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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re the Marriage of SOFIA LEUNG and  
JOREL DUANE HARTMAN.

H039978  
(Santa Clara County  
Super. Ct. No. 1-09-FL150601)

SOFIA LEUNG,

Appellant,

v.

JOREL DUANE HARTMAN,

Respondent.

Appellant Sofia Leung appeals the trial court's order awarding her need-based attorney fees (Fam. Code, §§ 2030, 2032) in her divorce from respondent Jorel Duane Hartman. Leung argues that the trial court abused its discretion by not awarding her additional need-based attorney fees and by denying her request for Family Code section 271<sup>1</sup> sanctions. For the reasons stated here, we will affirm.

**I. TRIAL COURT PROCEEDINGS**

This factual and procedural summary is based on findings in various trial court orders. We note that the parties, both of whom are proceeding in propria persona on appeal, designated a very limited Clerk's Transcript and rarely cite the record in their appellate briefing.

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<sup>1</sup> Unspecified statutory references are to the Family Code.

Leung and Hartman married in July 2003 and separated in April 2009. They have one daughter, born in 2007. The parties shared custody of their daughter evenly.

Between 2009 and 2012, Leung and Hartman litigated the division of their marital assets. They agreed to have many of the issues in the dissolution resolved by a judge pro tempore retained by the parties. The litigation involved several hearings, a report by an expert appointed by the court to determine whether certain property was separate or community property, and a report prepared by a forensic accountant retained by Leung. After resolving the property distribution in December 2012, the parties stipulated to resolve the issue of attorney fees and costs by submitting written declarations.

As relevant to this appeal, Leung's declaration stated that she owed her attorney \$3,000 and had over \$20,000 in credit card debt as of January 2013. In a reply declaration Leung raised a new argument, claiming that Hartman had a group legal plan through his employer that would reimburse him for any legal fees he incurred. Leung attached what appears to be an Internet printout of legal plan details and a December 2009 paystub for Hartman as an exhibit to her reply declaration. Hartman's declaration stated: "I [do] not have funds available to me through my employment benefits for this litigation. I have not received any monies from my employer to offset the costs of fees incurred." Leung requested \$100,000 in need-based attorney fees and costs; Hartman requested \$10,000 in need-based attorney fees and costs.

#### **A. INCOME, EXPENSES, ASSETS, AND ATTORNEY FEES**

The trial court filed its order regarding attorney fees in May 2013 after receiving the parties' declarations and allowing the parties to file certain forms to comply with a local court rule.<sup>2</sup>

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<sup>2</sup> As relevant to one of Leung's appellate arguments, Hartman's reply declaration argued that Leung had not complied with Santa Clara County Superior Court Local Family Rule 4, related to fee requests.

According to that order, Leung (who was 40 years old and in good health in May 2013), is a software engineer with a master's degree. She was earning approximately \$10,000 per month as a software engineer before the parties separated but was laid off in January 2009. Between May 2009 and April 2013, Leung earned a total of \$167,074 from 14 nonconsecutive months of work on multiple contract assignments. Leung also earned between \$20,580 (Leung's estimate) and \$41,160 (Hartman's estimate) in unemployment benefits.

Hartman (who was 41 years old and in good health in May 2013) is a senior design engineer with a master's degree. Between May 2009 and April 2013, Hartman earned approximately \$11,000 per month, for a total income of approximately \$528,000.

The court found that Leung had \$6,046 in reasonable monthly expenses (including \$2,000 per month in credit card payments), based on her most recent income and expense declaration.

The court stated Hartman's income and expense declaration listed \$7,476 in monthly expenses, including \$1,300 per month in automobile expenses. The court found Hartman's automobile expenses unreasonably high but found the expenses otherwise reasonable.

The court found that Leung had approximately \$321,182.72 in total net assets (after subtracting \$21,366 in credit card debt), not including retirement assets. Those assets included \$4,000 in bank accounts, \$69,925 in stocks and bonds, and \$269,269.72 that Leung received after the family residence was sold.

The court found Hartman had approximately \$373,131.24 in total net assets, not including retirement assets. Those assets included \$4,000 in bank accounts, \$113,700 in stocks and bonds, \$16,000 in other property, and \$239,471.24 in proceeds from the sale of the family residence.

The court found that Leung incurred \$179,528 in attorney fees and costs during the dissolution proceedings, consisting of \$133,000 in attorney fees, \$3,847 in costs;

\$350 for a real estate appraisal of the family residence; \$30,456 in fees for Leung's forensic accountant; and \$11,875 in judge pro tem fees.

Hartman had an attorney at the beginning of the litigation but proceeded in propria persona from September 2010 until the end of the proceedings. The court found Hartman incurred \$64,309.50 in attorney fees and costs, consisting of \$49,434.50 in attorney fees, \$11,875 in judge pro tem fees, \$2,500 in court-appointed expert fees, and \$500 for another expert. The court rejected Leung's argument that Hartman's attorney fees had been reimbursed by a group legal plan, finding that Leung "presented no evidence regarding the details of this plan or whether [Hartman] was actually reimbursed" for any of his attorney fees.

The court found that Hartman had paid Leung spousal and child support for certain periods during the dissolution proceedings. Hartman alleged those support payments totaled \$93,867, while Leung contended those payments totaled \$83,000.

#### **B. SECTION 4320 FACTORS**

The trial court discussed several section 4320 factors relevant to determining whether either party should receive need-based attorney fees under sections 2030 and 2032. The court found Leung and Hartman were relatively young and healthy, that both were skilled engineers with graduate degrees, and that neither party took significant time off during the marriage to devote to domestic duties. The court noted that Leung supported the family from 2004 to 2007 while Hartman obtained his master's degree and that the community spent approximately \$37,000 toward his education.

Regarding the ability to pay attorney fees, the court found that the parties had a comfortable upper middle class standard of living during the marriage. Leung and Hartman each had an earning capacity sufficient to maintain that standard of living; each had demonstrated the ability to earn over \$11,000 per month. The court found the parties' respective monthly expenses were commensurate with the standard of living established during the marriage. While the court found that both parties had the ability to

pay attorney fees and costs, Hartman had a greater ability because he had more assets and had earned significantly more income during the dissolution proceedings.

The court found that despite Leung's difficulty maintaining employment during the dissolution proceedings, her background and experience suggested that she would be able to be self-supporting in the future. The court also found that the "job market for her skills appears to be good."

Regarding the balance of hardships, the court noted that each party had significant liquid assets and found that it would not be a hardship for either party to pay attorney fees.

The court ordered Hartman to pay Leung \$20,000 in need-based attorney fees. The court found the evidence insufficient to award attorney fees and costs as a sanction under section 271.

## **II. DISCUSSION**

### **A. NEED-BASED ATTORNEY FEES AND COSTS (§§ 2030, 2032)**

#### **1. Legal Principles and Standard of Review**

In a marital dissolution proceeding, if the trial court finds a disparity between the parties regarding the ability to pay for legal representation, the court shall award attorney fees and costs in favor of the party with less ability to pay. (§ 2030, subd. (a)(1), (a)(2).) An award of attorney fees and costs under section 2030 must be "just and reasonable under the relative circumstances of the respective parties" (§ 2032, subd. (a)), giving due consideration to the factors listed in section 4320.<sup>3</sup> (§ 2032, subd. (b).) A party's ability to pay his or her own fees is not a per se bar to recovering fees from the other party, but is a factor that may be considered by the court. (*Ibid.*)

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<sup>3</sup> As relevant here, factors listed in section 4320 include the earning capacity of each party; each party's needs based on the standard of living established during the marriage; the assets and expenses of each party; the ability of the parties to work without unduly interfering with the interests of dependent children; the parties' age and health; and the balance of the hardships to each party. (§ 4320, subs. (a)–(n).)

“The family court has broad discretion in ruling on a motion for fees and costs; we will not reverse absent a showing that no judge could reasonably have made the order, considering all of the evidence viewed most favorably in support of the order.” (*In re Marriage of Winternitz* (2015) 235 Cal.App.4th 644, 657 (*Winternitz*).) We review the trial court’s decision for abuse of discretion. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 283.)

## **2. Calculating Leung’s Outstanding Attorney Fees and Costs**

Leung requested \$100,000 in attorney fees and costs to help cover the \$179,528 she incurred during the dissolution proceedings. But it is important to consider how much of that amount was still owed when the trial court made its fee order.

Leung’s January 2013 declaration requesting attorney fees and costs states that while her attorney fees to date were approximately \$133,000, she owed her attorney only \$3,000. She had also already paid \$350 to an appraiser, \$30,456 to her forensic accountant, and \$8,125 to the judge pro tem. The declaration further stated that she had over \$20,000 in credit card debt, which she argues on appeal was incurred in order to pay attorney fees.

Assuming that all of the credit card debt was attributable to attorney fees and costs, the evidence before the trial court supported a finding that Leung owed under \$30,000 in attorney fees and costs (consisting of outstanding attorney fees, credit card debt, and additional judge pro tem fees).

## **3. The Trial Court Did Not Abuse Its Discretion**

The trial court awarded Leung \$20,000 in attorney fees and costs. Leung argues that the trial court abused its discretion by not making a greater award.

The trial court was presented with parties who each had over \$320,000 in net assets. Leung and Hartman were skilled professionals who had each demonstrated an ability to earn over \$11,000 per month. Though Leung had encountered difficulty maintaining steady employment during the dissolution proceedings, the trial court could

reasonably find that the “job market for her skills appears to be good” and that she did not need further education to acquire more marketable skills. While it is true that Hartman had earned substantially more money during the dissolution proceedings and that he had about \$50,000 more in assets than Leung, the trial court could reasonably conclude that providing Leung \$20,000 in attorney fees and costs instead of the greater amount she requested was just and reasonable under the circumstances.

Given that Leung apparently still had over \$320,000 in assets—even after paying for most of the attorney fees and costs that she had incurred—the trial court’s award is reasonable. Leung has not satisfied her burden of showing that no judge could reasonably have made the fee order she challenges. (*Winternitz, supra*, 235 Cal.App.4th at p. 657.)

Leung correctly notes that her ability to pay her own fees is not a per se bar to recovering fees from Hartman. (Citing § 2032, subd. (b) [“Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably”].) But her assets were relevant to the trial court’s analysis and the partial award of fees demonstrates that the trial court did not improperly deny fees based on a mistaken understanding of its discretion under section 2032, subdivision (b).

Leung argues that the trial court erred “by failing to make a record demonstrating it applied the statutory factors” and by reducing the fee award without finding that any of the fees claimed were excessive or unreasonable. But the trial court’s order contains a detailed analysis of the relevant section 4320 factors. As for the reasonableness of the fees requested, it appears the trial court awarded less than the amount requested not because it found that the fees claimed were excessive but rather because awarding more than \$20,000 would not be just and reasonable under the circumstances.

Leung argues that her credit card debt expenses of \$2,000 per month were not commensurate with her standard of living during marriage, such that the trial court erred in finding that her expenses were commensurate with that standard. But the trial court

discounted the entire amount of her credit card debt when determining her net assets and its fee award essentially negated that credit card debt, meaning that Leung would no longer have those expenses each month.

Leung argues that the trial court improperly considered the attorney fees and costs Hartman claimed to have incurred. Leung contends that Hartman had a group legal plan through his employer that would reimburse him for his legal fees, based on an unauthenticated Internet printout attached as an exhibit to her reply declaration. But Hartman declared that he did not have funds available from his employment benefits to pay for the litigation. And Leung provided no evidence that Hartman had ever actually received any reimbursement from a group legal plan. Considering the evidence in the light most favorable to the trial court's order (*Winternitz, supra*, 235 Cal.App.4th at p. 657), the trial court could reasonably find that Hartman's attorney fees and costs could be considered when apportioning fees.

In sum, Leung has not demonstrated an abuse of discretion.

#### **B. DENIAL OF SANCTIONS**

Leung argues that the trial court abused its discretion by not imposing sanctions under section 271 based on Hartman's purposeful obstruction and delay of the dissolution proceedings.

The trial court may award attorney fees and costs as a sanction, based 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 ... ." (§ 271, subd. (a).) "The imposition of sanctions under section 271 is committed to the sound discretion of the trial court," and we consider the evidence in the light most favorable to the trial court's decision.

(*In re E.M.* (2014) 228 Cal.App.4th 828, 850 (*E.M.*))

Leung argues that Hartman was responsible for the extended duration of the dissolution proceedings. Leung points to several examples of what she contends were unnecessary or frivolous actions taken by Hartman, including filing claims for

reimbursement of purportedly separate property without an evidentiary basis, failing to cooperate with Leung's accountant, failing to attend scheduled meetings, and belatedly arguing that Leung had not followed a local rule related to attorney fee requests.

The judge pro tem who decided the attorney fee issue had worked on the case for over a year. He was uniquely qualified to assess whether Hartman sought to frustrate the policy promoting settlement. From the order denying sanctions, it appears the judge determined that Hartman's conduct was not sanctionable. Reviewing the evidence in the light most favorable to the trial court's decision, we cannot conclude that no judge could reasonably make that order. (*E.M.*, *supra*, 228 Cal.App.4th at p. 850.) Leung has not demonstrated that the decision to deny sanctions was an abuse of discretion.

### **III. DISPOSITION**

The order granting attorney fees and costs under Family Code sections 2030 and 2032, and denying fees and costs under Family Code section 271 is affirmed. Hartman is entitled to costs on appeal.

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Grover, J.

**WE CONCUR:**

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Rushing, P.J.

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Premo, J.

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