Filed 3/6/18 Marriage of Salas and Farraj CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of EDITH SALAS and AYMAN I. FARRAJ.	B275196 (Los Angeles County Super. Ct. No. BD490528)
EDITH SALAS, Respondent, v. AYMAN I. FARRAJ, Appellant.	

APPEAL from a postjudgment order of the Superior Court of Los Angeles County. Tamara Hall, Judge. Affirmed.

Patrick L. McCrary for Appellant.

No appearance for Respondent.

In our prior opinion in this case we affirmed the award of attorney fees in the nature of sanctions to Edith Salas pursuant to Family Code section 271 but remanded the matter for the family law court to reduce the amount awarded by excluding fees incurred in connection with two aspects of the contested child custody proceedings between Salas and her former husband Ayman Farraj. (*Salas v. Farraj* (Sept. 1, 2015, B252053) [nonpub. opn.] (*Salas I*).) After examining billing statements from Salas's attorneys, the court issued a revised fee order, reducing the original $123,087.50 award to $103,512.50.

On appeal Farraj argues the new fee order is not supported by substantial evidence. Farraj also contends the court abused its discretion by uncritically accepting the representations of Salas's counsel concerning which billing entries to exclude, rather than conducting an independent analysis, as well as by denying his request for a continuance to permit him to more fully prepare his case.[1] We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Salas I*

As set forth in more detail in *Salas I*, Farraj and Salas's marriage of nine years was dissolved on March 9, 2010; Salas

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[1] Farraj also contends the court erred in failing to consider his ability to pay the sanctions award as required by Family Code section 271, subdivision (a). We rejected that argument in *Salas I*, explaining the family law court had set a hearing to allow Farraj to address his ability to pay the sanctions but then properly ordered the full amount of sanctions be paid when Farraj and his counsel announced they would not comply with the court's order to produce an income and expense statement. (*Salas I*, at p. 15.)

was awarded sole legal and physical custody of the couple's two young children. Farraj was limited to four hours per week of professionally monitored visitation. The visitation terms were negotiated in response to the reports of Bruce Harshman, an independent custody evaluator.

On March 7, 2013, over Farraj's objection, the family law court granted Salas's request to move with her fiancé and the children to India. Salas was ordered to bring the children to California once each year for a period of four weeks during their summer vacation; Farraj was to be allowed professionally monitored visitation for four hours per day during that four-week period. In addition, Salas was ordered to fly Farraj to India for one week each year to allow Farraj up to four hours per day of professionally monitored visitation with the children in that country. Farraj was also permitted a weekly telephone conversation with the children.

When Farraj's counsel protested the monitoring request was unworkable and unenforceable, the court urged that Harshman again be retained to assess whether monitoring of Farraj's visits with his children could be terminated and the visits expanded. Farraj's counsel explained Harshman was unacceptable to Farraj, a Palestinian who believed Harshman was biased against him.

At this point Farraj retained Patricia Barry to challenge the Harshman reports and to attempt to overturn the order permitting Salas to move to India. Barry engaged in overly aggressive, scorched-earth tactics in representing her client that were in many instances highly inappropriate and unjustified. Pursuant to Family Code section 271, which provides the court in family law proceedings with authority to order payment of

attorney fees and costs in the nature of a sanction to encourage cooperation and discourage tactics that increase the cost of litigation, the court awarded Salas $123,087.50 in attorney fees incurred as a result of Barry's misconduct.

In *Salas I* we affirmed the family law court's award of fees as sanctions. However, we concluded neither Farraj's request for an order striking the Harshman reports based on his claim of bias nor Barry's litigation tactics during the first two months following Farraj's request to vacate the move-away order were improper. Accordingly, we remanded the matter "to allow the recalculation of attorney fees to deduct the fees associated with the motion to strike the Harshman reports and responding to the motion to vacate the move-away order incurred prior to June 6, 2013." (*Salas I*, at p. 16.)

2. *The Order Modifying the Fee Award*

On remand Salas submitted unredacted copies of billing statements from April 2013 through June 2013—the time period relevant to our direction to the family law court to recalculate recoverable attorney fees—highlighting all entries related to the motion to strike the Harshman reports and to vacate the move-away order. Salas proposed reductions of $6,645 and $7,162.50 respectively, for a total reduced fee award of $109,280. At a May 25, 2016 hearing on the scope of the reductions, Salas's counsel conceded certain billing entries might be vague, as argued by Farraj, because the various custody proceedings involved similar issues that could not easily be differentiated. She agreed to reduce the award by an additional $5,767.50. The court agreed with the proposed reductions and issued a new fee award of $103,512.50.

DISCUSSION

1. *Standard of Review*

"We review an award of attorney fees and costs under [Family Code] section 271 for abuse of discretion. [Citation.] 'Accordingly, we will overturn such an order only if, 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. [Citations.]' [Citation.] We review any factual findings made in connection with the award under the substantial evidence standard." (*In re Marriage of Fong* (2011) 193 Cal.App.4th 278, 291; accord, *In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1225.)

2. *The Family Law Court's Fee Order Is Supported by Substantial Evidence*

The evidentiary requirements to support an attorney fee award are not strict. Indeed, in appropriate circumstances it is not even necessary for a party to submit counsel's billing statements: "Declarations of counsel setting forth the reasonable hourly rate, the number of hours worked and the tasks performed are sufficient." (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1324; see *Mardirossian & Associates v. Ersoff* (2007) 153 Cal.App.4th 257, 269.) b

Although Farraj challenges the adequacy of the documentation submitted in support of Salas's proposed reductions, Salas's counsel provided the court detailed, unredacted copies of their billing records for the period at issue. Those records were more than sufficient to document the time charged and tasks performed by Salas's counsel.

Notwithstanding the detail of the records, Farraj accuses Salas's counsel of improper block billing. Block billing, bundling multiple tasks into a single time entry, can make it difficult to assess the amount of time spent on a particular task when apportionment of fees is appropriate. (See *Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 689; see also *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1010-1011 ["[t]rial courts retain discretion to penalize block billing when the practice prevents them from discerning which tasks are compensable and which are not"].) Contrary to Farraj's claim, however, there was no block billing in Salas's counsel's submissions. To be sure, the records included some "vague and unclear" billing entries, which Farraj terms "effectively block billings."[2] That creative labelling aside, the two problems are distinct. Unclear billing entries may be unhelpful to a court and may even justify a reduction in a fee award. But lack of clarity is not block billing, "effectively" or otherwise.

Our trial courts are entrusted with broad discretion to evaluate billing statements, including those that include vague entries, because they are "in the best position to assess the value of the professional services rendered in their courts." (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321.) Formulas used in other jurisdictions to restrain the use of improper or unclear billing practices are not germane to our evaluation of the nature of the evidence submitted in support of the fee award or the family law court's exercise of discretion in this

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[2] Farraj's additional complaint that the billing records had "numerous redactions" is entirely misplaced. Salas's counsel submitted unredacted billing entries that were then manually highlighted for the court's easy reference.

case.[3] Here, most of Salas's counsel's billing records contained fairly specific entries that designated the task performed and could be readily matched to specific pleadings or hearings.[4] Nonetheless, in response to Farraj's objections that a number of purportedly vague entries could not be identified as unrelated to work performed on the Harshman reports and the move-away order, Salas's counsel agreed to reduce the revised request for fees by an additional $5,767.50. The court evaluated Farraj's concerns and Salas's counsel's response and accepted as correct that proposed resolution of the issue based on its review of the billing records. The evidence amply supported the reductions ordered.

3. *The Court Properly Exercised Its Discretion in Ruling on the Mandated Reductions*

Citing the rule that "failure to exercise discretion is an abuse of discretion" (*Dickson, Carlson & Campillo v. Pole* (2000) 83 Cal.App.4th 436, 449), Farraj contends the family law court failed to exercise its discretion, simply accepting Salas's counsel's

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[3] We decline Farraj's invitation to adopt the practice of some federal courts of reducing billings by a percentage if entries are not readily susceptible to apportionment. (See, e.g., *Welch v. Metropolitan Life Ins. Co.* (9th Cir. 2007) 480 F.3d 942, 948 [acknowledging authority of courts to reduce block-billed time entries by percentage in setting fee award but reversing because of excessive reductions]; *In re Samuel R. Pierce, Jr.* (D.C. Cir. 1999) 190 F.3d 586, 593-594 [general practice to reduce vaguely worded time entries by 10 percent].)

[4] For example, "4/22/13: Review file (including Harshman deposition transcript, Harshman reports, and court orders) in response to ex parte notice"; "5/08/13: Legal Research re Code of Civil Procedure § 1005"; "05/23/13: Final Review of Opposition."

proposed reductions at face value. In general, a trial court has failed to exercise its discretion when it does not consider and weigh all the evidence and arguments and make a reasoned choice based on relevant legal principles. (See *People v. Wallace* (1963) 59 Cal.2d 548, 553 ["[T]he trial judge refused to exercise his discretion in the erroneous belief that he had none. Under such circumstances the judgment must be reversed, and the cause remanded not for a new trial, but in order that the trial court may have the opportunity to exercise its discretion."]; *Gardner v. Superior Court* (1986) 182 Cal.App.3d 335, 339 ["[i]t is the judge's responsibility to consider and weigh all the evidence and argument and make a reasoned choice"].)

Farraj's argument fails to distinguish the court's adoption of one party's position without any independent analysis from the court's agreement with a party's interpretation of the evidence and governing law after its own review. Here, the family law court weighed the evidence, heard argument from both sides at the recalculation hearing and came to the same conclusion as Salas's attorney regarding vagueness, finding some billing entries were vague, but most were not. The court then reduced the award by $5,767.50 for vague or ambiguous billing. Nothing in the record supports Farraj's contention that in entering the new fee award the court failed to exercise its discretion.

4. *The Trial Court Did Not Abuse Its Discretion by Denying Farraj's Request for a Continuance*

We review a court's decision denying a request for continuance under the deferential abuse of discretion standard. (*Dailey v. Sears, Roebuck & Co.* (2013) 214 Cal.App.4th 974, 1004; *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1126; *Foster v. Civil Service Com.* (1983)

142 Cal.App.3d 444, 448.) Under this standard the reviewing court will "only interfere with [the trial court's] ruling if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court's action, no judge reasonably could have reached the challenged result." (*Estate of Billings* (1991) 228 Cal.App.3d 426, 430.)

"Continuances are granted only on an affirmative showing of good cause requiring a continuance. (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 823; *In re Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1169.) "In ruling on a motion or application for continuance, the court must consider all the facts and circumstances that are relevant to the determination." (Cal. Rules of Court, rule 3.1332(d).) In evaluating the court's ruling, relevant factors include the reasons presented to the trial court for the request, whether a continuance was necessary to allow the parties to present relevant evidence and whether the refusal of a continuance had the practical effect of denying a fair hearing. (See *Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389, 1395; *In re Marriage of Hoffmeister*, at p. 1169.) As appellant, Farraj has the burden of showing an abuse of discretion and prejudice resulting from the denial of his request. (*In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 337.)

Farraj has not shown it was an abuse of discretion to deny a continuance to permit him to conduct additional discovery and to analyze the billings at greater length. Although Farraj argues postjudgment discovery was necessary because of the "minimal showing" by Salas's attorney, as discussed, detailed billing records were produced in unredacted form. Moreover, Farraj fails to identify what additional discovery he needed or explain

how more discovery would have helped his presentation to the court. In fact, Salas's counsel submitted the unredacted billings to the trial court on January 27, 2016. The hearing on fee recalculation took place on May 25, 2016. Even disregarding the time Farraj had to review the redacted billings during the earlier proceedings, he had nearly four months to analyze the unredacted billings to be used in the hearing required by our decision in *Salas I*.

Finally, Farraj suggests he should have been granted a continuance because "[t]he trial court took less than 45 minutes to go over and discuss 1154 entries totaling $123,087.50." This argument, even if it had anything to do with Farraj's continuance request, significantly misstates the record. The reporter's transcript shows Farraj's attorney flagged entries he believed were vague; Salas's attorney then agreed to reduce the fee request in response to those arguments. The court, having reviewed the billings before the hearing, accepted Salas's counsel's concession and ruled the additional entries identified by Farraj's attorney were not so vague as to warrant further reductions. Nothing about this process indicates the family law court did anything other than consider the evidence and properly exercise its broad discretion in calculating the revised fee award.

DISPOSITION

The order of the family law court is affirmed. Salas is to recover her costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J. SEGAL, J.