



In re Marriage of Duclo

2009 | Cited 0 times | California Court of Appeal | January 5, 2009

NOT TO BE PUBLISHED

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Appellant Frank J. Duclo (Husband) and respondent Michele Duclo (Wife) were married for 26 years 11 months. In November 2004, while Husband was stationed in Washington serving in the United States Army, the court entered a default judgment dissolving the parties' marriage. As part of the judgment, the trial court divided the community property, ordering Husband to pay to Wife an equalizing payment of \$831,729. The court also ordered Husband to pay \$4,745 per month in spousal support to Wife and \$3,000 for Wife's attorney fees.

In December 2004 Husband filed a motion to set aside the default judgment. On April 20, 2005, the trial court granted Husband's motion in part, ruling that "the Court is inclined to set aside that portion of the default judgment of dissolution that deals with the ranch and residence property, the retirement plans and spousal support." The court then set the matter for an evidentiary hearing, which was held in December 2006.

On March 20, 2007, the court entered its ruling, ordering the parties each to prepare a "Qualified Domestic Relations Order" for their respective interests in the retirement plan of the other, dividing them pursuant to the time rule. The court further analyzed the division of property and order of support, ordering Husband to pay to Wife an equalizing payment totaling \$26,278, spousal support arrears totaling \$9,585.29, and \$4,000 for Wife's attorney fees. Husband immediately filed a motion for reconsideration of the court's order.

In May 2007 the trial court heard Husband's motion for reconsideration of the court's March 20, 2007, order. In the interim, Wife had filed her own motion for reconsideration of the March 20 order. The court entered a ruling on August 16, 2007, setting a further hearing on September 18, 2007, on the parties' motions for reconsideration.

On December 14, 2007, the court issued its ruling on the parties' motions for reconsideration. After thoroughly considering the claims of both parties, the court affirmed its prior order compelling Husband to pay to Wife an equalizing payment totaling \$26,278 and \$4,000 for Wife's attorney fees.



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The court did, however, reduce Husband's obligation for spousal support arrears to \$4,509. Ten days later, Husband filed a motion for reconsideration of the court's December 14, 2007, order, and on February 5, 2008, he filed his notice of appeal.

DISCUSSION

As a preliminary matter, we consider the sufficiency of Husband's notice of appeal, which reads cryptically as follows: "NOTICE IS HEREBY GIVEN that (name): 1/29/08 appeals from the following judgment or order in this case, which was entered on (date): _____. " Husband thus failed to identify the order from which he intended to appeal, as required by California Rules of Court, rule 8.100. However, we are required to liberally construe a notice of appeal in favor of its sufficiency (Cal. Rules of Court, rule 8.100(a)(2)), and consistent with that precept, we will assume Husband intended to insert 1/29/08 into the space allocated for the date of entry of the judgment or order.

Although the record does not contain an order entered on January 29, 2008, both parties refer in their briefs to the summary denial of a motion for reconsideration; Wife states that denial occurred on January 29, 2008. The motion was made on December 24, 2007, in regard to the court's ruling of December 14, 2007. The denial of a motion for reconsideration is not an appealable order (*Association for Los Angeles Deputy Sheriffs v. County of Los Angeles* (2008) 166 Cal.App.4th 1625, 1632-1633; *Crotty v. Trader* (1996) 50 Cal.App.4th 765, 769; *In re Marriage of Burgard* (1999) 72 Cal.App.4th 74, 81) but extends the time to appeal from the underlying order (Cal. Rules of Court, rule 8.108(e)).

We thus construe Husband's notice as perfecting a valid appeal from the December 14, 2007, order. Both parties appear to assume that the appeal is from that order. Respondent has not objected to our consideration of Husband's appeal.

Still, it is difficult to discern the precise nature of Husband's claims on appeal as he cites no relevant authority and appears only to reargue the facts he argued in the trial court. From what we can discern, Husband's claims are that the trial court erred in ordering him to pay an equalizing payment, spousal support arrears, and Wife's attorney fees. Husband's claims fail on this record.

First, it is the appellant's responsibility to support claims of error with citation and authority; this court is not obligated to perform that function on the appellant's behalf. (*Estate of Hoffman* (1963) 213 Cal.App.2d 635, 639; *Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 113.) Husband is not absolved of this requirement simply because he does not have counsel (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795), and his failure to do so is ground for deeming the claims forfeited.

Additionally, the record does not include a reporter's transcript of the September 18, 2007, hearing. Thus, as a judgment roll appeal, we must conclusively presume evidence was presented that is sufficient to support the court's findings. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) Our review



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is limited to determining whether any error "appears on the face of the record." (National Secretarial Service, Inc. v. Froehlich (1989) 210 Cal.App.3d 510, 521; Cal. Rules of Court, rule 8.163.) Again, these restrictive rules of appellate procedure apply to Husband even though he is representing himself on appeal, and on the face of this record we find no error. (Leslie v. Board of Medical Quality Assurance (1991) 234 Cal.App.3d 117, 121; see also Nelson v. Gaunt (1981) 125 Cal.App.3d 623, 638-639.)

DISPOSITION

The trial court order is affirmed. Wife is awarded her costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

We concur: SCOTLAND, P. J., ROBIE, J.

