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

RUDOLFO CHAVEZ,
Plaintiff and Respondent,
v.
LEAH CHAVEZ,
Defendant and Appellant.

A141690
(Alameda County
Super. Ct. No. HF13692741)

Leah Chavez appeals from orders denying her request for sanctions against her ex-husband Rudolfo Chavez and denying her motion for reconsideration of the denial of sanctions.¹ Leah claims she was entitled to sanctions because Rudolfo allegedly sought to continue a hearing on a motion for support to a date on which he knew she had a court appearance in a small claims matter, in an effort to prevent her from attending the support hearing. We affirm the denial orders.

The relevant portions of the record show the following: On October 15, 2013, Rudolfo and his attorney, Justin Kirk Tabayoyon, appeared at the rescheduled hearing on Leah's motion for support. Tabayoyon immediately advised the court that Leah was not present because it was likely she was in small claims court. He further stated he had requested the rescheduled support hearing date unaware of the previously set small claims date. He also stated he had sought an ex parte order rescheduling the hearing on the support motion because he had another court appearance on the originally scheduled

¹ We conclude this matter is proper for disposition by memorandum opinion in accordance with California Rules of Court standard 8.1.

date. The court then observed Leah was claiming his client, Rudolfo, was fully aware of the small claims hearing and selected the rescheduled date so she would be unable to attend. Tabayoyon disputed this, saying he was the one that suggested the new date. He denied his client had any intent to prevent Leah from appearing on the support motion. He also told the court he had told Leah that if she was unable to appear, he would ask for a further continuance, which he proceeded to do. The court continued the matter, setting it for the same date, November 6, on which Leah had noticed a request for orders.

Leah and Rudolfo both appeared on November 6. Tabayoyon repeated what he had previously told the court—that when he rescheduled the hearing date on Leah’s support motion he was not aware of the small claims date. He acknowledged Rudolfo was aware of the small claims date, but Tabayoyon insisted he was not cognizant of it and sought a continuance to a date when he had another hearing scheduled in the department. He also stated he had tried to work with Leah as soon as he was aware there was a conflict with the small claims date. Leah continued to insist Tabayoyon had known about the small claims date. After Leah further accused Rudolfo and Tabayoyon of filing a forged request for dismissal of the small claims case, which Tabayoyon also vigorously denied, the court continued the sanctions issue.

Leah and Rudolfo both appeared again on November 27. The court addressed the sanctions issue at the end of the hearing. Tabayoyon first addressed Leah’s accusation that he had lied to the court in stating he needed a continuance because of a conflicting court date, referring the court to the clerk’s docket which confirmed his appearance on the other matter. He also once again denied that he had knowingly chosen a rescheduled date that conflicted with the small claims matter. He asserted Leah had not told him the date conflicted and said she flatly refused to agree to any continuance. He further said that when he became aware of the conflict, he tried to get a stipulation continuing the date again. He expressed great exasperation that what should have been a simple matter of rescheduling had mushroomed into a sanctions request and three hearings. In his view, Leah was trying to run up fees so Rudolfo would be unable to afford continued

representation, while she had a *juris doctorate*, and he asked for the court's help in facilitating cooperation.

The court denied the sanctions request, finding there had been a lack of cooperation on both sides. It also pointed out that despite the parties' conduct relative to the hearing date, all scheduled matters had been fully heard on the merits, so no party had suffered any harm.

Despite the court having given her an extraordinary amount of time to argue her position on sanctions—in fact, the court had extended the hearing after it had ruled to ensure she had an opportunity to say all that she wanted—Leah purportedly moved for reconsideration of the order denying sanctions. She entitled the document “Motion for Reconsideration of Sanctions Under CCP § 1008 or Alternatively Under CCP § 473, or FRCP Rule 60.” Leah continued to accuse Tabayoyon and Rudolfo of lying to the court about the rescheduling of her support motion, claiming the “new” evidence required by Code of Civil Procedure section 1008 was provided by the transcript of the October 15, 2013, hearing and her own phone records for October 1 and 2 showing she had tried to respond to Tabayoyon's request that she stipulate to a further continuance. She also complained about a litany of other asserted transgressions by Tabayoyon pertaining to service of documents.

The parties appeared before the court on April 16, 2014. However, as the hearing unfolded, it became clear Leah was focused on Rudolfo's liability for back taxes, and she did not press the court to revisit the prior ruling on sanctions. Moreover, the court ruled for Leah as to the tax debt issue, which Leah had raised in another request for orders. It therefore denied the motion for reconsideration, also noting Leah had not presented any “new” evidence under section 1008.

Leah appealed from the order denying sanctions and order denying her motion for reconsideration.

In a 52-page opening brief, Leah rails against the court's refusal to impose sanctions against Rudolfo and complains the court did not treat her fairly and unduly favored Tabayoyon. Her appeal is wholly without merit.

The trial court acted *well* within its discretion in declining to issue sanctions against either Rudolfo or Tabayoyon and, instead, admonishing all parties to act more cooperatively. (See *In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1478 [sanctions order by family court reviewed under abuse of discretion standard; evidence must be viewed most favorably in support of order, and order is subject to reversal only if no judge could have reasonably issued it].) Even if the court was unsure as to which party was telling the truth, it was completely within the realm of reason for it to have concluded both parties contributed to the problem and to have admonished both to cooperate in the future, rather than exact a monetary penalty for the waste of their and the court's time and resources on a matter that should have been readily dealt with by a stipulated continuance.

The orders denying sanctions and denying reconsideration are affirmed.
Respondent to recover costs on appeal.

Banke, J.

We concur:

Humes, P. J.

Margulies, J.