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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of ANTHONY A. PATEL
and SONYA B. PATEL.

ANTHONY A. PATEL,

Appellant,

v.

SONYA B. PATEL,

Respondent.

B257700

(Los Angeles County
Super. Ct. No. BD585163)

APPEAL from an order of the Superior Court of Los Angeles County,

Randall F. Pacheco, Judge. Dismissed.

Anthony A. Patel, in pro. per., Appellant.

No appearance for Sonya B. Patel, in pro. per., Respondent.

Petitioner and appellant Anthony A. Patel appeals in propria persona from purported pretrial orders made during a January 24, 2014 hearing in a contentious marital dissolution case. Appellant's wife, respondent Sonya B. Patel, did not file a respondent's brief.¹ Husband challenges the trial court's ruling that he should pay \$20,000 to wife's attorney under Family Code section 271,² as well as other unspecified financial rulings that "nobody agrees on what they are." In his opening brief, husband contends "orders of some sort were made [on January 24, 2014], but the minute order was not precise on the entire scope of the orders or what the trial court actually ordered regarding some of these issues." Although the parties were unable to agree on an order after hearing, they eventually entered into two stipulations, signed by the court on June 10, 2014 and January 13, 2015, addressing matters presented during the January 24, 2014 proceeding.

Because there are no orders from which to appeal and, in any event, the issues raised at the hearing were subsequently resolved by stipulated orders, we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Husband and wife were married in 2006. They have two children: a son born in 2009, and a daughter born in 2011. On July 8, 2013, husband filed a petition for dissolution of marriage.

On July 31, 2013, wife filed a request for order (RFO) seeking temporary sole legal and physical custody of the children, monitored visitation for husband, and \$25,000 to allow her to hire counsel. On September 19, 2013, the parties, with the assistance of their respective attorneys, resolved the July 31, 2013 RFO in a detailed,

¹ Although the record contains a partial stipulated judgment dissolving the parties' marriage, the judgment has not been approved by the court. Because the parties have the same last name, and there is no evidence the marriage was dissolved, we refer to appellant as husband and respondent as wife in this opinion.

² All further statutory references are to the Family Code unless otherwise indicated.

seven-page stipulation that was approved by the court. The stipulation provided that the parties would have joint legal and physical of the children, with a step-up visitation plan culminating in husband having “50/50” time with both children by October 2014.

Less than three months after the parties signed the stipulation, husband, now self-represented,³ filed a RFO to modify the agreed upon visitation schedule. Among other things, husband explained that he was “the more disciplined individual” and wife was unable to ensure stability and consistency for the children.

On December 19, 2013, wife filed a RFO seeking temporary child and spousal support, access to assets contained in a safe deposit box, and \$44,587 in attorneys’ fees incurred to date, plus additional fees up to a maximum of \$100,000. Relevant here, wife sought attorneys’ fees under sections 2030, 2032, and 271; she suggested that the proceeds from the liquidation of the assets in the safe deposit box could be used to pay for those attorneys’ fees. Wife argued that husband, a highly educated and qualified attorney representing himself in the case, has no incentive to act reasonably and has engaged in tactics to harass her and increase her attorneys’ fees. In connection with her request for fees as sanctions under section 271, wife contended that husband’s overly aggressive and unnecessary litigation conduct was contrary to the policy of encouraging settlement. For example, she noted that husband objected to 15 out of 21 form interrogatories, and served her with discovery requests which asked wife to admit her family required food stamps when she was growing up and that her father was mentally ill. Husband also threatened to publish details about the parties’ divorce in the newspaper, and accused wife’s attorney of being unethical and immoral. Wife explained that “when the ink [on the September 19, 2013 stipulation] ha[d] barely even dried,” husband sought to modify it. In response to wife’s December 19, 2013 RFO, husband filed another RFO to modify custody.

Wife’s December 19, 2013 RFO was heard on January 24, 2014; both parties were represented by counsel during this proceeding. The extent of the court’s rulings is

³ Husband is a practicing attorney. He was admitted to the California bar in 1999 and has “a strong background in business, finance and technology.”

unclear. After indicating what it gleaned from the parties' papers, the court said the level of litigation was "unsustainable." In connection with attorneys' fees under section 271,⁴ the court stated those fees "aren't available today, and I hope are never available." The court then expressed its view that "at this point \$20,000 in fees . . . are appropriate fees under [section] 271." Although the court stated that sanctions were necessary "in order to make sure that there is actually a cooperative spirit," it concluded the hearing by stating it hoped the parties reach an agreement regarding custody, and that it did not want sanctions under section 271 to be considered a threat. When wife's counsel asked the court whether to prepare an order after hearing, the court responded "you are not quite ready for that, but once we get to one" counsel for wife should prepare one. While the minute order from this hearing states that husband shall pay \$20,000 in fees to wife's counsel, notice was not waived.

Notwithstanding the minute order from the hearing, it appears the parties were uncertain about the terms of the sanctions and financial support rulings. For example, the record shows that the terms of any order after hearing, including for payment of fees under section 271, would be negotiated by the parties. In a letter dated April 4, 2014, husband explained his objections to the proposed order after hearing submitted by wife's counsel because he thought the \$20,000 should be paid from community property, not his separate property. Regardless, as acknowledged by husband in his June 30, 2014 RFO, "[n]o written order has yet been entered with respect to the issue of sanctions." As for financial support, in his supplemental letter brief husband states "it appears that a final order may not have been made by the trial court, because [it] wanted the parties/counsel to meet and confer and come up with a resolution, prospectively if possible."

⁴ The court contemplated that some of wife's attorneys' fees would be paid from the liquidation of assets in the safe deposit box. In that regard, the court stated "I'm going to order that once you folks do the inventory [from the safe deposit box] and you got all this gold, silver, platinum, other precious metals, bars, bullion, jewelry, collectibles on the table, each party is to receive \$50,000 in assets from that." This ruling is not challenged.

Months after the January 24, 2014 hearing, the parties entered into two stipulations, signed by the court, in connection with matters discussed during the hearing. Both stipulations were prepared by husband. The June 10, 2014 stipulation provided for the distribution of \$50,000 to each side, apparently for the payment of attorneys' fees, from the liquidation of items contained in the safe deposit box. The stipulation noted that it was necessary because the parties could not agree on the language in the order after hearing. On July 21, 2014, husband filed a notice of appeal from the order of sanctions and financial support. However, on January 13, 2015, the court signed a stipulation that "shall supersede and prevail over any support orders, findings or matters from the Court's hearing of January 24, 2014 (or the order after hearing thereof) that are in conflict with the Stipulation." While the stipulations addressed the distribution of assets from the safe deposit box, temporary support issues, and the payment of certain expenses, the payment of fees under section 271 was not expressly mentioned.

After the case was briefed, we issued a letter asking the parties to address whether the trial court made any appealable orders on January 24, 2014 and, in any event, why the appeal was not moot. Only husband filed a supplemental letter brief.⁵

DISCUSSION

It is well settled that an appellate court will decide only actual controversies. (*Costa Serena Owners Coalition v. Costa Serena Architectural Com.* (2009) 175 Cal.App.4th 1175, 1205-1206.) In the absence of an appealable order, or when no effective relief can be granted, the appeal should be dismissed. (*Northern Trust Bank v. Pineda* (1997) 58 Cal.App.4th 603, 606 [no final order made]; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1215 [appellate court should not give opinions upon moot questions or abstract propositions].) As we explain below, the trial court's rulings or comments during the January 24, 2014 hearing did not constitute appealable

⁵ Husband's request for judicial notice of a court transcript and related documents from a federal lawsuit brought by husband against the trial judge is denied.

orders, and even if they did, the appeal would be moot because the matters were resolved by subsequent stipulated orders.

An order awarding attorneys' fees under section 271 is appealable. (*In re Marriage of Burgard* (1999) 72 Cal.App.4th 74, 82). Here, however, it is not clear that the court's remarks during the hearing constituted a final order for sanctions subject to appellate review. Certainly, we acknowledge the minute order states that husband must pay \$20,000 under section 271. But, at the hearing, the court expressed its view that "at this point \$20,000 in fees" were "appropriate." The court also did not indicate in the minute order or during the hearing if the \$20,000 would be paid from husband's share of community property or from his separate property. (See Fam. Code, § 271, subd. (c).) Adding to the ambiguity, the court stated the fees under section 271 "aren't available today, and I hope are never available." Further, when wife's counsel asked the court at the conclusion of the hearing whether to prepare an order after hearing, the court responded that "you are not quite ready for that, but once we get to one" counsel for wife should prepare one.

An order awarding temporary child support or spousal support is also appealable. (*In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368-369.) But, nothing in the minute order or the transcript from the hearing suggests the court made any order or ruling involving temporary financial support on January 24, 2014. That hearing concluded with the parties agreeing to discuss financial support to be followed by an order after hearing. Husband appears to concede the point in his opening brief. And, in his supplemental letter brief, husband acknowledges "it appears that a final order may not have been made by the trial court, because [it] wanted the parties/counsel to meet and confer and come up with a resolution, prospectively if possible."

Our view that no appealable sanctions or financial support order was made on January 24, 2014 is supported by husband's two subsequent RFOs. In the June 30, 2014

RFO, husband sought reconsideration⁶ of the January 24, 2014 sanctions ruling and noted that the RFO was timely under Code of Civil Procedure section 1008, subdivision (a), because “[n]o written order has yet been entered with respect to the issue of sanctions, so the 10-day time has not started.” Alluding to the court’s statement at the January 24, 2014 hearing that “at this point \$20,000 in fees” were “appropriate,” husband argued that “it does not seem to be appropriate any longer, since [husband] is trying very hard to work to settle the case.” In the October 8, 2014 RFO, which sought to modify orders allegedly made on January 24, 2014, husband stated the following: “There was no support order entered after the January 24, 2014 hearing, and the parties/counsel could not meet and confer or resolve support (nor did the Court enter any order as of the date hereof).”

At best, we find the court contemplated entry of a written order⁷ after hearing and no such order was ever entered by the court for sanctions or financial support. (See *In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1170 [“A trial court’s oral ruling on a motion does not become effective until it is filed in writing with the clerk or entered in the minutes”]; *Herrscher v. Herrscher* (1953) 41 Cal.2d 300, 305 [minute order that normally would have been effective on entry in minutes was not an appealable order where defendant was directed to prepare, serve and file a formal order].) Accordingly, there is no order from which to appeal. To the extent there is

⁶ The RFO for reconsideration of the sanctions ruling was heard on October 9, 2014. The court denied the request for reconsideration because husband did not present new law or facts; it did not reach the merits of the request. Although an order denying a motion for reconsideration is not separately appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from the order that was the subject of the motion. (Code Civ. Proc., § 1008, subd. (g).) Since the original ruling granting section 271 sanctions is not appealable, the subsequent ruling denying reconsideration is also not appealable.

⁷ California Rules of Court, rule 5.125, provides for the preparation and submission of an order after hearing in family law proceedings. Notably, if the parties fail to resolve their disagreement concerning the scope or language of the order, they may ask the court to adopt a particular proposed order. (Cal. Rules of Court, rule 5.125(e)(3).)

a discrepancy between the oral pronouncement as reflected in the reporter's transcript and the minute order contained in the clerk's transcript, the oral pronouncement controls. (*In re J.P.* (2014) 229 Cal.App.4th 108, 118, fn. 4.)

Even if the court's rulings were appealable, the appeal would nevertheless be moot because the parties entered into two stipulated orders that resolved the matters raised at the January 24, 2014 hearing. First, the June 10, 2014 stipulated order required the distribution of monies to each side, apparently for the payment of attorneys' fees, after an inventory and liquidation of items contained in a safe deposit box. Second, in the January 13, 2015 stipulated order the parties waived temporary support and agreed that the stipulation "supersede[d] and prevail[ed] over any support orders, findings or matters from the Court's hearing of January 24, 2014 (or the order after hearing thereof) that are in conflict with the Stipulation." Since the payment of attorneys' fees under section 271 was one of the subjects of the hearing on January 24, 2014, any finding or ruling by the court requiring husband to pay \$20,000 to wife's attorney is a finding or matter within the scope of the January 13, 2015 stipulated order. We appreciate that husband contends he did not intend to resolve the issues raised during the January 24, 2014 hearing in the second stipulated order because, by then, he had filed a notice of appeal. We note, however, that husband did not take the hearing on the RFO for reconsideration off calendar, and that hearing took place on October 9, 2014--or months after the appeal was filed. We also note that the order denying reconsideration is the subject of husband's appeal. Importantly, husband, a seasoned attorney, prepared both stipulations. If he intended to exclude the award of \$20,000 in attorneys' fees or financial support from the stipulations, any ambiguity or uncertainty would be resolved against him. (See *Rainier Credit Co. v. Western Alliance Corp.* (1985) 171 Cal.App.3d 255, 263.)

DISPOSITION

The appeal is dismissed. Because respondent Sonya B. Patel did not participate in the appeal, no costs are awarded.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

ALDRICH, J.