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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of ROBERT and
NAM LEE DAVIS.

B278520

(Los Angeles County
Super. Ct. No. BD516241)

ROBERT DAVIS,

Appellant,

v.

NAM LEE DAVIS,

Respondent.

APPEAL from an order of the Superior Court of Los Angeles
County, Rolf Michael Treu, Judge. Affirmed.

Law Offices of Stephen J. Horvath and Stephen J. Horvath
for Appellant.

The Law Offices of Guenther A. Richter and Guenther A.
Richter for Respondent.

Appellant Robert Davis challenges the trial court's post-trial order requiring him to pay \$49,426.08 in California Public Employees' Retirement System (CalPERS) benefits to his ex-wife, respondent Nam Lee Davis. The couple separated in 2009, and CalPERS calculated in 2015 that Nam Lee¹ was entitled to \$716.32 per month as her share of Robert's benefits. CalPERS did not pay Nam Lee retroactively for any benefits to which she was entitled for the period from 2009 to 2015. Nam Lee requested that the court order Robert to pay Nam Lee her share of these retroactive benefits. Robert contends that the trial court abused its discretion by issuing the order prematurely, without allowing CalPERS to calculate the amount owed for that time period. We disagree and affirm the trial court. Robert has failed to show that CalPERS's prior calculation of Nam Lee's benefits was insufficient to support the court's order.

FACTS AND PROCEEDINGS BELOW

Robert and Nam Lee were married on August 19, 2000 and separated on September 1, 2009. The trial court entered a judgment of dissolution on September 24, 2010, reserving jurisdiction for the division of the couple's property. The couple's property included Robert's CalPERS pension. Robert was a state employee until he retired and began receiving benefits in 2006.

On January 9, 2015, the court entered a stipulated judgment to resolve the outstanding property issues. Under the terms of the stipulated judgment, Robert was required to pay Nam Lee \$2,000 in spousal support per month from January 2013 to January 2015. In addition, Nam Lee was entitled to one-half of the value of Robert's CalPERS retirement account accumulated between the date of marriage and of separation. Robert's pension from CalPERS paid him monthly benefits of \$3,697.20 per month as of April 2015. In a letter dated June 25, 2015, CalPERS informed the parties that

¹ For the sake of clarity, we refer to the parties by their first names. No disrespect is intended.

it would begin dividing Robert's retirement benefits in accordance with the terms of the stipulated judgment and would begin to pay Nam Lee her share effective as of June 1, 2015. There is nothing in the record to indicate that CalPERS paid any money to Nam Lee prior to 2015, nor that CalPERS ever paid Robert less than \$3,697.20 per month between the date of his retirement in 2006 and June 2015. The parties agreed to the entry of a qualified domestic relations order on these terms, which the court entered on August 27, 2015. On December 2, 2015, CalPERS sent a letter informing Nam Lee that it had calculated her share of the benefits according to the formula as \$716.32 per month.

In February 2016, Nam Lee sent a letter to Robert requesting that he pay her \$49,426.08. She calculated that she was owed \$716.32 for each of the 69 months from the date of separation in 2009 until CalPERS began to deduct funds from Robert's benefit checks to pay Nam Lee's share in June 2015. When Robert failed to respond to this letter and to a second letter Nam Lee sent in March 2016, Nam Lee filed a request for order regarding the retirement benefits. Robert did not file an opposition.

At the hearing regarding the request for order, Robert objected to Nam Lee's request, claiming that because she had failed to serve CalPERS with a copy of the request for order, he believed he did not need to file a responsive pleading. Robert argued that it was unnecessary to award Nam Lee any retroactive payments from his CalPERS benefits. The trial court refused to consider Robert's arguments on the ground that he had failed to file an opposition to the request for order, stating that it was "not going to take oral opposition." The court granted Nam Lee's request and ordered Robert to pay \$49,426.08 in prior retirement benefits.

DISCUSSION

Robert contends that the trial court erred by ordering him to pay Nam Lee the amount she requested in retroactive retirement benefits. He argues that the order was improper because the court issued it without allowing CalPERS an opportunity to calculate the amount Nam Lee was owed. He also argues that the court erred by failing to take into account considerations such as Nam Lee's efforts to become self-supporting, Nam Lee's share of Robert's retirement benefits that the couple enjoyed while they were married, and the extent to which Nam Lee's award of spousal support included her share of Robert's CalPERS benefits. We review for abuse of discretion (see *In re Marriage of Schleich* (2017) 8 Cal.App.5th 267, 276), and we affirm.

Robert argues that the trial court erred by granting Nam Lee's request without bringing CalPERS into court to calculate the amount Nam Lee was owed. But Robert has not shown why CalPERS's presence was necessary. The stipulated judgment provided for Nam Lee to receive one-half of the community interest in Robert's CalPERS retirement account. The parties later agreed to a qualified domestic relations order containing a formula for calculating Nam Lee's interest, under the terms of which Nam Lee was to receive one-half of the benefits Robert earned during their marriage. CalPERS later sent a letter to Nam Lee stating that she was entitled to \$716.32 per month according to this formula. As Nam Lee points out, the only relevant remaining calculation was to multiply \$716.32 by the number of months between the couple's separation and the date when CalPERS began paying Nam Lee her share of the retirement account. Robert has presented no evidence that Nam Lee performed this calculation incorrectly, or that Nam Lee would have been entitled to a lesser amount per month for the time from September 2009 until May 2015.

Robert argues that Nam Lee's calculation was flawed because it failed to consider whether she made efforts to become self-supporting. But the judgment of dissolution awarded her an interest in Robert's retirement account as part of her share of the couple's community property, with no reference to her earning power or efforts to become self supporting. The law allows parties to distribute their community property according to a written stipulation after divorce (see Fam. Code, § 2550), and in such a case, "the court must accept stipulations of the parties with regard to the disposition of their property. The court has no role in approving or disapproving property divisions agreed to by the parties." (*In re Marriage of Cream* (1993) 13 Cal.App.4th 81, 91.) Although the court's award of spousal support to Nam Lee in the stipulated judgment was conditioned on Nam Lee's reasonable good-faith efforts to become self-supporting, nothing in the stipulated judgment indicates that this requirement would apply to the distribution of Robert's retirement funds.²

Robert also contends that the calculation of Nam Lee's benefits was inadequate because it failed to take into account how Nam Lee benefited from Robert's pension payments during their marriage. But Nam Lee has requested payments pertaining to her share of the community property earned during the marriage, which belongs to her under the terms of the stipulated judgment. Furthermore, she does not claim that Robert must pay her a share of the payments he received before their separation.

Robert also argues that the trial court's order "indirectly imposes an unlawful garnishment of C[al]PERS benefits." This is untrue. The court's order does not purport to garnish Robert's

² In his reply brief, Robert argues that the court erred by preventing him from introducing evidence that he paid Nam Lee her share of the retirement benefits prior to 2015. But he appears to be referring to the spousal support payments he made to Nam Lee during that time.

benefits. If Nam Lee uses improper means to attempt to enforce the order, Robert may object at that time. Nor does the court's order seek to "liquidate" the retirement account. Instead, it requires Robert to pay Nam Lee payments from the retirement account that belonged to Nam Lee under the terms of the stipulated judgment and domestic relations order.

Finally, the court's order was not "punitive," as Robert alleges. It merely required him to pay the amounts awarded pursuant to the terms of the stipulated judgment and qualified domestic relations order that he agreed to. Robert claims he does not have the money to pay the full amount of the court's order, but there is no indication in the record that he has sought an alternative payment plan, much less that the court denied any such request.

We note that Robert has had several opportunities to raise a substantive argument against Nam Lee's request for order, and has failed to do so. He could have filed a timely opposition to Nam Lee's request, and if he believed CalPERS's presence was necessary, he could have alerted CalPERS to the hearing himself. Failing that, he could have requested a continuance during the hearing, or sought relief from the court's order on the grounds that it occurred as a result of "his . . . mistake, inadvertence, surprise, or excusable neglect." (Code Civ. Proc., § 473, subd. (b).) Nothing in the record suggests he took any of those steps.³ Even in this appeal, he has produced no evidence to show that Nam Lee is not entitled to the full amount she requested under the terms of the stipulated judgment and qualified domestic relations order. The court's order did not constitute a miscarriage of justice, and the court did not abuse its discretion in granting it.

³ In his reply brief, Robert argues that relief from default would be appropriate under Code of Civil Procedure section 473, subdivision (b), but the time to raise that argument was before the trial court, not on appeal.

DISPOSITION

The judgment of the trial court is affirmed. Respondent is awarded her costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.