Filed 9/23/19 Marriage of Bramhall and Melvoin CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re the MARRIAGE of DOYLE BRAMHALL and SUSANNAH MELVOIN.	B288129
DOYLE BRAMHALL, Plaintiff and Respondent, v. SUSANNAH MELVOIN, Defendant and Appellant.	(Los Angeles County Super. Ct. No. BD537264)

APPEAL from a judgment of the Superior Court of Los Angeles County, Bruce G. Iwasaki, Judge. Reversed and remanded with directions.

Law Offices of James R. Eliaser and James R. Eliaser for Defendant and Appellant.

Law Offices of Vicki J. Greene and Vicki J. Greene for Plaintiff and Respondent.

INTRODUCTION

Susannah Melvoin appeals from the judgment awarding her spousal and child support, ordering her to reimburse her former husband Doyle Bramhall for a watch she stole from him, and denying her request for attorneys' fees. She argues the family law court erred under California Rules of Court, rule 3.1590 by issuing a statement of decision without considering the principal controverted issues specified in her request for a statement of decision.[1] Melvoin also argues the family law court erred in denying her request for attorneys' fees because the parties had stipulated the court would hear and decide that issue at a later time. We find no prejudice in any procedural error the court may have committed in issuing its statement of decision, find reversible error in the court's decision to rule on Melvoin's request for attorneys' fees, and reverse the judgment with directions to allow the parties to have a hearing on the attorneys' fees issue.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Bramhall and Melvoin Divorce*

Bramhall and Melvoin were married for 13 years, until their divorce in September 2013. Bramhall is a guitarist and singer songwriter and Melvoin is a singer and performer. According to the family law court, the two of them "have often stood twenty feet from stardom, writing and performing with

---

1 References to rules are to the California Rules of Court.

major attractions," Bramhall with Eric Clapton and Melvoin with Prince.

But times have changed. Melvoin is now a teacher's aide and, in the words of the family law court, "sells Prince tchotchkes." Bramhall is still in the music business, but he now "travels by van from town to town for one-night [shows]." At the time of trial, however, the parties had other sources of income. Bramhall lived rent-free with his girlfriend, Renee Zellweger, who also paid his monthly credit card charges of $4,000 to $5,000, including almost $60,000 in 2015. Melvoin received "significant gifts" from family and friends, including $80,000 ($25,000 in 2016) from her sister.

B. *The Family Law Court Issues Its Tentative Decision*

In 2017 the family law court conducted a trial on spousal and child support. The issues at trial included whether the court should include as income the gifts the parties had received, whether certain royalty payments were income, what sample period to use for evaluating the fluctuating income of professional musicians, and how to treat certain foreign business tax credits. Bramhall also claimed Melvoin stole and sold an expensive watch.

The court ruled in its tentative decision that the amounts Bramhall and Melvoin received from third parties were not income for purposes of calculating child support and retroactive pendente lite spousal support, but that the court would consider them for purposes of calculating permanent spousal support and attorneys' fees. The court also ruled that, under the terms of a prior stipulation between the parties, it would not include a $50,000 advance against royalties in Bramhall's income. The

court also ruled that, "because of the inherently fluctuating nature" of the parties' income, the court would average Bramhall's income over 46 months and that it would not include Bramhall's foreign business tax credits as income to him.

For child support, the court rejected the opinions of Melvoin's expert witness, ruled Zellweger's expenditures on behalf of Bramhall were not income to him, and ordered Bramhall to pay Melvoin $1,066 in monthly child support. For permanent spousal support, the court, after analyzing the factors in Family Code section 4320, ordered Bramhall to pay Melvoin $200 in monthly spousal support through June 2018 and $100 each month after that. The court also ordered Melvoin to reimburse Bramhall $11,000 for the stolen watch and denied her request for attorneys' fees. In connection with the latter ruling, the court found that, although the disparity in access to funds to retain counsel favored Bramhall, Bramhall did not have the money to pay Melvoin's attorneys' fees and that Melvoin had "pursued several issues that lacked merit."

C. *Melvoin Files a Request for a Statement of Decision and Specifies Principal Controverted Issues*

The family law court filed its tentative decision on September 1, 2017, and the clerk served the parties with the tentative decision on September 5, 2017. Of particular relevance to this appeal, the family law court stated in its tentative decision: "This is the Court's Tentative Decision (Cal. Rules of Court, rule 3.1590(a)) and Proposed Statement of Decision (Cal. Rules of Court, rule 3.1590(c)). This tentative decision will become the statement of decision unless, within ten days after service of the tentative decision, a party specifies those principal

controverted issues as to which the party is requesting a statement of decision or makes proposals not included in this tentative decision. (Cal. Rules of Court, rule 3.1590(c)(4).) The Court reminds the parties that the 'purpose of an objection to a proposed statement of decision is not to reargue the merits . . . .'"

On September 15, 2017 Melvoin complied with the court's directive in the tentative decision and filed a document titled "Respondent's Request for Statement of Decision." This document stated Melvoin was requesting "that a Statement of Decision be prepared and filed in this action explaining the factual and legal basis for the Court's decision as to each of the principal controverted issues at the bifurcated Trial on the issue of spousal support and child support and related issues . . . ." Melvoin identified four principal controverted issues she wanted the court's statement of decision to address: (1) the "circumstances of the parties supporting the award of spousal support from [Bramhall] to [Melvoin], including, but not limited to, [Bramhall's] cash flow available for support, earning capacity, earned and unearned income, for each of the three calendar years . . . and all the other Family Code section 4320 factors"; (2) a similar question for child support; (3) the "ability of [Bramhall] to pay [Melvoin's] attorney's fees and costs, and [Melvoin's] need for same, taking into consideration that this issue was not even before the Court, and as a result nothing was presented by [Melvoin] to the Court from which the Court could make a determination as to whether [Bramhall] should be obligated to pay a contributive share of [Melvoin's] attorney's fees and costs and if so the amount thereof"; and (4) the "circumstances resulting in [Melvoin] reimbursing [Bramhall] in the amount of $11,000 for the . . . watch." On September 26, 2017 Melvoin filed

an objection to Bramhall's proposed judgment on the ground that, in light of Melvoin's request for a statement of decision, entering judgment was "premature."

D. *The Tentative Decision Becomes the Statement of Decision, and the Family Law Court Enters Judgment*

On November 27, 2017 the family law court overruled Melvoin's objection to the proposed judgment and signed the judgment. The court ruled: "On September 1, 2017, the Court issued its Tentative Decision and Proposed Statement of Decision in this matter. The Tentative Decision stated that it would become the Statement of Decision unless, within ten days after service, a party specifies those principal controverted issues as to which the party is requesting a statement of decision or makes proposals not included in the Tentative Decision. ([R]ule 3.1590(c)(4).) The Court received no such specifications from either party. Nor did the Court receive objections to the Proposed Statement of Decision. ([R]ule 3.1590(g).) On September 15, 2017 [Melvoin] requested a Statement of Decision. But because the Court had on September 1, 2017 served and filed its Proposed Statement of Decision, the request was unnecessary. The Tentative Decision is deemed the Court's Statement of Decision in this matter."

E. *Melvoin Files a Request for an Order Vacating the Judgment, Which the Family Law Court Denies*

On December 7, 2017 Melvoin filed a request for an order vacating the November 27, 2017 judgment and "reopening for further proceedings concerning [Melvoin's] request for statement

of decision." Melvoin argued she followed the court's direction and rule 3.1590 by timely filing on September 15, 2017 a request for a statement of decision "in which she specifically set forth those principal controverted issues as to which she is requesting a statement of decision." The court, however, stated in its November 27, 2017 order that it did not receive any specification of principal issues (even though it had).

The family law court denied the motion. The court reviewed its November 27, 2017 order and stated, "I don't believe there is anything more to be done." The court stated neither side specified, within 10 days of service of the tentative decision, any principal issues as to which the party was requesting a statement of decision. Counsel for Melvoin told the court he did exactly that. The court stated, "The statement of decision sets forth the reasoning of the court. You can agree with it or disagree with it. And you're welcome to disagree with it. I think what all this does is provide you an argument in the Court of Appeal that implied findings cannot be made. And that's all it does. So you can certainly say at the Court of Appeal, if you're there, that the doctrine of implied findings does not apply because you raised controverted issues. But other than that, that takes care of it." The court stated it had received and considered Melvoin's September 15, 2017 request. The following exchange occurred:

"[Counsel for Melvoin]: But there was no proposed statement of decision."

"The Court: No, there was.

"[Counsel for Melvoin]: There was a tentative decision.

"The Court: No. It said it. It said, 'On September 1, 2017 the court issued its tentative decision and proposed statement of decision.'"

On January 26, 2018 Melvoin filed a timely notice of appeal from the judgment and the order denying her motion to vacate.

DISCUSSION

A. *The Judgment Is Appealable*

Bramhall argues that, "as a preliminary matter, [Melvoin] is not appealing an appealable order." But she is. She is appealing from the judgment, which is appealable. (See Code Civ. Proc., § 904.1, subd. (a)(1).)

Bramhall argues "the Statement of Decision is not an appealable order." True enough. (See *Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 901 ["a statement of decision is not treated as appealable when a formal order or judgment . . . follow[s]"]; *Estate of Sapp* (2019) 36 Cal.App.5th 86, 100 ["a statement of decision is usually not appealable"]; see also *Hernandez v. Rancho Santiago Community College District* (2018) 22 Cal.App.5th 1187, 1192 ["'[t]he rule's practical justification is that courts typically embody their final rulings not in statements of decision but in orders or judgments'"].) But Melvoin is not appealing from the family law court's statement of decision. She is appealing from the judgment that followed.

B. *Any Error in the Family Law Court's Preparation of the Statement of Decision Was Harmless*

Code of Civil Procedure section 632 provides that, following a court trial, the "court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial." Rule 3.1590 prescribes the

procedure for preparing and filing the statement of decision. Rule 3.1590(a) provides that, "[o]n the trial of a question of fact by the court, the court must announce its tentative decision by an oral statement, entered in the minutes, or by a written statement filed with the clerk." Rule 3.1590(c)(4) allows the court's tentative decision to "[d]irect that the tentative decision will become the statement of decision unless, within 10 days after announcement or service of the tentative decision, a party specifies those principal controverted issues as to which the party is requesting a statement of decision or makes proposals not included in the tentative decision."

The parties have 10 days from the announcement or service of the tentative decision, whichever is later (here, the latter), to request a statement of decision and to specify controverted issues that party wants the court to address. (Cal. Rules of Court, rule 3.1590(d).) The request must specify the controverted issues. (*Ibid.*; see Code Civ. Proc., § 632 ["The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision."].) If a request is made, any other party may, within 10 days, make proposals for the content of the statement of decision. (Cal. Rules of Court, rule 3.1590(e).)

After the court, or a party designated by the court, prepares the statement of decision and proposed judgment, the parties may file objections. (Cal. Rules of Court, rule 3.1590(g).) Only after the court and the parties have followed this procedure, or the parties have waived their right to request a statement of decision or make objections, may the court enter judgment. (Cal. Rules of Court, rule 3.1590(l).)

There may have been some procedural hiccups in the statement of decision process here. The family law court issued a written tentative decision under rule 3.1590(a). As authorized by rule 3.1590(c)(4), the family law court's tentative decision stated it would become the statement of decision unless Bramhall or Melvoin specified principal controverted issues or made proposals not included in the tentative decision. Ten days later, Melvoin filed a request for a statement of decision and specified four principal controverted issues she was requesting the court to address: (1) spousal support, (2) child support, (3) attorneys' fees, and (4) reimbursement for the watch.[2]

On November 27, 2017 the family law court stated it had not received from either side a specification of principal controverted issues or proposals not included in the tentative decision under rule 3.1590(c)(4), even though Melvoin had filed one. The court acknowledged Melvoin had filed a request for a statement of decision, but found "the request was unnecessary" because the court believed it "had on September 1, 2017 served and filed its Proposed Statement of Decision." That document, however, was the court's tentative decision, which stated that, if Melvoin filed a request for a statement of decision on the principal controverted issues specified in her request (which she did), it would not become the court's statement of decision. Melvoin argues that the court "ignored and disregarded" her specification of principal controverted issues and that she "was

---

[2] And when Bramhall served a proposed judgment on September 20, 2017, Melvoin filed a timely objection on September 26, 2017 under rule 3.1590(j).

precluded from following . . . rule 3.1590(g) and from serving and filing objections to the proposed statement of decision . . . ."

Any error in the court's preparation of the statement of decision, however, was harmless. (See *F.P. v. Monier* (2017) 3 Cal.5th 1099, 1116 [procedural errors in the statement of decision preparation procedure, including those that deprive a party of "the requisite time to file objections," are "subject to harmless error review"]; *Heaps v. Heaps* (2004) 124 Cal.App.4th 286, 292 ["the premature signing of a proposed statement of decision does not constitute reversible error unless actual prejudice is shown"]; *In re Marriage of Steiner & Hosseini* (2004) 117 Cal.App.4th 519, 524 [no prejudice where the trial court failed to comply with the deadlines in predecessor to rule 3.1590]; *Estate of Cooper* (1970) 11 Cal.App.3d 1114, 1121 ["While a Rule of Court phrased in mandatory language is generally as binding on the courts and parties as a procedural statute, it is seldom jurisdictional and ordinarily departure from it is not reversible error unless prejudice is shown."].) Melvoin's request for a statement of decision specified four principal controverted issues she wanted the court to address, and the court's statement of decision essentially addressed all of them.

In her September 15, 2017 request for a statement of decision, Melvoin asked the family law court to explain the basis for the court's spousal support award. The court's statement of decision did just that. The court, after discussing relevant case authority,[3] ruled the gifts and alleged loans both parties had

---

[3] *Anna M. v. Jeffrey E.* (2017) 7 Cal.App.5th 439, *In re Marriage of Smith* (2015) 242 Cal.App.4th 529, *In re Marriage of Williamson* (2014) 226 Cal.App.4th 1303, *Kevin Q. v. Lauren W.* (2011) 195 Cal.App.4th 633, *In re Marriage of Alter* (2009) 171

received did not qualify as income for purposes of calculating retroactive spousal support, and the court awarded Melvoin $2,784 in retroactive spousal support. The court considered the testimony of Melvoin's expert on the appropriate sample for determining Bramhall's income, rejected that opinion, and decided to average Bramhall's income over 46 months. The court ruled it would not include Bramhall's foreign tax credits as income to him. The court, after determining that Bramhall and Melvoin "had a middle class standard of living," analyzed the factors under Family Code section 4320, including the parties' marketable skills (finding both had "significant talent, but few marketable skills beyond that"), their ability to pay spousal support, their assets and royalty income, the balance of hardships, and the goal of becoming self-supporting (finding that "Melvoin has failed to make adequate efforts to become self-supporting" and that she "should be seeking full time employment"). After a comprehensive analysis and weighing of these factors, the court ordered Bramhall to pay Melvoin $200 in monthly spousal support through June 2018 and $100 in monthly spousal support after that.

Melvoin also asked in her September 15, 2017 request for a statement of decision for an explanation of the court's child support award. The court's statement of decision provided that explanation. Referring to the amounts Bramhall and Melvoin received from their family and friends, the court ruled that, "for

---

Cal.App.4th 718, *In re Marriage of Williams* (2007) 150 Cal.App.4th 1221, *In re Marriage of Schlafly* (2007) 149 Cal.App.4th 747, *In re Marriage of Shaughnessy* (2006) 139 Cal.App.4th 1225, and *In re Marriage of Loh* (2001) 93 Cal.App.4th 325.

purposes of child support, the third party payments both parties received . . . are not considered income." The court rejected the opinion of Melvoin's expert that Zellweger's payments on Bramhall's behalf, Bramhall's royalty advances, and Bramhall's foreign tax credits were income to Bramhall. The court calculated that Bramhall's income in 2015 was $50,350, that his income for the first six months of 2016 was $22,198, and that his average monthly income over this period was $4,030. The court also calculated Melvoin's average monthly income in 2016 was $1,791. The court ordered Bramhall to pay Melvoin $34,624 in retroactive child support and $1,066 in monthly prospective child support.

Melvoin also asked, in her request for a statement of decision, the court to explain the circumstances of the $11,000 watch reimbursement. The court's statement of decision covered that issue too. The court explained, "Melvoin took a . . . watch that had been given to [Bramhall] as a gift and sold it. She expresses no remorse for this theft and seeks to justify it by claiming, without evidence, that she used it for family needs. Even if she did, this does not justify what was a breach of fiduciary duty. The Court orders . . . Melvoin to reimburse . . . Bramhall $11,000 for the watch."

Finally, Melvoin's request for a statement of decision asked the court to explain its reasoning concerning Bramhall's ability to pay Melvoin's attorneys' fees and to explain why the court had decided the issue when the parties had reserved the issue. The court, in its statement of decision, found that "there is a disparity in access to funds to retain and maintain counsel that favors . . . Bramhall," but that Bramhall "does not have the means to pay the attorney's fees of both parties."

Therefore, because the family law court's statement of decision addressed the principal controverted issues identified in Melvoin's request for a statement of decision, any failure by the court in complying with the requirements of rule 3.1590 was harmless. The only issue the court's statement of decision did not address was whether the court should have decided the issue of attorneys' fees at that time.

C. *The Family Law Court Erred in Deciding the Issue of Attorneys' Fees*

As discussed, the court filed its tentative decision, which included its ruling on Melvoin's request for attorneys' fees, on September 1, 2017. In her September 15, 2017 request for a statement of decision, Melvoin argued the court should not have decided the attorneys' fees issue because the parties had stipulated to bifurcate it. Because the court on November 27, 2017 adopted as its statement of decision the tentative decision it had filed on September 1, 2017, the statement of decision could not have addressed, and did not address, Melvoin's subsequent (to the tentative decision) objection.

Bramhall does not dispute his attorney stipulated to bifurcate the issue of attorneys' fees, and the record makes clear his attorney did. During the trial, counsel for Melvoin stated, "[W]ith the court's permission, counsel . . . have stipulated we're going to bifurcate the issue of attorneys' fees and litigation expenses from all other issues . . . ." Counsel for Bramhall did not deny she had entered into this stipulation, and instead participated in a discussion about whether the case would return to the "home court" to decide which party would pay the other party's attorneys' fees. The court stated its "view [was] that the

home court is in a better position to evaluate" attorneys' fees. Later in the trial, counsel for Melvoin raised the issue again, stating, "What about the attorney fee? Should we do that on declarations too?" The court again stated, "The court's inclination is that that's a home court issue." When counsel for Melvoin stated, "I just want to make sure the court reserves jurisdiction over the issue," the court stated, "Yes. Nothing is going to get lost. And nobody is going to pull a fast one and say, 'Too bad, you waived it.' That is definitely not the case. No one is going to do that." Given the stipulation, and the court's statements indicating it would transfer the case to a different (the "home") court to decide the issue, the family court erred in ruling in its statement of decision that Melvoin was not entitled to attorneys' fees.

Bramhall argues that the family law court "had all of the evidence it needed to decide the issue" and that the court's "findings still exist and will not support a request for fees and costs even if the issue were to be remanded for retrial." He also argues, incorrectly, Melvoin "never objected to the trial court's statement of decision on this topic," when this is exactly what Melvoin did in her request for an order vacating the judgment.

Certainly the court heard testimony about the parties' financial circumstances. But Melvoin (and, to be fair, Bramhall) did not have an opportunity to present argument and evidence specifically on the issue of attorneys' fees. The parties did not address attorneys' fees in their initial or supplemental closing briefs. Indeed, Melvoin stated she was submitting her "written closing argument on the bifurcated issues of child support and spousal support." Nor did counsel address attorneys' fees during

closing argument.[4] Bramhall may be able to cite evidence he contends supports the family law court's essentially surprise ruling, but Melvoin should have had the opportunity to argue the law and factors under Family Code sections 2030 and 2032 and why they weigh in favor of awarding her attorneys' fees. The opportunity to present argument and evidence on a disputed issue is fundamental to our system of justice, and Melvoin should have that opportunity. (See *People v. Superior Court (Vasquez)* (2018) 27 Cal.App.5th 36, 56 ["'The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner."'"]; *Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282, 1286 ["fundamental principles of due process . . . call for those with an interest in the matter to have notice and the opportunity to be heard, so that the ensuing order does not issue like a 'bolt from the blue out of the trial judge's chambers'"]; *Tokio Marine & Fire Ins. Corp. v. Western Pacific Roofing Corp.* (1999) 75 Cal.App.4th 110, 121 ["'Notice and a chance to be heard are essential components to the trial court's jurisdiction and for due process.'"].)

D. *Bramhall's Request for Sanctions Is Denied*

Bramhall argues Melvoin's appeal "is not well developed, is frivolous, and is subject to monetary sanctions, which should be awarded to [Bramhall] for having to engage counsel to respond to it in order to protect his rights." Part of Melvoin's appeal, however, has merit. (See *Contreras v. Dowling* (2016) 5

---

[4] Toward the end of closing argument, the court asked, "Are those the issues?" Counsel for Melvoin stated, "I think so," and counsel for Bramhall stated, "Yeah."

Cal.App.5th 394, 421 [“‘reversal of the trial court’s ruling establishes that [the appellant’s] appeal is meritorious and obviates any need to discuss the issue of sanctions’”].)

Moreover, some of the positions Bramhall has taken on appeal are, well, frivolous. For example, Bramhall, in arguing Melvoin’s appeal should be dismissed, asserts Melvoin “did not appeal the judgment.” This assertion is false. Melvoin’s notice of appeal stated she was appealing from a “[j]udgment after court trial.” In arguing forfeiture, Bramhall asserts Melvoin “did not properly perfect her right for review by first taking her complaints to the trial court.” False. Melvoin objected by filing a request to vacate the judgment soon after she received the court’s statement of decision. Bramhall argues Melvoin “did not fully or accurately explain anything” or “cit[e] to any legal precedent.” False again. Melvoin explained what she contended the trial court did wrong in preparing its statement of decision, including incorrectly stating Melvoin had not specified any principal controverted issues, and she cited to the provisions of rule 3.1590 she contended the trial court violated. And Bramhall asserts Melvoin did not file any objections to his proposed judgment, when Melvoin, on September 26, 2017, filed those objections. Bramhall is not entitled to sanctions on appeal.

DISPOSITION

The judgment is reversed. The family law court is directed to conduct a new hearing on Melvoin’s request for attorneys’ fees and costs, after giving the parties an opportunity to present argument and evidence on the issue, and to comply with rule 3.1590(a) regarding statements of decision and judgments in a

bifurcated court trial. Bramhall's request for sanctions is denied. Melvoin is to recover her costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.