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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of PAKIZA S. and
SHAKEEL MUSTAFA.

PAKIZA S. MUSTAFA,

Respondent,

v.

SHAKEEL MUSTAFA,

Appellant.

G044160

(Super. Ct. No. 07D004878)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
James L. Waltz, Judge. Affirmed; Motion for sanctions granted.

Law Offices of Timothy P. Peabody and Timothy P. Peabody for
Appellant.

Law Office of Herb Fox and Herb Fox for Respondent.

Shakeel Mustafa appeals from a postjudgment order denying his motion to vacate a stipulated judgment in the dissolution of his marriage to Pakiza S. Mustafa.¹ He claimed Pakiza failed to disclose approximately \$111,000 she had in a checking account, and the funds were potentially community property. Pakiza contended the funds were disclosed during settlement negotiations and were not hers but rather were the funds she managed for her elderly mother with Shakeel's knowledge. The trial court agreed with Pakiza. We conclude Shakeel's wholly inadequate appellate brief fails to demonstrate an abuse of the trial court's discretion, and we affirm the order.

Pakiza has filed a separate motion requesting sanctions be imposed against Shakeel and his attorney of record, Timothy P. Peabody, for pursuing a frivolous appeal for an improper purpose. The motion was not opposed. We agree that sanctions are appropriate.

FACTS AND PROCEDURE

Pakiza filed a petition for dissolution of her nine-year marriage to Shakeel in May 2007. On January 9, 2008, Pakiza and Shakeel, both represented by counsel, entered into a stipulation for a judgment. Among other things, the stipulation covered child support, custody, and visitation with the couple's two young children. They agreed to joint legal and physical custody, with Pakiza's home to be their primary residence and Shakeel to have visitation up to 20 percent of the time. The stipulation specifically contemplated Pakiza and the children might move out of the state. The stipulation provided for sale of the family residence and division of other community property with an equalizing payment to Pakiza, and awarded a business to Shakeel.

Shakeel quickly moved to set aside the stipulation claiming he was either surprised by or did not understand various provisions of the stipulation, and proper

¹ We hereafter refer to the parties by their first names for ease of reading and to avoid confusion, and not out of disrespect. (*In re Marriage of James & Christine C.* (2008) 158 Cal.App.4th 1261, 1264, fn. 1.)

financial disclosure forms had not been filed by either party. Following a hearing on February 29, 2008, the trial court denied the motion, finding Shakeel lacked credibility and was just expressing “buyer’s remorse.” On June 18, 2008, the trial court entered judgment in accordance with the stipulation. The judgment stated the court retained jurisdiction over all matters. Shakeel did not appeal the judgment.

On June 15, 2009, Shakeel moved to set aside the judgment and adjudicate an undisclosed community asset pursuant to Family Code section 2556.² He also asserted Pakiza had breached her fiduciary duty to him in violation of sections 721 and 1101 by failing to disclose the community property asset. In his declaration, Shakeel stated that in June 2008 (a full year *before* he filed the motion), he used Pakiza’s car during a visit with their children and found a recent Citibank bank statement pertaining to an account Pakiza had during the marriage showing a balance of \$111,521. Shakeel was surprised because the full balance in the account was not listed on Pakiza’s October 2007 disclosure of assets. He claimed Pakiza’s informal disclosure of assets indicated that particular account only had a balance of \$3,000. Shakeel asked Pakiza about the large account balance, and Pakiza told Shakeel it “was the money she ‘inherited’ from her mother.” Because Pakiza’s mother was still living, Shakeel suspected Pakiza had concealed community property funds from him.

Pakiza’s declaration in opposition to Shakeel’s motion stated the funds in the account belonged to her elderly mother, Anwar Saquib. After Pakiza’s father passed away in 2002, Pakiza’s mother sold her house, and Pakiza agreed to manage her mother’s money. It was Shakeel who suggested this arrangement, and he advised Pakiza to place the money in her higher yield accounts. Shakeel was well aware of Pakiza’s finances. The income and expense statement she filed with the court in October 2007 listed as an asset \$128,000 in cash and checking accounts.

² All further statutory references are to the Family Code, unless otherwise indicated.

Saquib's declaration confirmed her daughter's explanation. She stated that since 2002 Pakiza had been managing Saquib's money, and Shakeel knew full well Pakiza was holding Saquib's money in her accounts. Although Pakiza had permission from Saquib to transfer money to and from higher yield accounts for her mother, she did not have permission to spend any of the money.

At a hearing on October 15, 2009, the trial court pressed Shakeel as to what evidence he had to refute Pakiza's and Saquib's declarations that the money belonged to Saquib, and Pakiza held it in trust for her mother. Shakeel conceded he had no affirmative evidence but requested the opportunity to conduct discovery. The trial court granted Shakeel an evidentiary hearing to explore characterization of the funds. It reopened discovery permitting Shakeel to obtain bank records and to depose Saquib.

After discovery was completed, Shakeel's counsel submitted his declaration asserting Pakiza could not accurately account for the source of \$111,791 in her Citibank account. Saquib netted \$228,185 from the sale of her house in 2002, and counsel claimed Saquib's and Pakiza's explanation as to what happened to that money afterwards and the financial documents and bank records they produced were suspicious.

Pakiza's supplemental declaration reiterated the funds represented the proceeds of the sale of her mother's house in 2002, which Pakiza was managing for her mother with Shakeel's knowledge. Her opposition included documents showing that Saquib netted about \$235,000 from the 2002 sale of her house, Pakiza used \$100,000 to purchase an annuity for her mother, and the remainder was maintained in Pakiza's bank account. The documents included a July 2002 bank statement from Saquib's bank showing the deposit of approximately \$229,000, followed by a transfer of approximately \$228,000 to Pakiza's account, and documents pertaining to the purchase in early 2003 of Saquib's annuity for \$100,000.

The trial court denied Shakeel's motion. The court noted Shakeel was now on his fifth attorney and again was simply trying to "unsettle" the case. The court found

Pakiza had not failed to disclose the disputed funds—her October 2007 income and expense statement reflected \$128,000 in cash and checking accounts. But even if there was a failure to disclose, Shakeel was not harmed because the funds were not community property. The court found Shakeel failed to satisfy his burden to prove the funds were community property. And although it was not her burden, Pakiza had in fact “presented satisfying evidence” the funds belonged to her mother, Saquib, and were not community property. Shakeel obtained new counsel and filed a motion for reconsideration. The court denied the motion.

DISCUSSION

Shakeel contends the trial court abused its discretion by denying his motion. We find Shakeel has waived his argument due to his utter failure to file an adequate appellant’s opening brief (there is no reply brief), and even were the arguments not waived, he failed to show any abuse of discretion.

Waiver

Shakeel has waived his right to argue on appeal the order is not supported by substantial evidence (or constitutes an abuse of the trial court’s discretion), because he has violated numerous rules of court in failing to properly state the evidence. Shakeel largely analyzes his appeal as one from an order denying relief from a default judgment under Code of Civil Procedure section 473, and the majority of the cases cited in his opening brief relate to default judgment set aside motions under that section. But the motion presented below was not a Code of Civil Procedure section 473 motion. Shakeel’s motion was brought under sections 2120 [vacate marital dissolution judgment adjudicating support or division of property], 2556 [adjudicate undisclosed community property asset], and 721 and 1101 [spouses’ fiduciary duties regarding marital property]. In any event, Shakeel agrees the trial court’s factual findings are reviewed applying the substantial evidence standard (*In re Marriage of Hokanson* (1998) 68 Cal.App.4th 987, 994; see also *In re Marriage of Duffy* (2001) 91 Cal.App.4th 923, 929 [trial court’s

findings concerning breach of fiduciary duty reviewed for substantial evidence]), and if substantial evidence supports the trial court’s factual findings, we review its order for an abuse of discretion (*People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1144; see also *In re Marriage of Connolly* (1979) 23 Cal.3d 590, 597-598 [order denying relief under Code Civ. Proc., § 473 reviewed for abuse of discretion]; *In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 683 [order denying relief under § 2120 reviewed for abuse of discretion]; *In re Marriage of Stitt* (1983) 147 Cal.App.3d 579, 586 [trial court’s characterization of property in a dissolution proceeding reviewed for abuse of discretion]).

“A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.’ [Citations.]” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) “The burden of affirmatively demonstrating error is on the appellant.” (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610.)

We start “with the presumption that the record contains evidence to sustain every finding of fact.’ [Citations.]” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881 (*Foreman*)). Shakeel’s assertions the order constitutes an abuse of discretion requires him to demonstrate there is no substantial evidence to support the trial court’s factual findings supporting the ruling; accordingly, *all* material evidence must be set forth in his appellant’s opening brief, and not merely his own evidence. (*Ibid.*) Failure to do so amounts to a waiver of the alleged error, and we may presume the record contains evidence to sustain the trial court’s findings. (*Ibid.*)

Moreover, each assertion of fact in an appellant’s statement of facts must be supported by a citation to the record where the applicable facts recited may be found and verified. (Cal. Rules of Court, rule 8.204(a)(1)(C).) “As a general rule, ‘[t]he reviewing

court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment.’ [Citations.] It is the duty of counsel to refer the reviewing court to the portion of the record which supports appellant’s contentions on appeal. [Citation.] If no citation ‘is furnished on a particular point, the court may treat it as waived.’ [Citation.]” (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115 (*Guthrey*).

The present appeal is an appropriate one in which to apply this rule of waiver. Shakeel’s opening brief sets forth none of the evidence favorable to the trial court’s order; indeed it mentions little evidence at all. Shakeel discusses only his own contentions and deductions, and asserts he provided sufficient proof “to at least raise the issue if [*sic*] fraud and a failure to disclose by [Pakiza],” which the trial court “merely chose to ignore.” His recitation of facts and briefs are devoid of a single citation to the clerk’s transcript or the reporter’s transcript of the hearings held in the lower court. Instead, his sole effort at a record citation is to two exhibits attached to his opening brief, exhibit “A,” the trial court’s order, and exhibit “B,” a letter from Pakiza’s counsel pertaining to discovery, with nothing indicating this letter was ever before the trial court. Shakeel’s opening brief makes no reasoned attempt to demonstrate the trial court’s order is not supported by substantial evidence or constitutes an abuse of discretion. Rather, he simply asserts the court should have granted his motion. “““Instead of a fair and sincere effort to show that the trial court was wrong, appellant’s brief is a mere challenge to respondent[] to prove that the court was right.””” (*People v. Dougherty* (1982) 138 Cal.App.3d 278, 283.) In view of Shakeel’s failure to bring to our attention all of the evidence in the record bearing upon the issues raised on appeal and his failure to provide any appropriate citations to the record, we treat his contention as waived. (See *Planned Parenthood Assn. v. Operation Rescue* (1996) 50 Cal.App.4th 290, 305 [appellants’ claims waived because they failed to “set forth all of the relevant evidence in their briefs”].)

Substantial Evidence Supports the Order

Even if Shakeel had not waived his claims on appeal, the court's factual findings are supported by substantial evidence, and its order did not constitute an abuse of discretion.

Shakeel's motion was premised on his assertion Pakiza concealed a community asset during settlement negotiations and he was entitled to have that community asset adjudicated. Section 2556 provides the mechanism for adjudicating an omitted community property asset: "A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any community estate asset or liability omitted or not adjudicated by the judgment. In these cases, the court shall equally divide the omitted or unadjudicated community estate asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability."

It was Shakeel's burden to establish the existence of an unadjudicated *community* asset. (See *In re Marriage of Hixson* (2003) 111 Cal.App.4th 1116, 1119.) The trial court found the approximately \$111,000 in Pakiza's Citibank account was not a community asset, and in fact was not Pakiza's property at all but the property of her mother. Substantial evidence supports that finding. Pakiza and her mother both provided their declarations and documentary evidence demonstrating the funds were part of the proceeds of the sale of her mother's house in 2002, which Pakiza was managing for her mother with Shakeel's knowledge and on his advice. They presented documents showing Saquib netted approximately \$235,000 from the 2002 sale of her house and Saquib initially deposited approximately \$229,000 of the proceeds into her own account and then transferred approximately \$228,000 to Pakiza's bank account. Pakiza used \$100,000 of those funds to purchase an annuity for her mother, and the remainder was maintained by Pakiza in her bank account for her mother's benefit. Because the funds in the Citibank

account were not a community asset, Shakeel has offered no basis on which we would interfere with the trial court's order.

SANCTIONS

Pakiza filed a motion for sanctions against Shakeel and his attorney of record, Timothy P. Peabody, for having pursued a frivolous appeal for an improper purpose. She also filed a request for judicial notice of documents from the Superior Court record in this case in support of her claim. (Evid. Code, §§ 452, 459.) We issued a notice pursuant to California Rules of Court, rule 8.276, informing Shakeel of the pending motion for sanctions and request for judicial notice and gave him 10 days to file written opposition. No opposition has been filed. Pakiza's request for judicial notice filed December 22, 2011, is granted.

Facts

To put the sanctions request in context, we must set forth additional facts concerning custody and visitation disputes that preceded and then paralleled the bank account issue that is the subject of this appeal. The January 9, 2008, stipulation (and the subsequent June 2008 judgment) gave Pakiza and Shakeel joint legal and physical custody of their two young children, with Pakiza's home to be their primary residence and Shakeel to have visitation up to 20 percent of the time. The stipulation and judgment specifically acknowledged Pakiza and the children might move out of the state.

By August 2008, Shakeel returned to Pakistan, where he remarried, until he returned to California in March 2009, generally residing in the Bay Area. Pakiza found employment in Texas and moved there with the children and her mother sometime in March 2009. After returning from Pakistan, Shakeel filed an order to show cause (OSC) unsuccessfully seeking to thwart Pakiza's relocation to Texas, claiming she had no good reason for moving from Orange County and should be required to remain here. Shakeel complained Pakiza was denying him access to the children, to which Pakiza countered Shakeel had been out of the country for the past eight months and never once telephoned

them. Pakiza also pointed out that during that time, Shakeel refused to cooperate with the sale of the family residence in Orange County requiring her to obtain a court order directing the clerk to execute the deed. Shakeel filed subsequent OSCs concerning custody and visitation, again asserting Pakiza was denying him access to the children.

Against the backdrop of the disputes over visitation, we turn to the pertinent procedural facts concerning Shakeel's prosecution of this appeal and ongoing trial court proceedings. We begin with the goings-on in this court, which we recount at some length before juxtaposing them with events taking place in the trial court.

The trial court order that is the subject of this appeal was entered May 14, 2010, and Shakeel's notice of appeal was filed September 2, 2010, by Shakeel in pro. per. After Shakeel obtained two extensions of time to file his opening brief, on February 3, 2011, attorney Peabody substituted in as Shakeel's counsel of record, and Shakeel's opening brief, signed by Peabody, was filed February 4, 2011.

On April 14, 2011, before Pakiza's respondent's brief was filed and pursuant to a request for dismissal filed by Peabody on behalf of Shakeel, this court dismissed Shakeel's appeal and immediately issued the remittitur.

On May 9, 2011, Peabody filed a motion to set aside and vacate dismissal of the appeal on Shakeel's behalf. Peabody declared the dismissal request was filed by him in error due to misunderstanding or miscommunication with Shakeel concerning Shakeel's desire to pursue the appeal. On July 7, 2011, this court granted the motion, reinstated the appeal, recalled the remittitur, and ordered Pakiza's respondent's brief filed within 30 days.

On July 20, 2011, Pakiza filed a motion to vacate our order recalling the remittitur and reinstating the appeal. Her counsel, Herb Fox, explained he had been served with Shakeel's motion to set aside the dismissal. But the motion initially had only been marked "received" by this court, and not "filed," and inasmuch as Shakeel had not requested the remittitur be recalled, counsel did not believe this court had jurisdiction to

rule on Shakeel's motion. Had counsel known the motion was later filed by this court, he would have filed opposition. Fox declared Shakeel's dismissal was prompted by a letter Fox sent Peabody on March 17, 2011, after being served with Shakeel's opening brief. Fox warned Peabody the brief was completely deficient given the total failure to recite the evidence favorable to the judgment, absence of any citations to the record, and lack of reasoned analysis of why the order constituted an abuse of discretion. Fox offered on Pakiza's behalf to refrain from seeking sanctions, costs, or attorney fees in association with the appeal if Shakeel dismissed his appeal by March 24. Peabody replied on March 23, advising Fox a notice of dismissal of Shakeel's appeal would be filed "based upon [Fox's] comments as well as additional discovery that my client has brought to my attention to address the issues in the appeal." This court denied Pakiza's motion.

Shakeel's reply brief was due on October 24, 2011. Despite obtaining two extensions of time to file a reply brief, Shakeel never filed one.

Pakiza's unopposed motion for sanctions and request for judicial notice explain what was transpiring in the trial court during this time. On April 19, 2011, a few days after this court's April 14 dismissal of Shakeel's appeal and issuance of the remittitur, Pakiza filed a motion to transfer jurisdiction of child custody to the State of Texas under the Uniform Child Custody Jurisdiction and Enforcement Act (§ 3400 et seq.). (See § 3427 [inconvenient forum].) Pakiza's declaration explained both parties had severed ties to Orange County, with Shakeel residing in the Bay Area and Pakiza living in Texas with the children and her new husband. Pakiza declared Shakeel rarely exercised his visitation rights, and infrequently called them. The children's lives were entirely in Texas. Pakiza claimed Shakeel was merely harassing or punishing her by repeatedly forcing her to return to California to litigate custody and visitation issues, and it posed an undue financial and emotional burden on Pakiza. Pakiza's motion was set for hearing on July 29, 2011.

On May 9, 2011, Shakeel filed his motion in this court to reinstate his appeal and recall the remittitur. We granted the motion on July 7. Shakeel, represented by different counsel (i.e., not Peabody), then filed a document in the trial court titled “Notice of Stay of Trial Court Proceedings pursuant to [Code of Civil Procedure section] 916 re [Pakiza’s] Motion to Transfer Jurisdiction to State of Texas” in which he asserted the trial court could not transfer jurisdiction while this appeal was pending. Shakeel subsequently filed his opposition to Pakiza’s motion, in which he argued the motion “cannot take place” because his appeal had been reinstated and a transfer would “effectively strip the Court of Appeal’s jurisdiction[]” over the appeal. Shakeel also argued the court should not relinquish California’s jurisdiction but should instead transfer venue to Alameda County. On August 10, 2011, the trial court issued its order “exercis[ing] its discretion not to transfer” jurisdiction to Texas.

When it appears that an appeal is frivolous or taken solely for delay, we may add to the costs on appeal such damages as may be just. (Code Civ. Proc., § 907; Cal. Rules of Court, rule 8.276; *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 646 (*Flaherty*)). We may impose sanctions on the offending attorney, offending party, or both. (Cal. Rules of Court, rule 8.276(a).)

The standards for determining whether an appeal is frivolous are set forth in *Flaherty, supra*, 31 Cal.3d 637, in which the Supreme Court described a subjective standard and an objective standard. “The subjective standard looks to the motives of the appellant and his or her counsel. . . . [¶] The objective standard looks at the merits of the appeal from a reasonable person’s perspective. ‘The problem involved in determining whether the appeal is or is not frivolous is not whether [the attorney] acted in the honest belief he had grounds for appeal, but whether any reasonable person would agree that the point is totally and completely devoid of merit, and, therefore, frivolous.’ [Citations.] [¶] The two standards are often used together, with one providing evidence of the other. Thus, the total lack of merit of an appeal is viewed as evidence that appellant must have

intended it only for delay. [Citations.] ¶ Both strands of this definition are relevant to the determination that an appeal is frivolous. An appeal taken for an improper motive represents a time-consuming and disruptive use of the judicial process. Similarly, an appeal taken despite the fact that no reasonable attorney could have thought it meritorious ties up judicial resources and diverts attention from the already burdensome volume of work at the appellate courts. Thus, an appeal should be held to be frivolous only 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. [Citation.]” (*Id.* at pp. 649-650; see also Code Civ. Proc., § 907 [“When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just”]; Cal. Rules of Court, rule 8.276 [“[A] Court of Appeal may impose sanctions . . . on a party or an attorney for . . . ¶ [t]aking a frivolous appeal or appealing solely to cause delay”].)

Measured by this standard, there is no doubt this appeal is frivolous and sanctions are appropriate. After being warned by Pakiza’s counsel he had filed a wholly inadequate and defective appellant’s opening brief, Shakeel dismissed his appeal, implicitly taking Pakiza up on her offer to not seek costs and sanctions. Pakiza then filed her motion in the trial court to transfer jurisdiction of custody to Texas. Shakeel immediately returned to this court seeking to reinstate his appeal. His appellate counsel, Peabody, represented the dismissal resulted from mere miscommunication with Shakeel. After Pakiza was forced to prepare and file a respondent’s brief detailing the myriad deficiencies in Shakeel’s opening brief, Shakeel obtained two extensions of time to file a reply brief, yet never filed one and never made any attempt to defend his appeal. In the meantime, Shakeel (represented by different trial counsel) returned to the trial court brandishing our order reinstating his appeal to prevent transferring jurisdiction.

Whether reinstatement of Shakeel’s appeal, which concerned an order regarding division of community property, in fact deprived the trial court of the ability to transfer jurisdiction of child custody and visitation matters to the State of Texas is not our concern. What is significant here is the clear implication Shakeel reinstated his meritless appeal in an attempt to influence the trial court’s ability to rule on Pakiza’s motion. Shakeel did not attempt to vacate dismissal of his appeal until *after* Pakiza filed her transfer motion. Immediately upon succeeding here in having his appeal reinstated, he filed a notice of stay in the trial court asserting reinstatement of the appeal deprived the trial court of jurisdiction to proceed, and he raised the now renewed pending appeal as a reason for denying Pakiza’s motion. Thus, the only reasonable inference from the timing of Shakeel’s actions is that he sought reinstatement of his appeal not because he believed he had a valid community property issue for this court to address, but to interfere with Pakiza’s attempt to transfer jurisdiction of custody to the State of Texas.

Sanctions for filing a frivolous appeal are intended to compensate for expenses occasioned by the appeal and to deter similar conduct in the future. (*Flaherty, supra*, 31 Cal.3d at p. 646.) The amount of attorney fees reasonably incurred in responding to a frivolous appeal is one appropriate measure of sanctions. (See *In re Marriage of Economou* (1990) 223 Cal.App.3d 97, 108.) Pakiza’s counsel has submitted his declaration stating Pakiza has incurred \$8,250 in attorney fees responding to this appeal.

We are, of course, not limited to compensation for expenses but “may also require the payment of sums sufficient to discourage future frivolous litigation.” (*People ex rel. Dept. of Transportation v. Outdoor Media Group* (1993) 13 Cal.App.4th 1067, 1082; see also *Marriage of Economou, supra*, 223 Cal.App.3d at pp. 107-108.) In addition to compensating the respondent for costs and expenses, the amount of sanctions should also take into account the costs imposed on the court system by the waste of time and resources in processing, reviewing, and deciding a frivolous appeal. While we

recognize much of the responsibility for reinstating the meritless appeal rests with Shakeel, “An attorney in a civil case is not a hired gun required to carry out every direction given by the client. (Bus. & Prof. Code, § 6068, subd. (c).) As a professional, counsel has a professional responsibility not to pursue an appeal that is frivolous or taken for the purpose of delay, just because the client instructs him or her to do so. (Rule 2-110(C), Rules Prof. Conduct.) Under such circumstances, the high ethical and professional standards of a member of the bar and an officer of the court require the attorney . . . to withdraw from the representation of the client.” (*Cosenza v. Kramer* (1984) 152 Cal.App.3d 1100, 1103.) Although Attorney Peabody started down that path, filing a motion to withdraw as Shakeel’s counsel, he withdrew his motion. Thus, here, the client and the attorney are both responsible for pursuit of a frivolous appeal and liability for sanctions should be shared jointly and severally.

We find Shakeel’s appeal frivolous, and his conduct reinstating the appeal after dismissing it to influence ongoing trial court proceedings caused Pakiza to reasonably incur \$8,250 in attorney fees. That amount is assessed as sanctions against Shakeel Mustafa and his attorney, Timothy P. Peabody, jointly and severally. Further, in light of the undue burden this appeal has placed on the legal system and the consumption of this court’s time, sanctions in the amount of \$2,500 are assessed against Shakeel Mustafa and his attorney, Timothy P. Peabody, jointly and severally.

DISPOSITION

The postjudgment order is affirmed. We find this appeal to be frivolous and assess sanctions against Shakeel Mustafa and his attorney, Timothy P. Peabody, jointly and severally, as follows: (1) Sanctions in the amount of \$8,250, payable to Respondent within 30 days of the issuance of the remittitur in this matter; (2) sanctions in the amount of \$2,500, for the cost of processing the appeal, which sum shall be paid to the clerk of this court within 30 days of the issuance of the remittitur in this matter. Respondent is awarded her costs on appeal.

This opinion constitutes a written statement of our reasons for imposing sanctions as required by *Flaherty, supra*, 31 Cal.3d at p. 654. The clerk of this court is ordered, pursuant to Business and Professions Code section 6086.7, subdivision (a)(3), to forward a copy of this opinion to the State Bar of California upon return of the remittitur, and to notify Attorney Timothy P. Peabody the matter has been referred to the State Bar.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

FYBEL, J.