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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

In re the Marriage of BILLIE JO and
SCOTT SHUBIN.

BILLIE JO WILLIAMS,

Appellant,

v.

SCOTT SHUBIN,

Respondent.

C067326

(Super. Ct. No.
SDR0029488)

Billie Jo Williams (wife) appeals from a trial court order directing her to pay \$10,000 in attorney fees to Scott Shubin (husband) as sanctions pursuant to Family Code section 271.

Wife contends (1) the sanctions order was inappropriate and contrary to statute because the trial judge had previously been disqualified pursuant to Code of Civil Procedure section 170.6, and (2) the sanctions order was unreasonable and burdensome.

We conclude (1) wife abandoned her Code of Civil Procedure section 170.6 challenge when she appeared before the trial judge in a subsequent hearing and acquiesced in the trial judge's assumption of jurisdiction, and (2) in this judgment roll appeal, we must presume the evidence was sufficient to support the trial court's order, and we find no error on the face of this record.

We will affirm the trial court order.

BACKGROUND

Wife elected to proceed on a clerk's transcript. (Cal. Rules of Court, rule 8.121.) Thus, the appellate record does not include a reporter's transcript of the hearing in this matter. This is described as a "judgment roll" appeal. (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082-1083; *Krueger v. Bank of America* (1983) 145 Cal.App.3d 204, 207.)

The limited appellate record establishes that husband and wife were married in July 1995. They had one child and separated nearly 12 years later in March 2007. A judgment dissolving the marriage was filed in Placer County Superior Court on August 10, 2009. The judgment included orders regarding custody, support and property division, reserving jurisdiction on the division of debt, tax liability and retirement benefits.

The trial court subsequently heard motions regarding custody, visitation, attorney fees and sanctions. Among other rulings, the trial court denied husband's request to modify custody, adopted the mediator's recommended parenting schedule,

ordered a detailed plan for transportation, exchanges, co-parenting, and cooperation, and reserved jurisdiction on attorney fees and sanctions. The trial court also reserved jurisdiction "to impose financial sanctions of a minimum of \$100 per occurrence, in addition to any other appropriate orders, for intentional violations by either parent of the parenting plan."

Further proceedings occurred, and further orders were issued, regarding division of property, discovery of financial information, and child support. A judgment was entered regarding division of property.

On November 12, 2010, wife challenged Judge McElhany pursuant to Code of Civil Procedure section 170.6. Judge McElhany granted the challenge and was disqualified "from hearing any further matters in [this] case which involve contested issues of fact or law." Several weeks later, however, husband and wife appeared again in a hearing before Judge McElhany. During that hearing, the trial court ordered wife to pay \$10,000 in attorney fees to husband as sanctions under Family Code section 271. Wife appeals from that order.

STANDARD OF REVIEW

On appeal, we must presume the trial court's judgment is correct (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564) and adopt all inferences in favor of the judgment, unless the record expressly contradicts them. (See *Brewer v. Simpson* (1960) 53 Cal.2d 567, 583.)

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.) When an appeal is "on the judgment roll" (*Allen v. Toten, supra*, 172 Cal.App.3d at pp. 1082-1083), we must conclusively presume evidence was presented that is sufficient to support the trial court's findings. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) Our review is limited to determining whether any error "appears on the face of the record." (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521; Cal. Rules of Court, rule 8.163.)

These rules of appellate procedure apply to wife even though she is representing herself on appeal. (*Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121; see also *Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639; *Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795.)

DISCUSSION

I

Wife contends Judge McElhany was "statutorily precluded" from imposing sanctions because he was previously disqualified under Code of Civil Procedure section 170.6. "It is true that if such a challenge is properly made, it becomes effective 'instantaneously and irrevocably.' [Citation.] However, such challenges may be abandoned. [Citation.]" (*Andrisani v. Saugus Colony Limited* (1992) 8 Cal.App.4th 517, 525 (*Andrisani*)).

"[T]he right to urge the disqualification of a judge for most causes under [Code of Civil Procedure] section 170 and peremptorily under [Code of Civil Procedure] section 170.6 may be waived by the parties. [Citations.] Consequently, the

actions of a disqualified judge are not void in any fundamental sense but at most voidable if properly raised by an interested party." (*In re Christian J.* (1984) 155 Cal.App.3d 276, 280.) Thus, when a party fails to enforce a Code of Civil Procedure section 170.6 challenge and acquiesces to "the assumption of jurisdiction by the challenged judge," the party waives the right to raise the issue on appeal. (*Andrisani, supra*, 8 Cal.App.4th at p. 526.)

Here, Judge McElhany issued a further order in this case after he was disqualified. But there is no indication in the record that wife, who was present at the subsequent hearing, brought the disqualification to the trial court's attention or attempted to enforce it. Wife thus abandoned her Code of Civil Procedure section 170.6 challenge, acquiesced in Judge McElhany's assumption of jurisdiction, and cannot now raise the issue on appeal. (*Andrisani, supra*, 8 Cal.App.4th at p. 526.)

II

Wife also contends that the sanctions order is unreasonable and burdensome. Without a reporter's transcript of the proceedings, however, we must presume the trial court made sufficient findings to support its decision. That is, we must presume the trial court found that wife's conduct frustrated "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).)

Furthermore, we must conclusively presume the evidence was sufficient to sustain the trial court's findings. (*Ehrler v. Ehrler, supra*, 126 Cal.App.3d at p. 154.) We find no error on the face of this record.

DISPOSITION

The trial court order is affirmed. Husband shall recover his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

MAURO, J.

We concur:

RAYE, P. J.

HOCH, J.