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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re the Marriage of ARTHUR and POLINA TSATRYAN.	B251033, B256458 (Los Angeles County Super. Ct. No. BD512645)
ARTHUR TSATRYAN, Appellant, v. POLINA TSATRYAN, Respondent.	

APPEALS from orders of the Superior Court of Los Angeles County, Maren E. Nelson and Shelley Kaufman, Judges. Affirmed; sanctions denied.

Arthur Tsatryan, in pro. per., for Appellant.

Linda T. Barney for Respondent.

These are the second and third appeals by Arthur Tsatryan[1] in this dissolution action. In the first appeal, he challenged an order denying his request to change child custody and his motion to relieve the child's court-appointed counsel. We affirmed the trial court's order denying the motion to relieve counsel and dismissed the appeal from the trial court's order denying the request to change custody. (*In re Marriage of Tsatryan* (Sep. 15, 2014, B247448) [nonpub. opn.].)

In appeal No. B251033, Arthur appeals from an order granting his wife Polina's requests for accounting fees and for attorneys' fees and costs. He appears to be challenging the order based upon improper substitution of attorneys and fraud upon the court.

In appeal No. B256458, Arthur challenges an order granting attorneys' fees to the child's court-appointed counsel.[2] He claims that counsel acted improperly and was paid illegally.

We affirm. We also deny Polina's request for sanctions for a frivolous appeal.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Prior Appeal*

"Arthur and Polina . . . were married on August 5, 1987. They separated on August 3, 2009, and Arthur filed a petition for dissolution of marriage on September 23,

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[1] For convenience and clarity, and intending no disrespect, we refer to Arthur and Polina Tsatryan by their first names. (See *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 817, fn. 1; *In re Marriage of Lucio* (2008) 161 Cal.App.4th 1068, 1072, fn. 1.)

[2] An order awarding attorneys' fees pendente lite is appealable. (*In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1311; *In re Marriage of Weiss* (1996) 42 Cal.App.4th 106, 119; see *In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368-369.) The order awarding attorneys' fees to the child's counsel would similarly be appealable, as it "'possesse[d] all the essential elements of a final judgment. Nothing remained to be done except to enforce it . . . .'" (*In re Marriage of Skelley*, *supra*, at p. 368.)

2009. The parties have three sons. The youngest, Alexander, born in 2001, was a minor at the time Arthur filed his dissolution petition.

"After almost two years of acrimonious litigation, the trial court on September 6, 2011 indicated that it was granting Arthur and Polina joint legal custody over Alexander. Pursuant to stipulation, Polina retained primary physical custody over Alexander, and Arthur had visitation on alternate weekends. The court set a hearing on child custody and visitation for April 5, 2012.

"After a number of continuances and further sparring, the trial court on July 10, 2012 appointed David E. Rickett to serve as counsel for Alexander, pursuant to Family Code section 3150.[3] The reason for this appointment was to '[a]rticulate whether [Alexander] wishes to be heard; advise as to [Alexander's] level of maturity; [and] represent [Alexander] if his testimony is taken.'" (*In re Marriage of Tsatryan*, *supra*, B247448, at pp. 2-3, fn. omitted.)

The parties had a dispute over which school Alexander would attend for sixth grade, and Rickett filed a declaration stating there was no reason to transfer Alexander from the school he was currently attending to the school Arthur preferred for him. On July 30, 2012, the trial court ordered that Alexander remain at his current school for sixth grade, and that Arthur and Polina enroll in co-parenting counseling with a counselor experienced in high conflict cases. On August 29, the trial court modified the custody order and granted the parties joint legal and physical custody of Alexander, with each party having alternate weeks with the child. (*In re Marriage of Tsatryan*, *supra*, B247448, at p. 3.)

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3 Family Code section 3150 provides: "(a) If the court determines that it would be in the best interest of the minor child, the court may appoint private counsel to represent the interests of the child in a custody or visitation proceeding, provided that the court and counsel comply with the requirements set forth in Rules 5.240, 5.241, and 5.242 of the California Rules of Court. [¶] (b) Upon entering an appearance on behalf of a child pursuant to this chapter, counsel shall continue to represent that child unless relieved by the court upon the substitution of other counsel by the court or for cause."

"On November 26, 2012 the trial court ordered each party to pay Rickett $4,760 in attorneys' fees. On January 9, 2013 Arthur filed a motion to relieve Rickett as Alexander's counsel, claiming that Rickett was not representing Alexander's best interests . . . ." (*In re Marriage of Tsatryan*, *supra*, B247448, at p. 4, fn. omitted.) "On January 28, 2013 Arthur filed a request for modification of child custody and support, seeking legal and physical custody of Alexander, with visitation for Polina on alternate weekends. He also sought child support from Polina and an order compelling her to attend 52 parenting sessions. In his supporting declaration, Arthur challenged Polina's ability to care for Alexander. He claimed Polina was attempting to alienate Alexander from him and was not obeying court orders, such as the order to attend counseling." (*Id.* at p. 4.) Rickett filed opposition to both the motion to relieve him as Alexander's counsel and the request for modification of child custody. (*Id*. at pp. 4-5.)

"On February 19, 2013 the trial court denied Arthur's motion to relieve Rickett and his request for modification of child custody. With respect to the change in custody request, the court ruled that Arthur had not shown it was in Alexander's best interest to make a change. The court also stated that there was no reason to make a change in custody before the trial, which was set for the near future." (*In re Marriage of Tsatryan*, *supra*, B247448, at p. 5.) Arthur appealed from this order.

We dismissed the appeal as to the order denying Arthur's request for modification of child custody on the ground an order denying a request for modification of an interlocutory child custody order is nonappealable. (*In re Marriage of Tsatryan*, *supra*, B247448, at p. 6.) As to the denial of Arthur's motion to relieve Rickett as Alexander's counsel, we held that to the extent the order denying the motion was appealable, there was no merit to the appeal. Specifically, we held that "Arthur did not demonstrate that Rickett was unable to represent Alexander properly or competently, or that Rickett's representation was of no benefit to Alexander. Rickett did the research necessary to determine that Alexander would continue to receive a good education if he remained at the school he currently attended, Tesoro. . . . The fact that Rickett did not agree with Arthur's assessment of the alternatives for Alexander's education did not mean that

Rickett did not understand the situation or that Rickett was making a recommendation that was not in Alexander's best interest. [Citations.] Nor did Rickett have to file a motion to compel Polina to attend the court-ordered counseling sessions. The court addressed that issue when Arthur raised it, advising both Arthur and Polina that 'if either parent is shown at trial to fail to comply with the court's orders regarding counseling, . . . that's something that the court will take into account at trial about whether the parent is really acting in the best interest of the child or not.'" (*Id*. at pp. 7-8, fn. omitted.) We concluded that "Rickett was doing an adequate job representing Alexander. [Citations.] The trial court did not abuse its discretion in denying Arthur's motion to relieve Rickett. [Citations.]" (*Id*. at pp. 8-9.) We therefore affirmed the order.

B. ***Polina's Counsel in the Prior Proceedings and Arthur's Motion for Joinder***

On March 19, 2010, Polina filed a substitution of attorney substituting in J. Michael Kelly (Kelly) of the Law Offices of J. Michael Kelly. On September 25, 2012, Polina filed a notice of change of firm name, informing the court that the Law Offices of Michael Kelly had changed its name to Kelly Fernandez & Karney. Polina was represented at the February 19, 2013 hearing by Steven Shore (Shore) of Kelly Fernandez & Karney.

On February 27, 2013, Arthur filed a copy of a summons (joinder), purportedly joining Kelly in the action. He filed a motion for joinder on March 11, seeking to join the Los Angeles County Employees Retirement Association in the action.[4]

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[4] Polina is employed by Los Angeles County, and the parties had health and dental insurance through the county. Problems arose during the proceedings regarding continuation of Arthur's coverage.

C. ***Subsequent Proceedings — Polina's Attorneys' Fees and Accounting Fees (No. B251033)***

The acrimonious proceedings continued. Shore continued to represent Polina. On March 13, 2013, Polina filed a notice of limited scope representation, stating that Steven Fernandez (Fernandez) of Kelly Fernandez & Karney would be representing her only in connection with issues involving the division of property. She filed a second notice of limited scope representation on March 18, stating that Kelly would be representing her regarding Arthur's request for restraining orders. On the same day, presumably after Arthur's request for a temporary restraining order was denied, she filed a substitution of attorney, substituting in herself in place of Kelly.

However, on March 25, Kelly filed a stipulation re distribution of proceeds from the sale of the family residence on behalf of Polina under the limited scope representation re division of property. Pursuant to the stipulation, $10,000 was to be released to Arthur. Shore appeared at the hearing at which the parties agreed to the distribution of $10,000.

On April 3, 2013, Arthur filed a "notice to the court re fraud attempt by opposing party." According to Arthur, he had spoken to Fernandez on March 21 about drafting a stipulation to release $10,000. At the courthouse on March 25, Shore refused to show him the stipulation and instead offered him $50,000. The stipulation for a $50,000 payment "was 'too good to be true[.'] My suspicious feelings were not wrong. Opposing party tried to take advantage of my limited English ability and trap me to sign the Stipulation & Order which simply stated that my share from proceeds of the sale of rental Tarzana property is community property."[5] Arthur alleged that "Kelly Fernandez &

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[5] The stipulation for the $10,000 distribution contained the same provision that the "distribution shall be charged against Petitioner's community property share remaining held in trust."

Karney and Respondent Polina T[s]atryan regularly mislead, commit frauds, deceive, and trick the court throughout the entire proceeding of this case."[6]

On April 4, 2013, Arthur filed a request to enter Kelly's default. On April 9, Kelly filed a general denial to Arthur's summons (joinder). He also listed multiple affirmative defenses, basically asserting that Arthur had no claim against him for property in his possession because the only funds he took pursuant to Family Law Attorney's Real Property Liens were community property funds taken with Polina's permission as payment for services rendered. Arthur's request to enter default was denied on April 25 because a general denial had been filed. Arthur filed a motion for entry of Kelly's default on April 26 based on the filing of the general denial after the request for entry of default and the use of the incorrect form for the general denial.

In opposition to Arthur's motion, on May 22, 2013, Kelly filed a declaration stating that Kelly Fernandez & Karney was served with the pleading on joinder, not Kelly individually. The pleading had the words "Employee Benefit Plan" whited out and was not on the form for joinder of employee benefit plans. Kelly was never personally served with the summons (joinder) or the pleading on joinder. The request to enter default was not only on the wrong form but was also premature, having been filed prior to the deadline for response to the summons (joinder). Arthur filed a declaration in response stating that Kelly was properly served, Kelly "bluntly ignored all hearings therefore his declaration does [*sic*] make any sense," and Kelly was in default because he failed to file his denial in the time allowed by law.

At some point, Arthur filed a request for an order to show cause re Kelly's compliance with prior court orders. On May 24, 2013, Kelly filed a response detailing

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[6] During the course of the proceedings, Polina also accused Arthur of fraud, claiming that he lied about his assets in order to receive child and spousal support from her. Additionally, Polina was awarded sanctions for Arthur's failure to comply with her discovery requests. As we stated, the proceedings were acrimonious.

the receipt of funds from the sale of the parties' Tarzana rental property, the amounts deposited into his firm's client trust account, and the current balance of that account.

The hearing on Arthur's motion to enter Kelly's default and request for an order to show cause was held on June 5, 2013. The court denied the motion to enter default. It discharged the request for an order to show cause.

On July 11, 2013, Fernandez, on behalf of Polina, filed a request for attorneys' fees, accounting fees, and costs. Polina requested $100,000 in attorneys' fees and costs, and $10,000 in accounting fees and costs. In her supporting declaration, Polina stated: "Arthur has demonstrated frivolous litigation conduct that has caused me to incur attorney's fees at an increased and unreasonable velocity, forcing me to enter into a limited-scope representation with my attorney in an attempt to curb my litigation expenses; (2) Arthur has already received a disbursement of $10,000.00 from the proceeds held from the sale of the Tarzana Property, and I have not received a corresponding disbursement; (3) I have not had sufficient resources available to meet the expenses of litigation and I have only been able to make payments of $5,078.00 to Kelly Fernandez & Karney, leaving an unpaid balance of $521,542.26 in fees and costs . . . ."

In Fernandez's declaration, he detailed the amounts received into and expended from the client trust fund and the amount remaining. He discussed his experience, the hourly rate Polina agreed to pay for his services, and the employees working on the case. He also set forth a summary of the fees incurred addressing the various issues in the case. In addition, he noted that a majority of the fees were incurred "since April 1, 2012, during the time that Arthur has been representing himself. . . . During that time, our office has been forced to respond to Arthur's overzealous litigation conduct. Arthur has filed numerous unsubstantiated Requests for Order and motions, some having been filed as Orders to Show Cause and *ex parte* applications, needlessly dragging us in to [*sic*] court on a regular basis."[7]

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[7] Arthur filed a responsive declaration, but it does not appear to have been included in the record on appeal.

Polina also included a declaration by her accountant who discussed the services he provided and his fees.

On July 31, 2013, Fernandez also filed on behalf of Polina a request for monetary, issue, and evidence sanctions based on Arthur's failure to comply with discovery.

Arthur filed a responsive declaration to the request for sanctions on August 19, 2013. He accused Polina and her attorneys of "churning the case, the practice of unnecessarily running up fees in order to gain an advantage in the litigation by 'burying' the Petitioner with papers, discovery, motions, etc[.], and simply run up the attorney's fees to their own advantage, in the absence of any legal necessity for their actions." (Bold omitted.) He claimed Polina "is not trustworthy person, committed perjury under . . . oath numerous times in the court and in her declaration." He also challenged the request on the ground it was signed by Fernandez rather than Polina.

Arthur also claimed, "There is no business named Kelly Fernando [*sic*] & Karney located at 429 Santa Monica Blvd. Suite 120, Santa Monica, California 90401, per Santa Monica office of finance and license." Additionally, "There is no formerly known business as the Law Offices of Michael Kelly which was located at 429 Santa Monica Blvd. Suite 120, Santa Monica, California 90401, per Santa Monica office of finance and license." Rather, "The only business which is located at 429 Santa Monica Blvd. Suite 120, Santa Monica, California 90401, per Santa Monica office of finance and license, is Michael Kelly, Esq. APC."

At the August 21, 2013 hearing[8] on Polina's request for attorneys' fees and accounting fees, the trial court noted that Arthur's opposition to the request for attorneys' and accounting fees and costs "doesn't deal with the merits of this request. It attacks [Polina's] credibility, but it doesn't get to the merits of the question of whether money ought to be released from the trust account that Mr. Fernandez's firm is maintaining for [Polina's] attorney's fees. It seems to me the real question here is this, if money is

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[8] Judge Maren E. Nelson presided.

released to counsel for attorney's fees, will there be sufficient funds to pay any equalizing payment that's due to [Arthur], if any . . . ." The court noted there was "a substantial dispute as to whether one of the pieces of property is separate or community."

After a discussion of the matter, the court concluded that "from what I'm understanding, best case for [Polina], both these properties are community, and she has $282,000 in equity. Best case for [Arthur] is one property is community, the other is separate, and he has equity of [$]432[,000], or so. So under no scenario does she owe him an equalizing payment." When the court asked Arthur if he agreed, Arthur objected "to all declaration, and people not present here for the hearing," apparently referring to Polina and the accountant. Arthur also claimed it was suspicious that Polina changed tax accountants every year.

The court found: "This has been a matter that has been extraordinarily heavily litigated, every issue in this case has been litigated, the custody of the parties' minor child, issues regarding the sale of the rental property. There are issues yet on . . . reimbursements due to [Arthur] on the rental property. There are issues as to whether the Via Milagra property is community or separate, and whether that, if separate, whether there is a *Moore*/*Marsden*[9] reimbursement due to the community. All of that requires the services of an accountant to do the Moore/Marsden calculations, as well as a community property balance sheet.

"The $10,000 that's being suggested as needed for expert fees for that is appropriate. [Polina] needs to make her own determinations as to whether [her

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9 Under the *Moore/Marsden* rule (*In re Marriage of Moore* (1980) 28 Cal.3d 366 and *In re Marriage of Marsden* (1982) 130 Cal.App.3d 426), "'[w]hen community property is used to reduce the principal balance of a mortgage on one spouse's separate property, the community acquires a pro tanto interest in the property. [Citations.]'" (*In re Marriage of Geraci* (2006) 144 Cal.App.4th 1278, 1287.) The community is reimbursed for these payments prior to division of the community property. (*Id*. at p. 1286.)

accountant] is, in the circumstances, an appropriate expert, but that goes to the weight of his testimony, not whether she's entitled to money to pay him.

"As far as attorney's fees go, given the amount that's been litigated here, the $100,000 request is reasonable, and [it] does not appear [it] will impact [Arthur] adversely. Request for fees is granted $10,000 in accounting fees, $100,000 in attorney's fees, to be released from the trust account maintained by [Polina's] counsel, subject to reallocation."

Arthur complained that he previously requested attorneys' fees but was not awarded any. The court told him that if he obtained a declaration from counsel willing to represent him, he could file his own request. Arthur then requested a statement of decision. The court told him he was "not entitled to a statement of decision on attorney fees order."

The court then asked Fernandez if he was willing to prepare an order after hearing, and he said he would do it. The minute order for the hearing reflects that the request for attorneys' fees in the amount of $100,000 and accounting fees in the amount of $10,000 was granted, and Polina's counsel would prepare and submit an order after hearing.

Two days later, Arthur filed a notice to the court re ruling and request to overrule the decision. He claimed the ruling was erroneous, prejudiced, unfair, and unjustified. He also complained that the trial court did not rule on his objection to the declarations.

On August 26, 2013, Fernandez filed a reply declaration to Arthur's response to the request for sanctions, stating that Kelly Fernandez & Karney had filed a fictitious business name statement with the county clerk on July 20, 2012 and attaching a copy of the statement.

Arthur filed a notice of appeal from the August 21, 2013 order on August 27.

D. *Subsequent Proceedings — Attorneys' Fees for Rickett, Alexander's Attorney (No. B256458)*

Rickett had filed a request for attorneys' fees and costs in December 2013, to which Arthur had objected. On February 20, 2014, Rickett filed another request for

attorneys' fees and costs. He requested $6,647.78, to be split evenly between the parties, for his services on behalf of Alexander through November 2013. He requested an additional $1,200 to be paid by Arthur based on additional work required to respond to Arthur's meritless objection to his December 2013 request for attorneys' fees.

In a responsive declaration filed on March 11, 2014, Arthur opposed the request for attorneys' fees. He complained that Rickett did not represent Alexander's best interests to the court. He referred to incidents occurring from 2012 through the beginning of 2014.

The hearing on the matter was held on April 28, 2014.[10] Rickett argued that Arthur's objections were based on matters that had already been resolved in his previous submission of a bill. He stated that Arthur "hasn't said one word about my invoice and whether those . . . actually took place. So I think by the lack of addressing the proper issue, my invoice, the billing, the time, the work done, it is an admission that those were valid. So I submit on that, your honor."

Arthur sought to have Alexander testify, but the court refused to permit it, noting, "This is not an evidentiary hearing other than what you have submitted in your declaration."

Arthur then complained that Rickett had not filed a declaration regarding qualification as required by rule 5.315 of the California Rules of Court. Further, Arthur contended no review hearings were held concerning the parties' continuing financial ability to pay Alexander's attorneys' fees, again as required by the California Rules of Court.

Arthur also complained about Rickett "just chatting, responding through e-mails and getting his fee. This is big issue, which I did address to the court, that minor's counsel and everyone in the court talking to the previous law firm." That was "Michael Kelly and . . . Kelly, Fernandez and Karney. They are not legally represented here.

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[10] Judge Shelley Kaufman presided.

There is case law which says if client has attorney, only that attorney might be present in the court. There has never been substitution of Michael Kelly, who is [Polina's] attorney and still on file with the court. I would like to submit as evidence a printout from the website which says [Polina's] attorney is John Michael Kelly, no one else."

Rickett noted Kelly Fernandez & Karney had funds in their trust account. The court stated that Arthur's complaints about the lack of a substitution of counsel was "a different issue. What we are here today on is on minor's counsel, Mr. Rickett's invoice request for payment. Apparently there are funds sitting in the trust for [Polina's] counsel's firm. I have looked at the invoices. I have reviewed the stated work. I don't see any excessive time."

Arthur responded that it was Rickett's duty to investigate who Polina's attorney was. He complained, "I don't understand why should I pay him for talking to the people who is not supposed to be in the case."

The court granted Rickett's request in the amount of $6,739.18. Arthur filed a notice of appeal from this order on May 12, 2014.

DISCUSSION

A. *Standard of Review*

"'Perhaps the most fundamental rule of appellate law is that the judgment [or order] challenged on appeal is presumed correct, and it is the appellant's burden to affirmatively demonstrate error.'" (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383, quoting *People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573; accord, *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) "'To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.]' [Citation.] 'Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review.' [Citation.] 'Hence, conclusory claims of error will fail.' [Citation.]" (*Multani v. Witkin & Neal* (2013) 215

Cal.App.4th 1428, 1457; accord, *Rojas v. Platinum Auto Group, Inc.* (2013) 212 Cal.App.4th 997, 1000, fn. 3.)

The appellant's brief must "(A) State the nature of the action, the relief sought in the trial court, and the judgment or order appealed from; [¶] (B) State that the judgment appealed from is final, or explain why the order appealed from is appealable; and [¶] (C) Provide a summary of the significant facts limited to matters in the record." (Cal. Rules of Court, rule 8.204(a)(2).) In addition, the appellant must "[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority[.]" (*Id*., rule 8.204(a)(1)(B).)

We acknowledge a party who is representing himself has a more limited understanding of the rules on appeal than an experienced appellate attorney. Whenever possible, we do not strictly apply technical rules of procedure in a manner that deprives a party of a hearing. However, "mere self-representation is not a ground for exceptionally lenient treatment." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984.)

With these principles in mind, we turn to the appeals before us.

B. *Polina's Attorneys' Fees and Accounting Fees (No. B251033)*

1. Appealability

As Polina points out, Arthur purports to appeal from the August 21, 2013 minute order, which stated that the trial court granted the request for attorneys' fees and accounting fees and stated that Polina's counsel would prepare and submit an order after hearing. Where a minute order directs that a written order be prepared, the minute order is not appealable. Instead, the appeal must be taken from the subsequent written order. (See Cal. Rules of Court, rule 8.104(c)(2); *Cole v. Patricia A. Meyer & Associates, APC* (2012) 206 Cal.App.4th 1095, 1123, fn. 9; *In re Marriage of Adams* (1987) 188 Cal.App.3d 683, 688-689.)

Polina's counsel filed a written order on November 22, 2013. We deem Arthur's premature appeal, filed after the nonappealable minute order and before the written order

was entered, to be an appeal from the subsequent written order. (Cal. Rules of Court, rule 8.308(c); *Maxwell v. Dolezal* (2014) 231 Cal.App.4th 93, 96, fn. 1.)

2. Whether the Trial Court Properly Awarded Attorneys' Fees to Polina

In this appeal, Arthur filed a 62-page brief, in which he denotes 47 pages as "facts." These facts are not laid out in chronological order, relate to various proceedings in the case, and not necessarily to the order from which this appeal was taken. For example, he discusses the sale of the Tarzana property, child custody issues, discovery issues, and Polina's failure to release Alexander to him on various dates from 2010 through 2013.

In addition, the facts include Arthur's commentary, such as an accusation that Polina committed perjury, an accusation of "obvious fabrication and conspiracy" in the denial of his motion to enter Kelly's default, and a claim that the court was biased against him. If any of his commentary is intended to raise claims of error on appeal, the following principle applies: "We discuss those arguments that are sufficiently developed to be cognizable. To the extent [Arthur] perfunctorily asserts other claims, without development and, indeed, without a clear indication that they are intended to be discrete contentions, they are not properly made, and are rejected on that basis." (*People v. Turner* (1994) 8 Cal.4th 137, 214, fn. 19; *Committee to Save the Beverly Highlands Homes Assn. v. Beverly Highlands Homes Assn.* (2001) 92 Cal.App.4th 1247, 1258, fn. 5.) References to issues or errors, without analysis or authority, and "not set forth under an appropriate separate heading or subheading" need not be considered. (*Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 820, fn. 33; accord, *Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes* (2010) 191 Cal.App.4th 435, 457, fn. 4.)

The three-page section of Arthur's opening brief entitled "argument" amounts to a claim that the trial court should not have awarded attorneys' fees to Polina because Kelly was her attorney of record and the only attorney entitled to request attorneys' fees.

Arthur argues that Kelly Fernandez & Karney, Fernandez, and Shore were not entitled to receive attorneys' fees.

The record shows that Polina originally substituted in Kelly of the Law Offices of J. Michael Kelly. On September 25, 2012, Polina notified the court that the Law Offices of Michael Kelly had changed its name to Kelly Fernandez & Karney. In addition, on August 26, 2013, Polina filed with the trial court proof of publication of a Fictitious Business Name Statement, showing that since August 2012, Michael Kelly, Esq. APC was doing business under the fictitious business name Kelly Fernandez & Karney.[11]

"It is settled that the attorney of record has the exclusive right to appear in court for his client and to control the court proceedings, so that neither the party himself [citations], nor another attorney [citations], can be recognized by the court in the conduct or disposition of the case. [Citations.] If the attorney of record, however, associates another attorney with him, it rests with them to divide the duties concerning the conduct of the cause. [Citations.] The requirements of a substitution as prescribed in sections 284 and 285 of the Code of Civil Procedure are not applicable unless the associated attorney attempts to act as the sole attorney rather than as an associated attorney and to convert his association into a substitution for the attorney of record. [Citations.]" (*Wells Fargo & Co. v. City etc. of S. F.* (1944) 25 Cal.2d 37, 42-43; see also *Streit v. Covington & Crowe* (2000) 82 Cal.App.4th 441, 445.)

Kelly Fernandez & Karney, Fernandez, and Shore were all affiliated with Kelly and did not attempt to act as sole attorneys outside of their association with Kelly. As noted above, Polina filed notice that Kelly's law firm had changed its name to Kelly Fernandez & Karney. Fernandez and Shore indicated that they were representing Polina on behalf of Kelly Fernandez & Karney. Accordingly, they were entitled to represent Polina without a substitution of attorney, and they were entitled to receive attorneys' fees

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11 We deny Polina's request that we take judicial notice of fictitious business name statements for the Law Offices of Michael Kelly and Kelly Fernandez & Karney. We note, however, that the proof of publication is part of the record on appeal.

for their representation. (*Wells Fargo & Co. v. City etc. of S. F., supra*, 25 Cal.2d at p. 43; see also *Baker v. Boxx* (1991) 226 Cal.App.3d 1303, 1311 [filing of pleading by attorney who had not filed formal substitution of attorney did not invalidate pleading absent prejudice to other party].) Arthur presents no competent evidence that the services for which attorneys' fees were sought were not in fact rendered on behalf of Polina, or that he was somehow prejudiced by the lack of a formal substitution of attorney. Polina herself does not argue that any of the attorneys acted without her authorization. (Cf. *In re Marriage of Park* (1980) 27 Cal.3d 337, 343-344.)

3. Reasonableness of the Attorneys' Fees Award

Polina addresses the merits of Arthur's challenge in the trial court to the amount of attorneys' fees and accounting fees awarded. Family Code section 2031, subdivision (a)(1), provides that "during the pendency of a proceeding for dissolution of marriage, . . . an application for a temporary order making, augmenting, or modifying an award of attorney's fees, including a reasonable retainer to hire an attorney, or costs or both" may be made. Under Family Code section 2032, the trial court may make an award of attorneys' fees and costs under this section "where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties." (*Id*., subd. (a).) "In 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, taking into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320. . . ." (*Id*., subd. (b).) Additionally, "[t]he court may order payment of an award of attorney's fees and costs from any type of property, whether community or separate, principal or income." (*Id*., subd. (c).)

"'"A motion for attorney fees and costs in a dissolution action is addressed to the sound discretion of the [family] court . . . ."' [Citation.]" (*In re Marriage of Tharp, supra*, 188 Cal.App.4th at p. 1312.) The "'court has considerable latitude in fashioning

or denying an attorney fees award . . . .' [Citation.] However, the court's 'decision must reflect an exercise of discretion and a consideration of the appropriate factors as set forth in [Family Code] sections 203[1] and 2032.' [Citations.]" (*In re Marriage of Sharples* (2014) 223 Cal.App.4th 160, 165.)

"'The major factors to be considered by a court in fixing a reasonable attorney's fee [include] "the nature of the litigation, its difficulty, the amount involved, the skill required and the skill employed in handling the litigation, the attention given, the success of the attorney's efforts, his learning, his age, and his experience in the particular type of work demanded [citation]; the intricacies and importance of the litigation, the labor and the necessity for skilled legal training and ability in trying the cause, and the time consumed. [Citations.]" [Citations.]' [Citation.]" (*In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 870.) The court may also consider the parties' trial tactics. (*In re Marriage of Sharples*, *supra*, 223 Cal.App.4th at p. 165; *In re Marriage of Tharp*, *supra*, 188 Cal.App.4th at p. 1314.)

Here, in support of Polina's motion for attorneys' fees, Fernandez submitted a declaration, in which he set forth his experience, the hourly rate Polina agreed to pay for his services, and the employees working on the case. He set forth a summary of the fees incurred addressing the various issues in the case. He also explained how a large amount of the fees incurred was in response to "Arthur's overzealous litigation conduct."

While Arthur opposed Polina's motion, as the trial court observed, Arthur's opposition did not deal with the merits of this request, i.e., whether the amount requested was reasonable and whether that amount should be released to Polina from her attorneys' client trust account, which was holding the proceeds from the sale of the Tarzana property, which was community property. The trial court found, "As far as attorney's fees go, given the amount that's been litigated here, the $100,000 request is reasonable, and [it] does not appear [it] will impact [Arthur] adversely. Request for fees is granted $10,000 in accounting fees, $100,000 in attorney's fees, to be released from the trust account maintained by [Polina's] counsel, subject to reallocation."

It is clear the trial court considered the appropriate factors in making the attorneys' fees award and made an award that would assist Polina in paying her attorneys' fees without affecting Arthur's ability to litigate the matter. The fees awarded came from Polina's own share of the proceeds from the sale of the Tarzana property. In addition, the trial court determined that the amount of fees requested was reasonable under the circumstances, and we perceive no abuse of discretion in this determination. The award was proper.

4. Reasonableness of the Accountant's Fees Award

In support of her request for $10,000 in accountant's fees, Polina submitted the declaration of Certified Public Accountant Thomas B. Corby, explaining the assignments for which he had been retained, the rates he charged for his work and that he charged lesser rates for work performed by his associates. He also lodged a billing record with the court.

As with attorneys' fees, Arthur did not challenge the amount of accountant's fees requested but challenged Polina's selection of Corby as her expert. He also challenged the request for $10,000, when Corby stated that Polina's outstanding balance was only $5,288. Fernandez explained that part of the fees requested was for future services as to property division and testimony at trial.

The trial court properly weighed the relevant factors in determining the amount of funds to release to Polina for attorneys' fees.

An award of costs may include forensic accounting fees. (See, e.g., *In re Marriage of Sherman* (2005) 133 Cal.App.4th 795, 804, fn. 23; *In re Marriage of Ananeh-Firempong* (1990) 219 Cal.App.3d 272, 281.) We review the award of accountant's fees for abuse of discretion. (*In re Marriage of Barnert* (1978) 85 Cal.App.3d 413, 429.) There is no question that forensic accounting was required in this case, and Polina submitted documentation supporting the amount of fees requested for this accounting. The trial court analyzed the issues in the case and determined that the

$10,000 requested was a reasonable amount for the services of a forensic accountant. We find no abuse of discretion.

5. The Via Milagro Property

Polina identifies and addresses what she perceives to be another basis for Arthur's appeal: Arthur's claim that one of the parties' two properties, the Via Milagro property, was his separate property, not community property. The funds used for the payment of attorneys' fees and accounting fees came from the sale of the parties' other property, the Tarzana property. The trial court has not yet made a determination as to whether the Via Milagro property is Arthur's separate property or community property. Thus, this issue is not before us on appeal from the fees order.

6. Judicial Bias

Arthur also claims that the trial judges in the case were biased against him. The basis of his claim seems to be that he received unfavorable rulings, while Polina received favorable rulings. As Polina points out, "the mere fact a judicial officer rules against a party does not show bias." (*In re Marriage of Tharp*, *supra*, 188 Cal.App.4th at p. 1328.)

Moreover, the means by which to challenge a judge for bias are a peremptory challenge under Code of Civil Procedure section 170.6 or an objection under Code of Civil Procedure section 170.3, subdivision (c)(1). Peremptory challenges to a judge are waived when a litigant allows the proceedings to go forward without objection. (*Frisk v. Superior Court* (2011) 200 Cal.App.4th 402, 409-410.) An objection to the judge hearing the matter is not typically reviewable on appeal but may be reviewed only by a petition for writ of mandate in the Court of Appeal. (Code Civ. Proc., § 170.3, subd. (d); *Frisk*, *supra*, at p. 409.) We see no reason to vary the process here and decline to consider the claims of bias on this appeal.

C. *Attorneys' Fees for Rickett, Alexander's Attorney (No. B256458)*

In his appeal of the April 28, 2014 order granting attorneys' fees for minor's counsel, Arthur presents a myriad of facts, almost all of which arose prior to and were addressed in appeal No. B247448. Interspersed with these facts are claims of error and misconduct. The only one of these which arose subsequent to the prior appeal is a claim that only Kelly could represent Polina, and Rickett "all the time was dealing with 'Law Offices of Michael Kelly' and 'Kelly Fernandez & Karney' . . . never have been attorneys of record for [Polina] and are not part of divorce procedure . . . ."

Arthur has one section in his brief in which he discusses court rules regarding the appointment, continued appointment, and payment of counsel for a child, cases regarding an attorney's duty to provide competent representation, and Business and Professions Code section 6128, which provides that an attorney who engages in deceit or collusion in order to deceive a party is guilty of a misdemeanor. Arthur's subsequent argument is a list of 16 perceived transgressions by the trial court and by Rickett, stated in conclusory form, which Arthur claims, based on the facts previously stated, are supported by substantial evidence. This is insufficient to meet his burden of demonstrating error on appeal. (*Multani v. Witkin & Neal*, *supra*, 215 Cal.App.4th at p. 1457.)

Moreover, as Polina points out, most of Arthur's complaints are based on matters addressed in the court's order denying Arthur's motion to relieve Rickett as Alexander's counsel. Once our opinion affirming the order "became final and our remittitur issued . . . , the issues adjudicated by the judgment were conclusively determined." (*Ayyad v. Sprint Spectrum, L.P.* (2012) 210 Cal.App.4th 851, 861.) Arthur cannot relitigate these issues. (*Ibid*.; see *Puritan Leasing Co. v. Superior Court* (1977) 76 Cal.App.3d 140, 148-149; *Wilson v. Sharp* (1959) 175 Cal.App.2d 691, 694.) Specifically, Arthur's claims that Rickett did not represent Alexander properly or competently, or that his representation presented no benefit to Alexander were determined in the previous appeal. Further Arthur's claim that Rickett conducted insufficient research before making his recommendation regarding Alexander's education

and whether Rickett was required to file a motion to compel Polina to attend court-ordered counseling were adjudicated in the prior appeal as well.

As to Arthur's complaints based on Rickett's dealings with Kelly's associates rather than Kelly himself, there is no merit to any of them. Kelly Fernandez & Karney was authorized to represent Polina. For the same reasons, there was no error in payment of attorneys' fees to Rickett's law firm rather than Rickett personally. Further, as discussed above, Arthur has shown no prejudice arising from the change of name of Polina's attorney or Rickett's firm name on the payment for his services.

Arthur's claim that "[t]he order of the court is vague and it is not clear from whose portion it is paid and what portion of the total amount" is without merit. The fees are to be paid out of the Kelly Fernandez & Karney trust account, which contains the proceeds of the sale of community property. Therefore, Arthur and Polina are each paying half of the fees.

Similarly without merit is Arthur's claim that "[t]he court did not consider [his] declarations and evidence presented to the court. The court denied [him] his constitutional right to due process, fair and evidentiary hearing." The basis upon which Arthur makes this claim is unclear. That the trial court did not consider Arthur's meritless claims of error regarding Polina's legal representation does not establish that Arthur was deprived of a fair hearing. (Cf. *City of Corona v. Liston Brick Co.* (2012) 208 Cal.App.4th 536, 545 [exclusion of irrelevant evidence did not deny right to cross-examination]; *In re Earl L.* (2004) 121 Cal.App.4th 1050, 1053 [no due process right to present irrelevant evidence]; *In re Jeanette V.* (1998) 68 Cal.App.4th 811, 817 ["due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court"].)

Arthur may also be referring to the trial court's denial of his request to present live testimony from Alexander. Under rule 5.113(a) of the California Rules of Court, "at a hearing on any request for order brought under the Family Code, absent a stipulation of the parties or a finding of good cause under (b), the court must receive any live, competent, and admissible testimony that is relevant and within the scope of the hearing."

(Accord, Fam. Code, § 217, subd. (a).) Rule 5.113(b) sets forth a number of factors the trial court must consider in making a finding of good cause to exclude live testimony, including whether a substantive matter is at issue, whether a material fact is in controversy, and whether live testimony is necessary for the court to assess the credibility of a witness. Rule 5.113(c) requires the trial court to state its reasons on the record, or in a writing, if it excludes testimony.

The trial court denied Arthur's request to present live testimony from minor Alexander. The trial court's failure to state its reasons for so doing is plainly error. However, under the circumstances presented, we find the error was harmless. The record shows that had the trial court properly considered the factors set forth in rule 5.113 of the California Rules of Court, exclusion of Alexander's testimony would have been appropriate. First, the hearing did not concern a substantive matter such as custody, visitation, parentage, child support, spousal support, request for a restraining order or the division of property (see Cal. Rules of Court, rule 5.113(b)(1), listing these matters as substantive) — it concerned only attorneys' fees for minor's counsel.

Further the proffered testimony was not relevant to the issue to be determined at the hearing. Arthur sought to have Alexander testify "about Milliken School and soccer. [Additionally, t]here was issue about child well-being when child traveling from Valencia to Sherman Oaks and staying there for five hours and coming back home at 8:30, 9:30 p.m. And instead of investigating that issue, minor's counsel doesn't take any action." In other words, Arthur sought to have Alexander testify as to matters already addressed in Arthur's previous unsuccessful motion to relieve Rickett as Alexander's counsel and determined in the prior appeal.

Finally, to evaluate the request for attorneys' fees, the trial court did not need to assess Alexander's credibility or ascertain his preferences regarding custody or visitation. (See Fam. Code, § 3042; Cal. Rules of Court, rule 5.113(d).)

Based on this record, we do not find that a different result would have been obtained had the trial court either considered the factors set forth in California Rules of Court, rule 5.113 and articulated its reasons for excluding the testimony or if the trial

court had allowed Alexander to testify. (See *In re J.P.* (2014) 229 Cal.App.4th 108, 128 [“‘“[w]e will not reverse a judgment unless ‘after an examination of the entire cause, including the evidence,’ it appears the error caused a ‘miscarriage of justice’”’” and “‘“[i]n the case of civil state law error, this standard is met when ‘there is a reasonable probability that in the absence of the error, a result more favorable to the appealing party would have been reached’”’”].) The error is harmless.

Arthur cites to “California Rules of Court 5.13.1” for the proposition that failure to timely file a declaration of qualification by counsel appointed for a child may result in forfeiture of fees and costs incurred prior to filing. He cites the same rule for the proposition that the trial court should hold a review every 90 days to consider whether the representation should be continued and the parties’ ability to pay for representation. Arthur claims that Rickett did not file his declaration and the trial court did not hold review hearings, so Rickett is not entitled to attorneys’ fees.

As Polina pointed out in her respondent’s brief, there is no rule 5.13.1 in the California Rules of Court. Rather, it is a San Diego County Local Rule.[12] Moreover, we have granted Polina’s motion to augment the record with a copy of Rickett’s declaration of counsel for a child regarding qualifications, which was filed in this case on July 20, 2012.

In her respondent’s brief, Polina argued that Arthur was attempting to relitigate matters already decided on the prior appeal and his contentions regarding her counsel were without merit. In response, Arthur filed a lengthy reply brief discussing various proceedings throughout the case, many of which have no relevance to the order granting Rickett’s request for attorneys’ fees. Arthur again raises challenges to Rickett’s representation of Alexander which were resolved in the prior appeal. He also reiterated

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[12] The rule can be found at <http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/GENERALINFORMATION/LOCALRULESOFCOURT/LOCALRULESINDEX/SAN_DIEGO_SUPERIOR_COURT_LOCAL_RULES_2011.PDF> [as of June 17, 2015].)

his claims of error based on rule 5.13.1. Nothing in Arthur's reply brief refutes the points raised in Polina's respondent's brief.

The April 28, 2014 order granting Rickett's request for attorneys' fees is affirmed.

D. *Order To Show Cause Re Sanctions for Frivolous Appeal*

In response to Arthur's reply brief, Polina filed a motion for sanctions for frivolous appeal in appeal No. B256458. The bases of her motion were that we have already decided the issues regarding Rickett's competency that Arthur raises on appeal; the argument based on rule 5.13.1 is both legally and factually devoid of merit; and Arthur included hundreds of pages of documents irrelevant to the issues on appeal in his designated record on appeal. Polina also argues that Arthur should not be held to a more lenient standard as a self-represented litigant, in that he has been apprised of the law by this court in the prior appeal, by the trial court and by Polina, but he persists in raising the same claims of error.

On January 14, 2015, we issued an order to show cause why monetary sanctions should not be imposed for prosecuting a frivolous appeal. (Code Civ. Proc., § 907; Cal. Rules of Court, rule 8.276(a)[13]; see *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650-651.) We specifically requested that Arthur address the question whether the appeal became frivolous after we issued our opinion in the prior appeal, No. B247448. (*Guardianship of Melissa W.* (2002) 96 Cal.App.4th 1293, 1301.)

In response, Arthur filed a one-page reply in which he stated he never pursued any frivolous litigation or filed a frivolous appeal. He supported this with a copy of a transcript from a February 4, 2015 hearing. He claims that at the hearing, Alexander "testified in the court during the trial that he was abused and experienced violence from

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[13] Code of Civil Procedure section 907 provides: "When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just." Similarly, California Rules of Court, rule 8.276(a)(1) provides for sanctions for "[t]aking a frivolous appeal or appealing solely to cause delay."

his mother . . . , and David Rickett never presented his wishes to the court. Therefore it has been [proved] by testimony of the minor, that David Rickett aligned with [Polina] and failed his duty of care and judiciary duty to the minor . . . ."

An appeal is deemed to be frivolous "only when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable attorney would agree that the appeal is totally and completely without merit." (*In re Marriage of Flaherty*, *supra*, 31 Cal.3d at p. 650; accord, *In re Marriage of Gong & Kwong* (2008) 163 Cal.App.4th 510, 516.)

We discern no evidence that Arthur filed this appeal for an improper purpose, such as to cause a delay or to harass Polina. We note that at the time Arthur filed his notice of appeal (May 12, 2014), this court had not yet issued its ruling on his appeal from an order denying his request to relieve Rickett as Alexander's counsel (*In re Marriage of Tsatryan*, *supra*, B247448, filed Sep. 15, 2014).

We still must consider whether Arthur's maintenance of this appeal after our earlier opinion was filed is totally lacking in merit. This presents a closer question. Undoubtedly, Arthur continued to press many issues concerning Rickett's representation of Alexander which were addressed in the court's prior opinion. The issues raised in this appeal are not, however, identical. We note that Arthur raised some new issues in this appeal, such as his argument that Rickett should have been dealing only with Polina's counsel of record (as Arthur perceived that to be), rather than other attorneys in Kelly's newly named law firm. While this contention lacks merit, it is not a repetition of issues we have already addressed.

Bearing in mind that sanctions for prosecuting a frivolous appeal "should be used most sparingly to deter only the most egregious conduct" (*In re Marriage of Flaherty*, *supra*, 31 Cal.3d at p. 651), we decline to issue sanctions on this appeal. However, given that this is Arthur's third unsuccessful appeal, we are compelled to make the following observation. While Arthur may subjectively believe that his position is correct and he has the right to pursue it by any means available, that is not the case. He is not permitted

to ignore final decisions by this court and attempt to relitigate issues already determined. Any future conduct in this regard will be considered in light of this decision.

DISPOSITION

The orders are affirmed. Sanctions are denied. Polina is awarded costs on appeal.

STROBEL, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.