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Opinion following rehearing

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

KRISTOPHER D. LEINO, as Trustee, etc., et al., Plaintiffs and Appellants, v. TIMOTHY BALKCOM, Defendant and Respondent.	C080950 (Super. Ct. No. 34201400165972PRTPFRC) [OPINION ON REHEARING]

This is a shotgun-approach appeal in which trustee Kristopher D. Leino and his attorney Fred A. Ihejirika present 17 separate arguments against an order requiring them to jointly pay $16,060 in sanctions under Code of Civil Procedure section 128.7.[1] The trial court imposed the sanctions on grounds Leino and Ihejirika (appellants) refused to remove a lis pendens on Balkcom's property for more than a year after Leino's

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1 Undesignated statutory citations are to the Code of Civil Procedure.

underlying probate action was dismissed. The trial court expressly found appellants' refusal to withdraw the lis pendens was "for an improper purpose, that is was to harass or cause unnecessary cost and litigation, and it was because [Leino] simply refused to accept and honor the Court's decision."

Appellants contend (1) the motion for sanctions was not brought separately as required by section 128.7, subdivision (b), (2) the served and filed versions of the motion were different, (3) the version of the motion for sanctions filed with the court constituted an impermissible ex parte communication because appellants did not receive an identical copy, (4) the notice of the motion did not properly give notice that withdrawal of the lis pendens would avoid sanctions, (5) the motion for sanctions was not properly before the trial court because the motion was not brought separately, (6) the trial court "misconstrued a lis pendens as similar to a pleading, petition or written notice of motion," (7) section 128.7 does not apply to "misuse of the lis pendens procedure," (8) section 128.7 does not allow imposition of sanctions on a represented party's legal counsel, (9) appellants had no duty to take affirmative steps to withdraw the lis pendens, and (10) the lis pendens could not have been withdrawn without client consent. We determine these 10 arguments have not been preserved for appeal because appellants did not timely present these issues to the trial court before it ruled on the motion for sanctions or in a procedurally proper manner after the trial court imposed sanctions.

Appellants further argue (11) they received defective notice by fax because they never consented to receive notice by fax, (12) section 128.7 does not apply to documents submitted to the county recorder, (13) the "safe harbor period" provided by section 128.7 never commenced, (14) the full 21-day safe harbor period under section 128.7 was not provided to appellants, (15) the amount of sanctions was excessive, (16) appellants' due

process rights were violated due to inadequate notice, and (17) the trial court was biased against them.[2]

We reject these arguments on the merits. The trial court made an express factual finding that appellants received notice by fax and mail. Combined with evidence in the record of a proof of service by fax and mail, this factual finding is conclusive. We conclude section 128.7 authorized the trial court to impose sanctions for a frivolous notice that appellants were required to file with the court. Based on the validity of the notice given, the safe harbor period commenced. As to the safe harbor issue, we determine the record supports the trial court's finding appellants had many months in which they could have withdrawn their notice of pending action. We conclude appellants do not establish an abuse of discretion by the trial court that held extensive and exhaustive hearings dedicated to the motion for sanctions. Based on appellants' receiving actual notice and multiple opportunities to argue the issue, the procedure employed by the trial court passes constitutional muster. Finally, we determine appellants have forfeited the claim of bias by the trial court.

Accordingly, we affirm the order imposing sanctions under section 128.7.

BACKGROUND

In July 2014, Ihejirika filed a petition on behalf of his client, Leino, to seek a determination two parcels of real property in Sacramento County were subject to distribution under terms of a trust. Shortly thereafter, Ihejirika recorded a lis pendens on the two parcels – one owned by Timothy Balkcom, and one owned by Yong Cha Talbert.

On September 8, 2014, Balkcom's attorney, Eric L. Sayre, sent a letter to Ihejirika to state he would seek a continuance to allow time for serving and filing a motion for

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[2] We note appellants did not appeal the dismissal of their underlying petition.

sanctions if Leino did not withdraw the petition. The record does not indicate any response was given. On September 9, 2014, Balkcom filed an objection to Leino's petition and a request for continuance. The same day, a hearing on the petition was conducted with Ihejirika and Sayre present in court. During the hearing, the trial court announced it was dismissing Leino's petition.

On September 19, 2014, Leino filed a motion for reconsideration. On November 18, 2014, Balkcom filed an opposition and requested a continuance. The same day, the trial court denied Leino's motion for reconsideration and continued the matter of attorney fees requested by Balkcom and Talbert.

On November 26, 2014, Leino recorded a withdrawal of the lis pendens on Talbert's real property but did not file a withdrawal on Balkcom's real property.

On December 22, 2014, Balkcom served Leino with a notice of motion and motion for sanctions under section 128.7 *by mail*. On December 23, 2014, Balkcom served Leino with a slightly different notice of motion and motion for sanctions under section 128.7 *by fax*.

On January 9, 2015, Leino filed and served an opposition to the motion for sanctions, including an attachment that included what appears to be Balkcom's faxed version of the notice of motion for sanctions.

On January 13, 2015, Balkcom filed his notice of motion and motion for sanctions – four days after Leino filed his opposition.

The trial court conducted hearings on the motion for sanctions on May 15, 2015, and on July 10, 2015. On July 10, 2015, the trial court announced its statement of decision granting the motion in the amount of $16,060, and imposing the sanctions jointly on appellants. In pertinent part, the trial court stated:

"I find that based upon the facts of this case that on September 9th, 2014 I denied [Leino's] petition, that up until that day a valid notice of pending action was recorded in

this county. I have no problem with that. [¶] On September 26th the order after that hearing was filed, though [Leino] and his attorney knew of the Court's order because they were in open court on the day I denied his request. On September 30th, 2014 [Leino] filed a motion for reconsideration that came on for hearing on November 18th. [¶] On November 18th the motion for reconsideration was denied. So on – and counsel and client were present.

"On both of those days [Ihejirika] and [Leino], the Petitioner herein, were both on notice that [Leino]'s petition was terminated. And – by court order, and that there was no longer an[y] pending action to support the notice of pending action that was recorded in July of 2014. [¶] That on or about January 30th [2015,] after written notice between [Sayre]'s office and [Ihejirika]'s office pointing out certain issues and defects in the case, including the failure to sign the petition, and that at paragraph 20 of that underlying motion from [Sayre]'s client, specifically identified at page 17, paragraph 20 is the fact that the notice of pending action is still pending or still recorded and should be withdrawn, or that he sign the proposed quitclaim. That [Sayre]'s client took affirmative, active steps to remedy the situation in several ways, all of which were rebuffed by [Ihejirika] and his client."

The trial court further found: "Ihejirika and his client had more than 21 days to [cure] . . . [¶] . . . [¶] the defect between then and now. The matter then came on for hearing several times in Department 129 after I had left. The matter then came on, was continued downtown for me. I heard the matter, then continued it to this date. In all of that time, not just 21 days, but months and months, the issue has still not been addressed. The notice of pending action is still pending even though there is no underlying pending action.

"I find pursuant to 128.7 that the maintenance of that lis pendens was for an improper purpose, that it was to harass or cause unnecessary cost and litigation, and it

was because [Leino] simply refused to accept and honor the Court's decision. And apparently counsel joined that thought because counsel did not take responsibility upon himself to address the issue."

As to the applicability of section 128.7 to the conduct relating to the filing of a lis pendens, the trial court stated: "I find that the recording of a notice of a lis pendens is so integral to an action involving real property that it would be included in this statute, that the maintenance of a lis pendens would be something that this statute would cover certainly after the pending action has been resolved by court order, and certainly against the party who continues to maintain that notice of pending action when that party released another party, released another party's notice of pending action and refused to release this one even though there was no legitimate claim before the Court or even illegitimate claim before the Court.

"There was no pending action at all. That under [section 128.7, subdivision] (b)(2) there is no legal contention to support or warrant under existing law the maintenance in perpetuity of a notice of pending action when there is no pending action. That is to say one party who lost their litigation could not continue clouding the title of another party's property forever and ever because he or she simply disagrees with the Court's underlying ruling. There is no factual contention or evidentiary support or legal contention to support the maintenance of such a notice of pending action when there is no pending action, when that pending action terminated by operation of court order.

"For those reasons the Court believes that sanctions under 128.7 shall be granted . . . ."

The same day, on July 10, 2015, the trial court issued its written minute order confirming the imposition of sanctions.

Sayre proposed a formal order based on the trial court's announced statement of decision, but Ihejirika rejected the proposed order.

On August 11, 2015, appellants served a notice of motion and motion to vacate judgment and enter a new judgment, or for new trial. On October 9, 2015, the trial court denied the hybrid motion and issued an order to show cause on the court's own motion as to why appellants should not be sanctioned under section 128.5.

On October 22, 2015, appellants filed a notice of appeal from the order imposing sanctions and the order denying their motion to vacate the judgment and enter a new judgment, or for new trial.

On December 9, 2015, appellants recorded a withdrawal of the notice of pending action on Balkcom's real property.

DISCUSSION

I

Issues Forfeited for Lack of Timely Objection in Opposing the Motion for Sanctions

Appellants contend the trial court erred in awarding sanctions even though: the motion for sanctions was not brought separately as required by section 128.7, subdivision (b); the served and filed versions of the motion were different; the version of the motion for sanctions filed with the court constituted an impermissible ex parte communication because appellants did not receive an identical copy; the notice of the motion did not properly give notice that withdrawal of the lis pendens would avoid sanctions; the motion for sanctions was not properly before the trial court because the motion was not brought separately; the trial court "misconstrued a lis pendens as similar to a pleading, petition or written notice of motion"; that section 128.7 does not apply to "misuse of the lis pendens procedure"; section 128.7 does not allow imposition of sanctions on a represented party's legal counsel; appellants had no duty to take affirmative steps to withdraw the lis

pendens; and the lis pendens could not have been withdrawn without client consent. These issues are forfeited.

A.

Appellants Did Not Timely Raise these Issues

None of these issues were argued by appellants in opposing the motion for sanctions even though they presented 11 arguments why sanctions should not or could not be imposed.

For lack of timely objection, appellants failed to preserve the issues for appeal. It is well settled that "[a]ppellate courts are loath to reverse a judgment on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider. [Citation.] In our adversarial system, each party has the obligation to raise any issue or infirmity that might subject the ensuing judgment to attack. . . . [Citations.]" (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn*. (2008) 163 Cal.App.4th 550, 564.) Consequently, we deem forfeited these claims that were not were not properly briefed before the trial court imposed sanctions. (*Ibid.*)

In particular, we observe appellants failed to properly present to the trial court their argument in the opening brief that "§ 128.7(c)(1) states that a 'motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b).' " Although appellants assert they raised this argument orally during a hearing, the reporter's transcript shows counsel did not actually argue the motion for sanctions should be denied on grounds it was not made separately from other motions.

We also note appellants' argument on appeal regarding the sanctions motion not being brought separately was not preserved for appeal. Appellants attempt to salvage their argument by pointing to an instance in which appellants' trial counsel mentioned the

"issue of this lis pendens" was not before the court. This mere reference to the issue did not preserve it for appeal because trial counsel did not articulate an argument based on the assertion the motion for sanctions was not brought separately.

For lack of argument in the trial court on the same grounds as asserted on appeal, these issues have not been preserved for review.

B.

Appellants' Statutory Post-trial Motions Were Defective

Appellants did make a motion to vacate the judgment and enter a new judgment or for new trial in which they raised most of these contentions. However, these statutory motions expressly apply to *judgments* entered after a *trial* and were not procedural vehicles for challenging the *order* made after a *hearing* in this case.

In setting forth the requirements for a new trial motion, section 657 provides in pertinent part: "The verdict may be vacated and any other decision may be modified or vacated, in whole or in part, and a new or further *trial* granted on all or part of the issues, on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of such party: [¶] . . . [¶] 7. Error in law, *occurring at the trial* and excepted to by the party making the application." (Italics added.) Here, none of the errors complained of by appellants occurred during a trial. Because there was no trial, appellants could not have "excepted to" the errors during trial. (§ 657, subd. (7).) "The right to a new trial is purely statutory, and a motion for a new trial can be granted only on one of the grounds enumerated in the statute. [Citations.]" (*Fomco, Inc. v. Joe Maggio, Inc*. (1961) 55 Cal.2d 162, 166.) Thus, section 657 did not provide a proper manner for appellants to raise new objections to the sanctions they could have raised in their original opposition.

Likewise, a motion to vacate the judgment and enter a new judgment under section 663 applies only to judgments and decrees entered after a bench or jury trial on contested

facts. (Wegner, et. al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2016), § 18:488.1, p. 18-128 [noting section 663 applies only to bench and jury trials yielding judgments].) Section 663 states: "A judgment or decree, when based upon a decision by the court, or the special verdict of a jury, may, upon motion of the party aggrieved, be set aside and vacated by the same court, and another and different judgment entered, for either of the following causes, materially affecting the substantial rights of the party and entitling the party to a different judgment: [¶] 1. Incorrect or erroneous legal basis for the decision, not consistent with or not supported by the facts; and in such case when the judgment is set aside, the statement of decision shall be amended and corrected. [¶] 2. A judgment or decree not consistent with or not supported by the special verdict." A statutory motion to vacate a judgment requires strict compliance with the provisions of section 663. (See *Conservatorship of Townsend* (2014) 231 Cal.App.4th 691, 702.) Here, section 663 did not provide appellants with a procedural vehicle for relief because they were challenging an order granting sanctions after a hearing rather than a judgment entered after a trial.[3]

We conclude appellants did not preserve issues for appeal not raised in their original opposition by arguing them in defective motions for a new trial or to vacate the judgment.

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[3] This is not to say appellants had no options to challenge the imposition of sanctions in the trial court. For example, appellants could have filed a motion for reconsideration under section 1008, subdivision (a), that provides: "When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order." (See, e.g., *580 Folsom Associates v. Prometheus Development Co.* (1990) 223 Cal.App.3d 1, 9.)

II

Claimed Defective Notice by Fax

Appellants claim they received defective notice of the motion for sanctions because they were served by fax when they had not consented to receipt of documents by fax. We conclude the record does not support the factual assertion upon which their claim depends.

A.

Section 128.7

"Under Code of Civil Procedure section 128.7, a court may impose sanctions for filing a pleading if the court concludes the pleading was filed for an improper purpose or was indisputably without merit, either legally or factually." (*Peake v. Underwood* (2014) 227 Cal.App.4th 428, 440 (*Peake*), citing *Guillemin v. Stein* (2002) 104 Cal.App.4th 156, 168.) As the *Peake* court explained, "The Legislature enacted . . . section 128.7 based on rule 11 of the Federal Rules of Civil Procedure (28 U.S.C.), as amended in 1993 (Rule 11). (*Musaelian v. Adams* (2009) 45 Cal.4th 512, 518, fn. 2; *Guillemin, supra*, 104 Cal.App.4th at p. 167.) Therefore, federal case law construing Rule 11 (28 U.S.C.) is persuasive authority on the meaning of section 128.7 (*Guillemin, supra,* 104 Cal.App.4th at p. 167.) [¶] Under Rule 11 (28 U.S.C.), even though an action may not be frivolous when it is filed, it may become so if later-acquired evidence refutes the findings of a prefiling investigation and the attorney continues to file papers supporting the client's claims. (See *Childs v. State Farm Mut. Auto. Ins. Co*. (5th Cir. 1994) 29 F.3d 1018, 1025.) Thus, a plaintiff's attorney cannot 'just cling tenaciously to the investigation he [or she] had done at the outset of the litigation and bury his [or her] head in the sand.' (*Ibid*.) Instead, 'to satisfy [the] obligation under . . . section 128.7] to conduct a reasonable inquiry to determine if his [or her] client's claim was well-grounded in fact,'

the attorney must 'take into account [the adverse party's] evidence." (*Ibid*.)" (*Peake*, *supra*, at pp. 440-441.)

As to the notice required for the motion, subdivision (c)(1) of section 128.7 states: "A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in Section 1010,[4] but shall not be filed with or presented to the court unless, within 21 days after service of the motion, or any other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees." In short, "section 128.7 requires a formal noticed motion in order to comply with the statute." (*Barnes v. Department of Corrections* (1999) 74 Cal.App.4th 126, 135.)

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4 Section 1010 provides: "Notices must be in writing, and the notice of a motion, other than for a new trial, must state when, and the grounds upon which it will be made, and the papers, if any, upon which it is to be based. If any such paper has not previously been served upon the party to be notified and was not filed by him, a copy of such paper must accompany the notice. Notices and other papers may be served upon the party or attorney in the manner prescribed in this chapter, when not otherwise provided by this code. No bill of exceptions, notice of appeal, or other notice or paper, other than amendments to the pleadings, or an amended pleading, need be served upon any party whose default has been duly entered or who has not appeared in the action or proceeding."

B.

The Trial Court Expressly Found Notice Was Served by Mail

The gravamen of appellants' argument is that they never consented to service by fax and therefore they never received proper notice of the motion for sanctions. Section 1013, subdivision (e), provides that "[s]ervice by facsimile transmission shall be permitted only where the parties agree and a written confirmation of that agreement is made." Even so, as Balkcom points out, his attorney served the notice of motion and motion for sanctions on appellants by fax *and mail* on December 23, 2014.

The record contains a proof of service indicating the notice of motion and motion for sanctions were served by fax and mail on December 22, 2014. Notice is sufficient when made by regular mail service. (§ 1012.) And service is complete at the time of the deposit of the papers. (§ 1013, subd. (a).) Thus, notice was properly given under sections 1012 and 1013.

While appellants argued in the trial court they never received notice by mail, the trial court expressly found otherwise:

"THE COURT: Thank you. . . . Sir, hold on. Let me address one. You had the courtesy notice, but that's not all you had. You had the faxed notice, and you had the mail notice, or the fax and mail on the first one, and you had a faxed notice on the second. And as I've said ad nauseam, no where is prejudice shown, that you are relying on a technical defect. That even though strict compliance is required, there is no showing that your client did not have full notice, full opportunity and, in fact, fully participate in these proceedings." The trial court reiterated, "on two occasions through two different methods you got the full motion. Yes, you did. There's no dispute, and that is my finding."

The trial court's factual finding of service by mail obviates the need to consider whether substantial compliance by fax sufficed to give notice, whether appellants must

demonstrate prejudice in receiving notice by fax, or even whether their own filing of the notice of motion as an attachment to their opposition sufficed to show notice.

III

Whether a Frivolous Lis Pendens is Subject to Sanctions under Section 128.7

Appellants next contend section 128.7 did not authorize the trial court to impose sanctions for a frivolous document submitted to the county recorder. We are not persuaded.

In reviewing appellants' claim, we are mindful that " '[o]ur obligation in applying section 128.7 is to carry out the Legislature's intent. [Citations.] The words of a statute are the surest indication of the Legislature's intent. . . .' " (*Malovec v. Hamrell* (1999) 70 Cal.App.4th 434, 437-438, quoting *Goodstone v. Southwest Airlines Co*. (1998) 63 Cal.App.4th 406, 423.) Thus, we review the language of section 128.7 that states in pertinent part:

"(a) Every pleading, petition, written notice of motion, or other similar paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise provided by law, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

"(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met: [¶] (1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless

increase in the cost of litigation. [¶] (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. [¶] (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. [¶] (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief."

Appellants argue the trial court lacked authority to sanction them because the lis pendens was not presented "to the court" as required by subdivision (b) of section 128.7. In so arguing, appellants do not attempt to defend their lis pendens as nonfrivolous. Instead, they argue only that the lis pendens could not be the basis for sanctions under section 128.7. We reject the argument.

Although a lis pendens is ordinarily recorded with the county recorder, the Code of Civil Procedure also requires that a copy be filed immediately with the court in which the action is pending. Section 405.22 provides that, with exceptions not pertinent in this case, "the claimant shall, prior to recordation of the notice, cause a copy of the notice to be mailed, by registered or certified mail, return receipt requested, to all known addresses of the parties to whom the real property claim is adverse and to all owners of record of the real property affected by the real property claim as shown by the latest county assessment roll. . . . *Immediately following recordation, a copy of the notice shall also be filed with the court in which the action is pending*. Service shall also be made immediately and in the same manner upon each adverse party later joined in the action." (Italics added.)

Under section 405.22, a lis pendens is a paper that must be filed with the court. As a paper filed with the court, a frivolous lis pendens is subject to sanctions under section

128.7. Accordingly, we reject appellants' argument their mere filing of the lis pendens with the county recorder shielded them from sanctions under section 128.7.

IV

Claims Appellants Did Not Receive the 21-Day Safe Harbor Period

In two closely related arguments, appellants contend the safe harbor period provided by section 128.7 never commenced and therefore they did not receive the full 21-day period to withdraw the lis pendens. To succeed, these arguments depend on the conclusion that the service of the notice of motion for sanctions by fax was defective and the safe harbor period never started running. However, as we explained in part II, *ante*, the trial court found and the evidence in the record supports the finding appellants received proper service by fax and mail.

The record indicates Balkcom served the notice no later than December 23, 2014. However, sanctions were not imposed on appellants until July 10, 2015 – a period of *199 days*. Appellants did not actually withdraw their lis pendens until December 9, 2015 – a period of *351 days* after service of the notice for motion for sanctions. Appellants' delay was much longer than the 21 days to which they were entitled. The delay was such that the trial court remarked during a hearing on October 9, 2015:

"THE COURT: [I]s the lis pendens still pending?

"[Defense Counsel]: Yes, Your Honor, as of yesterday.

"THE COURT: Which is almost unfathomable to me after all of the discussions that we have had that there is no pending action. The underlying merits . . . , as we've discussed several times before, there is no pending action. . . . [Leino] has no claim to that property, and there is no action pending concerning that claim. It's been denied, yet he and counsel continue to maintain an encumbrance on the property with no legal basis."

In short, appellants had the benefit of the full safe harbor period provided under section 128.7 several times over but did nothing to withdraw the lis pendens in a timely manner.

V

Claim that Sanctions Were Excessive

Appellants argue that, in "granting Respondent's sanctions request for $16,060 consisting of $6,000 attorney fees incurred from the beginning of the case, plus $460 court fees/costs, and $9,000 for rent allegedly owed by [Leino] to [Balkcom], the sanction imposed on [Leino] and [Leino's] attorney was unauthorized and excessive, and the trial court failed to exercise discretion." We are not persuaded.

A.

The Trial Court's Findings

In imposing sanctions, the trial court found Balkcom "took affirmative, active steps to remedy the situation in several ways, all of which were rebuffed by [Ihejirika] and his client." Balkcom's attorney, Sayre, filed a declaration explaining the basis for the $16,060 in sanctions. Sayre's declaration stated Leino "recorded a declaration of trust with the Sacramento County Recorder and has not filed any correct[ive] document to stop this improper cloud on my client's real property, which [Leino] as Trustee, refuses to return possession and control to [Balkcom] in which he is incurring lost income from renting the duplex residential property at approximately $750.00 per month since on or about Jan. 2014, or $9,000.00 in lost income from his property that he, in part, purchased to support in generating income to supplement his other retirement income." Sayre also declared that as a consequence of the unmeritorious petition filed by Leino, Balkcom incurred $6,600 in attorney fees and $460 in court costs, for a total of $16,060. Sayre submitted an itemized bill of hours expended in the matter along with a list of court costs incurred.

The trial court found Balkcom was forced to incur these expenses and losses based on appellants' improper motive:

"The letter that [Leino] faxed to [Sayre] indicating among other things that he is going to get [Balkcom], and those are my phrases, including things such as, quote: Wait until People Magazine and the Sacramento Bee get it. I will make it my life's work. I want what is left to me, and I will get it. That was his concluding remark in what can be reasonably described as a threatening letter to [Balkcom] through his attorney, [Sayre]. He threatens [Sayre] in that letter: I will tie him up in court. And he indicates that abusing a disabled person, which [Leino] claims to be, can result in double settlement.

"And he alleges all kinds of things in that letter that evidences prior to the filing of his Complaint or Petition in this matter his animus toward [Balkcom] and the degree to which he will go after [Balkcom] to hurt him."

The trial court's minute order granted the sanctions under section 128.7 as requested.

B.

The Trial Court's Discretion and Our Review

"A court has broad discretion to impose sanctions if the moving party satisfies the elements of the sanctions statute. (See *Kojababian v. Genuine Home Loans, Inc*. (2009) 174 Cal.App.4th 408, 421.) However, the sanctions statute ' "must not be construed so as to conflict with the primary duty of an attorney to represent his or her client zealously. Forceful representation often requires that an attorney attempt to read a case or an agreement in an innovative though sensible way. Our law is constantly evolving, and effective representation sometimes compels attorneys to take the lead in that evolution." ' (*Guillemin, supra,* 104 Cal.App.4th at pp. 167–168.) Moreover, a sanction 'shall be limited to what is sufficient to deter repetition of [the improper] conduct or comparable

conduct by others similarly situated.' (. . . § 128.7, subd. (d).) [¶] "We review a . . . section 128.7 sanctions award under the abuse of discretion standard. (*Guillemin, supra*, 104 Cal.App.4th at p. 167.) We presume the trial court's order is correct and do not substitute our judgment for that of the trial court. (*Shelton v. Rancho Mortgage & Investment Corp.* (2002) 94 Cal.App.4th 1337, 1345.) To be entitled to relief on appeal, the court's action must be sufficiently grave to amount to a manifest miscarriage of justice. (*Kurinij v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 867.)" (*Peake, supra*, 227 Cal.App.4th at p. 441.)

We conclude the trial properly exercised its discretion. The trial court explained the basis of its decision over the course of four pages in the reporter's transcript. The trial court expressly found the sanctions were for conduct taken for the improper purpose to harass Balkcom. The record amply supports this finding. The trial court imposed sanctions in the amount requested – an amount supported by declarations and an itemized statement of legal fees and court costs. Appellants have not demonstrated any abuse of discretion by the trial court.

VI

Due Process Claim

Citing as authority only the Fifth and Fourteenth Amendments of the United States Constitution and article 1, section 7(a), of the California Constitution, appellants argue they were deprived of due process of law. They contend the trial court ignored the requirements of section 128.7 and displayed a bias against them. We reject the argument.

A.

Due Process Rights

"Adequate notice and an opportunity to be heard prior to the imposition of sanctions are mandated . . . by the due process clauses of both the federal and state

Constitutions. (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7; *Bauguess v. Paine* [(1978)] 22 Cal.3d at pp. 638–639; see also *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 651–654.) Indeed, due process protections must be afforded in every situation in which the state deprives an individual of property. (*Annex British Cars, Inc. v. Parker–Rhodes* (1988) 198 Cal.App.3d 788, 792.)" (*Caldwell v. Samuels Jewelers* (1990) 222 Cal.App.3d 970, 976.) Consequently, "the imposition of sanctions always requires procedural due process." (*Ibid.*)

The hallmarks of procedural due process are notice, hearing, and an impartial decision maker. Thus, "the due process clause of the Fourteenth Amendment to the United States Constitution requires that if a person is entitled to notice in a governmental proceeding, the method of giving that notice must be reasonably calculated to actually notify; giving notice cannot be merely a token or formalistic gesture. [Citations.] The requirements of due process in a particular setting must be based on an evaluation of the totality of the circumstances." (*California School Employees Assn. v. Livingston Union School Dist.* (2007) 149 Cal.App.4th 391, 397.) And even though a hearing is required, "due process does not necessarily require that a motion for sanctions for alleged misconduct during a hearing be heard on a separate and later hearing date." (*In re Marriage of Petropoulos* (2001) 91 Cal.App.4th 161, 179, quoting *In re Marriage of Quinlan* (1989) 209 Cal.App.3d 1417, 1419.)

And while parties are entitled to an impartial judge, "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge." (*Liteky v. U.S.* (1994) 510 U.S. 540, 555 [114

S.Ct. 1147]. "Neither strained relations between a judge and an attorney for a party nor '[e]xpressions of opinion uttered by a judge, in what he [or she] conceived to be a discharge of his [or her] official duties, are . . . evidence of bias or prejudice. [Citation.]' [Citation.]" (*Roitz v. Coldwell Banker Residential Brokerage Co*. (1998) 62 Cal.App.4th 716, 724, quoting *Jack Farenbaugh & Son v. Belmont Construction, Inc.* (1987) 194 Cal.App.3d 1023, 1031.)

B.

Appellants Received Due Process of Law

Based on our review of the record, we conclude appellants received due process of law. Appellants received actual notice of the motion for sanctions. Indeed, they were the first to file the notice of the motion for sanctions in court (as an attachment to their opposition). Appellants argued the motion for sanctions before and after the trial court imposed the sanctions. The sanctions were argued so extensively they comprise a 177-page reporter's transcript devoted to arguments on the issue.

Tellingly, appellants do not identify any examples of bias by the trial court, relying instead on the vague assertion that "the facts and basis" for their bias claim "are too numerous and replete with detail to be reproduced here." Appellants' undeveloped argument is deemed forfeited. "To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16; *In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672-673, fn. 3.)" (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) In any event, our review of the record reveals that during the proceedings, the trial court displayed remarkable patience despite being repeatedly interrupted by Ihejirika and the refusal of appellants for a year to accept the decision of the court to dismiss their underlying petition before they finally removed their

lis pendens. Finally, we note we have not found any error in law or abuse of discretion committed by the trial court in imposing sanctions.

In sum, appellants received due process of law.

DISPOSITION

The order imposing sanctions jointly on Kristopher D. Leino and his attorney Fred A. Ihejirika is affirmed. Timothy Balkcom shall recover his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).) A copy of this opinion shall be forwarded to the State Bar of California upon issuance of the remittitur.

/s/
HOCH, J.

We concur:

/s/
ROBIE, Acting P. J.

/s/
DUARTE, J.