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

FAY WONG,
Respondent and Appellant,
v.
EDWARD GENSER,
Petitioner and Respondent.

A133837
(Alameda County
Super. Ct. No. RF08398577)

Fay Wong, former wife of respondent Edward Genser, purports to appeal from the May 31, 2011 denial of her motion to set aside a December 2009 judgment dissolving the parties' marriage. For the reasons set forth in part I of our opinion, we conclude her notice of appeal was untimely filed, and therefore the appeal must be dismissed. Critical to that conclusion is the fact that Wong's counsel received timely notice of entry of the May 31, 2011 order denying her motion to set aside the judgment of dissolution. But because the superior court clerk failed to retain copies of the notices she sent to counsel, no such notice was included in the original clerk's transcript filed in this court, and thus we were initially unaware of the timeliness problem.

We discovered the appeal was untimely only through the dogged efforts of Genser's appellate counsel. After much investigation, he was able to obtain a copy of the missing notice of entry of the May 31, 2011 order. His investigation also revealed that Wong's appellate counsel, who had also represented her at the time of the challenged

order, had been in possession of this notice ever since it was first issued in May 2011. Yet remarkably, even after Genser moved to dismiss this appeal as untimely, and despite repeated requests by Genser's counsel that he be provided a copy of the notice, Wong's attorney refused to disclose it either to his opposing counsel or to this court. Thus, in addition to dismissing this case, we shall impose sanctions on Wong and her counsel for prosecuting a frivolous appeal. The appeal is indisputably without merit because this court has no jurisdiction to consider it.

FACTUAL AND PROCEDURAL BACKGROUND

Because of the extremely limited nature of the issues on appeal, we need not delve into the merits of the underlying litigation. We therefore set forth only those facts necessary to resolution of the matters before us.¹

Trial Court Proceedings

Wong and Genser married on May 25, 1995 and separated on May 23, 2008. Genser filed a petition for dissolution of the marriage on July 16, 2008. In September 2009, Genser moved to bifurcate the proceedings and obtain a status only dissolution. The court granted the motion to bifurcate, and it entered a judgment of status only dissolution on December 3, 2009.

On January 14, 2011, Wong's trial counsel, Stephen Michael Murphy, then of Murphy, Vu, Thongsamouth & Chatterjee, LLP of Oakland, filed a motion to set aside the judgment of status only dissolution.² On May 31, 2011, the trial court conducted a hearing on the motion to set aside. Both Wong and Murphy were present at that hearing. On that very same day, the trial court filed a written order denying Wong's motion to set aside the judgment of dissolution (the May 31 Order).

¹ We draw our statement of facts from the record on appeal, the declarations filed by appellate counsel, and the materials attached thereto. We note that while the declarations of counsel do conflict on certain points, the facts set forth in this opinion are not disputed.

² Counsel later made clear that the legal bases for the motion to set aside were Code of Civil Procedure section 473, subdivision (b) and Family Code section 2122, subdivision (d).

Significantly for purposes of this appeal, on the day the May 31 Order was filed, the courtroom clerk faxed file-stamped copies of that order to all counsel of record, including Murphy. The fax transmissions consisted of a cover sheet and copies of the eight-page May 31 Order. For reasons not apparent from the record, the courtroom clerk failed to retain copies of the fax cover sheets establishing service on all counsel. Thus, when the record on appeal was filed in this court, there was no notice of entry attached to the May 31 Order.

On June 10, 2011, Murphy, as counsel for Wong, filed a timely motion for reconsideration of the May 31 Order. Murphy's motion included a statement of the procedural history of the case in which he discussed the May 31, 2011 hearing and noted that "the Court took the matter under submission *and issued a written order later that day* wherein the Court dismissed [Wong's] motion to set aside the dissolution" (Italics added.) The motion for reconsideration argued that the judgment of dissolution should be set aside on a number of grounds. Nowhere in the motion did Murphy claim that there had been a defect in the clerk's service of the May 31 Order.

On September 29, 2011, the trial court heard argument on the motion for reconsideration. The court denied the motion in a written order filed September 30, 2011, and on that day, the courtroom clerk served notice of entry of the order on all counsel.

On November 28, 2011, Wong filed a notice of appeal. The notice of appeal was filed in propria persona, and it purported to appeal from the September 30, 2011 order denying Wong's motion for reconsideration.

Proceedings in This Court

Wong initially represented herself in this appeal. Both her opening brief and her reply brief were filed under her signature, and the case was fully briefed by June 11, 2012. On June 20, 2012, Murphy filed a substitution of counsel and began representing Wong in this court.

On July 12, 2012, Wong moved for calendar preference. We granted the unopposed motion on August 21, and also served notice that oral argument would be heard on September 27 or 28.

On July 16, 2012, Robert A. Roth entered his appearance for respondent Genser, replacing Genser's trial counsel, Heidi Hudson. Shortly after he substituted into this case as Genser's counsel, Roth began investigating the issue of service of the May 31 Order. In late July 2012, Roth visited the superior court clerk's office several times, seeking to determine whether the May 31 Order had been served on Murphy. He eventually determined that the superior court had no record of service of the order. On or about July 24, Hudson and another other attorney of record in the trial proceedings provided Roth with copies of the faxed notice of entry of order sent by the courtroom clerk on May 31, 2011. Hudson also sent Roth a copy of an e-mail from a third attorney in which the latter acknowledged receipt of a faxed copy of the May 31 Order.

On July 30, 2012, while continuing his efforts to document service of the May 31 Order on Murphy, Roth filed a motion to dismiss Wong's appeal as untimely. In the motion, Roth explained that Wong's motion to vacate the December 3, 2009 judgment of dissolution had been denied in the May 31 Order. He then noted, "There is no proof of service attached to the [May 31 Order]."

Roth argued for dismissal on two grounds. He first noted that Wong's notice of appeal sought review only of the September 30, 2011 order denying her motion for reconsideration. He relied on prevailing case law holding that the denial of a motion for reconsideration is not separately appealable. (See, e.g., *Powell v. County of Orange* (2011) 197 Cal.App.4th 1573, 1576-1577 [collecting cases].) He next argued that Wong's appeal could not be construed as having been taken from the May 31 Order, because it had been filed more than 180 days after entry of that order. (See Cal. Rules of Court, rules 8.104(a)(3), 8.108(e)(3).)

On Friday, August 3, 2012, superior court clerk Deborah Wanzo sent an e-mail to Murphy stating, "It has come to our attention there was a fax transmittal sent separately to all of the parties in the Genser vs. Wong Case. I (the clerk) have a record of receipt

from attorneys Kaplan and Hudson, however, [I] did not see one for your office, could you please check your records and see if there was a transmittal sheet forwarded with the FOAH [findings and order after hearing] filed 5/31/2012 [*sic*]. Ms. Wright, the clerk for that day is searching for it. I sincerely thank you for any assistance you can give.” Murphy forwarded this e-mail to his associate, Joseph Gacula, and asked him to follow up with the clerk.

Gacula searched the file for the document, and on August 6, 2012 at 11:52 a.m., he replied to Wanzo, explaining that he had reviewed the files and did not see any faxes or transmittal sheets from May 31, 2012. He continued, “I do see a fax from Ms. Wright for a FOAH from May 31, 2011. Is that it?” One minute later, Wanzo responded to Gacula, asking him, “Could you please provide us with a copy of the fax so that I can file all three on DOMAIN.” Minutes later, Gacula replied to Wanzo stating, “The copy that I have is marked up with our personal notes on the matter, and they are written on the copy of the order that we do have.” Wanzo responded that she could file Gacula’s e-mail rather than a copy of the notice and order.

On August 13, 2012, Murphy filed Wong’s opposition to the motion to dismiss the appeal. The opposition did not address the timeliness of Wong’s notice of appeal. Rather than address the merits of the motion, Murphy characterized Genser’s argument as “disingenuous” and claimed the motion to dismiss “is the latest effort to prevent this Court from hearing [Wong’s] appeal so as to allow her to have her day in court.” The opposition said nothing about Murphy’s receipt of notice of entry of the May 31 Order.

Also on August 13, Roth and Murphy spoke by telephone, and Roth requested that Murphy provide him with the entire fax.³ Murphy did not do so, but instead incorrectly told Roth he could get a copy of the fax notice from the superior court. Two days later, Roth e-mailed Wanzo asking whether Murphy had sent her a copy of the May 31, 2011 fax.

³ At oral argument on September 27, 2012, Murphy represented to us that it was during this conversation on August 13 that he first realized the fax notice of the May 31 Order might be an issue affecting this appeal.

On August 17, Murphy filed a “Supplemental Opposition to Motion to Dismiss Appeal.” In it, Murphy asserted Wong’s appeal was timely, and he claimed Roth had “incorrectly and disingenuously” argued to the contrary.⁴ Although his communications with both Wanzo and Roth had alerted him to the existence and significance of the fax notice, Murphy’s supplemental opposition again said nothing about his having received notice of entry of the May 31 Order.

In the early afternoon of August 17, Roth e-mailed Murphy and repeated his request that Murphy provide him “with the fax [he] received from the superior court clerk transmitting the May 31, 2011 FOAH.” Roth continued, “As far as I can tell, although you confirmed that you had it in our most recent conversation, it still has not been provided to me or to the superior court clerk, despite repeated requests. I will have to consider a request for sanctions explaining this situation to the Court of Appeal, if you do not provide me with the fax immediately. I hope this simple request can be resolved amicably.”

Murphy did not believe he owed this document to Roth, and he responded to Roth’s e-mail by saying he had never told Roth he would send him a copy of the fax. Rather, he had only promised to provide it to Wanzo if she requested it, and Wanzo had not done so because Gacula had told her Murphy’s copy had privileged notes on it. Murphy asked Roth to “explain how it is sanctionable for me to not send you a fax cover sheet for a document sent to me directly from the court.”

At 8:03 p.m. on August 17, Roth sent Murphy another e-mail in which he explained why he thought Murphy’s conduct was sanctionable. Roth wrote, “On May 31, 2011, clerk Venus Wright of the superior court sent you (and all other counsel) a 9 page fax serving a file-endorsed copy of the FOAH that was filed on that date. Under

⁴ Murphy contended the appeal was timely because the 180th day after entry of the May 31 Order fell on Sunday, November 27, 2011, so the deadline for filing was automatically extended to Monday, November 28, the day Wong filed her notice of appeal. Had there been no notice of entry of the May 31 Order, this argument would have been correct. (See Code Civ. Proc., §§ 10, 12, 12a; Cal. Rules of Court, rule 8.104(a)(1)(C), (a)(3).)

[California Rules of Court, rule] 8.104(a)(1), this qualifies as service triggering the deadline for filing notice of appeal from that order, obviously a document of legal significance. [¶] Inadvertently, the clerk failed to preserve a copy of this document, and you have the only copy. The document simply confirms that you were properly served with the FOAH, which obviously happened, since you filed a reconsideration motion ten days later. I do not believe you have the right to withhold this legally significant document from the superior court, the court of appeal, or from the other parties.” Roth then told Murphy bluntly, “By persisting in the conduct, you are withholding an important and legally significant record from the superior court, *you apparently seek to withhold the fact of service from the court of appeal*, and you are unnecessarily wasting the resources of the court and the parties. I believe this is sanctionable.” (Italics added.)

After receiving Roth’s e-mail, Murphy “took it upon [himself] to do due diligence in researching the matter.” He responded on August 19 asking that Roth give him until Tuesday, August 21 “to research this issue.” Murphy questioned whether he was obligated to provide the document to the superior court, since Wanzo had not requested it, and he threatened to seek sanctions against Genser for having to defend “a frivolous motion.”

When Roth responded to Murphy on the morning of August 20, he noted that Murphy’s supplemental opposition to the motion to dismiss had asserted that Roth had been “ ‘incorrectly and disingenuously’ arguing that the appeal is not timely.” Roth told Murphy that this “only strengthens your obligation to furnish the May 31, 2011 fax or a declaration confirming service on that date.”

Later that morning, at Roth’s request, Wanzo sent Murphy an e-mail asking him for a copy of the May 31, 2011 fax transmittal. That afternoon, an attorney in Murphy’s office scanned and e-mailed the document to Wanzo, and he notified Roth it had been sent to the superior court. Roth then requested that the attorney send him a copy, but his request was declined. Roth finally received a copy of the May 31, 2011 fax transmittal from Wanzo later that day. Roth then left on a previously planned vacation.

On August 31, Roth filed Genser's "Reply to Appellant's Supplemental Opposition to Motion to Dismiss, and Request for Sanctions" (Reply). Roth attached the fax notices of the May 31 Order he had obtained from all counsel, as well as copies of the e-mail correspondence documenting his unsuccessful efforts to obtain the document from Murphy. On the merits, Roth argued that Wong's receipt of a file-endorsed copy of the May 31 Order conclusively established that her appeal was untimely. He further argued sanctions were appropriate "because [Wong] and her counsel have persisted in this appeal when they unquestionably should have known it was untimely, and after they had been specifically notified by [Genser] of the significance of the May 31, 2011 fax and the grounds for dismissal."

After reviewing the Reply and the attached materials, on September 11 we issued an order notifying the parties the court was considering imposing sanctions on Wong and/or Murphy pursuant to California Rules of Court, rule 8.276. (See Cal. Rules of Court, rule 8.276(a), (c).) The order afforded Wong the opportunity to file an opposition brief. (Cal. Rules of Court, rule 8.276(d).)

On Wong's behalf, Murphy filed an opposition brief on September 21, 2012. Despite Genser's argument that Wong's receipt of notice of the May 31 Order conclusively established that her appeal was untimely, the opposition did not mention this issue at all. Instead, Murphy again accused Roth of "disingenuously" arguing Wong's appeal was not timely, and he claimed his prior filings had "simply and successfully refuted the disingenuous 180 day argument by Mr. Genser's counsel." Murphy also claimed Roth had "improperly request[ed] sanctions as a smokescreen to obscure his disingenuous argument, and to otherwise divert attention from the impending oral argument." In his attached declaration, Murphy stated that Wong's appeal "has meritorious claims and should be fully and fairly heard through the oral argument process[.]"

Murphy also opposed the request for sanctions. He argued it was not his responsibility to provide documents to Roth and claimed that when he provided a copy of the fax notice to Wanzo on August 20, "the issue became moot[.]" In Murphy's view,

since he was under no obligation to provide the document to Roth, neither he nor Wong “did anything inappropriate relative to the issue of the document in question.” In addition, Murphy contended Roth’s request for sanctions was procedurally defective and should be denied on that basis.

In their declarations, both Wong and Murphy claimed they had not acted in bad faith or engaged in any inappropriate behavior. Murphy declared that the “sequence of events” set forth in his declaration “evidences the fact that [he] was in no way attempting to delay or frustrate the process, but rather to protect [his] client.” Neither the opposition to the request for sanctions nor the declarations by Wong and Murphy acknowledge any duty to provide this court with a document critical to determining whether we have jurisdiction over this appeal.

On September 27, we held oral argument on the appeal and on the issue of sanctions. (Cal. Rules of Court, rule 8.276(e).)

DISCUSSION

“Only a timely filed notice of appeal can invoke the jurisdiction of the appellate court.” (*In re Marriage of Adams* (1987) 188 Cal.App.3d 683, 689.) Therefore, before we can consider the merits of this case, we must first address the jurisdictional issue raised by Genser’s motion to dismiss. (*In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 106.)

I. *Wong’s Notice of Appeal Was Untimely Filed.*

The order from which Wong purported to appeal was the September 30, 2011 denial of her motion for reconsideration. As noted above, however, the denial of a motion for reconsideration is not separately appealable. (*Powell v. County of Orange, supra*, 197 Cal.App.4th at pp. 1576-1577.) On the other hand, an order denying a statutory motion to set aside a judgment is appealable. (*In re Marriage of Walker* (2012) 203 Cal.App.4th 137, 145, fn. 1 [order denying motion under Fam. Code, § 2122]; *Generale Bank Nederland v. Eyes of the Beholder Ltd.* (1998) 61 Cal.App.4th 1384, 1394 [order denying relief under Code Civ. Proc., § 473].) But even if we deem Wong’s notice of appeal from the denial of her motion for reconsideration to be one taken from the trial

court's earlier denial of her motion to set aside the status only dissolution judgment (see *Hughey v. City of Hayward* (1994) 24 Cal.App.4th 206, 210), we have jurisdiction over this appeal only if that notice was timely with respect to the May 31 Order. We conclude it was not.

On the day the May 31 Order was issued, the courtroom clerk served a file-stamped copy of that order on Murphy by fax. This triggered the 60-day deadline for appealing that order. (Cal. Rules of Court, rules 8.104(a)(1)(A) [establishing 60-day deadline for notice of appeal after clerk serves "a file-stamped copy of the judgment"]; 8.104(e) ["judgment" in rule 8.104(a) includes appealable order].) Wong's filing of a motion for reconsideration extended the time for filing her notice of appeal until 30 days after service of the order denying that motion. (Cal. Rules of Court, rule 8.108(e)(1).) The trial court denied her motion on September 30, 2011, and notice of that order was mailed to Murphy the same day. Wong did not file her notice of appeal until November 28, 2011, almost 60 days later. Her notice of appeal was therefore filed late, and this court must dismiss the appeal. (Cal. Rules of Court, rule 8.104(b).)

At oral argument, Murphy raised a contention not presented in any of his filings in this court. He argued for the first time that the courtroom clerk's notice was ineffective because it had been sent by fax, a method of service not permitted by the Code of Civil Procedure. (See Cal. Rules of Court, rule 8.104(a)(2) [service of judgment or appealable order under rule 8.104(a)(1)(A) and (B) "may be by any method permitted by the Code of Civil Procedure"].) Murphy argued that under Code of Civil Procedure section 1013, subdivision (e), "[s]ervice by facsimile transmission shall be permitted only where the parties agree and a written confirmation of that agreement is made." (See also Cal. Rules of Court, rule 2.306(a)(1) [same].) Furthermore, California Rules of Court, rule 2.306(c) provides that "[a] court may serve any notice by fax in the same manner that parties may serve papers by fax." Although Murphy did not specifically state that the parties had not agreed to fax service in the trial court, we understand him to contend that since the parties did not agree to service by fax, the superior court could not avail itself of this method of service under California Rules of Court, rule 2.306(c).

Even if we ignore the well-established procedural rule that issues first raised at oral argument are forfeited (*County of Sonoma v. Superior Court* (2010) 190 Cal.App.4th 1312, 1326, fn. 10), this contention suffers from a number of fundamental flaws. First, it is undisputed that Murphy received actual notice of entry of the May 31 Order. He admitted this at oral argument, and his timely motion for reconsideration below referred specifically to the fact that the trial court had issued a written order on that date. Thus, we are not faced with a case in which the claimed defect in service “resulted, or could have resulted, in a lack of actual notice to the party or the party’s attorney.” (*Adaimy v. Ruhl* (2008) 160 Cal.App.4th 583, 587 [where plaintiff had actual notice, service of notices of entry of judgment and order not ineffective where notices sent to only one of two law firms representing plaintiff].)

Second, Murphy’s motion for reconsideration did not argue that the clerk’s notice of the May 31 Order did not comply with Code of Civil Procedure section 1013. Instead, the motion requested relief on the merits, and both Wong and Murphy appeared at the September 29, 2011 hearing, where Murphy presented argument on the motion. These actions waived any objection to the alleged failure to comply with the notice requirements of the Code of Civil Procedure. (See, e.g., *Lacey v. Bertone* (1949) 33 Cal.2d 649, 651-652 [appearance at hearing on motion to dissolve injunction waived objection that service of notice of hearing did not comply with Code Civ. Proc., §§ 1014 and 1015]; *Alioto Fish Co. v. Alioto* (1994) 27 Cal.App.4th 1669, 1688-1689 [party waived objections that he was not personally served with either order or motions to compel compliance with order as allegedly required by Code Civ. Proc., § 717.010, where he made general appearance and opposed motions on merits]; *Biddle v. Superior Court* (1985) 170 Cal.App.3d 135, 138 [parties waived objections to alleged noncompliance with notice requirements of Code Civ. Proc., § 409, subd. (c) where they received actual notice and raised notice issue only after they had unsuccessfully brought two motions to attack lis pendens].)

Third, while Murphy appears to claim the parties did not agree to fax service in the trial court, the record suggests otherwise. The clerk’s transcript contains at least two

instances in which Hudson served Murphy by fax, and Murphy appears to have made no objection to the manner of service. Because we conclude any claimed defect in the notice of entry of the May 31 Order was waived, we need not definitively resolve this factual issue. We do note, however, that a reviewing court must ordinarily presume the courtroom clerk properly performed her official duty and served all counsel by appropriate means. (Cf. *In re Linda D.* (1970) 3 Cal.App.3d 567, 571 [under Evid. Code, § 664, court would presume juvenile court clerk properly served copy of wardship petition and notice of hearing, even though no notice appeared in record].)

II. *The Issue of Sanctions*

Having concluded the appeal must be dismissed, we turn now to the issue of sanctions. Before discussing whether Wong’s and/or Murphy’s conduct warrants the imposition of sanctions, we will briefly review our authority to penalize the prosecution of frivolous appeals and the criteria for determining whether an appeal is frivolous.

A. *Authority to Impose Sanctions*

Our express authority to impose sanctions is derived from both the Code of Civil Procedure and the California Rules of Court. Code of Civil Procedure section 907 provides, “When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just.” In addition, under the California Rules of Court, this court may sanction an attorney or a party for “[t]aking a frivolous appeal or appealing solely to cause delay[.]” (Cal. Rules of Court, rule 8.276(a)(1).) Under both Code of Civil Procedure section 907 and rule 8.276(a), we may impose sanctions on our own motion. (See *Cosenza v. Kramer* (1984) 152 Cal.App.3d 1100, 1102 [imposing sanctions under Code of Civil Procedure section 907 and former California Rules of Court, rule 26(a)].) Our September 11, 2012 order indicated this court was considering imposing sanctions on its own initiative after our review of Genser’s Reply and the attached documents.⁵ (See *Kim v. Westmoore*

⁵ Consequently, we need not consider Wong’s arguments about alleged technical deficiencies in Genser’s request for sanctions. When conduct subject to sanction comes

Partners, Inc. (2011) 201 Cal.App.4th 267, 291 & fn. 14 [court issued sanctions notice on its own motion after review of brief filed by respondent in another case].)

B. *Standards for Determining Whether an Appeal is Frivolous*

The California Supreme Court has cautioned that “an appeal should be held to be frivolous only when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable attorney would agree that the appeal is totally and completely without merit.” (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650 (*Flaherty*)). The first standard is subjective, and its “focus is on the good faith of appellant and counsel.” (*In re Marriage of Gong & Kwong* (2008) 163 Cal.App.4th 510, 516 (*Gong & Kwong*)). The second standard is objective. (*Ibid.*) “ ‘While each of the above standards provides *independent* authority for a sanctions award, in practice the two standards usually are used together “with one providing evidence of the other. Thus, the total lack of merit of an appeal is viewed as evidence that appellant must have intended it only for delay.” [Citations.]’ [Citation.]” (*Ibid.*)

Although the two standards are frequently used together, where an appeal is objectively frivolous, we may impose sanctions even if the record fails to demonstrate the appeal was subjectively frivolous. (*Maple Properties v. Harris* (1984) 158 Cal.App.3d 997, 1009.) Thus, even if “counsel’s subjective intent eludes us, [but] we can say with entire confidence that, judged by any reasonable objective standard, this appeal has no chance of success,” sanctions are in order. (*Conservatorship of Gollock* (1982) 130 Cal.App.3d 271, 274.) However, a “combination of substantive frivolousness *and* procedural misconduct” will support a finding that the appeal was taken “solely for the purpose of delay or harassment, not because of any good faith belief in the validity of the appeal.” (*Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 32, fn. 9.)

to our attention, our authority to penalize it on our own motion does not depend on whether a party presents a request for sanctions in proper form.

C. *Wong's Untimely Appeal Is Objectively Frivolous.*

Here, judged by any reasonable, objective standard, Wong's appeal is frivolous. As explained in part I, *ante*, her notice of appeal was filed approximately a month after the outermost deadline for appealing the May 31 Order had expired. The California Rules of Court expressly state that “[i]f a notice of appeal is filed late, the reviewing court *must dismiss the appeal.*” (Cal. Rules of Court, rule 8.104(b), italics added.) “There is no relief from late filing.” (*In re Marriage of Adams, supra*, 188 Cal.App.3d at p. 689.) If a notice of appeal is not timely filed, we have no discretion to hear the case and must dismiss it on our own motion even in the absence of an objection. (*Hollister v. Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 666-667.) Obviously, there can be no merit to an appeal we plainly lack the power to decide. (*Papadakis v. Zelis* (1992) 8 Cal.App.4th 1146, 1149 [appeal frivolous where taken from order that was clearly interlocutory]; see *Guardianship of Melissa W.* (2002) 96 Cal.App.4th 1293, 1301 [appeal that becomes moot is frivolous]; *Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 16 [sanctions imposed where “appeal was clearly moot”].) Since an untimely notice of appeal is ineffective to vest jurisdiction in this court, it follows that a clearly untimely appeal is frivolous, because “any reasonable attorney would agree that the appeal is totally and completely without merit.” (*Flaherty, supra*, 31 Cal.3d at p. 650.)

Although our lack of jurisdiction prevents us from reaching the merits of the issues Wong raises, we did examine her arguments before we became aware her appeal was untimely. Those arguments are feeble at best. The trial court denied her January 14, 2011 motion to set aside the December 3, 2009 judgment of dissolution because the motion was untimely. (See Code Civ. Proc., § 473, subd. (b) [application for relief from a judgment “shall be made within a reasonable time, *in no case exceeding six months*, after the judgment . . . was taken”], italics added.) “[T]he outside limit of six-months applies inflexibly[.]” (*Arambula v. Union Carbide Corp.* (2005) 128 Cal.App.4th 333, 344.) In this court, Wong also claims the trial court should have set aside the judgment by exercising its equitable authority. But in the trial court she sought relief on the basis

of Family Code section 2122, subdivision (d). Wong therefore forfeited any equitable argument, and she “should not at this late date be permitted to change the entire basis of her motion because in hindsight it now seems expedient for her to do so.” (*In re Marriage of Eben-King & King, supra*, 80 Cal.App.4th at p. 110.) Thus, “a review of the whole cause persuades us that the issues raised on appeal . . . are entirely meritless and that no reasonable attorney familiar with the applicable law and the facts of this case would have pursued the present appeal.” (*Finnie v. Town of Tiburon, supra*, 199 Cal.App.3d at p. 16.)

D. *Wong’s Appeal is Also Subjectively Frivolous.*

In this case, the combination of the appeal’s objective lack of merit and Murphy’s procedural misconduct also compel the conclusion that the appeal is subjectively frivolous. (*Pierotti v. Torian, supra*, 81 Cal.App.4th at p. 32, fn. 9.) Here, Wong and Murphy persisted in the prosecution of this appeal, although they knew or should have known the appeal was untimely. To make matters worse, Murphy failed to provide this court with the fax notice of entry of the May 31 Order, a document that would have established the untimeliness of the appeal, and he persisted in his refusal to produce that document even after his opposing counsel spelled out its legal significance, informed Murphy he was withholding a critical document from us, and explained such conduct was sanctionable. Moreover, in none of his many filings with this court did Murphy ever address the issue repeatedly raised by Genser: how his receipt of notice of the May 31 Order affected the timeliness of his client’s appeal. Instead, as we will explain, he impliedly represented to us that he had received no notice. Finally, what is especially disturbing to us is Murphy’s steadfast refusal to acknowledge his breach of his duty to provide us with a document bearing on our jurisdiction and to express any remorse for that breach.

Since “[t]his opinion constitutes a written statement of our reasons for imposing sanctions” (*Huschke v. Slater* (2008) 168 Cal.App.4th 1153, 1164), we will explain in some detail why we find sanctions necessary and appropriate.

For the moment, we will indulge the assumption that by June 20, 2012, when Murphy entered his appearance as Wong's counsel, Murphy either: (1) had forgotten about receiving notice of the May 31 Order and was thus unaware of the timeliness problem or (2) failed to understand that under California Rules of Court, rules 8.104 and 8.108, his client's notice of appeal had been filed late. But even if we give Murphy the benefit of the doubt, it is indisputable that he and his client persisted in the prosecution of this appeal well after they must have become aware it was untimely.

First a comment on Murphy's duty to this court. Upon undertaking to represent Wong in this appeal, Murphy should have reviewed his files to assure himself her appeal was timely. A leading treatise advises appellate counsel, "if you have been specially retained to handle the appeal, do not assume that the referring attorney [or the client] was aware of the importance of timely filing: Before agreeing to prosecute the appeal, immediately *verify* the filing deadline!" (1 Eisenberg, et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2011) ¶ 3:9, p. 3-7.) Conscientious counsel should therefore assure themselves an appeal is timely *before* setting the appellate process in motion. If there is a question about the appeal's timeliness, counsel should bring the matter to the appellate court's attention at once. (Cf. *id.* ¶ 3:116, p. 3-49 [counsel may file late notice of appeal only "where some plausible technical argument may be made that the appeal deadline in fact has not yet expired" but "ethical considerations may still require counsel to bring the point to the appellate court's attention . . . when the notice of appeal is filed"].)

Even if Murphy could be excused for failing to verify the timeliness of his client's appeal when he first entered his appearance, later events indisputably put him on notice of the timeliness problem. Genser's July 30, 2012 motion to dismiss argued the appeal was untimely, and it noted that notice of entry of the May 31 Order did not appear in the record. Only a few days later, on August 3, Wanzo e-mailed Murphy asking for his copy of the faxed notice, and on August 6, Murphy's associate Gacula confirmed that the firm had a record of having received notice of the May 31 Order.

By that point, Murphy was unquestionably aware that: (1) the timeliness of Wong's notice of appeal was an issue; (2) he had received proper notice of entry of the May 31 Order; and (3) the notice was missing from the clerk's transcript, and we therefore did not know of it. Despite this, Murphy did not bring this important matter to our attention. Instead, on August 13, 2012, he filed an opposition to Genser's motion to dismiss in which he did not mention the timeliness issue at all, much less reveal that he had, in fact, received proper notice of the May 31 Order. On August 13, he also spoke with Roth by telephone, and Roth asked Murphy to provide him with a copy of the entire fax he had received from the courtroom clerk. Murphy refused Roth's request, but he admitted to us at oral argument that during this conversation he became aware the notice might be an issue.

Yet in spite of this admitted awareness, four days later, on August 17, 2012, Murphy filed a supplemental opposition to Genser's motion to dismiss. Again, it made no mention of the notice and instead made personal attacks on Roth, accusing him of incorrectly and disingenuously arguing the appeal was untimely. Most significant for present purposes is that Murphy responded to Genser's timeliness argument by claiming Wong had 180 days in which to file her notice of appeal of the May 31 Order, an argument that would be valid *only* if Murphy had not received notice of entry of that order. (See Cal. Rules of Court, rule 8.104(a)(1)(A)-(C).) Thus, by making this argument in the supplemental opposition, Murphy impliedly represented to us that no such notice had been given, although by then he was well aware that it had.⁶

Any lingering shadow of doubt about Murphy's awareness and understanding of the timeliness issue was dispelled by Roth's e-mail on the evening of August 17. Roth

⁶ It does not matter that Murphy did not *affirmatively* claim he had received no notice of entry of the May 31 Order. "An attorney has a duty 'never to seek to mislead . . . any judicial officer by an artifice or false statement.' ([Bus. & Prof. Code, § 6068, subd. (d)].) . . . An attorney need not utter an affirmative falsehood in order to violate that duty. This court has held that concealment of a material fact 'misleads the judge as effectively as a false statement No distinction can therefore be drawn among concealment, half-truth, and false statement of fact.' [Citations.]" (*Franklin v. State Bar* (1986) 41 Cal.3d 700, 709.)

laid out for Murphy precisely why the latter's receipt of notice of the May 31 Order was significant for purposes of our appellate jurisdiction, and he explained that withholding the document from us would subject Murphy to sanctions. Notwithstanding this blunt explanation, Murphy *still* did not provide the document either to this court or to his opposing counsel. (See *Hale v. Laden* (1986) 178 Cal.App.3d 668, 674-675 & fn. 5 [sanctions warranted where opposing counsel informed attorney appeal was frivolous and sanctions would be sought].) And far from recognizing his ethical responsibilities to this court and his obligations to opposing counsel, Murphy aggressively and with remarkable temerity threatened *Genser* with sanctions.

Regrettably, the matter did not end there. Genser's August 31, 2012 Reply detailed exactly why Wong's appeal was untimely. But even after having the chance to review the Reply, when Murphy filed a response to our September 11 order notifying him we were considering imposing sanctions, he did not address the timeliness issue. Instead, his response to us "was both truculent and dismissive[.]" (*Kim v. Westmoore Partners, Inc., supra*, 201 Cal.App.4th at p. 273.) Murphy again failed to explain why he had not provided this court with a copy of the notice of entry of the May 31 Order, and he again avoided answering Genser's argument that Wong's appeal was untimely filed because notice of the order had been properly given. Moreover, he repeated his personal attacks on Roth, renewing the accusation that Roth was making "disingenuous" arguments and claiming the request for sanctions was merely a "smokescreen" to divert this court's attention. (See *In re S.C.* (2006) 138 Cal.App.4th 396, 412 ["unwarranted personal attacks on the character or motives of the opposing . . . counsel . . . are inappropriate and may constitute misconduct"].) Murphy's response to our order demonstrated no recognition whatsoever of the gravity of his misconduct. Instead of an expression of contrition for withholding a key document and prosecuting a clearly untimely appeal, he met our concerns with nothing but petulance and disregard. Even at oral argument, when pressed by the court to explain how his client's appeal could possibly be timely, Murphy gave us no answer. As we explained above, his eleventh hour argument that fax notice did not satisfy the requirements of the Code of Civil Procedure is unavailing. We also

question whether it was made in good faith, since it was never raised in any of Murphy's filings in this court. (See *Simonian v. Patterson* (1994) 27 Cal.App.4th 773, 787 [explanation raised at oral argument "rings hollow" where it differs from arguments made in briefs].)

Although we gave him ample opportunity to do so, Murphy never did tell us why he had failed to disclose that he had received timely notice of the May 31 Order. While admitting his knowledge, he simply repeated over and over that he did not subjectively intend to commit a fraud on this court. In the absence of any credible explanation for his refusal to inform us that he had received notice of entry of the order from which his client purported to appeal—a refusal that persisted well after Roth had specifically told him why the notice was important—we may infer that Murphy was attempting to prevent us from learning of the existence of the notice. (See *Gong & Kwong, supra*, 163 Cal.App.4th at p. 521, fn. omitted [inference of willingness "to abuse the court's processes could be drawn from . . . counsels' sophistry and their litigation tactics, which went beyond proper advocacy and common sense"].)

Based on these facts, we conclude that *at least* as of August 13, 2012, Murphy knew or should have known his client's appeal was untimely. At that point, he was obliged to discontinue the appeal. As we said more than 25 years ago, "counsel has a professional responsibility not to pursue an appeal that is frivolous or taken for the purpose of delay[.]" (*Cosenza v. Kramer, supra*, 152 Cal.App.3d at p. 1103; see Rules Prof. Conduct, rule 3-200 ["A member shall not seek, accept, or continue employment if the member knows or should know that the objective of such employment is . . . [t]o . . . take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person"].) Once it was clear this court had no jurisdiction to consider this appeal, both Wong and Murphy had a duty promptly to dismiss it. (See *Guardianship of Melissa W., supra*, 96 Cal.App.4th at p. 1301 [appellants and counsel had duty to dismiss appeal once it was rendered moot].) If Wong refused to consent to dismissal, Murphy's ethical obligations required him to inform her that his professional responsibility as an attorney precluded him from continuing to prosecute the appeal and compelled him to

withdraw from representation. (*Consenza v. Kramer, supra*, 152 Cal.App.3d at p. 1103; see Rules Prof. Conduct, rule 3-700(B)(1) [“A member representing a client before a tribunal shall withdraw from employment . . . if . . . [t]he member knows or should know that the client is . . . taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person”].) Because Wong and Murphy violated their duty to dismiss an untimely appeal, we find their conduct warrants sanctions.⁷

E. *The Amount of Sanctions*

Having concluded sanctions are warranted, we must determine an appropriate amount. “Factors relevant to determining the amount of sanctions to be awarded a party responding to a frivolous appeal include ‘the amount of respondent’s attorney fees on appeal; the amount of the judgment against appellant; the degree of objective frivolousness and delay; and the need for discouragement of like conduct in the future.’ ” (*Gong & Kwong, supra*, 163 Cal.App.4th at p. 519; *Pollock v. University of Southern California* (2003) 112 Cal.App.4th 1416, 1434 [one goal of sanctions is to deter future frivolous litigation.])

As to the first factor, Genser has not told us the amount of attorney fees he has incurred on appeal. He has instead requested a remand to the trial court so that it may award reasonable attorney fees. We agree Genser should be awarded reasonable attorney fees for the period after August 13, 2012, the date upon which we have concluded Murphy certainly knew or should have known his client’s appeal was untimely. We will

⁷ In reaching this conclusion, we have gone out of our way to be fair to Wong and her counsel. It frankly strains our credulity to believe that in June of this year, when Murphy entered his appearance in this appeal, he had already forgotten about receiving notice of entry of the May 31 Order approximately one year earlier. Moreover, we struggle to understand how an attorney can have failed immediately to appreciate the legal significance of the notice once Genser’s motion to dismiss raised the timeliness issue. Nevertheless, in what is doubtless an overabundance of caution on our part, we have chosen to assume that Murphy did not understand the consequence of his receipt of the notice until his telephone conversation with Roth on August 13, 2012. (See *Flaherty, supra*, 31 Cal.3d at p. 648 [in penalizing frivolous appeals, courts must “strik[e] a balance that will ensure both that indefensible conduct does not occur and that attorneys are not deterred from the vigorous assertion of clients’ rights”].)

therefore remand the matter to the trial court for the limited purpose of assessing those fees. (See *Gong & Kwong, supra*, 163 Cal.App.4th at p. 521 [remanding case to trial court “to calculate and award . . . reasonable attorney fees incurred in responding to the appeal and in seeking sanctions”].)

Since there is no monetary judgment at issue, the second factor is less relevant to our analysis. We observe, however, that even though money is not involved here, Wong’s appeal has delayed the finality of the judgment of dissolution. This is itself a burden on Genser, who has been put to the trouble of defending a frivolous appeal. (See *Simonian v. Patterson, supra*, 27 Cal.App.4th at p. 786.)

In this case, the degree of objective frivolousness is very high. Wong’s appeal is clearly untimely, and we conclude that, at least as of August 13, 2012, “[n]o competent attorney could conceivably believe in good faith” the appeal was timely. (*Papadakis v. Zelis, supra*, 8 Cal.App.4th at p. 1149.) Thus, the case is not a close one. (See *Pierotti v. Torian, supra*, 81 Cal.App.4th at p. 34.) In addition, we are awarding sanctions not only to punish Wong and Murphy for prosecuting a frivolous appeal, but also to punish counsel for his failure to provide this court with a document that established our lack of jurisdiction, his implied representation in the supplemental opposition to Genser’s motion to dismiss that he had received no notice of the May 31 Order, and for his steadfast refusal to recognize his conduct as blameworthy. (See *ibid.* [higher sanctions appropriate where counsel filed frivolous appeal and unreasonably violated procedural rules on appeal].) Thus, this case involves “the added elements of dishonesty and lack of remorse” on counsel’s part. (*Kim v. Westmoore Partners, Inc., supra*, 201 Cal.App.4th at p. 294.)

It should also be obvious there is a great need to deter conduct of this nature in the future. “It is critical to both the bench and the bar that we be able to rely on the honesty of counsel. The term ‘officer of the court,’ with all the assumptions of honor and integrity that append to it, must not be allowed to lose its significance.” (*Kim v. Westmoore Partners, Inc., supra*, 201 Cal.App.4th at p. 292.) One of an attorney’s duties is to employ only those means that are consistent with truth and never to seek to mislead

us “by an artifice or false statement of fact or law.” (Bus. & Prof. Code, § 6068, subd. (d).) We cannot sit idly by when a member of the bar fails to live up to the standards of the profession.

Beyond the breach of their duties to us, the conduct of Wong and Murphy has also harmed others. “Respondent[s] . . . are not the only parties damaged when an appellant pursues a frivolous claim. Other appellate parties, many of whom wait years for a resolution of bona fide disputes, are prejudiced by the useless diversion of this court’s attention. [Citation.] In the same vein, the appellate system and the taxpayers of this state are damaged by what amounts to a waste of this court’s time and resources. [Citations.] Accordingly, an appropriate measure of sanctions should also compensate the government for its expense in processing, reviewing and deciding a frivolous appeal. [Citations.]” (*Finnie v. Town of Tiburon, supra*, 199 Cal.App.3d at p. 17.) In this time of limited budgets and strained judicial resources, this court can ill afford to devote its attention to an appeal it has no power at all to hear.

Consequently, we also find sanctions should be paid directly to the clerk of this court. (*Gong & Kwong, supra*, 163 Cal.App.4th at p. 520.) Appellate sanctions for frivolous appeals have recently ranged from \$6,000 to \$12,500. (*Kim v. Westmoore Partners, Inc., supra*, 201 Cal.App.4th at p. 294.) These figures are generally, but not exclusively, based on the estimated cost to the court of processing a frivolous appeal. (*Ibid.*) In 2008, our colleagues in Division One cited a cost analysis by the clerk’s office of the Second Appellate District indicating “the cost of processing an appeal that results in an opinion by the court to be approximately \$8,500, while the cost for processing a case that is resolved without opinion (for example, by dismissal for lack of an appealable order) to be approximately \$1,750.” (*Gong & Kwong, supra*, 163 Cal.App.4th at p. 520.) Although we are dismissing this appeal, its continued prosecution caused us to prepare an opinion on the merits and then to conduct a completely different analysis and to prepare and ultimately file a very different opinion. Since our processing and review of this appeal had been nearly completed before we became aware that its untimeliness was established, we believe a sanction in the higher range is necessary to compensate the

court for its costs. (See *Huschke v. Slater*, *supra*, 168 Cal.App.4th at p. 1163 [imposing sanction of \$6,000 where court had completed review of record, researched legal issues, and drafted a tentative opinion before being informed case had been settled].) Another factor weighing in favor of higher sanctions is Murphy’s dishonesty and lack of remorse. (*Kim v. Westmoore Partners, Inc.*, *supra*, 201 Cal.App.4th at p. 294.) We therefore conclude sanctions in the amount of \$8,500 are appropriate.

F. *Sanctions Should Be Imposed on Both Wong and Murphy.*

The final issue we must decide is who should be required to pay the sanctions. (*Pierotti v. Torian*, *supra*, 81 Cal.App.4th at p. 36.) “We may order a litigant, his attorney, or both to pay sanctions on appeal.” (*Ibid.*)

There can be no question that Murphy must shoulder primary responsibility for the sanctions in this case. He failed to carry out his professional responsibilities as an officer of the court. (*Cosenza v. Kramer*, *supra*, 152 Cal.App.3d at p. 1103.) By refusing to dismiss a clearly frivolous appeal, he breached his duty to “maintain those actions [or] proceedings . . . only as appear to him . . . legal or just[.]” (Bus. & Prof. Code, § 6068, subd. (c); *Pierotti v. Torian*, *supra*, 81 Cal.App.4th at p. 36; see also *Guardianship of Melissa W.*, *supra*, 96 Cal.App.4th at p. 1301 [counsel has duty promptly to dismiss appeal that becomes moot].) We have found he also sought to mislead this court “by an artifice or false statement of fact or law” by failing to divulge the fact that he had received notice of entry of the May 31 Order. (Bus. & Prof. Code, § 6068, subd. (d); see *Sui v. Landi* (1985) 163 Cal.App.3d 383, 386 [imposing sanctions on appellant whose failure to request preparation of reporter’s transcript “prevented us from reviewing the facts” supporting respondent’s action and trial court’s judgment].) Furthermore, he persisted in withholding this information well after his opposing counsel informed him of its importance and warned him of the danger of sanctions. Finally, he continued to refuse to recognize the gravity of his misconduct until the bitter end. (See *Kim v. Westmoore Partners, Inc.*, *supra*, 201 Cal.App.4th at pp. 294-295 [heightened sanctions warranted where counsel displayed lack of remorse].)

While Murphy is principally responsible, Wong is not blameless. (*Pierotti v. Torian, supra*, 81 Cal.App.4th at p. 37.) She “initiated the appeal and benefited from the delay.” (*Ibid.*) Although Wong is not a lawyer, she prepared and filed legal documents in the court below, and the appellate briefs she submitted in propria persona demonstrate she is not lacking in legal ability. The briefs are well written and replete with citations to statutory and case authority. If Wong was capable of such legal research, she was certainly capable of ascertaining whether her appeal was timely. (See *Sui v. Landi, supra*, 163 Cal.App.3d at p. 386 & fn. 2 [court documents prepared by unrepresented appellant showed “she appear[ed] to be an experienced litigant”].) In addition, like Murphy, Wong’s declaration in response to our September 11, 2012 order admits no responsibility for pursuing this untimely appeal and wrongfully impugns the motives of Genser’s counsel, whom she accuses of seeking “to prevent [her] from having [her] day in court, and to keep Mr. Genser silent because he has no one who is looking out for his best interests.”

Based on these factors, we conclude Murphy alone shall be responsible for paying the \$8,500 in sanctions due to the clerk of this court. (See *Pollock v. University of Southern California, supra*, 112 Cal.App.4th at p. 1434 [assessing sanctions payable to appellate court clerk only against counsel].) However, the attorney fees the trial court awards to Genser for defending this frivolous appeal after August 13, 2012 shall be paid “jointly and severally” by Wong and Murphy. (*Id.* at pp. 1433, 1434.)

III. *A Final Word on Civility*

While we have focused our attention on Murphy’s violation of his duties to this court, his behavior toward Roth, his opposing counsel, leads us to echo the view of our colleagues in the Fourth Appellate District, who recently lamented that “[o]ur profession is rife with cynicism, awash in incivility.” (*Kim v. Westmoore Partners, Inc., supra*, 201 Cal.App.4th at p. 293.) In this case, we would have been spared much effort if Murphy had accorded Roth the simple courtesy of providing a copy of the fax notice when he requested it. (See Atty. Guidelines of Civility & Professionalism (July 20, 2007) § 4(h)

(Civility Guidelines) [“An attorney should agree to reasonable requests in the interests of efficiency and economy”].) We see no reason why this request was not accommodated.

We also reiterate our disapproval of Murphy’s attacks on Roth’s motives and of his assertion that Roth’s arguments were “disingenuous” and a “smokescreen.” (See *In re S.C.*, *supra*, 138 Cal.App.4th at p. 412; Civility Guidelines, *supra*, § 8(a) [“An attorney should not make ad hominem attacks on opposing counsel”].) Impugning the character of opposing counsel is almost never appropriate, and in this case these charges were particularly unfounded, given the level of hypocrisy Murphy demonstrated in making them.

It would be deeply disturbing if the lack of professionalism and respect reflected in Murphy’s conduct toward Roth were common among members of the bar. We hope it is not, and repeat the admonition of the Board of Governors of the State Bar that “attorneys have an obligation to be professional with . . . other parties and counsel . . . This obligation includes civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, and cooperation, all of which are essential to the fair administration of justice and conflict resolution.” (Civility Guidelines, *supra*, Introduction.) The kind of conduct that occurred in this case “not only disserves the individual involved, it demeans the profession as a whole and our system of justice.” (*Ibid.*) Rather, counsel must “strive for the highest standards of attorney behavior to elevate and enhance our service to justice.” (*Ibid.*)

DISPOSITION

Genser’s motion to dismiss the appeal is granted, and the appeal is dismissed as untimely filed. The matter is remanded to the trial court to calculate and award Genser the reasonable attorney fees incurred in resisting this appeal after August 13, 2012.

As sanctions for prosecuting a frivolous appeal, Stephen Michael Murphy, State Bar No. 219468, individually shall pay \$8,500 to the clerk of this court. This sum shall be paid no later than 15 days after the remittitur is filed. The clerk shall deposit the sum paid to her into the general fund.

Stephen Michael Murphy and the clerk of this court are each ordered to forward a copy of this opinion to the State Bar upon return of the remittitur. (Bus. & Prof. Code, §§ 6068, subd. (o)(3), 6086.7, subd. (a).)

Genser shall recover his costs on appeal.

Jones, P.J.

We concur:

Simons, J.

Bruiniers, J.