

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

----

In re the Marriage of MARYLYNN and PHILIP  
REYNOLDS.

C079748

MARYLYNN REYNOLDS,

(Super. Ct. No. FL362535)

Appellant,

v.

PHILIP REYNOLDS,

Respondent.

Appellant Marylynn Reynolds<sup>1</sup> filed three notices of appeal, two before and one after a judgment of dissolution was entered in the parties' dissolution of marriage action. The record on appeal contains this judgment and a statement of decision that also

---

<sup>1</sup> We refer to the parties by their first names to avoid confusion. No disrespect is intended.

disposes of Marylynn’s various post-trial pleadings. In her opening brief, Marylynn appears to reargue her motion for reconsideration. We conclude the trial court did not abuse its discretion in ruling that her arguments pertaining to an earlier settlement conference did not establish any basis for setting aside the trial or its decision. Accordingly, we affirm. We do not, however, find the appeal so egregious as to warrant the imposition of sanctions. Therefore, we deny respondent Philip Reynold’s motion for sanctions.

### I. BACKGROUND

Marylynn’s briefs are “in dramatic noncompliance with appellate procedures.” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) She begins her opening brief by setting forth the relief she seeks from this court. If these requests were raised first in the trial court, and she is challenging a particular ruling in that respect, she does not say. California Rules of Court, rule 8.204 requires an appellant’s opening brief to “[s]tate the nature of the action, the relief sought *in the trial court*, and the judgment or order appealed from.”<sup>2</sup> (Rule 8.204(a)(2)(A), italics added.) The brief must also “[s]tate that the judgment appealed from is final, or explain why the order appealed from is appealable.” (Rule 8.204(a)(2)(B).) Further, the opening brief must “[p]rovide a summary of the significant facts limited to matters in the record.” (Rule 8.204(a)(2)(C).) Marylynn’s opening brief does none of these things. These requirements are important so the appellate court may be advised of “the exact question under consideration, instead of being compelled to extricate it from the mass.” (*Landa v. Steinberg* (1932) 126 Cal.App. 324, 325.) And here, Marylynn’s notices of appeal offer no guidance either because they

---

<sup>2</sup> Undesignated rule references are to the California Rules of Court.

each list multiple items.<sup>3</sup> Although these defects would justify an order striking the brief (rule 8.204(e)(2)(B)), we elect instead to merely caution that Marylynn’s noncompliance with the rules prevents us from fully describing the procedural history of this case, and leaves us only with what we were able to extricate from the mass:

Marylynn filed a petition for dissolution of her marriage to Philip on September 10, 2009. Trial occurred on January 28, 2015, and the court issued a statement of decision on April 27, 2015. Marylynn filed numerous post-trial pleadings. In particular, she filed a motion to reconsider on May 13, 2015, and an amended motion in July 2015. On August 19, 2015, the court denied her motion to reconsider and issued a final statement of decision. In it, the trial court stated several briefs Marylynn filed after trial concluded were not considered in reaching its final statement of decision because they were “unsolicited attempts to continue to argue the case, post-trial.” The court entered a judgment of dissolution on September 23, 2015, that includes a division of the parties’ community property and states that Marylynn owes Philip an equalization payment of \$131,311.24 to be made from the sale of a particular piece of property.

## II. DISCUSSION

### A. *Standard of Review*

“A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) It is the appellant’s burden “to provide an adequate record to assess error.” (*Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324.) Here, there is no record of the trial itself outside of the trial court’s decision and judgment. There is at least some record of Marylynn’s motion to reconsider. Code of

---

<sup>3</sup> Marylynn’s statement in her reply brief that she “is appealing all order(s), statement of decision(s), and judgments, pertaining to divorce matter (FL362535) for violation of Due Process,” illustrates rather than corrects the problem.

Civil Procedure section 1008, subdivision (a) provides that a party may make a motion to reconsider “based upon new or different facts, circumstances, or law.” “A party seeking reconsideration also must provide a satisfactory explanation for the failure to produce the evidence at an earlier time.” (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212.) We review a trial court’s ruling on a motion for reconsideration under the abuse of discretion standard. (*Ibid.*)

*B. Marylynn’s Motion to Reconsider*

On appeal, Marylynn asserts that an August 2014 settlement conference proceeding violated her due process rights because she was not served Philip’s settlement conference statement in a timely manner. She claims this made the trial court’s November 3, and November 13, 2014, trial setting orders void and means the trial court did not have jurisdiction over her. She also contends the statement and Philip’s attached property declaration were fabricated and constituted fraud. Based on these arguments, she asks us to vacate the trial court’s judgment. While Marylynn’s briefs fail to articulate what decision she is appealing or when she raised these arguments in the trial court, our review of the record discloses that the trial court ruled on these arguments in its August 19, 2015, statement of decision that also considered her motion to reconsider, but not in its original statement of decision. Therefore, the record indicates Marylynn raised these arguments for the first time in her motion to reconsider and we construe this as an appeal from the trial court’s ruling thereon.

The court ruled as follows: “[Marylynn] argued that this court did not have jurisdiction to hear the trial. [Marylynn] filed this action on September 10, 2009[,] and therefore submitted the case to the jurisdiction of the court. She complains that counsel for [Philip] filed a Settlement Conference statement late, and that ‘95%’ of what was contained therein was false, therefore the court did not have jurisdiction. Filing a late settlement conference statement might be a violation of San Joaquin County Local Rule 7-110, for which sanctions could be imposed, but it does not divest the court of

jurisdiction to hear the trial. False information, if provided, also does not divest the court of jurisdiction, but can result in sanctions or an unequal division of property.” We agree with the trial court’s assessment. The trial court also found Marylynn did not meet her burden to show that her “newly-discovered” evidence could not, with reasonable diligence, have been presented at trial. This finding was not an abuse of the trial court’s discretion. Therefore, we affirm the judgment and the trial court’s denial of her motion to reconsider.<sup>4</sup>

C. *Waiver of Marylynn’s Other Challenges*

To the extent Marylynn’s opening brief challenges other rulings by the trial court,<sup>5</sup> her intent is unexpressed and, as far as we can discern, unsupported by the record. For instance, Marylynn mentions November 2014 trial-setting orders but we were unable to locate any such orders or record of the proceedings that surrounded them. Accordingly, Marylynn has not satisfied her burden to provide an adequate record to assess error. (See *National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 522 [“The

---

<sup>4</sup> In her reply brief, Marylynn argues we should dismiss Philip’s respondent’s brief as untimely. It was not. We granted Philip an extension of time until August 18, 2016, to file his brief. He filed it on June 29, 2016. Therefore, we decline Marylynn’s request.

<sup>5</sup> Marylynn appears to make other requests for the first time in this court, such as asking us to order Philip to disclose all assets, debts and liabilities and to stop changing the locks and locking her out of various properties. These requests are forfeited by Marylynn’s failure to establish they were first raised in the trial court. (See *Dimmick v. Dimmick* (1962) 58 Cal.2d 417, 422 [“It is settled that points not raised in the trial court will not be considered on appeal. [Citations.] This rule precludes a party from asserting on appeal claims to relief not asserted in the trial court”].) Marylynn also raises multiple new arguments for the first time in her reply brief without establishing good cause for doing so. Accordingly, they too are waived. (See *People v. Baniqued* (2000) 85 Cal.App.4th 13, 29 [“Withholding a point until the reply brief deprives the respondent of an opportunity to answer it . . . . Hence, a point raised for the first time therein is deemed waived and will not be considered, unless good reason is shown for failure to present it before”].)

limited record before us is silent regarding all of these issues. As such, no error has been affirmatively shown and the trial court's ruling must be presumed to be correct"].) Nor would we know if she had. Marylynn's briefs are entirely devoid of references to the record. This is a violation of rule 8.204(a)(1)(C), which requires that each brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." "If a party fails to support an argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived." (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.) Marylynn cites exhibits attached to her briefs in lieu of record citations. This is not sufficient to make any of the attachments part of the record: "A party filing a brief may attach copies of exhibits or other materials *in the appellate record* or copies of relevant local, state, or federal regulations or rules, out-of-state statutes, or other similar citable materials that are not readily accessible." (Rule 8.204(d), italics added.) And to the extent that some or all of these exhibits may also appear somewhere in the clerk's transcript, again, "[i]t is not the task of the reviewing court to search the record for evidence that supports the party's statement; it is for the party to cite the court to those references." (*Regents of the Univ. of Cal. v. Sheily* (2004) 122 Cal.App.4th 824, 826, fn.1; see also rule 8.204(a)(1)(C).) Even though Marylynn "is representing herself in this appeal she is not entitled to special treatment and is required to follow the rules." (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 523.) Thus, to the extent Marylynn purports to raise issues we have not addressed above, we will not continue to search the record unassisted for their support and will deem them forfeited.

We therefore conclude Marylynn's appeal lacks merit. We next consider whether the appeal is also frivolous such that sanctions are warranted.

*D. Philip's Motion for Sanctions and Dismissal*

By written motion, Philip asks that we impose sanctions on Marylynn for filing a frivolous appeal and dismiss her appeal. (Code Civ. Proc., § 907; rule 8.276.) Although

Marylynn’s claims lack merit and there is some evidence to support Philip’s claim that she took this appeal to delay the effect of the judgment,<sup>6</sup> we decline to find that this appeal is so egregious as to warrant the imposition of sanctions. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650 [“[T]he punishment should be used most sparingly to deter only the most egregious conduct”].) We also chose to reach the merits rather than dismiss her appeal or strike her defective briefs. (Rule 8.204(e)(2).) Accordingly, Philip’s motion is denied.

### III. DISPOSITION

The judgment is affirmed. Respondent Philip Reynolds shall recover his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/S/

---

RENNER, J.

We concur:

/S/

---

BLEASE, Acting P. J.

/S/

---

NICHOLSON, J.

---

<sup>6</sup> We grant Philip’s motion for judicial notice of documents relating to the pre-filing order pursuant to Code of Civil Procedure section 391.7, subdivision (a) entered against Marylynn on November 5, 2015.