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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

M.G.,

Plaintiff and Respondent.

v.

O.G.,

Defendant and Appellant,

B254358

(Los Angeles County  
Super. Ct. No. BF039488)

APPEAL from a post-judgment order of the Superior Court of Los Angeles County, Scott Gordon, Judge; Peter Lichtman, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Brownstein Hyatt Farber Schreck, Kathryn Lee Boyd; Schwartz Rimberg and David R. Schwartz for Defendant and Appellant.

Law Offices of Marjorie G. Fuller, Marjorie G. Fuller; Harris • Ginsberg, Larry A. Ginsberg, Fahi Takesh Hallin and David L. Marcus for Plaintiff and Respondent.

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## INTRODUCTION

Appellant O.G. and Respondent M.G. were parties to a parentage action brought by M.G. to establish his paternity of the couple's daughter. While that action was pending, O.G. filed a separate action against M.G., asserting civil claims for battery and defamation. The parties settled the parentage action through a stipulated judgment, declaring M.G. the child's father. At the same time, the parties entered into a separate settlement agreement to resolve O.G.'s civil claims, pursuant to which M.G. agreed to pay O.G. a total of \$750,000 in three equal installments spread over the course of five years. As part of the settlement agreement, O.G. agreed to keep confidential "any and all information and facts related to the asserted claims and events underlying this Agreement." The agreement specified that a breach of the confidentiality obligation would result in O.G.'s forfeiture of all outstanding installments of the \$750,000 settlement payment.

After M.G. paid the first \$250,000 installment, O.G. appeared on the Howard Stern radio show. Based on statements made by O.G. in exchanges with the show's host, M.G. filed a request for an order discharging his obligation to pay the remaining balance on the ground that O.G. had breached the settlement agreement's confidentiality clause. After listening to a certified recording of the interview and reviewing the interview transcript, the trial court found that although O.G. had made no "explicit statement" about her settled claims against M.G., her statements, when taken in context with the "interview as a whole," "clearly implie[d]" that M.G. had committed domestic violence against her. Accordingly, the court granted M.G.'s request for discharge of the remaining settlement payment obligation. The court also found O.G. unreasonably refused to cooperate with M.G.'s efforts to authenticate the interview transcript, and awarded M.G. sanctions in the amount of \$13,530 for the otherwise avoidable fees and costs incurred in that effort.

O.G. appeals from the order discharging the settlement payment obligation and the sanctions award. She principally contends the court erred in interpreting the confidentiality clause to prohibit her from making “unspecified” statements about domestic violence, even if the context of those statements might create the inference that her statements related to M.G. As for the sanctions award, O.G. disputes that she failed to cooperate. We conclude the court correctly interpreted the confidentiality clause and its findings with respect to the order and sanctions award were supported by the evidence. We affirm.<sup>1</sup>

## **FACTS AND PROCEDURAL BACKGROUND**

### *1. The Parties*

M.G. is a well-known Hollywood actor. He and O.G. had a previous relationship that resulted in the birth of their daughter, L.G. In 2010, M.G. filed a petition in the superior court to establish his parental relationship to L.G. While the parentage action was pending, O.G. filed civil claims against M.G. for battery, defamation, and other nonspecific claims.

### *2. The Parentage Judgment and Stipulated Confidential Judgment*

On January 20, 2012, the family court entered an uncontested judgment declaring M.G. to be L.G.’s father (the Parentage Judgment). The Parentage Judgment contained court orders for custody/visitation and child support as stated in an “attached Stipulated Confidential Judgment” (the Stipulated Confidential Judgment). With respect to child

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<sup>1</sup> O.G. also challenges the court’s admission of certain evidence concerning statements she purportedly made at a fundraiser for a domestic violence shelter. And she attacks a separate anti-disparagement provision of the settlement agreement as unconstitutionally vague. Because the court’s finding that O.G. breached the confidentiality clause with her appearance on the Howard Stern Show constituted an independent and sufficient basis for its order, O.G.’s other appellate challenges are insufficient to establish prejudicial error. We do not address them in this appeal. (See Civ. Proc. Code, § 475 [“No judgment . . . shall be reversed or affected by reason of any error . . . unless it shall appear from the record that such error . . . was prejudicial, . . . and that a different result would have been probable if such error . . . had not occurred or existed”].)

support, the Stipulated Confidential Judgment provided for M.G. to pay O.G. \$20,000 per month for support of L.G., to pay L.G.'s health and education costs, and to provide a residence for L.G. and O.G. during L.G.'s minority. The Stipulated Confidential Judgment also contained the following provision pertaining to future requests to modify custody or child support: "[O.G.] may only seek a modification of support or custody for the best interest of the child. Should [O.G.] proceed with such a request and not prevail . . . all future installments of the original \$750,000 obligation due to her from [M.G.] as referenced in the parties' signed August 26, 2011 agreement will be forfeited and will relieve [M.G.] from any obligation for said balance."

### 3. *The Settlement Agreement*

As reflected in the custody/support modification provision of the Stipulated Confidential Judgment, on August 26, 2011, M.G. and O.G. entered into a separate agreement for the stated purpose of "resolv[ing] all pending issues, claims and/or potential claims arising out of the events underlying [O.G.'s] asserted battery, defamation, and other nonspecific claims [against M.G.]" (the Settlement Agreement). The Settlement Agreement provided for M.G. to pay O.G. a total of \$750,000 "as consideration for the releases given herein" (the Payment). The Payment was to be made in three equal installments of \$250,000, with the first payment made upon consummation of the settlement, the second on September 15, 2013, and the third on January 1, 2016.

Pursuant to a confidentiality clause contained in the Settlement Agreement, M.G. and O.G. "agree[d] that any and all information and facts related to the asserted claims and events underlying this Agreement . . . shall remain confidential as between the Parties." The confidentiality clause continued, "with respect to the Payments set forth herein by [M.G.] to [O.G.], any breach of the foregoing shall cause the forfeiture of the remaining balance due of the Payment."

M.G. made the first \$250,000 payment to O.G. upon execution of the Settlement Agreement.

4. *O.G.'s Interview on the Howard Stern Show*

On May 21, 2013, O.G. appeared on the Howard Stern Show, a radio show produced by Howard Stern Productions in New York. During the interview, after Stern introduced O.G. by commenting “we know [O.G.] because of the [M.G.] tapes,” O.G. engaged in the following exchanges with Stern:

“[O.G.]: I wanted to thank you so much for support when I had so much criticism. I really appreciated you for what you were saying.

“[Stern]: I want to thank you for saying that because I will support you to the end. I don’t care what the circumstances are. You do not treat a woman that way, especially the mother of your child.

“[O.G.]: Thank you.

“[¶] . . . [¶]

“[Stern]: Anyone who’s been through what you’ve been through with [M.G.], you got to be full of hope, because it’s the only way to be. You got to look ahead.

“[O.G.]: You know what? [Y]ou have to embrace your experience and even -- it doesn’t matter how painful it might be at the time, and that darker experience, learn from it, hopefully, lessons and . . . there’s light and definitely . . . follow what you had in you as a child, that dream. That is awesome.

“[Stern] : Well, you’re making a lot of sense.

“[O.G.] : It’s good. [Y]ou know, in a way, I realize that experience that I went through, I’m going to have to help others. That’s -- I’m ready to help and I’d really like to make a difference.

“[Stern] : How do you plan on doing that?

“[O.G.] : I’m going to open domestic violence charity.”

5. *M.G.'s Request for an Order Discharging His Obligation to Make Future Payments Under the Settlement Agreement and O.G.'s Motion to Strike*

On August 6, 2013, M.G. filed a request for an order to discharge his obligation to pay O.G. future installments of the Payment under the parties' Settlement Agreement. He argued O.G.'s statements on the Howard Stern Show breached the Settlement Agreement's confidentiality clause, thereby forfeiting the remainder of the Payment. M.G. supported the request with a declaration by his attorney, which included a partial transcript of the Howard Stern interview transcribed from a publicly available recording.

O.G. initially responded to M.G.'s request by moving to strike the partial transcript and portions of the attorney declaration pertaining to the contents of the Howard Stern interview. In a subsequently filed declaration, O.G. acknowledged that she had been interviewed by Howard Stern, but did not admit or deny that she had made the statements attributed to her in the partial transcript. Rather, she declared she had "no control over what [Stern], or other people, think, say, know or surmise," and she denied that she had breached the Settlement Agreement.

On October 14, 2013, the court held a hearing on O.G.'s motion to strike. The court indicated it was exclusively concerned with what was said during the interview—not what M.G.'s counsel said in his declaration—and, insofar as O.G. had participated in the interview, the court asked whether she objected to the transcript itself. If she did object to the transcript, the court suggested the relevant evidence could be obtained by subpoenaing the Howard Stern Show's custodian of records and taking O.G.'s deposition. On the other hand, the court observed this work could be avoided if O.G. was willing to stipulate to the transcript's authenticity. O.G.'s counsel indicated she would need to consult with her client. The court ordered O.G.'s counsel to notify the court and M.G. by the end of the week, October 18, 2013, whether O.G. would stipulate.

6. *M.G.'s Request for Sanctions*

O.G. did not stipulate to the transcript's authenticity. Accordingly, M.G. retained attorneys in New York, where the Howard Stern Show is produced, to subpoena a recording of the interview and a declaration from a Howard Stern Productions representative attesting to the recording's authenticity. M.G. had a partial transcript of the interview prepared from the authenticated recording, which he provided to the court and O.G.

M.G. also noticed O.G.'s deposition to ensure there would be no further grounds for objection to the evidence. At O.G.'s request, M.G. agreed to continue the deposition to a later date. An hour before the continued deposition was to commence, O.G.'s counsel called M.G.'s attorneys to advise that O.G. would not appear at the deposition and that she would not stipulate to the authenticity of the partial transcript because she wanted a full transcript of the Howard Stern interview made available to the court. The attorneys agreed to go forward with the deposition and to have the deposition reporter prepare a full transcript from the authenticated recording.

M.G. filed a request for sanctions pursuant to Family Code section 271, asserting O.G. had frustrated the policy of encouraging cooperation in family law matters by refusing to stipulate to the original transcript's authenticity. The request sought an award for the amount of fees and costs incurred in connection with O.G.'s deposition and the work performed by the New York attorneys to obtain the authenticated recording of the Howard Stern interview.

7. *The Order Granting M.G.'s Requests for Discharge and Sanctions*

On December 3, 2013, the court held a hearing on the pending matters. After argument by counsel, the parties submitted on the papers without offering additional evidence, and the court took the matter under submission.

On December 10, 2013, the court issued an order discharging M.G.'s obligation to pay the outstanding Payment amounts under the Settlement Agreement and granting M.G.'s request for sanctions. With respect to the Payment obligation, the court observed that the Settlement Agreement's confidentiality clause provided for forfeiture of the

Payment in the event O.G. publicized her allegations that M.G. had committed domestic violence against her. In concluding O.G. breached the clause and forfeited the Payment, the court found that although O.G. did “not make the explicit statement” that M.G. committed domestic violence, her response to Stern’s statement about what she had “ ‘been through with [M.G.],’ ” when taken in context with the “interview as a whole,” “clearly implic[ed] that [O.G.] suffered domestic violence at the hands of [M.G.]” The court rejected O.G.’s complaint that she was not responsible for what Stern said during the interview, reasoning that the Settlement Agreement did “not permit her the luxury of fostering, inferring or in any way contributing to the notion that she was the victim of domestic violence” by M.G.

As for M.G.’s request for sanctions, the court recounted the earlier proceeding during which O.G. had been given the opportunity to stipulate to the interview transcript’s authenticity and discussed the evidence concerning the subsequent work performed by M.G.’s attorneys in connection with O.G.’s deposition and obtaining a custodian of records declaration from the Howard Stern Show. Based on this evidence, the court concluded O.G.’s conduct was contrary to the admonition in Family Code section 271, subdivision (a) to “reduce the cost of litigation by encouraging cooperation between the parties and attorneys.” In view of that policy, the court awarded M.G. sanctions in the amount of \$13,530 for the fees and costs incurred in connection with O.G.’s deposition and the certified recording of the Howard Stern interview.

## **DISCUSSION**

### *1. The Settlement Payments Are Not Part of M.G.’s Child Support Obligation Under the Parentage Judgment*

For the first time on appeal, O.G. argues the \$750,000 Payment constituted a child support obligation under the Parentage Judgment, and the trial court therefore could not relieve M.G. of the purported support obligation without making findings concerning

L.G.’s best interests.<sup>2</sup> O.G. principally contends this is established by provisions in the Settlement Agreement making future installments of the Payment contingent upon O.G.’s compliance with the Stipulated Judgment’s custody and child support provisions. As O.G. puts it, “the lump sum payment of \$750,000 . . . is inextricably intertwined with the provisions for child support and custody under the terms of the Settlement Agreement, and therefore . . . it cannot be modified without considering the best interests of the child.” We disagree.

O.G.’s argument raises statutory and contract interpretation questions. Both are subject to our de novo review. (See *County of Tulare v. Campbell* (1996) 50 Cal.App.4th 847, 850 [“questions relating to the interpretation of statutes are matters of law for the reviewing court”]; *Lucas v. Elliot* (1992) 3 Cal.App.4th 888, 892 (*Lucas*) [“the interpretation of a contract or other written instrument is a question of law if there is no extrinsic evidence thereon”].)

Beginning with the relevant statutory provisions, Family Code section 150 defines “ ‘Support’ ” as an “obligation owing on behalf of a child, spouse, or family,” which, “when used with reference to a minor child . . . includes maintenance and education.” As for child support obligations arising out of a parental agreement, Family Code section 3585 states that “provisions of an agreement between the parents for child support shall be deemed to be separate and severable from all other provisions,” and “[a]n order for child support based on the agreement shall be imposed by law and shall be made under the power of the court to order child support.” With these statutory provisions in mind,

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<sup>2</sup> M.G. argues O.G. forfeited this argument by failing to raise it in the trial court. While it is true that an appellate court normally need not consider new theories that a party failed to present to the trial court, this principle does not apply in this instance. (See, e.g., *People v. Stowell* (2003) 31 Cal.4th 1107, 1114; *In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 117.) The right to child support belongs to the *child*—not the parent—and the parent cannot forfeit that right by failing to assert it on behalf of the child in the court below. (See Fam. Code, § 3900 et seq.; *Kristine M. v. David P.* (2006) 135 Cal.App.4th 783, 786 [“Parents have no right, in California, to waive or limit by agreement a child’s right to support”].) Accordingly, we must consider the argument insofar as it purports to implicate L.G.’s right to child support.

we turn to O.G.'s contention that the \$750,000 Payment constituted a child support obligation under the Parentage Judgment.

Nothing in the Parentage Judgment or Settlement Agreement supports O.G.'s contention that the \$750,000 Payment constituted court-ordered child support. The Parentage Judgment states that child support is ordered as provided in the "attached Stipulated Confidential Judgment." The Stipulated Confidential Judgment provides, under the heading "**Child Support Payments**," that "[c]ommencing effective September 1, 2011 and payable in full on the first day of each month, [M.G.] shall pay the sum of \$20,000 per month *in child support* to [O.G]." (Italics added.) Other terms in the Stipulated Confidential Judgment concerning M.G.'s obligation to pay for L.G.'s health insurance, medical care and school costs also fit squarely within the Family Code's definition of " 'Support' " for a minor child. (See Fam. Code, § 150 [" 'Support,' when used with reference to a minor child . . . includes maintenance and education"].) However, none of these provisions make any reference to the \$750,000 Payment, and nothing in the Stipulated Confidential Judgment or Parentage Judgment suggests this Payment was imposed as an "obligation owing on behalf of a child." (Fam. Code, § 150.) On the contrary, the Stipulated Confidential Judgment refers to the \$750,000 payment as "**Settlement Compensation**" to be paid by M.G. "*for the benefit of [O.G.]* in accordance with the terms and conditions as set forth in that certain *Settlement Agreement*." (Italics added.)

As for the Settlement Agreement, it states with respect to the \$750,000 Payment: "In consideration for the Parties' covenants . . . contained in this Agreement, [M.G.] agrees to pay [O.G.] a total of \$750,000.00 . . . . [O.G.] acknowledge[s] and agree[s] that . . . no further payment or reimbursement of expenses or other consideration is owed to or shall ever be demanded by, or paid to, [O.G.] . . . by [M.G.], except for the Payment set forth in this paragraph being made *as consideration for the releases given herein . . .*" (Italics added.) The "releases given herein" are described later in the Settlement Agreement, and include, specifically, "all Claims or rights . . . that arise out of the events underlying the battery, defamation and other nonspecific claims asserted by [O.G.]" As

with the Parentage Judgment and Stipulated Confidential Judgment, there is nothing in the Settlement Agreement that in any way refers to the \$750,000 Payment as a child support obligation.

Notwithstanding these specific provisions designating the \$20,000 monthly payments as “child support” and the \$750,000 Payment as “consideration for the release given” in the Settlement Agreement, O.G. contends the \$750,000 Payment must be treated as child support for purposes of modification and termination because, she argues, the “payment of \$750,000 was clearly intertwined with, and consideration for, [O.G.]’s acquiescence to [M.G.]’s terms of the custody and support arrangement.” O.G. bases the assertion principally upon substantively identical provisions in the Settlement Agreement and Stipulated Confidential Judgment making future installments of the \$750,000 Payment contingent upon her compliance with the Stipulated Confidential Judgment’s custody and support provisions. The relevant provision from the Stipulated Confidential Judgment states: “[O.G.] may only seek a modification of support or custody for the best interest of the child. Should [O.G.] proceed with such a request and not prevail . . . all future installments of the original \$750,000 obligation due to her from [M.G.] as referenced in the [Settlement Agreement] will be forfeited and [such proceeding] will relieve [M.G.] from any obligation for said balance.”<sup>3</sup>

The foregoing provision reinforces our conclusion that the \$750,000 Payment is not child support. Indeed, adopting O.G.’s contrary interpretation would produce a patently absurd result. Based on the provision, O.G. argues the \$750,000 Payment must constitute child support because it can be forfeited upon a failure to demonstrate child

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<sup>3</sup> The Settlement Agreement provision states: “The Parties agree that [O.G.] may only seek a modification of the child support or child custody terms as set forth in that certain Judgment of Parentage . . . for the best interests of the minor child. Should [O.G.] proceed with such a request as to any issues related to child custody and/or child support . . . and should [O.G.] . . . not be found to have been the prevailing party . . . , all future installments of the \$750,000.00 obligation as set forth above which remain due and owing . . . shall be forfeited by [O.G.] . . . and [such proceeding] shall relieve [M.G.] from any further obligation with regard to said balance.”

support should be modified. However, by this logic, O.G.’s failure to demonstrate that child support should be modified would result in *a modification of child support*—i.e., forfeiture of the \$750,000 Payment’s outstanding balance. Fundamental precepts of contract construction require that we avoid an interpretation that would produce such an internally inconsistent result. (See *Mount Vernon Fire Ins. Co. v. Busby* (2013) 219 Cal.App.4th 876, 882)

On the other hand, there is nothing absurd or remarkable about M.G. seeking to limit prospective litigation by making future installments of a *settlement payment* contingent upon O.G. ensuring that any modification petition she brings is in L.G.’s best interests. The subject provision does not affect *L.G.*’s right to receive child support or obtain modification of the support order, which, as discussed, is not subject to the parents’ agreement, but rather “imposed by law” and based on “the power of the court to order child support.” (Fam. Code, § 3585; see *Armstrong v. Armstrong* (1976) 15 Cal.3d 942, 947 [“When a child support agreement is incorporated in a child support order, the obligation created is deemed court-imposed rather than contractual, and the order is subsequently modifiable despite the agreement’s language to the contrary”].) The provision does, however, create a mechanism for dissuading O.G. from initiating future *unwarranted* court action. This was an understandably desirable benefit of the bargain that M.G. made with O.G. when he agreed to pay her \$750,000 “as consideration for the releases given” in their Settlement Agreement. The fact that the agreements linked forfeiture of the Payment to prospective petitions to modify child support or custody does not convert the Payment into a child support obligation. There is no merit to O.G.’s novel contention that the \$750,000 Payment was anything more than a *contractual obligation* subject to all relevant terms of the Settlement Agreement.

2. *Substantial Evidence Supports the Court’s Finding that O.G.’s Statements on the Howard Stern Show Violated the Settlement Agreement’s Confidentiality Clause*

O.G. contends the trial court misinterpreted the confidentiality clause in concluding her interview on the Howard Stern Show breached the Settlement Agreement

and compelled forfeiture of the \$750,000 Payment's remaining balance. With regard to the relevant evidence, O.G. also argues the interview was insufficient to establish a breach because her statements referred only to "unspecified domestic abuse," such that the court necessarily based its finding on "inference." We conclude the court properly interpreted the contract and its finding was supported by substantial evidence.

O.G.'s contention raises questions about the proper interpretation of the confidentiality clause and the sufficiency of the evidence to support the trial court's finding. As discussed, in the absence of admissible extrinsic evidence, the interpretation of a contract is a question of law subject to our de novo review. (*Lucas, supra*, 3 Cal.App.4th at p. 892.) Our guiding purpose is to give effect to the parties' mutual intention at the time of contracting, which we infer solely from the written provisions of the contract. (*Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co.* (1993) 5 Cal.4th 854, 867 (*Bay Cities*)). Contractual language is to be interpreted in its " " "ordinary and popular sense" " " in a manner that is reasonable in the context of the instrument as a whole. (*Ibid.*) As for O.G.'s attack on the sufficiency of the evidence, "[t]he substantial evidence standard has two components, and both work generally against appellants: First, all *conflicts* in the evidence must be resolved in favor of the prevailing party; second, all *reasonable inferences* from the evidence (all conflicts already having been properly resolved) must be drawn in favor of the prevailing party." (*Le v. Pham* (2010) 180 Cal.App.4th 1201, 1205-1206.) Thus, "[o]n review for substantial evidence, we examine the evidence in the light most favorable to the prevailing party and give that party the benefit of every *reasonable inference*." (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1151, italics added.)

We begin with the trial court's order, which offers a cogent account of the reasoning and evidence underpinning the court's finding that O.G. violated the confidentiality clause. The court observed in its order that the Settlement Agreement expressly required O.G. and M.G. to keep confidential "any and all information and facts related to the asserted claims and events underlying this Agreement," including "[O.G.'s] allegations that [M.G.] committed domestic violence on her." Turning to the offending

exchange on the Howard Stern Show, the court wrote: “The Court agrees with [M.G.] that this interview as a whole is a representation by [O.G.] that [M.G.] committed domestic violence against her. While [O.G.] did not make the explicit statement that [M.G.] committed domestic violence against her, when asked about what she’s ‘been through with [M.G.],’ she talked about ‘the experience’ that was ‘dark’ and ‘painful,’ and as a result of the ‘experience that [she] went through,’ she is ‘ready to help’ by ‘open[ing] domestic violence charities.’ ” “This exchange,” the court concluded, “clearly implies that [O.G.] suffered domestic violence at the hands of [M.G.]”

On appeal, O.G. contends the court improperly found she breached the Settlement Agreement by drawing an “inference” about the subject of her statements from the “ ‘interview *as a whole.*’ ” She argues the confidentiality clause did not limit her right “to speak out as a domestic violence survivor or to allow other people to refer to events that happened in her past.” Thus, O.G. maintains her responses to Stern’s statements, which, in her view, indicated only that “she was a victim of *unspecified* domestic abuse” (italics added), could not have constituted a breach. We disagree.

While it is true that the confidentiality clause did not require O.G. to police what other people might say about her past relationship with M.G., it expressly restricted *her* capacity to make statements “*related to*” her domestic violence claims against him. (Italics added.) As our Supreme Court observed in *Bay Cities*, “ ‘Related’ is a commonly used word with a broad meaning that encompasses a myriad of relationships.” (*Bay Cities, supra*, 5 Cal.4th at p. 868.) And, given its popular meaning, contracting parties may choose to use the word “for that very reason—its breadth—to achieve a broad purpose.” (*Ibid.*) Here, the Settlement Agreement’s express purpose, as stated in its recitals, was “to resolve all pending issues, claims and/or potential claims arising out of the events underlying [O.G.’s] asserted battery, defamation, and other nonspecific claims [against M.G.]” Construing the “related to” language according to its popular meaning and in the context of the larger instrument’s purpose, it is reasonable to infer that the parties intended the confidentiality clause to encompass not only express statements about O.G.’s domestic violence claims against M.G., but also implicit assertions about

those claims made through reference to what others might say.<sup>4</sup> Thus, even accepting O.G.’s premise that she was not required to control what others would say, nor prohibited from speaking about domestic violence generally, it still follows from the language of the confidentiality clause that she could not insinuate M.G. committed domestic violence on her by piggybacking on Stern’s comments about what she had “been through with [M.G.]”

Given the proper interpretation of the confidentiality clause, the court’s breach of contract finding was plainly supported by substantial evidence. As recounted in the trial court’s order, when Stern referred to what O.G. had “been through with [M.G.]” O.G. responded by talking about the “experience that I went through,” which was “painful” and compelled her to “help others” by opening a “domestic violence charity.” The court found this exchange, taken in context with the “interview as a whole,” “clearly implie[d] that [O.G.] suffered domestic violence at the hands of [M.G.]” This was a reasonable inference to draw from the evidence. We find no error.

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<sup>4</sup> O.G. attempts to add a constitutional dimension to her argument by asserting a broad construction of the confidentiality clause would infringe on her “First Amendment right to comment on issues of public concern, including issues related to domestic violence in general and her empathy with victims of abuse.” The argument has no merit. To begin, constitutional protections apply to *state action*, not private agreements between individuals. Unlike the Parentage Judgment, the Settlement Agreement, which contains the confidentiality clause, was not a product of state action formed under the court’s jurisdiction. Rather, it was formed as a private out-of-court agreement to settle a pending court action. The First Amendment is not implicated. (Cf. *City of Glendale v. George* (1989) 208 Cal.App.3d 1394, 1397 [observing, a consent judgment that restricts a parties’ right to free speech may be attacked as void on constitutional grounds “on the theory that such a judgment exceeds the court’s jurisdiction”].) In any event, as discussed, the confidentiality clause does not prohibit O.G. from speaking about domestic violence *in general*. It does, however, restrict her ability to speak about domestic violence in a way that clearly implies M.G. committed domestic violence on her. O.G.’s First Amendment rights notwithstanding, this interpretation is consistent with the ordinary and accepted meaning of the “related to” phrase. (See *Bay Cities, supra*, 5 Cal.4th at p. 868; see also *Sanchez v. Cty. of San Bernardino* (2009) 176 Cal.App.4th 516, 528 [observing, “ [I]t is possible to waive even First Amendment free speech rights by contract’ ”].)

### 3. *The Court Did Not Abuse Its Discretion by Ordering Sanctions*

Lastly, O.G. challenges the \$13,530 sanction award. The court imposed sanctions for the attorney fees and costs related to O.G.'s deposition, which she failed to attend, and the work performed by attorneys M.G. retained in New York to secure a custodian of records declaration authenticating a recording of the Howard Stern Show interview. The court's order was supported by the evidence; we find no abuse of discretion.

Family Code section 271 authorizes the family court to award sanctions for "attorney's fees and costs on the extent to which the conduct of [a] party or attorney . . . frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys." (Fam. Code, § 271, subd. (a).) "Sanctions under section 271 are appropriate whenever a party's dilatory and uncooperative conduct has frustrated the policy of promoting settlement of litigation and cooperation among litigants." (*In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1317.) There is no prerequisite that a party suffer actual injury, and "the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award." (Fam. Code, § 271, subd. (a); *In re Marriage of Tharp*, at p. 1317.)

We review a trial court's decision to award sanctions under Family Code section 271 for an abuse of discretion. (*In re Marriage of Tharp, supra*, 188 Cal.App.4th at p. 1316.) "As long as the court exercised its discretion along legal lines, its decision will be affirmed on appeal if there is substantial evidence to support it." (*In re Marriage of Duncan* (2001) 90 Cal.App.4th 617, 625.) We will overturn the order only if, "considering all of the evidence viewed most favorably in its support and indulging all reasonable inferences in its favor, no judge could reasonably make the order." (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1225-1226.)

As the trial court recounted in its order awarding sanctions, at a prior hearing concerning O.G.'s objections to M.G.'s evidence, the court gave O.G. a deadline to advise M.G. as to whether she would stipulate to the authenticity of a recording and partial transcript of the Howard Stern Show interview. The court made the order in an

attempt to promote cooperation among the litigants, as encouraged by Family Code section 271, based on the reasonable assumption that O.G. would know whether the recording and transcript accurately represented an interview in which she had participated. O.G. refused to stipulate by the appointed deadline, forcing M.G. to retain attorneys in New York, where the Howard Stern Show is produced, to obtain a custodian of records declaration and certified copy of the interview recording. M.G. also noticed O.G.'s deposition to confirm she no longer disputed the authenticity of this evidence. M.G. continued the date of the deposition at O.G.'s request; however, on the morning the rescheduled deposition was to take place, O.G.'s attorneys called to advise M.G.'s counsel that O.G. was sick and would not attend. O.G.'s attorneys nevertheless appeared at the deposition, where they advised M.G. for the first time that O.G. would not stipulate to the authenticity of a partial transcript of the interview. To resolve the issue, the attorneys agreed to have the recording of the interview played before the deposition reporter so the reporter could prepare a full transcript. Based on this record, the trial court found O.G.'s conduct caused M.G. to incur \$13,500 in "unnecessary fees and costs" related to O.G.'s deposition and the work performed by the attorneys in New York.

O.G. argues the sanction award was unwarranted because, on the evening prior to her rescheduled deposition, her attorneys purportedly emailed M.G.'s attorneys with a stipulation to authenticate the interview recording. The only support O.G. cites for the claim is argument by counsel at the sanctions hearing; she does not cite the email exchange itself, which she apparently neglected to include with her opposition to the sanctions petition. In any event, even if counsel's argument were *evidence* that could compel the trial court to deny M.G.'s petition, and it is not, the supposed fact that O.G.'s counsel sent such a message does nothing to undermine the court's rationale for awarding sanctions. For one, as the court observed at the hearing when O.G.'s counsel raised the issue, by the time the purported email was sent, M.G. had already been forced to incur fees and costs for the work performed by New York attorneys to secure a custodian of records declaration authenticating the interview recording. Moreover, with regard to the supposed stipulation, as the court noted in its order, on the date of the rescheduled

deposition, O.G.'s counsel *refused* to stipulate to the partial transcript, thus forcing the parties to go forward with the deposition so the reporter could listen to the full recording and transcribe it. The court awarded a sanction amount directly attributable to the fees and costs incurred for these two tasks. This was not an abuse of discretion.

### **DISPOSITION**

The order discharging M.G.'s obligation to pay further amounts under the Settlement Agreement is affirmed. The order awarding M.G. sanctions is also affirmed. M.G. is entitled to his costs for this appeal.

### **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

HOGUE, J.\*

We concur:

EDMON, P. J.

ALDRICH, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.