Filed 2/15/13 Marriage of Mundkowsky CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of ROBERT and HYEONJOO MUNDKOWSKY.	B235517
ROBERT MUNDKOWSKY, Respondent, v. HYEONJOO MUNDKOWSKY, Appellant.	(Los Angeles County Super. Ct. No. PD041594)

APPEAL from orders of the Superior Court of Los Angeles County, Patricia M. Ito, Judge Pro Tem. Affirmed.

Hyeonjoo Mundkowsky, in pro. per., for Appellant.

Robert Mundkowsky, in pro. per., for Respondent.

INTRODUCTION

This is a marital dissolution case between appellant Hyeonjoo Mundkowsky (wife) and respondent Robert Mundkowsky (husband). Although the trial court entered a comprehensive judgment in 2008, the couple has continuously litigated many issues, including child custody and child support, since then. In this appeal, wife contends the trial court made numerous reversible errors in orders it entered on June 28, 2011 and August 22, 2011. We shall conclude that wife did not meet her burden of showing the trial court committed a reversible error.

FACTUAL AND PROCEDURAL BACKGROUND

In order to understand the June 28 and August 22, 2011, orders, we must briefly review the previous litigation between wife and husband. Unfortunately, wife, who is in propria persona (pro. per.), did not set forth a coherent statement of the necessary background facts in her brief. [1] To provide context, we shall first summarize the facts found in our previous two unpublished opinions in this action, Case No. B215472, dated August 20, 2010 (*Mundkowsky I*) and Case No. B228423, dated December 9, 2011 (*Mundkowsky II*). We can verify most, but not all, of these facts from the record in this appeal. Our opinion in this case does not rely on any facts we cannot verify from the current record.

1. *Facts from the Mundkowsky I Opinion*

This litigation began in 2006 or 2007 when husband filed a petition for dissolution. The trial court entered judgments dated July 17, 2008 and January 14, 2009 (Second Judgment). Under these judgments, wife was awarded sole legal and physical custody of the couple's daughter, Elizabeth,[2] husband was awarded visitation rights, wife

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[1] "Pro. per. litigants are held to the same standards as attorneys." (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.)

[2] At some point, husband and wife were granted joint legal custody. Later, as we shall explain *post*, pursuant to a petition by the Los Angeles County Department of Children and Family Services (DCFS), the juvenile court declared Elizabeth a dependent child of the court.

was given the right to move back with Elizabeth to her native country, South Korea, and wife was awarded child and spousal support.

The Second Judgment further provided that wife was required to post a $50,000 bond before removing Elizabeth from the United States. It also stated if Elizabeth's residence changed to South Korea, each party shall pay one-half of all travel expenses and one-half of the expense of husband's psychological evaluations related to husband's visitations. Wife appealed the Second Judgment. This appeal was adjudicated in *Mundkowsky I*, which we shall discuss *post*.

2. *Facts from the Mundkowsky II Opinion*

In 2009 and 2010, wife and husband filed numerous papers requesting, inter alia, modifications to the trial court's custody and child support orders. The parties also litigated wife's claims for reimbursement of medical expenses incurred by Elizabeth and wife's alleged home schooling of Elizabeth. The trial court periodically issued orders adjudicating these disputes.

One such order, dated July 29, 2010, stated that husband had overpaid child support in the amount of $2,656.73, and that wife was required to repay husband $50 per month until the balance was paid. The order further stated that the court found wife was willfully remaining unemployed, and thus the court imputed income to her in the amount of a full-time minimum-wage salary. Additionally, the order denied in part and granted in part wife's request for reimbursement of certain medical expenses.

On August 26, 2010, wife filed an Order to Show Cause (OSC) to set aside various aspects of the trial court's order dated July 29, 2010. She argued, inter alia, that (1) the court's imputation of income to her was an abuse of discretion, (2) the calculation of child support was erroneous and based on fraud and mistake, (3) the court abused its discretion in requiring wife to reimburse husband for overpaid child support.

On September 13, 2010, the trial court issued an order denying the August 26, 2010, OSC, with one exception not relevant here. Wife appealed the September 13, 2010, order. This appeal was adjudicated in *Mundkowsky II*, which we shall discuss *post*.

3. *Mundkowsky I*

In the meantime, on August 20, 2010, we filed the opinion in *Mundkowsky I*. We held that the Second Judgment was reversed with respect to the requirement that wife post a $50,000 bond and the requirement that wife pay for one-half of husband's costs relating to psychological evaluations and travel. The matter was remanded to the trial court to consider whether a bond should be required and, if so, the amount of the bond. The Second Judgment was otherwise affirmed. It appears, based on the record in this case, wife never moved to South Korea with Elizabeth.

4. *April 1, 2011, Hearing*

On April 1, 2011, the trial court held a hearing on (1) husband's OSC for modification of custody, (2) husband's OSC for modification of child support, (3) wife's motion for modification of custody, (4) wife's motions for modification of child support, and (5) wife's motion for sanctions. Wife and husband appeared in pro. per. Elizabeth was represented by attorney Kenneth P. Sherman. The trial court took the matter under submission.

5. *May 19, 2011, Minute Order or "Ruling"*

On May 19, 2011, the court issued a minute order, entitled "RULING ON SUBMITTED MATTER," which adjudicated the matters submitted on April 1, 2011. The court denied husband's OSC for modification of custody but granted husband's OSC for modification of child support. Husband was ordered to pay wife $1,504 per month in child support. Additionally, for the reasons stated in its July 29, 2010, ruling, the court imputed full-time minimum wage income to wife. Husband was awarded a credit of $874 for overpaid child support.

The court granted wife's motion for modification of custody in part and denied it in part. Husband and wife retained joint legal custody. Husband was permitted to obtain access to Elizabeth's medical and educational records.

The court denied wife's motions for modification of child support. With respect to these motions, the ruling stated: "[Wife] is seeking to relitigate matters previously ruled upon. The evidence presented now was either presented previously or could have been presented previously. The motions are untimely motions for reconsideration."

The court also denied wife's motion for sanctions. The ruling stated that the court "does not find [husband's] conduct to be frivolous or in bad faith."

The ruling required attorney Sherman to prepare and lodge a proposed order within two weeks. Mr. Sherman lodged a proposed order on June 2, 2011.

6. *Wife's Motion to Set Aside the May 19, 2011, Ruling and Motion to Seal Part of the Record*

On June 13, 2011, before the trial court signed and entered Mr. Sherman's proposed order, wife filed two motions. The first motion was to set aside the May 19, 2011, ruling. In addition to attacking the May 19, 2011, ruling, wife sought modification of child custody, child support, spousal support and an award of attorney fees and costs. This motion was supported by wife's declaration.

The second motion requested that the court seal Exhibit C to wife's declaration, which was a transcript of Mr. Sherman's March 22, 2011, interview of Elizabeth. This motion was based on, inter alia, wife's allegation that "[t]here exists a conspiracy reported to FBI" to take Elizabeth away from her.

A hearing on both motions was held on July 21, 2011. At the hearing the court heard testimony and argument from both husband and wife regarding a wide variety of issues the parties were disputing.

One issue was the amount, if any, husband paid for Elizabeth's medical insurance. With respect to this issue, husband stated: "I have had medical insurance for Elizabeth for a long period of time, except recently while I was a contractor. I didn't have the benefit. It was too expensive to pay for that. But for that short period of time, I did not have medical insurance for her. I did pay for dental insurance. But, we now, I have insurance for one."

7. *June 28, 2011, Order*

On June 28, 2011, the trial court entered an order prepared by Mr. Sherman regarding the five matters addressed at the April 1, 2011, hearing. The order essentially repeated the findings and statements of the May 19, 2011, ruling. It did not address wife's motion to set aside the May 19, 2011, ruling.

8. *August 22, 2011, Order*

On August 22, 2011, the trial court entered an order adjudicating wife's motion to seal and motion to set aside the May 19, 2011, ruling. The court construed the motion to set aside as challenging both the May 19, 2011, ruling and the June 28, 2011, order.

The court denied wife's motion to seal on the ground that there was "no credible evidence to support [wife's] contention that there is a conspiracy which has been reported to the FBI, that her safety is in danger, that the Court is conspiring against her and failing to protect the best interests of Elizabeth and that her 'overriding First Amendment right to speak anonymously supports sealing the record.' "

The court also denied wife's motion to set aside the May 19, 2011, ruling for two reasons. First, the court stated that is lacked jurisdiction with respect to the July 29, 2010 and September 13, 2010, orders (2010 Orders) because those orders, and the issues raised in them, were pending before the Court of Appeal in *Mundkowsky II*.

Second, the court stated: "As to matters over which this Court does possess jurisdiction, [wife's] motion to set aside the May 19, 2011 ruling is essentially a motion for reconsideration of the issues of legal custody, child support and sanctions. It is denied on the grounds that the evidence presented in support was presented or could have been presented previously. For example, [wife] referred to her testimony and pleadings to having submitted evidence many times, including in support of the hearings ruling in the 2010 Orders and May 19, 2011 ruling. The pending motion would be [wife's] third bite at the apple (or 4th if the pending appeal is included): the hearings resulting in the 2010 Orders, the hearing resulting in the May 19, 2011 ruing declining to reconsider the 2010 Orders and the pending motion. [Wife] has a history of seeking to re-litigate matters which she feels were determined adversely against her."

Additionally, the court denied wife's request for modification of child custody on the ground that it found no significant change of circumstances. The court further stated: "The award of joint legal custody was and still is based on [wife's] decision to withhold the minor from school in violation of California law and [wife's] history of [erroneously] ascribing illnesses to the minor."

The court granted wife's request for modification of child support in part. It increased child support from $1,504 to $1,636 per month. The court, however, rejected wife's contention that husband owed previously due child support other than $264 arising from the increase in child support as of July 1, 2011. The court found that wife's argument that husband was wrongfully awarded $2,656.73 in overpayment of child support was pending on appeal.

The court denied wife's request for attorney fees and costs on, among other grounds, that (1) wife did not file a declaration pursuant to *In re Marriage of Keech* (1999) 75 Cal.App.4th 860 (*Keech*) and (2) wife "failed to specify the filing date of the request to which she refers." The court noted that the case file was six volumes and approximately 14 inches high.

9. *Notice of Appeal*

On August 25, 2011, wife filed a timely appeal of the trial court's orders dated June 28, 2011 and August 22, 2011.

10. *Mundkowsky II*

On December 9, 2011, we filed the opinion in *Mundkowsky II*. In that opinion, we addressed wife's arguments that the trial court abused its discretion by (1) ordering her to sign an Internal Revenue Service form with respect to husband's 2009 tax returns, (2) imputing income to her, (3) issuing the July 29, 2010 order requiring her to reimburse husband $2,656.73 for overpaid child support (4) finding insufficient proof of $564.53 in uninsured medical expenses, (5) denying her childcare expenses, (6) deducting husband's travel expenses from child care support, and (7) denying wife's request for reimbursement of moving expenses. We rejected each of wife's arguments for a variety

of reasons, including wife's failure to provide an adequate record and failure to present comprehensible legal arguments. We thus affirmed the order dated September 13, 2010.

11. *Juvenile Dependency Case*

On our own motion, we take judicial notice of the records in *In re Elizabeth M.*, Case No. B245227, which is currently pending in Division 5 of the Court of Appeal, Second Appellate District (the Dependency Case). (Evid Code, § 452, subd. (d), § 459, subd. (a).) These records indicate that DCFS has filed a juvenile dependency petition with respect to Elizabeth. They also indicate that as of October 30, 2012, Elizabeth was a dependent child of the juvenile court under Welfare and Institutions Code section 300, subdivisions (b) and (c), Elizabeth was placed in the home of husband under the supervision of the DCFS, mother was granted certain visitation rights, the DCFS was required to provide wife with family reunification services and husband with family maintenance services, and wife was prohibited from speaking with Elizabeth regarding any health issues.

CONTENTIONS

Wife argues that the trial court erroneously (1) ordered husband to pay an insufficient amount of child support, (2) refused to consider wife's challenge to the court's July 29, 2010 order requiring her to repay husband $2,656.73 in child support, (3) awarded husband an $874 credit for overpaid child support in its May 19, 2011 ruling and June 28, 2011 order, (4) "quot[ed]" *Keech* in denying her request for attorney fees, (5) denied her sanctions against husband, and (6) awarded husband joint legal custody of Elizabeth.

DISCUSSION

1. *Standard of Review*

We review orders regarding child support, child custody, monetary sanctions and attorney fees for abuse of discretion. (*In re Marriage of Chandler* (1997) 60 Cal.App.4th 124, 128 [child support]; *In re Marriage of Adams* (2012) 209 Cal.App.4th 1543, 1565 [child custody]; *In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1478 [sanctions and attorney fees].) "The court abuses its discretion only if its ruling is

arbitrary, capricious or patently absurd." (*Faigin v. Signature Group Holdings, Inc.* (2012) 211 Cal.App.4th 726, 748.)

We review the trial court's factual findings under the substantial evidence test. (*In re Marriage of Chandler*, *supra*, 60 Cal.App.4th at p. 128.) In so doing, we make all reasonable inferences in support of the findings and cannot reweigh the evidence or second-guess the trial court's credibility determinations. (*Kern County Dept. of Child Support Services v. Camacho* (2012) 209 Cal.App.4th 1028, 1036.) If substantial evidence is found to support the trial court's findings, "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, 874, italics omitted.)

We must presume that the record contains evidence to support every finding of fact of the trial court unless the appellant proves otherwise. (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 737 (*Schmidlin*).) "A party who challenges the sufficiency of the evidence to support a finding must set forth, discuss, and analyze all the evidence on that point, both favorable and unfavorable." (*Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218 (*Doe*).) Further, a party who challenges the sufficiency of the evidence must present the facts in a light most favorable to the prevailing party. (*Schmidlin*, at pp. 737-738.)

The appellant must also provide a summary of the significant facts in the record and provide references to the record to support his or her claims regarding the evidence. (Cal. Rules of Court, rule 8.204(a)(1)(C) & (a)(2)(C).) It is not up to the court to search the record to determine whether the appellant's assertions about the evidence are true. (*Schmidlin, supra,* 157 Cal.App.4th at p. 738.) When an appellant fails to fully analyze the evidence with specific citations to the record, or only presents facts and inferences favorable to his or her position, the contention that the findings are not supported by substantial evidence is deemed forfeited. (See *id.* at pp. 737-738; *Doe, supra*, 177 Cal.App.4th at p. 218.)

We presume an order of the trial court is correct and make all inferences in favor of the order. (*Yu v. University of La Verne* (2011) 196 Cal.App.4th 779, 787.) On matters as to which the record is silent, it is the appellant's burden to affirmatively show error. (*Ibid.*)

Additionally, it is the appellant's burden to provide a coherent legal argument, with citations to legal authority and the record and factual analysis on each point made. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655 (*Keyes*); *Salehi v. Surfside III Condominium Owners Assn.* (2011) 200 Cal.App.4th 1146, 1161-1162 (*Salehi*).) It is also the appellant's burden to provide a record on appeal sufficient for us to determine whether the trial court erred. (*Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 364.) If the appellant does not satisfy these basic requirements, the appellant forfeits his or her arguments on appeal. (*Keyes*, at p. 655; *Salehi*, at p. 1162; *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051, fn. 9.)

Finally, even assuming the trial court erred, we cannot reverse its order unless the appellant meets his or her burden of showing that the error resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475; *In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 337.)

2. *Wife Failed to Meet Her Burden of Showing That the Trial Court Committed a Reversible Error*

a. *The Amount of Child Support Husband Was Required to Pay*

Wife's first argument is that the trial court abused its discretion by ordering husband to pay an insufficient amount of child support. This argument is based on wife's assertion that the trial court erroneously found that husband paid $446 a month for medical insurance. We reject this argument.

Wife's argument is based on citations to two portions of the record. The first is a "DissoMaster"[3] data sheet which indicates "Father" incurred a $446 monthly expense for health insurance. The record does not, however, indicate any context for this document. It is unclear, for example, whether this document was attached to some sort of declaration filed by husband or wife or presented to a witness at a hearing, when, if ever, it was filed or lodged in the trial court, and whether it was accepted into evidence by the court.

The second item of "evidence" wife relies upon is husband's testimony regarding medical insurance at the July 21, 2011, hearing. Wife contends this testimony supports her claim that husband did not have medical insurance from August 2010 to April 2011. It does not. Husband merely stated that he did not have medical insurance for Elizabeth for a "short period of time[.]" He further stated that he had medical insurance for Elizabeth at the time of the July 21, 2011, hearing.

Wife did not meet her burden of showing that the trial court abused its discretion with respect to calculating the amount of child support husband was obligated to pay her.

b. *Credits for Overpayment of Child Support*

Wife's second and third arguments relate to credits in the amount of $2,656.73 and $874 the trial court gave husband in overpaid child support.[4] As to the $2,656.73 credit—which the trial court awarded to July of 2010—the trial court correctly determined that it had no jurisdiction over the issue because the matter was the subject of a pending appeal, namely *Mundkowsky II*. (*Young v. Tri-City Healthcare Dist.* (2012) 210 Cal.App.4th 35, 41.) In any case, we rejected wife's arguments relating the

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3 "The DissoMaster is one of two privately developed computer programs used to calculate guideline child support as required by [Family Code] section 4055, which involves, literally, an algebraic formula." (*In re Marriage of Schulze* (1997) 60 Cal.App.4th 519, 523-524, fn. 2.)

4 Although the trial court lacked authority to absolve husband of child support arrearages even if they were based on a support order that was inequitable when made (Family Code, § 3692), it did have the discretion to credit husband for payments he made beyond those ordered by the court. (*In re Marriage of Tavares* (2007) 151 Cal.App.4th 620, 626.)

$2,656.73 credit in *Mundkowsky II* on the ground that wife failed to meet her burden of showing the trial court erred.

We again reject wife's argument on this issue. Although wife concedes "there was [an] overpayment of $2,409" by husband in 2007, she contends the trial court overlooked the "short payments" husband made in 2008, 2009, 2010 and 2011. The only citation wife provides to support this argument, however, is a reference to her memorandum of point and authorities to support her March 1, 2011, motion for child support. The document wife relied upon is argument, not evidence. Wife therefore failed to meet her burden of showing that the trial court abused its discretion in rejecting her renewed attack on the trial court's July 2010, award of a credit of $2,656.73 to husband.

As to the trial court's June 28, 2011, award of an $874 credit, wife makes no coherent legal argument, and fails to provide relevant cite citations to the record or a factual analysis. We therefore deem her argument forfeited.

c. *Attorney Fees*

Wife contends the trial court erred by "quoting" *Keech* because that case is not applicable to her claim for attorney fees. Whether the trial court correctly cited *Keech* is irrelevant. A trial court's purported improper or incorrect reliance on a published case is not, by itself, ground for reversal. Because we review the correctness of the ruling, and not the court's reasons, we must affirm the ruling if it can be supported on any legal theory, even if the trial court misapplied or misunderstood the law. (*Hoover v. American Income Life Ins. Co.* (2012) 206 Cal.App.4th 1193, 1201.)

Apart from attacking the trial court's reliance on *Keech,* wife provides no explanation as to why the trial court's ruling with respect to her request for attorney fees was an abuse of discretion. Indeed, like the trial court, we cannot determine which particular attorney fees request wife contends should have been granted. Wife therefore did not meet her burden of showing the trial court abused its discretion with respect to denying wife an award of attorney fees.

d. *Sanctions*

Wife contends the trial court erroneously denied her request for monetary sanctions against husband for his alleged bad faith litigation tactics. Her request was apparently based on the trial court's denial of husband's motion to modify a previous custody order. However, apart from making the conclusionary assertion that husband's request was "frivolous," wife fails to set forth a coherent legal argument or factual analysis of the matter. We thus hold that wife forfeited the argument.

e. *Custody of Elizabeth*

At the time the trial court issued its orders dated June 28, 2011 and August 22, 2011, wife and husband had joint legal custody of Elizabeth. Wife argues that the trial court's order denying her request for sole legal custody of Elizabeth was an abuse of discretion and a violation of due process because husband used the trial court's order to accuse wife of Munchausen syndrome by proxy in the juvenile court.

Preliminarily, we note that wife's argument appears to be moot in light of the developments in the Dependency Case. Assuming wife's argument is not moot, we nonetheless reject it.

We presume there was substantial evidence to support the trial court's factual findings that wife withheld Elizabeth from school in violation of California law and has a history of (erroneously) ascribing illnesses to Elizabeth. Wife, however, has not met her burden overcoming this presumption. This is because she did not meet her obligation to set forth, discuss, and analyze all the relevant evidence, both favorable and unfavorable. Instead, she only cited and discussed evidence that purportedly shows Elizabeth had serious health problems and husband had serious mental health problems. Because wife did not meet her obligations in connection with a substantial evidence challenge to the trial court's findings, she has forfeited her challenge to those findings on appeal.

DISPOSITION

The orders dated June 28, 2011 and August 22, 2011 are affirmed. Respondent Robert Mundkowsky is awarded costs on appeal.

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KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.