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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Marriage of BONNIE JANE and JEFFREY ALLAN FRANKE.	B256682 (Los Angeles County Super. Ct. No. BD377508)
BONNIE JANE FRANKE, Appellant, v. JEFFREY ALLAN FRANKE, Respondent.	

APPEAL from the orders of the Superior Court of Los Angeles County, Tamara Hall, Judge. Affirmed.

Bonnie Jane Franke, in pro. per., for Appellant.

Gould-Saltman Law Offices and Richard Gould-Saltman for Respondent.

Appellant Bonnie Jane Franke[1] appeals from postjudgment orders denying her initial request for modification of spousal support and her subsequent request for support modification, along with attorney fees and costs. Bonnie contends her due process rights were violated by respondent Jeffrey Allan Franke, his counsel, and the trial court. She argues the court enabled Jeffrey and his counsel "to bully and disparage Bonnie, while also frustrating the entire discovery and settlement process." Bonnie further contends Jeffrey intimidated, abused, and deceived her during the judgment phase of their divorce. We conclude that Bonnie has failed to affirmatively demonstrate any error warranting reversal. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Bonnie and Jeffrey married in 1986 and separated in 2002. Jeffrey filed a petition for dissolution in October 2002. A stipulated judgment resolving all substantive issues was entered in April 2005. Both parties were represented by counsel throughout the dissolution and at the time of the judgment, which was prepared by Bonnie's counsel. The judgment provided that Jeffrey would pay $1,000 a month in spousal support to Bonnie for seven and half years, unless an application to extend the payment of spousal support was made on or before June 30, 2012. It also included a finding that Bonnie was ". . . in good health and has a nursing degree and that there is a reasonable expectation that she will be able to re-enter the job market after a period of re-training."

In May 2012, Jeffrey and Bonnie stipulated to a five-year extension and increase in the amount of $1,200 a month in spousal support beginning on July 1, 2012, through December 1, 2017. Neither party was represented by counsel at the time of the written stipulation, which was prepared by Bonnie. The stipulation included no findings or

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[1] "As is customary in family law cases, we will refer to the parties by their given names for purposes of clarity and not out of disrespect." (*In re Marriage of Nelson* (2006) 139 Cal.App.4th 1546, 1549, fn. 1.)

recitations as to the parties' financial circumstances. An order was issued on the stipulation on May 17, 2012.

On November 15, 2013, Bonnie, representing herself, filed a request to modify spousal support from $1,200 to $3,811 a month and extend it beyond the 2017 termination date. Bonnie contended she "did work before marriage, during and after the marriage ended," however, she became ill after the divorce was finalized because of "an injury caused by a surgeon during surgery" and was unable to return to work. At the time of the May 2012 order, Bonnie was disabled and attempted to obtain social security disability benefits, but failed to receive her benefits due to a mistake or failure of an attorney in handling the application for those benefits. She was also behind on her mortgage. Based on her health and financial issues, she contended she qualifies for food stamps. In her income and expense declaration, she stated that she is a nurse but was no longer employed as of February 23, 2012, due to health issues.

On December 23, 2013, Jeffrey filed a responsive declaration along with his income and expense declaration. Jeffrey contended Bonnie provided no information "as to her last employment and pay-rate," "her alleged disability," or "the status of any application for unemployment compensation, [Social Security Income], [Social Security Disability Income], or disability payments, other than a reference to her attorney having 'failed to file a document.'" Moreover, she offered no explanation as to why her need for spousal support is any different now than it was when they signed the 2012 stipulation, or what other circumstances have changed since the 2012 agreement.

On the court's own motion, Bonnie's request for modification of spousal support was continued from the January 9, 2014 date to April 18, 2014. Bonnie filed an unsuccessful ex parte application to have her request heard on January 9, 2014, or prior to April 18, 2014. On March 24, 2014, Jeffrey filed an updated income and expense declaration and a memorandum of points and authorities. On April 1, 2014, Bonnie filed a 20-page handwritten supplemental declaration. On April 7, 2014, Bonnie filed a memorandum of points and authorities, consisting of a 35-page handwritten declaration.

Bonnie, Jeffrey, and Jeffrey's counsel were present at the April 18, 2014 hearing. The court stated at the outset of the hearing that it was Bonnie's "burden to prove that there is a significant change of circumstances that occurred . . . to determine whether or not spousal support should be changed." When Bonnie began testifying that Jeffrey lied in his declaration, the court interjected that Bonnie must first "show a significant change in circumstances, because . . . the only issue before me is whether you could establish your burden that there is a significant change in circumstance . . . in that you're [*sic*] needs at the time of separation were never met." The court granted Jeffrey's counsel's oral motion "to strike any narrative portions of [Bonnie's] declaration—reply declaration or memorandum of points and authorities that refer to any events prior to the 2012 stipulation on the basis of relevance Evidence Code section 352." The court asked Bonnie again, "What is the significant change in circumstance from [May] of 2012 until today? What has changed significantly? One moment. What is different that the court should then decide whether or not modification on your spousal support of $1,200 should be increased which you are asking for? You need to answer that question." Bonnie replied she had surgery in July 2011, and her doctor put her off work. Her doctor put her back on limited duty in January 2012. He then put her off work on February 23, 2012, and has not been back to work since. She filed for bankruptcy in October 2012. She also started receiving food stamps six months ago. In February 2014, Bonnie's house went into foreclosure. The court denied her request for modification of spousal support without prejudice and "highly highly suggest[ed]" to Bonnie that she hire a lawyer. The court told Bonnie the matter was taken off calendar and she would have to refile.

On April 22, 2014, Bonnie, still unrepresented by counsel, filed a request to modify spousal support from $1,200 to $4,200 a month and extend it permanently. Bonnie also requested $12,000 in attorney fees and costs. She contended she was hospitalized on July 27, 2011, has "had a multitude of health/emotional issues since my divorce," and Jeffrey "was abusive during the marriage." In her attached 10-page handwritten declaration, she stated her doctor put her off of work for two months on February 23, 2014, and she could not receive any state disability because she was told it

was exhausted due to her 2011 surgery. After the 2011 surgery, she "started working at AVH hospital" in May 2011. She began working at "Henry Mayo" in October 2010 for a few months, and then worked at "Facey" in March 2005, "but was placed off of work by Doctor for much of it, received some state disability until [she] exhausted [the] benefits." Bonnie also filed a spousal support declaration attachment, along with a 10-page handwritten declaration. In her supporting declaration for attorney fees and costs attachment, she requested $8,000 initially and then $4,000 leading up to the trial. Bonnie contended Jeffrey "retained [a] high end law firm and pays attorney fees at $500.00/hr" and "[t]he balance is unequal."

On May 9, 2014, Jeffrey filed a memorandum of points and authorities with a responsive declaration. He contended Bonnie "simply rehashes, and embellishes, her prior [modification request's] complaints about [his] conduct, occurring mostly during the parties' marriage . . . all of which were and are *irrelevant* to a determination of the issue of the change of financial circumstances since the last stipulated order." Additionally, Bonnie provided no evidence as to the nature of her alleged disability and that she has made effort to obtain retraining or further education since the stipulated judgment. As to attorney fees, Jeffrey contended Bonnie failed to provide the requisite information required by California Rules of Court, rule 5.427. In his responsive declaration, Jeffrey argued Bonnie failed to provide any new facts to support her second request for modification of spousal support, large portions of her declaration are inadmissible evidence, and Bonnie has misrepresented or falsified events.

On May 19, 2014, Bonnie filed a 10-page handwritten supplemental declaration replying to Jeffrey's responsive declaration.

Bonnie and Jeffrey's counsel were present at the May 23, 2014 hearing. The court sustained many of Jeffrey's evidentiary objections to Bonnie's declaration. The court noted that Bonnie's request for modification was "identical" and "the exact same request" made on November 15, 2013. The court repeated that it denied Bonnie's first request for modification without prejudice for failure to carry her burden. In addressing her request for attorney fees and costs, the court stated that she does not have the documentation and

evidence that it needed to make a decision on that request. The court told Bonnie that it is her burden to show "new evidence meaning what has changed since 2012 until today," in order for spousal support to be modified. Bonnie told the court that she cannot pay her taxes. She also stated she does not have hot water at her house, she cannot pay her bills, and her utilities have been turned off. Jeffrey's counsel responded at the time Jeffrey and Bonnie entered into the 2012 stipulation, she was off work because of a medical condition, but did not know the exact nature of her condition. Jeffrey's counsel questioned that if Bonnie's house was at risk of foreclosure, why was it not sold or rented. He is unaware of Bonnie's employment status, whether she applied for social security disability income, and if she had applied, what is the status of her application. Moreover, he argued there are no facts before the court that were different than at the first hearing. "This is simply as the court observed the identical facts repeated several times with additional requests added onto them." After reviewing the moving papers, the court denied Bonnie's request without prejudice and "advised [her] to seek legal advice."

Bonnie filed a timely notice of appeal.

DISCUSSION

Legal Principles of Appellate Review

"Preliminarily, we stress that, to be successful on appeal, an appellant must be able to affirmatively demonstrate error on the record before the court." (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 822 (*Falcone*).) "'"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.)" (*In re Marriage of Bower* (2002) 96 Cal.App.4th 893, 898.)

A reviewing court is not required to make an independent search of the record to find error or grounds to support the judgment. (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115-1116; *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545.) "Where a point is merely asserted by [appellant] without any [substantive] argument of or authority for its proposition, it is deemed to be without foundation and requires no discussion." (*People v. Ham* (1970) 7 Cal.App.3d 768, 783, disapproved on another ground in *People v. Compton* (1971) 6 Cal.3d 55, 60, fn. 3.) If issues are not raised or supported by substantive argument or citation to authority, we consider the issues waived. (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99.) Appellants acting in propria persona are held to the same standards as those represented by counsel. (See, e.g., *City of Los Angeles v. Glair* (2007) 153 Cal.App.4th 813, 819.)

Based on our review of Bonnie's briefs, we conclude she has waived her appellate contentions by not presenting substantive legal arguments supported by citations to the record and legal authorities. Bonnie has failed to offer any authority or cogent argument that establishes that the court erred in denying her two requests for modification of spousal support. (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862; *Falcone, supra*, 164 Cal.App.4th at p. 830.) To the extent Bonnie argues the trial court erred in denying her request for $12,000 in attorney fees and costs, she again has failed to present any cogent, legal argument to support her contention.

Requests for Modification of Spousal Support

Assuming Bonnie has not waived her appellate arguments, we nevertheless would conclude her contentions fail on the merit.

"'A motion for modification of spousal support may only be granted if there has been a material change of circumstances since the last order. (*In re Marriage of Kuppinger* (1975) 48 Cal.App.3d 628.) Otherwise, dissolution cases would have no finality and unhappy former spouses could bring repeated actions for modification with no burden of showing a justification to change the order. Litigants "'are entitled to

attempt, with some degree of certainty, to reorder their finances and life style [*sic*] in reliance upon the finality of the decree.'" [Citation.] Absent a change of circumstances, a motion for modification is nothing more than an impermissible collateral attack on a prior final order. [Citation.]' (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 480.)" (*In re Marriage of Khera and Sameer* (2012) 206 Cal.App.4th 1467, 1479.) A trial court's spousal support orders will not be disturbed on appeal unless, as a matter of law, an abuse of discretion is shown. (*In re Marriage of Smith*, *supra*, at p. 480.) The court has broad discretion over spousal support. (*Id.* at p. 479.)

The trial court correctly denied both of Bonnie's requests for modification of spousal support as she was unable to meet her burden of establishing a material change of circumstances since the May 2012 order. At both hearings regarding her requests to modify spousal support and in her appellate briefs, Bonnie rehashes events that transpired *before* the May 2012 order. She argued that she was "injured by a surgeon during a surgery" in 2011, unable to return to work, and was disabled. Bonnie never elaborates or provides any evidence of her disability, or attempt to receive social security benefits for her disability. In the 2012 stipulation, there was no mention of her inability to reenter the workforce or health issues. Without any evidence of a material change *after* the 2012 order, Bonnie's conclusory allegations of disability, illness and lack of financial means is of no consequence.

Attorney Fees and Costs

Bonnie also challenges the trial court's denial of $12,000 in attorney fees and costs. "Pursuant to Family Code sections 2030 and 2032, the trial court is empowered to award fees and costs between the parties based on their relative circumstances in order to ensure parity of legal representation in the action. It is entitled to take into consideration the need for the award to enable each party to have sufficient financial resources to present his or her case adequately. In assessing a party's relative need and the other party's ability to pay, it is to take into account '"'all evidence concerning the parties'

current incomes, assets, and abilities.'"' (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 406.)" (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 974-975, fn. omitted.) "In making this determination, the trial 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 Sullivan* (1984) 37 Cal.3d 762, 768-769.)" (*Id.* at p. 975.)

Bonnie essentially argues that she requires attorney fees and costs in order to create an equal playing field as she cannot afford to hire one on her own, and the court encouraged her to hire an attorney. This argument fails under the abuse of discretion standard of review. Bonnie fails to provide the requisite information required for the trial court to determine attorney fees and costs. Pursuant to California Rules of Court, rule 5.427(b)(2), "[t]he party requesting attorney fees and costs must provide the court with sufficient information about the attorney's hourly billing rate; the nature of the litigation; the attorney's experience in the particular type of work demanded; the fees and costs incurred or anticipated; and why the requested fees and costs are just, necessary, and reasonable." Bonnie's conclusory request of $8,000 initially in attorney fees and costs, and then $4,000 leading up to the trial, was insufficient to warrant an award of attorney fees and costs.

DISPOSITION

The postjudgment orders are affirmed. Respondent Jeffrey Allan Franke is awarded his costs on appeal.

KRIEGLER, J.

We concur:

TURNER, P.J.

MOSK, J.