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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ALAN M. KINDRED,

Petitioner and Respondent,

v.

MAUREEN KINDRED,

Appellant.

B270807

(Los Angeles County  
Super. Ct. No. BD500928)

APPEAL from a judgment of the Superior Court of Los Angeles County, Bruce G. Iwasaki, Judge. Affirmed.

Maureen Kindred, in pro. per., for Appellant.

Goodman Seeger, Karen L. Goldman; Akin Gump Strauss Hauer & Feld, Jessica M. Weisel and Rex S. Heinke for Petitioner and Respondent.

Maureen Kindred, in propria persona, appeals from a judgment of dissolution of her marriage to Alan M. Kindred following a contested trial. She challenges numerous factual findings made by the trial court in characterizing and apportioning assets. The trial court's findings are supported by the evidence. We therefore affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Maureen and Alan were married on May 17, 1986, in Australia, where they were both living at the time. They moved to the United States in 1989 and separated on February 15, 2009. Alan filed a petition for dissolution of the marriage on February 19, 2009.

The trial court granted dissolution of the marriage status as of June 22, 2011, reserving jurisdiction over all other issues. On August 4, 2011, the parties entered into a partial settlement agreement regarding the division of various items of property, including cars and bank accounts.

The court had ordered that the family home be sold in February 2010, but the parties agreed to wait until their daughter finished high school in June 2011. They signed a listing agreement with a realtor in July 2011. Alan accused Maureen of refusing to allow access to the house for repairs to be done.

In November 2011, Alan asked the court to order Maureen and their adult children to vacate the house so that it could be sold. In August 2012, the realtor canceled the listing agreement, stating in an email to Alan and his lawyer that “[i]t is very difficult to sell a home where one of the sellers is unwilling to cooperate, undermines me as a

professional, and seems to know the real estate market better than I do.” Alan asserted that Maureen had been uncooperative, an accusation that Maureen denied in her declaration. In August 2012, Alan sought a court order to grant him exclusive authority to sell the house. The court granted the request in October 2012.

The house was sold in April 2013. In July 2013, Maureen moved *ex parte* to have some of the proceeds of the sale released to her so that she could find alternative housing. Alan opposed the request, stating that Maureen had been irresponsible financially. The court ordered that \$7,500 be released to each party and placed in their attorneys’ trust accounts, indicating that Maureen could use the funds to pay fees for a storage unit and to obtain an apartment.

A trial was held on the reserved issues in April 2014, but Maureen did not appear. Judgment was entered on June 30, 2014. Proceeding *in propria persona*, Maureen moved to set aside the judgment on the ground that her former counsel, Martin Cutler, did not receive notice of the trial. Cutler stated in a declaration that he had been suspended from the practice of law from February 6, 2014 to April 6, 2014 for writing personal checks from his client trust account. He further stated that, due to mail delivery problems, he did not receive notices regarding the hearing. Maureen declared that she was caring for family members in Australia at the time of trial and did not receive notice of the trial. She further stated that Alan knew where she was and failed to inform her of the trial date, despite weekly conversations with their son, who was living with Maureen in Australia. The trial court granted Maureen’s motion in November 2014, but ordered her to pay Alan

\$7,750 in attorney's fees and ordered Cutler to pay Alan a \$1,000 penalty.

Maureen represented herself in the new trial, which was held in August 2015. The trial court filed a statement of decision and a judgment of dissolution of marriage on December 21, 2015. The court found \$618,213 in community assets and \$84,093 in community debts. The court found that Maureen had received \$140,136 in assets after separation and had taken \$42,964 from two of Alan's separate property accounts.

The court awarded reimbursement to Alan for \$134,867 in post-separation payments he made to benefit the community and Maureen, but ordered him to reimburse Maureen \$18,221 in accrued arrearages of spousal support. The court found that Maureen had been uncooperative in selling the house and that her delay prolonged the litigation and resulted in Alan making mortgage payments for two extra years. The court therefore ordered her to pay \$20,000 in "penalty sanctions" under Family Code section 271.<sup>1</sup> The court thoroughly considered the requisite factors set forth in section 4320 for determining spousal support.<sup>2</sup> In doing so, the court found not credible Maureen's accusations of domestic violence. The court ordered Alan to pay

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<sup>1</sup> Unspecified statutory references are to the Family Code.

<sup>2</sup> The factors include each party's earning capacity, age and health; the supporting party's ability to pay; the marital standard of living; any history of domestic violence; the balance of the hardships; and the goal that the supported party be self-supporting. (§ 4320.)

Maureen \$32,155 in property division equalization and monthly spousal support of \$700 until January 1, 2019, when it would be reduced to \$500. The court conditioned the payment of spousal support on Maureen's residence in the United States, explaining that the court had no information regarding Maureen's income, expenses and needs in Australia.

## DISCUSSION

### I. *Forfeiture*

Maureen's briefs fail to comply with rule 8.204(a)(1) of the California Rules of Court, which requires citations to the record and to legal authority. ““An appellate brief ‘should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as [forfeited], and pass it without consideration.’ [Citation.]” [Citation.] It is not the function of this court to comb the record looking for the evidence or absence of evidence to support [a party's] argument. [Citations.]’ [Citations.]” (*Garcia v. Seacon Logix, Inc.* (2015) 238 Cal.App.4th 1476, 1489 (*Garcia*).)

Maureen's briefs also fail to comply with the rule that “appellants who challenge the decision of the trial court based upon the absence of substantial evidence to support it “are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed waived.” [Citations.]’ [Citation.]” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 (*Nwosu*).)

Maureen contends that she is unable to afford an attorney because of Alan’s alleged misconduct and the trial court’s findings. However, “mere self-representation is not a ground for exceptionally lenient treatment. Except when a particular rule provides otherwise, the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation. [Citation.]” (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985.)

Notwithstanding the procedural deficiencies in Maureen’s briefs, counsel for Alan has addressed the merits of the appeal. Therefore, we will briefly address the issues.

## II. *Constitutional Claims*

Maureen contends the trial court violated her rights to free speech, counsel, due process, and freedom from cruel and unusual punishment. “In civil cases, constitutional questions not raised in the trial court are considered waived. [Citation.]” (*Phillips v. Campbell* (2016) 2 Cal.App.5th 844, 853 (*Phillips*).) There is no indication she raised these claims below. Even if she did, none of those rights was at issue here.

### A. *Section 271 Sanction*

Section 271 “authorizes the trial court to award attorney’s fees and costs based ‘on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and

attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction.' (§ 271, subd. (a).) The purpose of the statute is "'to promote settlement and to encourage cooperation which will reduce the cost of litigation.' [Citation.]" [Citation.]" (*Sagonowsky v. Kekoa* (2016) 6 Cal.App.5th 1142, 1152 (*Sagonowsky*).)

The trial court found that Maureen's recalcitrance and delay in selling the family home prolonged the litigation and resulted in additional expense to Alan, in the form of mortgage payments in 2011 and 2012. Finding that this conduct came within the purview of section 271, the court ordered Maureen to pay a \$20,000 sanction to Alan. Maureen contends the imposition of this sanction violated her right to free speech. We disagree.

"Although stated in broad terms, the right to free speech is not absolute.' [Citation.] "[T]here are categories of communication and certain special utterances to which the majestic protection of the First Amendment does not extend because they 'are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.'" [Citation.]" (*In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416, 1427–1428.) Maureen's conduct in delaying the sale of the home was not expressive conduct within the ambit of First Amendment protection.

This situation is unlike *Maggi v. Superior Court* (2004) 119 Cal.App.4th 1218, in which the trial court imposed a gag order prohibiting the plaintiffs' counsel from speaking to third-party witnesses or representing other clients against the same defendants.

The appellate court found the gag order unconstitutionally restrained speech. (*Id.* at pp. 1225-1226.)

The trial court did not impose any restraint on Maureen’s speech but instead imposed a sanction for conduct that prolonged the litigation and increased Alan’s expenses. (See *Phillips, supra*, 2 Cal.App.5th at pp. 853-854 [rejecting the appellant’s First Amendment argument “because [his] ability to continue to engage in activity that has been determined after a hearing to constitute abuse . . . is not the type of “speech” afforded constitutional protection.”].)

“The imposition of sanctions under section 271 is committed to the sound discretion of the trial court. The trial court’s order will be upheld on appeal unless the reviewing court, “considering all of the evidence viewed most favorably in its support and indulging all reasonable inferences in its favor, no judge could reasonably make the order.” [Citation.]’ [Citation.]” (*Sagonowsky, supra*, 6 Cal.App.5th at p. 1152.) “We review any findings of fact that formed the basis for the award of sanctions under a substantial evidence standard of review.’ [Citation.]” (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1126.)

Although Maureen contends that she was cooperative in selling the house, we must view the evidence in favor of the trial court’s order. (*Sagonowsky, supra*, 6 Cal.App.5th at p. 1152.) Doing so, we find the court did not abuse its discretion in imposing the sanction. Alan stated in a declaration that Maureen did not give the handyman access to the property to make needed repairs before the house could be listed and that she requested “more and more work” to be done, thus prolonging



the process. He also provided a copy of an email from the realtor stating that “one of the sellers,” presumably Maureen, was unwilling to cooperate in preparing to sell the house. Alan further provided evidence that he attempted to lease the house to a tenant to mitigate expenses because it was taking so long to sell the house, but Maureen did not timely indicate that she would vacate the property, so the tenant found a different home to lease. We further note that the trial court found it necessary to grant Alan’s request to be given exclusive authority to sell the house. The evidence is sufficient to support the trial court’s order.

#### B. *Miscellaneous Constitutional Claims*

As to Maureen’s other constitutional claims, she has not explained how her due process rights were violated. She repeatedly claims that the trial was unfair, stating that she was not allowed to object to evidence, present rebuttal evidence, or have “time in the witness box.” The record shows, however, that Maureen testified at trial and submitted exhibits that were received into evidence. The record further shows that Maureen rested after testifying, Alan testified on rebuttal, and that both sides rested after Alan testified. There is no indication that Maureen attempted to and was prevented from testifying on rebuttal.

Maureen also contends she was not allowed to see Alan’s evidence regarding community assets and debts prior to trial, resulting in a “trial by ambush.” However, the record contains a proof of service, indicating that Alan’s exhibits were served on Maureen on July 30, 2015. Another proof of service indicates that Alan’s income and expense declaration

was served on Maureen on the same date. The trial started on August 17, 2015. Maureen’s claim of an unfair trial is not supported by the record.

There is no due process right to counsel in dissolution proceedings. (*In re Marriage of Campi* (2013) 212 Cal.App.4th 1565, 1574.) “[T]he general rule is that there is no due process right to counsel in civil cases. [Citation.] Generally speaking, the right to counsel has been recognized to exist only where the litigant may lose his physical liberty if he loses the litigation.’ [Citation.]” (*Ibid.*) There is no due process right in this case, where “there is no . . . risk of a loss of the custody of a child,” and “no liberty interest of the parties was at stake.” (*Id.* at p. 1575.)

The Eighth Amendment’s proscription against cruel and unusual punishment does not apply here. (See *Roman Catholic Bishop of Oakland v. Superior Court* (2005) 128 Cal.App.4th 1155, 1167–1168 [“because [punitive damages] are based on private civil actions, they are ‘too far afield from the concerns that animate the Eighth Amendment’”]; *Downey Savings & Loan Assn. v. Ohio Casualty Ins. Co.* (1987) 189 Cal.App.3d 1072, 1101 [“[T]he Eighth Amendment applies only to criminal actions, not to purely civil penalties, as involved here.”].)

### III. *Characterization and Disposition of Property*

Maureen challenges nearly every finding the trial court made. Maureen takes a scattershot approach in her brief, listing numerous grievances from the time she and Alan moved from Australia to the

United States in 1989 through the 2015 trial. In doing so, she raises issues and circumstances not pertinent to the trial court's order, such as events that occurred at the genesis of her relationship with Alan and the trial court's June 2014 judgment, which was subsequently set aside. We will address only the issues pertinent to the trial court's order. Moreover, as stated above, Maureen's brief fails to include citations to the record. "The appellate court is not required to search the record on its own seeking error.' [Citation.]" (*Nwosu, supra*, 122 Cal.App.4th at p. 1246.) We therefore address her claims only to the extent Alan's brief did so.

#### A. *Standards of Review*

"[T]o be successful on appeal, an appellant must be able to affirmatively demonstrate error on the record before the court. "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.'"" (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 822 (*Falcone*).) "Where [a] statement of decision sets forth the factual and legal basis for the decision, any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision.' [Citation.]" (*In re Marriage of Berland* (1989) 215 Cal.App.3d 1257, 1262.)

We review the court's characterization and disposition of property for an abuse of discretion and uphold any findings of fact if they are

supported by substantial evidence. (*In re Marriage of Dellaria & Blickman–Dellaria* (2009) 172 Cal.App.4th 196, 201.) “Generally, ‘the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered. [Citations.]’ [Citation.] To the extent that a trial court’s exercise of discretion is based on the facts of the case, it will be upheld ‘as long as its determination is within the range of the evidence presented. [Citation.]’ [Citation.]” (*In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 197.)

“As a general rule, we review spousal support orders under the deferential abuse of discretion standard. [Citation.] We examine the challenged order for legal and factual support. ‘As long as the court exercised its discretion along legal lines, its decision will be affirmed on appeal if there is substantial evidence to support it.’ [Citations.]” (*In re Marriage of Blazer* (2009) 176 Cal.App.4th 1438, 1443.)

#### B. *Merits*

Among other claims, Maureen contends she never received the various funds Alan claimed to have transferred to her (\$71,055 in August 2011, \$93,555 and \$18,585 from a Vanguard IRA account). She further contends that Alan lied about the expenses he paid post-separation, stating that she paid the mortgage and utilities on the house post-separation. She also challenges the trial court’s finding that she removed property from the house and caused the loss of personal property by failing to pay the bill from a storage company. Maureen

also contends the trial court erred in conditioning her receipt of spousal support on her residence in the United States.

As to the funds that Maureen received, we note that Maureen mistakenly names the amounts as if they were separate payments. However, the record indicates that the \$71,055 she disputes is a subtotal included in the \$93,555 figure, which itself is a subtotal of the total amount Maureen received as calculated by the trial court. The trial court calculated the \$71,055 figure by adding the amounts in the August 4, 2011 settlement agreement, which “acknowledged Maureen’s receipt of \$43,000 in prior distributions, and reflected that an additional \$25,000 would be paid to her, and that \$3,055 would be advanced for a dental procedure.” The settlement agreement supports this finding.

As to the sum from Maureen’s Vanguard IRA account, neither party has pointed to any evidence in the record to support this finding. We have examined the record, and it appears from the stipulation agreement that Maureen withdrew \$17,000 from her Vanguard IRA in 2009. The agreement provides that if the \$17,000 withdrawal from Maureen’s Vanguard IRA in 2009 did not deplete the account, “any remaining sum is to be divided equally between the parties.” The trial court found that the value of Maureen’s Vanguard IRA as of March 31, 2009 was \$18,583.

We are not required to comb the record to look for the evidence or the absence of evidence to support a party’s argument. (*Garcia, supra*, 238 Cal.App.4th at p. 1489.) In the absence of any indication that the trial court’s finding regarding the value of Maureen’s Vanguard IRA was erroneous, we will affirm.

Regarding the post-separation expenses, the court stated that Alan testified to the post-separation expenses he had paid and that Maureen “offered no rebuttal evidence to these expenses.” Maureen’s argument in her brief that she paid the mortgage and utilities post-separation does not constitute evidence.

In one of his declarations, Alan set forth the circumstances regarding the loss of personal property and the storage company bill. Maureen has pointed to no evidence to contradict this evidence.

Maureen is mistaken in her contention that the trial court erroneously relied on section 4337 in requiring her to live in the United States to receive spousal support. Section 4337 provides that an order of spousal support “terminates upon the death of either party or the remarriage of the other party.” The trial court’s citation of the statute was in reference to its prior statement that spousal support would end if Maureen remarries or either party dies. The court’s requirement that Maureen reside in the United States was a separate requirement, based on the court’s reasoning that there was no evidence of Maureen’s income, expenses, and needs in Australia. The court’s spousal support order is supported by the record.<sup>3</sup>

Maureen has failed to meet her burden of affirmatively showing error. (See *Falcone, supra*, 164 Cal.App.4th at p. 822.)

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<sup>3</sup> In the event that Maureen moves or undergoes “a material change of circumstances,” she can make a request for modification of spousal support. (*In re Marriage of Usher* (2016) 6 Cal.App.5th 347, 357; see § 3591, subd. (a) [providing for modification of support].)

## **DISPOSITION**

The judgment is affirmed. The parties shall bear their own costs on appeal.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.