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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

CATHERINE YOUSSEFYEH,

Appellant,

v.

HOOTAN MELAMED,

Respondent.

B269371

Los Angeles County
Super. Ct. No. BD608949

APPEAL from an order of the Superior Court of
Los Angeles County, Robert E. Willett, Judge. Affirmed.

Benedon & Serlin, Douglas G. Benedon and
Judith E. Posner for Appellant.

Trope & DeCarolis, Patrick DeCarolis, Jr., and
Clarissa Lopez for Respondent.

INTRODUCTION

In this marital dissolution proceeding, Catherine Youssefyeh (wife) appeals from an order imposing monetary sanctions against her after she unilaterally withdrew more than \$7.1 million from the parties' joint bank accounts. Wife contends she did not receive notice and an opportunity to be heard before the trial court imposed the sanctions. In the alternative, she contends that her actions did not frustrate the promotion of settlement or reduction of the parties' litigation costs. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 29, 2014, wife filed a petition to dissolve her marriage to Hootan Melamed (husband). The court issued a summons which, as required by Family Code section 2040, subdivision (a)(2),¹ enjoined the parties from, among other things, “transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life.” (See § 2040, subd. (a)(2); Cal. Rules of Court, rule 5.50(b) [clerk must issue summons that includes automatic temporary restraining orders].)² Almost a year later, on September 14, 2015, husband obtained a domestic violence restraining order protecting him from wife, with the restraining order set to expire on August 27,

¹ All undesignated statutory references are to the Family Code.

² We refer to the automatic temporary restraining order in the summons as the ATRO. The ATRO is in effect until the final judgment is entered, the petition is dismissed, or until further order of the court. (See § 233, subd. (a).)

2020. (DVRO) The DVRO contained a property restraint order prohibiting wife from transferring or hiding any property.

On September 16, 2015, wife closed husband's email account for his business, New Age Pharmaceuticals (NAP). In response, husband notified wife that he would file an ex parte application to be heard on September 21, 2015 to allow him access to this email account. The hearing was continued to September 22, 2015 to allow the parties additional time to discuss settlement. Instead of settling the matter, however, wife gave ex parte notice that she would request an order giving her control of NAP and exclusive access to husband's email account. The court denied both parties' requests on September 22, 2015.

Notwithstanding the ATRO and DVRO, on September 25, 2015, without notice to or consent by husband or the court, wife withdrew the following sums from the parties' joint bank accounts: \$125,802 from East West Bank; \$75,109 from City National Bank; and \$6,904,083 from Wells Fargo Bank. Husband discovered wife's actions when he happened to check the parties' bank accounts and saw they had zero balances. Wife admitted taking these monies but explained she did so because she was afraid husband would soon leave her with no funds to pay for her and the children's living expenses.

Shortly after discovering wife's unauthorized bank withdrawals, at 2:00 p.m. on September 25, 2015, husband gave ex parte notice that on September 29, 2015 he would request an order requiring wife to deposit all of the monies taken by her on September 25, 2015 into a blocked account; the blocked account would require the signature of both parties or a court order for any withdrawal. Husband also asked the court to "reserve the issue of sanctions against [wife] for [her] conduct in this matter

pursuant to Family Code § 271.” Husband explained that wife’s actions violated the ATRO and DVRO, and wife should not be allowed to “thumb her nose at the Court.” After receiving husband’s ex parte notice, wife gave ex parte notice for the same day, September 29, 2015. In her request, wife stated, among other things, that after a hearing she would request an award of sanctions under section 271 due to husband’s conduct in usurping NAP’s domain name, thereby interfering with NAP’s ongoing business.

At the hearing on September 29, 2015, husband and wife filed responsive declarations to each other’s requests for orders. In particular, wife stated she did not consent to the orders requested by husband, including his request that the court reserve the issue of sanctions under section 271. Husband also did not consent to the orders sought by wife, including her competing request for sanctions under section 271. Instead, husband sought sanctions under section 271 in the “minimum amount” of \$8,922.50 for wife’s withdrawal of more than seven million dollars from the parties’ bank accounts. At the conclusion of the hearing on September 29, 2015, the court ordered the placement of the funds withdrawn by wife on September 25, 2015 into a new blocked bank account; the court’s order was effective “forthwith.”³ As for the other relief requested by the parties in their ex parte papers, the court instructed the parties to file noticed motions to be heard on November 3, 2015.

The parties complied with the court’s instruction and filed their ex parte requests as noticed requests for orders to be heard on November 3, 2015. On October 21, 2015, wife filed a

³ Wife, however, waited until October 13, 2015 to comply with the court’s order.

responsive declaration in which she stated that she did not consent to husband's request. On the same day, husband filed a supplemental responsive declaration where he reiterated his request for sanctions against wife under section 271 for withdrawing monies from the parties' bank accounts.

On October 27, 2015, wife filed a reply declaration opposing the relief requested by husband in his "moving papers filed on September 29, 2015." Also on October 27, 2015, husband filed reply papers in further support of his request for an order regarding the misappropriation of funds by wife. In his reply declaration, husband now requested a minimum of \$50,000 in sanctions for the attorney's fees and costs incurred by him as a result of wife's "efforts to loot the community accounts." All of the parties' responsive and supplemental papers reflected a hearing date of November 3, 2015.

The court conducted a hearing on November 3, 2015. Both parties were represented by counsel during this proceeding, and wife was present in the courtroom with her lawyer. At the beginning of the hearing, husband's lawyer asked the court to continue the hearing because his client was at the pediatrician with the parties' children. The court responded that it would consider the request to continue the hearing after it stated its tentative ruling. Relevant here, the court stated the following: "As for attorney's fees and 271 sanctions requests by each of the parties, the court concludes on the evidence that [wife], aware of the ATRO[] and the DVRO and acting in self-help began this flurry of litigation by removing without notice the 7.1 million dollars from joint or community accounts." The court noted that wife's actions unnecessarily increased the costs of the litigation and frustrated the policy of the law to promote settlement, and

then tentatively ordered wife to pay husband \$50,000 within 15 days. As for wife's competing request for sanctions, the court tentatively denied it because she alleged breaches of the parties' fiduciary duties that could only be resolved after trial.

After the court made its tentative ruling, the court asked wife whether she opposed husband's request for a continuance. Wife opposed the request and did not ask for her own continuance to address the court's tentative ruling. Although wife argued that sanctions should not be imposed against her because the \$7.1 million could be traced and husband had also previously withdrawn monies from the parties' bank accounts, she never argued that she was not provided with sufficient notice of husband's request for sanctions. Toward the end of the hearing, wife asked for, and received, additional time to pay the sanctions. At the end of the hearing, the court ordered husband's counsel to prepare the order after hearing.

On December 18, 2015, the court entered a written order requiring wife to pay husband \$50,000 under section 271 within 45 days. The court stated that wife, "aware of the [ATRO] and the [DVRO] and acting in self-help began this flurry of litigation by removing without notice the \$7.1 million from joint or community accounts. When this unilateral conduct was discovered, [husband] reacted. [Wife] filed her Request for Order on September 29, 2015 related to this conduct as a defensive measure." Wife timely appeals from the written order.

DISCUSSION

Section 271 authorizes the trial court to award attorney's fees and costs "on the extent to which the conduct of each party or attorney furthers or 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. An award of attorney’s fees and costs pursuant to this section is in the nature of a sanction.” (§ 271, subd. (a).) Under section 271, litigants who flout the policy to promote cooperation and settlement by engaging in conduct that increases litigation costs are subject to imposition of attorney’s fees and costs. (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1225 (*Corona*)). We review an order under section 271 for abuse of discretion, reversing it “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.” (*Corona, supra*, 172 Cal.App.4th at pp. 1225-1226; see *In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1478 (*Feldman*)).

On appeal, wife contends that section 271 sanctions were imposed against her without sufficient notice or an opportunity to be heard. Although she acknowledges that husband sought section 271 sanctions in his September 29, 2015 ex parte papers, and in declarations filed on October 21 and October 27, 2015, she complains that husband never filed a noticed motion, the court never issued an order to show cause, and the court previously indicated that it would only address the parties’ business disputes on November 3, 2015.

Where, as here, a party claims that the notice actually given with respect to a particular issue she knows will be decided was insufficient or defective, that claim is subject to waiver. If the party appears for the hearing and argues the merits of the issue, rather than registering any objection to the defective notice, the defect is waived. (*Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697.) As explained in *De Luca v. Board of Supervisors* (1955) 134 Cal.App.2d 606, 609, the “general rule is

that one who has been notified to attend a certain proceeding and does do so, cannot be heard to complain of alleged insufficiency of the notice; it has in such instance served its purpose. This rule applies to one who appears in a lawsuit after defective service of process upon him [citation], [and] to one who responds to a notice of motion without adequate notice [citation].”

That is what occurred here. Even assuming husband’s notice was defective because his request for sanctions was not made in a noticed motion or in an order to show cause, the record establishes wife had been given notice that monetary sanctions were being sought against her at the hearing scheduled for November 3, 2015, and had been apprised of both the factual and statutory basis for that requested award by husband’s papers. In fact, wife appeared at the hearing and argued against the imposition of sanctions. If she registered any objection to the sufficiency of the notice, or claimed surprise that section 271 was being considered as the basis for imposing the sanctions she knew had been requested, it is not reflected in the appellate record. In sum, we conclude wife waived her right to challenge the adequacy of the notice provided by husband. (See *Amato v. Mercury Casualty Co.* (1993) 18 Cal.App.4th 1784, 1794 [“It must appear from the record that the issue argued on appeal was raised in the trial court. If not, the issue is waived.”].)

In any event, if we were to consider the merits of wife’s argument, we would conclude notice was sufficient here. Section 271 does not specify the form of notice, nor the amount of notice that must be provided. As *Feldman, supra*, 153 Cal.App.4th at p. 1495 expressly states, “the only procedural requirement in the statute is that an award of attorney fees and costs as a sanction may be imposed ‘only after notice to the party

against whom the sanction is proposed to be imposed and opportunity for that party to be heard.’” (See also § 271, subd. (b).) Husband’s notice plainly met that standard. As noted *ante*, husband’s September 29, 2015 request for order sought sanctions under section 271 in the “minimum amount” of \$8,922.50 for attorney’s fees incurred as a result of wife’s withdrawal of more than seven million dollars from the parties’ bank accounts, and his request was scheduled for a hearing on November 3, 2015. Further, on October 21, 2015, husband filed a supplemental responsive declaration in which he reiterated his affirmative request for sanctions against wife under section 271. On October 27, 2015, wife filed a reply declaration opposing the relief requested by husband in his “moving papers filed on September 29, 2015,” which shows her awareness of the relief requested by husband. And in his October 27, 2015 reply declaration, husband requested a minimum of \$50,000 in sanctions for the attorney’s fees and costs he had incurred to date as a result of wife’s “efforts to loot the community accounts.” All of the parties’ responsive and supplemental papers reflected a hearing date of November 3, 2015.

The parties’ competing requests then came on for hearing on November 3, 2015, at which hearing wife was afforded an opportunity to be heard. In light of this procedural history and the scope of the November 3, 2015 hearing, the due process requirements of section 271 were satisfied. (See *In re Marriage of Quinlan* (1989) 209 Cal.App.3d 1417, 1422 [“[t]he adequacy of notice . . . should not depend upon an arbitrary number of days’ notice but ‘should be determined on a case-by-case basis to satisfy basic due process requirements’ ”].)

Finally, we reject wife’s contention that her actions did not frustrate the promotion of settlement or the reduction of litigation costs. The evidence showed that on a single day, without notice, wife withdrew more than seven million dollars from the parties’ joint bank accounts. To be sure, wife asserted that she did so because she was afraid husband would leave her with no funds to pay for her and the children’s *daily* living expenses. Even giving her every benefit of the doubt, however, the court found that wife’s “self-help began this flurry of litigation”, and her actions violated the ATRO and DVRO. We defer to the court’s assessment of wife’s credibility and the other evidence before it. (See, e.g., *In re Marriage of Scherr* (1986) 177 Cal.App.3d 314, 320 [appellate court must “defer to the trial court’s assessment of the witnesses and resolve any factual conflict in support of the court’s findings”].) Moreover, on appeal, wife concedes that her actions on September 29, 2015 caused husband to incur litigation costs and that those costs were “not insignificant.” We accept wife’s concession, and after considering all of the evidence viewed most favorably in support of the court’s order (*ibid.*), we find no abuse of discretion.

DISPOSITION

The order is affirmed. Husband shall recover his costs on appeal.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

BACHNER, J.*

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