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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Nevada)

In re the Marriage of PAULA F. and
TERRY L. FERGUSON.

C066858

(Super. Ct. No. FL03970)

PAULA F. FERGUSON,

Respondent,

v.

TERRY L. FERGUSON,

Appellant;

NEVADA COUNTY DEPARTMENT OF CHILD
SUPPORT SERVICES,

Respondent.

Terry L. Ferguson (Father) appeals from court orders sanctioning him \$2,500 pursuant to Family Code section 271,¹ compelling him to open an interest-bearing, secured child support account pursuant to sections 4560, 4561, and 4562, and

¹ Undesignated statutory references are to the Family Code.

ordering him to comply with the court's prior order to pay one-half of his children's unreimbursed medical expenses. Finding none of Father's claims to have merit, we shall affirm the trial court's orders.

FACTUAL BACKGROUND

Paula F. Ferguson (Mother) and Father were married in 1994 and separated in 2005. Together they have four minor children. In June 2007, Mother filed an amended petition to dissolve their marriage. Following eight days of trial in March, April, and May 2009, a judgment on reserved issues was entered on September 17, 2009 (the 2009 Judgment on Reserved Issues).

Included in the 2009 Judgment on Reserved Issues was an order that Father pay to Mother child support totaling \$1,552 per month beginning June 1, 2009. Father also was ordered to pay half of all reasonable, unreimbursed healthcare expenses for the children, as well as half of all job-related child care expenses as additional child support. Judicial Council form FL-192, entitled "Notice of Rights and Responsibilities—Health-Care Costs and Reimbursement Procedures," was attached to the 2009 Judgment on Reserved Issues.

The 2009 Judgment on Reserved Issues also included a 29-page attachment addressing several related issues, set forth in relevant part, as follows:

"41. [Father's] payment of timely child support has been an issue in this case [P]ursuant to Family Code Section 4560 [Father] shall make a child support security deposit in the

sum of \$18,624.00 which represents one year of child support under the current order. This interest-bearing account shall be established and set up at a state or federally chartered and insured financial institution, in accordance with Family Code Sections 4561-4567.

"42. The deposit account is to be used exclusively to guarantee the payment of child support and does not relieve [Father] of his monthly obligation to timely pay child support as ordered. Evidence of the deposit shall be filed with the Court Clerk within 30 days of entry of [j]udgment pursuant to Family Code Section 4562 and so as to afford [Father] notice and opportunity to be heard as required by Family Code Section 4565. The Court findings and order regarding the distribution of joint funds held in trust has been made to account for the above order.

"43. As and for additional child support the parties shall equally pay one[-]half of all reasonable and necessary uninsured health care costs incurred for the children including medical, dental, orthodontic and vision. When seeking reimbursement from the other parent the parties shall follow the procedures outlined in Family Code Section 4063 and contained in the notice of rights and responsibilities, attached to this [j]udgment."

In dividing up the community estate, Father and Mother sold real property. The money derived from those sales was held in trust by Mother's attorney, Joseph Bell.

In August 2009, the trial court ordered Father to contact the children's orthodontist directly and arrange a payment schedule for orthodontic work recommended for the parties' oldest son.

In October 2009, Father filed a motion regarding the funds contained in Attorney Bell's trust account. Father also asked for sanctions against Bell and Mother. The matter was set for a long cause hearing on October 27, 2009.

On October 27, 2009, Father appeared in propria persona at the hearing on his motion; Mother appeared with Attorney Bell. The Sierra Nevada Regional Department of Child Support Services (DCSS) also appeared in order to address questions regarding child support payments received and the amount of child support arrearages. The child support issues were resolved; the remaining issues were continued to a later hearing in November 2009, then again to December 2009, and finally to January 19, 2010, when the matters were finally submitted.

On January 19, 2010, after the long cause hearing on Father's motion concluded, Father made a statement to the court "regarding the trust account he opened with three years of child support as ordered by the Court's ruling. No money has been transferred. He requests transfer to occur." Then there was a discussion off the record among the parties, the court, and counsel. The trial court then stated for the record that, "if there is an issue regarding the child support security deposit

and it is not resolved, [the] parties can bring the matter back before the Court.”

The parties appeared before the court again in February 2010 to discuss custody and visitation issues. Father was ordered, again, to contact the children’s orthodontist “forthwith” to pay his share of the bill for the oldest child’s orthodontia. The hearing was continued to March 3, 2010, when Father agreed to pay his share of the child’s orthodontia bill no later than 5:00 p.m. on March 5, 2010.

A written decision resolving the matters submitted on January 19, 2010, was entered on April 13, 2010. Included in that decision was an order compelling Father to pay to Mother \$22,500 in attorney fees and costs. A portion of those fees (\$4,000) was “need-based” under sections 2030 and 2032, but the greater portion (\$18,500) was imposed as a sanction pursuant to section 271. Two days later, Father filed a motion to set aside the court’s decision.²

In support of his motion to set aside the court’s decision, Father alleged that Mother committed fraud and perjury during the hearing. Father asked the court to set aside the support order and “any judgment yet to be made to [Mother] for [f]ees

² In his motion, Father asks the court to set aside a March 13, 2010 support order. The record does not contain any order filed on March 13, 2010, or any information regarding a hearing held on that date. It is apparent to us that he intended to set aside the court’s decision filed on April 13, 2010.

and sanctions since the information provided is perjured, and fraud has been attempted by [Mother]."

In response to Father's motion, Mother denied committing perjury or fraud. Mother advised the court that Father still had not paid his half of the children's orthodontia bill. Mother also advised the court that the orthodontist would stop treating their oldest son, and would not resume treatment until Father paid his share of the bill. Thus, Mother asked the court to order the orthodontist's fees to "be paid out of the child support guarantee money held in [Attorney Bell's] trust account and that [Father] repay the account." Mother also noted that Father now owed her more than \$1,000 in child support arrearages.

The court heard Father's motion on May 12, 2010. Counsel for DCSS was present along with Father and Mother. The court found no proof to support Father's claims of perjury and fraud. Accordingly, the court denied Father's request to set aside the support order.

A formal judgment on reserved (and bifurcated) issues submitted on January 19, 2010, was then entered on May 14, 2010 (the 2010 Judgment on Reserved Issues). Included in that judgment, along with orders regarding division of the community estate, was confirmation of the court's prior order compelling Father to pay \$22,500 to Mother as attorney fees and costs. The 2010 Judgment on Reserved Issues, drafted by Attorney Bell, included a provision whereby the fees would be paid from the

funds held in trust by Bell. The 2010 Judgment on Reserved Issues further provided that the court would "reserve[] jurisdiction to make further and enforcement orders to the extent that [Father] does not pay or if there are insufficient funds held for [Father] to satisfy these orders."

Mother then filed a motion "to collect monies owed"; that motion is not included in the record on appeal. Mother's motion was heard on October 27, 2010. Father appeared at the hearing without counsel and objected to Commissioner Thomsen presiding over the hearing. Commissioner Thomsen reviewed a stipulation entered into by the parties in January 2008, wherein they agreed Commissioner Thomsen would be assigned to their case "for all purposes." On the basis of that stipulation, the court overruled Father's objection. The matter proceeded and the parties discussed, among other things, amounts owed by Father for reimbursement of medical expenses, child support arrearages, and orthodontia.

The trial court found that Father had child support arrearages totaling \$1,377.06. The court ruled that amount could be paid from money held in trust by Attorney Bell. The court also found Father owed mother \$2,774 in reimbursements for their oldest son's orthodontia, plus another \$179.56 in medical reimbursements. The court ruled these too could be paid from the money held in trust by Bell. The court denied without prejudice Mother's request that Father pay half of the orthodontic expenses for two of their other children, finding

there was no evidence the orthodontia was necessary for the children's health and welfare.

The court further ordered Father to provide proof to Attorney Bell by November 5, 2010, that the Citizen's Bank account Father claimed he opened for the child support account was actually open. If Bell did not receive confirmation from Father by November 5, 2010, he was to file an objection with the court.

On November 5, 2010, Attorney Bell filed an ex parte request for an order shortening time to file an order to show cause to modify the prior 2009 Judgment on Reserved Issues. Specifically, Bell wanted the court to "make orders as necessary to end [Bell's] responsibility to hold funds in trust which [he had] no means or method to disburse" Bell further suggested "the court . . . specifically order [father] to open a blocked account, designated as the Ferguson Child Support Security Account, at Citizens Bank" Bell also requested, on Mother's behalf, that the amount of the child support security deposit "be reduced by the amount of unpaid fees and sanctions due her from [Father] (\$3,846.10, plus interest) and the further fees and sanctions requested on the pending Application."

In support of his request to modify the 2009 Judgment on Reserved Issues, Attorney Bell noted that when the court ordered Father to open an interest-bearing child support account and deposit \$18,624 from the funds held in trust by Bell into that

security account, there were insufficient funds in Bell's trust account to comply with that order. The funds held in trust by Bell were further reduced by subsequent court orders for payment of delinquent child support and other payments.

Attorney Bell also claimed that Father "never provided any written or other notice received by [Bell] of any blocked account being opened or even that [Father] had made an attempt to open such an account." Father also told Bell in October 2010 that he was retaining an attorney to file a Chapter 7 bankruptcy. Bell was thus concerned that the money he held in trust would not be protected from the bankruptcy proceeding. Accordingly, he believed the matter of moving those funds into a blocked account in order to preserve them for child support was urgent.

Mother submitted her own declaration in support of Attorney Bell's motion. In her declaration, Mother stated that she never received notice from Father that he had established the court-ordered child support account. What she did receive was an e-mail message from Father indicating that the account "'opened with Citizens Bank was closed in March, 2010.'"

The parties appeared before Commissioner Thomsen on November 24, 2010. Father again objected to Commissioner Thomsen presiding over the hearing; Commissioner Thomsen again overruled the objection based on the parties' prior stipulation assigning Commissioner Thomsen to their case "for all purposes." The court took judicial notice of the 2009 Judgment on Reserved

Issues and the November 8, 2010 findings and order after hearing. The court then found Father failed to establish a child support security account by November 5, 2010, as previously ordered by the court.

The court executed Judicial Council form FL-400, requiring Father to establish a blocked account at Citizens Bank in Nevada City for use as a blocked child support account. Father was ordered to provide evidence of the blocked account, in writing, to both DCSS and Attorney Bell by November 29, 2010. Bell was then ordered to deposit the remaining balance of funds in his trust account, a total of \$13,211.10, into the blocked child support security account by December 3, 2010.

The court denied Mother's request for need-based attorney fees, finding Father lacked the ability to pay those fees. The court did, however, find sanctions were warranted under section 271 and ordered Father to pay to Mother \$2,500 in sanctions. Father's request that the court impose sanctions against Attorney Bell was denied.

Father filed a notice of appeal on December 3, 2010. In his notice, Father states he is appealing from the minute order of November 24, 2010, and "all orders [and] hearings leading up to [the] hearing of [November 24, 2010]." On January 18, 2011, the findings and order after hearing for the November 24, 2010 hearing was filed by the court.

DISCUSSION

I. Appealable Orders

Father claims to be appealing from "all orders [and] hearings leading up to [the] hearing of [November 24, 2010]." A notice of appeal, however, must be filed on or before 180 days after entry of that order. (Cal. Rules of Court, rule 8.104(a)(3), (c), (e) [as relettered eff. Jan. 1, 2011].) Father's notice of appeal was filed on December 3, 2010. Accordingly, it is timely only as to orders entered on or after June 6, 2010.

The record on appeal reflects only two hearings from which orders were made and entered on or after June 6, 2010: the orders made at the October 27, 2010 hearing (and the formal order after hearing filed on November 8, 2010), and the orders made at the November 24, 2010 hearing (and the formal order after hearing filed on January 18, 2011). Those orders made prior to June 6, 2010, are final and are not subject to challenge on appeal.

II. Adequate Notice

At oral argument, father argued the orders issued by the trial court following the November 24, 2010 hearing should be reversed because he was not provided adequate notice of that hearing. Our review of the record reveals that on November 5, 2010, Attorney Bell contacted father both by telephone and e-mail and advised father that on November 8, 2010, he would be seeking "ex parte orders shortening time for service and

hearing" on mother's order to show cause to modify the 2009 Judgment on Reserved Issues.

Father appeared telephonically at the hearing on November 8, 2010, but because DCSS was not notified of the hearing, it was continued to the following day. Father again appeared telephonically on November 9, 2010; Attorney Bell's request for an order shortening time was granted and the hearing on mother's order to show cause was scheduled for November 24, 2010.

To the extent father is arguing the court erred in granting the ex parte request for an order shortening time because he was not given sufficient notice of the request, the record does not support his claim. The Superior Court of Nevada County, Local Rules, rule 5.01 provides that Attorney Bell was required to give only four hours' notice of the ex parte application for an order shortening time. (Super. Ct., Nevada County, Local Rules, rule 5.01(C)(1).) He actually gave father three days' notice; father was given an additional 24 hours to prepare his opposition when the matter was continued to allow DCSS to respond. Father thus received sufficient notice of the ex parte request for an order shortening time.

Additionally, the record does not contain a reporter's transcript from the hearing on Attorney Bell's request for an order shortening time. Accordingly, we must presume the court made sufficient findings to support its decision. That is, we must presume the court found "emergency circumstances,"

warranting the abbreviated time for service. (Super. Ct., Nevada County, Local Rules, rule 5.01(E).) We also must conclusively presume the evidence submitted by Attorney Bell was sufficient to sustain that finding. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.)

Father then appeared in person at the hearing on November 24, 2010, and asked the court for a continuance; his request was denied. Without a reporter's transcript we do not know why father asked for a continuance. Thus, whether it was because father believed he was not given sufficient notice of the hearing, or something else, we must presume the court made sufficient findings to support its decision. That is, we must presume the court found there was no good cause to continue the hearing. (Super. Ct., Nevada County, Local Rules, rule 5.03(L).) Furthermore, we must conclusively presume the evidence was sufficient to sustain that finding. (*Ehrler v. Ehrler, supra*, 126 Cal.App.3d at p. 154.) On the face of this record we find no error.

III. Medical Expenses

Father contends the court erred in ordering him to pay half of the children's unreimbursed medical expenses. In support of his contention, Father argues that Mother presented him with the relevant medical bills for the first time at the hearing on October 27, 2010. Accordingly, Father contends, Mother failed to comply with section 4063, subdivision (b), which he contends requires Mother to give him notice of the expenses within 30

days of the date they were incurred. Thus, he argues, Mother has waived her right to receive reimbursement. We disagree.

Even if Father was correct that the law required Mother to provide him notice of the medical expenses within 30 days of the date they were incurred, there is no evidence in the record that the bills presented at the October 27, 2010 hearing were not previously presented to him. Accordingly, his contention fails.

Father also contends the trial court should have considered the parties' historical income before ordering him to pay one-half of the children's orthodontic expenses. In support of his claim, Father relies on *In re Marriage of Lusby* (1998) 64 Cal.App.4th 459, wherein the court considered the parties' disparity in income before making an initial order regarding unreimbursed medical expenses. (*Id.* at p. 466.) The order compelling Father to pay one-half of the children's unreimbursed medical expenses was made in the 2009 Judgment on Reserved Issues. Nothing in the record indicates that order was ever modified, that Father ever requested a modification, or that Father presented evidence to the trial court in support of such a modification. Accordingly, the order is now final and cannot be challenged on appeal.

IV. Sanctions

Father also contends the trial court erred in sanctioning him for failing to provide evidence to the court that he opened a blocked child support security account pursuant to the court's order. We disagree.

Generally, the propriety of "[a] sanctions order under section 271 is reviewed for abuse of discretion. ([*In re Marriage of*] *Feldman* [(2007)] 153 Cal.App.4th [1470,] 1478.) Accordingly, we will overturn such an 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. (*Ibid.*; *In re Marriage of Petropoulos* [(2001)] 91 Cal.App.4th [161,] 177-178.) 'We review any findings of fact that formed the basis for the award of sanctions under a substantial evidence standard of review.' (*Feldman*, at p. 1479.)" (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1225-1226.) In assessing whether substantial evidence supports the trial court's order, """"all conflicts must be resolved in favor of the [prevailing party], and all legitimate and reasonable inferences indulged in [order] to uphold the [finding] if possible."""" (*Feldman*, *supra*, 153 Cal.App.4th at p. 1479.)

In 2009, Father was ordered to open an interest-bearing child support security account pursuant to sections 4560, 4561, and 4562. He was further ordered to provide evidence to the court that he had deposited the sum of \$18,624 into that interest-bearing trust account. The court twice more ordered Father to open that same interest-bearing child support account. Nothing in the record indicates Father ever complied with that order and it was only after the third order that the court finally sanctioned Father for his failure to comply. Under the

circumstances, we find the trial court acted well within its discretion.

V. Bias and Misconduct

Father claims Commissioner Thomsen, who presided over this matter by stipulation, was biased against him. He also claims Bell, Mother's attorney, committed misconduct in a variety of ways. Father does not support either of these claims with evidence or legal argument.

It is the burden of the party challenging a judgment to provide an adequate record to assess claims of error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) An appellant must present an analysis of the facts and legal authority on each point made, and must support the analysis with appropriate citations to the material facts in the record. (Cal. Rules of Court, rule 8.204(a)(1)(B).) If an appellant fails to do so, the argument is forfeited. (*County of Solano v. Vallejo Redevelopment Agency* (1999) 75 Cal.App.4th 1262, 1274; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.)

These restrictive rules of appellate procedure apply to Father even though he represents himself on appeal. (*Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121; see also *Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795; *Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639.) Because Father provides no citation to the record or authority, and offers no analysis to support his claims, we will not consider them. (*People v. Freeman* (1994) 8 Cal.4th 450, 482, fn. 2 [a

reviewing court need not discuss claims that are asserted perfunctorily and insufficiently developed]; *People v. Hardy* (1992) 2 Cal.4th 86, 150 [same]; *People v. Galambos* (2002) 104 Cal.App.4th 1147, 1159 [appellate contentions must be supported by analysis].)

VI. Sanctions

In his closing paragraph, Father asks this court to award him costs and issue sanctions against Mother. Again, Father fails to support his request with any citation to the record or legal analysis. We thus will not consider this claim.

DISPOSITION

The orders of the trial court are affirmed. Costs are awarded to Mother. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

BUTZ, J.

We concur:

ROBIE, Acting P. J.

MAURO, J.