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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

In re the Marriage of RAYMOND
WING-HANG LI and ECHO JIE LIU.

RAYMOND WING-HANG LI,

Respondent,

v.

ECHO JIE LIU,

Appellant.

A133319

(San Mateo County
Super. Ct. No. FAM 0110674)

Appellant Echo Jie Liu and respondent Raymond Wing-Hang Li were married in August 2007, having lived together since January 1998. In September 2010, Raymond¹ filed a petition to dissolve marriage. Several hearings were held, including one on May 17, 2011, where both sides were represented by counsel. There, among other things, the trial court granted the petition for dissolution and approved the terms of a settlement between the parties.

Now representing herself, Echo appeals, asserting four “Assignments of Error” and requesting us to order eight specific things, including a “de novo review.” We reject Echo’s assertions and requests, and we affirm.

¹ As is frequently done in marital dissolution cases, we refer to the parties by their first names. We intend no disrespect in doing so.

INTRODUCTION

As indicated, Echo represents herself on appeal, and has filed an opening brief that is 33 pages in length. The brief has attached five exhibits, which Echo references in the course of her brief. The brief has a 14-page “Statement of the Facts” that, save for a few references to the exhibits, contains no record references, no citation to anything purportedly supporting the facts, in violation of California Rules of Court, rule 8.204(a)(1)(C).

As to the record on appeal, Echo has included a clerk’s transcript with 11 items. It includes a copy of the judgment appealed from, notice of entry of that judgment, the notice of appeal, the notice of designating record on appeal, and a register of actions. Beyond that, the clerk’s transcript consists of six selected items from the proceedings below, this in a case with a six-page register of actions.

Finally, Echo’s record on appeal includes two reporter’s transcripts, of hearings on May 17, 2011, and July 12, 2011.

GENERAL BACKGROUND AND PROCEEDINGS BELOW

Echo and Raymond began living together in 1998, and were married in 2007. They had two children, both born before they were married. The family home was on Dover Court, in Daly City.

On September 11, 2010 Raymond filed a petition to dissolve marriage.

On September 30, 2010, represented by Attorney Hong Chew, Echo filed various pleadings, including her response and request for dissolution of marriage, and a motion for child and spousal support and attorney fees.

According to the register of actions, the first court hearing was on December 14, 2010, held before Commissioner Richard DuBois. It included hearing on Echo’s motions and Raymond’s order to show cause re child custody, and Commissioner DuBois issued various orders that day. Various other court proceedings followed, all presided over by

Commissioner DuBois, which included a status conference on January 28, 2011, where Echo was represented by Mr. Chew.²

On March 2, 2011, Raymond filed some motions, including a motion to enforce settlement. The next month Raymond filed an ex parte motion to have Echo evicted from the home on Dover Court. And on May 2, 2011, another status conference was held with Commissioner DuBois, at which Echo was represented by Peter Manetas.

On May 17, 2011, the matter came on for hearing before Commissioner DuBois. We have a transcript of that hearing, and it is enlightening—and most relevant to this appeal.

The hearing began with Commissioner DuBois obtaining the appearances of counsel, Adam Gurley representing Raymond, Mr. Manetas³ representing Echo. The following then ensued:

“THE COURT: Good morning, everyone.

“MR. GURLEY: Your Honor, this was a motion to enforce a settlement agreement. We got a deal to go forward on the settlement with a slight modification.

“And then I’d like to get a judgment signed today. What I was going to just do is attach the old settlement agreement, it’s only two pages, it’s a simple case.

“And we made an agreement to go through the jurisdictional facts for dissolution today, but we’ve agreed to delay the dissolution date for three months to keep [Echo’s] health insurance.

“Does the court see any problem with that?

“THE COURT: None at all.

“MR. MANETAS: Okay. The issue where we’re hung up on is the request for [Family Code] 271 sanctions. And then we need to go through them, modification for child support.

² Echo’s brief accuses Chew of conspiracy to engage in “undue influence” against her.

³ Echo’s brief accuses Manetas of giving her “bad advice.”

“THE COURT: Okay. So . . . the court is conditionally granting the motion to enforce a settlement agreement, but you have modification of that settlement agreement. We should put that on the record.

“MR. GURLEY: One slight modification. . . . [M]y client is going to advance a 10,000 equalizing payment prior to the schedule set forth in the agreement. He’s going to advance another 10,000 within seven days.

“THE COURT: Okay. With that modification then the court will enforce the written settlement agreement.

“MR. MANETAS: Just to comment, the specific date is May 24th.

“THE COURT: All right. So the 10,000 will be paid on or about May 24th.

“MR. GURLEY: And did you want me to go through the jurisdictional factors right now, your Honor?

“MR. MANETAS: Before we do that, I want to voir dire the clients—

“THE COURT: Let me do this. Can I have both parties stand up for a moment.

“We’ll swear you in and we can take care of the jurisdictional requirements as well.

“(BOTH PARTIES BEING SWORN IN)

“THE COURT: Okay. Thank you. Have a seat.”

Mr. Gurley then conducted an extensive voir dire of Raymond, which was followed by this:

“THE COURT: Mr. Manetas, do you wish to voir dire your client?

“MR. MANETAS: Echo, do you understand that you’re agreeing to the terms that were discussed and settled on January 21st when you met with your former attorney and Raymond and his current attorney? Do you understand those terms from back then?

“Remember the settlement agreement that you signed with your prior counsel back in January? Do you remember that agreement?

“[ECHO]: Yes.

“Q: Do you understand that we’re modifying that agreement today to provide you with an advance of \$10,000 payable by next Tuesday, the 24th? Do you understand that?

“A: Yes.

“Q: Did you have an opportunity to talk about that outside?

“A: Yes.

“Q: Do you have any questions about that?

“A: No.

“Q: Do you also understand that we’re delaying the entry of the status of the divorce until August 17th? Do you understand that?

“A: Yes.

“Q: Do you also understand that once the court makes these orders today on what we just discussed, you will be bound on?

“A: Yes.

“Q: Do you have any questions of the court just on these things that we discussed?

“[ECHO]: No.

“THE COURT: Okay.

“Mr. Gurley, you’re waiving the change of final declarations from disclosure from Ms. Liu. Is that I correct?

“MR. GURLEY: Yes, your Honor.

“THE COURT: I noticed that you did do your final declaration.

“MR. GURLEY: Yes, your Honor.

“THE COURT: All right. The court does find it has jurisdiction over this matter, that it does cite irreconcilable differences have arisen between the parties, therefore the petition for dissolution of marriage will be granted. The parties will be restored to the status of single individuals as of August 17th, 2011. And the court will approve the terms of the agreement that was entered into between parties with the one modification we’ll set forth on the record.

“MR. GURLEY: Can I pass this judgment up?

“THE COURT: Yes.

“MR. GURLEY: I just used the agreement that we had that we entered into, and I

didn't handwrite in the modification about the 10,000 advance. I don't know if we need it on the record.

“THE COURT: Do you want that added to the judgment?”

“MR. MANETAS: Absolutely. As well as the effective date in August.

“MR. GURLEY: I changed the dates.

“THE COURT: Yes. [¶] The \$10,000 is due on—what was the date?”

“MR. MANETAS: May 24th.

“THE COURT: Okay. Got that taken care of. [¶] Now we can move into the request to modify child and spousal support. . . .”

As to this, Commissioner DuBois heard argument from both counsel, and then concluded as follows:

“THE COURT: Okay. What the court is going to do is use the factors that you've given me. The court is not going to use the commuting expense as a non-reimbursable business expense because the commute is not a reasonable commute in the Bay Area. . . .

“In light of mother's only \$750 a month total income, court will not make a contribution toward the special school that was set forth on the record. So based on the factors that you've given me, child support would be \$942 per month from father to mother. Spousal support, \$944 per month. And these would be effective—I'm going to make it March 1st, 2011.

“MR. MANETAS: The spousal support was dealt with in the judgment that we just entered, so

“THE COURT: Has spousal support been waived?”

“MR. MANETAS: It was part of the settlement that was reached back in January.

“THE COURT: What was the amount of the spousal support agreed to?”

“MR. MANETAS: It was part of the settlement.

“THE COURT: Good. That's what I thought. [¶] Based on—by not making his spousal support order, the child support is \$942 per month.

“MR. MANETAS: Okay. Doesn't change at all.”

Then, after some more discussion, Commissioner DuBois ended this issue as follows:

“THE COURT: All right. I’m going to leave the order at 942 taking into consideration the fact that wife did reside there while he maintained the expenses. So in order to kind of catch up for that, I’m not going to include it with the anticipation that even if it were deductible, that deduction would probably go away within a couple of months. So leave it at 942 a month.”

The next item addressed was Raymond’s request for attorney fees under Family Code section 271.⁴ Colloquy on this included the following:

“MR. GURLEY: Your Honor, I’d like to move on to the issue of request for attorneys fees. I’d like to request 6,000 out of Respondent’s share of the house proceeds. I know I didn’t initially request it in my motion. I was pretty close to a 271 when I initially did a motion on this enforcement of judgment—

“THE COURT: Mr. Manetas, your comment on what Mr. Gurley had to go through?

“MR. MANETAS: He’s asking for sanctions. I don’t think there’s any bad faith here. She’s desperate for housing. She lost her apartment because the spousal support dropped off after they reached their agreement in January, so her income dropped by almost a thousand dollars. She couldn’t maintain the apartment she had in the East Bay. She moved into the house. She’s a co-owner of the house, she moved in. Yes, we went through a lot of wrangling to get her out—

⁴ Family Code section 271 provides in pertinent part as follows: “(a) Notwithstanding any other provision of this code, the court may base an award of attorney’s fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney’s fees and costs pursuant to this section is in the nature of a sanction. . . .”

“THE COURT: Excuse me. Court’s going to find father would be entitled to sanctions under 271. However, it would cause a significant financial impact, and therefore the fees will be denied on that basis.

“MR. GURLEY: Can we put in there for future reference—

“THE COURT: That’s why I made the finding that she would be entitled to it had it not been for the significant financial impact that we have.”

The final item involved an apparently ongoing issue pertaining to Echo remaining on the Dover property. This was the colloquy as to that:

“MR. GURLEY: One final point

“There’s still an ongoing issue that this court made an ex parte order that [Echo] get out of the house. Made an order at case management that she get out. There are further orders that she get out, and she’s apparently not staying at the house anymore, but she’s left all her furniture there, and when you move out, you take your furniture. Right?

“MR. MANETAS: Can I comment?

“She’s left some large items, couch, dining table. She has nowhere to put them. They staged the house, so they’re not really affecting the sale of the house. They’re not affecting showing the house.

“MR. GURLEY: Your Honor, my client went in and apparently, the premises— [Echo] left the premises filthy with garbage everywhere. We’re going to send the furniture to the Goodwill if that’s okay. It’s not quality furniture. Dirty. The house is filthy. It needs to be cleaned up. It’s outrageous that my client has to keep going back to court to get her out.

“THE COURT: I understand. Is there some major furniture she wants to use once she finds her own place? [¶] . . . [¶]

“MR. GURLEY: It needs to be vacant to be shown. The whole agreement all the way from the beginning was the tenants would move out as a rental agreement was set. As soon as they moved out, it would start to sell. As soon as the tenants moved out, she moved in. She was never supposed to be there in the first place. Been trying to get out for months. Spent thousands in attorney fees.

“THE COURT: I understand. [¶] . . . [¶] Just move the furniture she’d like to save if she can get her own place into the garage so long as it would be removed from the garage, say, within 15 days of acceptance of an offer of purchase of the house.

“MR. GURLEY: How much furniture? Can you stick it all in the garage?

“RAYMOND: It’s two huge beds.

“THE COURT: It’s too much.

“MR. GURLEY: Beds, furniture, everything. Why don’t we just say if she doesn’t move it out within a week, we’re going to give it to Goodwill.

“THE COURT: Either that or you want to store it? Pay for storage and be reimbursed from the sales proceeds from the house.

“MR. GURLEY: Okay. My client will hire movers and put everything in storage—

“THE COURT: It’s up to Mr. Manetas.

“MR. GURLEY: What do you want?

“MR. MANETAS: Why don’t we do this? She’s due to get the 10,000 next Tuesday. She can certainly use that to find a place or pay for storage. Why don’t we give her 15 days after she gets the 10,000.

“THE COURT: Perfect. Everything will be removed within 15 days of receipt of the \$10,000. Anything not removed, husband can dispose of as he sees fit. Very good.”

With that, the hearing ended.

That same day, a judgment of dissolution was filed, appended to which was the settlement agreement approved by Commissioner DuBois. Notice of entry of judgment was served that same day.

Unfortunately, Echo did not leave as promised or do what was indicated, which led to the hearing on July 12, 2011, with Echo now represented by attorney Wendy Morck. According to a representation by Raymond’s counsel, the parties were “in the middle of a close [of the sale of the house] and [Echo] leased it to a friend,” for \$200 a month. After hearing briefly from the “tenant” that the lease was “null and void,” the hearing turned to the “issue of the 271 attorney fees” for the “delay of closing caused by

the lease.”

“MR. GURLEY: I am requesting attorney fees and the point is that the last time we were here, as you recall, the Court find [*sic*] she had the engaged in sanctionable conduct. She leases the property to her friend for \$200 a month.

“THE COURT: I understand the whole scenario.

“MR. GURLEY: I am asking for 10,000 in attorney fees. She is going to get like 50,000 out of the proceeds of the sale of the 17 Dover and my attorney fees related to her conduct are far over 10,000.

“MS. MORCK: Your Honor, we disagree with any action for attorney fees especially \$10,000. That is outrageous. Since the Court ruled last that there were no attorney fees, clearly \$10,000 hasn’t been incurred between now and then.

“Also, my client was reasonable in her understanding that the house was to be sold for 490. [Raymond] was to come back to court to get the Court’s permission or he was supposed to ask her permission. He did not ask her permission for 470—475 and he didn’t come back to court.

“I understand that the Court has confirmed it today and that as it should be, but clearly, she was not out of line in believing 490 was the price. So she shouldn’t have to pay attorney fees. There was a problem with the lease. I wish that I had been involved sooner than yesterday afternoon and I may have been able to get some type of a stipulation so we could have even avoided this hearing.

“But at this point I don’t think she should be ordered to pay attorney fees. Part of the money that she is getting from the house is for a waiver of her spousal support claim and her waiver of interest in the 401K. So clearly, she is going to need all the money that she can get so that she can get another place to live.

“She is going to move to Daly City so that she can help parent their two children. I think it’s—the Court should not order her to pay any attorney fees.

“MR. GURLEY: I have got bank statements showing she has other assets that—

“THE COURT: I understand.

“MR. GURLEY: And the reason the Court—it is not 10,000 since the last time. It

is 10,000 for her conduct. The Court declined last time to give me 5,000. We are back here again a month later. If you don't give me some attorney fees, we will be back here another month.

“MS. MORCK: I don't think so, Your Honor.

“THE COURT: The Court will make an order if wife fails to execute any document regarding the sale of the residence, that the court clerk is authorized to sign on her behalf and that would be—Mr. Gurley, all you would have to do is an ex parte application notifying the Court that she has not signed and the Court will sign an order authorizing the clerk to sign on her behalf.

“The Court does find that her conduct it was close in regard to whether her sister would help her out or not. But her conduct in attempting to bypass the Court's order by leasing the property out certainly is sanctionable conduct under 271. The Court is going to order her to pay fees of \$5,000 in 271 sanctions. Those fees will be paid from her share of the proceeds from the sale of the residence.”

On July 12, 2011, findings and order after hearing were signed and filed.

On September 28, 2011, Echo filed a notice of appeal, checking the box indicating that the appeal was from a “Judgment After Court Trial.”

Echo's Opening Brief

Echo's brief asserts four “Assignments of Error”:

“A. The Superior court erred in granted the restraining orders to Raymond against me without placing a court hearing, and didn't evaluate truthfulness of all evidences provided by Raymond and Attorney Gurley.

“B. The Superior Court erred in granted eviction order to Raymond evicting me out from my own house when I am under disability and no other place to live. The Superior Court violated ADA Laws.

“C. Raymond violated the court order, but the Superior court erred in using 271 sanction imposing on me, a disable person who has cancer, to pay \$5000 attorney fee to Raymond.

“D. Both Raymond and Attorney Gurley deliberately made false statement to

court to against me. That is by definition, perjury or at least mendacity. Attorney Gurley misled Echo to sign the so-called settlement against my will and take advantage of my limited English, trick me at the time of signing, saying it's only a working memorandum, it's professional misconduct. The Superior court erred in did not verified the truthfulness and accuracy of Raymond and Attorney Gurley's statement before making any judgment. Furthermore, the court did not provide me a translator when I could not fully understand the conversation they had in court."

Echo's brief ends with a "Conclusion," "Reques[ing] [of] Court of Appeal" the following:

- "1. awarding me a De Novo review;
- "2. awarding me approximately \$ 600,000 in total for punitive damages from the malicious eviction, violation, discrimination, trick of false pretense, abuse of process, enforceable by contempt, emotional distress and the traumatizes of they are tortfeasor;
- "3. ordering Raymond to reimburse \$80000 down payment from the Dover Property back to me;
- "4. imposing Raymond pays me the difference \$15000 (\$490K - \$475K) of the minimum selling price authoring by the court and the real selling price;
- "5. enforcing Raymond to provide entire family income document (Cal. FAM. Code § 760);
- "6. reconsidering the length of marriage and adjudge the alimony (Cal. FAM Code § 2554);
- "7. removing the sanction order on 07/12/2011, and reimbursing \$5000 back to me;
- "8. plus subject to turnover procedures for lost settlement amount, my down payment and 50% settlement was not done and illegal settlement because of RICO act."

The Appeal Has No Merit

To begin with, Echo's notice of appeal filed September 28, 2011, could not attack anything that occurred at the May 17, 2011, hearing, as the appeal was untimely, filed more than 60 days after notice of entry of judgment that day. "A party who fails to take a

timely appeal from a decision or order from which an appeal might previously have been taken cannot obtain review of it on appeal from a subsequent judgment or order.” (*Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1749; accord, *Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 212, 239 [“ ‘ “The law of this state does not allow, on appeal from a judgment, review of any decision or order from which an appeal might previously have been taken.” ’ ”]; *In re Marriage of Lloyd* (1997) 55 Cal.App.4th 216, 219.)

The only order from which the appeal could possibly be timely is that of July 12, 2011, regarding the section 271 award, as there is no indication that notice of that order was ever served. And that award was proper.

“[Family Code] [s]ection 271 ‘ “authorizes sanctions to advance the policy of promoting settlement of litigation and encouraging cooperation of the litigants” and “does not require any actual injury.” [Citation.] Litigants who flout that policy by engaging in conduct that increases litigation costs are subject to imposition of attorney fees and costs as a section 271 sanction.’ (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1225.) Some courts have said the section authorizes attorney fees and costs as a penalty for obstreperous conduct. (See *Robert J. v. Catherine D.* (2009) 171 Cal.App.4th 1500, 1520; *In re Marriage of Freeman* [(2005)] 132 Cal.App.4th [1, 6].) [¶] Sanctions under section 271 are committed to the discretion of the trial court, and will be reversed on appeal only on a showing of abuse of that discretion, that is ‘only if, considering all of the evidence viewed more favorably in its support and indulging all reasonable inferences in its favor, no judge could reasonably make the order.’ [Citations.]” (*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1524.) We find no abuse here.

As to any of the other “assignments of error” or “requests” set out by Echo, they are not appropriate for consideration. But even assuming Echo could make any of the arguments she attempts, they would fail, based on well-settled principles of appellate review, including these:

First, as noted, Echo’s opening brief contains no record references. This is not

only improper (Cal. Rules of Court, rule 8.204(a)(1)(C)); *Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 745), but allows us to treat the points raised as waived. (*Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 799-801.)

Second, “A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Walling v. Kimball* (1941) 17 Cal.2d 364, 373.)

Third, because error is never presumed, it is appellant’s duty to show error in the record the appellant produces before the reviewing court. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Hughes v. Wheeler* (1888) 76 Cal. 230, 234.) This, Echo has not done.

Fourth, an appellant challenging the sufficiency of the evidence to support a finding or judgment is required to state in the opening brief all evidence pertinent to that point. If not done, the reviewing court may treat the issue as waived. (*In re Marriage of Fink* (1979) 25 Cal.3d 877, 887; *Foreman & Clark Corp. v. Fallon* (1970) 3 Cal.3d 875, 881; *In re Marriage of Steiner* (2004) 117 Cal.App.4th 519, 530.)

Superimposed on all the above is the fact that at the hearing on May 17, 2011, Echo testified under oath that she signed the settlement agreement and had no questions about it.

Lastly, on April 25, 2012, Echo filed a motion to augment the record on appeal, which we deemed a request for judicial notice that would be ruled on with the merits of the appeal. None of the documents has any bearing on our decision, and the request for judicial notice is denied.

DISPOSITION

The judgment and order are affirmed.

Richman, J.

We concur:

Haerle, Acting P.J.

Lambden, J.