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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of ANTHONY and
SUZANA LOCATELLI.

B267653

(Los Angeles County
Super. Ct. No. BD516629)

SUZANA LOCATELLI,

Respondent,

v.

ANTHONY LOCATELLI,

Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County. Thomas Trent Lewis, Judge. Affirmed
in part and reversed in part with directions.

Anthony Locatelli, in pro. per., for Appellant.

No appearance for Respondent.

Anthony Locatelli,¹ in propria persona, appeals from a ruling on submitted matters in this marital dissolution action, denying both parties' attorney's fee requests pursuant to Family Code section 2030,² granting sanctions against both parties pursuant to section 271, and awarding attorney's fees and costs to respondent Anthony's former wife, Suzana Locatelli, pursuant to sections 3652 and 6344. Suzana did not file a brief or otherwise appear. We reverse the order to the extent it denied Anthony attorney's fees and granted sanctions against him. In all other respects we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This is the third appeal stemming from the dissolution of Anthony and Suzana's marriage. (*In re Marriage of Locatelli* (Apr. 8, 2015, B252667) [nonpub. opn.] (*Locatelli I*); *In re Marriage of Locatelli* (Jan. 28, 2016, B258051) [nonpub. opn.] (*Locatelli II*, and together with *Locatelli I*, prior opinions).)

¹ Appellant filed his notice of appeal under the name Anthony Locatelli, and the ruling from which he appeals utilizes the name Anthony Paul Locatelli. Appellant's opening brief was filed using the first name Paul. For consistency, we use the name Anthony, the name under which appellant filed his notice of appeal. We refer to both parties by their first names to prevent confusion, and mean no disrespect by doing so.

² Except as otherwise specified, statutory references are to the Family Code.

The August 28, 2015 ruling on submitted matter and order thereon (ruling) from which Anthony appeals represents “the final chapter in a long saga of family law litigation” between Anthony and Suzana, and provides a net award of \$65,426.50 to Suzana.³ The ruling represents the superior court’s determination to award: (a) section 271 sanctions against both parties, (b) attorney’s fees and costs to Suzanna in connection with a DVRO, and (c) attorney’s fees and costs to Suzana incurred in enforcing child support obligations, as well as the denial of both parties’ requests for attorney’s fees pursuant to section 2030.

Earlier, the court conducted trials with respect to custody, property division, and support. The record provided by Anthony does not include moving papers underlying these matters, nor does it include a copy of the DVRO. We take judicial notice of the record before the superior court. (Evid. Code, § 452, subd. (d).)

The findings of the trial court in support of the ruling include that Suzana incurred \$110,049.36 in attorney’s fees, in addition to fees incurred in connection with a trial on the fees

³ In addition to appealing the ruling, Anthony’s opening brief challenges the 2012 domestic violence restraining order (DVRO), as well as judgments from 2012 and 2013 and other actions taken by the trial court. To the extent those orders are not covered in the prior opinions, the appeals from those orders are untimely.

issue. The court found that Suzana has a gross monthly income of \$10,000 and owns a home with approximately \$500,000 in equity. Anthony incurred attorney's fees totaling \$54,100. Anthony is unemployed and receives unemployment compensation in the amount of \$450 per week. The court found that Anthony had a property valued at \$100,000, and that he transferred the property to his mother without disclosure to Suzana. The court also found that Anthony did not properly disclose an unspecified amount of severance pay from a prior employer. Finally, the court found that Anthony had unutilized lines of credit amounting to \$50,000. No other findings regarding assets and income are set forth in the order.

The court concluded, after reviewing the assets and income of the parties that, pursuant to section 2030, Suzana is not eligible for an attorney's fee award based on need and ability to pay, and that, based on need and ability to pay, Anthony would be eligible for such an award. The court, however, applying a domestic violence factor pursuant to section 4320, declined to make such an award to Anthony. The court awarded Suzana section 271 sanctions against Anthony in the amount of \$40,000, finding that Anthony "has the ability to pay these sanctions without undue financial hardship." In addition, the court assessed Suzana sanctions pursuant to section 271 in the amount of \$5,000. This sanction was based on an occasion in which

Suzana “misused the custody order so that she could deprive Anthony of time during the summer.” The trial court found this conduct on Suzana’s part to be reprehensible and unjustified. The basis for the court’s determination that Anthony has the ability to pay sanctions is that Anthony is imputed with the \$100,000 he removed from the parties’ IRA to purchase a property in San Diego County, which he subsequently transferred to his mother, and that because he acted unreasonably in making the transfer, the court can also consider Anthony’s borrowing ability. We note that the court previously sanctioned Anthony \$30,000 for improperly withdrawing money from the parties’ IRA, which we affirmed in the prior opinions.

Anthony contends that the trial court erred in several respects: (1) The court abused its discretion by failing to award him attorney’s fees and by imposing an unreasonable financial burden on Anthony by awarding sanctions against him; (2) It was error for the court to consider his borrowing capacity, particularly in light of his unemployment, resulting in his inability to repay any such borrowing; and (3) The court improperly awarded attorney’s fees and costs to Suzana. As in the prior appeals, Anthony contends that the trial court is biased against him and acted improperly by receiving additional income for family law treatises, and that the court has engaged in “dehumanization and physiological terror” against him. He argues that the trial judge

should not have transferred the case to the court's "long cause" division and Anthony's peremptory challenge should have been granted. We will not revisit these decisions, which are addressed in prior opinions.

Finally, Anthony contends that the court's consideration of a 2012 DVRO in calculating the appropriate amount of fees and sanctions represented an abuse of discretion and violates public policy because a different judge denied an earlier request for a restraining order.

DISCUSSION

I. *Law of the Case*

Anthony asserts numerous claims that were asserted and rejected in the prior opinions from the judgment of dissolution and from an order granting sanctions to Suzana. As we discussed in the prior opinions, the "rule of 'law of the case' generally precludes multiple appellate review of the same issue in a single case." (*Searle v. Allstate Life Ins. Co.* (1985) 38 Cal.3d 425, 434.) This doctrine applies even when an appellant cites different authorities or asserts different reasons in support of his or her legal claim or theory. (*Yu v. Signet Bank/Virginia* (2002) 103 Cal.App.4th 298, 312.) These rules apply to self-represented parties. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) Moreover, Anthony's attempts to address the merits of the

2012 DVRO and 2012 and 2013 judgments, to the extent not covered in the prior opinions, are untimely.

II. *Section 2030 Attorney's Fee Awards*

We review the attorney's fee awards under section 2030 for abuse of discretion. (*In re Marriage of Smith* (2015) 242 Cal.App.4th 529, 532.) "Applying the abuse of discretion standard, we consider de novo any questions of law raised on appeal, but will uphold any findings of fact supported by substantial evidence." (*Ibid.*)

"The purpose of a section 2030 fee award is to ensure that the parties have adequate resources to litigate the family law controversy and to effectuate the public policy favoring 'parity between spouses in their ability to obtain legal representation.' " (*In re Marriage of Braud* (1996) 45 Cal.App.4th 797, 827.) In the prior opinions, we affirmed a section 271 sanction in the amount of \$30,000 against Anthony relating to an IRA withdrawal. That breach underlies the sanction order in the ruling as well. The court's finding that Anthony has incurred attorney's fees of approximately \$54,000 and is unemployed and receiving unemployment compensation, while Suzana receives income of \$10,000 per month and has equity in her home of approximately \$500,000, suggests that even attributing the full value of the property purchased by Anthony to him, and considering earlier sanctions and monetary orders against

Anthony, the parties in this case were not in parity with respect to their ability to obtain legal representation.

In concluding that Anthony is not entitled to an award of fees, the trial court determined that “it is apparent that Suzana has the greater ability to pay fees based on her income and other assets. Anthony has a need for a contribution of fees, however, the court is guided by the legislative mandate to consider whether to award fees in his favor applying section 4320.

(See *Alan S. [] v. Superior Court* (2009) 172 Cal.App.4th 238 (*Alan S.*)). The case law mandates that the court consider all the relevant factors under section 4320. Here, Suzana is the victim of domestic violence. *In re Marriage of Fr[e]i/tas* (2012) 209 Cal.App.4th 1059 (*Fr[e]i/tas*) enunciates the clear and general policy of California that victims of domestic violence should not be required to support the perpetrators of violence. The same logic in *Fr[e]i/tas* concerning spousal support extends to the issue of attorney’s fees and costs. [¶] Applying these principles, Suzana is not eligible for a need based fee award; and while Anthony is eligible based on the economics [need and ability], he is not entitled to such an award.”

We disagree with this conclusion, in two respects. First, a determination to award attorney’s fees pursuant to section 2030 is based on economic need and ability to pay. “When a request for attorney’s fees and costs is made, the court shall make

findings on whether an award of attorney's fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties. If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs. A party who lacks the financial ability to hire an attorney may request, as an in pro[.] per[.] litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward." (§ 2030, subd. (a)(2).) This does not mean, however, that "the purpose of section 2030 is . . . the redistribution of money from the greater income party to the lesser income party. Its purpose is *parity*: a fair hearing with two sides equally represented. The idea is that both sides should have the opportunity to retain counsel, not just (as is usually the case) only the party with greater financial strength." (*Alan S.*, *supra*, 172 Cal.App.4th at p. 251.) The trial court found that Anthony had a need for attorney's fees pursuant to section 2030 and that Suzana had the ability to pay them. We have no reason to question that conclusion.

"The public policy purpose behind sections 2030 and 2032 is 'leveling the playing field' and permitting the lower-earning

spouse to pay counsel and experts to litigate the issues in the same manner as the spouse with higher earnings.’ [Citation.] Attorney fees, financial experts, other experts, witness fees, and other costs are all awardable. [Citation.] A spouse should not have to utilize support payments designed to pay living expenses to fund litigation in the dissolution proceeding.” (*In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1315–1316.) In this matter, in which the court found that the parties have significantly disparate income and assets, the relevant economic factors support an award of attorney’s fees to Anthony pursuant to section 2030.

Applying the principle set forth in *Alan S.*, which reviewed an award of a pendente lite fee order in the context of section 4320, the trial court discussed the factors in section 4320. Ultimately, however, the court placed near total weight on the asserted domestic violence rather than focusing primarily on those factors relevant to a determination of the parties’ economic need for counsel and ability to pay. Section 2032, subdivisions (a) and (b), explains what a court shall consider in making such an award. “The court may make an award of attorney’s fees and costs under [s]ection 2030 or 2031 where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties. [¶] . . . In determining what is just and reasonable under the relative

circumstances, the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in [s]ection 4320.” (§ 2032, subds. (a) & (b).) The factors listed in section 4320 include “[d]ocumented evidence, including a plea of nolo contendere, of any history of domestic violence, as defined in [s]ection 6211, between the parties or perpetrated by either party against either party's child, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party.” (§ 4320, subd. (i).) Although the trial court found that Anthony had a need for a contribution of fees and that Suzana had an ability to pay, he declined to order them based on the ground of the DVRO.⁴ This does not reflect a consideration of the economic

⁴ In *Locatelli I*, we described the court's findings supporting the DVRO as solely a video in which Anthony is seen as pushing Suzana away as she recorded an argument, Anthony's violation of a restraining order the court had issued two years earlier by maintaining a firearm, Anthony's failure to attend court-ordered parenting classes and other courses, and “‘pretty strong language in . . . e-mail communications . . . that could cause a reasonable apprehension.’” (*Locatelli I, supra*, B252667,

factors or the relative circumstances of the parties as required by section 2030. We thus conclude that it was an abuse of discretion to deny Anthony's request for fees. Accordingly, we reverse the order and remand to the superior court to determine the amount of attorney's fees to be awarded Anthony.

III. *Sanctions Pursuant to Section 271*

The trial court awarded sanctions against Anthony in the amount of \$40,000 and against Suzana in the amount of \$5,000. In evaluating the parties' requests, the court found that delays caused by Anthony were "nominal in time and expense to Suzana," Anthony was "within his rights to challenge the court even if he was not successful," and that Anthony "acted based on his perceptions (even if wrong) and not to cause delay for Suzana as it relates to this topic," but that Anthony "did cause unnecessary delay in this proceeding by misusing the court process," filing "hundreds of pages of documents with the court that were voluminous, disjointed, and lacking in meritorious, cogent arguments," which caused Suzana unnecessary fees and delay. Further, the court found that Anthony filed income and expense declarations that did not accurately state his income and hid documents from Suzana while "styling himself (without basis) as a self-represented litigant who did not know his way around

at p. 22.) The record does not contain evidence of any criminal charges against Anthony.

the court,” and “confabulat[ing] this litigation far beyond the substance or merits of the case in an unrelenting vendetta toward Suzana.”

The court found that Anthony had the ability to pay the \$40,000 sanction without undue financial hardship. The basis for this finding, as stated in the ruling, is that Anthony “breach[ed] his fiduciary duty to take money out of an IRA so he could [buy] land in San Diego County,” that he transferred that property to his mother in a misguided attempt to render himself judgment proof, and that Anthony has available lines of credit with an additional \$50,000 of borrowing capacity. We address these in turn.

We do not agree with Anthony that the court erred in refusing to disallow certain liabilities resulting from Anthony’s removal of the funds from the IRA and purchase of the land in San Diego. But even attributing the full \$100,000 to Anthony, when viewed in light of Anthony’s unemployment, earlier sanctions of \$30,000, support obligations, and in light of the other attorney’s fee awards to Suzana and the fact that the court concluded that Anthony had a need for contribution of attorney’s fees, this was insufficient to establish that Anthony had the ability to pay further sanctions. Moreover, the trial court’s reliance on Anthony’s unutilized borrowing capacity as a source for payment was mistaken. Although borrowing ability may,

under some circumstances, be considered in determining ability to pay, it is error to consider it when the person is unemployed and has no prospects of being able to repay the loan. Section 271 sanctions shall not apply when they “impose[] an unreasonable financial burden on the party against whom the sanction is imposed.” (§ 271, subd. (a).)

For these reasons, we conclude that the trial court’s findings do not support an award of sanctions, and we reverse that portion of the award.

IV. *Attorney’s Fees Pursuant to Sections 3652 and 6344*

We disagree with Anthony that the trial court erred in granting certain attorney’s fees to Suzana. The trial court’s determination that Suzana was entitled to fees totaling \$7,676.50 associated with enforcing a child support order, pursuant to section 3652 (permitting an award of attorney’s fees to the prevailing party with respect to “an order modifying, terminating, or setting aside a support order”), was supported by Suzana’s attorney’s declaration. The court’s award of fees and costs to her totaling \$22,750 pursuant to section 6344, subdivision (b) (permitting an award of attorney’s fees to the prevailing party with respect to a DVRO), was supported by the parties’ respective incomes and ability to pay, attributing the \$100,000 value of the property purchased by Anthony.

V. *Conclusion*

For the reasons set forth above, we reverse the order in so far as it denies Anthony attorney's fees and grants sanctions against Anthony. We remand in order for the court to determine the amount of attorney's fees to be awarded Anthony and accordingly recalculate the amount that may be due from one party to the other. In all other respects, the ruling is affirmed.

DISPOSITION

The trial court's August 28, 2015 "Ruling on Submitted Matter and Order Thereon" determination that Anthony is not entitled to an award of attorney's fees pursuant to Family Code section 2030 is reversed, and the matter is remanded to the superior court to determine, consistent with this opinion, the appropriate amount of attorney's fees to be awarded Anthony. The ruling's award of sanctions against Anthony pursuant to Family Code section 271 is reversed. In all other respects, the ruling is affirmed. Appellant to bear his own costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J

We concur:

CHANEY, J.

JOHNSON, J.