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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of VERNON DECK and
HEATHER SUMMERBY.

2d Civil No. B255741
(Super. Ct. No. 1127093)
(Santa Barbara County)

VERNON DECK,

Appellant,

v.

HEATHER SUMMERBY,

Respondent.

In this marital dissolution case, Vernon Deck appeals (1) a stipulated judgment and (2) an order denying his motion to set aside the judgment. He contends Heather Summerby did not provide income and expense declarations, resulting in a miscarriage of justice. The appeal is untimely. We dismiss.

FACTUAL AND PROCEDURAL BACKGROUND

Deck and Summerby married in 2001 and separated in 2003. The trial court entered a stipulated judgment of dissolution in 2005. Deck asked the court to waive Summerby's duty to exchange preliminary and final declarations of disclosure.¹ He declared, "I am satisfied that I am completely familiar with all of our finances, and those of

¹ The parties agree the waiver was ineffective. (See Fam. Code, § 2105.)

[Summerby], and I do not require that she file a preliminary and/or final declaration of disclosure."

In 2008, the parties entered into an oral stipulated judgment on reserved issues pursuant to Code of Civil Procedure section 664.6. Deck waived spousal support, Summerby agreed to pay him \$60,000, and they divided their interest in real property, among other things. The trial court did not enter a written judgment until 2013.

Between 2008 and 2013, Deck filed four motions to set aside the stipulated judgment, and one to enforce it. Deck omits from the record the trial court's orders on his 2008, 2009, and 2011 motions, but it appears that the court denied each. In support of his motions to set aside, Deck argued that Summerby did not provide financial disclosures, and that he was upset, confused, mentally fragile, and pressured. Deck did not appeal from the 2008, 2009, and 2011 orders.

In 2013, the trial court ordered Summerby to prepare a judgment nunc pro tunc based on the 2008 stipulated judgment. The court entered formal judgment on April 8, 2013, and the clerk of the court served notice of entry of judgment on April 12, 2013. Deck did not appeal within 60 days. (Cal. Rules of Court, rule 8.104(a)(1)(A).)²

The trial court denied Deck's fourth motion to set aside the judgment on September 12, 2013. The court entered the order in the permanent minutes the same day and did not direct preparation of a written order. The court found that Deck did not demonstrate that a lack of financial disclosure resulted in a miscarriage of justice, among other things. (Cal. Const., art. VI, § 13; Fam. Code, § 2107, subd. (e); *In re Marriage of Steiner & Hosseini* (2004) 117 Cal.App.4th 519, 525.) Deck did not appeal within 180 days of entry of the minute order. (Rule 8.104(a)(1)(C), (c)(2).)

Six months after entry of the September 12, 2013, minute order, Deck's counsel prepared a written order after hearing. The trial court entered the written order on March 24, 2014. Deck filed a notice of appeal three weeks later, on April 11, 2014.

² All references to rules are to the California Rules of Court.

DISCUSSION

We dismiss the appeal because Deck did not timely file the notice of appeal. (Rule 8.104(b).) A notice of appeal must be filed within 60 days of service of notice of entry of judgment or within 180 days of entry of judgment, whichever is earliest. (*Id.*, subd. (a).)

Deck's appeal from the April 8, 2013, judgment, based on the 2008 stipulated judgment, is untimely. His April 11, 2014, notice of appeal was not filed within 60 days of service of notice of entry of judgment on April 12, 2013.

Deck's appeal from the September 12, 2013 order denying his fourth motion to set aside the judgment is also untimely. The entry date of an appealable order that is entered in the minutes "is the date it is entered in the permanent minutes." (Rule 8.104(c)(2); *Strathvale Holdings v. E.B.H.* (2005) 126 Cal.App.4th 1241, 1248.) Deck's April 11, 2014, notice of appeal was not filed within 180 days of entry of the order in the permanent minutes on September 12, 2013.

Deck argues that his appeal from the September 2013 minute order is timely because the trial court entered a written order after hearing six months later, on March 24, 2014, and he filed his notice of appeal within 60 days. "[I]f the minute order directs that a written order be prepared, the entry date is the date the signed order is filed; a written order prepared under rule 3.1312 or similar local rule is not such an order prepared by direction of a minute order." (Rule 8.104(c)(2).) The minute order did not direct that a written order be prepared. The written order was prepared by counsel on his own initiative six months later. It did not revive Deck's lapsed appellate rights.

DISPOSITION

The appeal is dismissed.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Timothy J. Staffel, Judge
Superior Court County of Santa Barbara

Robert F. Carbone for Appellant.

John E. D. Nicholson for Respondent.