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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of DEBORAH GROVE
and MICHAEL IRVIN GROVE.

MICHAEL IRVIN GROVE,

Appellant,

v.

CLIFFORD ROSS CHERNICK,

Respondent.

A138521

(San Mateo County
Super. Ct. No. FAM0102937)

Michael Irvin Grove (Michael), *in pro per*, challenges the trial court's order awarding Clifford Ross Chernick (Chernick), a judge pro tem who presided over Michael's dissolution of marriage case, approximately \$8,000 in fees for services provided in that case.¹ Michael contends the trial court erred by: (1) refusing to consider any evidence of Chernick's performance as judge pro tem in the case; and (2) hearing the matter without adequate preparation. We reject the contentions and affirm the order.

¹We refer to the parties to the dissolution of marriage case—who share the same last name—by their first names, as is customary in family law matters. No disrespect is intended by this practice. (See *In re Marriage of Witherspoon* (2007) 155 Cal.App.4th 963, 967, fn. 2.)

FACTUAL AND PROCEDURAL BACKGROUND

On January 17, 2013, Chernick filed a Request for Order and Declaration requesting an order requiring Michael to pay \$8,171.12 plus interest for services Chernick provided as a judge pro tem in Michael's dissolution of marriage case. He declared he was retained by Michael and Deborah Grove (Deborah) on March 6, 2009 "in a neutral capacity as a mediator in [their] dissolution of marriage action. Initially, I worked only with the parties, and thereafter the mediation included their respective legal counsel (Kelly J. Shindell . . . for Deborah, and Timothy C. Wright for Michael). This was an extremely difficult case, and the parties were unable to resolve this matter in mediation." Pursuant to a Stipulation and Order Appointing Judge Pro Tem for All Purposes (the Stipulation) filed October 29, 2009, Chernick was appointed as the judge pro tem in the case. The case settled after "innumerable settlement conferences," and Judgment of Dissolution was filed on September 27, 2010.

Chernick further declared that the parties agreed to split his fees equally between them. The Stipulation that Michael and Deborah signed provided in part: "Any disputes regarding payment of the Temporary Judge's fees shall be resolved by the Presiding Judge of the Superior Court or by the Supervising Family Law Judge of the Superior Court." Deborah paid the fees in full and Michael refused to do so. There was an unpaid balance of \$8,171.12 for services rendered through December 31, 2010. Chernick attached to his request a copy of the Stipulation and a copy of his billings statements. He attached a declaration from Deborah's attorney, Kelly J. Shindell (Shindell), who declared that she believed Chernick was "fair and neutral in facilitating the Parties' negotiations and navigating the highly emotional aspects of the Parties' matter." He attached a letter from Deborah stating she was "disappointed in the duration of our divorce settlement process, as well as the outcome," but that she did "not believe that the fault lies with the private Judge." Deborah stated that Michael deliberately caused delays during the process and failed to "take advice or recommendations," which resulted in frustration and "great expense" to the parties.

On February 22, 2013, Michael filed a responsive declaration questioning “the quality and effectiveness of the services” Chernick provided. He stated, “The literature is replete with warning to clients in divorce cases where attorneys take advan[tage] of the emotions of clients often increasing the conflict among the parties and thus extending the case and running up fees.” He asserted that Chernick was “well aware” the parties “were strapped for cash but . . . did not use that fact and evidence of the case to motivate the parties into a settlement.” He stated that Chernick “established” the expectation that a judge pro tem would be more efficient and less costly than going to court, which Chernick estimated would cost \$30,000. Michael declared, “Mr. Chernick failed twice to reach a negotiated settlement . . . [yet] he was paid \$32,299 or an average of \$400 per hour.” Michael declared that the case was not complicated and that Chernick failed to “follow the basic processes of negotiation practiced by professional mediators, private judges, or the court.” He asserted that Deborah was “emotional” but that he was “negotiable and offered concessions,” and that “in fact,” the parties “reached an agreement on their own.” Michael requested that Chernick pay him and Deborah “respectively a sum of \$12,000 representing a fraction of the cost, time, and stress endured during this case.” He attached to his responsive declaration various documents, including a draft of a “Divorce Settlement Agreement” and a copy of emails purporting to show the efforts he and Deborah made in attempting to settle the case on their own.

Before the hearing on the matter took place on February 26, 2013, the trial judge disclosed to the parties that he “worked with Mr. Wright [Michael’s family law attorney who had been subpoenaed to testify at the hearing] for a number of years on the San Mateo County Law Library Board of Trustees and have a great deal of respect for him and his skills as a lawyer as well as his skills as a trustee on the Law Library Board.” There was no objection.

Wright testified that he had been an attorney since 1970 and was a certified specialist in family law. He was Michael’s attorney during most of the time Chernick served as mediator in the case, as well as after Chernick was appointed judge pro tem in the case. Wright testified that on a scale of one to ten, with ten being the most complex,

he believed Michael and Deborah's case was a ten in complexity. It was also a "high-conflict" case. Wright testified that he believed Chernick faced a "considerable challenge in getting the parties to agree to a settlement" and that his services were "most satisfactory in terms of helping these people resolve these complex issues." On cross-examination, Wright testified that Chernick was "certainly instrumental in enabling the [parties] to bring about a settlement." He agreed that the issue in the case was "dividing up who got what assets," and testified that "it was a very gradual process in terms of reaching agreements on particular issues."

Chernick testified that he had mediated—or had been a judge pro tem in—"hundreds of cases." He believed the case involving Michael and Deborah was "probably the most difficult case I have ever had as a mediator." He testified that he almost quit once but was asked not to by the parties. He testified that this was the first time he had ever filed a motion seeking fees, and believed he performed as well as he could under the extraordinarily difficult circumstances of the case. He testified that the parties signed two agreements for the payment of his fees and also agreed to pay interest at ten percent per annum. He believed his role was to assist the parties in resolving their issues, and that the issues were in fact ultimately resolved.

On cross-examination, when asked why the case was so difficult, Chernick testified that it was an "extraordinarily" high conflict case that involved many complicated issues such as spousal support, multiple real properties, and issues relating to the characterization of property as separate or community. He testified that the fact that the parties "did not get along did not make it any easier," and recalled that Michael had told him about incidents in which Deborah cut up Michael's clothes with scissors and was spitting across a table at him during a family dinner. Chernick testified that the parties "could not agree on almost anything" and that "[e]very single issue" in the case was contested.

In closing, Michael stated that he believed Chernick "was paid enough funds here in this case. And I think this was a mismanaged case." Chernick stated that he "did the best that humanly could be done to settle this case under extraordinarily difficult

circumstances, and it was settled.” He noted there were two agreements for the payment of his fees, and that he expected to be paid. The trial court granted Chernick’s request and ordered Michael to pay him \$8,171.12 plus interest at ten percent per annum beginning December 31, 2010, plus \$90 in filing fees and \$42.50 in service of process fees. The trial court signed an order after hearing to that effect on March 14, 2013.

DISCUSSION

Chernick’s Performance

Michael contends the trial court erred by refusing to consider any evidence of Chernick’s performance as judge pro tem in the case. It appears his argument is that the court failed to give sufficient weight to the evidence he presented to support his position that Chernick’s performance was deficient. In other words, his argument is one of substantial evidence—that there was no substantial evidence to support the trial court’s finding that Chernick’s performance was satisfactory, and that his fees were therefore fair and reasonable.

Where an appellant challenges the sufficiency of the evidence, the reviewing court must start with the presumption that the record contains sufficient evidence to support the judgment; it is the appellant’s burden to demonstrate otherwise. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) The reviewing court must “view the evidence in the light most favorable to the trial court’s order, drawing every reasonable inference and resolving all conflicts in support of the judgment.” (*In re Marina S.* (2005) 132 Cal.App.4th 158, 165.)

Here, Chernick submitted declarations from Deborah and her attorney regarding the efforts Chernick made in resolving the parties’ issues. Deborah’s attorney believed Chernick was “fair and neutral in facilitating the Parties’ negotiations.” Deborah, while disappointed in the “duration of [the] divorce settlement process, as well as the outcome,” opined that Michael—not Chernick—was at fault for the delays and expense. At the hearing, both Wright and Chernick testified that the case was extraordinarily complex and involved a lot of conflict, and Wright opined that Chernick performed “most satisfactorily” under the circumstances. Michael presented documents including email

exchanges between him and Deborah to show that he and Deborah—and not Chernick—were to be credited for resolving the issues in the case. He attempted to show that the case was not complicated by pointing out that many issues, including most issues relating to his and Deborah’s minor children, were not in dispute. He noted the various ways in which he believed the case was “mismanaged.”

The trial court presumably considered all of this evidence relating to Chernick’s performance in finding that the fees were “fair and reasonable under the circumstances presented in the case.” The trier of fact determines the credibility of witnesses, weighs the evidence, and resolves factual conflicts. (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830.) An appellate court does not reweigh the evidence. (*Ibid.*) If substantial evidence, contradicted or uncontradicted, supports the judgment, it must be affirmed. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630–631.) Here, Chernick and Wright’s testimony and the declarations of Deborah and her attorney regarding Chernick’s performance provided substantial evidence to support the trial court’s implied finding that Chernick’s performance was satisfactory, and that his fees were therefore fair and reasonable.²

Adequate Preparation

Michael contends the trial court erred by hearing the matter without adequately preparing for it. The record shows that Michael filed his responsive declaration on February 22, 2013, two court days before the hearing on the matter took place. At the hearing, Chernick argued the responsive papers should be disregarded as untimely filed.

²Michael also argues the trial court failed to “consider the obligation of the temporary judge and the Court” to ensure that “the earliest possible resolution” is achieved “with the least expense to the parties.” It appears his argument is that Chernick failed to achieve this goal because he caused delays and great expense to him and Deborah. The trial court, however, did essentially address and reject this argument when it found that Chernick’s fees were fair and reasonable. In addition, Michael asserts, without citation to any relevant authority, that the trial court judge should not have presided over the case because of his personal and professional relationship with Wright. Michael forfeited this claim by failing to object below. (See e.g., *In re Dakota H.* (2005) 132 Cal.App.4th 212, 222.)

Michael asked the court to review the papers, stating, “I talked to the clerk, and she didn’t frankly tell me that I needed to do that.” When the court stated, “We’ll take a ten-minute recess, and I’ll take a look at it,” Michael did not ask the court to take more time to review his papers, and did not otherwise object in any way.

Michael claims for the first time, without citation to any relevant legal authority, that a ten minute recess was “not adequate time for a review.” A party may not raise arguments or theories on appeal that were not raised in the trial court. (See e.g., *In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 222.) Moreover, “the trial court’s judgment is presumed to be correct, and the appellant has the burden to prove otherwise by presenting legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited.” (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655.) Because Michael failed to raise the claim below, and has not cited any legal authority on appeal, we conclude the issue has been forfeited.

In any event, the claim fails on the merits. Michael complains that the trial court referred to only a small portion of the “extensive facts” he presented, which shows the court did not conduct a thorough review of the information he had submitted. There is nothing in the record, however, that indicates the court did not review all of the papers that were submitted. The fact that the court determined that only a few of the facts presented by Michael were relevant does not show that the court was not adequately prepared. In fact, the record shows the court not only reviewed the papers that were submitted by both parties, but that it also heard testimony from multiple witnesses, heard argument from both parties, and asked its own questions before reaching its decision in this case. Michael has failed to show any error.

DISPOSITION

The judgment is affirmed. Clifford Ross Chernick shall recover his costs on appeal from Michael Irvin Grove.

McGuiness, P.J.

We concur:

Siggins, J.

Jenkins, J.