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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re Marriage of KAMAL and ADIL
HIRAMANNEK.

H035887
(Santa Clara County
Super. Ct. No. FL149682)

KAMAL HIRAMANNEK,

Respondent,

v.

ADIL HIRAMANNEK,

Appellant.

Adil HirananeK appeals from an order of the family law court declaring him a vexatious litigant and requiring him to submit his papers for court approval before filing. We affirm the order.¹

¹ HirananeK also appeals from an order denying his motion to vacate a child custody emergency screening order that temporarily placed custody of HirananeK's three children with their mother, Kamal HirananeK. We dismiss this appeal. The order is not an appealable order because it is interlocutory. While orders modifying or refusing to modify custody after a final judgment on custody are appealable as postjudgment orders (see *In re Marriage of Brown & Yana* (2006) 37 Cal.4th 947, 956), and orders regarding temporary spousal or child support are appealable as “ ‘order[s] dispositive of the rights of the parties in relation to a collateral matter, or directing payment of money or performance of an act’ ” (*In re Marriage of Campbell* (2006) 136 Cal.App.4th 502, 505), temporary custody orders are not. “A temporary custody order is interlocutory by definition, since it is made pendente lite with the intent that it will be superseded by an award of custody after trial. [Citation.] Code of Civil Procedure section 904.1 bars appeal from interlocutory judgments or orders ‘other than as provided in paragraphs (8), (continued)

APPEALABILITY

“There are three categories of appealable judgments or orders: (1) final judgments as determined by case law, (2) orders and interlocutory judgments made expressly appealable by statute, and (3) certain judgments and orders that, although they do not dispose of all issues in the case are considered ‘final’ for appeal purposes and are exceptions to the one-final-judgment rule.” (*Conservatorship of Rich* (1996) 46 Cal.App.4th 1233, 1235.) There is no final judgment in this case; the underlying family law proceeding within which the order was made is still pending. And an order designating a person to be a vexatious litigant under Code of Civil Procedure section 391.7² is not expressly made appealable by any statute. But where, as here, the order is made in the course of an underlying action but is collateral to the subject of that action, it is appealable pursuant to the collateral order doctrine. (*Lester v. Lennane, supra*, 84 Cal.App.4th at p. 561.) Under the majority rule, “an interim order is appealable if: [¶] 1. The order is collateral to the subject matter of the litigation, [¶] 2. The order is final as to the collateral matter, and [¶] 3. The order directs the payment of money by the appellant or the performance of an act by or against appellant.” (*Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4th 289, 297-298, citing *Sjoberg v. Hastorf* (1948) 33 Cal.2d 116, 119.) The order in this case is wholly collateral to the subject of the underlying proceeding. Indeed, it has no effect upon the proceeding. It affects only litigation Hiranamek might want to file in the future. The trial court’s granting of the motion is a final decision on that issue. And the order directs Hiranamek to perform an act, namely to obtain an order from the presiding judge before filing any future litigation. Thus, the order is appealable as a final decision on a collateral matter.

(9), and (11). . . .’ [Citation.] Temporary custody orders are not listed in any of those paragraphs. Therefore this statute precludes the appealability of such orders.” (*Lester v. Lennane* (2000) 84 Cal.App.4th 536, 559-560, fn. omitted.)

² Further unspecified statutory references are to the Code of Civil Procedure.

LEGAL BACKGROUND AND SCOPE OF REVIEW

Section 391, subdivision (b), defines several categories of vexatious litigants, including one who, “[in] any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.” (§ 391, subd. (b)(3).)

The Legislature passed vexatious litigant statutes to curb misuse of the courts by litigants acting in propria persona who repeatedly relitigate the same issues. These persistent and obsessive litigants often file groundless actions against judges and other court officers who made decisions adverse to them. This abuse of the system wastes court time and resources and prejudices other parties waiting their turns before the courts. (*Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 220-221.)

Once a party has been declared a vexatious litigant, the court on its own motion or that of any party may enter a “prefiling” order prohibiting that party from filing new state court litigation in propria persona absent leave of the presiding judge where the litigation is proposed to be filed. (§ 391.7, subd. (a); *In re R.H.* (2009) 170 Cal.App.4th 678, 690.) After a prefiling order issues, the presiding judge shall permit the party to file further litigation “only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay.” (§ 391.7, subd. (b).)

Section 391, subdivision (b)(3) does not define what constitutes “repeatedly” filing “unmeritorious” litigation.³ We therefore defer to the sound discretion of the trial

³ “While there is no bright-line rule as to what constitutes ‘repeatedly,’ most cases affirming the vexatious litigant designation involve situations where litigants have filed dozens of motions either during the pendency of an action or relating to the same judgment.” (*Morton v. Wagner* (2007) 156 Cal.App.4th 963, 972 (*Morton*).) For example, in *Bravo* the litigant filed approximately 20 motions during the same action, many of which were identical to motions previously brought and denied. In the case of *In re Whitaker* (1992) 6 Cal.App.4th 54, 56, the litigant filed at least 24 actions in the (continued)

court to make that determination. (*Morton, supra*, 156 Cal.App.4th at p. 971.) “Review of the order is accordingly limited and the Court of Appeal will uphold the ruling if it is supported by substantial evidence. Because the trial court is best suited to receive evidence and hold hearings on the question of a party’s vexatiousness, we presume the order declaring a litigant vexatious is correct and imply findings necessary to support the judgment” so long as there is evidence to support the findings. (*Golin v. Allenby* (2010) 190 Cal.App.4th 616, 636.)

“When a trial court’s factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. If such substantial evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.” (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874, italics omitted.)

THE TRIAL COURT’S ORDER

The trial court’s order stemmed from its own motion in this acrimonious dissolution proceeding. The motion included a nonexclusive list of 32 pleadings in the case. Twenty-five pleadings were filed by Hiranamek toward achieving some form of relief. One pleading was dismissed; one was suspended; and 23 were denied. The denied

superior court and 35 writ and appeal proceedings, the majority of which were meritless. The appellate court in the case of *In re Lockett* (1991) 232 Cal.App.3d 107, 109, found the litigant to be vexatious based upon the lack of merit in “43 separate appellate actions.” On the other hand, as this court recognized in *Morton, supra*, at page 972, as few as three motions might form the basis for a vexatious litigant designation where, for example, they all seek the exact same relief which has already been denied or all relate to the same judgment or order or are filed in close succession.

requests included: two challenges for cause against the trial judge; four requests for a statement of decision; four motions to modify child visitation--three of them ex parte; three motions to modify child custody--two of them ex parte; two motions to quash a subpoena; an ex parte motion to compel discovery; and a motion for reconsideration.

In its order, the trial court noted that the case itself had “expanded to occupy twelve volumes of Court files” and it had “done its best to determine how many motions and OSCs (ex parte or not) were filed” by Hirananeck in propria persona. The trial court explained: “Due to the volume of documents and the way that issues were continued over different hearings, the Court is not certain that its count is perfect, but notes that neither Petitioner nor [Hirananeck] challenged the court’s total count in their briefs.” It then carefully catalogued Hirananeck’s multiple filings: “Analysis of [Hirananeck’s] in pro per filings and their dispositions demonstrates their repetitive and meritless nature. In sum, the Court counts that in a one year period, [Hirananeck] filed in pro per seventeen initial motions, OSCs, challenges, and requests for statement of decision, in addition to other non-initial-pleading documents he has filed. [Hirananeck] abused the ex parte process, filing eight ex parte motions or OSCs: seven were denied outright and one was granted an order shortening time, but denied substantive temporary orders. When his ex partes eventually came on for regular hearing, they were again denied. In addition to the eight ex partes, [Hirananeck] filed four non-ex parte motions or OSCs: three were denied outright, the fourth contained four issues: two were denied, one continued and one taken off calendar. [Hirananeck] filed two 170.1 challenges for cause against Judge L. Michael Clark, both of which were denied by Judge Massullo of San Francisco County.

[Hirananeck] objected to having Ed Mills appointed as judge pro tem, then he later requested to have Mills appointed as case manager. [Hirananeck] filed four requests for a statement of decision in a six week period, the fourth of which was filed after the request had already been denied. The vast majority of [Hirananeck’s] motions, OSCs and other requests have been denied. ¶ . . . ¶ In addition to the filings listed above, [Hirananeck]

has filed well over a dozen ‘supplemental’ documents, consisting of additional declarations, responses, and other requests. He has sometimes filed several ‘supplemental’ documents for the same motion, and even filed them after a decision on the matter had been rendered.” (Fns. omitted.) The trial court also observed that Hiranamek occasionally used attorneys as puppets evidenced by recycled pleadings under an attorney’s name that “appear to be penned by the same hand” as pro per pleadings that “frequently make the same mistakes the Court hopes an attorney would not make, such as the hearsay problem of referring to an exhibit drafted by [Hiranamek] himself as ‘clear proof’ of a factual or legal assertion contained therein.”

DISCUSSION

The pleadings identified by the trial court are part of a 16-volume, 4,429-page clerk’s transcript on appeal. They support a finding that Hiranamek, “while acting in propria persona, repeatedly file[d] unmeritorious motions, pleadings, or other papers . . . or engage[d] in other tactics that are frivolous or solely intended to cause unnecessary delay.” (§ 391, subd. (b)(3).)

We add that Hiranamek’s appeal is also frivolous. The opening brief, filed by attorney Lyle W. Johnson, consists of 79 pages of rambling incoherence that, at its best, is a reargument and, at its worst, is irrelevant nonsense. For example, attorney Johnson tells us the following: “Contrasting judicial discretion between Judges; Judge-Johnson got child visitation started in a 30 minute hearing, by neutralizing Kamal’s frustrating efforts. After 210+ hearings with Judge-Clark (25 in 2011 alone), children continue to be denied contact with Adil, 4th year in a row, not even a phone call.” Attorney Johnson also informs us that “Compounding the situation is complaints against Judge-Clark from numerous other attorney/litigants. Judge-Clark’s adjudication on Adil’s filings do not lend itself to an automatic presumption of unmeritorious.” (Fn. omitted.)

Attorney Johnson does not meaningfully argue that the record lacks substantial evidence demonstrating that Hiranamek meets the statutory definition of a vexatious

litigant. The brief is disorganized, repetitive, and largely incoherent. (See Cal. Rules of Court, rule 8.204(a)(1), (2)(A)-(C).) It is no more than a criticism of the trial court's characterization of the numerous documents filed by Hiranek as being frivolous and unmeritorious.

It is the appellant's burden on appeal to show both that the trial court committed error, and that the error was prejudicial to the appellant. (*In re Marriage of Behrens* (1982) 137 Cal.App.3d 562, 575.) “ ‘In a challenge to a judgment, it is incumbent upon an appellant to present argument and authority on each point made. Arguments not presented will generally not receive consideration.’ ” (*In re Marriage of Ananeh-Firemong* (1990) 219 Cal.App.3d 272, 278.) Indeed, “failure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal. . . . “ ‘Contentions supported neither by argument nor by citation of authority are deemed to be without foundation, and to have been abandoned.’ [Citations.]” [Citation.] Nor is an appellate court required to consider alleged error where the appellant merely complains of it without pertinent argument.’ ” (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119.) “One cannot simply say the court erred, and leave it up to the appellate court to figure out why.” (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368.)

DISPOSITION

The order subjecting Adil Hiranamek to a pre-filing order as a vexatious litigant under Code of Civil Procedure section 391.7 is affirmed. The appeal from the emergency screening order of May 20, 2010, is dismissed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Márquez, J.