

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

OGOCHUKWU O. IKE,

Plaintiff and Respondent,

v.

EDMUND C. IKE,

Defendant and Appellant.

B235460

(Los Angeles County
Super. Ct. No. PD040683)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Robert E. Willett, Judge. Dismissed.

Edmund C. Ike, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Edmund C. Ike, in propria persona, appeals from an order of the trial court denying his motion to set aside a judgment regarding the distribution of property from his former marriage to respondent Ogochukwu Ike and denying his request for an order to show cause. Because the order appealed from is an interlocutory order, and we see no reason why review should not await the final judgment, we dismiss the appeal.¹ (*In re Marriage of Lafkas* (2007) 153 Cal.App.4th 1429, 1434 (*Lafkas*).)

FACTUAL AND PROCEDURAL BACKGROUND

In April 2006, appellant filed a complaint, alleging that respondent used community property funds to buy property in her name as an unmarried woman in order to convert it to separate property, filed a fraudulent tax return, and engaged in other conduct designed to deprive him of community property to which he was entitled. After appellant obtained a default judgment against respondent, the court ordered the matter transferred for consolidation with the parties' dissolution proceedings.

Respondent's counsel filed a motion to set aside the default judgment, asserting that the default was entered as a result of counsel's mistaken belief that appellant agreed to an extension of time to file a response. Respondent also filed a special demurrer, arguing that the issues appellant raised in the complaint were within the jurisdiction of the family court.

On February 21, 2008, the trial court entered a final partial judgment of dissolution, reserving jurisdiction over all other issues and making orders regarding

¹ Appellant's motion to disqualify Justices Willhite, Epstein and Suzukawa has been read and considered and is denied.

the distribution of property.² The court awarded the family residence to respondent and ordered her to buy out appellant's interest by paying him \$32,428.50. The court also ordered appellant to reimburse respondent for a separate property student loan that resulted in a lien placed against property the parties owned in Lancaster, California. The court found that appellant owed respondent child support and day care costs which were both in arrears. The court found that each party had a one-half community property interest in respondent's pension funds. The court awarded each party the furniture, furnishings, and appliances in his or her possession.

On March 8, 2011, appellant filed an application for an order to show cause, seeking an order to distribute community property omitted from four previous partial judgments.³ Appellant alleged the following items were omitted community property assets: (1) savings from respondent's income; (2) equity from the family home; (3) equity from the Lancaster property; (4) respondent's retirement funds; (5) child support payments from respondent's prior marriage; (6) furniture and furnishings; (7) proceeds from the sale of property in Adelanto, California; and (8) land in Nigeria.

On April 6, 2011, appellant filed an application for an order to show cause regarding alleged perjury by respondent and seeking an injunction to prevent respondent from making further misrepresentations to the court regarding her

² The case summary indicates that there were other judgments and orders entered before February 21, 2008, but these are not in the record on appeal.

³ On March 29, 2011, appellant appealed from the trial court's denial of his motion for reconsideration of an order regarding child support. We dismissed the appeal pursuant to the prevailing view that an order denying a motion for reconsideration is not an appealable order. (*Ike v. Ike* (Dec. 22, 2011, B231966) [nonpub. opn.], citing *Branner v. Regents of University of California* (2009) 175 Cal.App.4th 1043, 1050.)

income. Appellant filed exhibits indicating, for example, that respondent's stated income on her Income and Expense Declaration was less than her deposit receipts actually showed.

On April 11, 2011, the court ordered appellant to pay respondent \$447 per month in child support and found that he was \$2,905 in arrears.

On May 27, 2011, appellant filed a motion to set aside the property distribution order contained in the February 21, 2008 judgment.

The trial court decided appellant's motion and his applications for orders to show cause on June 27, 2011. The court denied with prejudice appellant's motion to set aside the February 2008 judgment. The court also denied appellant's request for an injunction regarding respondent's alleged perjury, stating that the court has no jurisdiction to hear a criminal issue. The court then addressed the issues raised in appellant's request for an order to distribute omitted property.

First, as to items 2, 3, and 6 (equity from family home, equity from Lancaster property, and furniture and furnishings), the court denied the request on the basis that the assets were already adjudicated in the final partial judgment. As to item 4 (respondent's retirement fund), the court granted the request in part, setting an evidentiary hearing/trial on November 14, 2011, to adjudicate the disposition of respondent's retirement funds as an issue reserved in the final partial judgment. The court also granted in part the request as to items 1, 5, 7, and 8 (community income respondent allegedly withheld from appellant, child support payments from her prior marriage, proceeds from the sale of Adelanto property, and property in Nigeria), stating that it would set an evidentiary hearing/trial to adjudicate those items. The court also held that requests regarding child support arrears and other costs not addressed in the final partial judgment would be continued for further briefing. Appellant filed a notice of appeal.

DISCUSSION

“‘A reviewing court has jurisdiction over a direct appeal only when there is (1) an appealable order or (2) an appealable judgment.’ [Citation.] In civil cases there normally can only be an appeal from a final judgment. [Citation.] If there are unresolved causes of action between the parties, the judgment is not final and an appeal therefrom must be dismissed. [Citations.]” (*Lafkas, supra*, 153 Cal.App.4th at p. 1432.) However, “[a]n interlocutory judgment dissolving a marriage, and collateral issues decided with finality that are embodied in the judgment of dissolution, are appealable. [Citation.]” (*Id.* at p. 1433.)

“‘Even if it is technically interlocutory, an order dispositive of the rights of the parties in relation to a collateral matter, or directing payment of money or performance of an act, may be subject to direct appeal. For this reason, it has long been established that severable portions of a judgment may be separately appealed, particularly in dissolution cases.’ [Citation.]” (*In re Marriage of Campbell* (2006) 136 Cal.App.4th 502, 505-506 (*Campbell*).) *Campbell* held that an order denying a motion to terminate temporary spousal support was appealable because it “was dispositive of the parties’ rights with respect to the collateral issue of temporary support.” (*Id.* at p. 506; accord *In re Marriage of Gruen* (2011) 191 Cal.App.4th 627, 637 [“A temporary support order is operative from the time of pronouncement, and it is directly appealable.”].)

Here, the trial court order addressed the division of some but not all of the marital assets. The court denied in part appellant’s motion to vacate the judgment on the basis that the assets in question were already adjudicated in the final partial judgment. However, the court set hearings to determine the adjudication of remaining assets, including respondent’s retirement funds, community income respondent allegedly hid from appellant, and property in Adelanto and Nigeria.

“Thus, the order appealed from is merely preliminary to a final order characterizing, valuing, and dividing all the marital assets.” (*Lafkas, supra*, 153 Cal.App.4th at p. 1433.) As in *Lafkas*, appellant has shown no reason “why review of the interlocutory order should not await the rendition of a final judgment.” (*Id.* at p. 1434.) He “has an adequate appellate remedy by an appeal from the final judgment.” (*Id.* at pp. 1434-1435.) The appeal therefore should be dismissed. (*Id.* at p. 1435.)

DISPOSITION

The appeal is dismissed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.