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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

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ROBERT D. BARRON,

Appellant,

v.

LEAH M. COOK,

Respondent.

C073211

(Super. Ct. No. SDR0024538)

Appellant Robert D. Barron (father) appeals from an order to pay attorney fees totaling \$8,000 to respondent Leah M. Cook (mother). Father contends the trial court abused its discretion in entering the order, labeling the order “an arbitrary determination of fault, a capricious disposition of the issue, and a grossly unjust abuse of judicial discretion.”

Although father spends much of his briefing discussing the trial held to adjudicate his motion for custody, he does not discuss the hearing on mother's request for fees. The record on appeal does not include a reporter's transcript of that portion of the trial, and it appears that portion of the trial that dealt with the issue of attorney fees was not reported (by stipulation of the parties). Accordingly, we treat the appeal as a "judgment roll" appeal. (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082-1083 (*Allen*); *Krueger v. Bank of America* (1983) 145 Cal.App.3d 204, 207.)

On the face of this record, father cannot establish error. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Father and mother are the parents of a child who is now 10 years old (the minor). On June 1, 2010, the trial court ordered joint legal custody of the minor, giving mother primary physical custody. Because father had "no parenting time" with the minor since the parties' separation in May 2008, the trial court granted father parenting time to be supervised by a third party, up to 12 hours per week. The trial court also ordered father and the minor to participate in reunification therapy.

On August 24, 2012, father filed his third motion seeking sole legal and physical custody, including temporary emergency custody orders/child abduction prevention orders. Shortly thereafter, the expert appointed by the trial court issued her "child custody recommending counseling report," which recommendations included a detailed schedule for father's supervised parenting time and phone calls between father and the minor.<sup>1</sup>

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<sup>1</sup> This was the fourth time the parties had been to mediation or court ordered "child custody recommending counseling" since August 2008. The parties have a long and tortured litigation history, including two previous motions by father for custody, filed in June and October 2011. Father does not provide us with the record of disposition of these earlier motions; we assume they were either decided against him or consolidated for trial with his August 2012 motion.

The trial on father's motion began on November 2, 2012, and ended on December 14, 2012, having consumed a total of three court days. Both parties were represented by counsel for the entirety of the trial, but only one of the three days--the middle day--was reported. On the final day of trial, the parties stipulated "to go forward without a court reporter." At the conclusion of the trial, the court denied father's motion to modify custody. The court also issued a detailed order regarding father's supervised parenting time and telephone calls. The court also "hear[d] the issue of attorney fees" and took that issue under submission.

On January 22, 2013, the trial court issued its findings and order regarding attorney fees. The court found mother incurred over \$13,000 in attorney fees--fees "almost entirely related to [father's] ill-advised attempt to modify custody and allow the minor child, a child with whom he has had to date only supervised visitation, to relocate with him to the state of Oregon." The court noted the parties were "[u]nquestionably" in need of "court intervention to assist in the structure of an appropriate visitation plan. That issue, [however,] could have been more than adequately addressed in the initial hearings, and indeed [mother] early on agreed to the very orders that this court ultimately adopted after three days of trial."

The court found father to be inflexible and quick to abandon "visitation attempts in the face of any perceived failure of the [mother], or visitation supervisors for that matter, to comply with his visitation parameters." The court recognized that "[i]n assessing responsibility for attorney's fees and costs the court must not only look to the parties' income and ability to pay but to the necessity of the fees incurred. [Mother's] fees were greatly in excess of what would be expected had the parties resolved the matter at the initial hearings, which she was prepared to do. That her fees escalated to over \$13,000 was solely due to the necessity to proceed to trial in light of [father's] dogged determination to modify custody."

“In setting the amount of fees due from one to the other the court has taken into consideration the parties respective incomes, ability to pay, and the above-noted trial tactics. In addition, the court has taken into consideration that [father] incurs considerable expenses in coming from Oregon to California to exercise his parenting time and also presently incurs supervision expenses.”

Father appeals from this order.<sup>2</sup>

### DISCUSSION

On appeal, we must presume the trial court’s judgment is correct. (*People v. Giordano* (2007) 42 Cal.4th 644, 666.) 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.)

The party challenging a judgment bears the burden 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, 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 (*Ehrler*).) 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 father even though he is representing himself on appeal. (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795; *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.)

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<sup>2</sup> Mother, despite being represented by counsel and receiving an extension of time, never filed a response to father’s opening brief.

Here, father argues that the trial court's order for attorney fees should be vacated as it was made without basis and statutory authority. We disagree.

Family Code section 271 authorizes the imposition of attorney fees as sanctions when the conduct of a party or attorney frustrates the policy of the law to promote settlement of the 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.*)

It is evident from the trial court's written order that the attorney fees were intended to sanction father for his tactics, which the court found "demonstrated a pattern of inflexibility and abandonment of visitation attempts in the face of any perceived failure by [mother] . . . to comply with his visitation parameters" and, most importantly, greatly increased the cost of litigation. The trial court expressly noted its consideration of the parties' respective abilities to pay attorney fees and their role in the cost of the litigation. The court ultimately found that "[mother's] fees were greatly in excess of what would be expected had the parties resolved the matter at the initial hearings, which she was prepared to do. That her fees escalated to over \$13,000 was solely due to the necessity to proceed to trial in light of [father's] dogged determination to modify custody."

Accordingly, the court made all the findings required by section 271. Without a reporter's transcript of the hearing, we must conclusively presume the evidence was sufficient to sustain those findings. (*Ehrler, supra*, 126 Cal.App.3d at p. 154.)

**DISPOSITION**

The order of the trial court is affirmed. The parties shall each bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

DUARTE, J.

We concur:

RAYE, P. J.

BUTZ, J.