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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

JOSE LUIS SALDANA,

Plaintiff and Appellant,

v.

MIRANDA ANNE NOH,

Defendant and Respondent.

A143491

(Sonoma County
Super. Ct. No.SFL-54249)

Plaintiff Jose Luis Saldana appeals from a family court judgment ordering him to pay \$72,660 to defendant Miranda Anne Noh in attorney fees. Noh requested these fees in a motion she made pursuant to Family Code section 6344,¹ which authorizes the award of such fees to a prevailing party in a Domestic Violence Prevention Act (DVPA) proceeding (§ 6200 et seq.). The court's judgment, however, awards Noh these fees pursuant to sections 2030 to 2032, which authorize the award of attorney fees in a significantly broader category of family law proceedings based on need and equity. The record does not indicate Noh moved pursuant to sections 2030 to 2032 or that anyone raised them prior to the court's judgment. Further, the court did not consider certain issues raised by Saldana in opposition to Noh's motion or issues section 6344 required it to consider. The court's legal errors constitute an abuse of its discretion. Therefore, we reverse and remand this matter to the trial court for further proceedings consistent with this opinion.

¹ All statutory references herein are to the Family Code.

BACKGROUND

In July 2011, Noh petitioned the Sonoma County family court for a temporary restraining order against her then-husband, Saldana, for domestic violence, which the court granted. The court's subsequent judgment suggests the court also may have issued some sort of temporary restraining order against Noh at Saldana's request.

The parties, both represented by counsel, subsequently litigated the merits of their requests for permanent restraining orders for domestic violence in a court trial, as well as the merits of certain issues related to the custody of their minor daughter, who was born in 2008. After several days of testimony, argument and further hearings, the court issued a statement of decision in February 2013. The court reviewed the parties' claims of domestic violence and substance abuse. It found that Saldana had committed domestic violence against Noh on two separate occasions. The first occurred on August 29, 2009, when Saldana became intoxicated at a party and physically assaulted Noh in a car on their way home. The second occurred on April 25, 2010, when Saldana, again intoxicated, assaulted Noh by the side of a road, called her names, grabbed her hair, forced her back into a car, and closed the car door on her leg.

The court further found that Noh "did have substance abuse problems, which contributed to discord in the relationship, but that [Noh] has received treatment for her substance abuse issues and has remained free of drugs and alcohol since approximately July 2011." The court rejected Saldana's argument that it should issue a "mutual" permanent restraining order against Noh, concluding "[t]here was no evidence or allegation of any objectionable conduct of [Noh] after the parties finally and permanently separated after the incidents of July 14, 2011. Thus, there was no risk of improper future conduct that needed to be prevented by a restraining order." The parties' joint appendix contains only a portion of the record below and, although the court's judgment does not specifically order a restraining order against Saldana, its denial of Saldana's request for a "mutual" restraining order suggests that it did so.

In April 2013, Noh moved for an order that Saldana pay her \$72,660 for attorney fees she incurred related to the DVPA action. Noh contended she was the prevailing

party and should be awarded these fees pursuant to section 6344 of the DVPA. She contended that she did not have the ability to pay her own fees, which had been paid by her parents with funds intended for her parents' retirement and savings. In a supporting declaration, her father, Lance Noh, stated these payments were "a loan, not a gift."

Saldana opposed Noh's motion for attorney fees on a variety of grounds. These included that she did not need the fees because she had "chosen not to work and to live off of her parents"; had never requested fees during the action; was requesting fees for matters that did not pertain to domestic violence, such as "ordinary custody/visitation issues and post-trial services"; and that Saldana was a prevailing party as well, since the court had previously issued a restraining order against Noh and purportedly affirmed it could do so after hearing the trial testimony.

The record does not indicate the court ruled on Noh's attorney fees motion until 2014, after holding a court trial regarding both that motion and certain child custody issues. Saldana testified that he did not comply with Noh's notice of deposition and discovery requests for financial information, did provide some financial information to her, had incurred substantial attorney fees himself, made little income from two businesses he operated, which were landscaping and real estate broker businesses, had filed for bankruptcy, and was unable to pay for Noh's fees. Noh testified that she had very limited financial resources, having only started working again the year before. She said the majority of her attorney fees had been paid by her parents and that she was repaying her parents while also living with them and relying on them for some of her expenses. Noh's father also testified about his financial support of Noh and the strain it had put on his finances, including that it caused him to go into bankruptcy.

In the course of questioning Saldana, Noh's attorney showed Saldana two exhibits, lettered "N" and "O", which Noh's counsel had created from Saldana's financial information and which purported to detail financial deposits and withdrawals in accounts Saldana used for his two businesses. Saldana's attorney objected to the admission of these exhibits until he had "a chance to do some calculations to verify the numbers are accurate, with the understanding that those are speculative." The court sustained what it

characterized as these “standing objections,” but “without prejudice to revisit whether [Exhibits N and O] are admissible or not.” The court continued, “I think there are some questions about admissibility. So I will allow cross-examination and further inquiry; then we will revisit those later.” These exhibits were marked for identification purposes, but not as admitted into evidence. The record contains no indication that the court or counsel revisited their admissibility during the trial.

At the conclusion of the trial, the court asked the parties to submit their closing arguments in post-trial briefs. Whether or not these were submitted, there are no post-trial briefs in the joint appendix.

On June 12, 2014, the court filed its “Finding and Order After Hearing.” After Saldana moved for a new trial on a variety of grounds, the court vacated this ruling and filed its “Tentative Decision After Trial.” On August 12, 2014, the court filed its “Judgment After Trial” (August 2014 judgment). The court first addressed an issue about Saldana’s bankruptcy debated between the parties; it ruled that Saldana’s “attorney fee obligation to Ms. Noh is not discharged through his bankruptcy” in part because the bankruptcy discharge order “did not specifically discharge Mr. Saldana’s obligation for payment of spousal support, or attorney fees pursuant to Family Code [sections] 2030–2032.” It continued, “Mr. Saldana’s actions caused the attorney fees incurred by Ms. Noh. This Court finds pursuant to the factors set forth in Family Code [sections] 2030–2032 that Ms. Noh has a need for the fees to be paid by Mr. Saldana.”

As for Saldana’s ability to pay, the court noted that Saldana had failed to provide complete information concerning his financial status and stated, “The court may construe the evidence and inferences against a party who has the burden of producing evidence and does not provide complete information when that party has the means and ability to produce it. In this case Mr. Saldana is in sole possession of the information. Proper discovery requests were made through Ms. Noh’s attorneys. Mr. Saldana testified that he was too busy to compile all of his business records in response to discovery requests, and in preparation for trial. The court will use Ms. Noh’s extrapolation contained in Exhibit O submitted at trial.

“Based solely on Mr. Saldana’s testimony at trial it is deduced that Mr. Saldana has at least \$318 per month in spendable funds after deducting his expenses from his claimed income. However[,] [t]estimony at trial and evidence in the Court record[,] show that Mr. Saldana has paid his own attorneys substantial sums during the domestic violence litigation and custody matter. The Court does not find his testimony concerning his actual net income credible.

“This Court finds that the business income of \$161,941.20 as illustrated in Exhibit O received into evidence at trial to be reliable as Mr. Saldana failed to produce any reliable contrary evidence. As testimony indicated at trial, Exhibit O is a spreadsheet prepared with the partial information that Mr. Saldana provided, and an extrapolation. This Court finds the numbers to be reasonable based on all the evidence presented in this case.” After noting that Saldana did not provide credible and complete financial information to the court, it stated: “Therefore, we impute a gross income of \$13,495.00 per month and find he has the ability to pay at least \$1,000 per month toward attorney fees incurred by Ms. Noh.” It ordered Saldana to pay this amount each month until he had paid the sum of \$72,660.

The court rejected a request by Saldana for attorney fees. In doing so, it found that “[h]is need for Ms. Noh to pay his attorney fees is questionable,” and that “Ms. Noh has shown that she does not have ability to pay Mr. Saldana’s attorney fees,” having been unemployed for a long time, having borrowed money from her parents to cover her own attorney fees and living expenses and having exhausted her parents’ ability to help her. The court characterized its judgment as a “tentative decision” that would not become final if parties filed objections within ten days.

Saldana filed written objections to the court’s judgment. His objections included that the court could not rely on Exhibits N and O because they were not admitted into evidence during the trial pursuant to his counsel’s objections and, therefore, the court was precluded from imputing a gross income to Saldana of \$13,495 per month in determining whether he could pay Noh’s attorney fees. Among other things, Saldana also objected that he had contended in his opposition to Noh’s motion that some of the attorney fees

accumulated by Noh were unrelated to domestic violence and instead pertained to their child custody dispute.

On September 9, 2014, the court filed its “Rulings on Petitioner’s Objections to Judgment After Trial.” It overruled Saldana’s objections to the court’s reliance on Exhibits N and O in its judgment because “[r]espondent, [Saldana], and Lance Noh all testified about the contents of Exhibits N and O and their independent recollection of the facts.” The court did not address Saldana’s contention that some of the attorney fees accumulated by Noh were unrelated to domestic violence. It ordered that the judgment be entered unmodified. Saldana filed a timely notice of appeal from this judgment.

DISCUSSION

We conclude we must reverse and remand this case for further proceedings because the trial court did not properly exercise its discretion to decide Noh’s motion, which she brought pursuant to section 6344 of the DVPA.

We review the court’s judgment awarding attorney fees, whether issued pursuant to section 6344 or sections 2030 to 2032, for abuse of discretion. (See *Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1509 [reviewing an award of attorney fees pursuant to section 6344 for abuse of discretion]; *In re Marriage of Sorge* (2012) 202 Cal.App.4th 626, 662 [reviewing an attorney fee award under section 2030 for abuse of discretion]; *Mooney v. Superior Court* (2016) 245 Cal.App.4th 523, 535–537 [reviewing an award of attorney fees pursuant to section 2032 for abuse of discretion].)²

The purpose of the DVPA “is to prevent acts of domestic violence, abuse, and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence.” (§ 6220; see also *Oriola v. Thaler* (2000) 84 Cal.App.4th 397, 405–406 [asserting this purpose applies to section 6344 specifically].) Section 6344 authorizes the court to order a party to pay attorney fees in DVPA proceedings. Specifically, “[a]fter

² Section 2031 pertains to an application for a temporary order making, augmenting or modifying an attorney fee award and, therefore, does not appear pertinent to this case. Therefore, we do not discuss it further.

notice and hearing, the court may issue an order for the payment of attorney's fees and costs of the prevailing party." (§ 6344, subd. (a).) Further, "[i]n any action in which the petitioner is the prevailing party and cannot afford to pay for the attorney's fees and costs, the court shall, if appropriate based on the parties' respective abilities to pay, order that the respondent pay petitioner's attorney's fees and costs for commencing and maintaining the proceeding. Whether the respondent shall be ordered to pay attorney's fees and costs for the prevailing petitioner, and what amount shall be paid, 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).)

Thus, section 6344 authorizes a court to award attorney fees to a party found to have prevailed in a DVPA proceeding. However, the trial court here did not designate a prevailing party in its August 2014 judgment, and Saldana specifically argued that both he and Noh should be designated prevailing parties. The court also did not make any finding regarding Saldana's contention that a portion of the attorney fees Noh requested related to their custody dispute, not domestic violence issues.

Instead, the trial court indicated in its August 2014 judgment that it was deciding Noh's motion under sections 2030 to 2032, although the record contains no discussion of these statutes or their requirements prior to the court's issuance of its judgment. Sections 2030 to 2032 authorize a court to award attorney fees in a broader array of proceedings than section 6344 authorizes, i.e., "[i]n a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, and in any proceeding subsequent to entry of a related judgment." (§ 2030, subd. (a)(1).) Furthermore, its purpose is unrelated to who is prevailing party in such an action; rather it is to "ensure that each party has access to legal representation, including access early in the proceedings, to preserve each party's rights." (*Ibid.*) Thus, the court may order, "if necessary based on income and needs assessments, one party . . . to pay to the other party . . . 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." (*Ibid.*)

Further, upon a party's request for attorney fees pursuant to section 2030, the court is required to make specific findings. "When a request for attorney's fees and costs is made, the court shall make findings on whether an award of attorney's fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties. If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs." (§ 2030, subd. (a)(2).)

Finally, the court may make such an attorney fees award when it finds it is "just and reasonable" to do so given the relative circumstances of the parties involved. Specifically, "[t]he court may make an award of attorney's fees and costs under Section 2030 or 2031 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).) "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 circumstances of the respective parties described in Section 4320.^[3] 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." (*Id.*, subd. (b).)

³ Section 4320 describes circumstances the court should consider in awarding attorney fees pursuant to sections 2030 to 2032 when relevant, including the marketable skills of the supported party; the ability of the supporting party to pay spousal support, taking into account earning capacity, earned and unearned income, assets, and standard of living; the duration of the marriage; the ability of the supported party to engage in paid employment without unduly interfering with the interests of dependent children in his or her custody; the age and health of the parties; documented evidence of a history of domestic violence between the parties; and the balance of hardships to each party. (§ 4320, subs. (a)(1), (c), (f), (g), (h), (i) & (k).)

Thus, section 6344 and sections 2030 to 2032 have significant similarities, such as both calling for consideration of the respective financial resources of the parties involved. They also have significant differences, such as that section 6344 requires a party be designated as the prevailing party while sections 2030 to 2032 do not, and that section 6344 applies to DVPA proceedings only.⁴ These differences are critical in the present case. The trial court failed to consider Noh’s motion pursuant to the requirements of the statute relied on by Noh for her motion, which was section 6344. Despite section 6344’s requirement that the party receiving attorney fees be a “prevailing party,” and although Saldana in his opposition to Noh’s motion contended that both he and Noh should be so designated, the court’s judgment did not designate a prevailing party. Furthermore, although section 6344 awards attorney fees for Domestic Violence Act proceedings only, as opposed to the broader scope of proceedings covered by sections 2030 to 2032, the court failed to address Saldana’s contentions that some, but not all, of the attorney fees incurred by Noh were regarding domestic violence issues. Instead, the trial court ordered Saldana to pay Noh’s attorney fees pursuant to sections 2030 to 2032 although the record does not indicate Noh moved pursuant to these sections or that anyone raised them before the court’s judgment.

In short, the trial court did not rule on Noh’s motion pursuant to the legal authority she relied on, section 6344, and instead relied on statutes that no party raised. As Saldana points out in his supplemental briefing, “[i]f the court’s decision is influenced by an erroneous understanding of applicable law or reflects an unawareness of the full scope of its discretion, the court has not properly exercised its discretion under the law. [Citation.] Therefore, a discretionary order based on an application of improper criteria or incorrect legal assumptions is not an exercise of informed discretion and is subject to reversal.” (*Farmers Ins. Exchange v. Superior Court* (2013) 218 Cal.App.4th 96, 106.) This is

⁴ As we have discussed, the court indicated in its judgment that it was ruling pursuant to sections 2030 to 2032. Therefore, we do not presume that it applied section 6344 in making its decision. (See, e.g., *In re Jacob J.* 130 Cal.App.4th 429, 437–438 [“On a silent record, the ‘trial court is presumed to have been aware of and followed the applicable law’ when exercising its discretion].)

because “ ‘[a]ll exercises of discretion must be guided by applicable legal principles’ ” and such a legal error constitutes an abuse of discretion. (*David v. Hernandez* (2014) 226 Cal.App.4th 578, 592, quoting *Farmer’s Ins. Exchange*, at p. 106.) Nor did the court have the discretion to rule pursuant to sections 2030 to 2032 in the absence of a motion made under this authority. (See *Mooney v. Superior Court*, *supra*, 245 Cal.App.4th at pp. 535–537 [abuse of discretion for the court to award attorney fees pursuant to section 2032 in the absence of a motion that it do so].)

For the reasons we have discussed, we conclude the trial court abused its discretion here. In light of our conclusion, it would be premature for us to address the remainder of the parties’ arguments, other than to note that the court should not have relied on Exhibits N and O in the August 2014 judgment without first overruling Saldana’s objection to them and admitting them into evidence. The record indicates the court initially sustained Saldana’s objection to them without prejudice to revisit their admissibility later in the trial, and there is no indication that their admissibility was revisited.

DISPOSITION

Accordingly, we vacate that part of the court’s judgment that orders Saldana to pay attorney fees to Noh and remand this matter to the trial court for further proceedings consistent with this opinion. The parties are responsible for their own costs of appeal.

STEWART, J.

We concur.

KLINE, P.J.

RICHMAN, J.

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