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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

RICK FIELDS,

Plaintiff and Respondent,

v.

MAESTRO'S RISTORANTE OF SAN
RAMON, INC., et al.,

Defendants and Appellants.

A140670

(Contra Costa County
Super. Ct. No. MSC97-05176)

RICK FIELDS,

Plaintiff and Appellant,

v.

MAESTRO'S RISTORANTE OF SAN
RAMON, INC., et al.,

Defendants and Appellants.

A141478

(Contra Costa County
Super. Ct. No. MSC97-05176)

These appeals arise out of efforts to enforce a judgment first entered in January 2003. The judgment was last amended in 2005. After the judgment creditors renewed the judgment in October 2013, the judgment debtors moved to vacate the renewal, arguing that the judgment creditors failed to renew the judgment within the ten-year period specified in Code of Civil Procedure¹ section 683.130, subdivision (a). The

¹All further statutory references are to the Code of Civil Procedure unless otherwise specified.

trial court denied the motion to vacate the renewal, granted a motion by one of the judgment creditors to compel discovery responses related to collection efforts, and denied the judgment creditor's request for discovery sanctions.

On appeal from the order denying their motion to vacate renewal of the judgment, the judgment debtors argue that the ten-year period to seek renewal runs from the date of the original judgment and is not restarted when an amended judgment is entered. The judgment debtors also appeal the order compelling responses to discovery. For his part, the judgment creditor who secured an order compelling further discovery responses appeals the order denying his request for discovery sanctions. He contends the court was required to impose sanctions in the absence of an express finding that there was substantial justification for the judgment debtors' failure to respond to discovery. We reject these contentions and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

General Background

The background of the dispute giving rise to these appeals is set forth at length in this court's prior opinion in *Fields v. Maestro's Ristorante of San Ramon, Inc.* (May 20, 2005, A102857 [nonpub. opn.]). In brief, Rick Fields and his wife, Rebecca, operated a comedy club in San Ramon. Grace and Walter Young owned and operated two "Maestro's" restaurants, one of which was located in San Ramon. The Youngs approached the Fields on several occasions and sought to unite their respective businesses. The parties ultimately entered into an agreement in 1997 to transfer the entire comedy club business to Maestro's. The comedy club operated by the Fields ceased to exist, and the Fields became employees of Maestro's with general responsibility for marketing and the comedy club operation. The relationship between the Fields and the Youngs quickly deteriorated. In December 1997, the Fields elected to rescind their agreement after coming to the conclusion that the Youngs did not intend to make them partners in the business.

The Original January 2003 Judgment

The Fields filed suit against the Youngs and the corporation through which they operated Maestro's, Maestro's Ristorante of San Ramon, Inc. (collectively, the Youngs).² The Fields asserted causes of action for rescission and breach of contract, among other claims. Following a jury trial, a judgment on special verdict was entered in favor of the Fields and against the Youngs in the sum of \$1,025,000. The award represented damages for the amount by which the Youngs were unjustly enriched, consisting of \$25,000 in personal services rendered by Rebecca Fields and \$1 million in profits. The judgment awarded costs in an amount to be determined by the court. The original judgment was entered on January 22, 2003.

The Judgment as Modified in October 2003

The Youngs filed motions for judgment notwithstanding the verdict and for a new trial. Among other things, the Youngs argued that the award of profits was excessive. The trial court denied the motion for judgment notwithstanding the verdict outright. The court also denied the motion for new trial with respect to the award of \$25,000 in unpaid salary to Rebecca Fields. However, the court issued a conditional order pursuant to section 662.5, subdivision (b) granting the motion for new trial subject to the condition that the motion would be denied if the Fields consented to a reduction of the award of unjust enrichment profits from \$1 million to \$333,333. On October 16, 2003, the Fields consented to the reduced award of unjust enrichment profits. Consequently, the motion for new trial was denied in its entirety and judgment was reduced to \$358,333, consisting of the sum of \$333,333 for unjust enrichment profits, plus \$25,000 awarded to Rebecca Fields for lost wages. This court affirmed the judgment in *Fields v. Maestro's Ristorante of San Ramon, Inc.*, *supra*, A102857.

²According to the Youngs, the corporation has long since gone out of business and is not a party to this appeal. In the absence of evidence that the corporation no longer exists, and in view of the fact the corporation is a named judgment debtor and is included on the various notices of appeal, we have listed the corporation as a party to this appeal.

The July 2005 Amended Judgment

On January 10, 2005, while the appeal of the 2003 judgment was pending, the trial court awarded the Fields, as the prevailing parties, attorney fees in the amount of \$965,328.96. This court's decision affirming the 2003 judgment was filed in May 2005. Thereafter, on July 5, 2005, the trial court entered an "amended judgment on special verdict" for the sum of \$1,720,284.20. The amended judgment was composed of the following amounts: (1) the original award in the amount of \$358,333.33; (2) attorney fees totaling \$965,328.96; (3) costs totaling \$29,637.00; (4) "additional attorney fees" in the amount of \$135,329.92; and (5) interest accrued as of June 7, 2005, in the amount of \$231,655.15. This court affirmed the orders awarding attorney fees in *Fields v. Maestro's Ristorante of San Ramon, Inc.* (May 31, 2006, A109130 [nonpub. opn.]).

The Judgment as Renewed in October 2013

On October 16, 2013, exactly 10 years after the Fields consented to reduce the damages award for unjust enrichment profits from \$1 million to \$333,333, the Fields filed an application to renew the judgment. The application identified the "original judgment" being renewed as the amended judgment filed July 5, 2005, in the amount of \$1,720,284.20. As reflected in the application for renewal, the Youngs had been credited with payments of \$829,776.43 on the judgment. Even allowing for the credit against the judgment, the amount of the renewed judgment totaled \$2,250,783.65. The increase was attributable to the addition of postjudgment interest and costs. The Fields served notice of the renewal.

Motion to Vacate Renewal

The Youngs filed a motion to vacate the renewal of the judgment, which they entitled "motion to take judicial notice of the court's docket." They argued that the renewal was untimely under section 683.130 because the Fields did not apply to renew their judgment until October 2013, which was more than 10 years after the entry of the original judgment in January 2003. In an order filed March 12, 2014, the trial court denied the motion to vacate the renewal of the judgment. The Youngs appealed the court's order in case number A141478.

Motion to Compel and for Sanctions

To aid in the enforcement of the judgment, Rick Fields had served a set of special interrogatories and a request for production of documents on each of the Youngs in February 2013. After the Youngs failed to respond to the discovery, a discovery facilitator was assigned to attempt to resolve the dispute. The discovery facilitator recommended to the court that the Youngs be ordered to give full and complete responses to the discovery without objection. When the Youngs still failed to respond to the discovery, Rick Fields filed a motion to compel the Youngs to provide discovery responses and for the imposition of sanctions. He sought monetary sanctions in the sum of \$4,648, representing the attorney fees and costs incurred in pursuing the motion to compel. In opposition to the motion, the Youngs claimed that he was not entitled to any discovery concerning their financial condition because the judgment had expired in January 2013.

In an order filed December 24, 2013, the trial court granted the motion to compel discovery responses. The court deferred consideration of whether to impose sanctions against the Youngs until it considered their motion to vacate the renewal of the judgment. The Youngs filed an appeal from the order compelling discovery responses in case number A140670.

The trial court held a hearing on January 27, 2014, at which it considered the request for sanctions filed by Rick Fields as well as the motion filed by the Youngs seeking to vacate the renewal of the judgment. The record on appeal contains no record of that hearing, other than an entry in the court's docket. By order dated March 12, 2014, the court denied the request for sanctions. Rick Fields appealed from the order denying sanctions in case number A141478.

At the request of the Youngs, we consolidated the appeal in case number A140670 challenging the order compelling discovery responses with the cross-appeals in case number A141478 challenging the order denying the motion to vacate the renewal of the judgment and the order denying discovery sanctions. Because Rebecca Fields did not file

a notice of appeal or appear as a respondent in these appeals, all subsequent references in this opinion to “Fields” signify Rick Fields unless specified otherwise.

DISCUSSION

1. *Timeliness of Renewal of the Judgment*

The Youngs contend the renewal of the judgment is invalid because it was not sought until more than 10 years had passed since entry of the original judgment. The issue presented is whether entry of an amended or modified judgment restarts the 10-year period in which to renew a judgment under section 683.130, subdivision (a). Although the Youngs characterize this issue as one of first impression, it is the subject of two published opinions described below that reject their interpretation of the statute’s operation. Because the challenge to the order denying the motion to vacate the renewal of the judgment turns upon the application of applicable statutes to undisputed facts, our review is de novo. (*Iloff v. Dustrud* (2003) 107 Cal.App.4th 1201, 1207 (*Iloff*).

As set forth in section 683.020, “[e]xcept as otherwise provided by statute,” a money judgment may not be enforced “upon the expiration of 10 years after the date” the judgment is entered. Section 683.130, subdivision (a) provides in relevant part that a lump-sum money judgment may be extended by renewal of the judgment “at any time before the expiration of the 10-year period of enforceability prescribed by Section 683.020”

In *Iloff, supra*, 107 Cal.App.4th at page 1206, the court considered the precise question presented here—whether the 10-year period of enforceability is restarted by the filing of an amended or modified judgment. There, an original judgment was entered in March 1991. The original judgment mentioned the prevailing parties’ right to prejudgment interest, attorney fees and costs, and punitive damages “as awarded” but did not specify amounts for those aspects of the judgment. An amended judgment was entered in May 1991. (*Id.* at p. 1204.) The amended judgment was identical to the original judgment except that it included amounts for prejudgment interest, attorney fees and costs, and punitive damages. (*Id.* at p. 1205.) The plaintiff applied to renew the amended judgment in April 2001, more than 10 years after entry of the original judgment

but less than 10 years after entry of the amended judgment. The trial court vacated the renewed judgment, reasoning that the plaintiff filed the renewal application more than 10 years after entry of the original, March 1991 judgment. (*Ibid.*) The Court of Appeal reversed and concluded that the 10-year period ran from the entry of the amended judgment. (*Id.* at p. 1208.)

The *Iloff* court concluded the statutory language is “unambiguous” and “needs no judicial construction.” (*Iloff, supra*, 107 Cal.App.4th at p. 1207.) Under the statutory scheme, the 10-year period commences upon the date of *entry* of a judgment “and not upon any other procedural or substantive event.” (*Ibid.*) According to the court, “[b]y the statute’s plain terms this rule applies to any money judgment (or judgment for possession or sale of property) *regardless of whether it be a modified or amended judgment*, and without regard to finality.” (*Ibid.*, italics added.)

The Court of Appeal in *In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492 (*Wilcox*) likewise considered the issue of whether entry of an amended judgment restarts the 10-year period of enforceability. Citing *Iloff*, the court stated: “When an amended judgment is entered the 10-year period within which the judgment must be enforced or renewed commences upon the date of entry of the amended or modified judgment.” (*Wilcox, supra*, 124 Cal.App.4th at p. 502.) The court concluded that a renewal of a judgment was timely when sought within 10 years after entry of a modified judgment that added attorney fees, child support arrearages, and interest to an original judgment. (*Id.* at p. 502.)

The holdings in *Iloff* and *Wilcox* are dispositive of the issue raised on appeal. Here, the original judgment entered in January 2003 did not include amounts for attorney fees and costs. The judgment was effectively modified in October 2003 when the Fields accepted a reduced damage award for unjust enrichment profits in exchange for the trial court agreeing to deny the motion for new trial. As noted above, the Fields applied for renewal of the judgment exactly 10 years to the day after they accepted the reduced judgment. The judgment was further modified when the court entered an amended judgment in July 2005 that included amounts for attorney fees and costs as well as

interest. Entry of the amended judgment commenced a new 10-year period of enforceability. (*Wilcox, supra*, 124 Cal.App.4th at p. 502; *Iloff, supra*, 107 Cal.App.4th at p. 1207.) Consequently, the renewal filed in October 2013 was well within the 10-year period of enforceability.

The Youngs urge this court to distinguish or reject *Iloff* and *Wilcox* for a variety of reasons. First, they claim that *Iloff* is distinguishable because the original judgment in that case was purportedly incomplete on its face and therefore unenforceable. They claim the judgment could not be fully enforced because aspects of the award had yet to be determined. We are not convinced the facts of *Iloff* are distinguishable from the relevant facts in this case. Just like the amended judgment in *Iloff*, the amended judgment here added specific amounts for forms of relief that were mentioned but not assigned a dollar value in the original judgment. Further, even if we were to agree with the characterization of the original judgment in *Iloff* as unenforceable, the distinction the Youngs seek to draw was not the basis for the court's decision in *Iloff*. The court did suggest the original judgment was unenforceable or that the judgment became enforceable only after an amended judgment had been entered. (See *Iloff, supra*, 107 Cal.App.4th at pp. 1206–1208.) Instead, in view of unambiguous statutory language, the court set forth the straightforward rule that the 10-year period of enforceability commences upon entry of *any* judgment, regardless of whether it is denominated an original, modified, or amended judgment. (*Id.* at p. 1207.)

Insofar as the Youngs attempt to distinguish or criticize *Iloff* because it involved a default judgment and because the judgment debtors there were unrepresented on appeal, their claims are specious. The principle adopted by the *Iloff* court did not turn on the fact the original judgment was entered following a default. Further, whether the judgment debtors in *Iloff* were represented by counsel on appeal has no bearing on the validity of the court's legal reasoning.

The Youngs further argue that *Iloff* is poorly reasoned and should be rejected. We are not persuaded. The gist of their argument is that the court's analysis in *Iloff* is internally inconsistent because, on the one hand, the court held that the period of

enforceability begins upon entry of the judgment, and not upon “any other procedural or substantive event” (*Iloff, supra*, 107 Cal.App.4th at p. 1207), while on the other hand the court held that the period of enforceability begins to run anew if the original judgment is amended or modified. The analysis is not inconsistent. The Youngs seem to equate the entry of an amended or modified judgment with a “procedural or substantive event” following entry of the original judgment. However, the entry of an amended or modified judgment is not simply a “procedural or substantive event” concerning the original judgment, such as the issuance of the remittitur following an appeal or the finality of the judgment. An amended or modified judgment is, in effect, a new judgment that supersedes the original judgment. In this case, Fields does not seek to enforce the original judgment, which has been superseded. Instead, he seeks to enforce the amended judgment, which was renewed within 10 years following its entry.

The Youngs also seek to discount *Wilcox*, a family law case, arguing that the court’s discussion of the renewal issue is obiter dictum in light of the fact that Family Code money judgments are not subject to the 10-year time limit for renewal under section 683.130. (See *Wilcox, supra*, 124 Cal.App.4th at p. 499.) As an initial matter, simply characterizing the court’s analysis as obiter dictum does not suggest the analysis is flawed. Nevertheless, we do not agree that the renewal discussion in *Wilcox* is unnecessary to the court’s opinion. Although Family Code money judgments are exempt from the requirement of renewal, a party may *choose* to renew such a judgment pursuant to section 683.130. (See Fam. Code, § 291, subd. (c).) Renewal of Family Code money judgments is advantageous to judgment creditors because it permits compounding of postjudgment interest. (See *In re Marriage of Thompson* (1996) 41 Cal.App.4th 1049, 1057.) Consequently, the renewal of the judgment in *Wilcox* was not simply a pointless exercise; it had a bearing upon the amount the judgment creditor would be entitled to collect. We therefore do not agree with the Youngs that the discussion of the renewal issue in *Wilcox* was simply a “passing comment” upon what the outcome would have been if the renewal procedure applied to Family Code money judgments.

Because the Youngs have not offered any persuasive reason for this court to depart from the holdings in *Iliff* and *Wilcox*, we conclude the trial court properly denied their motion to vacate the renewal of the judgment.

2. Order Compelling Discovery Responses

The Youngs separately appealed the court's December 2013 order compelling discovery responses in case number A140670. They do not offer any basis for this court to overturn that order other than to claim the trial court erred in compelling discovery to aid in the execution of an expired judgment. Because we have concluded the amended judgment was timely renewed, the judgment did not expire. There was consequently no error in compelling discovery to aid in collecting the judgment.

3. Denial of Discovery Sanctions

Fields contends the court erred in failing to award discovery sanctions against the Youngs. He argues that the court was required to award sanctions in the absence of an express finding that the Youngs acted with substantial justification in refusing to provide discovery responses. As we explain, even if we accept the principle that sanctions must be awarded unless the court makes certain *express* findings, the record here is inadequate to support the claim advanced by Fields.

As a general matter, we review an order granting or denying discovery sanctions for abuse of discretion. (See *Conservatorship of G.H.* (2014) 227 Cal.App.4th 1435, 1440; see also *In re Marriage of Michaely* (2007) 150 Cal.App.4th 802, 809.) We presume the trial court's order is correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) When the record is silent, we make all intendments and presumptions in favor of the order, including “ ‘inferring the trial court made implied findings of fact that are consistent with its order, provided such implied findings are supported by substantial evidence.’ ” (*San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 531.)

Section 2023.030, subdivision (a) provides that, if a monetary sanction is authorized by the Code of Civil Procedure for discovery abuses, “the court *shall* impose that sanction *unless it finds* that one subject to the sanction acted with substantial

justification or that other circumstances make the imposition of the sanction unjust.” (Italics added.) Similar mandatory language directing the court to impose sanctions unless it makes requisite findings is contained in statutes governing motions to compel the production of documents and further answers to interrogatories. (See §§ 2030.290, subd. (c), 2031.300, subd. (c).)

The relevant statutes do not specifically require that any findings must be *expressed* in order to support an order denying sanctions. (§§ 2023.030, subd. (a), 2030.290, subd. (c), 2031.300, subd. (c).) Nevertheless, there is authority for the proposition that a court is obligated to make express findings when a statute requires a court to take a particular action unless certain findings are made. (See *Rodriguez v. Brill* (2015) 234 Cal.App.4th 715, 726–727.) In such cases, the failure to make an express finding justifies reversal only if the party challenging the court’s action can demonstrate prejudice. (*Id.* at p. 727.) We will assume without deciding that the applicable discovery statutes require express findings to support an order denying sanctions.

The court’s written order denying sanctions does not contain an express finding that the Youngs acted with substantial justification or that imposition of a sanction would be unjust. That is not the end of the inquiry, however. Even if the relevant statutes require express findings, there is no requirement that the findings be written or contained in the court’s order. The court could have satisfied its obligation by stating its findings on the record at the hearing conducted on January 27, 2014, at which the court considered whether to impose sanctions. (Cf. *Robert v. Stanford University* (2014) 224 Cal.App.4th 67, 72 [even where written findings were required, there was no prejudice because court made express oral findings].)

Because Fields did not provide this court with a transcript, settled statement, or other record of the hearing conducted on January 27, 2014, we have no way of assessing whether the court made the requisite findings at that hearing. It is the appellant’s obligation to show “reversible error by an adequate record.” (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) Fields has failed to satisfy that burden. We will not presume, in the absence of a record of the hearing, that the court erred and failed to make

the findings required by the applicable statutes. Accordingly, we conclude the record is insufficient for us to reverse the order denying sanctions.

DISPOSITION

The orders filed on December 24, 2013, and March 12, 2014, compelling discovery responses, denying discovery sanctions, and denying the motion to vacate the renewal of the judgment are affirmed. Each party shall bear its own costs on appeal.

McGuiness, P.J.

We concur:

Siggins, J.

Jenkins, J.