Filed 7/25/17 Marriage of Thomas CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of DENISE THOMAS and GARY EVERETT THOMAS II	2d Civil No. B270906 (Super. Ct. No. D372848) (Ventura County)
DENISE THOMAS, Plaintiff and Appellant, v. GARY EVERETT THOMAS II, Defendant and Respondent.	

Denise Thomas (wife) appeals from an order dissolving a domestic violence temporary restraining order issued against respondent Gary Everett Thomas II (husband), who is appearing in propria persona. She also appeals from orders (1) concerning custody and visitation of their child; (2) quashing bench warrants for the arrest of four witnesses; and (3) requiring her to pay fees to dissolve the warrants. We affirm.

Factual and Procedural Background

The parties married in January 2014. Their child was born in March 2015. In November 2015 wife filed in Ventura County a request for a domestic violence restraining order against husband (Form DV-100). She also filed a request for child custody and visitation orders (Form DV-105). The court issued a temporary restraining order and ordered the parties to attend a mediation session.

In December 2015 wife filed in Orange County a petition for legal separation. On February 1, 2016, she filed in Orange County a request for a domestic violence restraining order against husband (Form DV-100). In the request wife stated: "Case is Pending in Ventura Currently, but may transfer/consolidate to be heard here in Orange County with our Pending Family Law Matter [i.e., petition for legal separation], so a Court Date is Requested." The Orange County court set the matter for a hearing on February 29, 2016.

Wife filed in Ventura County a request for a change of venue to Orange County. Wife declared that she has resided in Orange County "for at least approximately 2 months." Husband filed opposition to wife's request for a change of venue.

Wife's notice of appeal states that she is appealing from orders entered on February 2, 2016. On that date, a hearing was conducted in Ventura County on wife's request for a change of venue. After both parties had argued the matter, the trial court transferred the Ventura County action to Orange County.[1] It dissolved the Ventura County temporary restraining

[1] During appellate oral argument, wife's counsel said that child custody, visitation, and domestic violence issues are

order. In addition, the court adopted as its own order a written recommendation on child custody and visitation prepared by attorney Amy Smith, whose title is "Child Custody Recommending Counselor." The order provides that "[t]he parties shall share joint legal custody of their minor child." It further provides that "[t]he parties shall share physical custody of the minor child in such a way so as to assure the child continuing contact with both parents." The order includes a parenting plan, holiday schedule, and other matters. The court quashed bench warrants for the arrest of four witnesses and ordered wife to pay fees to dissolve the warrants.

Discussion

Wife's "opening brief, authored by her retained trial counsel, reads like an all-out, frontal assault on the rules on appeal . . . ." (*People v. Dougherty* (1982) 138 Cal.App.3d 278, 280.) Wife forfeited her arguments because they lack specific headings. The argument portion of her opening brief is headed "ARGUMENT" without further explanation. This violates the California Rules of Court (Rules), which require that a brief "[s]tate each point under a separate heading or subheading summarizing the point . . . ." (Rule 8.204(a)(1)(B).) "This is not a mere technical requirement; it is 'designed to lighten the labors of the appellate tribunals by requiring the litigants to present their cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass.' [Citations.]" (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) "The

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currently pending before the Los Angeles County, not the Orange County, Superior Court.

failure to head an argument as required by California Rules of Court, rule [8.204(a)(1)(B)] constitutes a waiver. [Citations.]" (*Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830, fn. 4.)

In the "Argument" and "Conclusion" sections of her opening brief, wife claims: (1) "The actions of respondent Superior Court were in excess of jurisdiction, an abuse of discretion, a violation of California's statutory scheme, a violation of California's Constitution, and a violation of the United States Constitution." (2) The February 2, 2016 orders were made "over objection and not before the court, terminating that action without allowing a hearing on same, and then 'rubber stamping' a pre-prepared order [i.e., the custody and visitation order] from a California Attorney [Amy Smith] not involved directly in the action, serving as a court 'mediator.'" "[T]he court did not make its own orders at all." (3) The "attorney [Amy Smith] who wrote the order rubber stamped by the judge did not stand cross examination as due process would require." (4) "The issue of custody/visitation was in Orange County and so could not be addressed elsewhere at that time." (5) "Even if, arguendo, the issue could be addressed elsewhere, it was not remotely before the court on 2/2/16, so that court had no jurisdiction to address issues not before it." (6) The court's custody/visitation order "was made ex-parte." "Custody cannot be addressed ex-parte, as we all know, without making 1 of 2 showings to the court, neither of which was alleged here by either side, so that would have been a legal impossibility for the court to address those issues as well." (7) "Even if, arguendo, the Ventura Court has subject matter jurisdiction over custody and visitation, and, even i[f], arguendo, anyone had given ex-parte notice to request a change in custody

ex-parte, which no one did, the court still would have been without jurisdiction to act on the request." (8) The court erroneously dissolved the domestic violence temporary restraining order. (9) Wife "had right to a Statement of Decision on all issues not decided in her favor." "[A]ny 'Orders' must . . . be void . . . as having not been made with any required Statement of Decision." (10) "The court, sua sponte and not before the court, apparently quashed . . . warrants [for the arrest of four witnesses] and ordered [wife] to pay all fees for quashing the warrants. There's no authority in the law for any of this, or for the court to heap other fees on a Protected Party in a Domestic Violence case."[2]

Even if the above claims had not been forfeited by wife's failure to "[s]tate each point under a separate heading or subheading summarizing the point" (Rule 8.204(a)(1)(B)), they would have been forfeited because they are not supported by meaningful legal analysis with citations to the record and pertinent authority. "'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,

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[2] In her late-filed reply brief, wife contends for the first time that (1) "[c]hild support is essential and required to be assessed and addressed by law," (2) "the court below . . . acted to extinguish this right," and (3) "[t]he only way to keep that issue [child support] alive retroactive is with a reversal." The contention is forfeited because it was not raised in wife's opening brief and is not supported by meaningful legal and factual analysis. (*Holmes v. Petrovich Development Co.* (2011) 191 Cal.App.4th 1047, 1074; *In re S.C.*, *supra*, 138 Cal.App.4th at p. 408.)

and error must be affirmatively shown. . . .'" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.]" (*In re S.C.*, *supra*, 138 Cal.App.4th at p. 408.) "When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary. [Citations.]" (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699 -700.) "Hence, conclusory claims of error will fail." (*In re S.C.*, *supra*, at p. 408.)

In her opening brief wife cites only a single case authority - *Gruendl v. Oewel Partnership, Inc.* (1997) 55 Cal.App.4th 654. The case is cited without discussion in support of her claim that "[a]ny orders must . . . be void . . . as having not been made with any required Statement of Decision." Wife fails to explain how *Gruendl* supports her claim. *Gruendl* concluded that the trial court had committed reversible error in refusing to issue a statement of decision after granting respondent's motion to amend a judgment to add appellant as a defendant and judgment debtor on an alter ego theory. We perceive no reason why *Gruendl* required the trial court here to issue a statement of decision.

A statement of decision is required only "upon the trial of a question of fact by the court." (Code Civ. Proc., § 632; see also Fam. Code, § 3022.3 ["Upon the trial of a question of fact in a proceeding to determine the custody of a minor child, the court shall, upon the request of either party, issue a statement of the decision explaining the factual and legal basis for its decision pursuant to Section 632 of the Code of Civil Procedure"].) Wife

provides no legal analysis why the proceedings that occurred on February 2, 2016, constitute the trial of questions of fact.

In any event, wife's written request for a statement of decision is deficient. The request was filed approximately two months before the February 2, 2016 hearing. Wife requested "a Statement of Decision as to any and all matters before this honorable court in this matter, or any related matter, at any time, as to any decision not made favorably to her or her minor children." Code of Civil Procedure "[s]ection 632 is unmistakably clear that 'The request for a statement of decision *shall* specify those controverted issues as to which the party is requesting a statement of decision.' (Italics added.) In this case, *no* party specified *any* controverted issues to be addressed by the statement of decision. . . . [A] general, nonspecific request for a statement of decision [as made here by wife] does not operate to compel a statement of decision as to all material, controverted issues." (*City of Coachella v. Riverside County Airport Land Use Com.* (1989) 210 Cal.App.3d 1277, 1292-1293, fn. omitted; see also *Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 979, fn. 2 [party's "request for a statement of decision addressing the claims alleged in the complaint and the cross-complaint, without specifying any particular issue," failed to comply with section 632].)

Wife's opening brief violates appellate rules not just because of a lack of meaningful legal analysis with citations to authority, but also because of a lack of citations to the record. If "'a party fails to support an argument with the necessary citations to the record, . . . the argument [will be] deemed to have been waived. [Citation.]' [Citations.]" (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) Wife refers to a reporter's transcript of

the hearing conducted on February 2, 2016. But the transcript is not part of the record. On January 30, 2017, wife's counsel electronically submitted a motion to augment the record to include the transcript. The next day, a clerk of this court emailed counsel that the motion had been rejected for failure to comply with Rule 8.54. The clerk asked counsel to "re-file the motion to augment to comply with Rule 8.54." We know that counsel received the clerk's email because he replied to it. Counsel failed to timely resubmit the motion to augment the record.[3]

An opening brief must "[p]rovide a summary of the significant facts limited to matters in the record." (Rule 8.204(a)(2)(C).) "'Factual matters that are not part of the appellate record will not be considered on appeal and such matters should not be referred to in the briefs.' [Citations.]" (*Citizens Opposing a Dangerous Environment v. County of Kern* (2014) 228 Cal.App.4th 360, 366-367, fn. 8; see also *Banning v. Newdow* (2004) 119 Cal.App.4th 438, 453, fn. 6 ["We disregard factual assertions . . . attribute[d] to sources outside the record"].) Accordingly, we disregard wife's references to the reporter's transcript of the February 2, 2016 hearing.

Even if the reporter's transcript had been included in the record, wife's references to the transcript would not have carried her burden of affirmatively showing error. Each time

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[3] On June 30, 2017, 12 days before oral argument, wife electronically filed a request to augment the record with the reporter's transcript of proceedings conducted on December 9, 2015, and February 2, 2016. The request is denied because of the late filing without justification for the delay. In any event, as we explain below, granting the motion to augment would not assist wife.

wife refers to the transcript, she cites pages 1-21 of the "Motion to Augment." Such block citations are improper. A brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Rule 8.204(a)(1)(C).) "Briefs which do not meet this requirement may be stricken. [Citation.] As [a] practical matter, the appellate court is unable to adequately evaluate *which facts* the parties believe support their position when nothing more than a block page reference is offered in the briefs—e.g. [CT 1-20] . . . ." (*Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205.)

In the argument section of her opening brief, wife quotes from the reporter's transcript with the usual citation to pages 1-21 of the Motion to Augment. The quotations show that (1) wife's counsel objected to the court's consideration of the custody and visitation issues, and (2) counsel said he thought it was "fine" if the court transferred the case to Orange County and vacated the Ventura County temporary restraining order.[4] If the

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[4] According to wife's opening brief, the trial court said to her counsel: "[Y]ou can dismiss this case and refile it in Orange County. That's the first choice. Number two, we can proceed with the hearing on Friday [on wife's request filed in Ventura County for a domestic violence restraining order and orders concerning custody and visitation] . . . . Or [number three] I can transfer the case to Orange County but not issue any temporary order; in other words, *vacate the temporary order*. So what is it you want me to do, [counsel]?" (Italics added.) Counsel replied: "I think one or three are fine. I'm not sure of the difference between either of them." Later, when the court said it was vacating the hearing set for Friday, counsel protested: "Let's do it Friday. You don't have any jurisdiction. Those issues are not before the Court . . . . [I]f you have to, let's do the hearing Friday

quotations had been properly supported by citations to the exact page of the reporter's transcript where the quotations appear, the absence of meaningful legal analysis with citations to pertinent authority would still have been fatal to wife's appeal. "An appellate court is not required to examine undeveloped claims, nor to make arguments for parties. [Citation.]" (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106.) "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations.]" (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.) Moreover, by acquiescing in the vacating of the Ventura County temporary restraining order, wife forfeited her contention that the trial court had erroneously dissolved the order. [5] (See *In re S.C.*, *supra*, 138 Cal.App.4th at p. 406.)

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or let me dismiss the case." The court replied, "I just transferred it [to Orange County]. Thank you."

[5] We need not consider husband's claim that wife's appeal is moot because of events that occurred after the February 2, 2016 orders. Husband's claim is not supported by references to the record, and he has not asked us to take judicial notice of the alleged facts underlying his claim. (See Evid. Code, § 459.)

Disposition

The orders appealed from are affirmed. Husband shall recover his costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Michele M. Castillo, Judge

Superior Court County of Ventura

Law Offices of Ernest Calhoon and Ernest Calhoon, for Plaintiff and Appellant.

Gary E. Thomas II in propria persona, Defendant and Respondent.