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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

In re the Marriage of FATIMA KATUMBUSI and
FREDERICK WHYTE.

FATIMA KATUMBUSI,

Appellant,

v.

FREDERICK WHYTE,

Respondent.

C067692

(Super. Ct. No. 01FL03407)

Appellant Fatima Katumbusi (mother) appeals from a court order sanctioning mother \$3,000 under Family Code section 271. On appeal, mother claims she was denied the opportunity to make a record for appeal and denied the opportunity to be heard prior to sanctions being ordered. Mother also claims the trial court wrongly allowed father Frederick Whyte's attorney to represent him beyond the scope of the attorney's notice of limited representation, wrongly allowed father to file a modified billing statement hours before the hearing on sanctions, and failed to provide mother with a statement of decision regarding the order of sanctions. Finally, mother claims the order of sanctions imposes

on her an unreasonable financial burden in contravention of Family Code section 271. Finding none of mother's claims to have merit, we affirm.

BACKGROUND

Mother has 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 referred to 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 record we have establishes that in June 2010 father filed an order to show cause seeking to modify the court's order for custody and visitation regarding the parties' minor children. Father also sought attorney fees and sanctions against mother under Family Code section 271. Mother did not consent to the order requested by father, but proposed custody and visitation modifications of her own. The court made immediate custody orders and ordered the parties to participate in mediation. No orders were made regarding fees or sanctions.

Mother and father returned to court on August 23, 2010. The court noted in its minute order an intention to adopt the report of the Family Court Services mediator. Trial, however, was set for November on the issues of custody, visitation, and sanctions.

On November 18, 2010, the matter went to trial. Mother and father both appeared at trial, only father was represented by an attorney. Mother and father each testified, and they each called witnesses. At the conclusion of trial, the court took the matter under submission and issued a written ruling the following day.

In its written order, the trial court ruled that father would "maintain sole legal and physical custody of both children." The court further ruled this was a final determination of custody. The court outlined a detailed schedule for mother's parenting time, ordered mother to attend coparenting counseling, and ordered the children to continue with individual counseling.

The court also found that mother's conduct "warrants the granting of attorney fees/sanctions pursuant to Family Code section 271. Her actions related to her failure to follow the court's order regarding visitation, including withholding the children from [father], has frustrated settlement and unreasonably increased litigation costs." Father requested sanctions totaling \$9,500 but the court noted "it must consider the parties' incomes, assets and liabilities and the amount imposed must not be an unreasonable financial burden against the sanctioned party." The court found mother was receiving public assistance, had minimal income, and had no assets. The court also noted mother was supporting three other children. Accordingly, the court ordered sanctions of only \$3,000, to be paid in monthly installments of \$50. Mother appeals from this order.

DISCUSSION

On appeal, we must presume the trial court's judgment is correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Thus, we must 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 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 restrictive rules of appellate procedure apply to mother 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.)

A

Forfeiture

Mother contends the trial court failed to provide a statement of decision in support of its sanctions order. Mother failed to raise this issue in her opening brief. “Points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before.” (*Campos v. Anderson* (1997) 57 Cal.App.4th 784, 794, fn. 3.) Mother does not explain why she could not have made this contention earlier and thus it is forfeited.

For the first time in her reply brief mother also contends the trial court did not allow her “the opportunity to be heard on the issues before issuing its sanctions ruling and court’s ruling.” Again, she makes no effort to explain why she could not have raised this issue earlier. Accordingly, this claim also is forfeited. (*Campos v. Anderson, supra*, 57 Cal.App.4th at p. 794, fn. 3.)

B

Prejudice

Mother makes two claims of procedural error. She claims the trial court wrongly allowed father’s attorney to represent him in excess of her limited scope of representation. She also claims the trial court wrongly allowed father to submit a “modified billing statement” on the day of the evidentiary hearing in this matter.

Where, as here, there was a purported procedural error, we will reverse the judgment only if the appealing party has shown it was reasonably probable a result more

favorable to her would have been reached in the absence of error. (*In re Marriage of Jones* (1998) 60 Cal.App.4th 685, 694; Cal. Const., art.VI, § 13 [a judgment may be set aside for procedural error only if the error resulted in a miscarriage of justice].) Mother has failed to demonstrate how she was prejudiced by either of these purported procedural errors. Accordingly, these claims fail.

C

Opportunity To Make A Record

Mother also claims the trial court “deprived” her of the opportunity to make a record of the relevant evidentiary hearing. Mother’s claim fails because it is not supported by any meaningful argument or citations to relevant legal authority. Indeed, mother’s argument is limited to the following statement: “The court deprived Mother [of] the opportunity to make [a] record of the ‘evidentiary’ hearing in front of a court reporter whereas a court reporter was personally scheduled with Tara Schoemer at least a month in advanced [*sic*] by Mother.”

We will not consider such a perfunctory claim. (*People v. Hardy* (1992) 2 Cal.4th 86, 150 [a reviewing court need not address any issue purportedly raised without argument or citation to relevant authority]; *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115-1116 [merely setting forth general legal principles without specifically demonstrating how they establish error is insufficient to raise a cognizable issue on appeal].)

D

Order For Sanctions

Mother contends the trial court abused its discretion in ordering her to pay \$3,000 in sanctions under Family Code section 271. Specifically, she claims the order imposes on her an unreasonable financial burden. Family Code section 271 authorizes the imposition of sanctions when the conduct of a party or attorney frustrates the policy of the law to promote settlement of litigation and increases the cost of litigation. (Fam.

Code, § 271, subd. (a).) In issuing such an award, trial courts “shall take into consideration all evidence concerning the parties’ incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed.” (*Ibid.*)

In its written order, the trial court expressly found mother’s conduct “has frustrated settlement and unreasonably increased litigation costs.” The court also found, “after considering [mother]’s conduct, the incomes, assets and liabilities of the parties, and the potential financial burden upon [mother], the Court orders sanctions payable by [mother] to [father]” Accordingly, the court made all the findings required under Family Code section 271, and without a reporter’s transcript of the hearing we must conclusively presume the evidence was sufficient to sustain those findings. (*Ehrler v. Ehrler, supra*, 126 Cal.App.3d at p. 154.)

E

Request For Judicial Notice

On October 1, 2012, mother filed in this court a request for judicial notice wherein she asked this court to take judicial notice of several documents. A ruling on mother’s request was deferred. We now rule on her request.

As to those documents attached to mother’s request that are stamped “filed” or “received” by the trial court or contain other indicia showing they are part of the trial court’s record, we agree to take judicial notice of the fact that they were filed in or received by the trial court and are a part of the trial court’s record.

As to those documents not stamped “filed” or “received” by the trial court, and which bear no other indicia of being part of the trial court’s record, we deny mother’s request.

DISPOSITION

Mother's request for judicial notice is denied in part and granted in part as explained more fully in the discussion portion of this opinion. The order of the trial court is affirmed. Costs are awarded to father. (Cal. Rules of Court, rule 8.278(a)(5).)

ROBIE, J.

We concur:

NICHOLSON, Acting P. J.

BUTZ, J.