In re Marriage of Popejoy

2006 | Cited 0 times | California Court of Appeal | June 27, 2006

NOT TO BE PUBLISHED

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More than 20 years after entry of a 1982 default judgment dissolving his marriage and requiring him to pay child support for two children of the marriage, Charlie M. Popejoy moved successfully to set aside that portion of the default judgment requiring him to support a child who was not yet born when the judgment was entered, and its implicit determination that Charlie[1] was the biological father of the unborn child.

Intervenor Shasta County Department of Child Support Services (the County) appeals, contending the trial court erred in allowing Charlie's belated collateral attack on the judgment. The County is correct; we shall reverse the judgment (order).

PROCEDURAL BACKGROUND[2]

In February 1981, Susan A. Popejoy filed a petition to dissolve her 1977[3] marriage to Charlie. The petition identified one minor child of the marriage--a daughter, then seven-year-old P.--and Susan checked the boxes indicating her request that "custody be awarded [to] Petitioner," that "[c]hild support be awarded [to] Petitioner," and that Charlie be permitted visitation "[b]ased on continual and consist[e]nt child support of $175 monthly."

Charlie was personally served with the petition but he filed no response.

In the same month, the court issued temporary orders awarding Susan custody of P. and ordering that Charlie pay child support in the amount of $80 per month.

In September 1981, while the petition for dissolution was pending, the County filed a motion in the dissolution action to modify the temporary child custody and child support orders, on the ground that Susan was expecting an "unborn Popejoy, due approx[imately] Jan[uary] 1982" of whom she sought custody and for whom she sought "reasonable" monthly child support. In support of the motion, the County stated that the Shasta County Welfare Department had begun paying public assistance to Susan "on behalf of the minor children, P. and the unborn [Popejoy] due approximately

Jan[uary] 1982." Charlie was served with the notice of motion and he personally appeared at the hearing. There is no reporter's transcript, but Charlie later averred that at the hearing he denied paternity of Susan's unborn child and requested paternity testing. The court granted the County's motion directing Charlie to pay to Susan (through the Shasta County District Attorney's Office, Family Support Division) temporary child support "for the unborn child [in the amount of] $100 per month," in addition to the $80 per month previously ordered in support for the parties' daughter, P.

In January 1982, the court entered an interlocutory decree of dissolution, based on Susan's testimony alone; Charlie did not appear. It awarded to Susan custody of the minor children, P. and the unborn child, and ordered Charlie to pay child support in the amount of $80 per month for P. and "$100 per month for the unborn child." Final judgment of dissolution was entered in March 1982.

Over the next 20 years, Charlie made very few child support payments, and the County made periodic efforts to adjudicate arrearages and collect them.

In February 1984, the court issued an order to show cause re contempt for Charlie's failure to pay child support in the amount of $180 per month, based on the County's declaration that Charlie had accrued arrearages from March 1981 through January 1984 of $3,300.[4] The order was served personally on Charlie and he appeared at the hearing. He was found in contempt of court for failure to comply with the child support orders, and ordered to pay down the arrearages and to keep his monthly support obligation current.

In November 1990, the court issued an order to show cause re contempt for failure to pay child support in the amount of $180 per month, based on the County's declaration that Charlie had accrued arrearages of $13,146 between August 1981 and July 1989, and arrearages of $2,700 between August 1989 and October 1990. The order was served personally on Charlie, he appeared at the hearing, and was again found in contempt of court for failure to comply with child support orders.

In May 1991, the court issued an order to show cause re contempt for failure to pay child support in the amount of $180 per month, based on the County's declaration that Charlie had accrued arrearages of $15,846 between August 1981 and October 1990, and arrearages of $1,080 between November 1990 and April 1991. The order was served personally on Charlie, he ultimately appeared at the hearing and in August 1994 was found in contempt of court for failure to comply with child support orders.

In October 2001, the court issued an order to show cause re modification of the child support order to include work orders (Fam. Code, §§ 3558, 4505). After continuing the hearing several times, the court eventually dismissed the order to show cause because defendant obtained employment and had made consistent payments through a wage and earnings assignment.

In October 2004, the County brought a motion to establish final arrearages and arrange a payment

schedule. Charlie responded by bringing a motion to "disestablish" his paternity of the unborn child identified in the judgment of dissolution--who was by then a 22-year-old man named J.--on the ground J. was conceived after the parties separated and could not be his son. The County opposed the motion on the basis that the marital presumption in Family Code section 7540 applied to J.'s paternity. The court denied Charlie's motion without prejudice.

Charlie then brought a motion in April 2005 to set aside those portions of the 1982 interlocutory and final judgments of dissolution that purport to adjudicate paternity and order him to support the then- unborn child. The motion was based on the ground that the court lacked "proper jurisdiction over [him] regarding th[e] issue" of the unborn child because the second child was not identified in Susan's original petition for dissolution, nor was the issue of a second child raised by Susan in any supplemental pleading.

The County opposed Charlie's motion, arguing that Susan's petition gave him adequate notice that Susan was seeking child support, and its September 1981 motion addressing the issues of custody and support of the then-unborn child constituted "a de facto supplemental petition to add the unborn child." The County also urged the court to deny Charlie's motion because his failure to challenge the judgment's order of support for more than 20 years exposed him to the equitable defenses of laches and unclean hands.

The court granted Charlie's motion on the papers submitted by the parties, ruling that "[i]n a default proceeding, the plaintiff may apply to the court for the relief demanded in the complaint. The trial court's jurisdiction to award damages (enter judgment) is controlled by the complaint. . . . [¶] Here, the judgment exceeded the scope of the court's jurisdiction. [Charlie] is moving to set aside a judgment in which he cannot be deemed to have acquiesced, since the judgment exceeded the scope of the petition in the first instance."[5]

DISCUSSION

The County contends on appeal the trial court erred in allowing Charlie to set aside that portion of the 1982 judgment requiring him to support then-unborn J. (and implicitly determining J. to be a child of the parties' marriage) on the ground the child was not named in the dissolution petition.

The County is correct.

"It is a fundamental concept of due process that a judgment against a defendant cannot be entered unless he was given proper notice and an opportunity to defend. (U.S. Const., [14th Amend., § 1].)" (In re Marriage of Lippel (1990) 51 Cal.3d 1160, 1166 (Lippel); In re Marriage of O'Connell (1992) 8 Cal.App.4th 565, 574.) This principle is embodied in Code of Civil Procedure section 580, which, at the time of the 1982 judgment in this matter, provided: "The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint; but in any other case,

the Court may grant him any relief consistent with the case made by the complaint and embraced within the issue." (Compare 16 West's Ann. Code Civ. Proc., § 580 (1976 ed.) p. 30, with id., see Historical and Statutory Notes (2006 Supp.) foll. § 580, p. 6; see also Lippel, supra, 51 Cal.3d at pp. 1165-1166 & fn. 1.)

In his motion to set aside that portion of the judgment concerning Susan's unborn child, Charlie relied upon the California Supreme Court's 1990 decision in Lippel. In Lippel, the mother initiated dissolution proceedings using a standard printed form petition; in so doing, she checked the box requesting custody of the parties' daughter, but left the box relating to child support blank. (Lippel, supra, 51 Cal.3d at p. 1163.) Following the default hearing, the trial court entered a judgment of dissolution, awarded the mother custody of the child, and ordered the father to pay $100 per month in child support. (Id. at pp. 1163-1164.)

When, more than 16 years later, the county (which had paid Aid to Families with Dependent Children to the child) obtained an order assigning the father's wages for unpaid child support (Lippel, supra, 51 Cal.3d at pp. 1164-1165), the Supreme Court in Lippel vacated the order of child support. It reasoned that, because the mother had not checked the box on the petition indicating that she requested child support, the father was never put on notice that child support would be at issue: The "standard form petition, which, with minor modifications over the years, remains in use today, requires a petitioner to set forth certain statistical information in spaces provided, and to check boxes, from a series provided, which indicate the remedy or relief requested (e.g., legal separation, dissolution, or nullity of the marriage) and the specific relief being sought (e.g., property division, spousal support, child custody, child support or attorney fees). [¶] Coupled with the requirement that the respondent be served with a copy of the petition [citation], the manner in which these boxes are checked, or not checked, informs and puts the respondent on notice of what specific relief the petitioner is, or is not, seeking." (Id. at pp. 1169-1170; see also In re Marriage of Wells (1988) 206 Cal.App.3d 1434, 1437 [Code of Civil Procedure section 580 forbids award of spousal support not requested].) The court in Lippel concluded that the utter lack of notice to father that he could be liable for child support rendered the default judgment void. (Lippel, supra, 51 Cal.3d at p. 1163.)

Here, in contrast, the trial court erred in accepting Charlie's argument that the 1982 judgment deprived him of due process to the extent it required him to support his then-unborn child.

Lippel teaches us that there must be a request for child support or the court exceeds its jurisdiction in awarding it against a defaulting spouse. In the instant case, there was a request for child support, in the amount of $175 per month, only a few dollars less than was ultimately awarded. In addition, the County's motion[6] in September 1981 to modify the interim support orders to include the then-unborn child afforded Charlie notice and an opportunity to appear and challenge an award of support prior to the hearing on the dissolution petition and, from the record, it appears he took full advantage of that opportunity. Thus, Charlie knew before the hearing on an interlocutory decree of dissolution that his continued liability for support of Susan's then-unborn child would be at issue. He

knew the full extent of his potential liability for child support. Charlie was afforded all process that was due. There was no error.

Moreover, even were we to agree that the 1982 judgment exceeded the relief claimed in the petition by awarding $180 in child support and by providing for a second, unborn child, the court here erred in allowing Charlie's collateral attack, because the court's 1982 error would have rendered the judgment merely voidable, not void.

"Essentially, jurisdictional errors are of two types. `Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.' [Citation.] When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void, and `thus vulnerable to direct or collateral attack at any time.' [Citation.] [¶] However, `in its ordinary usage the phrase "lack of jurisdiction" is not limited to these fundamental situations.' [Citation.] It may also `be applied to a case where, though the court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no "jurisdiction" (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites.' [Citation.] `"[W]hen a statute authorizes [a] prescribed procedure, and the court acts contrary to the authority thus conferred, it has exceeded its jurisdiction."'" (People v. American Contractors Indemnity Co. (2004) 33 Cal.4th 653, 660-661 (American Contractors).)

"The consequences of an act beyond the court's jurisdiction in the fundamental sense differ from the consequences of an act in excess of jurisdiction. An act beyond a court's jurisdiction in the fundamental sense is void; it may be set aside at any time and no valid rights can accrue thereunder. In contrast, an act in excess of jurisdiction is valid until set aside, and parties may be precluded from setting it aside by such things as waiver, estoppel, or the passage of time." (People v. Ruiz (1990) 217 Cal.App.3d 574, 584; In re Andres G. (1998) 64 Cal.App.4th 476, 482; see also American Contractors, supra, 33 Cal.4th at p. 661.)

Here, the court ruled that the 1982 judgment "exceeded the scope of the court's jurisdiction." But it is undisputed that the family law court in 1982 had "fundamental jurisdiction" (American Contractors, supra, 33 Cal.4th at p. 661) in the dissolution proceeding--that is, it had jurisdiction over the parties and over the subject matter of that proceeding, including (by virtue of Susan's checking both the "custody" and "support" boxes) questions of custody and support over any children. Thus, Charlie's argument that the court ought not have considered custody and support for the then-unborn child does not challenge fundamental jurisdiction. Rather, Charlie's argument is that the court violated Code of Civil Procedure section 580, by failing to exercise its "`jurisdiction to render default judgments [which] can be exercised only in the way authorized by statute.'" (Lippel, supra, 51 Cal.3d at p. 1167.) If a court having fundamental jurisdiction oversteps proscriptions that it not "`act except in a particular manner, or . . . give certain kinds of relief, or . . . act without the occurrence of certain procedural prerequisites'" (American Contractors, supra, 33 Cal.4th at p. 661), the ensuing judgment

is voidable, not void (ibid.; Conservatorship of O'Connor (1996) 48 Cal.App.4th 1076, 1088; but cf. Lippel, supra, 51 Cal.3d at p. 1163).

Because the 1982 judgment was, at most, merely voidable, the trial court erred in entertaining Charlie's belated protests against the default judgment: It should have rejected them as barred by laches. His more than 20-year delay in attacking the default judgment was inexplicable and inexcusable. In the intervening decades, the County petitioned successfully to have Charlie held in contempt for failure to comply with the support provisions of the judgment first in 1984, then in 1990 and 1991, and it initiated contempt proceedings again in 2001. Yet Charlie took no action to challenge the validity of the judgment until 2004 when the County sought to establish final arrearages. He waited an unreasonable length of time to mount his attack, causing significant prejudice to the County, to Susan, and to J. if the judgment were now to be set aside. (Cf. In re Andres G., supra, 64 Cal.App.4th at p. 482.)

DISPOSITION

The judgment (order granting Charlie's partial set aside) is reversed. The County is awarded its costs on appeal. (Cal. Rules of Court, rule 27(a)(2).)

We concur: SIMS, Acting P. J., MORRISON, J.

1. To avoid confusion and for convenience only, we shall refer to the parties in this narrative by their first names. No disrespect is intended.

2. There is no respondent's brief. Consequently, California Rules of Court, rule 17(a)(2) states this court "will decide the appeal on the record, the opening brief, and any oral argument by the appellant." In applying this rule, we "examine the record on the basis of appellant's brief and . . . reverse only if prejudicial error is found." (Votaw Precision Tool Co. v. Air Canada (1976) 60 Cal.App.3d 52, 55; accord, Carboni v. Arrospide (1991) 2 Cal.App.4th 76, 80, fn. 2.)

3. The record indicates the parties were previously married to, and divorced from, each other in or before 1975.

4. Arrearages are rounded to the nearest dollar.

5. The court also found that, because he prevailed, Charlie "is now qualified to file for disestablishment of paternity" and ordered the County to initiate paternity testing.

6. At oral argument, appellant's counsel noted that a former version of Welfare and Institutions Code section 11484 authorized the County to file such a motion in 1981. (Stats. 1965, ch. 1784, § 5, pp. 3978, 4018- 4019, repealed by Stats. 1989, ch. 1359, § 13, p. 5793; see also Fam. Code, § 17400, subd. (k).)