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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

COUNTY OF LOS ANGELES CHILD SUPPORT SERVICES DEPARTMENT,
--

Plaintiff and Respondent,

v.

RUSSELL LAMBERT,

Defendant and Appellant.

B284237

(Los Angeles County
Super. Ct. No. BY788375)

APPEAL from an order of the Superior Court of Los Angeles County, Nancy A. Ramirez, Commissioner.
Dismissed.

Russell Lambert, in pro. per. for Defendant and Appellant.

Xavier Becerra, Attorney General, Julie Weng-Gutierrez, Senior Assistant Attorney General, Linda M. Gonzalez, Supervising Deputy Attorney General, Jennevee H. de Guzman, Deputy Attorney General, for Plaintiff and Respondent.

Appellant Russell Lambert (father) appeals from an order after hearing filed July 13, 2017. The order arises from a hearing held five months earlier and was issued by a commissioner in connection with father's request to modify his child support obligation. The order in question merely continued the hearing on the merits of father's December 1, 2016 request for modification of child support, requiring the parties to submit additional information. By the time of the July 13, 2017 order subject to father's appeal, neither a commissioner nor the court had ruled on father's request to modify child support. Because father has appealed from a non-appealable order, we dismiss his appeal.

FACTUAL AND PROCEDURAL BACKGROUND¹

Father and Yue Yun Fan (mother) have a son who was born in 2003. In March 2006, the court ordered father to pay \$254 per month in child support. In February 2008, the

¹ This court has granted motions to augment the record filed by the County of Los Angeles Child Support Services Department and father.

court reduced father's child support obligation to zero. In October 2008, the County of Los Angeles Child Support Services Department (Department), mother, and father stipulated to child support payments of \$250 per month, an amount that all parties acknowledged was different than the guideline² amount of zero.

In December 2016, father filed a request for modification of child support, seeking to reduce his child support payments to zero and offering \$250 per month in voluntary child support.³

On February 1, 2017, Commissioner Nancy Ramirez held a hearing on father's modification request. Father completed and filed a standard form advising him of his rights under Family Code section 4251, subdivision (b)⁴ regarding hearings before court commissioners; father filed his form with a handwritten statement, "I object to a commissioner acting as a temporary judge." Commissioner Ramirez continued the matter to May 4, 2017; directed both parents to bring updated evidence of their income and expenses to the continued hearing; and ordered father to search for work, bring documentation of his work searches to

² Family Code section 4050 et seq.

³ In its Respondent's brief, the Department claims it filed a response requesting child support at the amount of guideline calculations, but the response is not in our record.

⁴ Statutory references are to the Family Code unless stated otherwise.

the next hearing, and notify the Department of any changes in his employment status. For reasons not clear to this court, the order after hearing setting forth the continuance and directing the parties to provide additional information was not filed until July 13, 2017. It is from this July 13, 2017 order that father appeals.

On April 24, 2017, father filed an amended pleading for child support modification, attaching extensive documentation, including nine years of tax returns and other evidence of his employment status.

The May 4, 2017 continued hearing took place before Commissioner Laura Streimer, who again continued the matter to June 29, 2017. The minute order states the continuance was made by the court on its own motion, “to wait for Department 2 to make an order as to the Findings and Recommendations of Commissioner from the hearing of 2/01/17 when [father] objected to the commissioner.” Father lodged objections to Commissioner Streimer acting as a temporary judge both before and after the May 4, 2017 hearing. Father later filed other pleadings, and several hearings took place before either Commissioner Streimer or Judge Thomas Trent Lewis.

On July 13, 2017, the order after hearing pertaining to the February 1, 2017 hearing before Commissioner Ramirez was filed. On July 24, 2017, father filed a motion to vacate judgment and a demand for new trial. On July 28, 2017, father appealed the July 13, 2017 order. At the time father filed his notice of appeal, his modification request—filed

December 1, 2016 and amended April 24, 2017—had not yet been ruled upon, whether by a judge or a commissioner. It appears from the augmented record that the court subsequently denied father’s modification request in October 2017.⁵

DISCUSSION

Father contends on appeal that his due process rights were denied when his request for modification of child support was considered by a commissioner over his objections, and he was not granted a de novo hearing before a judge. Father does not appear to challenge the portion of the order that had directed him to file additional information with the court before the continued hearing and, in any event, he appears to have complied with that order by filing his amended pleading on April 24, 2017. The order father seeks to appeal merely continued the hearing on his request for modification and is not an appealable order. We therefore dismiss father’s appeal.

⁵ We take judicial notice of the subsequent orders and filings provided to us by father in his request for augmentation of the record on appeal. (Evid. Code, § 452, subd. (c).) Based on those records, it appears that in September 2017, Commissioner Streimer made findings and recommendations to deny father’s modification request, and in October 2017, Judge Lewis adopted those recommendations. We express no opinion on the validity of those orders because they are not at issue in this appeal.

Dismissal of father's appeal

Postjudgment orders are appealable under Code of Civil Procedure section 904.1, subdivision (a)(2) if they raise issues different than those arising from the final appealable judgment, and affect or relate to enforcement of the judgment in some way. (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651–652 (*Lakin*).)

Specifically, a party may appeal from an order modifying child support. (*County of Los Angeles v. Patrick* (1992) 11 Cal.App.4th 1246, 1250.) If a postjudgment order is more interlocutory than final, however, it is not appealable.

Certain postjudgment orders, “although following an earlier judgment, are more accurately understood as being preliminary to a later judgment, at which time they will become ripe for appeal.” (*Lakin, supra*, 6 Cal.4th at p. 652.) Such preliminary postjudgment orders “lacked finality in that they were also preparatory to later proceedings. To hold these orders ‘nonappealable’ merely postponed their appeal until the conclusion of later proceedings; it did not deny it altogether.” (*Id.* at p. 653.) In one example, the trial court found a retirement benefit to be community property and set a future hearing to determine valuation of the benefit. This court concluded that such an order was not an appealable postjudgment order, but rather was “merely preliminary to an anticipated final order evaluating and dividing the asset.” (*In re Marriage of Ellis* (2002) 101

Cal.App.4th 400, 403; see also *In re Marriage of Levine* (1994) 28 Cal.App.4th 585, 589 [finding postjudgment order “not sufficiently final” and dismissing appeal].)

Here, the July 13, 2017 order that is currently on appeal memorializes Commissioner Ramirez’s findings and recommendations from a hearing that took place on February 1, 2017. As evidenced by the order itself,⁶ Commissioner Ramirez did not rule on the substance of father’s modification request. She did nothing more than continue the scheduled hearing on father’s modification request and direct the parties to bring additional documentation. “The meaning of a court order . . . is a question of law within the ambit of the appellate court. [Citation.]” (*In re Ins. Installment Fee Cases* (2012) 211 Cal.App.4th 1395, 1429.) The order is not sufficiently final to be appealable. At the time father filed his notice of appeal on July 28, 2017, neither a commissioner nor a judge had yet made a ruling on the substance of his request to modify child support.

We decline to construe father’s notice of appeal as appealing from the court’s later orders, which appear to deny his modification request. The later orders were issued in

⁶ The Department relegates to a footnote the important fact that the July 13, 2017 order did not decide father’s December 1, 2017 modification request. The Department further muddies the waters by claiming that the issue pending before Commissioner Ramirez is “unknown” rather than acknowledging the fact that the very order father appeals clarifies the nature of the February 1, 2017 hearing.

September and October of 2017, well after the July 13, 2017 order challenged here. Instead, we find his notice is premature to challenge any such denial. (*Silver v. Pacific American Fish Co., Inc.* (2010) 190 Cal.App.4th 688, 691 [notice of appeal untimely as it related to a later ruling on attorney fees].)

Father's request for change of venue

In his reply brief, father raises an entirely new contention not mentioned in his opening brief. Father asks this court to remand the case to a county other than Los Angeles. Father does not cite any legal authority to support his request, and so we decline to consider it.

“[W]e will not address arguments raised for the first time in the reply brief [citation]” (*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1295; see also *Los Altos, supra*, 136 Cal.App.4th at p. 1216, fn. 2 [absent a showing of good cause, reviewing court will not consider an argument raised for the first time in a reply brief].) In addition, we observe that there is no evidence in the record that father filed a motion for change of venue in the trial court. (See, e.g., *Walt Disney Parks & Resorts U.S., Inc. v. Superior Court* (2018) 21 Cal.App.5th 872 [reviewing denial of a motion to change venue].

DISPOSITION

Father's appeal is dismissed. In the interests of justice, each party is to bear its own costs on appeal.

MOOR, J.

We concur:

BAKER, Acting P.J.

SEIGLE, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.