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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re the Matter of J.P. and T.T.

J.P.,
Petitioner and Respondent,

v.

T.T.,
Respondent and Appellant.

A135793

(Alameda County
Super. Ct. No. AF11588217)

Appellant T.T. (mother) challenges an order of the trial court granting the request of respondent J.P. (father) for attorney fees for his legal costs associated with this action brought under California’s Uniform Parentage Act (Family Code section 7600 et seq., hereinafter UPA).¹ In doing so, mother, who never married father, contends the trial court relied on the wrong statute, section 2030, as the basis for the order. While section 2030 is the provision authorizing an award of attorney fees in marital dissolution cases, section 7605 is the provision authorizing such an award under the UPA, and thus should have been relied upon in this action. We agree the trial court erred in relying on section 2030 instead of section 7605 in awarding fees to father, but nonetheless affirm on the ground that the error was harmless because the same result would have been reached under either statute.²

¹ Unless otherwise stated, all statutory citations herein are to the Family Code.

² Father did not file a respondent’s brief in this appeal.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2011, father filed a petition under the UPA to establish parentage to mother's only child, N.P., a daughter born in 2002. No judgment of paternity has yet been entered. However, in November 2011, mother filed a motion for guideline child support. According to mother's Income and Expense Declaration that accompanied her child support motion, she was employed as an administrative assistant with a gross monthly income of \$5,492. Mother had minimal assets, owed about \$14,500 in installment debt that was currently in collection, and had monthly expenses of about \$3,660 (including a monthly payment of \$350 on the installment debt). Mother lived with N.P. and was her primary caregiver. Father had contributed nothing towards N.P.'s needs and support since February 2011.

According to father's responsive declaration, he was currently unemployed and received unemployment benefits of \$1,950 per month; possessed assets in the form of an IRA account valued at about \$6,000; and had received two recent job-related payments, one in the amount of \$18,515 in May 2011 for a job-related injury, and another in the amount of \$10,514 in December 2010 when his employment was terminated. Father lived with his mother, to whom he paid \$1,317 per month for utilities and maintenance in lieu of rent. His monthly expenses totaled \$2,537.

Father also submitted a request that mother contribute to his attorney fees "pursuant to Family Code Sections 2030 (2) and 271." In doing so, father declared that, to date, he had paid approximately \$10,000 in attorney fees.

Following a hearing on December 13, 2011, the court ordered mother to pay father \$139 per month in child support, reflecting in part the fact that father had begun providing afterschool care for N.P., and was providing primary care for her several weekends per month, several weeks in the summer and on some holidays. The court reserved the issue of attorney fees for a later hearing.

In February 2012, father submitted a supplemental declaration in support of his attorney fees request indicating the amount of fees he had incurred to date had increased to \$15,000. The court thereafter scheduled a hearing on the issue of attorney fees for

March 22, 2012, reduced the amount of child support payable by mother to zero on the ground of hardship, and ordered father to seek employment.

On March 16, 2012, mother filed a Verified Statement of Disqualification pursuant to Code of Civil Procedure section 170.1, subdivision (a)(6)(A)(iii), seeking appointment of a different judicial officer on the ground that the court commissioner presiding over the matter lacked impartiality. On March 22, 2012, the court issued an Order Striking Challenge for Cause on the grounds that the challenge was not properly served and that there was no factual or legal basis for granting it.

On the same day, the court issued the order challenged herein, granting father's request for attorney fees. Specifically, the court ordered mother to contribute \$5,000 towards father's attorney fees, payable in the amount of \$100 per month until the total amount was paid in full.³ Mother thereafter filed a timely notice of appeal of the court's order.

DISCUSSION

Here, mother challenges the trial court's award of \$5,000 in attorney fees to father on two grounds: (1) the court applied the wrong statute, and (2) the court abused its discretion by failing to consider pertinent information regarding the parents' respective needs and ability to pay. The following principles govern her challenge.

“Generally, where a trial court has discretionary power to decide an issue, an appellate court is not authorized to substitute its judgment of the proper decision for that of the trial judge. The trial court's exercise of discretion will not be disturbed on appeal in the absence of a clear showing of abuse, resulting in injury sufficiently grave as to amount to a manifest miscarriage of justice. [Citations.] ‘ “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. . . .” ’ [Citations.]” (*In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 682.) Moreover, the burden is on the party complaining – in this case, mother – to establish an abuse of discretion.

³ The \$100 monthly payment was made subject to a Wage and Earnings Assignment Order. The court reserved ruling on the issue of ordering additional attorney fees as a sanction pursuant to section 271.

(*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.) However, “[t]he determination of the legal basis for an award of attorney fees is a question of law that we review de novo.” *Corbett v. Hayward Dodge Inc.* (2004) 119 Cal.App.4th 915, 921.)

Turning to the relevant statutes in this case, we first note that both section 7605 and section 2030 authorize the trial court, in its discretion, to award attorney fees after consideration of relevant statutory factors. Section 7605 authorizes a trial court to award attorney fees to a mother or father in UPA proceedings relating to the issues of custody, visitation, and support. (*Robert J. v. Catherine D.* (2005) 134 Cal.App.4th 1392, 1395.) Specifically, section 7605, subdivision (a) authorizes the court to order one party to pay the other party’s attorney fees “if necessary based on the income and needs assessments” to “ensure that each party has access to legal representation to preserve each party’s rights” in “whatever amount is reasonably necessary for attorney’s fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.” (§ 7605, subd. (a).) Section 7605, subdivision (b), in turn, provides that whether and what amount of fees a party shall be ordered to pay “shall be determined based upon (1) the respective incomes and needs of the parties, and (2) any factors affecting the parties’ respective abilities to pay.” (*Id.*, subd. (b).)

Identical to section 7605, subdivision (a), section 2030, subdivision (a)(1) authorizes a trial court in marital dissolution proceedings to order one party to pay the other party’s attorney fees “if necessary based on the income and needs assessments” to “ensure that each party has access to legal representation including access early in the proceedings to preserve each party’s rights” in “whatever amount is reasonably necessary for attorney’s fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.” (§ 2030, subd. (a)(1).) Section 2032, subdivision (a) states that the court may award attorney fees and costs “where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties.” (§ 2032, subd. (a).) Finally, section 2032, subdivision (b) states that, when deciding what amount is just and reasonable, “the court shall take into consideration the need for the award to enable each party, to the extent practical, to have

sufficient financial resources to present the party's case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320." (*Id.*, subd. (b).)

As set forth above, the trial court in this case relied upon section 2030 to award father attorney fees. Given, however, that mother and father were never married and that father brought these proceedings to establish paternity, mother is undoubtedly correct that the trial court should have applied section 7605 rather than section 2030. However, the question remains whether the trial court's erroneous reliance on section 2030 requires reversal of the attorney fee award. We conclude it does not.

Specifically, we conclude that, given the virtually identical language of the two statutes, the result would have been the same in the case if the trial court had applied section 7605 rather than section 2030 to father's fee request. In so concluding, we note this court is not the first court to be called upon to compare sections 2030 and 7605. In *Kevin Q. v. Lauren W.* (2011) 195 Cal.App.4th 633 (*Kevin Q.*), our colleagues in the Court of Appeal, Fourth District explained as follows when upholding the trial court's decision to look to sections 2032 and 2030 for guidance when applying section 7605: "[T]he Legislature drafted section 7605 and amended section 2030 to be identical statutes, without changing section 2032 which supplemented and controlled section 2030. These statutes require a *comparative analysis* of the parties' circumstances and/or needs and serve the common purpose (shared by all the Fam. Code statutes that authorize attorney fee awards) of ensuring, 'to the extent possible, that the litigating parties are on an equal footing in their ability to present their cases' (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2008) § 5:180, p. 5-75 (rev. # 1, 2010), citation omitted.) Thus, sections 7605 and 2030 focus on the parties' '*respective incomes and needs*' and '*respective abilities to pay.*' (§ 7605, subd. (b), italics added; see § 2030, subd. (a)(2).) Section 2032 asks whether the award is 'just and reasonable under the *relative circumstances* of the respective parties.' (*Id.*, subd. (a), italics added.) Of these three statutes, section 2032 is the only one that instructs the court in detail *how* to make a comparative analysis; it requires the court to 'take into consideration the need for the

award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately, taking into consideration, to the extent relevant,' the circumstances specified in section 4320. (§ 2032, subd. (b).) Although some of the factors listed in section 4320 relate only to marriage cases (for example, the duration of the marriage), most of the enunciated circumstances are equally relevant to UPA cases (for example, each party's marketable skills and earning capacity). (§ 4320, subds. (a), (b) & (f); [citation.]” (*Kevin Q.*, *supra*, 195 Cal.App.4th at pp. 643-644.)

Thus, as the *Kevin Q.* decision reflects, both statutes require analysis of the same set of factors relating to the parties' financial circumstances. Moreover, the analysis under both statutes is designed to serve “the same goals—i.e. determining the best interests of the child/children at issue in custody and visitation matters—are paramount, regardless of whether that child's parents are in a legally recognized relationship. The fact that these custody issues are resolved in the context of a petition to establish parental relationship rather than in a petition for dissolution does not alter the fact that custody and visitation issues are, ultimately, to be resolved in a manner consistent with the best interests of the children. It is not likely that the Legislature believed it less necessary to continue to protect the best interests of children born to unwed parents than those of children born during a marriage.” (*Robert J. v. Catherine D.*, *supra*, 134 Cal.App.4th at pp. 1403-1404.) The only significant difference in the statutes is that section 2030, read together with section 2032 (as the legislative scheme requires), harnesses the trial court's discretion to a greater degree by dictating *how* to compare the relevant circumstances.⁴

⁴ As the *Kevin Q.* court explained: “Despite their virtually identical language, section 2030 diverged in one major respect from section 7605: Section 2030 is (and always has been) controlled and supplemented by section 2032. Under section 2032, ‘[t]he court may make an award of attorney's fees and costs under Section 2030 . . . where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties.’ (§ 2032, subd. (a).) Section 2032 further provides: ‘In determining what is just and reasonable under the relative circumstances, the court *shall* take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately, taking into consideration, to the extent relevant, the

In any event, it is clear on this record that the trial court did in fact consider the relevant statutory factors, including the parties' relative circumstances, in making the attorney fee award. Specifically, the court considered father's and mother's respective ability to pay based upon current income, savings and debt, as well as their litigation needs and the reasonableness of the fees already incurred. For example, the record reflects that the trial court considered father's monthly income, which was \$1,950 attributable solely from unemployment benefits, as well as mother's monthly income, which was \$5,492 earned from her full-time position as an administrative assistant. The court also considered that, while father had quite minimal monthly expenditures because he lived with family and paid no rent, mother's monthly expenditures were \$3,660 and her "net spendable" was just under \$4,000. The court, while noting mother had no real assets, ultimately found that, due to her substantially greater monthly income, even with her monthly expenditures she was capable of contributing \$100 per month to father's fees. In so finding, the court first subtracted father's monthly expenses of \$2,500 (consisting of maintenance costs that he pays in lieu of rent) from his \$1,950 in monthly income and concluded he was "some \$600 a month in the hole." The court then subtracted mother's monthly expenses of \$3,660 from her net spendable of just under \$4,000, and found she was left with just over \$300 per month that could be used in part to contribute to father's fees. In doing so, the court further noted, "of course, [father's] the one paying an attorney at more or less standard market rates, whereas [mother's attorney's] statement is that her client is paying her at an extremely discounted rate. [¶] So that being said, it seems to me on the basis of Family Code section 2030 and the following as need and ability to pay, that [father] does, indeed, have a need, and [mother]

circumstances of the respective parties described in Section 4320. The fact that the party requesting an award of attorney's fees and costs has resources from which the party could pay the party's own attorney's fees and costs is not itself a bar to an order that the other party pay part or all of the fees and costs requested. Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances.' (§ 2032, subd. (b), italics added.)" (*Kevin Q.*, *supra*, 195 Cal.App.4th at pp. 640-641.)

does at least have some ability to pay a contribution toward his fees, especially given how minimal her fees are.”

As this record reflects, the trial court properly considered the relevant factors under section 7605 before ordering mother to pay a portion of father’s fees, even if the court expressly relied on section 2030 in doing so. Whether we would have reached the same conclusion is irrelevant. As noted above, nothing in the Family Code (and specifically, nothing under either section 7605 or section 2030) required the trial court to rely on any particular financial measure or factor to establish father’s need for mother’s contribution to his attorney fees. Rather, the decision to award him fees was left to the court’s sound discretion based on a totality of relevant circumstances, and we see no reason here to disturb it. (E.g., *Alicia R. v. Timothy M.* (1994) 29 Cal.App.4th 1232, 1239.)

Thus, under these circumstances, we conclude that, even if the court erred in applying the wrong statute, mother has not made the necessary showing of prejudice. In particular, given that the trial court considered the same evidence of the parties’ relative circumstances that it would have considered had it relied upon section 7605 rather than section 2030, we are confident no miscarriage of justice has been shown. (See Evid. Code, § 354; *In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 336 [“Article VI, section 13 [of the California Constitution] admonishes us that error may lead to reversal only if we are persuaded ‘upon an examination of the entire cause’ that there has been a miscarriage of justice. In other words, we are not to look to the particular ruling complained of in isolation, but rather must consider the full record in deciding whether a judgment should be set aside’ ”].) Indeed, if anything, by applying section 2030 rather than section 7605, the court performed a more thorough analysis of the parties’ respective needs and abilities to pay than it otherwise would have.

Accordingly, for the reasons set forth above, we conclude the trial court’s order to award father \$5,000 in attorney fees must stand.

DISPOSITION

The attorney fee order is affirmed.

Jenkins, J.

We concur:

McGuinness, P. J.

Siggins, J.