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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of JOHN M. and LISA M.
HOFER.

2d Civil No. B233788
(Super. Ct. No. D331366)
(Ventura County)

JOHN M. HOFER,

Appellant,

v.

LISA M. HOFER,

Respondent.

This is an appeal from an order requiring John M. Hofer to pay Lisa M. Hofer \$75,000 for attorney fees and costs pursuant to Family Code section 2030.¹ This is the second such order. The first order required John to pay Lisa \$200,000 for attorney fees and costs.² We dismissed John's appeal of the first order under the disentitlement doctrine. We affirm the instant order.

¹ All statutory references are to the Family Code unless otherwise stated.

² We refer to the parties by their first name, not out of disrespect, but to ease the reader's task.

FACTS

Hofer I

Initially, the trial court ordered John to pay \$200,000 for Lisa's attorney fees and costs pursuant to section 2030. John posted a \$300,000 undertaking to stay the order and appealed. On appeal John claimed there was insufficient evidence of his ability to pay. But John had refused to disclose his financial circumstances. The refusal led to three separate discovery orders and sanctions against him. We concluded that John could not refuse to participate in discovery and complain there was insufficient evidence of his financial circumstances. We dismissed the appeal under the disentitlement doctrine. (*In re Marriage of Hofer* (2012) 208 Cal.App.4th 454 (*Hofer I*).

Hofer II

While the appeal in *Hofer I* was pending, Lisa made another motion for fees and costs pursuant to section 2030. She claimed she needed \$150,000 for a seven-day evidentiary hearing on temporary spousal and child support; \$50,000 for a forensic expert to prepare for and testify at the hearing; \$35,000 to respond to John's appeal in *Hofer I*; and \$35,000 to defend a civil action for malicious prosecution brought against her by John, for a total of \$270,000.

John claims to have supplied Lisa with voluminous amounts of financial records. Whether this satisfies the court's discovery orders remains to be seen. Presumably, the attorney fees will enable Lisa's attorney to analyze this information for the evidentiary hearing.

John concedes, and the trial court found, that the parties lived a lavish lifestyle during their marriage. Lisa did not work and John was the sole source of their income. John claims he supported their lifestyle by improperly taking funds from businesses owned by his family of which he owns only a small fractional share. The trial court was skeptical of John's claim. It stated, "The court cannot help but question how the characterization of funds available to [John] changed from during the marriage, to post separation and then to the current time."

John declared that he has paid his attorneys \$258,653.91 and owes an additional \$141,977. Again, the court was skeptical. It noted John declared he paid \$10,000 to one of his attorneys, but the attorney testified he received in excess of \$57,000.

The court found that John paid Lisa's attorney \$20,000 plus discovery sanctions for a total of \$47,810. Lisa's attorney is owed \$212,931.71. The court also found that Lisa has liquid assets of \$109,000 as a result of \$100,000 being given by John to Lisa prior to their separation.

The trial court also considered that John was able to post a cash bond of \$300,000; that his declaration states he has a \$100,000 water bond; and that money may be available from the Hofer Trust after an Internal Revenue Service (IRS) audit of the trust tax return.

The trial court found: John has the only source of income, which has remained the same throughout the marriage, until now. He has the ability to pay for the representation of both parties. He simply has not. Lisa has access to over \$100,000 and should contribute some to her representation. It is hoped that the hearing set pursuant to section 217 will determine John's income. To participate in the hearing, Lisa needs her own expert, just as John has. The court ordered John to pay \$75,000 as a contribution to Lisa's attorney's fees and costs.

DISCUSSION

I

Section 2030, subdivision (a)(1) requires the trial court in a dissolution proceeding to ensure that each party has access to legal representation. If necessary, the trial court may order one party to pay the other party's attorney reasonable fees "based on the income and needs assessments" of the parties.

We review the award for an abuse of discretion. (See *Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238, 254.)

II

John contends the trial court relied on inappropriate factors in determining his ability to pay.

John argues that he objected to "virtually all" of Lisa's evidence. He states he objected to Lisa's assertions about his control of the Hofer entities; assertions that John and the Hofer entities are the same; and that he has control of those entities. John points out the trial court failed to rule on his objections.

But the trial court failed to rule on John's objections because it did not rely on Lisa's evidence. Instead, it relied on evidence that John supported the parties in a lavish lifestyle during the marriage and that the source of the funding for that lifestyle remains unchanged. It also relied on evidence that John has paid his attorneys at least \$258,000 and posted a \$300,000 cash bond. John fails to show how any of the evidence on which the trial court actually relied was properly objectionable.

John claims he was only able to provide his family a lavish lifestyle by improperly taking funds from businesses owned by his family. But the trial court found John's claim not to be credible. The court pointed out that John's characterization of the funds he has available has changed to suit his needs. We have no power on appeal to judge the credibility of the evidence. (See *Kimble v. Board of Education* (1987) 192 Cal.App.3d 1423, 1427.)

John argues the trial court improperly considered his appeal in *Hofer I*. He claims he has a statutory right to appeal and stay execution by posting a bond. (Code Civ. Proc., §§ 902, 916, 917.1.)

But as we explained in *Hofer I*, the statutory right to appeal is not unlimited. John has no right to defy the trial court's orders and appeal. In any event, the trial court's point was simply that John's appeal and bond prevented Lisa from gaining access to the \$200,000 for fees and costs previously ordered. That is a legitimate consideration. Therefore there is no merit to John's contention that the court was penalizing him.

John claims the trial court relied on speculation that he could borrow money. He points out that the trial court noted he may have a source of funds from a trust after an IRS audit of the trust's tax return. He asserts the audit might not be concluded until 2013. He concludes that because the court's order calls for immediate payment, he must borrow the money.

But the trial court did not find that the money John might receive after an IRS audit was John's sole source of income. Obviously, John did not have to wait for the results of the audit to provide his family with a lavish lifestyle, to pay his attorneys over \$258,000 or to post a \$300,000 cash bond.

John asserts the evidence that he must borrow to pay the ordered fees is uncontradicted, as is evidence that he has no ability to borrow. But the trial court may reject even uncontradicted evidence as lacking sufficient credibility. (See *Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1028.) It was not required to conclude that John must borrow to pay the fee award, and it made no such finding. In fact, the trial court expressed doubt about John's credibility as it relates to his financial condition.

In any event, as we stated in *Hofer I*, there is no authority prohibiting the trial court from making an order that requires John to borrow. *In re Marriage of Mosley* (2008) 165 Cal.App.4th 1375, 1386-1387, does not stand for the proposition that as a matter of law there is always a miscarriage of justice where an order requires a party to borrow.

Finally, John argues that the amount and terms of the fee award are unreasonable under the circumstances. He points out that section 2032, subdivision (b) warns that financial resources are only one factor for consideration in a fee request. The party seeking fees must also provide evidence of the reasonableness of the amount of fees requested. (Citing *In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 870.)

John claims evidence of reasonableness is generally produced in the form of billing statements attached to the moving papers. Lisa did not provide such

billing statements. Instead, she provided a list of tasks that her counsel wished to undertake. She did not tie the fee request to the amount of time her attorney expected to devote to the case.

But here an experienced trial court awarded Lisa \$75,000 to prepare for a seven-day hearing. The hearing promises to involve complex financial documents and expert testimony. Under the circumstances, \$75,000 is anything but excessive. John has failed to show an abuse of discretion.

The order is affirmed. Costs are awarded to Lisa.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

CHANEY, J.

Ellen Gay Conroy, Judge
Superior Court County of Ventura

Ferguson Case Orr Paterson LLP, Gregory W. Herring and Wendy C.
Lasher for Appellant.

Goldenring & Prosser, Peter A. Goldenring and Edwin S. Clark for
Respondent.