

NOT TO BE PUBLISHED

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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  
THIRD APPELLATE DISTRICT

(Placer)

----

In re the Marriage of TANYA and CALVIN  
MOMAN.

C073185

TANYA MOMAN,

(Super. Ct. No. SDR0037529)

Respondent,

v.

CALVIN MOMAN,

Appellant.

Tanya Moman and Calvin Moman were married for eight years and had two sons.<sup>1</sup> In their dissolution of marriage proceeding, they initially stipulated that Calvin would pay child and temporary spousal support, plus an amount each month to make up for arrearages in his court-ordered support payments. But Calvin’s support arrearages increased over time and he did not appear at subsequent hearings, did not file the required

---

<sup>1</sup> We will refer to the parties by their first names for clarity.

disclosure information, and did not comply with court orders. The trial court granted Tanya's request to strike Calvin's responsive pleading, ordered that Calvin's default be entered, and sanctioned Calvin \$5,000.

At a March 19, 2012 default prove-up hearing, the trial court entered judgment of dissolution, ordering, among other things, that Calvin pay child and spousal support in the same amounts as the prior stipulation and order.

Almost six months after default was entered, and almost five months after the judgment was entered, Calvin filed a "motion to set aside default and default judgment or, in the alternative, to vacate judgment." The motion sought relief based on mistake, inadvertence, surprise or excusable neglect pursuant to Code of Civil Procedure section 473, subdivision (b), and based on asserted incorrect or erroneous grounds for the decision. After hearing and argument, the trial court found that Calvin did not meet his burden and denied the motion.

Approximately 11 months after the judgment was entered but 13 days after the denial of his motion to set aside the default, Calvin filed his notice of appeal, indicating that he was appealing from the "default judgment."

Calvin now contends (1) the trial court erred in denying his motion to set aside the judgment because he had no notice of the March 19, 2012 default prove-up hearing at which judgment was entered, and his failure to respond constituted excusable neglect; and (2) the judgment exceeds the bounds of law.

We will affirm the judgment.

#### BACKGROUND

Tanya and Calvin were married for eight years and had two sons. In their dissolution of marriage proceeding, they initially stipulated that Calvin would pay child support in the amount of \$8,462 per month, and temporary spousal support in the amount of \$14,935 per month, based on, among other things, Calvin's income of \$66,000 per

month and Tanya's zero income. They also stipulated that Calvin would pay \$5,000 per month on child support arrearages totaling \$89,090 at the time.

Despite the promising stipulation between the parties, the record reflects that Calvin did not appear at subsequent hearings, did not file the required disclosure information, and did not comply with court orders. His support arrearages increased over time. Tanya obtained an order directing Calvin to appear and show cause why the trial court should not strike Calvin's responsive pleading in the dissolution case, enter his default, set the matter for a prove-up hearing, and sanction Calvin \$7,500. Calvin was served with that order to show cause and knew about the hearing, but did not appear as ordered.<sup>2</sup> The trial court granted Tanya's request to strike Calvin's responsive pleading, ordered that Calvin's default be entered, and sanctioned Calvin \$5,000, but directed that Calvin could file an objection to the order within 30 days. The court mailed the order to Calvin. Calvin did not object to the order within 30 days.

Calvin's default was entered on February 22, 2012, and the matter was set for a prove-up hearing on March 19, 2012. Calvin was served with the request to enter default on February 22, 2012. It is unclear whether Calvin was also served with the "request for default setting," a document that scheduled the prove-up hearing for March 19, 2012, and also stated that "Party was provided a copy of this Request for Default Setting at the counter on February 22, 2012." There are indications in the record that Calvin did not receive notice of the March 19, 2012 prove-up hearing.<sup>3</sup>

---

<sup>2</sup> Tanya's motion to take judicial notice filed February 20, 2015, is granted.

<sup>3</sup> We note this background because Calvin asserts lack of notice as a contention on appeal. As we will explain in our discussion, however, the prove-up hearing occurred after Calvin's default had been entered. Calvin was not permitted to present evidence or argument at the prove-up hearing without first setting aside the default.

The trial court held the default prove-up hearing on March 19, 2012, and entered judgment of dissolution that same day. Among other things, the judgment ordered child support and spousal support in the same amounts as the prior stipulation and order, incorporating the prior stipulation and order as part of the judgment. The judgment provided that the court retained jurisdiction over the judgment. There is no indication in the appellate record that a notice of entry of judgment was served on Calvin, but Calvin was personally served with a copy of the judgment on April 12, 2012.

On August 16, 2012, almost six months after default was entered, and almost five months after the judgment was entered, Calvin filed a “motion to set aside default and default judgment or, in the alternative, to vacate judgment.” The motion sought relief based on mistake, inadvertence, surprise or excusable neglect pursuant to Code of Civil Procedure section 473, subdivision (b), and based on asserted incorrect or erroneous bases for the decision. After hearing and argument, the trial court found that Calvin did not meet his burden and denied the motion.

On February 14, 2013, approximately 11 months after the judgment was entered but 13 days after the denial of his motion to set aside the default, Calvin filed his notice of appeal, indicating that he was appealing from the “default judgment.”

After full briefing, the parties complied with our request for supplemental briefing regarding the trial court’s authority under Family Code section 2107 and related issues. We also received an amicus curiae brief from a family law practitioner on the same subject, and Tanya filed a response to it.

## DISCUSSION

### I

Calvin contends the trial court erred in denying his motion to set aside the judgment because he had no notice of the March 19, 2012 default prove-up hearing at which judgment was entered, and his failure to respond constituted excusable neglect.

“The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” (Code Civ. Proc., § 473, subd. (b).) But a ruling on a motion for discretionary relief under Code of Civil Procedure section 473 shall not be disturbed on appeal absent a clear showing that the trial court abused its discretion. (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 257 (*Zamora*).

The party seeking relief must be diligent. (*Zamora, supra*, 28 Cal.4th at p. 258.) Here, however, the history of this case is replete with examples in which Calvin did not comply with laws, rules and court orders and did not exercise reasonable diligence. His support arrearages increased over time. He did not appear at court hearings and did not file the required disclosure information. Calvin admitted knowing about the order to show cause on Tanya’s request to strike Calvin’s responsive pleading, take his default and sanction him, but he did not appear as ordered because he had another “important business matter” that day. The trial court gave Calvin an opportunity to object to the order striking his pleading and entering his default, but Calvin did not move to set aside the default until almost six months after his default was entered.

Calvin argues he did not have notice of the default prove-up hearing, but that hearing occurred after his default had been entered. He was not permitted to present evidence or argument at the prove-up hearing without first setting aside the default. (*Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.* (1984) 155 Cal.App.3d 381, 385-386.) Calvin has not established that the alleged lack of notice caused him prejudice or resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13; *In re Marriage of E. & Stephen P.* (2013) 213 Cal.App.4th 983, 994-995.)

Calvin was self-represented during some portions of this action and at other times he retained the services of three different attorneys. Those transitions, and his self-representation, do not excuse his lack of diligence. (*Rappleyea v. Campbell* (1994)

8 Cal.4th 975, 984-985; *Knight v. Berger* (1943) 57 Cal.App.2d 763, 771.) As Calvin concedes, he was “largely in denial concerning much of the advice” his attorneys gave him and his attention to his personal affairs was wanting.

We agree with the trial court’s finding that Calvin’s neglect of applicable laws, rules and court orders in this case, and his lack of diligence, are not excusable. The trial court was well within its discretion in denying his motion under Code of Civil Procedure section 473, subdivision (b).

## II

Calvin also contends the judgment exceeds the bounds of law.

As a threshold matter, we note that Calvin did not appeal the judgment within 180 days of its entry. (Cal. Rules of Court, rules 8.104, 8.108.) Ordinarily that would bar him from collaterally attacking the judgment. But he filed a timely motion to vacate the judgment, asserting that the judgment is unlawful, and he filed a timely appeal from the trial court’s post-judgment denial of that motion, an appealable order. (Cal. Rules of Court, rule 8.108.) Accordingly, we will address his contention.

Calvin challenges the following purported provisions of the judgment:

(1) that spousal support will continue even after Tanya’s remarriage or cohabitation;  
(2) that spousal support is not modifiable; and (3) that Calvin provide Tanya with insurance coverage impracticable to obtain.

We begin by disagreeing with Calvin’s characterization of the judgment. With regard to spousal support, the judgment is inconsistent and ambiguous. The first two pages are a Judicial Council form. The second page of the judgment, at item 4n, says “Spousal or partner support is ordered as set forth in the attached [¶] . . . [¶] (3) other (specify): Judgment, Section 4, Exhibit B: Stipulation and Order Re: Child and Spousal Support Modification and Arrearages, and Exhibit C: Annual Bonus Table for Father. [¶] NOTICE: It is the goal of this state that each party will make reasonable good faith efforts to become self-supporting as provided for in Family Code section 4320.

The failure to make reasonable good faith efforts may be one of the factors considered by the court as a basis for modifying or terminating spousal or partner support.”

The same page (page 2 of the judgment) provides: “Each attachment to this judgment is incorporated into this judgment, and the parties are ordered to comply with each attachment’s provisions. [¶] Jurisdiction is reserved to make other orders necessary to carry out this judgment.” That page bears the judge’s signature.

The first attachment to the judgment is a 12-page printed document titled “Judgment” that appears to have been prepared by Tanya’s counsel. Page 12 of that attachment has a signature line for a judge, but the copy in the appellate record is unsigned. Among other things, the first attachment purports to order Calvin to pay Tanya spousal support of \$14,935 per month, with support ceasing on death of Calvin or Tanya, but not terminating upon Tanya’s remarriage or cohabitation. The first attachment also purports to provide: “Notwithstanding any other provisions of this Judgment interpreted to the contrary, the spousal support payable to [Tanya] as set forth in Section 4.1 shall not be subject to modification, extension, or revocation by any court, as further provided in Section 4.5.” Section 4.5 states: “The spousal support provided for [Tanya] in this Judgment is nonmodifiable, and no court shall have jurisdiction to award, modify, or extend support for [Tanya] beyond that provided in Section 4.1. Notwithstanding any other Sections in this Judgment, no court shall have the ability to make a future award of spousal support, as provided above, regardless of when a Party may bring a motion to do so and irrespective of any change in economic or other circumstances of the Parties.” Section 12 of the first attachment provides that the court retains jurisdiction except as otherwise provided in the judgment.

The third attachment to the judgment is the “Exhibit B: Stipulation and Order Re: Child and Spousal Support Modification and Arrearages” referenced on the first page of the judgment. Among other things, the third attachment provides that Calvin shall pay

Tanya spousal support of \$14,935 per month until Calvin or Tanya's death, Tanya's remarriage, or further court order.

Thus, there are provisions in the judgment stating that jurisdiction is reserved, and provisions stating that the court lacks jurisdiction. There is a provision stating that each attachment is incorporated and the parties must comply with each attachment's provisions, but there is also a provision stating, "Notwithstanding any other Sections in this Judgment . . . ." There are provisions indicating that spousal support is modifiable, and other provisions saying spousal support is not modifiable.

At the hearing on Calvin's motion to vacate the judgment, the trial court referenced the purportedly non-modifiable spousal support provisions and opined that support orders can only be made non-modifiable through mutual agreement of the parties. The trial court indicated that the non-modification clause was not binding, and if there was a showing of changed circumstances, the trial court could reexamine spousal support and issue further orders. Despite the trial court's comments, there is no indication in the record that Calvin attempted to modify the spousal support order in the trial court (other than seeking to vacate the judgment). There is also no evidence he has actually been paying spousal support.

In any event, we agree with the trial court. Family Code section 3651, subdivisions (a) and (d) specify that spousal support may be modified any time the court determines necessary, unless the parties agree to the contrary in a written agreement or in an oral agreement entered in open court. (See *In re Marriage of Alter* (2009) 171 Cal.App.4th 718, 727.) We resolve the ambiguities in the spousal support provisions of the judgment by interpreting them in a manner consistent with the law. Accordingly, Calvin's claim that the judgment exceeds the bounds of the law lacks merit to the extent it is based on his characterization that spousal support is not modifiable and will continue even after Tanya's remarriage or cohabitation.

