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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of DOREEN and
DANIEL GOLKA.

DOREEN GOLKA,

Respondent,

v.

DANIEL GOLKA,

Appellant.

G045882

(Super. Ct. No. 09D009609)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Michael J. Naughton, Judge. Affirmed.

Daniel Golka, in pro. per., for Appellant.

No appearance by Respondent.

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INTRODUCTION

In April 2011, judgment was entered dissolving the marriage of Daniel Golka and Doreen Golka.¹ Pursuant to Daniel and Doreen’s stipulation, the judgment resolved all issues between them, including issues related to support, custody, and visitation, except for one—whether the trial court should award to either party attorney fees, costs, or sanctions. Following trial on the issue of attorney fees, costs, and sanctions, the court entered a judgment ordering Daniel to pay sanctions “related to his conduct,” in the total amount of \$45,000 (the judgment on the reserved issue). The judgment on the reserved issue further directed that the sanctions be paid directly from the escrow account containing Daniel’s share of the proceeds from the sale of the family residence. The trial court denied Daniel’s motion for a new trial.

We affirm the judgment on the reserved issue. For the reasons we will explain, we reject each of Daniel’s contentions of error and hold that (1) sufficient evidence supported the sanctions award; (2) the sanctions award did not impose an unreasonable financial burden on Daniel; (3) the trial court did not deprive Daniel of a fair trial by denying him the rights to present evidence, cross-examine witnesses, and testify on his own behalf; and (4) the trial judge did not demonstrate “bias and prejudice” against self-employed businessmen in general or against Daniel specifically.

BACKGROUND

Pursuant to Daniel and Doreen’s stipulation, judgment was entered dissolving their marriage and resolving the issues of child support, custody, and visitation as to their two minor children, as well as spousal support and the division of property.

¹ We use the parties’ first names to avoid confusion and intend no disrespect. (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 390, fn. 1.)

The judgment reserved one issue, stating: “The issue of attorney fees, sanctions and costs shall be heard at trial on April 5, 2011.”²

Doreen filed a trial brief on the issue of attorney fees, costs, and sanctions, arguing, inter alia, that the trial court should award her sanctions under Family Code section 271, on the ground Daniel’s conduct in the marital dissolution action had frustrated the policy of the law to promote settlement of litigation. (All further statutory references are to the Family Code unless otherwise specified.) Daniel also filed a trial brief on the issue of attorney fees, costs, and sanctions, in which he requested an order requiring Doreen to pay some, if not all, of his attorney fees and costs under sections 2030 and 2032, because Doreen was employed and Daniel was not earning any income from his business. He also requested that Doreen be ordered to pay sanctions pursuant to section 271.

Following trial, the court issued a minute order stating, inter alia, “[t]he court did not believe [Daniel]’s testimony and with clear and unconvincing [*sic*] evidence, rules on the side of mistrust. The court notes the failure of [Daniel] to produce bank statements and they suddenly appear as exhibits.” The minute order further stated the court “finds a failure to disclose and produce as in [*In re M*]arriage of *Feldman* [(2007) 153 Cal.App.4th 1470]” and ordered Daniel “to pay \$15,000 of the accountant fees payable directly to the accountant and \$30,000 in attorney fees payable directly to the attorney for [Doreen].” (Italics added.)

The trial court entered the judgment on the reserved issue, requiring Daniel “to pay sanctions related to his conduct in the sum of \$15,000.00 to [Doreen’s expert forensic accountant] and the sum of \$30,000.00 to [Doreen’s attorney’s office].” The judgment on the reserved issue stated: “The sanctions totaling the sum of \$45,000.00

² The judgment stated that a previous “\$3,000.00 sanction order against [Daniel] shall be paid directly from his share of the proceeds from the sale of the family residence.”

shall be paid directly from escrow from [Daniel]'s share of the proceeds from the sale of the family residence." It further stated Daniel and Doreen had stipulated they would each bear their own attorney fees and costs.

Daniel filed a document, entitled "Objection to Proposed Judgment on Reserved Issues and Notice of Intent to Move for New Trial," in which he argued a new trial should be ordered because (1) the court's tentative ruling "was made by reason of the surprise and excusable neglect of [Daniel] and his counsel in not providing the Court with all of the facts in order that the Court could make [a] reasonable and fair ruling regarding sanctions"; (2) "[i]rregularity in the proceedings of the Court and the adverse party and abuse of discretion which prevented a fair trial"; (3) "[t]he Court's sanctions Order of a total of \$45,000.00 is, under the facts, excessive, arbitrary and capricious"; (4) "[i]nsufficiency of evidence to justify the decision"; (5) "[Daniel] did everything in his ability to comply with all prior discovery requests of [Doreen] and [Doreen]'s counsel"; (6) "[t]he Trial Court apparently believed that [Daniel] had earnings of \$11,000.00 per month, when in fact [Daniel] had no earnings, in that his prior business was completely defunct"; (7) "[t]he Trial Court apparently believed the unsupported statements of [Doreen]'s counsel regarding [Daniel]'s income and ability to pay; and regarding [Daniel]'s purported failure to comply with prior discovery rulings"; and (8) "[e]rror at law."

The following day, Daniel filed another document, entitled "Supplemental Objections to Proposed Judgment on Reserved Issues and Declaration of Daniel Golka."³ In that document, Daniel asserted one of the attorneys who had represented him at the beginning of the marital dissolution action had told Daniel the trial judge "was a close

³ That document stated Daniel was now acting in propria persona "due to attorney of record . . . refus[ing] to file any additional documents objecting to judgment or asserting a right to a new trial." Daniel had been represented by counsel up to that point in time.

personal friend of his” and that the attorney had given a toast at the judge’s 60th birthday party. Daniel also asserted his former attorney “assured [him] of a favorable outcome in the divorce proceedings.” Daniel’s supplemental objections described various alleged misdeeds by his former attorney during his representation of Daniel. Daniel stated his former attorney later successfully withdrew from representing Daniel and sued him to recover unpaid attorney fees. Daniel further stated that at the trial on the reserved issue, “Judge Naughton demonstrated bias against me. He would not allow me to testify fully regarding my financial situation; and he would not allow me to testify that I was not making any money; and he would further not allow me to testify that I had no assets with which to pay for an expert, or for legal fees, or for sanctions.” He also stated the trial judge had never disclosed his close friendship with Daniel’s former attorney, and Daniel believed it was “very curious that, after [he] was sued by [his former attorney], . . . Judge Naughton made an award of \$45,000 for sanctions against [him].”⁴ He stated he could not afford to support himself or his children after paying the sanctions award required by the judgment on the reserved issue.

Daniel filed a supplemental memorandum of points and authorities, which quoted unauthenticated postings on the Internet, containing general criticisms of the trial judge who presided over this case.

The trial court denied the motion for a new trial.⁵ Daniel filed a notice of appeal, stating he appealed from the order denying the motion for a new trial and the judgment on the reserved issue. An order denying a motion for a new trial, however, is

⁴ In his opening brief, although Daniel summarizes his declaration describing his former attorney’s claims that he was a good friend of Judge Naughton, had given a toast at Judge Naughton’s 60th birthday party, and predicted a favorable resolution of this marital dissolution case as a result of his friendship with Judge Naughton, Daniel does not argue these “facts” in support of his contention of judicial bias. In any event, Daniel’s declaration consists of unsubstantiated hearsay.

⁵ The motion for a new trial was heard by Orange County Superior Court Judge Theodore R. Howard.

not directly appealable, but is reviewable on appeal from the underlying judgment. (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 18.)⁶

DISCUSSION

I.

SUBSTANTIAL EVIDENCE SUPPORTED THE TRIAL COURT’S SANCTIONS AWARD.

Daniel argues insufficient evidence supported the trial court’s finding he engaged in sanctionable conduct. He also argues the trial court’s sanctions award under section 271 was erroneous because it imposed an unreasonable financial burden on him.

“Section 271 authorizes an award of attorney fees and costs as a sanction for uncooperative conduct that frustrates settlement and increases litigation costs.” (*In re Marriage of Fong* (2011) 193 Cal.App.4th 278, 290.) Section 271, subdivision (a) provides: “Notwithstanding any other provision of this code, the court may base an award of attorney’s fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney’s fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties’ incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an

⁶ In a footnote in his opening brief, Daniel requests that this court “take judicial notice of the economy and the recession which was (and is) prevalent between 2007 to at least 2011.” Daniel’s request for judicial notice is denied, because even if his request involved a proper subject of judicial notice on appeal, Daniel failed to file a motion seeking judicial notice as required by California Rules of Court, rule 8.252(a). (See *United Teachers of Los Angeles v. Los Angeles Unified School Dist.* (2012) 54 Cal.4th 504, 528.)

unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award."

"We review an award of attorney fees and costs under section 271 for abuse of discretion. [Citation.] 'Accordingly, we will overturn such an order only if, considering all of the evidence viewed most favorably in its support and indulging all reasonable inferences in its favor, no judge could reasonably make the order. [Citations.]'" (*In re Marriage of Fong, supra*, 193 Cal.App.4th at p. 291; see *In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 122 [the trial court has broad discretionary authority under section 271].) ""We review any findings of fact that formed the basis for the award of sanctions under a substantial evidence standard of review."" (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 995.)

Here, citing *In re Marriage of Feldman, supra*, 153 Cal.App.4th 1470, the trial court's minute order awarding sanctions was expressly based on Daniel's failure to timely disclose and produce bank statements; the court noted that the statements "suddenly appear[ed] as exhibits," and did not find Daniel's testimony to be credible. In *In re Marriage of Feldman*, the appellate court affirmed the trial court's award of sanctions in the amount of \$250,000 and attorney fees in the amount of \$140,000, under section 271, based on the husband's failure to disclose financial information to the wife. (*In re Marriage of Feldman, supra*, at pp. 1474-1475; see *In re Marriage of Sorge* (2012) 202 Cal.App.4th 626, 652 ["Together, sections 271 and 2107 'give the trial court authority to order sanctions and the payment of attorney fees for breach of a party's fiduciary duty of disclosure and for conduct which frustrates the policy of promoting settlement'"].)

In designating the record for this appeal, with the exception of an income and expense declaration that Daniel filed in October 2010, Daniel did not designate any document filed in the case before the parties filed their trial briefs on the reserved issue of

attorney fees, costs, and sanctions on March 29, 2011. Our review of the superior court docket shows that Daniel might not have designated, for inclusion in the clerk's transcript, all of the documents that are relevant to the resolution of the issues presented in this appeal. (See *Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435 [“a record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed”].) For example, the superior court docket reflects that on March 29, 2011, not only were Doreen's and Daniel's respective trial briefs on the reserved issue filed along with Daniel's latest income and expense declaration, but there was a document filed and entered as “Declaration re Attorney's Fees” that was not designated by Daniel and not included in the clerk's transcript. Three other documents were filed on March 29, one described in the docket as “Affidavit/Declaration-Other,” another described as “Other Miscellaneous Document,” and another described as “Exhibit-Other”; none of these three documents was designated by Daniel or included in the clerk's transcript.

Notwithstanding the specter Daniel might have designated an incomplete record that possibly omitted evidence submitted by Doreen in support of her trial brief on the reserved issue, substantial evidence in the record before us supported the trial court's finding Daniel had engaged in sanctionable conduct by failing to timely disclose and produce bank statements and as a result increased the cost of the litigation. Doreen's expert forensic accountant testified that certain bank statements regarding Daniel's business had to be subpoenaed because Daniel failed to produce them pursuant to discovery orders. The accountant testified he was not surprised to later learn that Daniel had those documents in his possession because “they are documents that people normally retain in the course of conducting business in their personal lives.” The accountant further testified that his fees in this case were “very, very high” because “we had to

reconstruct the activity in the bank accounts because [Daniel]'s business bookkeeping was not being maintained in a proper manner and that the documents that we received through petition we then had to assemble them and go through them item by item to corroborate or to come to conclusions." He testified that Doreen had already paid him around \$25,000 and before he testified at trial that day, she owed him \$9,100.

After closing argument, the trial court stated that in many family law cases he presided over, once the petition for dissolution was filed, a party would suddenly claim he or she could no longer earn as much because "there's no overtime down at the plant," "[t]he government grants just ran out," or "[b]usiness is lousy and nobody is paying anything." In such cases, the trial court stated, that then, "as if by magic right around the time the divorce decree is inked . . . all of a sudden now [that party is] a participating equity partner down at the plant. The government is now granting business by some miracle it's gotten a whole lot better."

Notwithstanding the trial court's past experience with less than forthright litigants, the court stated that "to some extent," it believed business was bad for Daniel "because in the construction-related business and home-improvement business, business may be bad." The court, however, went on to state: "The thing that disturbs me is that if business is so bad, why not open the books? Why not let all the world, particularly in a litigation, take a look and see what's in the checking accounts and where it all went or what's going on with it?" The trial court expressed skepticism about some of the expenses Daniel claimed in his most recently filed income and expense declaration, such as his payroll expense of \$3,615 after Daniel had laid off all of his employees.

The court further stated: "Now, what I look at in that case is the failure to provide bank statements and the other financial materials which if by magic appeared in this particular exhibit right around the time his feet [were] in the fire going to trial on this thing. And as if by magic it suddenly surfaced when he had a fiduciary duty under *In re the Marriage of Feldman* and *In re the Marriage of Walker* to produce this stuff without

any request at all, period.” (Italics added.) (The court also mentioned, “some of the earlier settlement proposal[s] by [Daniel] were insulting” and case law holds that “unreasonable settlement offers can be the basis for sanctionable conduct.”) The court ultimately found that “the cost of this litigation was doubled by the conduct in the forensic incident on the part of [Daniel].” The trial court’s finding Daniel engaged in uncooperative conduct that increased the cost of litigation was supported by the expert forensic accountant’s testimony, described *ante*.

Daniel contends the amount of the sanctions award imposed an unreasonable financial burden on him in violation of section 271. At trial, after determining that a sanctions award was appropriate, the court stated: “The only thing that bothers me is I don’t want to leave [Daniel] with nothing at the end of the day. I don’t think that’s appropriate. The sanctions that are attributable in this sort of case in theory are supposed to de[t]er conduct . . . in the future by people like this and anybody else of his or her guilt [*sic*].” The court further stated that some of the attorney fees and expert forensic accountant’s fees were Doreen’s responsibility. The court continued: “That kind of goes with the territory and under [section] 2030 she seem[s] to be in [a] better financial situation than [Daniel] but in my view as and for conduct-related sanctions, the court orders \$15,000 in accounting fees and \$30,000 in attorney fees.” The court stated, “[t]hose two items are ordered specifically from [Daniel]’s share of the community property sale of the family residence and directly—the court orders it directly payable from escrow to the attorney and the accountant involved.”

The record shows the trial court considered Daniel’s financial situation in determining the amount of the sanctions award. The court also expressed skepticism about Daniel’s claimed lack of income. (Doreen’s expert forensic accountant testified that for the year ending December 31, 2010, Daniel’s “monthly controllable cash flow [was] \$7,860.”) Significantly, the court knew Daniel could pay the amount of sanctions

it had ordered from the proceeds of the sale of the family residence; therefore, the court did not order sanctions in an amount Daniel was unable to pay.

In sum, we conclude substantial evidence supported the trial court's finding Daniel engaged in sanctionable conduct, and its implied finding that the sanctions award would not impose an unreasonable financial burden on Daniel within the meaning of section 271. Daniel has failed to show the sanctions award otherwise constituted an abuse of discretion.

II.

DANIEL'S RIGHTS TO OFFER EVIDENCE, CROSS-EXAMINE WITNESSES, AND TESTIFY ON HIS OWN BEHALF WERE NOT INFRINGED UPON BY THE TRIAL COURT.

Daniel argues the trial court denied him a fair trial by wrongfully limiting his rights to offer evidence, to cross-examine witnesses, and to testify on his own behalf. The record shows Daniel testified at the trial on the reserved issue, and, through his counsel, submitted evidence, called witnesses, and cross-examined Doreen's witnesses.

Daniel's argument that he was denied a fair trial is based on specific evidentiary rulings by the trial court during the trial on the reserved issue. Daniel does not, however, offer any analysis or citation to legal authority explaining why any given evidentiary ruling constituted error or how he was prejudiced by it. (See *Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007 [the failure to make a coherent argument or cite any authority to support a contention on appeal constitutes a waiver of the issue on appeal]; *Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448 ["parties are required to include argument and citation to authority in their briefs, and the absence of these necessary elements allows this court to treat appellant's [contentions] as waived"]; *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1 [appellate court "will not develop the appellants' arguments for them"]; Cal.

Rules of Court, rule 8.204(a)(1)(B) [each point in a brief must be supported by “argument and, if possible, by citation of authority”]; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2012) ¶ 9:21, p. 9-6 (rev. # 1, 2012) [“appellate court can treat as *waived, forfeited* or *meritless* any issue that, although raised in the briefs, is *not supported by pertinent or cognizable legal argument or proper citation of authority*”].) Consequently, Daniel’s argument that he was denied a fair trial on this basis is forfeited.

Notwithstanding Daniel’s forfeiture of the issue, we review each evidentiary ruling Daniel cites in support of his argument, and confirm the absence of prejudicial error.

A.

Inadmissibility of Declarations

Daniel argues that before the trial on the reserved issue, the court wrongly refused to consider two declarations filed by Daniel’s attorneys in support of his trial brief. After Doreen’s counsel objected to the declarations on the ground both were untimely filed and objected to one of the declarations on the additional ground it was procedurally defective, the trial court stated it would not read either declaration, without further comment. Daniel does not contend the declarations were timely filed or procedurally proper. Nothing in the record suggests that Daniel was precluded from offering the same evidence contained in those two declarations during the trial itself.

B.

Cross-examination of Witnesses

Daniel argues the trial court denied him the right to cross-examine witnesses, based on three separate evidentiary rulings, without offering any explanation as to how they were erroneous. The first instance occurred when the court did not allow Daniel’s attorney to cross-examine Doreen’s expert forensic accountant as to a report he had relied upon because “[i]t’s useless under 352 of the Evidence Code given the fact that

it has no probative value.” (The trial court had previously sustained *Daniel’s* attorney’s objection to the admissibility of that same report and refused to allow it into evidence.) The court informed Daniel’s attorney that it would admit the report, and then allow such cross-examination; Daniel’s attorney declined that option.

Daniel argues the trial court denied him the right to cross-examine witnesses on a second occasion when the court sustained Doreen’s counsel’s objection to a question posed by Daniel’s counsel during the cross-examination of Doreen’s expert forensic accountant, as follows:

“Q. So in your report you made no allowances whatsoever for any reimbursement. If it’s been deposited into his account you pretty much counted that as income; is that correct?

“A. That’s correct.

“Q. Okay. So let me ask you this: Have you formed any kind of a second opinion as to what his income would be if certain reimbursements were withdrawn?

“A. No.

“Q. Okay. Let me ask you this: Is it fair to say that your opinion as to [Daniel]’s income would be lower if, in fact, you had taken into consideration reimbursements no matter how small?

“[Doreen’s counsel]: Objection, calls for speculation.

“The Court: Sustained on both accounts.”

This testimony shows the expert forensic accountant did not distinguish between reimbursements and income in his report. There is no reason to believe the trial court misunderstood this testimony. Accordingly, any error in the ruling on the question posed would be harmless.

Daniel argues a third instance of a purported infringement on his right to cross-examine witnesses occurred during the expert forensic accountant’s testimony. The trial court sustained Doreen’s counsel’s objection to the question, “is it pretty common

for records to be incomplete and sloppy when the business is failing according to your experience,” on the grounds the question was argumentative, called for speculation, and lacked foundation.

Neither this evidentiary ruling, nor the other two described *ante*, reflect an infringement of the right to cross-examine witnesses. Even if they were erroneous, there is no basis for concluding any of the rulings constituted prejudicial error.

C.

Daniel’s Trial Testimony

Daniel also argues the trial court wrongfully denied him the right to testify because of the following three instances.

First, in response to Doreen’s counsel’s question, “[y]our attorney argues that you[’re] in dire straits that you have no money. If you truly believed you were entitled to \$55,000 or one half of that why would you avoid that,” Daniel answered, “[t]o put an end—I can’t afford this, Mr. Dolnick [(Doreen’s counsel)]. You know this. Mr. Goldenberg has paid for her defense up to this point. I can’t afford this. My business has failed. All I wanted from the beginning was my children and to put an end to this. I tried to settle this a year ago. You have hundred thousand dollars of legal fees that you drug out because Mr. Goldenberg fully paid for the” At this point, the trial court stopped Daniel, and stated: “How about you answer the question and save the speeches for later.” The court did not err by reminding Daniel that he was to answer the question asked of him.

Second, in response to Doreen’s counsel’s question, “[a]nd your second offer of settlement asked her to pay you \$258,000. Ultimately, you’re getting only one half of the equity in the home, approximately 50 to \$60,000, correct,” Daniel said, “Mr. Dolnick, I’m broke. I can’t continue to fight this.” Again, the court stated to Daniel: “Do me a favor just answer the questions, will you? We’ll be here all day.”

Daniel responded, “[o]kay.” Daniel’s answer was not responsive to Doreen’s counsel’s question. The trial court properly redirected Daniel accordingly.

Finally, Daniel argues his counsel “attempted to question [Daniel] regarding duplicate deposits into his business account, which would have rebutted opinion testimony of wife’s expert that [Daniel]’s ‘controllable cash flow’ was \$7,000/month. [¶] However, Judge Naughton sustained every objection of [Doreen’s counsel] to this line of questioning . . . ; and then discouraged [Daniel]’s counsel from continuing.” The relevant portion of Daniel’s testimony is as follows:

“Q. Can you explain to the court what this first page is?

“A. This is a spreadsheet of duplicate deposits that were counted as income into my personal account.

“Q. So let me ask you this: What is the account number on this account?

“A. It’s the Bank of America account ending in

“Q. And is it your understanding that this account was used in [Doreen’s expert forensic accountant]’s analysis?

“[Doreen’s counsel]: Objection, lack of foundation.

“The Court: Sustained. The answer is stricken.

“By [Daniel’s counsel]:

“Q. The document is entitled, ‘Duplicate Deposits Returned.’ Can you explain what that means?

“A. These were checks that were written from the business to myself that were either bounced or did not go to the bank.

“Q. At the bottom there’s a total of \$6,534.60. What does . . . that number represent?

“A. Money that was counted as income that was not income.

“[Doreen’s counsel]: Objection, lack of foundation.

“The Court: Sustained. The answer is stricken.

“By [Daniel’s counsel]:

“Q. Let me ask you this: That \$6,534.60, were those moneys that were reimbursed to you from the business for advances?

“[Doreen’s counsel]: Objection, leading.

“The [Court]: Sustained.

“By [Daniel’s counsel]:

“Q. The first entry on that first page states that there’s \$158 let[’]s call it expense or figure and that was dated January 6th, 2010. Do you see that?

“A. Yes.

“Q. Do you recall what that \$158 was for?

“A. I don’t at the time but I know it was a duplicate.

“Q. Is there any document that would refresh your recollection as to what that expense would be?

“A. If I had the actual check, yes.

“Q. By taking a look at the actual statement, is there any way that you can tell that it was a reimbursement?

“A. It was definitely a reimbursement.

“Q. I’m going to have you take a look—

“[Doreen’s counsel]: Objection, lack of foundation.

“The Court: Sustained. Are we really—do you really propose to go item by item?

“[Daniel’s counsel]: I did not want to, Your Honor, but this—

“The Court: You gave me an hour estimate.

“[Daniel’s counsel]: I didn’t. I did not.

“The Court: I’ll see you tomorrow morning at 9:00 o’clock. You’re ordered to be here, you and your client. If this litigation is any example of what went on before, your client better bring a checkbook.”

That a trial court sustained a series of objections to a line of questioning does not in and of itself constitute an infringement upon a party's right to testify on his or her own behalf. Furthermore, the trial court's questioning of the efficiency of Daniel's counsel's method of direct examination is well within the court's duty under Evidence Code section 765, subdivision (a) to "exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth, as may be."

We find no error.

III.

THE TRIAL JUDGE DID NOT DEMONSTRATE JUDICIAL BIAS.

Daniel argues the trial judge "committed reversible error by demonstrating that a fair and impartial trial could not be had before him by reason of his bias and prejudice (a) against self-employed businessmen and (b) against [Daniel]." (Capitalization, boldface, & underscoring omitted.) Under Code of Civil Procedure section 170.1, "(a) A judge shall be disqualified if any one or more of the following are true: [¶] . . . [¶] (6)(A) . . . [¶] . . . [¶] (iii) A person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. [¶] (B) Bias or prejudice toward a lawyer in the proceeding may be grounds for disqualification." It is well established that "[w]hen reviewing a charge of bias, ' . . . the litigants' necessarily partisan views should not provide the applicable frame of reference. [Citations].' [Citation.] Potential bias and prejudice must clearly be established [citation] and statutes authorizing disqualification of a judge on grounds of bias must be applied with restraint. [Citation.] 'Bias or prejudice consists of a "mental attitude or disposition of the judge towards [or against] a party to the litigation. . . ."' [Citation.] Neither strained relations between a judge and an attorney for a party nor '[e]xpressions of opinion uttered by a judge, in what he conceived to be a discharge of his official duties, are . . . evidence of bias or prejudice.

[Citation.]” (*Roitz v. Coldwell Banker Residential Brokerage Co.* (1998) 62 Cal.App.4th 716, 724.) Daniel’s contention of judicial bias is based on four separate instances, none of which reflects judicial bias.

First, in response to Daniel’s counsel’s argument that Daniel was out of money and a sanctions award would impose an unreasonable financial burden on him, the trial judge expressed frustration with the trend he had observed in family law cases where the parties spend all their money litigating and then complain about being sanctioned because they would not have a lot of money left. The judge stated, “my response to that is: You guys should have thought about that in the first place when you both decided you want to go forward to do battle and that goes for both sides.” The trial judge’s comment, which was equally directed to both Daniel and Doreen, does not reflect any form of bias against Daniel.

Second, Daniel argues the judge demonstrated bias against Daniel and his counsel and prejudgment of the case, by informing Daniel’s counsel, after what the judge considered to be inefficient direct examination at the trial to determine sanctions, that “[i]f this litigation is any example of what went on before, your client better bring a checkbook.” But, expressions of understandable frustration do not establish bias. (*Roitz v. Coldwell Banker Residential Brokerage Co.*, *supra*, 62 Cal.App.4th at p. 725.) Furthermore, the judge’s isolated statement in the middle of trial does not disclose the judge’s prejudgment of any issue in the case. In any event, the expression of such a view on a legal or factual issue in a proceeding is not grounds for disqualification under Code of Civil Procedure section 170.2, subdivision (b).

Third, Daniel’s counsel argued at the trial on the reserved issue (and Daniel argues on appeal) that he had been “completely vindicated” (boldface omitted) as to Doreen’s allegations that Daniel had engaged in domestic violence. The trial judge corrected Daniel, explaining, “I thought at the time that there wasn’t a preponderance of the evidence of the conduct that—whatever was alleged under the Domestic Violence

Prevention Act. That doesn't mean that I made a finding of not guilty. I simply found that I wasn't satisfied by a preponderance of the evidence and it was not a vindication of [Daniel] or anybody else. [¶] I know that some stuff went on that night and I know that it was inappropriate. Whether or not it was domestic violence is another matter." The judge's comments clarifying the legal significance of the denial of the preliminary injunction do not reflect bias.

Finally, Daniel contends the judge demonstrated bias against him personally and against self-employed husbands by the following comments: "[T]he question that I have is all along [Daniel] has said, 'my business in the tank. I'm in building-related, construction-related industry and it's going down hill and it's going counter clockwise down the sink and I'm broke basically.' I can't tell you over the last nine years as a judge and 30 some odd years as a lawyer how many times I've heard that same song. [¶] They ought to have sheet music for it in divorces. Murphy's Law of divorce is that right around the time the petition was filed there's no overtime down at the plant. The government grants just ran out. Business is lousy and nobody is paying anything as if by magic right around the time the divorce decree is inked . . . all of a sudden now I'm a participating equity partner down at the plant. The government is now granting business by some miracle it's gotten a whole lot better. [¶] But to some extent I believe it because in the construction-related business and home-improvement business, business may be bad." The trial judge's comments reflect his experience with parties who are not forthright about their income in family law cases, not about self-employed husbands or Daniel in particular. In fact, the judge expressly stated that he believed business had been bad for Daniel.

In sum, we find no evidence of judicial bias in this case. We note, however, that the opening brief contains inappropriate statements, personally attacking the trial judge in this case. Those statements by Daniel are without any basis.

DISPOSITION

The judgment is affirmed. Inasmuch as respondent did not file a brief, neither party shall recover costs on appeal.

FYBEL, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.