of the parties' 2007 marital settlement agreement (MSA), which required Sondra to sell the residence and pay him \$75,000 from the proceeds. When the court modified the MSA, it acted upon equitable considerations that are well within its discretion. We affirm.

FACTS

Appellant's appendix consists only of the judgment and a prejudgment order explaining the court's reasoning. The judgment awards Sondra the family residence in Lancaster (the Property), where she lives with the parties' son. The court found that Sondra has paid \$51,000 toward the \$150,000 she owes Herman for his share of the community interest in the Property. The court ordered Sondra to pay Herman \$150 per month to satisfy her remaining \$75,000 debt to Herman.

The prejudgment order states that in March 2007, the parties agreed that Herman would receive \$150,000 as his share of the \$300,000 equity in the Property. Herman received \$51,000 from Sondra in April 2007, when she refinanced the Property. It was contemplated that Herman would receive the rest of his equity share when Sondra sold the Property by June 2010. The court wrote, "Subsequent to 2007, the value of the residence decreased greatly and Wife never sold the residence and never paid Husband his remaining \$75,000 share."

The court rejected Sondra's claim that the decrease in the Property's value voided her obligation to repay Herman. The court wrote, "While Wife's obligation to pay Husband \$75,000 is far more difficult given the decrease in value, it is not impossible. Therefore, the court orders Wife to pay Husband \$75,000 owed to him pursuant to the March 2007 agreement. Given the decrease in the value of the property and given Wife's

¹ For convenience, we refer to the parties by their first names. (*In re Marriage of Fini* (1994) 26 Cal.App.4th 1033, 1035, fn. 1.)

income as a teacher, the court orders such payment to be made in installments of \$150 per month starting April 1, 2011.” Herman appeals from the judgment.

DISCUSSION

The record on appeal is inadequate. The parties’ MSA is not in the record. Although the judgment states that the trial was conducted “by declaration,” none of the parties’ declarations are in the record. There is no reporter’s transcript in the record, so we cannot tell what issues were presented at trial. Nothing in appellant’s appendix indicates that Herman objected to the terms of the proposed judgment.

The appealing party carries the burden of demonstrating error, which means that Herman must provide “an adequate record to assess error.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) Without the MSA, there is no evidence of its terms. There is no proof that Herman objected to the trial court’s ruling, forfeiting the claim on appeal. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293; *Dacey v. Taraday* (2011) 196 Cal.App.4th 962, 978-979.) The inadequate record is reason enough to reject the appeal, without reaching the merits. (*Ketchum v. Moses, supra*, 24 Cal.4th at p. 1141; *In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498.)²

In any event, we find no abuse of discretion. MSA’s are “subject to the scrutiny and approval of the court and, if approved, will be incorporated into the interlocutory judgment.” (*In re Marriage of Vomacka* (1984) 36 Cal.3d 459, 464.) An MSA may be set aside on legal principles applicable to contracts, including mistake. (*In re Marriage of Egedi* (2001) 88 Cal.App.4th 17, 22; Civ. Code, § 1689.) A mutual mistake of fact or law affecting an essential element of the contract makes the contract subject to rescission. (*Guthrie v. Times-Mirror Co.* (1975) 51 Cal.App.3d 879, 884.) “The trial court also had the power to invalidate the MSA if it was inequitable. Family law cases ‘are equitable

² “When practicing appellate law, there are at least three immutable rules: first, take great care to prepare a complete record; second, if it is not in the record, it did not happen; and third, when in doubt, refer back to rules one and two.” (*Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 364.)

proceedings in which the court must have the ability to exercise discretion to achieve fairness and equity.”” (*In re Marriage of Egedi, supra*, 88 Cal.App.4th at pp. 22-23.; *In re Marriage of Fini, supra*, 26 Cal.App.4th at p. 1043; *Adams v. Adams* (1947) 29 Cal.2d 621, 624.) “[M]arital settlement agreements may be set aside where the court finds them inequitable even though not induced through fraud or compulsion.” (*In re Marriage of Moore* (1980) 113 Cal.App.3d 22, 32.)

The 2007 MSA required that Sondra sell the Property by June 2010 to pay Herman \$75,000. It is common knowledge that the housing market crashed in 2008; the Antelope Valley is particularly impacted by a drastic decrease in property values. Herman does not even attempt to argue that Sondra can sell the Property in a depressed market. The parties signed the MSA in 2007 under a mutual mistake: they mistakenly believed that real estate values would continue to rise and that Sondra would be able to sell the Property by 2010, realizing enough profit to pay Herman \$75,000. Instead, the market collapsed and the parties’ home equity was lost.

Under the circumstances, it would be inequitable to require Sondra to pay Herman \$75,000 right away, or force a sale of the Property when it is “upside down,” i.e., the mortgage is greater than the value of the property. Herman has not proved that Sondra has access to \$75,000 unless she sells the Property for a profit. The equitable solution is the one devised by the trial court: that Sondra pay Herman monthly on the debt.

Herman argues that the judgment is unfair because (1) he will be 90 years old by the time the \$75,000 is repaid at the current rate; (2) the court did not provide for interest; and (3) there is no provision for accelerated repayment in the event that the real estate market recovers and Sondra sells the Property profitably. While Herman’s arguments make sense, they did not compel the trial court to rule in his favor.

The law requires that the community estate be equally divided, unless the parties agree otherwise. (Fam. Code, § 2550.) If the family home is a community asset, as it is here, the husband who is not awarded the home may petition to compel the spouse who remains in the home to sell the home and compensate him for his share of the community interest: the husband’s award is illusory if there is an open-ended arrangement to allow a

former wife to sell whenever (and if ever) she pleases. (*In re Marriage of Pollard* (1988) 204 Cal.App.3d 1380, 1382-1386.) When market conditions improve, Herman may petition the family law court to require Sondra to sell or refinance the Property and reimburse him entirely with interest if, in its discretion, the court deems that to be an economically sound and appropriate course. (*Ibid.*; *In re Marriage of Schenck* (1991) 228 Cal.App.3d 1474, 1484)

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

CHAVEZ, J.