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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re the Marriage of JANETTE and
SHAHIN MONFARED

JANETTE MONFARED,

Respondent,

v.

SHAHIN MONFARED,

Appellant.

B231558

(Los Angeles County
Super. Ct. No. BD443260)

APPEAL from orders of the Superior Court of Los Angeles County. Michael J. Convey and Stephen M. Moloney, Judges. Affirmed.

Cara R. Daneman for Appellant.

Janette Monfared, in pro. per., for Respondent.

In this marital dissolution action, appellant Shahin Monfared appeals from the trial court's orders requiring him to pay, effective October 1, 2007, specified amounts of child support, temporary spousal support, and support arrearages to his wife Janette.¹ We affirm the trial courts orders.

BACKGROUND

Janette's order to show cause (OSC) for support and September 2007 order

Janette filed a petition for dissolution of marriage on March 30, 2006. The petition sought spousal support, determination of property rights, and custody of the children. At the time the petition was filed, Janette and Shahin had three minor children. On September 19, 2007, Janette filed an ex parte application for an OSC seeking child support and temporary spousal support.

At the September 19, 2007 hearing on Janette's ex parte application, the trial court denied Janette's request to shorten time and set a hearing date of November 20, 2007 for her OSC. Pending that hearing date, the trial court granted Janette ex parte relief by ordering Shahin to pay certain of the family's expenses. The September 19, 2007 minute order states: "Pending next hearing, the court issues its temporary orders as reflected in the ex-parte application's FL-300 attachment and attachment 4 to form 305." Those attachments indicate that Shahin was to pay unspecified amounts for the mortgage on the family residence, taxes, utilities, health insurance, car insurance, homeowner's insurance, automobile payments, as well as "approximately \$20,000" for private school tuition, and a \$38,500 payment for the Visions Adolescent Treatment center.

At the conclusion of the September 19, 2007 hearing, the trial court made clear in an exchange with Janette's counsel that the ex parte relief granted did not include specified spousal or child support payments:

¹ We refer to the parties by their first names to avoid confusion. No disrespect is intended.

“[JANETTE’S COUNSEL]: Your honor, did you make any provision for monetary support for my client other than payment of the expenses?”

“THE COURT: No, I did not. . . .”

April 3, 2009 hearing on Janette’s OSC

The hearing on Janette’s OSC was continued several times and was finally heard on April 3, 2009. At that hearing, the trial court ordered Shahin to pay child support in the amount of \$13,002 per month and spousal support of \$28,917 per month, effective October 1, 2007. After Shahin argued that he had been making payments to Janette for the benefit of the children in the absence of a support order, the trial court ordered the parties to meet and confer in an effort to determine the amount of any credits that Shahin might be entitled to offset against his support obligations. The trial court reserved jurisdiction over the issues of any offsets and credits the parties may have.

Following the April 3, 2009 hearing, the trial court issued a written order, filed on June 26, 2009, requiring Shahin to pay Janette child support in the amount of \$12,976 per month and spousal support of \$22,000 per month, retroactive from October 1, 2007. The court found that Shahin owed support payment arrearages and ordered him to pay the sum of \$15,000 per month, commencing on May 1, 2009, until the amounts in arrears were paid in full. The court ordered counsel to meet and confer regarding the amounts of credits or offsets Shahin was entitled to as the result of payments he had made for the benefit of Janette and the children during the period between October 1, 2007 and April 3, 2009. The court further ordered Shahin to pay interim accounting fees of \$30,000, payable in two installments of \$15,000 on May 15, 2009, and June 15, 2009.

Effective June 1, 2009, the court ordered Shahin’s support obligations modified to \$7,864 in monthly child support and \$31,868 in monthly spousal support.

Shahin’s OSC to modify support

On November 20, 2009, Shahin filed an OSC seeking to modify his support obligations. The hearing on Shahin’s OSC was held on March 9, and 16, 2010. The trial court issued its ruling on Shahin’s OSC on May 18, 2010, and on May 24, 2010, the

parties requested clarification of the trial court's ruling. The trial court issued a clarification of its ruling on July 20, 2010.

On January 12, 2011, the trial court issued its written order on Shahin's OSC to modify support. The January 12, 2011 order includes the trial court's findings from its previous May 18, 2010 ruling and its July 20, 2010 clarification. The trial court found that Shahin owed a net amount of \$294,987.53 in arrears for child support and spousal support during the period from October 1, 2007 through December 31, 2009.² The court ordered Shahin to pay the \$294,987.53 owed in arrears in monthly payments of \$15,000 until paid in full. The trial court reserved jurisdiction until the time of trial over \$108,828.69 in payments Shahin had made but that the parties could not agree upon as offsets to the support obligation.

Shahin filed this appeal on March 10, 2011.

DISCUSSION

Shahin advances the following arguments as grounds for reversing the trial court's support orders: the orders issued at the September 19, 2007 hearing on Janette's ex parte application were final and appealable orders, and the trial court acted in excess of its jurisdiction by retroactively modifying those orders at the April 3, 2009 hearing on Janette's OSC. There was an insufficient factual basis for the trial court's finding that Shahin owed a support arrearage, and the trial court's finding of a support arrearage conflicted with its concurrent finding that Shahin had paid "most, if not all" of the family's living expenses. The trial court should have stayed enforcement of any support arrearage when it vacated the trial date. As we discuss, none of these grounds is a valid basis for reversing the trial court's orders.

² The \$294,987.53 in net support arrearages was calculated as follows: the trial court found that Shahin owed a gross total of \$937,912 in child support and spousal support from October 2, 2007 to November 30, 2009, plus an additional \$24,143 in support for the month of December 2009. Against those amounts, the court credited Shahin with \$538,688.12 in offsets the parties had agreed upon in a court ordered "meet and confer," plus an additional \$128,379.35 in payments Shahin had made that the court found should be credited against his support obligation.

I. Support payments -- general legal principles

A court is authorized to award child support and temporary spousal support by Family Code section 3600,³ which provides in part as follows: “During the pendency of any proceeding for dissolution of marriage . . . the court may order (a) the husband or wife to pay any amount that is necessary for the support of the wife or husband, . . . or (b) either or both parents to pay any amount necessary for the support of the child, as the case may be.”

When making an order for child support, a court must adhere to the statewide uniform guideline set forth in section 4050 et seq. The statewide uniform guideline establishes a mandatory formula for computing child support that must be applied in all child support proceedings, regardless of whether temporary or permanent support is sought. (See *Wilson v. Shea* (2001) 87 Cal.App.4th 887, 891 [“no trial judge making a child support order can escape making a formula calculation pursuant to section 4055”]; Hogoboom and King, Cal. Practice Guide: Family Law (The Rutter Group 2011) ¶¶ 5:132-5:140, pp. 5-56 to 5-59; ¶ 6:130, p. 6-57. (*Hogoboom*).) Application of the uniform guideline results in an amount of monthly child support owed by one parent to the other. (*Hogoboom, supra*, ¶ 6:177, p. 6-73.) An order for child support may be made retroactive to the date of filing of the order to show cause. (§ 4009.)

A trial court is not bound by any statutory guideline when fixing an amount of temporary spousal support. Temporary spousal support may be ordered in any amount based on the party’s need and the other party’s ability to pay. (*In re Marriage of Wittgrove* (2004) 120 Cal.App.4th 1317, 1327.) A temporary spousal support order can be made retroactive to the date of filing a petition for dissolution that requests spousal support. (*In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 165 (*Dick*).) An order for temporary spousal support is in the nature of a final judgment and is directly appealable. (*In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368-369 (*Skelley*).) An exception exists only if it is clear that the order is an interim or preliminary ruling; such orders are not

³ All further statutory references are to the Family Code unless otherwise indicated.

final or appealable even if affecting severable and collateral matters arising in a dissolution proceeding. (*In re Marriage of Levine* (1994) 28 Cal.App.4th 585, 586-589; *In re Marriage of Van Sickle* (1977) 68 Cal.App.3d 728, 737.)

An order awarding temporary spousal and child support “may be modified or terminated at any time except as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate.” (§ 3603.) “[T]he retroactive effect of any modification or revocation of support is limited to the date of filing the notice of motion or order to show cause, or any date subsequent thereto. [Citation.]” (*Skelley, supra*, 18 Cal.3d at p. 369.) The filing date, in other words, establishes the outermost limit of retroactivity.

II. The September 19, 2007 ex parte rulings were not final or directly appealable

Shahin contends the orders issued at the September 19, 2007 hearing on Janette’s ex parte application requiring him to pay certain expenses was a final and directly appealable order for support. Shahin further contends that the trial court’s orders issued at the April 3, 2009 hearing on Janette’s OSC, requiring him to pay spousal and child support retroactive to October 1, 2007, constituted an improper retroactive modification of the September 19, 2007 support order.

It is evident from the record that the orders made at the September 19, 2007 hearing were preliminary rulings and not final and directly appealable orders for spousal and child support. The minute order for September 19, 2007, states that the court’s “temporary orders” were effective “pending” the “next hearing” on Janette’s OSC seeking spousal and child support. The order makes no reference to spousal or child support, and the trial court expressly stated that it had made no provision for such support. There is no indication that the trial court applied the mandatory statewide uniform guidelines for determining child support during the September 19, 2007 hearing or that the court made any findings necessary to support a deviation from those guidelines. (§§ 4055-4056.)

Shahin cites *In re Marriage of Gruen* (2011) 191 Cal.App.4th 627 (*Gruen*) as support for his argument that the orders made at the September 19, 2007 hearing were

final and directly appealable orders. That case, however, is distinguishable. The orders at issue in *Gruen* were made, not at an ex parte hearing, but at a hearing on an OSC regarding child and spousal support. (*Id.* at p. 632.) The orders issued in *Gruen* required the husband to pay not only monthly expenses such as the mortgage and insurance, but also the specific sum of \$40,000 in monthly spousal support. (*Id.* at p. 633.) The appellate court in *Gruen* accordingly concluded that the trial court could not subsequently reduce the husband's spousal support obligations on a retroactive basis because to do so would exceed the trial court's jurisdiction. (*Id.* at p. 639-640.)

In the instant case, unlike *Gruen*, the preliminary rulings made by the trial court at the September 19, 2007 ex parte hearing did not adjudicate issues concerning support, nor did they require payment of any specified sum for monthly child or spousal support. Those issues were expressly reserved for the hearing on Janette's OSC seeking spousal and child support.

III. The trial court had jurisdiction to issue support orders on April 3 and June 26, 2009

The trial court did not issue its orders for child support and temporary spousal at the September 19, 2007 ex parte hearing, but at the April 3, 2009 hearing on Janette's OSC seeking such support. At the April 3 hearing, the trial court applied the statewide uniform guidelines for determining child support and ordered Shahin to pay a specific monthly sum "as and for child support." The trial court similarly ordered Shahin to pay a specific sum "for spousal support."

The trial court did not exceed its jurisdiction by making Shahin's spousal and child support obligations retroactive to October 1, 2007, "[t]he next available date after the filing of the OSC." The trial court had jurisdiction to award child support from September 19, 2007, the date Janette filed her OSC, and its jurisdiction to award temporary spousal support existed from March 30, 2006, the date on which Janette filed her petition for dissolution of the marriage. (§ 4009; *Dick, supra*, 15 Cal.App.4th at p. 165.)

IV. The trial court did not err by finding and ordering payment of support arrearages

Because the trial court did not exceed its jurisdiction by making Shahin's spousal and child support obligations retroactive to October 1, 2007, the court did not err by finding that Shahin owed support arrearages effective as of that date. The trial court had ample factual basis for calculating the amounts owed in arrears. To calculate the gross amount owed in arrears, the court simply had to refer to the orders it had issued at the April 3, 2009 hearing on Janette's OSC. From that amount, the trial court subtracted \$538,688.12 in payments Shahin had made for the family's benefit and that the parties agreed should be credited against his support obligations. The trial court then subtracted an additional \$128,379.35 in payments Shahin had made that the court determined should be allowed as offsets against his support obligations. The court's January 12, 2011 order sets forth in detail the trial court's findings regarding these additional offsets. The court reserved jurisdiction to the time of trial to determine whether Shahin should be credited with \$108,828.69 in additional offsets.

The trial court's finding that "Shahin has paid most, if not all, of the parties' and their children's household living expenses from the filing of the marital dissolution action through the dates of the hearing of [Janette's] OSC" does not conflict with its finding that Shahin owed support arrearages. Those findings were made concurrently with the trial court's determination "that Shahin shall therefore receive appropriate credit for those payments against his support obligation."

V. Shahin waived any argument that enforcement of support arrearages should have been stayed

Shahin claims the trial court should have stayed enforcement of any support arrearages when it vacated the trial date at a hearing on January 25, 2010. Shahin did not request such a stay at the January 25, 2010 hearing, and therefore forfeited that claim on appeal. (See *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 912.)

DISPOSITION

The trial court's orders dated June 26, 2009 and January 12, 2011, are affirmed.
Janette is awarded her costs on appeal.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
ASHMANN-GERST