Filed 3/27/12 Marriage of Csupo CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of GABOR and BRET CSUPO.	B227959
GABOR CSUPO, Respondent, v. BRET CSUPO, Respondent; FREID AND GOLDSMAN, Objector and Appellant.	(Los Angeles County Super. Ct. No. BD489643)

APPEAL from orders of the Superior Court of Los Angeles County, Keith M. Clemens, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Freid and Goldsman and Gary J. Cohen for Objector and Appellant.

Benedon & Serlin, Gerald M. Serlin and Douglas G. Benedon for Respondents.

Although this is an action to dissolve a marriage, this appeal finds both spouses united in defending the trial court's order, which terminated further attorney fee payments by the husband to the wife's attorneys after the attorneys substituted out of the case.

The firm argues that, under the Family Code, the trial court lacked the authority to terminate the husband's obligation to continue paying attorney fees under a pendente lite order. We conclude that the Family Code authorized the trial court's decision and therefore affirm. (All undesignated section references are to the Family Code.)

I

BACKGROUND

In July 2008 Gabor Csupo (Husband) filed a petition to dissolve his marriage to Bret Csupo (Wife). Wife filed a response in which she requested that Husband pay her attorney fees and costs.

In June 2009, Freid and Goldsman (the firm) substituted in as Wife's counsel of record. In late December 2009, Wife filed an order to show cause (OSC) requesting $218,806 for attorney fees, $75,000 for accountant fees, and $5,000 for a real estate appraiser. Husband filed an opposition to the OSC.

The OSC was heard on February 17, 2010. By orders issued on February 18, 2010 (but filed on March 10, 2010), the trial court directed Husband to pay Wife's attorneys (the firm) an advance of $180,000 in pendente lite attorney fees and accountant fees, payable at the rate of $30,000 per month to the firm's client trust account, commencing April 15, 2010. A designated portion of each payment was to be paid to Wife's attorneys (the firm) and her accountants, respectively. According to the firm, each $30,000 payment provided $21,900 in attorney fees, and the accountants would receive the rest, $8,100. There was no appeal of the February 2010 fee order.

On or about April 15, 2010, Husband made the first $30,000 payment.

Four days later, the firm filed a motion to be relieved as counsel of record. The firm asserted there had been a total breakdown of the attorney-client relationship, and Wife had refused to sign a substitution of attorney form.

On May 13, 2010, Wife substituted in, representing herself. The same day, Wife and Husband signed and lodged a stipulation and proposed order, reciting that the trial court's February 2010 fee order, requiring Husband to pay the firm $180,000, "is terminated as of May 13, 2010." The trial court issued a minute order informing Husband, Wife, and the firm that it was inclined to approve the stipulation and, if it did so, the firm would have to seek its fees through an independent action against Wife. The court established a briefing schedule and permitted the two sides to address whether the stipulation should be approved.

The firm filed an opening brief, emphasizing that, excluding Husband's initial payment of $30,000, the outstanding balance for services rendered on Wife's behalf was $157,147.76 — approximately $47,648 more than what the firm would receive if Husband paid the remaining amount due under the February 2010 order ($150,000). Wife sent an e-mail to the trial court, stating, "'I object and contest [the firm's] legal fees and [its] request for payment of said fees.'" The court forwarded the e-mail to the firm and to Husband's counsel. Husband filed a response. The firm filed a reply.

On August 11, 2010, the trial court issued a written order explaining that it had decided to approve the stipulation, terminating Husband's obligation to pay additional attorney fees. That order was filed again on August 19, 2010. Also on August 11, 2010, the trial court approved and filed the "Stipulation and Order," which was filed again on August 19, 2010. The firm appealed the August orders.

II

DISCUSSION

Because this appeal involves the application of statutory law to undisputed facts, we independently review the trial court's orders. (*Estate of Earley* (2009) 173 Cal.App.4th 369, 373.)

The firm contends the Family Code permitted it to recover the full $180,000 awarded in the February 2010 order and the trial court lacked the authority to terminate that order. Husband and Wife argue the Family Code authorized the trial court to terminate, or reduce, the original fee award. We agree with Husband and Wife.

"'"A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law."'" (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743.) "'The statutory language itself is the most reliable indicator, so we start with the statute's words, assigning them their usual and ordinary meanings, and construing them in context. If the words themselves are not ambiguous, we presume the Legislature meant what it said, and the statute's plain meaning governs.'" (*Lonicki v. Sutter Health Central* (2008) 43 Cal.4th 201, 209.)

A. Section 272

The firm relies on section 272, subdivisions (a) and (b) for the proposition that it had a vested right to the entire amount of fees awarded in the February 2010 order. That statute reads:

"(a) Where the court orders one of the parties to pay attorney's fees and costs for the benefit of the other party, the fees and costs may, in the discretion of the court, be made payable in whole or in part to the attorney entitled thereto.

"(b) Subject to subdivision (c), the order providing for payment of the attorney's fees and costs may be *enforced* directly by the attorney in the attorney's own name or by the party in whose behalf the order was made.

"(c) If the attorney has ceased to be the attorney for the party in whose behalf the order was made, the attorney may *enforce* the order only if it appears of record that the attorney has given to the former client or successor counsel 10 days' written notice of the application for enforcement of the order. During the 10-day period, the client may file in the proceeding a motion directed to the former attorney for partial or total reallocation of fees and costs to cover the services and cost of successor counsel. On the filing of the motion, the *enforcement* of the order by the former attorney shall be stayed until the court has resolved the motion." (Italics added.)

We do not interpret section 272 as creating a vested right to attorney fees awarded pendente lite. The statute addresses the *enforcement* of fee awards — for example, by writ of execution — and expressly grants the trial court the authority to "reallocate" a prior fee award when a discharged attorney files an "application for enforcement of the

order." (See Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2011) ¶¶ 18:241, 18:242, p. 18-81 (rev. # 1, 2010).) Neither the February 2010 order nor the August 2010 orders involved an application for enforcement of a fee award. Rather, the question before the trial court in February 2010 was whether, based on need, Husband should pay Wife's attorney fees and accountant fees in advance. In August 2010, the issue before the court was whether to approve a stipulation terminating Husband's obligation to pay further attorney fees given that the firm was no longer Wife's counsel of record.

In short, we are not reviewing any orders made in an enforcement proceeding. The firm admits as much, stating in its reply brief that it has not attempted "to enforce" the February fee order. The firm also acknowledges that it does not rely on section 272, *subdivision (c)* in arguing that it had a vested right under the February fee order.

Under the plain meaning rule, section 272, subdivisions (a) and (b) involve the enforcement of fee awards —which is not at issue here. Nothing in section 272 remotely suggests that a pendente lite fee award requiring payment directly to one party's attorneys creates a vested right in those attorneys to the entire amount of fees regardless of a subsequent change in circumstances.

B. Section 2030

Under section 2030, "the [trial] court shall ensure that each party [in a dissolution action] has access to legal representation, including access early in the proceedings, to preserve each party's rights by ordering, if necessary based on the income and needs assessments, *one party . . . to pay . . . to the other party's attorney*, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding." (§ 2030, subd. (a)(1), italics added.) "The court shall *augment or modify* the *original* award for attorney's fees and costs as may be reasonably necessary for the prosecution or defense of the proceeding . . . ." (*Id.*, subd. (c), italics added).

In *Schwartz v. Schwartz* (1959) 173 Cal.App.2d 455 (*Schwartz*), the trial court ordered the husband to pay pendente lite fees to the wife's attorneys in the amount of

$2,500. Eight days later, the wife's attorneys substituted out of the case and were replaced by other counsel. The husband moved "for a *modification* of attorney's fees" (*id*. at p. 456, italics added), seeking to reduce the original award to $1,250. The attorneys countered with a motion for additional fees. The trial court granted the husband's motion and denied the attorneys' motion. The attorneys appealed.

The Court of Appeal affirmed, relying on former Civil Code section 137.3, which stated in part, "'[F]rom time to time and *before entry of judgment* . . . the court may augment or *modify* the original award . . . for costs and attorney's fees.'" (*Schwartz*, *supra*, 173 Cal.App.2d at p. 457, italics added.) Civil Code section 137.3 is the predecessor of Family Code section 2030. (See Historical and Statutory Notes, 29D West's Ann. Fam. Code (2004 ed.) foll. § 2030, p. 70.) As the Court of Appeal stated: "It is argued first that the [trial] court exceeded its jurisdiction in reducing the award of attorney fees theretofore made to these [attorneys]. This contention is without merit. . . . [¶] 'After a pendente lite award has been made, the trial court retains jurisdiction to *modify* the award at any time during the pendency of the action when a change of circumstances occurs that alters the extent of the services required.'" (*Schwartz*, at p. 457, italics added.)

Although the Court of Appeal commented that "'the trial court could reduce the award to an amount necessary to compensate the attorney for services *actually rendered*" (*Schwartz*, *supra*, 173 Cal.App.2d at p. 457, italics added), it went on to say: "This matter comes before us on a clerk's transcript alone, containing only the pleadings, affidavits and orders *in re* support and attorney's fees. The order recites that there was a hearing had at which both sides appeared and were presumptively heard. Such oral proceedings, with statements of counsel and court, are not before us. On the basis of the record before us we cannot say that the trial court's order was outside the pale of reasonable propriety nor that it in any way abused its discretion. The purpose of the original allowance was to provide full reasonable value of legal services, at least up to the time of the entry of judgment. . . . The proportionate amount of legal work done up to the time of substitution and to be done thereafter was a matter resting in the sound judicial

discretion of the court, and its order will not be disturbed in the absence of a clear abuse of that discretion." (*Id.* at p. 458, citation omitted.)

But the firm does not contend the trial court abused its discretion in determining how much it was owed for "services actually rendered." Instead, it argues only that the trial court lacked the authority to terminate the February 2010 fee order, and requests that this court direct the trial court on remand to reinstate the order. Under section 2030 and *Schwartz*, the trial court did not lack the authority to reduce the original fee award given that the firm substituted out of the case. Were it otherwise, the firm would have been entitled to the full $180,000 even if it had withdrawn from the case the day after the trial court made the award.

Finally, the firm argues that because a pendente lite fee order is treated as "final" for purposes of appeal, it is final for all other purposes and thus cannot be subsequently changed. Under the collateral order doctrine, an order awarding attorney fees pendente lite is appealable. (See *In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368–369; Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, ¶¶ 16:268 to 16:269, pp. 16-80 to 16-81 (rev. # 1, 2011).) It does not follow, however, that the trial court lacks jurisdiction to modify such an order when circumstances change. (See § 2030, subd. (c); *Schwartz*, *supra*, 173 Cal.App.2d at p. 457.)

III

DISPOSITION

The August 2010 orders are affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

JOHNSON, J.