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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of RENEE
BAZAR and ALAN SHORR.

B275808

(Los Angeles County
Super. Ct. No. BD458883)

RENEE M. BAZAR,

Appellant,

v.

ALAN SHORR,

Respondent.

APPEALS from orders of the Superior Court of Los Angeles
County, Colin Leis, Judge. Reversed and remanded.

Renee M. Bazar, in pro. per., for Appellant.

No appearance for Respondent.

Renee M. Bazar, representing herself, appeals from four postjudgment family court orders arising from the request of her former husband, Alan Shorr, for an order declaring her a vexatious litigant pursuant to Code of Civil Procedure section 391.7, subdivision (a): two orders denying requests for attorney fees and costs to defend against Shorr's motion; an order denying her request to compel further discovery relating to Shorr's ability to pay her attorney fees and costs; and an order awarding her \$2,500 in attorney fees and costs, rather than \$42,341 as requested, after Shorr withdrew his motion to declare her a vexatious litigant. In light of the family court's ultimate finding that the issue to be decided was the amount necessary and reasonable to defend against the motion, not Shorr's greater ability to pay, Bazar's challenges to the first three orders are now moot. Nonetheless, it was an abuse of discretion for the court to exclude her counsel's fees in connection with those matters in assessing what was necessary and reasonable to defend against Shorr's motion. Accordingly, we reverse the order awarding \$2,500 in fees and costs and remand for a new hearing on Bazar's third request for order.¹

¹ Shorr, who triggered these proceedings by requesting an order declaring Bazar a vexatious litigant, has not filed a respondent's brief. Accordingly, we decide the case based on the record (an Appellant's Appendix), Bazar's opening brief and her oral argument. (See Cal. Rules of Court, rule 8.220(a)(2).)

FACTUAL AND PROCEDURAL BACKGROUND

1. *Prior Proceedings*

In January 2007 Bazar petitioned for dissolution of her nearly 19-year marriage to Shorr. On June 3, 2008 the superior court entered a judgment of dissolution, status only, pursuant to Family Code section 2337, subdivision (a).² On January 5, 2010 the parties entered into a marital settlement agreement awarding Bazar spousal support of \$5,500 per month.

The case was set for trial on Shorr's claim that Bazar had breached her fiduciary duty to the community by improperly refusing to consent to the sale of Shorr's investment management company and on other remaining property issues. Bazar failed to appear on the date set for trial and did not notify the court of the reason for her absence. Shorr proceeded with his case. Based on the evidence presented, the court awarded Shorr \$600,000 in damages arising from Bazar's breach of fiduciary duty and ordered her to reimburse Shorr for certain expenditures. Judgment on the reserved issues was entered on February 7, 2011. Bazar's motion to vacate the judgment was denied in April 2011. We affirmed the judgment in a nonpublished opinion. (*In re Marriage of Shorr* (Mar. 20, 2013, B232176).)

On October 14, 2011 Shorr requested an order to show cause seeking to modify his spousal support obligation to \$1,881 per month based on his reduced income. On January 26, 2012 he filed a supplemental declaration, including a revised income and expense declaration, seeking reduction of his monthly spousal support obligation to \$642. The hearing proceeded before a new

² Statutory references are to this code unless otherwise stated.

family law judge, who agreed with Shorr's counsel to treat the request as a pendente lite, temporary support proceeding and granted the request for modification retroactive to October 15, 2011. Bazar appealed on the ground Shorr had sought modification of a long-term spousal support agreement and the court had improperly failed to consider the factors set forth in section 4320. We agreed and reversed the order, directing the superior court to enter a new order based on the factors set forth in section 4320. (*In re Marriage of Bazar and Shorr* (June 17, 2013, B239592) [nonpub].)

In September 2013 and again in January 2014 Bazar filed new challenges in the family court to its February 7, 2011 judgment.³ Bazar filed separate appeals from the denial of those two requests to vacate judgment, as well as from orders relating to the modification of the spousal support award and Bazar's request for an award of attorney fees. We consolidated all of Bazar's appeals and resolved them in Shorr's favor. However, we denied Shorr's request to sanction Bazar for filing a frivolous appeal. (*In re Marriage of Bazar and Shorr* (March 29, 2016, B256588) [nonpub].)

³ While these matters were pending, at the urging of the family court Bazar and Shorr settled a number of issues relating to payment of Bazar's attorney and expert fees, as well as spousal support. Commencing April 1, 2014 Shorr agreed to pay monthly spousal support of \$3,175, a sum that was nonmodifiable through April 1, 2017.

2. *Shorr's Vexatious Litigant Motion and Bazar's Responsive Requests for Orders*

a. *The first request for attorney fees*

On July 18, 2015 Shorr filed a request for order declaring Bazar a vexatious litigant pursuant to Code of Civil Procedure section 391.7, subdivision (a), which would prohibit her from filing any new litigation in a California court as a self-represented litigant without first obtaining leave of the presiding judge or justice. The request was premised on various orders and appellate decisions adverse to Bazar in the parties' ongoing family law case.⁴

Bazar retained Karen Phillips Donahoe as counsel on a limited scope basis to assist her in defending against Shorr's motion. On August 3, 2015 Donahoe filed a request for an order requiring Shorr to pay \$32,000 in attorney fees for Bazar's representation, including discovery, in response to Shorr's motion. Bazar's declaration in support of the request stated her income was limited to the \$3,150 per month she received in spousal support and she had more than \$60,000 in credit card debt and no savings or other assets.⁵

⁴ Although Shorr's request for order is not part of the record on appeal, Shorr described the basis for his request in declarations accompanying papers filed in opposition to Bazar's several fee requests.

⁵ Bazar also filed a Judicial Council form FL-150, Income and Expense Declaration, that basically tracked her declaration, but reported, in addition to her receipt of spousal support from Shorr, she received monthly dividends and interest of \$36 and had cash, checking or savings account balances of \$221.

In his response to Bazar's request for attorney fees, Shorr asserted he did not have the ability to pay Bazar's attorney fees and argued the amount of fees requested was unreasonable. Bazar's reply papers described Donahoe's efforts to obtain financial information from Shorr through formal discovery and included an analysis of the financial information that had been provided, arguing that it indicated he could pay all of Bazar's attorney fees. A supplemental reply stated a motion to compel further discovery had been filed and asked the court to continue the request for attorney fees until that motion had been decided and to delay hearing Shorr's vexatious litigant motion until the attorney fees issue had been resolved.

At the hearing on December 10, 2015 the court denied Bazar's request to continue the application for attorney fees until the discovery dispute had been resolved, but continued the hearing on the vexatious litigant motion to a date after a hearing on Bazar's request for an order compelling further discovery. The court then denied the request for an award of attorney fees because Bazar's initial papers failed to include Judicial Council forms FL-158 (supporting declaration for attorney's fees and costs attachment) and FL-157 (spousal support declaration attachment) or a declaration with comparable information about Shorr's financial situation from which the court could evaluate the various factors identified in sections 2030 and 4320 (for example, whether there is a disparity between the parties' ability to access funds to retain counsel) to assess whether an award of fees was appropriate. The court explained that, in its view, presenting such information in reply papers was not adequate because Shorr had no opportunity to respond, rejecting Donahoe's position that it was impossible to include information about

Shorr's current financial situation without discovery and no discovery was permitted before the request for an order had been filed. The court suggested Bazar file a new request for fees with the information developed through discovery.⁶

b. *The request for an order compelling further discovery*

Bazar through her counsel served a demand for production of documents on Shorr on August 10, 2015, the week after filing her request for order regarding attorney fees. Donahoe agreed to extend the time for Shorr "to provide responses and documents" to September 28, 2015. Shorr mailed his responses to Bazar's counsel on September 28, 2015; they were received on October 5, 2015. Shorr's signature on the verification page was computer-generated. A second copy of the verification page stated, on the line for Shorr's signature, "Facsimile Signature Pursuant to Rule 2.305(d), Cal. Rules of Court."

On October 20, 2015 Donahoe wrote Shorr's counsel a 44-page meet-and-confer letter. On November 12, 2015, after further exchange of correspondence between the parties and 45 days from the September 28, 2015 due date for Shorr's response to the document demand, Bazar filed a request for order compelling further responses to the document demand. However, because of an error at Donahoe's office, the service copy of the document was mailed to the law firm representing Shorr using the address of the Los Angeles Superior Court. The court forwarded the document, together with the original misaddressed

⁶ Although the court ruled at the December 10, 2015 hearing, its findings and order after hearing were not filed until April 8, 2016.

envelope, to Shorr's counsel on November 20, 2015; it was not received until November 23, 2015.

In his opposition to the request for an order compelling further discovery, Shorr argued the request was untimely because it had not been served within 45 days of the discovery due date as required by Code of Civil Procedure section 2031.310, subdivision (c). In her reply papers Bazar contended the 45-day rule did not apply because Shorr had not properly verified the responses, as required by Code of Civil Procedure section 2031.250, subdivision (a), and the unsworn responses were the equivalent of no response at all. In addition, Bazar argued Shorr's responses had not been "provided" on September 28, 2015, as agreed, and were therefore untimely.

After hearing argument on February 24, 2016 the court denied the motion to compel without considering the merits of the request. The court pointed out that Bazar had not objected to the adequacy of the verification in her lengthy meet-and-confer letter and also found that an electronic signature was adequate for purposes of the Civil Discovery Act. Accordingly, Bazar's request for an order was barred because it did not satisfy the 45-day notice requirement. In its findings and order filed on August 11, 2016, the court also ruled the word "provide" in counsel's correspondence regarding the extension of time was ambiguous and concluded Shorr had complied with the Code of Civil Procedure by serving his discovery responses by mail on September 28, 2015.

c. The second request for attorney fees

Donahoe filed Bazar's second postjudgment request for attorney fees and costs, which contained the evidence previously submitted but not considered in connection with the initial

postjudgment fee request, on February 8, 2016. Bazar's declaration addressed the elements identified in section 4320 for consideration by the court in making a fee award under section 2030. Donahoe's declaration described the legal services already provided as a result of Shorr's request for an order declaring Bazar a vexatious litigant (\$25,000 in attorney fees and \$1,656 in costs) and estimated the hours and costs for future services that would be necessary.

In his responding papers Shorr objected that Bazar's form FL-150, Income and Expense Declaration, contained blanks in violation of rule 5.9 of the Superior Court of Los Angeles County, Local Rules (local rule 5.9).⁷ In reply papers Donahoe stated as of February 29, 2016 Bazar's outstanding attorney fees were \$33,229.62. Bazar submitted a declaration explaining there was nothing to disclose at each place there was a blank space on her Income and Expense Declaration (that is, that the blank space was the equivalent of a zero).⁸

At the outset of the March 16, 2016 hearing on the second request for attorney fees, the court stated, "The issue of respondent's ability to pay this amount of fees is not really being disputed. It's rather what is necessary and reasonable." After reviewing the record and hearing an initial round of argument,

⁷ Local rule 5.9 provides, "The parties must completely fill in all blanks on financial declarations (including the Income and Expense Declaration), as required by California Rules of Court, rule 5.92."

⁸ The form FL-150 filed by Bazar with her first request for order for attorney fees, like the FL-150 filed with her second request, contained numerous blank lines. Neither the court nor Shorr objected to that form as violating local rule 5.9.

the court indicated it would order Shorr to pay \$15,000 to Bazar as a necessary and reasonable amount in connection with her defense to the motion to have her declared a vexatious litigant. The court then turned to the contention Bazar's form FL-150 was deficient. Counsel for Shorr focused on the blank lines for assets, asserted Bazar had undisclosed assets, questioned how Bazar was meeting her monthly living expenses if she had no assets and no income other than Shorr's spousal support payments, and indicated there were various inconsistencies between this form FL-150 and Bazar's previous Income and Expense Declarations. The court changed its tentative and denied the request for attorney fees based on the insufficiency of the Income and Expense Declaration.⁹

d. *The third request for attorney fees*

The week after the court denied the second request for attorney fees Bazar filed her third request for fees and costs. Donohoe's declaration stated Bazar had incurred \$33,230 in attorney fees and \$1,874 in costs and projected an additional \$16,500 in fees and costs. In his April 11, 2016 response Shorr revealed he had withdrawn his request for a vexatious litigant order, explaining there was now no basis for awarding prospective fees. Shorr argued the fees claimed to date were unreasonable because they had been incurred in connection with defective motions that had been denied by the court. He stated he had offered to pay \$2,500 to Donohoe in connection with Bazar's opposition to the vexatious litigant request, which he contended was about half the reasonable cost of an opposition. In

⁹ The findings and order denying the second request were not filed until August 11, 2016.

her reply Bazar requested a total of \$42,341 for fees and costs incurred as of March 31, 2016.

At the hearing on April 22, 2016 the court again indicated Shorr's greater ability to pay for attorney fees was not in dispute.¹⁰ However, the court awarded Bazar only \$2,500 in fees and costs, explaining that amount was appropriate because "the vexatious litigant matter was largely a matter of statutory interpretation, applying principally court records, things of which a court could take judicial notice that there had been certain filings and they had been adversely decided against the petitioner. It was really just a matter of comparing what was in the court file versus the vexatious litigant statute and matching it up. It wasn't going to take \$45,000 to prepare for that." The court found the \$42,000 in fees and costs incurred by Bazar "was not the reasonable, necessary amount. There were—a great deal of those fees were incurred in pursuing fee requests with fatally defective pleadings for which there were hearings and in which the court denied the request. There have been other filings by petitioner that were unsuccessful." The court's findings and order after hearing were filed on August 11, 2016.

Bazar filed timely notices of appeal from all four orders.

¹⁰ The court observed, "There is no evidence that petitioner is working. She's 67 years old, in poor health. There is no contrary evidence that she's not in poor health, suffering from various ailments that interfere with her ability to work. She's in Texas where she can't practice law because she went to a non-ABA accredited law school. . . . She doesn't have any income other than spousal support. And, whereas, respondent is earning income."

DISCUSSION

1. *The Family Court Erred in Denying Bazar's First Request for Attorney Fees Without Addressing the Merits*

Because the family court granted Bazar's third request for an award of attorney fees in connection with her response to Shorr's effort to declare her a vexatious litigant, Bazar's appeals from the denial of her first and second requests on procedural grounds are moot. We cannot provide any effective relief. (See *Lockaway Storage v. County of Alameda* (2013) 216 Cal.App.4th 161, 175 ["an appeal is moot if "the occurrence of events renders it impossible for the appellate court to grant appellant any effective relief""]; *Simi Corp. v. Garamendi* (2003) 109 Cal.App.4th 1496, 1503 ["[a] case becomes moot when a court ruling can have no practical impact or cannot provide the parties with effective relief"].) Nonetheless, we review the court's rulings because the court based its reduction in the amount of fees ultimately awarded in substantial part on its evaluation of the "fatally defective pleadings" prepared by Donahue.

Bazar's first request for attorney fees following the filing of Shorr's request for order declaring her a vexatious litigant included her Income and Expense Declaration (form FL-150) and a declaration from Bazar that described her need for the award, as well as a paragraph discussing her understanding of Shorr's ability to pay based on prior discovery in the dissolution proceedings. The declaration stated, "If necessary, I will conduct discovery to determine Respondent's current lifestyle, savings, and gross cash flow." Bazar also filed a declaration from Donahue, explaining the basis for her request for \$32,500, and a memorandum of points and authorities in support of the fee request.

Bazar did not attach the optional Judicial Council form FL-158, Supporting Declaration for Attorney's Fees and Costs Attachment with her request for order.¹¹ Item 6 on form FL-158 states, "If you are or were married to, or in a domestic partnership with, the person you are seeking fees from, the court must consider the factors in Family Code section 4320 [circumstances to be considered in ordering spousal support] in determining whether it is just and reasonable under the relative circumstances to award attorney's fees and costs. Complete and attach *Spousal or Partner Support Declaration Attachment* (form FL-157) or a comparable declaration to provide the court with information about the factors described in section 4320." Bazar did not attach a form FL-157 with her request for order.

As discussed, the family court denied Bazar's request for attorney fees without addressing the merits because her initial papers failed to include forms FL-157 and FL-158 or a declaration that provided the evidence requested on those forms. The court stated the missing information was necessary for it to determine whether an award of fees would be appropriate, particularly evidence concerning the potential source for Shorr's payment of Bazar's fees. The court refused to consider whether those deficiencies were cured by evidence provided in Bazar's reply papers, explaining it was Bazar's burden to support her request in the first instance and pointing out that Shorr had no opportunity to respond to material in her reply papers.

The family court erred. Section 2030, subdivision (a)(2), authorizes the family court, when one of the parties lacks the

¹¹ Form FL-158 is designed for use by either the party seeking, or the party opposing, a request for attorney fees.

financial ability to hire an attorney, to “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.” (See also § 2032, subd. (b) “[i]n 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”].) This statutory directive to ensure parity in legal representation through a pendente lite attorney fee order applies to postjudgment matters, as well as to the proceedings leading up to the initial trial of the family law case. (*Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238, 251.)

We acknowledge it is preferable from the court’s perspective to have all necessary information relating to the requesting party’s needs and the responding party’s ability to pay the other side’s attorney fees in the moving papers. But as Bazar’s counsel emphasized at the hearing on the first request for fees, the court’s reasoning creates a Catch-22 for a self-represented litigant in family court where, as here, that party must respond under a deadline to a request for order filed by his or her former spouse: The self-represented party cannot request an order for pendente lite attorney fees without first conducting discovery about his or her former spouse’s current financial situation; but without first filing a request for order for fees, discovery regarding the former spouse’s financial situation is not authorized. Moreover, without an order awarding fees, the self-represented litigant generally cannot afford an attorney to conduct discovery, to respond to the request that triggered the

new proceedings or even to seek to continue the substantive matters until the fee issues, as well as any discovery disputes, have been resolved.

The court's concern about the respondent's inability to contest evidence first advanced in reply papers is easily resolved by permitting a supplemental briefing, continuing the hearing if required. In this case, however, those steps appeared unnecessary. Shorr provided information about his current financial situation in his response to Bazar's request for order for attorney fees, contending he lacked the ability to pay her fees. He did not argue the lack of information in Bazar's initial papers prevented him from responding and did not object to the evidence submitted by Bazar in her reply and supplemental reply papers. The court should have proceeded to rule on the request for fees on the merits.

2. The Appeal from the Order Denying Bazar's Discovery Motion Is Moot

As discussed, at the hearings on Bazar's second and third requests for an order for attorney fees, the family court determined Shorr had the ability to pay the amount of fees requested by Bazar. The issue to be resolved, other than the procedural point raised by Shorr in response to the second request, was the amount of a reasonable fee order. The additional financial documents sought by Bazar in her November 12, 2015 request for order compelling further responses to discovery were not needed for that determination. Accordingly, we need not decide whether Shorr properly verified his initial response through an electronic signature or, if not, whether Bazar forfeited that issue by not raising it in her meet-and-confer letter. To the extent information concerning Shorr's

current financial circumstances may be necessary on remand, Bazar must propound new discovery requests; and Shorr must respond.

3. *The Family Court Abused Its Discretion in Denying Bazar's Second Request for Attorney Fees Without Addressing the Merits*

After tentatively deciding to order Shorr to pay \$15,000 for Bazar's attorney fees to defend against Shorr's effort to declare Bazar a vexatious litigant, the court reversed itself and denied Bazar's second request for order for attorney fees because her Income and Expense Declaration was not in compliance with local rule 5.9, which requires the parties to "completely fill in all blanks on financial declarations." The court found Bazar's declaration under penalty of perjury that the blanks on the Income and Expense Declaration were the equivalent of zeroes was insufficient to cure the defect. The court's refusal to rule on the merits of Bazar's request based solely on a violation of local rule 5.9, imposing what was akin to a terminating sanction, was an abuse of discretion. (See *Denham v. Superior Court* (1970) 2 Cal.3d 557, 556 ["[d]iscretion is abused whenever in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered"]; *Hernandez v. Superior Court* (2004) 115 Cal.App.4th 1242, 1246 [the term "judicial discretion" "implies the absence of arbitrary determination, capricious disposition or whimsical thinking"].)

California Rules of Court, rules 5.92(b)(2) and 5.427(b)(1)(C) require a party seeking an order for attorney fees and costs to complete and file a "current" form FL-150, Income and Expense Declaration. Rules 5.260(a)(3) and 5.427(d)(1) define "current" in this context to mean the form has been completed within the past three months providing no facts have

changed and specify that the form “must be sufficiently completed to allow the court to make an order.”

Bazar’s Income and Expense Declaration appears to have satisfied the “sufficiently completed” requirement of the California Rules of Court. As evidenced by its tentative ruling to order Shorr to pay \$15,000 in attorney fees, the blanks, rather than zeroes, on Bazar’s form FL-150 did not prevent the court from evaluating the parties’ relative access to funds or Bazar’s need for the award to enable her to have sufficient financial resources to adequately respond to Shorr’s vexatious litigant motion. Indeed, although Shorr objected to the blanks on Bazar’s Income and Expense Declaration, this purported defect did not prevent him from arguing Bazar was hiding income and assets.

We are not persuaded the additional requirement imposed by local rule 5.9 that the parties fill in all blanks on the Income and Expense Declaration, while not specified in the Rules of Court, is inconsistent with them and therefore invalid, as Bazar argues. (See *Tiffany v. State Farm Mut. Auto. Ins. Co.* (1993) 14 Cal.App.4th 1763, 1768 “[a] local rule which is inconsistent with the California Rules of Court cannot be enforced”.) The local rule supplements, rather than contradicts, the provisions of California Rules of Court, rules 5.92, 5.260 and 5.427.¹² However, we agree with Bazar that denial of her request for

¹² Bazar points out in her appellant’s brief that the instructions for form FL-150 in the self-help section of the Judicial Council’s website indicate the self-represented litigant should “fill in only those lines that apply to you, leave the rest blank or write zero.” The inconsistency between this direction and local rule 5.9 is troubling and should be addressed.

order for attorney fees based on violation of that local rule, without prior notice, was an unauthorized sanction.

Rule 5.1(b) of the Local Rules of the Superior Court of Los Angeles County provides, “Sanctions. For any noncompliance with these rules, the court may set an order to show cause why sanctions or other penalties should not be imposed pursuant to Code of Civil Procedure section 575.2.” Code of Civil Procedure section 575.2, subdivision (a), authorizes the superior court to provide in its local rules for imposition of sanction for failure to comply with any of their requirements. However, the final sentence of that provision mandates that “[n]o penalty may be imposed under this section without prior notice to, and an opportunity to be heard by, the party against whom the penalty is sought to be imposed.”¹³ By effectively striking Bazar’s Income

¹³ Code of Civil Procedure section 575.2 provides in full,

“(a) Local rules promulgated pursuant to Section 575.1 may provide that if any counsel, a party represented by counsel, or a party if in pro se, fails to comply with any of the requirements thereof, the court on motion of a party or on its own motion may strike out all or any part of any pleading of that party, or, dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party, or impose other penalties of a lesser nature as otherwise provided by law, and may order that party or his or her counsel to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees. No penalty may be imposed under this section without prior notice to, and an opportunity to be heard by, the party against whom the penalty is sought to be imposed.

“(b) It is the intent of the Legislature that if a failure to comply with these rules is the responsibility of counsel and not of

and Expense Declaration for failing to comply with local rule 5.9, the family court violated both local rule 5.1, which requires the court to set an order to show cause before imposing a sanction, and the notice requirement of Code of Civil Procedure section 575.2, subdivision (a).

In addition, although striking a defective pleading or imposing a terminating sanction is an authorized penalty for violating local rules, under the circumstances here—where neither the court nor the adverse party appeared to have any difficulty understanding that Bazar intended lines left blank to equate to zeros, a fact she confirmed in her reply declaration—use of this sanction, rather than something less severe, was far out of proportion to Bazar’s transgression. (Cf. *Wilson v. Jefferson* (1985) 163 Cal.App.3d 952, 958 [when imposing sanctions, “[t]he penalty should be appropriate to the dereliction”].) The court should have ruled on the request for fees on the merits.

4. *The Family Court Abused Its Discretion by Excluding from Its August 11, 2016 Award All Fees and Costs Incurred by Bazar in Seeking Fees*

Shorr, represented by counsel as he has been throughout these proceedings, advanced three arguments in support of his contention Bazar’s requests for fees and costs were unnecessary or unreasonable. First, Bazar could respond to his request for a vexatious litigant order without retaining her own lawyer. Second, determining whether Bazar was a vexatious litigant did not require an analysis of his financial situation; thus he should not be required to pay any fees incurred by Bazar in discovery.

the party, any penalty shall be imposed on counsel and shall not adversely affect the party’s cause of action or defense thereto.”

Finally, Bazar should not recover fees for the defective requests for orders Donahue had filed.

The family court correctly rejected Shorr's first contention. Through sections 2030 and 2032 the Legislature has mandated, whenever feasible, parity in legal representation in family law proceedings based on the parties' relative circumstances. (See *In re Marriage of Falcone and Fyke* (2012) 203 Cal.App.4th 964, 974.) In ordering Shorr to pay only \$2,500 toward Donahue's fees in this postjudgment proceeding, however, the court improperly adopted Shorr's second and third arguments. Explaining its award, which excluded any fees billed in connection with Donahue's requests for fees or her efforts to discover Shorr's current financial situation, the court stated, "[T]he vexatious litigant matter was largely a matter of statutory interpretation It was really just a matter of comparing what was in the court file versus the vexatious litigant statute and matching it up. It wasn't going to take \$45,000 to prepare for that." The court also noted, "[A] great deal of those fees were incurred in pursuing fee requests with fatally defective pleadings"

The court's limited fee order was an abuse of its discretion. (See *In re Marriage of Winternitz* (2015) 235 Cal.App.4th 644, 650 [fee award under § 2030 reviewed for abuse of discretion].) As Bazar's counsel, Donahue appropriately filed a request for pendente lite fees and costs. Filing the initial request for order for attorney fees was both necessary and reasonable. As discussed, the family court erred in denying that request without reaching its merits. The fees and costs associated with making that request should not have been excluded from the amount the court ultimately ordered Shorr to pay. Similarly, the second fee

request, which was made necessary by the court's error, was improperly denied on procedural grounds. At least some portion of the fees related to that motion, as well as for the successful final motion, should be included in the fee and cost award.

In addition to arguing Bazar should have proceeded without counsel in responding to his request to declare her a vexatious litigant, Shorr argued he could not afford to pay Bazar's counsel fees. Accordingly, while Shorr's current financial situation was not germane to the substance of his vexatious litigant motion, it was an essential aspect of Donahue's fee motions. Discovery to determine Shorr's current income, cash flow and net worth was proper. Even if on remand the court decides to reduce Donahue's fees in a modest amount for her unsuccessful effort to compel further discovery responses, some portion of the fees and costs associated with that discovery must be included in the fee award.

In sum, although we recognize the family court's broad discretion in assessing the reasonableness of need-based fees and costs under sections 2030 and 2032, there was no rational basis for the court to exclude all fees and costs associated with Bazar and Donahue's efforts to require Shorr to pay those fees. The August 11, 2016 order awarding \$2,500 in fees and costs is reversed. The matter is remanded for the family court to redetermine the amount of fees and costs that was necessary and reasonable to defend against Shorr's motion to declare Bazar a vexatious litigant.

DISPOSITION

The appeals from the orders denying Bazar's first and second requests for attorney fees and her request for an order compelling further discovery are dismissed as moot. The August 11, 2016 order awarding \$2,500 in attorney fees and costs is reversed, and the cause remanded for a new hearing to assess, consistent with the views expressed in this opinion, the amount of fees and costs necessary and reasonable to defend against Shorr's motion to declare Bazar a vexatious litigant, including fees and costs related to Bazar's requests for orders awarding attorney fees and costs under section 2030.

Bazar is to recover her costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.