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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

ELENA GROSS,

Plaintiff and Appellant,

v.

TIMOTHY GROSS et al.,

Defendants and Respondents.

E060475

(Super.Ct.No. INC10002737)

OPINION

APPEAL from the Superior Court of Riverside County. Harold W. Hopp, Judge.

Affirmed.

Elena Gross, in pro. per., for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

I

INTRODUCTION

Elena appeals judgment entered on January 21, 2014, following a court trial on her complaint to enforce affidavits of support against her former husband, Timothy Gross,

and Timothy's parents, Phillip and Carol Gross.<sup>1</sup>

Elena contends the trial court failed to provide a proper, timely statement of decision. In addition, Elena asserts the damages award for defamation and intentional infliction of emotional distress is deficient, and the trial court erred in relying on the litigation privilege in excluding statements made in court proceedings. Elena also contends the trial court erred in rejecting her claims for (1) breach of contract, (2) abuse of process, (3) malicious prosecution, (4) violation of the Ralph and Tom Bane Civil Rights Acts (Ralph and Bane Act).<sup>2</sup> We reject Elena's contentions and affirm the judgment.

## II

### FACTUAL AND PROCEDURAL BACKGROUND

In 2000, Elena emigrated from South Africa to the United States. She married Timothy Gross in August 2001. In October 2001, Timothy, Phillip, and Carol (defendants) signed affidavits of support (sponsorship contract),<sup>3</sup> required for Elena to immigrate to the United States under the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996. Defendants agreed in the sponsorship contract that they would be jointly and individually liable for providing Elena with support up to 125 percent of the federal poverty level.

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<sup>1</sup> This is Elena Gross's second appeal in this action. In Elena's previous appeal (case No. E057575), Elena challenged the amount of support awarded in the preliminary injunction.

<sup>2</sup> Civil Code sections 51.7 and 52.1.

<sup>3</sup> U.S. Department of Justice, Immigration and Naturalization Service Form I-864.

Elena and Timothy have two sons, born in 2002 and 2007. In November 2007, Timothy was laid off from his real estate job. Timothy stopped paying the mortgage on Elena and Timothy's home. In October 2009, Timothy filed for divorce.

In April 2010, after defendants stopped paying Elena support, Elena filed a complaint alleging (1) breach of the sponsorship contract; (2) abuse of process; (3) malicious prosecution; (4) intentional misrepresentation, deceit, and fraud; (5) interference with civil rights, in violation of the Ralph and Bane Act, codified in Civil Code sections 51.7 and 52.1 (these Acts allow a victim of a hate crime to bring a private action seeking damages and equitable relief); (6) intentional infliction of emotional distress; and (7) defamation, libel, and slander. Later, Elena filed first and second amended complaints.

In July 2010, the trial court granted Elena a preliminary injunction under the sponsorship contract, ordering defendants jointly and individually to pay Elena \$1,128.12 a month in support, amounting to 125 percent of the federal poverty level.

In June 2011, Elena and Timothy's home was foreclosed upon and sold. In March 2012, Phillip died. A month later, Elena informed the court that she intended to proceed against his estate.

On June 3, 2013, trial began on Elena's complaint to enforce the sponsorship contract. The bench trial continued on June 4 and 5, 2013. On the third and final day of trial, on June 5, 2013, Elena filed a timely request for a statement of decision. In the request for a statement of decision, Elena enumerated in detail her allegations regarding the seven causes of action asserted in her breach of contract complaint. After the parties

submitted on the matter, the court requested the parties to submit supplemental briefing on the issue of whether the sponsorship contract was enforceable after the 40-qualifying quarter limit was reached. The matter was taken under submission.

On September 9, 2013, the trial court issued a detailed written tentative decision, finding in favor of Elena, and against Timothy, on Elena's claims for intentional infliction of emotional distress and defamation. The court awarded Elena an aggregate award of \$25,000 in damages on the emotional distress and defamation claims. The court rejected the remainder of Elena's claims against Timothy, and entered a defense award as to Carol and Phillip.

On September 17, 2013, Elena filed a statement of objection to the trial court's tentative statement of decision (September objection). Elena asserted the trial court's tentative statement of decision failed to address all of the controverted issues and the decision was ambiguous in that it did not include specific findings of fact or cite any evidence from the record. Elena further argued the tentative statement of decision misstated the evidence and was incorrect. Elena objected to the court failing to make any reference to the July 2010 preliminary injunction. Elena also argued the court failed to take into account her emotional distress from being prevented from seeing her children, and from starving and living in her car because Timothy had not paid the court-ordered support. Elena asserted the court decision was ambiguous because the court did not address each cause of action and controverted issue separately, and the court did not consider the maliciousness of defendants' defamatory statements. Elena also objected to the tentative statement of decision not mentioning the Ralph and Bane Act.

On October 2, 2013, the trial court issued a ruling on Elena's September objection to the statement of decision (October ruling). The court overruled Elena's objection to the court's decision on the breach of sponsorship contract cause of action because her objection merely reargued her case. The court rejected as irrelevant Elena's argument that federal law prohibits assignment of work credits and that Social Security credits cannot be allocated as community property benefits. The court also overruled Elena's objection that the court did not reference the preliminary injunction. The court explained the preliminary injunction is a provisional remedy that has nothing to do with whether a party will prevail at trial. The court noted Elena's discussion of "other causes of action" was confusing but appeared to assert that the court did not award sufficient damages for intentional infliction of emotional distress. The court overruled the objection, concluding the damages awarded were sufficient. The trial court further stated that it found there was insufficient evidence to support Elena's Ralph and Bane Act claim. The court noted the claim was not alleged in the latest complaint. The trial court also rejected Elena's claim there was sufficient evidence of litigation expenses.

On October 3, 2013, Elena filed objections to the trial court's October ruling. She reargued her case and her September objection. On October 8, 22, and 25, 2013, Elena filed supplemental objections to the October ruling. On January 16, Elena filed a declaration in support of her proposed order and judgment.

On January 21, 2014, the trial court issued a ruling, entitled "Ruling on Submitted Matter—Judgment and Order on Declaration of Elena Gross In Support of Proposed Order and Judgment." The trial court rejected Elena's proposed order and judgment.

The court further ordered that the statement of decision would consist of, and incorporate, the tentative statement of decision issued on September 9, 2013, and the October ruling on Elena's initial September objection. The court noted that none of Elena's objections filed on October 3, 8, 22, and 25, 2013, were received by the trial court judge when they were originally filed nor were they timely. The October objections were not forwarded to the judge until Elena filed her declaration on January 14, 2014. Therefore the court summarily overruled the October objections.

The court further stated in its January 21, 2014 ruling that "This shall constitute judgment in favor of Elena on the causes of action for intentional infliction of emotional distress and for defamation in the aggregate amount of \$25,000 (that is, she shall recover \$25,000 on each cause of action, but because the damages are the same, the total amount of damages is \$25,000). Judgment is entered in favor of Timothy on all remaining causes of action and in favor of Carol on all causes of action."

Elena filed a notice of appeal from the January 21, 2014 order.

### III

#### STATEMENT OF DECISION

Elena contends the trial court committed reversible error by failing to issue a timely statement of decision.

##### *A. Applicable Law*

Code of Civil Procedure section 632 states regarding statements of decisions: "In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of

decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision . . . . The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision. . . .”

“The purpose of a statement of decision is to provide an explanation of the factual and legal basis for the trial court’s decision. [Citation.] It gives the parties and the appellate court a clear understanding of the facts and law relied on by the court to reach its decision. [Citation.] . . . [¶] ‘[A] trial court’s failure to issue a statement of decision can have a significant adverse effect on that party’s ability both to assess whether an appeal is justified and, if an appeal is filed, to present an effective challenge to the trial court’s decision.’ [Citation.] For this reason, a trial court’s failure to file a statement of decision following a timely request constitutes ‘per se reversible error.’ [Citations.]”

(*Wallis v. PHL Associates, Inc.* (2013) 220 Cal.App.4th 814, 825.)

### *B. Discussion*

Elena argues the trial court failed to issue a timely statement of decision. She asserts the trial court improperly overruled her objections to the tentative statement of decision without providing any factual or legal basis for the court’s ruling on her objections.

California Rules of Court, rule 3.1590(g) provides that, “[a]ny party may, within 15 days after the proposed statement of decision and judgment have been served, serve and file objections to the proposed statement of decision or judgment.” The trial court

issued a tentative statement of decision on September 9, 2013, and served it on the parties the following day. On September 17, 2013, Elena timely served and filed her initial objections. The trial court was not required to conduct a hearing on Elena's September objections, and chose not to do so. (Cal. Rules of Court, rule 3.1590(k).) The court properly issued and served on the parties its written October ruling on Elena's September objection.

Elena complains that the trial court ignored her subsequent objections filed on October 3, 8, 22, and 25, 2013. As the trial court stated in its final decision on January 21, 2014, the October objections were not timely. They were not filed within 15 days after the tentative statement of decision was served on September 20, 2013. Furthermore, the trial court was not required to consider multiple submissions of objections after it ruled on October 2, 2013, on Elena's initial September objection.

Elena cites *Wallis v. PHL Associates, Inc.*, *supra*, 220 Cal.App.4th 814 for the proposition the trial court's decision on January 21, 2014, fails properly to address her objections to the tentative statement of decision. *Wallis* is not on point. In *Wallis*, the trial court rejected the appellant's request for a statement of decision as untimely. The *Wallis* court disagreed, concluding the request was timely because the 10-day period to request a statement of decision began running when the trial court issued the last part of its piecemeal tentative ruling. (*Id.* at p. 826.) Here, it is undisputed Elena filed a timely request for a statement of decision in June 2013, during the trial.

Even assuming Elena's October 3, 8, 22, and 25 objections were all proper and timely, there was no prejudicial error in the trial court rejecting them because the

objections merely reargued Elena's case and repeated objections previously raised in her September objection addressed by the court in its October ruling. Furthermore, "In rendering a statement of decision under Code of Civil Procedure section 632, a trial court is required only to state ultimate rather than evidentiary facts; only when it fails to make findings on a material issue which would fairly disclose the trial court's determination would reversible error result. [Citations.] Even then, if the judgment is otherwise supported, the omission to make such findings is harmless error unless the evidence is sufficient to sustain a finding in the complaining party's favor which would have the effect of countervailing or destroying other findings. [Citation.] A failure to find on an immaterial issue is not error. [Citations.] The trial court need not discuss each question listed in a party's request; all that is required is an explanation of the factual and legal basis for the court's decision regarding the principal controverted issues at trial as are listed in the request." (*Hellman v. La Cumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224, 1230.)

The trial court's ruling on January 21, 2014, appropriately ordered that the tentative decision issued on September 9, 2013, as modified by the October ruling on Elena's September Objection, would be the statement of decision. The statement of decision is sufficiently detailed and clear on each principal controverted issue and addressed all material issues raised in Elena's request for a statement of decision and September objection. (*Wolfe v. Lipsy* (1985) 163 Cal.App.3d 633, 643.)

Elena argues the trial court's statement of decision was not timely, and the trial court did not extend the time for compliance under California Rules of Court, rule

3.1590(m). Elena requested a statement of decision during the trial on June 3, 2013, and filed a written request on the last day of trial, on June 5, 2013. On September 9, 2013, the court issued and served a tentative statement of decision under California Rules of Court, rule 3.1590(c)(4).

California Rules of Court, rule 3.1590(c) states that “[t]he court in its tentative decision may [¶] . . . [¶] . . . [d]irect that the tentative decision will become the statement of decision unless, within 10 days after announcement or service of the tentative decision, a party specifies those principal controverted issues as to which the party is requesting a statement of decision or makes proposals not included in the tentative decision.” Elena timely filed on September 17, 2013, an objection to the tentative statement of decision, requesting the court to address controverted issues. On October 2, 2013, the trial court responded with a ruling on Elena’s objections to the tentative statement. On January 21, 2013, the court issued a final statement of decision and judgment, incorporating the September tentative decision and October ruling modifying the tentative decision and ruling on Elena’s objections.

California Rules of Court, section 632 does not require the trial court to file its statement of decision and judgment within a certain period of time. However California Rules of Court, rule 3.1590(f) provides that, “[i]f a party requests a statement of decision under (d), the court must, within 30 days of announcement or service of the tentative decision, prepare and serve a proposed statement of decision and a proposed judgment on all parties that appeared at the trial, unless the court has ordered a party to prepare the statement.” Subdivision (d) states: “Within 10 days *after* announcement or service of *the*

*tentative decision*, whichever is later, any party that appeared at trial may *request a statement of decision* to address the principal controverted issues. The principal controverted issues must be specified in the request.” (Italics added.)

Assuming, without deciding Elena’s September objection to the tentative statement of decision qualifies as a request for a statement of decision under California Rules of Court, rule 3.1590(d), the court was required under subdivision (f) to issue a proposed statement of decision and judgment within 30 days. Also, subdivision (l) states in relevant part that, “[i]f a written judgment is required, the court must sign and file the judgment within 50 days after the announcement or service of the tentative decision, whichever is later, . . .”

The trial court ruled on Elena’s September objection within 30 days but did not issue a statement of decision and judgment until January 21, 2014. Nevertheless, this does not constitute reversible error because the delay was harmless. Elena argued in her declaration filed in support of her proposed judgment on January 16, 2014, that in *California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1145, “the court held that time limits in statutes are usually directory unless a clear contrary intent is expressed. It noted that time limits have been held mandatory if a penalty is provided for failure to act, if the action is invalidated by the failure to act, and if the consequences of finding a mandatory action would defeat or promote the purpose of the enactment. (*Ibid.*) In this case there is no penalty for failure to comply with [California Rules of Court, rule 3.1950(l)], and it would be contrary to the interests of the parties to invalidate a judgment because it was not entered in a timely fashion.”

We agree. Here, the rules provide no penalty for the trial court's noncompliance with the rules providing a time frame within which the trial court must issue a statement of decision and judgment, making the language directory. Even assuming the trial court did not issue its final statement of decision and judgment within the time frame stated in the rules, such noncompliance does not warrant reversal in this case because there is no showing of prejudice. (*California Correctional Peace Officers Assn. v. State Personnel Bd.*, *supra*, 10 Cal.4th at pp. 1145-1147.)

#### IV

#### DAMAGES AWARD

Elena objects to the trial court's award of damages for defamation and intentional infliction of emotional distress.

##### *A. Noneconomic Damages for Emotional Distress and Defamation*

Elena argued in the trial court that the court awarded insufficient damages for emotional distress and defamation. Her claims were based on Timothy's defamatory statements made on Facebook, in the Santa Cruz newspaper, and in court. Elena objected to the trial court combining damages for emotional distress and defamation, when the claims were alleged separately. She also argued that the \$25,000 award did not adequately compensate her for the outrageous, severe emotional distress she suffered.

The trial court found in its decision on January 21, 2014, that Elena had prevailed on the two separate causes of action but explained that it awarded her aggregate noneconomic damages of \$25,000 for both claims because the damages for each cause of action were for the same conduct.

In the October 2 ruling, the trial court stated that Elena's argument in the section of her September objection entitled, "OTHER CAUSES OF ACTION," "is difficult to follow or understand. Apparently plaintiff does not believe that the damages awarded under the intentional infliction of emotional distress cause of action were sufficient; the Court believes that they are and does not change its tentative decision regarding them."

When deciding Elena's sufficiency of evidence challenge to the \$25,000 damages award, we must consider whether there was substantial evidence to support the award. In doing so, it is the general rule that this court "(1) will view the evidence in the light most favorable to the respondent; (2) will not weigh the evidence; (3) will indulge all intendments and reasonable inferences which favor sustaining the finding of the trier of fact; and (4) will not disturb the finding of the trier of fact if there is substantial evidence in the record in support thereof. [Citations.] It is not the province of the reviewing court to analyze conflicts in the evidence. [Citation.] Rather, when a finding of fact is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence contradicted or uncontradicted, which will uphold the disputed finding. [Citation.]" (*Berniker v. Berniker* (1947) 30 Cal.2d 439, 444.) "Findings of fact must be liberally construed to support the judgment." [Citation.]" (*Gordon v. City Council of Santa Ana* (1961) 188 Cal.App.2d 680, 686; see *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.)

Elena has the burden of proof on appeal to establish the damages were inadequate. The determination is factual in nature. Therefore Elena has the burden of showing there was insufficient evidence to support the trial court's damages award. Elena has not

provided a sufficient record to enable us to analyze fully whether the damages award is inadequate. The evidence is presumed sufficient to support the judgment and Elena has not established that she is entitled to a damages award greater than the \$25,000 amount awarded for both emotional distress damages and defamation. (*Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003.) The limited evidence in the record on appeal here supports the trial court's determination that Elena's emotional distress and defamation claims arose from the same facts and actions, and therefore a single, aggregate award for both claims is appropriate. Otherwise, Elena would receive a double recovery for the same wrongful acts. As to the amount of damages awarded, Elena has not established that the trial court's exercise of discretion in determining the amount of noneconomic damages is unreasonable.

“Where no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary matters*. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. [Citation.] The effect of this rule is that an appellant who attacks a judgment but supplies no reporter's transcript will be precluded from raising an argument as to the sufficiency of the evidence. [Citations.]” (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992.) Although the clerk's transcript contains trial exhibits, there is no reporter's transcript of the trial. Elena elected in her notice designating the record on appeal to proceed without a record of the oral trial court proceedings. In the absence of a reporter's transcript of the trial testimony, we cannot conclude the damages award is unsupported by the evidence.

*B. Economic Damages and Costs*

Elena contends the trial court should have awarded her actual costs for prevailing on her causes of action for defamation and intentional infliction of emotional distress. Elena explains that on the last day of trial the trial court asked her what her actual costs were. Elena offered a copy of an itemized statement totaling \$14,000. The court refused to consider the statement.

In the tentative statement of decision, the trial court stated that “Elena testified to no economic damages in connection with [the emotional distress and defamation] causes of action (other than her litigation expenses, which she cannot recover both because there appears to be no connection between her purported litigation expenses and Timothy’s conduct that caused emotional distress or defamed her and because there is insufficient support for the \$14,000 she claims as litigation expenses . . .).”

In Elena’s September objection entitled, “OBJECTIONS TO THE AWARD,” she objected to the trial court finding that she did not enter any evidence of her expenses incurred. Elena asserted that she offered to present evidence of a list of expenses incurred during three years of litigation. Her expenses included attorney fees, evaluation costs, transcript fees, and other expense receipts. The court declined her offer of proof. There is no reporter’s transcript of the proceedings.

It seems that Elena is arguing on appeal that she was entitled to economic damages consisting of her litigation costs under Code of Civil Procedure section 1032, but there is no evidence in the record supporting her claim. There is no reporter’s transcript of the proceedings in which she claims she attempted to introduce evidence of her actual

expenses. Furthermore, Elena's expenses appear to be court costs, rather than damages from defamation and emotional distress.

As Elena notes in her opening appellate brief, Code of Civil Procedure section 1032 provides authority for awarding the prevailing party costs in civil actions. Code of Civil Procedure section 1032 states in relevant part: "Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc., § 1032, subd. (b).) Under Code of Civil Procedure section 1034, "Prejudgment costs allowable under this chapter shall be claimed and contested in accordance with rules adopted by the Judicial Council. [¶] (b) The Judicial Council shall establish by rule allowable costs on appeal and the procedure for claiming those costs." California Rules of Court, rule 3.1700 requires that, in order to recover such costs, a prevailing party must serve and file a memorandum of costs after entry of judgment. Elena argues that the trial court should have awarded actual costs for each prevailing cause of action, including costs for defamation and emotional distress. Elena seems to confuse costs with economic damages and has not established she properly requested costs. She also has not cited to any evidence in the record on appeal supporting her costs claim or that she properly requested costs.

### *C. Litigation Privilege*

Elena contends Timothy and Carol did not assert the litigation privilege at trial and therefore the trial court improperly applied the privilege when rejecting damages for defamation and emotional distress. The litigation privilege, Civil Code section 47, subdivision (b) (section 47(b)), "generally protects from tort liability any publication

made in connection with a judicial proceeding.” (*Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948, 952.) “The privilege ‘applies to any publication required or permitted by law in the course of a judicial proceeding to achieve the objects of the litigation, even though the publication is made outside the courtroom and no function of the court or its officers is involved.’ [Citations.] ‘The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action.’ [Citation.]” (*Id.* at p. 955.)

The purposes of the litigation privilege “‘are to afford litigants and witnesses free access to the courts without fear of being harassed subsequently by derivative tort actions, to encourage open channels of communication and zealous advocacy, to promote complete and truthful testimony, to give finality to judgments, and to avoid unending litigation.’ [Citation.] Another purpose is to ‘promote[] effective judicial proceedings’ by encouraging full communication with the courts. [Citation.] To further these purposes, the privilege has been broadly applied. It is absolute and applies regardless of malice.” (*Jacob B. v. County of Shasta, supra*, 40 Cal.4th at p. 955.)

Elena argues that Civil Code section 47, subdivision (b)(1), provides an exception to the litigation privilege as to statements made in documents and pleadings submitted in marital dissolution cases, when made with malice and without reasonable and probable cause to believe they are true.

Civil Code section 47, subdivision (b)(1), provides: “(1) An allegation or averment contained in any pleading or affidavit filed in an action for marital dissolution

. . . made of or concerning a person by or against whom no affirmative relief is prayed in the action shall not be a privileged publication or broadcast as to the person making the allegation or averment within the meaning of this section unless the pleading is verified or affidavit sworn to, and is made without malice, by one having reasonable and probable cause for believing the truth of the allegation or averment and unless the allegation or averment is material and relevant to the issues in the action.”

The litigation privilege exception generally protects third parties from defamation and invasion of their privacy in litigation. The exception is intended to apply only to statements in pleadings and affidavits or declarations, not to other documents. (Civ. Code, §§ 47, subd. (b)(1), and 2015.5) The term “pleading” is limited to complaints, demurrers, answers and cross-complaints. (Code Civ. Proc., § 422.10.) Documents filed in dissolution actions that are neither pleadings nor affidavits are absolutely privileged by Civil Code section 47, subdivision (b). (*Chauncey v. Niems* (1986) 182 Cal.App.3d 967, 981; *Silberg v. Anderson* (1990) 50 Cal.3d 205, 216.) Furthermore, with narrow exceptions inapplicable here, protection under the litigation privilege exception is limited to third parties; spouses cannot use it. The exception to the litigation privilege “may apply only to statements made in a marital dissolution proceeding by or against a third party, not under the circumstances of this case when the statements are made against a party to the action.” (*Holland v. Jones* (2012) 210 Cal.App.4th 378, 381.)

In the instant case, the court stated in its tentative statement of decision that “it is clear that Elena suffered significant emotional distress (apart from that caused by the family law proceedings).” The tentative statement of decision does not state it rejected

evidence of Elena's emotional distress and defamation claims based on the litigation privilege, although the court could have reasonably applied the privilege to statements made during the family law proceedings and the lower court proceedings in the instant case. Even assuming the trial court relied on the litigation privilege in not considering defamatory statements made during court proceedings, reliance on the litigation privilege was proper and the trial court appropriately limited its findings of emotional distress and defamation claims based on other evidence. The litigation privilege exception under Civil Code section 47, subdivision (b)(1), does not apply here.

## V

### OTHER CAUSES OF ACTIONS

Elena contends the trial court erred in rejecting her claims for (1) breach of contract, (2) abuse of process, (3) malicious prosecution, (4) fraud, and (5) violation of the Ralph and Bane Act. Elena further asserts that the trial court's statement of decision, which rejected and dismissed these claims, failed to address the elements of each cause of action. We do not find any merit to these contentions.

#### *A. Breach of Contract*

Elena's breach of contract claim is founded on the sponsorship contract defendants signed on behalf of Elena in furtherance of allowing her to immigrate to the United States. Under section 1183 of title 8 of the United States Code, immigrants who are deemed likely to become public charges may gain admission to the United States if a sponsor signs United States Citizenship and Immigration Services form I-864, thereby promising to support the sponsored immigrant at no less than 125 percent of the Federal

Poverty Guidelines for the immigrant's household size. (See 8 U.S.C. § 1183a(a)(1)(B); *Shumye v. Felleke* (N.D. Cal. 2008) 555 F.Supp.2d 1020, 1024.) “The requirement under § 1183a that a sponsor promise to maintain the immigrant is intended not only to protect the immigrant from poverty, but to protect the *government* from a public burden.” (*Carlborg v. Tompkins* 2010 U.S. Dist. LEXIS 117252 at \*10 (W.D.Wis., Aug. 24, 2010).)

As form I-864 explains, an affidavit of support creates a contract between the sponsor and the United States government, which can be enforced by the sponsored immigrant as a third-party beneficiary. (8 U.S.C. § 1183a(a)(1)(B).) The sponsor's obligation ends only in the event the sponsored immigrant (1) becomes a United States citizen, (2) works 40 quarters or receives credit for 40 quarters, as defined by the Social Security Act, (3) no longer has lawful permanent resident status and permanently leaves the United States, (4) receives a new grant of adjustment of status based on a new affidavit of support, or (5) dies. (8 U.S.C. § 1183a(a)(2)-(3).) Dissolution of marriage between the sponsor and the sponsored immigrant does not terminate the support obligation. (*Liu v. Mund* (7th Cir. 2012) 686 F.3d 418, 423.)

Elena contends the trial court erred in finding there was no breach of the sponsorship agreement based on the finding defendants' obligations ended after Elena and Timothy accumulated during their marriage more than 40 quarters of coverage as defined by the Social Security Act. Elena argues Elena and Timothy's social security credits could not be combined to satisfy the 40-quarter requirement for termination of defendants' obligations under the sponsorship contract. Elena maintains the sponsorship

contract states that the contract terminates only based on the immigrant's own social security credits.

The sponsorship contract states: "By submitting a separate Affidavit of Support under Section 213A of the Act (Form I-864), a joint sponsor accepts joint responsibility with the petitioner for the sponsored immigrant(s) until they become U.S. citizens, can be credited with 40 quarters of work, leave the United States permanently, or die." The sponsorship contract further states, "*I understand that my obligation will continue until my death or the sponsored immigrant(s) have become U.S. citizens, can be credited with 40 quarters of work, depart the United States permanently, or die.*" This is also stated again in the sponsorship contract under the heading, "Consideration of Sponsor's Income in Determining Eligibility for Benefits": "The attribution of the income and resources of the sponsor and the sponsor's spouse to the immigrant will continue until the immigrant becomes a U.S. citizen or has worked *or can be credited with 40 qualifying quarters of work*, provided that the immigrant or the worker crediting the quarters to the immigrant has not received any Federal means-tested public benefit during any creditable quarter for any period after December 31, 1996." (Emphasis added.)

The sponsorship contract clearly states that the calculation of 40 quarters of work credit triggering termination of the sponsors' obligations may include both credits for the immigrant's work and credits for the immigrant spouse's work. Section 213A(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C.A. § 1183a) states in general, regarding "Termination of period of enforceability upon completion of required period of employment, etc.": "An affidavit of support is not enforceable after such time as the

alien (i) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C. 401 et seq.] *or can be credited with such qualifying quarters as provided under subparagraph (B), and (ii) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.*” (Emphasis added.)

Subparagraph (B) of section 213A(a)(3)(A) of the Immigration and Nationality Act provides:

“(B) Qualifying quarters. [¶] For purposes of this section, in determining the number of qualifying quarters of coverage under title II of the Social Security Act [42 U.S.C. 401 et seq.] an alien shall be credited with—

“(i) all of the qualifying quarters of coverage as defined under title II of the Social Security Act worked by a parent of such alien while the alien was under age 18, and

“(ii) *all of the qualifying quarters worked by a spouse of such alien during their marriage and the alien remains married to such spouse or such spouse is deceased.*”

(Emphasis added.)

The trial court states in its tentative statement of decision, adopted in the January 21, 2014 final decision and judgment that “. . . the undisputed evidence is that Elena and Timothy accumulated more than 40 qualified quarters during their marriage and before the alleged breach of the sponsorship affidavit. Accordingly, the Court finds that Timothy and Carol no longer had a contractual obligation to support Elena as of the time

of the alleged breach and therefore that judgment on the breach of contract cause of action should be entered in their favor and against Elena.”

Elena has not cited any relevant evidence or law refuting the trial court’s unambiguous findings and conclusions rejecting Elena’s breach of contract claim. The trial court appropriately relied on Elena and Timothy’s combined Social Security work credits to find that Elena and Timothy accumulated more than 40 qualified quarters of credits during their marriage, before the date of the alleged breach of the sponsorship contract. Termination of defendants’ obligations under the sponsorship contract before the alleged breach precluded liability under the sponsorship contract.

Case law Elena cites for the proposition federal law prohibits assignment of work credits, and Social Security credits cannot be allocated as community property benefits is not on point or relevant. The instant case does not concern assignment of work credits or allocation of Social Security credits as community property.

Because there was insufficient evidence to support Elena’s breach of contract cause of action and the trial court therefore properly dismissed the claim, we need not address Elena’s contention that the trial court failed to consider the malicious, oppressive and despicable nature of defendants’ breach of contract. Timothy and Carol did not have any contractual obligation to support Elena at the time of the alleged breach. In turn, Elena was not entitled to damages of any kind from Timothy and Carol for not supporting Elena under the sponsorship contract, which was no longer in effect.

We further note Elena argues she is entitled to tort damages, including punitive damages, arising from breach of the sponsorship contract. Tort damages generally are

not recoverable in breach of contract claims, including Elena's breach of contract claim. (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 514-516.)

### *B. Preliminary Injunction*

Elena discusses in her appellate opening brief the preliminary injunction the trial court granted, ordering defendants to pay her support under the sponsorship contract. It is unclear what her objection is. Because the preliminary injunction was a provisional remedy which automatically expired upon the trial court entering judgment, there is no ground for reversal based upon the trial court granting the preliminary injunction or because the statement of decision does not definitively state the preliminary injunction was terminated.

Elena argued in her September objection to the tentative statement of decision that the trial court failed to mention the preliminary injunction in the tentative statement of decision. Therefore the preliminary injunction remained in effect. In overruling Elena's objection, the trial court correctly explained in its October ruling: "[P]laintiff argues that the Court did not reference the preliminary injunction. Plaintiff apparently thinks that the fact that a preliminary injunction was issued means that she must prevail on her breach of contract cause of action. This is obviously incorrect – the preliminary injunction is a provisional remedy and has nothing to do with whether a plaintiff or a defendant should prevail at trial; the decision at trial is based on the evidence produced during the trial, regardless of what evidence was offered earlier in the litigation."

The preliminary injunction simply was a provisional or auxiliary remedy used to preserve the status quo until the final judgment. (*Southern Christian Leadership*

*Conference v. Al Malaikah Auditorium Co.* (1991) 230 Cal.App.3d 207, 223.) The granting of the preliminary injunction did not adjudicate the ultimate rights in controversy. Instead, it merely reflected “the court’s determination, after balancing the respective parties’ equities, that pending a trial on the merits the defendant should or should not be restrained from exercising a right claimed by that defendant. [Citations.] A preliminary injunction does not create a right, but merely undertakes to protect a right from unlawful or injurious interference. [Citation.] The fate of a preliminary injunction, having a strictly adjunct character, depends on the main action.” (*Ibid.*) The trial court’s dismissal of Elena’s breach of contract claim, and entry of final judgment resulted in termination of the preliminary injunction as a matter of law.

*C. Sufficiency of Evidence of Other Causes of Actions*

Elena contends the trial court erred finding there was insufficient evidence to support her causes of action for malicious prosecution, abuse of process, fraud, and violation of the Ralph and Bane Act. She asserts she presented substantial evidence to support these claims and the trial court erred in relying on the litigation privilege. Elena cites exhibits presented during the trial, which are included in the clerk’s transcript on appeal. Elena argues this evidence shows that Timothy and Carol knowingly made false representations that harmed Elena, and maliciously conspired to attempt to separate Elena from her children and jeopardize Elena’s immigration status.

The trial court stated in its statement of decision, incorporating the tentative statement of decision and October ruling that there was insufficient evidence of malicious prosecution, abuse of process, fraud, violation of the Ralph and Bane Act, and related

damages. The court also found that Timothy's submissions to the court containing allegedly false and defamatory statements were protected by the litigation privilege and there was insufficient evidence of Timothy intentionally using any legal procedure, such as applying for a restraining order, to harass Elena. The court further stated there was insufficient evidence to find Timothy did not believe his statements that Elena may have been delusional and a danger to the children, made when Timothy sought the restraining orders. The court concluded there was also insufficient evidence of a violation of the Ralph and Bane Act, which the court noted was not included in Elena's most recent complaint. We cannot confirm this because the underlying complaint is not included in the clerk's transcript. On appeal, Elena has failed to refute the trial court's findings and conclusions.

As stated above, it is the general rule this court will view the evidence in the light most favorable to the respondents. We will not reweigh the evidence and will indulge all intendments and reasonable inferences in favor of sustaining the trial court's findings. We will also not disturb the trial court's findings as long as there is substantial evidence supporting them. The power of this court "begins and ends with a determination as to whether there is any substantial evidence contradicted or uncontradicted, which will uphold the disputed finding. [Citation.]" (*Berniker v. Berniker, supra*, 30 Cal.2d at p. 444.) "Findings of fact must be liberally construed to support the judgment.' [Citation.]" (*Gordon v. City Council of Santa Ana, supra*, 188 Cal.App.2d at p. 686; see *Bowers v. Bernards, supra*, 150 Cal.App.3d at pp. 873-874.)

Elena has not met her burden of proof on appeal establishing there was insufficient evidence to support the trial court's rejection of Elena's causes of action for malicious prosecution, abuse of process, fraud, and violation of the Ralph and Bane Act. The limited evidence in the record on appeal supports the trial court's findings and rejection of Elena's claims. Furthermore, Elena has not provided an adequate record to enable us to analyze fully the sufficiency of the evidence presented to the court. The record is incomplete because the clerk's transcript on appeal does not include the underlying operative complaint and there is no reporter's transcript of the trial proceedings and testimony presented, including the testimony of Timothy, Carol, Elena, and Tracey Dible.

Without the proper record, we cannot evaluate issues requiring a factual analysis. We therefore must presume the unreported trial testimony demonstrates the absence of error and the evidence was sufficient to support the judgment. (*Pringle v. La Chapelle, supra*, 73 Cal.App.4th at p. 1003.) "Where no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary matters*." (*Estate of Fain, supra*, 75 Cal.App.4th at p. 992.) "The effect of this rule is that an appellant who attacks a judgment but supplies no reporter's transcript will be precluded from raising an argument as to the sufficiency of the evidence." (*Ibid.*)

VI

DISPOSITION

The judgment is affirmed. Defendants are awarded their costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON  
J.

We concur:

McKINSTER  
Acting P. J.

MILLER  
J.