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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

YAKOV KLEYTMAN,

Appellant,

v.

ALENA PECHONKINA,

Respondent.

A130779

(San Mateo County Super. Ct.
No. 082528)

Yakov Kleytman, proceeding in propria persona, appeals from the order of October 29, 2010, denying reconsideration of the court's order of September 30, 2010, which imposed a sanction of \$1,500 for attorney's fees, payable to counsel for Alena Pechonkina. We reverse the order of the court.

BACKGROUND

Appellant and respondent were divorced in July 2005. Since then the parties have been before the court numerous times regarding custody of and visitation rights to their daughter.

On September 30, 2010, a hearing was held on appellant's motion for modification of visitation. At that hearing, it became apparent that appellant had not served his declaration on respondent, so the court disregarded the declaration. Respondent's counsel pointed out that two months earlier, in hearing a similar motion from appellant, the court had denied the motion because there were no changed circumstances and had also denied respondent's request for attorney's fees. Respondent's counsel continued: "There is nothing in these papers that could possibly suggest a change in circumstance

other than he doesn't like any of the rulings that you have made or Commissioner Jakubowski made, or anybody has made. He is going to keep coming back here. He's in pro per. It costs my client \$1,800 to have me do the response and appear today. And he has to be convinced some way that he has to have legitimate grounds to come back and he doesn't." The court directed appellant to pay respondent's counsel \$1,500 within 60 days.

On October 8, 2010, appellant filed a motion seeking relief from the order to pay respondent's attorney's fees and a hearing was held on October 28. At the hearing, the court told appellant: "[W]hat you're really asking for is a motion for reconsideration. However, you did not plead it that way. So, so there's that problem. And then, there's certain criteria that you need to follow that is a motion for reconsideration. Secondly, you're arguing that there is this financial burden, because of a 271 sanctions, without giving me any type of financial declaration as required, when you filed such a motion. So, there's two problems. ¶ . . . ¶ The third problem here is that, when I went back again today and looked at the previous pleadings and I took into consideration when looking at the issues of 271 and the ability to pay, that I found in your declarations some of the evidence that I used, that I believe you do have the ability to pay."

The court denied appellant's request for relief from the order to pay \$1,500 and the order was filed on November 16, 2010. Appellant filed a notice of appeal on December 28, 2010, and timely filed his appeal with this court.

DISCUSSION

Appellant's brief requests a de novo review of the entire litigation between him and his former wife. We have no jurisdiction to do so (see Code Civ. Proc., § 906) and we limit our review to the court order denying reconsideration of the order to pay \$1,500 in attorney's fees.

Family Code section 271, subdivision (a), provides for the award of attorney's fees as a sanction. "An award of attorney's fees and costs as a sanction pursuant to this section shall be imposed only after notice to the party against whom the sanction is proposed to be imposed and opportunity for that party to be heard." (Fam. Code, § 271,

subd. (b).) Notice “must also advise of the specific grounds and conduct for which the fees or sanctions are sought, and must be directed to the specific person against whom they are sought. [Citation.]” (*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1529.)

Here, the request for a sanction was made orally by respondent’s counsel at the September 30, 2010 hearing, and the judge ordered that appellant pay \$1,500 in attorney’s fees. The record provides no indication that notice was provided to appellant prior to the request for the sanction or the grant of the sanction by the court. Thus, as a matter of law, it was improper for the trial court to impose a sanction under Family Code section 271 at that hearing.

Appellant does not appeal from the order of the court that imposed the sanction. Instead, appellant filed a motion for relief from paying the sanction and appeals from the order denying that motion. Respondent argues that the latter order should be affirmed on procedural grounds because, as the court noted, appellant should have filed a motion for reconsideration and he did not properly do so. However, even though the court detailed the procedural deficiencies of appellant’s filings, the court went on to consider the merits, so we regard the court as having construed appellant’s filings as a motion for reconsideration. That the court did so construe the filings is confirmed by the written order of the court, filed on November 18, 2010, which refers to “Petitioner’s request to reconsider the previously ordered attorney’s fees.” Accordingly, we decline respondent’s suggestion that we affirm the court’s order on procedural grounds.

Because the initial imposition of the \$1,500 sanction was improper as a matter of law, it was equally improper for the court to deny reconsideration of the sanction.

DISPOSITION

The order denying appellant’s motion for reconsideration of the award of attorney’s fees is reversed. We remand the matter to the trial court with direction to enter an order granting the motion for reconsideration of the award.

Lambden, J.

We concur:

Kline, P.J.

Richman, J.