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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of JUDY KONONCHUK
and ANTHONY MOURADIAN.

JUDY KONONCHUK,

Respondent,

v.

ANTHONY MOURADIAN,

Appellant.

D058615

(Super. Ct. No. D430212)

APPEAL from orders of the Superior Court of San Diego County, Robert C. Longstreth, Judge. Affirmed; sanctions on appeal awarded to Respondent.

Appellant Anthony Mouradian appeals from a 2010 order renewing a 2006 domestic violence restraining order, that prevents him from contacting his former wife, respondent Judy Kononchuk and their son, J. (Fam. Code,¹ § 6345.) Mouradian also contends the family court abused its discretion in denying his motion to resume contact with his son and implement a parenting plan.

¹ All statutory references are to the Family Code unless otherwise specified.

In response, Kononchuk argues that the family court acted well within its discretion and in compliance with the evidence when it renewed the restraining order and denied the request to resume contact. Additionally, Kononchuk has brought a motion for sanctions against Mouradian for pursuing a frivolous appeal. (Code Civ. Proc., § 907.)

Mouradian's wide-ranging arguments seem to claim the family court's rulings are based on a misinterpretation of the evidence or of the applicable legal standards. We reject his arguments and affirm the orders, as they are well supported by the record. Moreover, we find the appeal to be frivolous and award sanctions against him in a total amount of \$16,257 to compensate Kononchuk for attorney fees and expenses incurred to oppose his filings.

FACTUAL AND PROCEDURAL BACKGROUND

A. Underlying 2006 Orders

In the mid-1990s, the parties were married and had one son, J., who is now age 16. Originally, in 1997, Mouradian was allowed supervised visitation pending a full psychological custody evaluation. In 2000, the parties agreed to lift the supervision condition of his visitation, and the parties stipulated that J. would have his own therapist, Dr. Kachorek, and that a mediator, Dr. Doyne, would be appointed to make recommendations on any motions regarding custody or visitation.²

² Mouradian seems to refer to a prior appellate proceeding in this case. The records of this court show only that a petition for writ of mandate was filed and denied in 2004. (*Kononchuk v. Mouradian* (D045432, Dec. 22, 2004).)

After more difficulties developed, a set of orders was issued by Judge Domnitz in late 2005, in which Kononchuk was awarded sole custody and Mouradian's visitation was reduced. Child support arrearages and attorney fees orders were made, and sanctions were awarded against Mouradian, who was at times represented by counsel. Although he was ordered to turn over a certain third-party settlement check to counsel for Kononchuk, Mouradian did not do so nor pay the amounts due.

In March 2006, Kononchuk filed her initial request for a domestic violence restraining order under the Domestic Violence Prevention Act (DVPA). (§ 6200 et seq.) She presented evidence that Mouradian had threatened to use deadly force against her or her family members or her agents, and he appeared to be acting on paranoid delusions that she was stalking him and threatening his life and J.'s life. Judge Oberholtzer issued temporary orders and after several hearings, permanent restraining orders (the latter on Sept. 7, 2006). The court found Kononchuk had demonstrated by a preponderance of the evidence that the actions by Mouradian had placed her in reasonable fear for her safety and J.'s safety. Mouradian was found to pose an immediate and substantial risk of harm to J., and a no contact order was imposed, unless contact was requested by J.'s therapist in a therapeutic setting.

Additionally, the court ordered that Mouradian undergo psychiatric evaluation by a specified doctor and a psychologist, to include a domestic violence risk assessment (IME-Mental). He was ordered to participate in therapy and he could then apply to reinstate contact with J., subject to J.'s therapist's approval, after he completed the

evaluations and therapy. On September 7, 2006, the court issued a four-year restraining order.

A dispute arose about payment for the IME-Mental expense, since Mouradian contended he could not afford it and could not obtain income. He had completed some psychological testing at a Kaiser facility and wanted to provide it to the court. At hearings in February 2007 and September 2007, the court considered several related motions on the financial matters, as well as child support and Mouradian's request to vacate the no contact visitation order. The court adhered to the previous orders and ordered additional attorney fees to be paid to Kononchuk.

B. 2010 Proceedings

On May 17, 2010, shortly before the 2006 protective order was set to expire, Mouradian, acting in propria persona, filed a request for an order to show cause (OSC) to modify visitation orders, and to establish a specific parenting plan. A Family Court Services (FSC) mediation was scheduled for August and a hearing in September.

In July 2010, Kononchuk filed an ex parte request to obtain a hearing date to renew the restraining order before it expired, and requested that Mouradian's pending motion be dismissed because he had not complied with previous orders for psychiatric evaluation, therapy, or payments. The court set a hearing date and combined it with the pending motion, as well as continuing the FSC date. Eventually, the parties met with the FSC counselor separately, with Mouradian appearing telephonically from his Los Angeles home. The mediator reviewed a June 17, 2010 letter from J.'s therapist, Dr. Kachorek, and a letter from a therapist that Mouradian had seen, Dr. Jones. The

mediator's recommendation was that Mouradian should complete his IME-Mental, and the no contact visitation order should remain in effect.

In support of Kononchuk's renewal motion, she submitted a declaration describing her fears about further risks of harm to her and J. posed by Mouradian's apparent antisocial and paranoid behavior and history of personality disorders. Nothing had changed, and J. did not want to resume contact. Kononchuk worked as an attorney, and Mouradian seemed to believe she was an FBI spy, or part of a conspiracy that violated fiduciary duties owed toward him, or that she was still in league with Ku Klux Klan members that were following him, or with Russian Mafia or KGB members who were threatening him. She believed that he had illegally obtained her credit report or other financial information, when he filed his own income and expense declaration in June 2010 that referenced her income.

The record does not contain a written response from Mouradian to the renewed motion. The continued hearing went forward on September 7, 2010, on his pending motion to modify visitation orders and Kononchuk's request to renew the restraining order. Although Dr. Kachorek had been subpoenaed and was present, no oral evidence was taken. At the hearing, the court heard argument and denied oral requests by Mouradian to continue the motions for more time to review the papers, or to transfer the file to the supervising department on the grounds that he wanted an "investigation of the vested interests done in this case." The court noted that it was undisputed that Mouradian had not complied with the previous orders to undergo an IME-Mental and therapy.

In its order, the court set forth numerous specific findings as follows to explain its denial of Mouradian's requests to reinstate contact with J. or order a specific parenting plan, and its granting of Kononchuk's request for a renewal of the restraining order for four years. The renewal was deemed supported by evidence of her reasonable belief that there might be future abuse against her and/or J. if the orders were not renewed.

Mouradian had not complied with the prerequisites to resume contact, and the existing orders were confirmed for him to obtain a psychiatric evaluation with domestic violence risk assessment (IME-Mental) and psychiatric treatment. The same concerns outlined in the previous orders were still in existence, and no new, sufficient information had been presented to support Mouradian's requests. The court declined to adopt the specific recommendations in the FCS report, instead affirming the previous orders.

C. Appellate Proceedings

Mouradian appeals from the renewal order and the order denying his visitation request. In addition to his opening brief, he has submitted numerous items to this court, and those requests have already been ruled on during the record preparation stage. These include several peremptory challenges to this court (denied), and a one-sided proposed "stipulation to Father's Day contact" (rejected).

Additionally, Mouradian filed several requests to submit evidence outside the record on appeal. In separate orders, those numerous new exhibits and news articles that were outside the record were stricken and returned to him (on an unopposed motion to strike by Kononchuk). Mouradian lodged additional exhibits, resulting in another motion to strike being filed by Kononchuk, which was granted, with a few exceptions (and we

have considered material already found in the clerk's transcript, i.e., his exhibits A, B, C). In accordance with our previous order, we have considered the materials he properly submitted, his exhibits FFF (1997 psychological evaluation), JJJ, KKK (appellate filings by Mouradian), and portions of K (Dr. Jones's letter) and III (Mouradian declaration).

This court denied Mouradian's request to transmit the entire superior court file. In the trial court and in this court, he sought appointment of counsel due to an alleged lack of funds, and submitted proposed costs memos, but this was denied. Kononchuk filed a motion for sanctions with separate exhibits, and Mouradian filed opposition. The motion was deferred for this merits panel to decide. (See pt. III, *post.*)

No reply brief was filed. To the extent Mouradian is still requesting in his opening brief that this court should consider additional evidence beyond the record, we have already considered and denied those same requests. (See *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3 [review on appeal is based solely on the evidence before the trial court at the time of the challenged ruling].) Although an appellate court has limited authority to admit additional evidence (see Code Civ. Proc., § 909), this authority must be "exercised sparingly" (*In re Zeth S.* (2003) 31 Cal.4th 396, 405), and we have been unable to exercise that authority on the showings made.

DISCUSSION

Mouradian mainly attempts to reargue the merits of the issues, or to claim there were private conspiracies or some irregularities at the trial court level that operated against him, such that he is entitled to new forms of relief. He suggests damages awards or the imposition of civil penalties on others. To address those limited issues that have

been validly raised in his appeal of these orders, we next set forth applicable standards of review for evaluating the record, and explain the proper limitations upon our scope of review.

I

APPLICABLE STANDARDS OF REVIEW

Matters involving child custody and visitation are generally conferred to the discretion of the family court, and its decisions are reviewed by appellate courts for abuse of discretion. (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32.) Abuse of discretion occurs if the trial court exceeded the bounds of reason, or failed to apply correct legal standards and thereby took action outside the confines of the applicable principles of law, or made decisions that do not have substantial support in the evidence. (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420.) As a trier of fact, a trial judge is required to reject evidence only " 'when it is inherently improbable or incredible, i.e., " 'unbelievable *per se*,' " physically impossible or " 'wholly unacceptable to reasonable minds.' " ' " (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.)

On appeal, we do not reweigh the evidence or second-guess the credibility of a witness. (*In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1531.) In determining whether substantial evidence supports the court's order, we view the evidence in the light most favorable to the order. (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1151.)

As an appellant, Mouradian has the burden of providing an adequate record and of showing that error occurred and that it was prejudicial. (*Maria P. v. Riles* (1987) 43

Cal.3d 1281, 1295-1296; *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132.) The arguments on appeal must be restricted to documents in the record, and we generally do not consider references to matters outside the record. (Cal. Rules of Court, rule 8.204(a)(2)(C) [appellant's opening brief must provide a summary of significant facts limited to matters in the record on appeal]; all further rule references are to the California Rules of Court.) Absent an adequate record to demonstrate error, a reviewing court presumes the judgment or order are supported by the evidence. (*In re Angel L.* (2008) 159 Cal.App.4th 1127, 1136-1137.)

It is well established that "[i]n propria persona litigants are entitled to the same, but no greater, rights than represented litigants and are presumed to know the [procedural and court] rules." (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795.) For any appellant, "[a]ppellate briefs must provide argument and legal authority for the positions taken. 'When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.'" (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862.) "We are not bound to develop appellants' argument for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived." (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830.)

Although this court could legitimately affirm each of the challenged orders on the basis that Mouradian has failed to present any understandable, persuasive, or supported arguments on appeal, we are mindful that important rights are at stake, and in an

abundance of caution, we next examine the record for any evidentiary and legal support for the discretionary orders made.

II

MERITS OF VISITATION AND RENEWAL ORDERS

A. Applicable Standards

This visitation dispute was heard as a companion matter to the request for renewal of a domestic violence protective order. Both factual contexts required substantial exercises of discretion on the part of the trial court. (*In re Marriage of Burgess, supra*, 13 Cal.4th at p. 32.) A trial court has broad discretion in determining whether to grant a renewal order under the statutory scheme. (See § 6345, subd. (a); *Gonzalez v. Munoz, supra*, 156 Cal.App.4th at p. 420; *Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334.)

Abuse of a serious nature, even if not infliction of physical injury, may warrant the issuance or renewal of such a domestic violence protective order. (*Conness v. Satram* (2004) 122 Cal.App.4th 197, 202; § 6345.) "[S]ection 6320 broadly provides that 'disturbing the peace of the other party' constitutes abuse" (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497.) "[T]he plain meaning of the phrase 'disturbing the peace of the other party' in section 6320 may be properly understood as conduct that destroys the mental or emotional calm of the other party." (*In re Marriage of Nadkarni, supra*, at p. 1497.)

Section 6345, subdivision (a) provides in relevant part that a restraining order "may be renewed, upon the request of a party, either for five years or permanently, *without a showing of any further abuse since the issuance of the original order*, subject to

termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party." (Italics added.)

To prevail on a motion to renew such an order, a protected party has the burden to show by a preponderance of the evidence that a reasonable person would have a " 'reasonable apprehension' " of future abuse. (*Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1290 (*Ritchie*)). Under this objective test, a moving party need not show that future abuse is likely to occur, but must instead show he or she is under a "genuine and reasonable" apprehension of future abuse. (*Ibid.*) Even if no abuse has occurred since the initial protective order was issued, the court may renew a protective order on request and a proper showing, since the lack of evidence of abuse might reasonably be attributed to the effectiveness of the order. (*Id.* at p. 1284.) "[T]he fact a protective order has proved effective is a good reason for seeking its renewal." (*Ibid.*)

In challenging a renewal order, the restrained party is not permitted "to challenge the truth of the evidence and findings underlying the initial order . . ." (*Ritchie, supra*, 115 Cal.App.4th at p. 1290.) A reviewing court must affirm the renewal order unless "the trial court exceeded the bounds of reason.'" (*Gonzales, supra*, 156 Cal.App.4th at p. 420.)

B. Denial of Motion To Resume Contact

As a threshold matter, we observe that most of Mouradian's appellate brief seeks to challenge the 2006 findings that underlie the denial of his motion to resume contact with J., but he never explains why none of the conditions imposed by the court for resuming contact was met or why they could not have been met. The time to appeal the

2006 order has passed, and we have no jurisdiction to consider these arguments. (*Ritchie, supra*, 115 Cal.App.4th at p. 1290.)

Mouradian seems to believe that with regard to his visitation request, he should be able to choose which department should hear his case, or that he can show somehow that court files have been altered or corrupted or that Kononchuk (trained as an attorney) has violated her fiduciary duties as an attorney toward him. We note that the financial orders made were not challenged, and Kononchuk stated in her moving declaration that no financial issues were before the court in 2010, and there is no indication in the record that financial issues were reopened.

If Mouradian is contending the trial court failed to apply the appropriate legal standards, or that the family law system as a whole is incapable of fairly adjudicating his case, those arguments are unsupported and meritless. In determining whether substantial evidence supports the court's order, we view the evidence in the light most favorable to the order. (*In re Marriage of Drake, supra*, 53 Cal.App.4th at p. 1151.) There was sufficient evidence to support the court's visitation order in the declarations provided by Kononchuk and her attorney, the lodged documents, the letter from J.'s therapist, and the FCS recommendations, none of which was controverted by Mouradian. Also, Mouradian's therapist, Dr. Jones, could not provide any new information about the appropriateness of any of his proposed changes to the visitation order.

Absent an indication to the contrary, we are required to presume the trial court applied the correct legal standards in making its discretionary determinations. (*In re Angel L., supra*, 159 Cal.App.4th at pp. 1136-1137; *Gonzales, supra*, 156 Cal.App.4th at

pp. 420-421.) There is no basis in the record to show the court abused its discretion in any way in evaluating this visitation request. Rather, the reporter's transcript as a whole shows that the judge conscientiously gave Mouradian a chance to be heard and to explain his position, but he could not or did not offer any meaningful support for it.

C. Respective Showings: Renewal

In his appellate filings, Mouradian has a duty to summarize the relevant underlying facts fairly, but instead, he makes only broad-based attacks and arguments about the system as a whole. Such factual statements in appellate briefs not supported by citations to the record are improper and cannot be considered. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

The family court stated at the 2010 hearing that it was undisputed that Mouradian had not complied with the 2006 orders that would have enabled him to seek to renew visitation with J., and Mouradian did not disagree. The FCS mediator made a similar finding. The court stated that Mouradian's letter from his therapist, Dr. Jones, had been considered, but it did not provide anything new and was not persuasive to show any changed circumstances. However, Mouradian continued to contend that his 2007 psychological exams and the 1997 tests should have been enough to satisfy the court, were it not for unspecified "vested interests" that hampered him.

Based on Kononchuk's description in her declaration of the limited interaction she continued to have with Mouradian, such as when she believed he had tampered with her financial records or was inexplicably reporting her to authorities, the court had a substantial basis to find that Kononchuk's fear of continued abuse was genuine and

reasonable. There is nothing in the record showing the court was required to reject Kononchuk's evidence that Mouradian was reasonably likely to continue to engage in "behavior that has been or could be enjoined pursuant to Section 6320." (§ 6203, subd. (d).)

After analyzing the paperwork submitted, the court stated in its oral ruling that the same concerns that were important at the previous hearings in 2006-2007 were still serious and unaddressed, and no reason had been given to change the existing orders. The restraining order was renewed, and Mouradian told the court he was going to appeal. He has done so, but without showing any error or abuse of discretion in the issuance of the order.

III

MOTION FOR SANCTIONS

In light of the conclusions we reach above, that the record well supports the orders and no legitimate basis to challenge them has been raised, we consider Kononchuk's request that this court impose monetary sanctions on Mouradian. She contends his appeal to this court is frivolous and was taken solely for the purpose of delay and harassment, and that Mouradian has violated a number of procedural rules in proceeding with his appeal, causing her expense in opposing it and in bringing the motions to correct his errors in designating the record. This court informed the parties that the sanctions motion would be heard with the appeal, and we next consider its merits and Mouradian's opposition to it. (Rule 8.276(e)(1).)

A. Authority

A reviewing court "may add to the costs on appeal such damages as may be just" when that court determines that an appeal "was frivolous or taken solely for delay." (Code Civ. Proc., § 907.) Standards for evaluating whether an appeal is frivolous are set forth in *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650 (*Flaherty*), including both an objective and a subjective standard. An appeal is frivolous "when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable attorney would agree that the appeal is totally and completely without merit." (*Ibid.*)

"The subjective standard looks to the motives of the appealing party and his or her attorney, while the objective standard looks at the merits of the appeal from a reasonable person's perspective. [Citation.] Whether the party or attorney acted in an honest belief there were grounds for appeal makes no difference if any reasonable person would agree the grounds for appeal were totally and completely devoid of merit." (*Cox v. County of San Diego* (1991) 233 Cal.App.3d 300, 313, abrogated on other grounds in *Zavala v. Arce* (1997) 58 Cal.App.4th 915, 925, fn. 8.) Sanctions should be sparingly used to "deter only the most egregious conduct" (*Flaherty, supra*, 31 Cal.3d at p. 651). If an appeal merely lacks merit, that determination alone will not establish that it is frivolous in nature. (See *Dodge, Warren & Peters Ins. Services, Inc. v. Riley* (2003) 105 Cal.App.4th 1414, 1422.)

"We impose a penalty for a frivolous appeal for two basic reasons: to discourage further frivolous appeals, and to compensate for the loss that results from the delay."

(*Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 33 (*Pierotti*)). In deciding the measure of sanctions, relevant inquiries are the goals of compensating the parties for expenses occasioned by the appeal and deterring similar conduct in the future. (*Flaherty, supra*, 31 Cal.3d at p. 651.) The courts may consider the cost of attorney fees on appeal, "the degree of objective frivolousness and delay; and the need for discouragement of like conduct in the future." (*Pierotti, supra*, 81 Cal.App.4th at pp. 33–34.)

B. Analysis of Record

At the outset, we note that Kononchuk's motion for sanctions suggests in the alternative that we make an order compensating this court for our own costs of processing a frivolous appeal. (*Pierotti, supra*, 81 Cal.App.4th at pp. 35-36.) We decline to make such an order in this family law matter.

Kononchuk's main request for sanctions seeks compensation for the attorney fees she has incurred in responding to this meritless appeal. Specifically, she argues that she went to considerable expense in pointing out to this court the numerous unreasonable violations of the rules governing appeals that Mouradian has committed during the process of preparing the appellate record and his appellate briefing.

In his opposition to the motion for sanctions, Mouradian merely repeats his earlier claims of financial hardship, that have not been substantiated. He also refers to previous troubles with record preparation that he believes should have justified consideration of the superior court file as a whole, for undisclosed reasons of his own ("vested interests"). This court declined that same request and struck his exhibits D and E, and he suggests he will seek reconsideration at oral argument, to reinstate to the clerk's transcript his exhibit

D and exhibit E . He also continues to object to cocounsel for respondent, Steven Temko, associating in this matter, although this court already declined to take any action on his request.

In applying the standards for evaluating whether this appeal must be deemed frivolous, we are satisfied that it qualifies as objectively frivolous under the *Flaherty* standard. (See, e.g., *Pierotti, supra*, 81 Cal.App.4th at p. 32 & fn. 9 [appellant's (a) failure to discuss pertinent legal authority, (b) preparation of an inadequate appellate record, and (c) attempt to impugn opposing party's character without any factual support in the record, all demonstrate that appeal was subjectively pursued for an improper purpose, without good faith belief in its validity].) Here, Mouradian's deficient briefing, which fails to address the issues that are cognizable on appeal, his voluminous citation to inapposite authorities, and his continual attempts to reargue the merits of earlier orders, contrary to the applicable standards of review, all qualify under the objective standard as factors supporting a determination that the appeal is totally and completely without merit.

We also conclude Mouradian's appeal is subjectively frivolous, given the messy and cumbersome state of this record, which has required substantial time and effort from Kononchuk to oppose his many inappropriate requests, as well as substantial court staffing time to prepare the record for review. It is difficult to understand Mouradian's motivations, but the purposes of harassment or intimidation in prosecution of the appeal are very likely possibilities. For example, Mouradian refused to stipulate to extensions of time for the respondent's brief, and used abusive language in doing so. In April of 2011, he served and attempted to file a premature notice of entry of judgment while the appeal

was still pending. In August 2011, apparently in connection with seeking appointment of counsel, Mouradian tried to bill his own costs on appeal to Kononchuk in the amount of \$142,208.05, without justification.

Kononchuk has lodged as an exhibit in support of the sanctions request a July 2011 FBI receipt for court case materials that Mouradian dropped off at its Los Angeles office (including 1995 wedding video and materials lodged in connection with this appeal that he believes will connect Kononchuk with a gangster recently apprehended by the FBI, Whitey Bulger). Deterrence of future egregious conduct is a valid reason for imposing sanctions on appeal, and sanctions are justified here. (*Flaherty, supra*, 31 Cal.3d at p. 651.)

Kononchuk has provided declarations and supplemental declarations of her attorney and associated counsel, establishing that they have incurred approximately \$8,097 in attorney fees and staff expenses (Clark) and \$8,160 in attorney fees (Temko). The total of claimed expenses is at least \$16,257, and this amount appears to be reasonable under all the circumstances, as outlined above. We accordingly conclude that an award of sanctions in the amount of \$16,257 in attorney fees and expenses payable to Kononchuk is appropriate.

DISPOSITION

The orders are affirmed. We find Mouradian's appeal to be frivolous and Kononchuk is awarded sanctions in the form of attorney fees and expenses of \$16,257,

in addition to the other ordinary costs she incurred on appeal, if any. The sanctions amount is payable no later than 30 days after the remittitur has issued.

HUFFMAN, Acting P. J.

WE CONCUR:

AARON, J.

IRION, J.