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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

CALIFORNIA APARTMENT
PROPERTIES LTD. et al.,

Plaintiffs and Appellants,

v.

JACQUELINE NORTON,

Defendant and Appellant.

B291601

(Los Angeles County
Super. Ct. No. BC669722)

APPEALS from a judgment of the Superior Court of Los Angeles County. Barbara M. Scheper, Judge. Affirmed.

Solomon Ward Seidenwurm & Smith, Daniel E. Gardenswartz and Deborah A. Yates for Plaintiffs and Appellants.

Law Office of Thomas M. Hall and Thomas Montague Hall for Defendant and Appellant.

These appeals challenge the judgment entered in the underlying interpleader action. Jacqueline Norton (Jacqueline) appeals the judgment to the extent it held the interpleader action proper and awarded costs and attorney fees to the plaintiffs.¹ ConAm challenges the judgment to the extent it awarded costs and attorney fees in an amount less than that requested by ConAm.

As discussed below, we affirm the judgment. First, we conclude the interpleader action was proper and Jacqueline's arguments to the contrary are not persuasive. Second, we conclude the trial court did not abuse its discretion when it awarded costs and attorney fees in an amount less than that requested by ConAm but more than that typically awarded in interpleader cases.

BACKGROUND

1. The Norton Family

Jacqueline and Kenneth Norton (Kenneth) were married in 1977 and divorced in 2000. During their marriage, Jacqueline and Kenneth had three children together, two sons (Kenneth Jr. and Kene) and one daughter (Kenisha), all of whom are now adults.

¹ Plaintiffs are Continental American Properties, Ltd., ConAm Partners, ConAm Partners 85D, ConAm Management Corporation, California Apartment Properties, Ltd., and Sandstone Investors, Ltd. They are related entities in the business of real estate investment and management. Each plaintiff's primary place of business is in San Diego, California. Consistent with the briefing on appeal, we refer to the plaintiffs collectively as ConAm.

2. The CAP Investment and the Sandstone Investment

In 1985, while still married, Jacqueline and Kenneth bought an interest in plaintiff California Apartment Properties, a now-dissolved California limited partnership (CAP investment). Jacqueline and Kenneth held the CAP investment as joint tenants with rights of survivorship. In 1986, while married to Jacqueline, Kenneth bought an interest in plaintiff Sandstone, a California limited partnership (Sandstone investment). Kenneth held the Sandstone investment as an individual. Both investments produced income for Jacqueline and Kenneth. For years, ConAm mailed CAP investment distributions to Jacqueline and Kenneth and Sandstone distributions to Kenneth. We refer to the CAP investment and the Sandstone investment together as the ConAm investments.

3. Family Court Case (Divorce Action)

In 1999, Kenneth filed for divorce in Orange County Superior Court. (*Norton v. Norton* (Super. Ct. Orange County, No. 99D007019).) In 2000, the Orange County Superior Court granted a status dissolution stating Jacqueline and Kenneth no longer were married. The court retained jurisdiction to determine the proper allocation of community property.

For approximately 15 years, from 2001 to 2016, there was no substantive activity in the divorce action. During that time, neither Kenneth nor Jacqueline asked the court to divide their property.

Then in July 2016, years after Kenneth had passed away, Jacqueline successfully requested the divorce action be transferred from Orange County to a family law department of the Los Angeles County Superior Court. (*Norton v. Norton* (Super. Ct. L.A. County, BD649541).) The following year, in May

2017, the family court granted Kenisha's request to be appointed representative of her late father in the divorce action.

Still almost one year later, in April 2018, Jacqueline filed a request for order asking the family court to confirm a property settlement agreement and order the division of community property, which request for order was heard and decided by the family court in May 2018.²

4. Kenneth's Second Marriage, Guardianships, and Death

In 2012, Kenneth moved to Las Vegas, where he lived the remainder of his life. At some point while living in Las Vegas, Kenneth met Rose Conant. Conant purported to be Kenneth's second wife, stating they married in April 2012. Jacqueline and her children with Kenneth dispute the validity of that marriage.

In September 2012, because of Kenneth's mental decline, Conant was appointed temporary guardian of Kenneth and his estate. (*Guardianship of the Person and Estate of Ken Norton, Jr.* (Dist. Ct. Clark County, Nev., G-12-037623-A).) Following Conant's appointment, however, Kenneth's separately appointed guardian ad litem conducted an investigation and made

² The documents related to the divorce action are not a part of the appellate record. In connection with her appeal, Jacqueline filed a motion for judicial notice (or in the alternative for additional evidence) asking us to take judicial notice of the family court's May 7, 2018 findings and order ruling on Jacqueline's April 2018 request for order in the divorce action. The motion for judicial notice also asks that we take judicial notice of a December 2017 order from Department 1 of the Los Angeles County Superior Court declining to relate the divorce action and the instant action. We grant Jacqueline's motion for judicial notice.

recommendations to the Nevada court overseeing the guardianship proceedings. The guardian ad litem recommended Kene and Kenneth Jr. be appointed their father's guardians. The guardian ad litem did not believe Conant always had Kenneth's best interests in mind, although it was reported Conant "was devoted to" Kenneth. The guardian ad litem also reported a neuropsychologist who had examined Kenneth in 2009 did not believe Kenneth had the mental capacity to conduct legal and business transactions at that time and was incompetent to get married years later in 2012. The guardian ad litem had "serious doubts as to the validity of the marriage between Rose [Conant] and [Kenneth]." The Nevada court appointed Kene and Kenneth Jr. as Kenneth's guardians.

In September 2013, Kenneth died intestate in Las Vegas. At the time of Kenneth's death, Kene and Kenneth Jr. were Kenneth's guardians. No probate action was opened to administer Kenneth's estate.

5. Inquiries Regarding the ConAm Investments

According to ConAm, in June 2012, more than a decade after Kenneth and Jacqueline's marriage had been dissolved but more than a year before Kenneth's death, ConAm received several inquiries from Conant and Kenneth about the ConAm investments. First, Conant called ConAm stating she was Kenneth's wife and requesting ConAm remove Jacqueline from CAP investment distribution checks. ConAm informed Conant it could not make such a change without proper documentation demonstrating Kenneth had become the sole owner of the CAP investment. ConAm did not receive any such documentation. Second, a couple of weeks later, ConAm received a letter from Kenneth asking ConAm to "omit Jacqueline Norton from any/all

of my Partnerships, any/all of my interest checks. We have been divorced for over 15 years.” ConAm again responded it could not take such action without the necessary documentation, which it never received. Third, toward the end of the month, Conant called ConAm again and requested a copy of the CAP investment documents. ConAm e-mailed the requested documents to Conant.

In October 2012, because ConAm had not received requested documentation from either Kenneth or Conant, ConAm decided to withhold the CAP investment distributions. However, because Kenneth held the Sandstone investment as an individual, ConAm continued to mail those investment distributions to Kenneth. But in December 2012, Kenneth’s Sandstone investment distribution check was returned to ConAm as undeliverable. According to ConAm, a couple of months later, Conant called ConAm indicating she and Kenneth had moved and requesting ConAm update their mailing address.

After Kenneth passed away, ConAm decided to withhold both CAP and Sandstone investment distribution checks and sought to determine who was entitled to the distributions. Around the same time, ConAm was selling CAP-owned properties, which generated further income for CAP investment owners such as Jacqueline and Kenneth. However, following Kenneth’s September 2013 death through mid-2015, ConAm was unable to determine who might have an interest in the CAP and Sandstone investments, and according to ConAm, Kenneth’s 2013 and 2014 tax documents were returned as undeliverable.

Finally in mid-2015, ConAm received a letter from Conant stating she was “the widow of Kenneth H. Norton Sr.” Conant sent ConAm copies of both her 2012 marriage license to Kenneth

and Kenneth's 2013 death certificate. Conant also advised ConAm Kenneth had died without a will. Around the same time, ConAm located and contacted Jacqueline, who said she had never agreed to assign her interest in the CAP investment to Kenneth. Jacqueline mailed copies of Nevada and California court documents, including the Nevada court order appointing Kene and Kenneth Jr. as Kenneth's guardians, which order also noted questions concerning the legitimacy of Conant's marriage to Kenneth.

Much later, in April 2016, Kene e-mailed ConAm and its counsel stating he had been Kenneth's co-guardian prior to his death and was "in the process of reviewing all financial matters re my father." Kene requested information on Kenneth's investments. In response, ConAm's counsel requested documentation regarding Kene's role in Kenneth's estate. According to ConAm's counsel, Kene provided some documentation but no details related to ownership of the ConAm investments.

6. Rejected Indemnification Agreement

In light of Jacqueline's representations she was the rightful owner of the ConAm investments, and based on its own research, ConAm decided it would release the CAP investment assets to Jacqueline provided she signed a release and indemnification agreement concerning those assets (indemnification agreement). In September 2015, counsel for ConAm wrote to Jacqueline, Kenneth Jr., and Conant explaining ConAm's decision and indicating ConAm would distribute the withheld investment funds to Jacqueline unless Conant or Kenneth Jr. objected and provided supporting documentation. ConAm received no objections. In December 2015, ConAm's attorneys sent a

proposed indemnification agreement to Jacqueline for her review and signature. ConAm advised Jacqueline to seek legal counsel, which she did. Jacqueline never signed the indemnification agreement.

Instead, almost one year later in November 2016, Jacqueline wrote to ConAm stating she was “perplexed by the state of things.” In her letter, Jacqueline explained she and Kenneth had invested with ConAm during their marriage and, therefore, “[t]he invested money was community property, and any returns were also community property. What money [you] are holding is my money now. I do not understand why it is not simply sent to me.” Jacqueline objected to ConAm’s apparent use of the withheld investment distribution funds for attorney fees. She also asked if others had made claims against the withheld funds and, if so, for ConAm to identify them and their claims.

In December 2016 and in response to Jacqueline’s November 2016 letter, ConAm wrote to Jacqueline outlining the various people who had contacted ConAm regarding Kenneth’s investments beginning with Conant and Kenneth in 2012 as well as the steps ConAm had taken to protect the assets. ConAm indicated its continued willingness to disburse the withheld investment funds to Jacqueline provided ConAm received both a written directive from all potential claimants instructing ConAm how to distribute the funds as well as a release and indemnification agreement from anyone who received a portion of those funds. ConAm explained its past need for legal counsel to assist in its efforts to distribute the funds properly as well as its continued need for such counsel if the parties could not agree to the proper distribution. Absent an agreement, ConAm indicated it would file an interpleader action. According to ConAm, neither

Jacqueline nor her attorney responded to ConAm's December 2016 letter.

7. The Instant Civil Court Case (Interpleader Action)

a. *Complaint and Initial Deposit of Funds*

In January 2017, having no agreement as to the disbursement of the withheld ConAm investment distributions, ConAm filed the instant complaint in interpleader and for declaratory relief in the San Diego Superior Court (interpleader action). (*California Apartment Properties v. Norton* (Super. Ct. San Diego County, 37-2017-00002681-CU-MC-CTL).) The named defendants were Jacqueline, Kenneth's estate,³ and Jacqueline and Kenneth's two sons, Kene and Kenneth Jr. In February 2017, ConAm amended the interpleader complaint to add as defendants Conant and Kenneth and Jacqueline's daughter, Kenisha. In its complaint, ConAm alleged it was holding approximately \$80,000 in distribution proceeds from the ConAm investments, it did not know who owned those proceeds, and it believed there were conflicting claims to those proceeds. By its complaint, ConAm sought to have the various claimants interplead and litigate their claims to the distribution proceeds as well as a court order both determining the rights and obligations of all the parties and discharging ConAm from liability with respect to those proceeds. ConAm disclaimed any interest in the withheld funds other than seeking reimbursement for its costs and attorney fees associated with the interpleader action.

In connection with the interpleader action, ConAm deposited with the court \$80,165, which represented the

³ ConAm later dismissed Kenneth's estate from the interpleader action.

distribution proceeds ConAm was holding pending resolution of the case (interpleaded funds).

Eventually, in May 2017, ConAm successfully requested entry of default as to Kene, Kenneth Jr., and Conant.

b. *Transfer to Los Angeles County Superior Court*

Also in May 2017, Jacqueline filed a motion to transfer the case to Los Angeles County. In support of her motion to transfer venue, Jacqueline filed a declaration as well as declarations from her daughter Kenisha and son Kene stating neither they nor Kenneth had ever lived in San Diego County. Eventually ConAm and Jacqueline filed a stipulation to transfer the interpleader action and interpleaded funds to Los Angeles County Superior Court. In July 2017, the San Diego trial court ordered the interpleader action and interpleaded funds transferred to Los Angeles County Superior Court, which is the case from which these appeals arise.

c. *Jacqueline's Unsuccessful Attempt to Relate the Interpleader Action and the Divorce Action*

In September 2017, after the interpleader action was transferred to Los Angeles, Jacqueline filed a notice of related cases, stating the interpleader action was related to the pending divorce action, which had been filed first. Specifically, Jacqueline stated the two cases “are related in that each of them deals with the proper allocation of assets of the marriage of Kenneth H. Norton and Jacqueline Norton, as the result of investments by the Norton community with [ConAm]” and “[t]he determination of proper allocation of assets held by ConAm entities is governed by the Norton community’s contracts with ConAm, and by the California Family Law Code.”

ConAm objected to the notice of related cases. ConAm noted that, besides Jacqueline and Kenisha who recently had been appointed Kenneth's representative in the divorce action, none of the parties in the interpleader action was a party to the divorce action. In addition, ConAm argued the two cases raised different legal and factual issues. According to ConAm, the interpleader action involved the disposition of a single asset, the interpleaded funds, to which ConAm disclaimed any interest other than an amount to satisfy its costs and fees associated with the interpleader action. On the other hand, ConAm claimed the divorce action involved broader issues and community assets, of which the interpleaded funds were but one part. ConAm explained it "simply wish[ed] to dispose of the [interpleaded] funds as quickly, cheaply, and efficiently as possible." ConAm believed it would be unfair and a waste of resources if it were forced to participate in the long-running divorce action, in which ConAm had no interest or stake.

In December 2017, Department 1 of the trial court declined to relate the divorce action and the interpleader action.

d. *Demurrer*

In October 2017, before Department 1 had ruled on Jacqueline's notice of related cases, Jacqueline filed a demurrer to the interpleader action, arguing ConAm's complaint failed to state, and could not state, a cause of action against her for interpleader or for declaratory relief. In particular, Jacqueline explained the complaint failed to identify any competing claims to the subject property or actual present controversy, and speculation that competing claims might arise is insufficient to state a claim for interpleader.

In opposition to the demurrer, ConAm argued its complaint stated causes of action for both interpleader and declaratory relief, and Jacqueline's demurrer improperly addressed the substance of the claims instead of the sufficiency of the pleading. As to competing claims to the subject property, ConAm explained Jacqueline and Kenneth's three grown children as well as Rose Conant had made or were in a position to make claims to the subject property as Kenneth's apparent heirs. ConAm noted it had "no independent means of determining to whom, and in what manner, the investment funds were to be distributed." ConAm listed the reasons why it was unable to determine the proper distribution of the subject property, which included: the lack of a final agreement or judgment in either the divorce action or a probate action governing distribution of Kenneth's community or separate property, the fact Kenneth had died without a will, trust or other testamentary instructions for the disposition of his assets and no one had instituted a probate proceeding to handle the affairs of his estate, and it was unclear whether Kenneth was married when he died and if he was to whom.

The trial court overruled Jacqueline's demurrer to the complaint. The court held the complaint sufficiently alleged both a reasonable probability of competing claims to the subject property (interpleader) and an actual and current controversy related to the rights to the subject property (declaratory relief).

e. *Answers and Additional Interpleaded Funds*

In November 2017, following the trial court's order overruling Jacqueline's demurrer, Jacqueline and Kenisha each filed an answer to the complaint. In her answer, Kenisha stated there was no conflict between her mother or her siblings as to the interpleaded funds, but Conant had no right to those funds. Kenisha asked that the interpleaded funds be awarded to her and Jacqueline. In her answer, Jacqueline denied all allegations of the complaint and stated the interpleaded funds were the community property of her marital estate with Kenneth and subject to the jurisdiction of the family court presiding over the divorce action.

Also in November 2017, ConAm deposited an additional \$10,335 with the trial court.

f. *Jacqueline's Motion for Judgment on Stipulation*

In January 2018, Jacqueline filed a motion for entry of judgment on stipulation. Jacqueline and Kenisha had reached an agreement with respect to the interpleaded funds. (That stipulation is not in the record on appeal.) By her motion, Jacqueline requested the trial court to enter judgment in her favor, not only awarding her the interpleaded funds plus interest but also adjudging the Sandstone investment to be her property. Jacqueline also argued the trial court should hold a trial on the disputed issues of whether the interpleader action was properly filed, and which party was entitled to costs and attorney fees and in what amount.

ConAm opposed Jacqueline's motion on one ground. Although ConAm did not oppose Jacqueline's request for an order disbursing the interpleaded funds to her and declaring her the

owner of the remaining ConAm investments, ConAm opposed the motion to the extent it failed to address ConAm's statutory entitlement to its costs and attorney fees associated with the interpleader action.

g. *ConAm's Motion for Discharge from Liability and for Costs and Attorney Fees*

In February 2018, while Jacqueline's motion for judgment was pending, ConAm filed a motion for discharge from liability and for an award of costs and attorney fees under Code of Civil Procedure section 386.6. ConAm requested an award of at least \$83,473.09 in costs and attorney fees for its work on the interpleader action.

Jacqueline opposed ConAm's motion on the grounds the interpleader action was improper and, at the least, a trial should be held to determine the disputed factual issue of whether the action was proper as well as the propriety of an award of costs and attorney fees.

h. *Trial Court's Rulings*

At a March 2018 hearing, the trial court heard argument on both Jacqueline's motion for judgment and ConAm's motion for discharge and costs and attorney fees. At the hearing, the trial court adopted its tentative ruling as its final order. The court granted Jacqueline's motion for judgment in her favor subject only to the court's ruling on ConAm's motion for costs and attorney fees.

With respect to ConAm's motion, the trial court discharged ConAm from liability as to the interpleader funds and awarded ConAm \$16,000 in costs and attorney fees. The court found ConAm's requested \$83,473.09 in costs and attorney fees to be "grossly excessive" and stated, "Even accepting [ConAm]'s

argument that [Jacqueline]’s litigation tactics unnecessarily increased the costs of this action, this amount [is] more than ten times the amount typically requested by stakeholders in interpleader actions handled by this Court. Accordingly, the Court will reduce the amount of fees and costs to \$16,000. This amount will be deducted from the interpleaded funds and paid to [ConAm].” The court indicated it “spent a lot of time looking at it” and believed the matter could have been resolved more efficiently and that each side blamed the other for the inefficiencies. The court also noted, “There would be virtually nothing left of the [interpleaded funds] if the court were to award all of the attorneys’ fees” ConAm requested.

8. The Appeals

Jacqueline appealed from the judgment discharging ConAm from liability and awarding ConAm costs and attorney fees. ConAm filed an appeal challenging the amount of the awarded costs and attorney fees.

DISCUSSION

1. Jacqueline’s Appeal

On appeal, Jacqueline challenges the trial court’s judgment in the interpleader action, which awarded the interpleaded funds to her less \$16,000 for ConAm’s costs and attorney fees. She asks that we “order the improper interpleader action dismissed” and that she be awarded her costs and attorney fees “necessitated by ConAm’s litigation strategy.”

a. *Inadequate Record Citations*

As an initial matter, we address ConAm’s objection to the lack of record citations in Jacqueline’s opening brief. We agree the opening brief sorely lacks the required citations to the appellate record. (Cal. Rules of Court, rule 8.204(a)(1)(C).) In

such cases, we would be justified in treating Jacqueline's unsupported points as waived. (*Lonely Maiden Productions, LLC v. GoldenTree Asset Management, LP* (2011) 201 Cal.App.4th 368, 384.) Despite the lack of citations to the appellate record, however, we believe we understand Jacqueline's arguments sufficiently to address them.

b. *Applicable Law*

Code of Civil Procedure section 386 (section 386) addresses interpleader actions. Subdivision (b) of that section states: "Any person, firm, corporation, association or other entity against whom double or multiple claims are made, or may be made, by two or more persons which are such that they may give rise to double or multiple liability, may bring an action against the claimants to compel them to interplead and litigate their several claims." (§ 386, subd. (b).) "Once the person admits liability and deposits the money with the court, he or she is discharged from liability and freed from the obligation of participating in the litigation between the claimants." (*City of Morgan Hill v. Brown* (1999) 71 Cal.App.4th 1114, 1122.) "'Code of Civil Procedure section 386, subdivision (b), requires only that the stakeholder file a verified pleading disclaiming any interest in the money or property claimed. It is the stakeholder's avowed disinterest in the interpleaded proceeds which gives him the right to interplead.'" (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 873.) "An interpleader action is an equitable proceeding" (*Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 42 (*Dial 800*)), and the stakeholder is not obligated to resolve the dispute between the interpleader claimants (*Cantu*, at p. 876).

"A complaint in interpleader must show that 'the defendants make conflicting claims to [the subject matter], and

that the [plaintiff] cannot safely determine which claim is valid and offers to deposit the money in court’ ” (*Westamerica Bank v. City of Berkeley* (2011) 201 Cal.App.4th 598, 607–608.) Nonetheless, as the trial court recognized here, “[a]n interpleader action . . . may not be maintained ‘upon the mere pretext or suspicion of double vexation; [the plaintiff] must allege facts showing a reasonable probability of double vexation’ [citation], or a ‘valid threat of double vexation.’ ” (*Id.* at p. 608.)

We review the trial court’s factual findings for substantial evidence and its legal conclusions de novo. (*Fuller v. Tucker* (2000) 84 Cal.App.4th 1163, 1169.)

c. No Error

The trial court correctly held the interpleader action was proper and ConAm was entitled to discharge from liability. ConAm not only properly pleaded the elements of an interpleader action, but it also provided facts supporting its action. First, ConAm disavowed any interest in the interpleaded funds. Second, ConAm explained the various actual and reasonably probable claims as to the interpleaded funds, which supported ConAm’s concern that it was vulnerable to “double vexation.” Those claims included actual claims by Jacqueline and Conant, as well as from Kenisha in her answer to the interpleader complaint. In addition, prior to his death, ConAm received an apparent directive from Kenneth to remove Jacqueline from future investment distribution checks. ConAm also noted it was reasonably probable Kenneth’s heirs could make claims to the interpleaded funds. In fact, Kene had contacted ConAm stating he was reviewing his late father’s financial matters and inquiring as to his father’s investments. Significantly, Jacqueline also declined to execute the indemnification agreement, which only

bolstered ConAm's understanding that conflicting claims to the interpleaded funds reasonably could exist and double vexation was a valid threat. Finally, prior to filing the interpleader action and despite its requests, ConAm never received official and conclusive documentation as to any of the potential claimant's entitlement or lack of entitlement to the interpleaded funds.

In her briefing on appeal, Jacqueline ignores significant facts. First, the confusion and conflict over the ConAm investments resulted in large part because Jacqueline and Kenneth never sought a formal and final allocation of their property through the divorce action. Second, the facts not only that Kenneth had died, but died without having left a will, added to that confusion because it opened the possibility of Kenneth's heirs making claims to his property. Third, the parties to the divorce action were Jacqueline and Kenneth only. Neither Kenneth's heirs, nor Conant, nor ConAm was a party to the divorce action. Finally, although Jacqueline was adamant the ConAm investment funds belonged to her, she refused to sign the indemnification agreement proposed by ConAm. Thus, while she was unwilling to accept responsibility for determining the ConAm investments belonged to her, it is unclear how Jacqueline can argue so strenuously, that ConAm—a company that had been producing income for the Nortons for decades, had been trying to protect those assets while disclaiming any interest in them, and was not a party to the divorce action or the Nortons' private affairs—acted improperly in withholding the interpleaded funds until a legal determination as to the proper distribution of those funds was made.

Given the actual and reasonably probable claims to the interpleaded funds, and despite Jacqueline's adamant position

that the interpleaded funds belonged to her, ConAm was justified in filing the interpleader action, depositing the interpleaded funds with the court and disavowing any interest in those funds. We conclude substantial evidence supports the trial court's finding that although Jacqueline may have demonstrated ConAm "could logically conclude that no actual claim [challenging her claim to the interpleaded funds] would be asserted," Jacqueline failed to show ConAm "could know, with anything close to legal certainty that [it] would not be subject to any conflicting claims."

d. *Jacqueline's Arguments on Appeal*

Jacqueline raises the following arguments on appeal: (1) the trial court improperly exercised jurisdiction over the interpleader action, (2) the trial court erred when it declined to relate the interpleader action and the divorce action, and (3) the trial court improperly failed to hold a trial on disputed issues of fact in the interpleader action. We address each in turn.

i. *Jurisdiction*

Jacqueline argues the trial court "usurped" the family court's jurisdiction over the "characterization and allocation" of Jacqueline and Kenneth's marital property. She also claims the trial court's ruling in the interpleader action "directly conflicted" with the family court's May 7, 2018 ruling. We disagree.

The existence of jurisdiction is a legal question we review de novo. (*Dial 800, supra*, 118 Cal.App.4th at p. 42.)

Contrary to Jacqueline's arguments and legal citations on appeal, this is not a case where the trial court addressed a matter that was already pending before another court. Here, the family court had reserved jurisdiction over the broad task of characterizing and allocating Jacqueline and Kenneth's marital property. In contrast, the trial court presiding over the

interpleader action was presented with the specific issue of whether at the time the interpleader action was filed ConAm reasonably was vulnerable to competing claims to the interpleaded funds, and if so, which claim or claims were valid. Although the ConAm investments were involved in both the divorce action and the interpleader action, we conclude the courts presiding over those cases were tasked with addressing different legal issues.

In addition, although Jacqueline insists the family court had to decide ConAm's lawsuit as part of the divorce action, she does not explain how ConAm could have inserted not only itself but also the claimants and potential claimants to the interpleaded funds into the divorce action. Other than Jacqueline's notice of related cases, our review of the appellate record reveals no attempt by Jacqueline either to join the interpleader parties to the divorce action or to stay the interpleader action pending resolution of the divorce action. Either approach potentially could have avoided some of the duplication of which Jacqueline complains. (See Cal. Rules of Court, rules 5.16 & 5.24 [addressing parties to a marital dissolution proceeding].) Or, had Jacqueline or Kenneth asked the family court presiding over the divorce action years earlier to allocate the ConAm investments, it is likely ConAm would not have been vulnerable to competing claims and would not have had to file an interpleader action.

Also contrary to Jacqueline's position on appeal, the trial court's March 2018 order (finalized in August 2018) does not directly conflict with the family court's May 2018 order. The trial court's order states Jacqueline shall receive the interpleaded funds less the award of costs and attorney fees to ConAm. The

family court's order, on the other hand, states Jacqueline had accrued the right to ownership of the ConAm investments as of 2011. Thus, the orders are consistent in that one awards Jacqueline ownership of the ConAm investments (family court order) and the other released the interpleaded funds derived from those investments to Jacqueline (trial court order). The obvious difference between the two orders—and the only logical reason Jacqueline would contest the trial court's order—is the trial court also deducted from the interpleaded funds the award of costs and attorney fees to ConAm. We do not view the trial court's costs and attorney fees award as a direct conflict with the family court's order.

Jacqueline also appears to argue the orders conflict because the family court's May 2018 order determined Jacqueline's ownership of the ConAm investments accrued years earlier in 2011. Jacqueline seems to contend, therefore, any claims to the interpleaded funds made after 2011 (e.g., Conant's claims to the ConAm investment distributions) were invalid and as such ConAm had no reason to file the interpleader action. We fail to see the logic in that argument for the simple reason the family court did not make its determination until May 2018, long after competing claims to the interpleaded funds arose or were reasonably probable to arise. As already noted, at the time the interpleader action was filed, neither Jacqueline nor Kenneth (nor his estate) had asked the family court to decide any marital property issue, let alone specifically the allocation of the ConAm investments. Necessarily, therefore, when ConAm filed the interpleader action, no court order directed the proper distribution of the interpleaded funds. Only later, following Jacqueline's communications with ConAm regarding the ConAm

investments and her refusal to sign the indemnification agreement, did Jacqueline re-engage the family court in the divorce action after years of inaction and ask that court to address those investments. By that time, however, the interpleader action already had been pending over one year. The interpleader action resulted in a court order formally releasing the interpleaded funds according to the remaining defendants' agreement and discharging ConAm from further liability as to those funds. That is exactly what ConAm wanted and needed but had been unable to achieve without the court's assistance.

We conclude the family court in the divorce action and the trial court in the interpleader action were asked to address different legal issues, and the trial court neither usurped the jurisdiction of the family court nor issued a ruling "directly conflicting" with a ruling of the family court.

ii. Related Cases

In a somewhat similar argument, Jacqueline argues Department 1 of the superior court erred when it ruled the interpleader action and the divorce action were not related. In response, ConAm argues the issue of whether the two cases should have been related is not properly before us in this appeal. ConAm claims Jacqueline appealed only from the judgment in the interpleader action, not from Department 1's separate ruling denying related case status, which ruling is not in the record on appeal and was not identified in Jacqueline's notice of appeal.⁴

⁴ Although Jacqueline's notice of related cases and ConAm's response to that notice are both in the record on appeal, as is the notice of Department 1's ruling declining to relate the cases, Department 1's written order on the matter is not in the appellate record. However, that order is one of the documents

In addition, and in any event, ConAm argues Department 1 did not abuse its discretion in declining to relate the two cases.

We assume without deciding both that this issue is properly before us on appeal and that Department 1 erred in declining to relate the interpleader and divorce actions. Given these assumptions, however, we find no reversible error. Error alone does not require automatic reversal. Rather, we reverse for prejudicial error only. (Cal. Const., art. VI, § 13.) “We will not reverse for error unless it appears reasonably probable that, absent the error, the appellant would have obtained a more favorable result.” (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 876; *Nazari v. Ayrapetyan* (2009) 171 Cal.App.4th 690, 697.)

Jacqueline claims that had the interpleader action and divorce action been related, “duplication and waste would have been avoided.” She argues it was improper and wasteful to have both cases proceeding simultaneously and that the judgment in the interpleader action “directly conflicts” with the family court’s May 7, 2018 ruling in the divorce action. We already have rejected Jacqueline’s claim the two rulings conflict. Thus, we address what appears to be Jacqueline’s broader claim that the family court in the divorce action could have decided (and did decide) the issues raised in the interpleader action at no cost to ConAm and presumably, therefore, at no additional cost to Jacqueline.

We are not persuaded. As discussed above, given both the real and potential claims to the interpleaded funds (including Jacqueline’s own claim to those funds) and ConAm’s need to protect itself and its other investors, as well as the lack of a

Jacqueline asked us to judicially notice, which we have done. (See *ante*, fn. 2.)

controlling court order or party agreement deciding the ownership of those funds, ConAm properly filed the interpleader action. Thus, even if the two cases had been related, ConAm's case still was one for interpleader that carried the possibility of an award of costs and attorney fees in ConAm's favor. (Code Civ. Proc., § 386.6.) Moreover, it is not entirely accurate to claim the family court decided the issue at no cost to ConAm. The family court's May 2018 decision in the divorce action came after significant confusion had arisen regarding the ConAm investment funds and ConAm's efforts to resolve that confusion. Indeed, Jacqueline did not look to the family court for assistance with the ConAm investments until after ConAm had located her and attempted to resolve the uncertainties surrounding the distributions from those investments. Had Jacqueline and Kenneth sought an order from the family court years earlier, the interpleader action might never have existed. However, because there was no formal order or agreement governing disposition of the investment funds, the interpleader action was born. Finally, had Jacqueline sought to stay the interpleader action pending a ruling in the divorce action or to join the interpleader parties to the divorce action, she potentially could have avoided the extra expenses of which she now complains.

Although the interpleader and divorce actions could have proceeded in various ways, we conclude Jacqueline has not shown it is reasonably probable she would have obtained a more favorable result had the interpleader action and divorce action been deemed related.

iii. Trial on Disputed Facts

Although somewhat difficult to follow, Jacqueline appears to argue the trial court erred when it entered judgment in the

interpleader action without first holding a trial on disputed issues of fact. Jacqueline claims that had the trial court “taken evidence on the underlying facts, it might have reached the same conclusion that the Family Law Court had reached, that Jacqueline Norton’s entitlement to the assets held by ConAm antedated any claims that might have been asserted by any of the defendants named by the ConAm plaintiffs.” Jacqueline requests “if the case is returned to the civil trial court for any reason” that we instruct the trial court to allow the defendants to litigate the merits of the interpleader complaint.

To the extent we understand this argument, we are not persuaded. First, because we have already concluded the interpleader action was proper, we are not remanding this case for further inquiry as to its propriety. Second, and as ConAm points out, the trial court indisputably received evidence on the propriety of the interpleader action. Other than to claim the trial court “might have reached the same conclusion” as the family court with respect to the ownership of the ConAm investments, Jacqueline does not explain how the trial court’s decision with respect to the interpleader action might be different if further evidence were considered. In other words, even if the trial court agreed with the family court and found Jacqueline’s entitlement to the ConAm investments accrued before ConAm filed the interpleader action, that finding would not change the propriety of the interpleader action. Whether the family court or the trial court decided the issue, it is undisputed that *at the time ConAm filed the interpleader action*, no court had determined the ownership of the ConAm investments or the interpleaded funds. Indeed, it is disingenuous for Jacqueline to fault ConAm for filing the interpleader action when Jacqueline herself refused to sign

the indemnification agreement that would have protected ConAm from any future claims to the interpleaded funds.

e. *Jacqueline's Request for Costs and Attorney Fees*

Finally, Jacqueline argues she “should be awarded her attorneys’ fees and costs for having to deal with the improper interpleader action.” Because we have determined the interpleader action was proper, it follows that Jacqueline is not entitled to costs and attorney fees.

2. *ConAm's Appeal*

In its appeal, ConAm argues the trial court acted arbitrarily when it awarded ConAm \$16,000 in costs and attorney fees instead of the \$83,473.09 ConAm had requested. Acknowledging the amount it requested is an unusually high amount for an interpleader action, ConAm claims its costs and fees were so unusually high because of Jacqueline’s unusual litigation tactics. Like ConAm, Jacqueline also argues the trial court abused its discretion in awarding costs and attorney fees. Contrary to ConAm, however, Jacqueline claims the court should not have awarded costs and fees at all. Her arguments against the award of costs and fees are in large part the same as those we already have rejected above.

As discussed below, we conclude the trial court did not abuse its discretion when it awarded \$16,000 in costs and attorney fees to ConAm.

a. *Applicable Law and Standard of Review*

Code of Civil Procedure section 386.6, subdivision (a) (section 386.6) governs an award of costs and attorney fees in an interpleader action. Section 386.6 provides: “A party to an action who follows the procedure set forth in Section 386 or 386.5 may

insert in his motion, petition, complaint, or cross complaint a request for allowance of his costs and reasonable attorney fees incurred in such action. In ordering the discharge of such party, the court may, in its discretion, award such party his costs and reasonable attorney fees from the amount in dispute which has been deposited with the court. At the time of final judgment in the action the court may make such further provision for assumption of such costs and attorney fees by one or more of the adverse claimants as may appear proper.” (§ 386.6, subd. (a).)

We generally review a section 386.6 award of costs and attorney fees for an abuse of discretion. (*MDQ, LLC v. Gilbert, Kelly, Crowley & Jennett LLP* (2019) 32 Cal.App.5th 702, 712.) “We presume the trial court’s attorney fees award is correct, and ‘[w]hen the trial court substantially reduces a fee or cost request, we infer the court has determined the request was inflated.’ [Citation.] “The “ ‘experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.’ ” ’ ” (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 998.)

In addition to the abuse of discretion standard of review, however, we review de novo “whether the trial court *selected* the proper legal standards in making its fee determination.” (569 *E. County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 434.) “[A]lthough the trial court has broad authority in determining the amount of reasonable legal fees, the award can be reversed for an abuse of discretion when it employed the wrong legal standard in making its determination.” (*Ibid.*)

b. *No Abuse of Discretion*

ConAm argues the award of costs and attorney fees must be reversed for two reasons. First, ConAm contends the trial court failed to analyze the reasonableness of the costs and fees ConAm requested and instead simply awarded an amount it stated was “almost four times as much as the typical amount” the court sees in interpleader cases. Second, ConAm claims the trial court erred as a matter of law when it considered the amount of interpleaded funds in making its award of costs and fees to ConAm, stating “there would be virtually nothing left of the [interpleaded funds] if the court were to award all of the attorneys’ fees” ConAm requested.

Despite ConAm’s contention the trial court did not adequately assess the requested costs and fees, the trial court stated it “spent a lot of time looking at it.” Clearly, the court believed the case was not only more complicated than the typical interpleader case but also more complicated than necessary. The court noted both sides blamed the other. Nonetheless, despite its recognition the interpleader action was atypical, the court found ConAm’s requested costs and fee were “grossly excessive.” Thus, the trial court determined it would award an amount less than that requested but almost four times more than the amount it generally sees in such cases. As noted above, the trial judge “ ‘ ‘ ‘is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.’ ” ’ ” (*Doppes v. Bentley Motors, Inc.*, *supra*, 174 Cal.App.4th at p. 998.) The trial court’s decision here was not arbitrary or clearly wrong. We find no abuse of discretion.

Southern California Gas Co. v. Flannery (2014) 232 Cal.App.4th 477, relied upon by ConAm, does not change our analysis. In that case, the reviewing court affirmed a section 386.6 costs and fee award in the amount of \$81,053.44. The court held that award was not an abuse of discretion under the circumstances of that case. Although the section 386.6 award in *Flannery* was similar to ConAm's requested amount here, *Flannery* is not particularly helpful because it is based on the facts at issue there. By finding no abuse of discretion, *Flannery* does not dictate we should find the trial court abused its discretion here in awarding a lesser amount.

Finally, assuming ConAm is correct that the trial court should not base a section 386.6 award on the amount of interpleaded funds, the trial court's statement in that respect (i.e., noting the requested award would almost deplete the interpleaded funds) also does not change our analysis. As noted above, the trial court indicated it considered the requested costs and fees and made a reasonable determination to award an amount lower than that requested but higher than that recovered in a more typical interpleader case.

DISPOSITION

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

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.