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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re PATRICE LIBAW TRUST  
DATED MAY 24, 1976.

B271815

(Los Angeles County  
Super. Ct. No. BP163290)

PATRICE LIBAW  
NIKOPOULOS,

Petitioner and Appellant,

v.

EVAN J. LIBAW et al.,

Objectors and  
Respondents.

APPEAL from an order of the Superior Court of Los Angeles County, Maria E. Stratton, Judge. Dismissed.

HamptonHolley, George L. Hampton IV, Colin C. Holley, and Kareen Sassounian for Petitioner and Appellant.

Sacks, Glazier, Franklin & Lodise, Robert N. Sacks and Katherine McKeon for Objectors and Respondents.

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Patrice Libaw Nikopoulos appeals from the probate court's order granting Evan and Shawn Libaw's motion for sanctions under Code of Civil Procedure section 128.7.<sup>1</sup> Because we are without jurisdiction to hear the appeal, we dismiss.

### **BACKGROUND**

Jack and Frances Libaw had three children: Patrice, Evan, and Shawn.<sup>2</sup> In 1976, Patrice created the Patrice Libaw Trust (the Trust) and named her brothers trustees.

In 1995, the Libaw family hired Munger, Tolles & Olson (MTO) to provide estate planning services. As part of the representation, MTO advised Evan and Shawn in their roles as trustees of various of the family's trusts, including the Trust.

In January 2008, Patrice filed a petition in the probate court alleging her brothers had, among other things, breached their fiduciary duties to her. The case settled in March 2012.

On April 9, 2012, the brothers sued MTO, alleging the law firm's acts and omissions led to Patrice's probate court petition. Evan and Shawn filed the lawsuit as individuals and in their capacities as the Trust's former trustees. The brothers settled their lawsuit against MTO in May 2014.

In June 2015, Patrice filed a probate court petition against her brothers to recover money they received from MTO in the

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<sup>1</sup> Statutory references are to the Code of Civil Procedure unless otherwise noted.

<sup>2</sup> We use first names for ease of reading and to avoid confusion, not out of disrespect. (*In re Marriage of Melissa* (2012) 212 Cal.App.4th 598, 600, fn. 1.)

settlement, alleging that because they filed the suit in their capacities as the Trust's former trustees, any money they recouped in that capacity belonged to the Trust. Evan and Shawn demurred and filed a section 128.7 motion for sanctions against Patrice and her counsel. The court overruled the demurrer, but Patrice later dismissed her petition. After she dismissed, the court granted the brothers' motion for sanctions, but only as against Patrice's attorneys. Patrice appealed.

After the appeal was filed, we invited supplemental briefing on whether this court had jurisdiction over the appeal. (Gov. Code, § 68081; cf. *Walton v. City of Red Bluff* (1991) 2 Cal.App.4th 117, 129.) Both sides responded by filing supplemental briefs.

### DISCUSSION

“An appeal . . . may be taken from . . . [¶] . . . [¶] . . . an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars . . .” (§ 904.1, subd. (a)(12).) The right to appeal, however, belongs to the sanctioned party. (*Calhoun v. Vallejo City Unified School Dist.* (1993) 20 Cal.App.4th 39, 42 (*Calhoun*); see *Estrada v. RPS, Inc.* (2005) 125 Cal.App.4th 976, 985 [“a party cannot assert error that injuriously affected only nonappealing coparties”].)

Although the brothers' section 128.7 motion sought sanctions against both Patrice and her attorneys, the court awarded sanctions against only the attorneys. Only Patrice appealed. Because we are “duty-bound” to consider our jurisdiction on our own motion, *Olson v. Cory* (1983) 35 Cal.3d 390, 398, the threshold question is whether the notice of appeal vested this court with jurisdiction.

If sanctions are awarded against both a client and attorney, the Court of Appeal *may* liberally construe the client’s notice of appeal to include the attorney. (See *Eichenbaum v. Alon* (2003) 106 Cal.App.4th 967, 974; *Cromwell v. Cummings* (1998) 65 Cal.App.4th Supp. 10, 15; see also *Moyal v. Lanphear* (1989) 208 Cal.App.3d 491, 497 [notice of appeal sufficient where attorney included himself as an additional appellant in the notice of appeal rather than filing a separate notice of appeal]; but see *Taylor v. Varga* (1995) 37 Cal.App.4th 750, 761, fn. 12 [Court of Appeal had no jurisdiction to review portion of sanction order applicable to attorney where attorney did not file a separate notice of appeal]; & *Laborde v. Aronson* (2001) 92 Cal.App.4th 459, 465 [same], disapproved on another ground in *Musaelian v. Adams* (2009) 45 Cal.4th 512, 520.)

When sanctions are awarded against only the attorney, however, a client’s notice of appeal is insufficient to vest jurisdiction in the appellate court. (*Calhoun, supra*, 20 Cal.App.4th at p. 42.) “The client does not have standing to appeal an order assessing monetary sanctions against counsel alone.” (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2016) ¶ 2:272.1, p. 2-171.)

Patrice’s counsel asks us to extend *Kane v. Hurley* (1994) 30 Cal.App.4th 859, 861, footnote 4, and liberally construe Patrice’s notice of appeal to include counsel. In *Kane*, the notice of appeal was filed “on behalf of” counsel. (*Ibid.*) The notice of appeal here was not. *Kane* is factually distinguishable, and we decline to extend it to apply to these facts.

Absent a notice of appeal by Patrice's attorneys, we are without jurisdiction to hear the appeal. (*Calhoun, supra*, 20 Cal.App.4th at p. 42.)<sup>3</sup>

**DISPOSITION**

The appeal is dismissed. Respondents are awarded their costs on appeal.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.

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<sup>3</sup>Because the jurisdictional issue is dispositive, we do not address the merits of the appeal.