

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

\$9,572.00,

Defendant,

NATHALIE PEREZ,

Appellant and Real Party in Interest.

A139549

(Contra Costa County
Super. Ct. No. MSN10-0591)

Nathalie Perez, in propria persona, appeals from an order striking her claim opposing forfeiture and imposing terminating sanctions. She contends that the trial court abused its discretion in granting the People’s motion for terminating sanctions. We shall affirm the order.

I. FACTUAL BACKGROUND

On March 17, 2010, the police arrested Perez at her home during the execution of a search warrant. In the bedroom Perez shared with Nasir Khan, her boyfriend, they found approximately 49 grams of methamphetamine, two digital scales, a white envelope with written numbers showing addition and subtraction figures (“pay-owes”), and \$9,572.00.

On April 13, 2010, Perez filed a claim opposing forfeiture of the \$9,572 seized from her home.¹ In support of her claim, she submitted two receipts from California Check Cashing showing that on March 12, 2010, she cashed two checks in the amounts of \$1,000.00 and \$5,210.14, and another receipt dated March 16, 2010, reflecting that three checks in the amounts of \$4,506.00, \$1,000.00, and \$1,000.00 had been cashed. In addition, she attached copies of a federal income tax refund check dated March 12, 2010 for \$4,506.00; three checks from Phillip Wright made payable to her, each for \$1,000.00 dated January 29, 2010, February 1, 2010, and February 10, 2010; and a check from the Lucking Childrens Trust in the amount of \$5,210.14, also made payable to her, dated February 10, 2010.

The People subsequently filed a Petition for Forfeiture and initiated requests for discovery. On May 10, 2010, the People served Perez with requests for admissions, document requests, and interrogatories. Perez responded to the discovery requests on June 25, 2010. She refused to answer many of the interrogatories and objected to producing many of the documents requested on the grounds of relevancy. She, however, provided some documents, including the same documents previously submitted with the claim. She also provided a copy of a federal income tax return (Form 1040) that indicated a refund of \$4,506.00, consistent with the amount in the tax return check, and a page reflecting a copy of the same check from Lucking Childrens Trust previously submitted with her claim, but this copy was dated September 19, 2007.

On July 13, 2010, the People sent Perez a “meet and confer” letter pointing out the deficiencies in her discovery responses and requesting additional responses and documents. (See Code Civ. Proc., § 2031.310, subd. (b).) Perez claimed that she was unable to reach counsel for the People to discuss the meet and confer letter and that she sent amended discovery responses on July 23, 2010. Counsel for the People declared that Perez failed to respond to the letter. The People subsequently moved to compel

¹ Health and Safety Code section 11470, subdivision (f) provides for the forfeiture of money seized and found to be traceable to the sale of controlled substances. (See *People v. \$400* (1993) 17 Cal.App.4th 1615, 1617–1618.)

responses to their discovery requests. On November 12, 2010, the court granted the motion. On December 10, 2010, Perez responded to the order and filed responses stating that responsive documents had been produced, documents and items in response to the interrogatories had previously been identified, and that the values of her assets were unknown.

In the meantime, James Bergstrom, the lieutenant of inspectors for the district attorney's office, was investigating Perez's case. He interviewed Phillip Wright, who purportedly had written three checks in the amount of \$1,000 to Perez that she had produced in response to the People's discovery request. In July 2010, Wright told Bergstrom that Perez hired him to fix her computer, and that he never paid her any money. He did not have a checking account and had not written any checks to Perez.

On October 19, 2011, Inspector Bergstrom interviewed Perez. She identified a DMV photo of Wright as the source of the three \$1,000.00 checks. She told Bergstrom that the correct date on the check from the Lucking Childrens Trust was August 1, 2007. She could not explain how the copy of the check she filed with her claim bore a date of February 10, 2010. She stood by the validity of all the documents submitted with her claim and in response to the discovery requests.

In November 2011, Bergstrom interviewed Wright again. Wright admitted he had purchased methamphetamine from Perez and Khan. He also admitted that he had shown Perez how to create images of the IRS check and the receipts from California Check Cashing on her computer.

Inspector Bergstrom also interviewed JoAnn Giarletto, the manager of California Check Cashing. Giarletto stated the receipts submitted by Perez were not true copies of California Check Cashing receipts. She said that their records showed it had not cashed any of the checks produced by Perez. Giarletto provided a print-out of Perez's transactions from 2004 through November 17, 2011 documenting that fact.

Inspector Bergstrom also spoke with Aprile Barker, who handled the Lucking Childrens Trust. Barker issued a check to Perez on July 10, 2007. She stated there had been no further disbursements from the trust following July 2007.

Inspector Bergstrom subsequently spoke to Special Agent Jeffrey Jones of the San Francisco field office of the United States Secret Service. Jones advised that the copy of the U.S. Treasury check, No. A 631,587,871, provided by Perez was not a valid check as the check bearing that number was issued to another party.

Bergstrom opined that Perez had submitted forged documents in order to falsify the source of the \$9,572 that was seized from her home. On January 27, 2012, the People sent a letter to Perez indicating that they had discovered evidence that cast doubt on the veracity of the documents she provided in response to their discovery requests and the court's order compelling her to comply with discovery. The letter was returned to the People unclaimed.

On March 26, 2013, the People moved to strike Perez's claim opposing forfeiture of the \$9,572 on the ground that she failed to comply with the court's discovery order. The motion also sought terminating sanctions based on Perez's failure to comply with the court's order and her fabrication of evidence.

On May 31, 2013, the court granted the People's motion for terminating sanctions and entered an order striking Perez's claim for the \$9,572. This appeal followed.

II. DISCUSSION

Perez contends that the trial court abused its discretion in ordering terminating sanctions and striking her claim. She argues that she complied with the court's order and thus sanctions were not justified.

“ ‘California discovery law authorizes a range of penalties for conduct amounting to “misuse of the discovery process,” ’ including terminating sanctions. [Citation.] Misuses of the discovery process include the following: ‘(d) Failing to respond or to submit to an authorized method of discovery. [¶] (e) Making, without substantial justification, an unmeritorious objection to discovery. [¶] (f) Making an evasive response to discovery. [¶] (g) Disobeying a court order to provide discovery.’ (Code Civ. Proc., § 2023.010.) Terminating sanctions may take the form of ‘[a]n order rendering a judgment by default against [the offending] party.’ (Code Civ. Proc.,

§ 2023.030, subd. (d)(4).)’ ” (*Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 390 (*Los Defensores*).

“ ‘ “The power to impose discovery sanctions is a broad discretion subject to reversal only for arbitrary, capricious, or whimsical action.” ’ [Citation.] The trial court may order a terminating sanction for discovery abuse ‘after considering the totality of the circumstances: [the] conduct of the party to determine if the actions were willful; the detriment to the propounding party; and the number of formal and informal attempts to obtain the discovery.’ [Citation.] Generally, ‘[a] decision to order terminating sanctions should not be made lightly. But where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction.’ [Citation.]” (*Los Defensores, supra*, 223 Cal.App.4th at p. 390.)

“When the trial court’s exercise of its discretion relies on factual determinations, we examine the record for substantial evidence to support them. [Citations.] In this regard, ‘the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination [of the trier of fact]’ [Citation, italics omitted.]” (*Los Defensores, supra*, 223 Cal.App.4th at pp. 390–391.)

The trial court did not abuse its discretion in ordering terminating sanctions here. Perez initially provided incomplete responses to interrogatories, and her responses were replete with objections. Substantial evidence showed that the documentation she produced in response to the court’s order granting the motion to compel was fraudulent. Bergstrom’s investigation revealed that Perez not only had submitted copies of receipts of transactions that had never occurred, she had altered copies of checks to show dates occurring shortly before the March 2010 seizure of the funds and to show herself as a payee when in fact none of the copies she produced were of valid checks. On this record, the trial court had substantial and unrebutted evidence before it that Perez willfully failed to comply with its order compelling discovery. The court’s order of terminating sanctions was therefore proper. (*Los Defensores, supra*, 223 Cal.App.4th at p. 390)

[terminating sanctions proper for willful disobedience of discovery orders].) Moreover, the evidence before the court demonstrated that Perez produced fraudulent documents in an attempt to support her claim opposing forfeiture. Perez's conduct justified the court's order of terminating sanctions and dismissal of her claim opposing forfeiture.

III. DISPOSITION

The order is affirmed.

Rivera, J.

We concur:

Ruvolo, P.J.

Reardon, J.