

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re the Marriage of ROBERT and SUSAN BASSI.

ROBERT ALAN BASSI,
Respondent,

v.

SUSAN H. BASSI,
Appellant.

H046284
Santa Clara County Super. Ct. No. FL009065

BY THE COURT:

Rebecca Fleming, Chief Executive Officer of the Santa Clara County Superior Court is ordered to appear in this court on December 14, 2020, and to show cause why the record on appeal in the above entitled case has not been completed in compliance with the California Rules of Court.

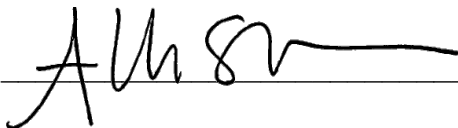
Specifically, the notice of appeal in this case was filed on October 11, 2018. The appellant filed a notice designating the record on November 30, 2018. The trial court issued notices to reporters to prepare transcripts on March 6, March 7, and March 29, 2019.

On June 6, 2019, the trial court notified this court that it would follow up with the court reporters. On July 1, 2019, this court sent an inquiry requesting an update on the reporter's transcripts. On July 2, 2019, the trial court advised this court that three reporter's transcripts were still outstanding from reporters A. Clendenen, L. Helgoe and K. Tresidder.

This court sent a further request for update on November 26, 2019. This court received no response, but the trial court issued a notice of estimated costs for the clerk's transcript on January 30, 2020. We have received no further update on record preparation since that time.

Failure to take ameliorative action in compliance with this order to show cause may result in the issuance of an order in re contempt and the attendant consequences set forth in Code of Civil Procedure Sections 1212-1216.

Date: 11/16/2020

 _____, Acting P.J.


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CODE OF CIVIL PROCEDURE - CCP

PART 3. OF SPECIAL PROCEEDINGS OF A CIVIL NATURE [1063 - 1822.60] (Part 3 enacted 1872.)

TITLE 5. OF CONTEMPTS [1209 - 1222] (Title 5 enacted 1872.)

1209. (a) The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

- (1) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding.
- (2) A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding.
- (3) Misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person, appointed or elected to perform a judicial or ministerial service.
- (4) Abuse of the process or proceedings of the court, or falsely pretending to act under authority of an order or process of the court.
- (5) Disobedience of any lawful judgment, order, or process of the court.
- (6) Willful disobedience by a juror of a court admonishment related to the prohibition on any form of communication or research about the case, including all forms of electronic or wireless communication or research.
- (7) Rescuing any person or property in the custody of an officer by virtue of an order or process of that court.
- (8) Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial.
- (9) Any other unlawful interference with the process or proceedings of a court.
- (10) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.
- (11) When summoned as a juror in a court, neglecting to attend or serve as a juror, or improperly conversing with a party to an action to be tried at the court, or with any other person, in relation to the merits of the action, or receiving a communication from a party or other person in respect to the action, without immediately disclosing the communication to the court.
- (12) Disobedience by an inferior tribunal or judicial officer of the lawful judgment, order, or process of a superior court, or proceeding in an action or special proceeding contrary to law, after the action or special proceeding is removed from the jurisdiction of the inferior tribunal or judicial officer.

(b) A speech or publication reflecting upon or concerning a court or an officer thereof shall not be treated or punished as a contempt of the court unless made in the immediate presence of the court while in session and in such a manner as to actually interfere with its proceedings.

(c) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting an attorney, his or her agent, investigator, or any person acting under the attorney's direction, in the preparation and conduct of an action or proceeding, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, the violation of which is the basis of the contempt, except for conduct proscribed by subdivision (b) of Section 6068 of the Business and Professions Code, relating to an attorney's duty to maintain respect due to the courts and judicial officers.

(d) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting a public safety employee acting within the scope of employment for reason of the employee's failure to comply with a duly issued subpoena or subpoena duces tecum, the execution of any sentence shall be stayed pending the filing within three

judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, a violation of which is the basis for the contempt.

As used in this subdivision, "public safety employee" includes any peace officer, firefighter, paramedic, or any other employee of a public law enforcement agency whose duty is either to maintain official records or to analyze or present evidence for investigative or prosecutorial purposes.

(Amended by Stats. 2011, Ch. 181, Sec. 3. (AB 141) Effective January 1, 2012.)

1209.5. When a court of competent jurisdiction makes an order compelling a parent to furnish support or necessary food, clothing, shelter, medical attendance, or other remedial care for his or her child, proof that the order was made, filed, and served on the parent or proof that the parent was present in court at the time the order was pronounced and proof that the parent did not comply with the order is prima facie evidence of a contempt of court.

(Amended by Stats. 1992, Ch. 163, Sec. 57. Effective January 1, 1993. Operative January 1, 1994, by Sec. 161 of Ch. 163.)

1210. Every person dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, who, not having right so to do, reenters into or upon or takes possession of the real property, or induces or procures any person not having right so to do, or aids or abets such a person therein, is guilty of a contempt of the court by which the judgment was rendered or from which the process issued. Upon a conviction for contempt the court must immediately issue an alias process, directed to the proper officer, and requiring the officer to restore possession to the party entitled under the original judgment or process, or to the party's lessee, grantee, or successor in interest. No appeal from the order directing the issuance of an alias writ of possession stays the execution of the writ, unless an undertaking is executed on the part of the appellant to the effect that the appellant will not commit or suffer to be committed any waste on the property, and if the order is affirmed, or the appeal dismissed, the appellant will pay the value of the use and occupation of the property from the time of the unlawful reentry until the delivery of the possession of the property, pursuant to the judgment or order, not exceeding a sum to be fixed by the judge of the court by which the order for the alias writ was made.

(Amended by Stats. 1982, Ch. 517, Sec. 179.)

1211. (a) When a contempt is committed in the immediate view and presence of the court, or of the judge at chambers, it may be punished summarily; for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he or she be punished as therein prescribed.

When the contempt is not committed in the immediate view and presence of the court, or of the judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators, or other judicial officers.

(b) In family law matters, filing of the Judicial Council form entitled "Order to Show Cause and Affidavit for Contempt (Family Law)" shall constitute compliance with this section.

(Amended by Stats. 2001, Ch. 754, Sec. 1. Effective January 1, 2002.)

1211.5. At all stages of all proceedings, the affidavit or statement of facts, as the case may be, required by Section 1211 shall be construed, amended, and reviewed according to the followings rules:

(a) If no objection is made to the sufficiency of such affidavit or statement during the hearing on the charges contained therein, jurisdiction of the subject matter shall not depend on the averments of such affidavit or statement, but may be established by the facts found by the trial court to have been proved at such hearing, and the court shall cause the affidavit or statement to be amended to conform to proof.

(b) The court may order or permit amendment of such affidavit or statement for any defect or insufficiency at any stage of the proceedings, and the trial of the person accused of contempt shall continue as if the affidavit or statement had been originally filed as amended, unless substantial rights of such person accused would be prejudiced thereby, in which event a reasonable postponement, not longer than the ends of justice require, may be granted.

(c) No such affidavit or statement is insufficient, nor can the trial, order, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form which does not prejudice a substantial right of the person accused on the merits. No order or judgment of conviction of contempt shall be set aside, nor new trial granted, for any error as to any matter of pleading in such affidavit or statement, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

(Added by Stats. 1970, Ch. 1264.)

1212. When the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer, or, without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment can be issued without such previous attachment to answer, or such notice or order to show cause.

(Amended by Stats. 1951, Ch. 1737.)

1213. Whenever a warrant of attachment is issued pursuant to this title the court or judge must direct, by an endorsement on the warrant, that the person charged may give an undertaking for the person's appearance in an amount to be specified in such endorsement.

(Amended by Stats. 1982, Ch. 517, Sec. 179.5.)

1214. Upon executing the warrant of attachment, the officer executing the warrant must keep the person in custody, bring him before the court or judge, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

(Amended by Stats. 1951, Ch. 1737.)

1215. The person arrested must be discharged from the arrest upon executing and delivering to the officer, at any time before the return day of the warrant, an undertaking to the effect that the person arrested will appear on the return of the warrant and abide the order of the court or judge thereupon.

(Amended by Stats. 1982, Ch. 517, Sec. 180.)

1216. The officer must return the warrant of arrest and undertaking, if any, received by him from the person arrested, by the return day specified therein.

(Enacted 1872.)

1217. When the person arrested has been brought up or appeared, the court or judge must proceed to investigate the charge, and must hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time if necessary.

(Amended by Stats. 1951, Ch. 1737.)

1218. (a) Upon the answer and evidence taken, the court or judge shall determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he or she is guilty of the contempt, a fine may be imposed on him or her not exceeding one thousand dollars (\$1,000), payable to the court, or he or she may be imprisoned not exceeding five days, or both. In addition, a person who is subject to a court order as a party to the action, or any agent of this person, who is adjudged guilty of contempt for violating that court order may be ordered to pay to the party initiating the contempt proceeding the reasonable attorney's fees and costs incurred by this party in connection with the contempt proceeding.

(b) Any party, who is in contempt of a court order or judgment in a dissolution of marriage, dissolution of domestic partnership, or legal separation action, shall not be permitted to enforce such an order or judgment, by way of execution or otherwise, either in the same action or by way of a separate action, against the other party. This restriction shall not affect nor apply to the enforcement of child or spousal support orders.

(c) In any court action in which a party is found in contempt of court for failure to comply with a court order pursuant to the Family Code, the court shall order the following:

(1) Upon a first finding of contempt, the court shall order the contemner to perform community service of up to 120 hours, or to be imprisoned up to 120 hours, for each count of contempt.

(2) Upon the second finding of contempt, the court shall order the contemner to perform community service of up to 120 hours, in addition to ordering imprisonment of the contemner up to 120 hours, for each count of contempt.

(3) Upon the third or any subsequent finding of contempt, the court shall order both of the following:

(A) The court shall order the contemner to serve a term of imprisonment of up to 240 hours, and to perform community service of up to 240 hours, for each count of contempt.

(B) The court shall order the contemner to pay an administrative fee, not to exceed the actual cost of the contemner's administration and supervision, while assigned to a community service program pursuant to this

paragraph.

(4) The court shall take parties' employment schedules into consideration when ordering either community service or imprisonment, or both.

(d) Pursuant to Section 1211 and this section, a district attorney or city attorney may initiate and pursue a court action for contempt against a party for failing to comply with a court order entered pursuant to the Domestic Violence Protection Act (Division 10 (commencing with Section 6200) of the Family Code). Any attorney's fees and costs ordered by the court pursuant to subdivision (a) against a party who is adjudged guilty of contempt under this subdivision shall be paid to the Office of Emergency Services' account established for the purpose of funding domestic violence shelter service providers pursuant to subdivision (f) of Section 13823.15 of the Penal Code.

(Amended by Stats. 2013, Ch. 352, Sec. 56. (AB 1317) Effective September 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.)

1218.5. (a) If the contempt alleged is for failure to pay child, family, or spousal support, each month for which payment has not been made in full may be alleged as a separate count of contempt and punishment imposed for each count proven.

(b) If the contempt alleged is the failure to pay child, family, or spousal support, the period of limitations for commencing a contempt action is three years from the date that the payment was due. If the action before the court is enforcement of another order under the Family Code, the period of limitations for commencing a contempt action is two years from the time that the alleged contempt occurred.

(Added by Stats. 1994, Ch. 1269, Sec. 3.5. Effective January 1, 1995.)

1219. (a) Except as provided in subdivisions (b) and (c), if the contempt consists of the omission to perform an act which is yet in the power of the person to perform, he or she may be imprisoned until he or she has performed it, and in that case the act shall be specified in the warrant of commitment.

(b) Notwithstanding any other law, a court shall not imprison or otherwise confine or place in custody the victim of a sexual assault or domestic violence crime for contempt if the contempt consists of refusing to testify concerning that sexual assault or domestic violence crime. Before finding a victim of a domestic violence crime in contempt as described in this section, the court may refer the victim for consultation with a domestic violence counselor. All communications between the victim and the domestic violence counselor that occur as a result of that referral shall remain confidential under Section 1037.2 of the Evidence Code.

(c) Notwithstanding any other law, a court shall not imprison, hold in physical confinement, or otherwise confine or place in custody a minor for contempt if the contempt consists of the minor's failure to comply with a court order pursuant to subdivision (b) of Section 601 of, or Section 727 of, the Welfare and Institutions Code, if the minor was adjudged a ward of the court on the ground that he or she is a person described in subdivision (b) of Section 601 of the Welfare and Institutions Code. Upon a finding of contempt of court, the court may issue any other lawful order, as necessary, to secure the minor's attendance at school.

(d) As used in this section, the following terms have the following meanings:

(1) "Sexual assault" means any act made punishable by Section 261, 262, 264.1, 285, 286, 287, 288, or 289 of, or former Section 288a of, the Penal Code.

(2) "Domestic violence" means "domestic violence" as defined in Section 6211 of the Family Code.

(3) "Domestic violence counselor" means "domestic violence counselor" as defined in subdivision (a) of Section 1037.1 of the Evidence Code.

(4) "Physical confinement" has the same meaning as defined in subdivision (d) of Section 726 of the Welfare and Institutions Code.

(Amended by Stats. 2018, Ch. 423, Sec. 9. (SB 1494) Effective January 1, 2019.)

1219.5. (a) Except as provided in subdivision (d), in any case in which a contempt consists of the refusal of a minor under 16 years of age to take the oath or to testify, before imposing any sanction for the contempt, the court shall first refer the matter to the probation officer in charge of matters coming before the juvenile court for a report and recommendation as to the appropriateness of the imposition of a sanction. The probation officer shall prepare and file the report and recommendation within the time directed by the court. In making the report and recommendation, the probation officer shall consider factors such as the maturity of the minor, the reasons for the minor's refusal to take the oath or to testify, the probability that available sanctions will affect the decision of the minor not to take the oath or not to testify, the potential impact on the minor of his or her testimony, the potential impact on the pending litigation of the minor's unavailability as a witness, and the appropriateness of the various

available sanctions in the minor's case. The court shall consider the report and recommendation in imposing a sanction in the case.

(b) A victim of a sex crime who is subject to subdivision (a) shall meet with a victim advocate, as defined in Section 679.04 of the Penal Code, unless the court, for good cause, finds that it is not in the best interest of the victim.

(c) In any case in which the court orders the minor to be placed outside of his or her home, the placement shall be in the least restrictive setting available. Except as provided in subdivision (e), the court shall not order the minor to be placed in a secure facility unless other placements have been made and the minor has fled the custody and control of the person under the control of whom he or she has been placed or has persistently refused to obey the reasonable and proper orders or directions of the person under the control of whom he or she has been placed.

(d) The court may impose a sanction for contempt prior to receipt of the report and recommendation required by subdivision (a) if the court enters a finding, supported by specific facts stated on the record, that the minor would be likely to flee if released before the receipt of the report and recommendation.

(e) The court may order the minor placed in a secure facility without first attempting the nonsecure placement required by subdivision (c) if the court enters a finding, supported by specific facts stated on the record, that the minor would be likely to flee if released to nonsecure placement as a prerequisite to secure confinement.

(Amended by Stats. 2012, Ch. 223, Sec. 1. (SB 1248) Effective January 1, 2013.)

1220. When the warrant of arrest has been returned served, if the person arrested does not appear on the return day, the court or judge may issue another warrant of arrest or may order the undertaking to be enforced, or both. If the undertaking is enforced, the measure of damages is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued.

(Amended by Stats. 1982, Ch. 517, Sec. 181.)

1221. Whenever, by the provisions of this title, an officer is required to keep a person arrested on a warrant of attachment in custody, and to bring him before a court or judge, the inability, from illness or otherwise, of the person to attend, is a sufficient excuse for not bringing him up; and the officer must not confine a person arrested upon the warrant in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

(Amended by Stats. 1951, Ch. 1737.)

1222. The judgment and orders of the court or judge, made in cases of contempt, are final and conclusive.

(Amended by Stats. 1951, Ch. 1737.)