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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CLEMENTINE S. MURDOCK

Plaintiff and Respondent,

v.

LOUIS J. MURDOCK,

Defendant and Appellant.

B259694

(Los Angeles County
Super. Ct. No. BD479418)

APPEAL from an order of the Superior Court of Los Angeles County,
Thomas Trent Lewis, Judge. Affirmed in part and reversed in part.

Gordon | Gordon | Lawyers and Errol J. Gordon for Defendant and
Appellant.

Lopez & Grager and Eve Lopez for Plaintiff and Respondent.

INTRODUCTION

Louis Murdock appeals a post-judgment order to pay spousal support arrears, attorney's fees and sanctions to his former wife, Clementine Murdock.¹ We conclude that the pendente lite order in question did not direct Louis to pay Clementine spousal support, and, therefore, it cannot serve as a basis for the challenged post-judgment order to pay spousal support arrears. We also conclude the portion of the order requiring Louis to pay attorney's fees for his purported breach of fiduciary duty was not supported by sufficient evidence that he impaired Clementine's interest in the community estate. (See Fam. Code, § 1101, subd. (a).)² We reverse those portions of the order on these grounds. As for Louis's other contentions, we conclude the court reasonably exercised its discretion to order need-based attorney's fees and section 271 sanctions, except to the extent the court ordered sanctions to be paid from Louis's exempt retirement account. In all other respects the order is affirmed.

FACTS AND PROCEDURAL BACKGROUND

Louis and Clementine married in June 1988 and separated in May 2007. At the time of the relevant post-judgment proceedings, Clementine was 71 years old and employed as a grants development administrator for the California State University Dominguez Hills. Louis was 75 years old and retired from his career as a college administrator. The parties have no children together, but both have adult children from prior marriages.

Prior to marriage, Louis worked for the University of Delaware and the University of Maryland. In connection with his employment, Louis contributed funds to retirement plans established by these universities and administered by TIAA-CREF.

Louis and Clementine married in Maryland, and moved to California shortly thereafter. They both obtained employment with the California State University System, in connection with which Louis began contributing funds

¹ For clarity, we refer to the parties by their first names.

² Statutory references are to the Family Code, unless otherwise designated.

to a new retirement account administered by TIAA-CREF. Both were also enrolled in the CalPERS Retirement Plan.

On May 5, 2008, following Louis's and Clementine's separation, the court entered a pendente lite order upon the parties' stipulation. As relevant to this appeal, the pendente lite order provided: "Respondent [Louis] shall pay to Petitioner [Clementine] as her 1/2 interest in that certain PERS monthly payment the sum of \$2056.00 (paid sum is nontaxable to [Clementine]) commencing [May 1, 2008]. [Clementine] shall pay nontaxable nondeductable support to [Louis] in the sum of \$291.00. [Louis] shall write a net monthly check in the sum of \$1,765.00." The order further stated: "The parties shall jointly retain a QDRO [Qualified Domestic Relations Order] preparer forthwith to divide [Louis's] PERS."³

From May 2008 through February 2011, Louis sent Clementine monthly checks in the sum of \$1,765 as directed by the pendente lite order. Commencing in March 2011, CalPERS began withholding one half of Louis's monthly benefit payments for Clementine pursuant to a joinder by the parties' QDRO preparer. Louis also stopped sending monthly checks to Clementine in March 2011.

On October 8, 2008, the court entered a further order on the parties' stipulation prohibiting either party from withdrawing any funds from the TIAA-CREF accounts. And, on May 9, 2009, the parties entered into a stipulation providing that the TIAA-CREF accounts would be divided per a QDRO.

³ The Employee Retirement Income Security Act (ERISA, 29 USC § 1001 et seq.), as amended by the Retirement Equity Act of 1984, provides that state courts can bind ERISA retirement plans to state community property division orders without offending ERISA's anti-assignment and anti-alienation provisions (29 USC § 1056(d)(1)) only if the order meets federal statutory requirements for a "qualified domestic relations order" (QDRO). (29 USC §§ 1144(b)(7), 1056(d)(3)(A); *Boggs v. Boggs* (1997) 520 U.S. 833, 846-847; *In re Marriage of Oddino* (1997) 16 Cal.4th 67, 76; Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2016) ¶ 8:1170, p. 8-392.)

On various occasions from April 2009 to April 2013, Louis withdrew funds totaling approximately \$105,000 from the TIAA-CREF accounts in violation of the October 8, 2008 order. Louis later testified that all withdrawals were made from the accounts established and funded in connection with his employment at the University of Delaware and the University of Maryland.

On June 11, 2012, the court entered judgment for dissolution of Louis's and Clementine's marriage. With respect to spousal support, the judgment provided: "The jurisdiction of the Court to order and award spousal support to either party, including the ability of this Court to extend its jurisdiction to award such support, is reserved until death of either party, remarriage or further order of this [C]ourt whichever first occurs. A pendente lite order regarding spousal support was entered May 5, 2008 and remains in full force and effect."

On February 13, 2014, Clementine filed a request for order seeking a determination of arrears for the alleged spousal support that Louis had failed to pay since March 2011. The filing included a request for attorney's fees and costs.

On February 19, 2014, the court entered a QDRO directing that Clementine would commence receiving her one-half interest in Louis's CalPERS benefit payments "by separate warrant directly from the CalPERS as soon as administratively practicable" and that her interest would be "applied to any amounts segregated by CalPERS prior to the date of this Order." The court entered a similar QDRO the same date concerning Louis's interest in Clementine's CalPERS benefits.

On March 25, 2014, Clementine filed a motion in limine seeking to preclude Louis from asserting a separate property claim to funds held in the TIAA-CREF accounts. Clementine based the motion in limine on financial disclosures and discovery responses provided by Louis in 2008 indicating he had no separate property interest in the TIAA-CREF accounts, which at the time held funds totaling more than \$500,000.

On June 13, 2014, Clementine received a check from CalPERS for \$70,235.90, representing the net amount, after taxes, of \$90,017.18 withheld from Louis's benefit payments since March 2011. While Clementine

acknowledged the payment represented her one-half interest in Louis's CalPERS monthly benefit payments, she maintained her receipt of the payment had no effect on Louis's alleged obligation to pay spousal support pursuant to the May 5, 2008 pendente lite order, as incorporated into the judgment.

In August 2014, the court held a three-day trial on Clementine's request for order and motion in limine. After taking evidence and receiving the parties' written closing arguments, the court issued a written statement of decision denying Clementine's motion in limine and granting her request for order. With respect to the motion in limine, the court found "[t]he evidence demonstrate[d] that Louis contributed to his [University of] Maryland and [University of] Delaware [TIAA-CREF] Accounts entirely prior to marriage," concluding "[t]hese accounts are his separate property." As for the request for order, the court ordered Louis to pay Clementine: (1) over \$96,000 in accrued spousal support arrears since April 1, 2014 pursuant to the May 5, 2008 pendente lite order and subsequent judgment; (2) \$40,000 as a sanction under section 271 for violating the October 8, 2008 order prohibiting either party from withdrawing funds from the TIAA-CREF accounts; (3) \$17,500 pursuant to section 1101 for attorney's fees incurred as a result of Louis withdrawing funds from the TIAA-CREF account in breach of his fiduciary duty to Clementine; and (4) \$35,000 in need-based attorney's fees pursuant to sections 2030 and 2032. The court imposed a judicial lien upon Louis's interest in the TIAA-CREF accounts and ordered the payments to be made pursuant to a QDRO affecting those accounts.⁴ Louis filed a timely notice of appeal from the spousal support, attorney's fees and sanctions order.

DISCUSSION

1. *The Pendente Lite Order Did Not Require Louis to Pay Spousal Support*

Clementine premised her request for an order to determine spousal support arrears on the May 5, 2008 pendente lite order and the June 11, 2012

⁴ The order also required the parties to pay \$10,000 each to an outside attorney for fees and costs associated with preparing the QDRO.

judgment of dissolution. In her moving papers, Clementine argued the pendente lite order imposed an obligation on Louis to pay the net amount of \$1,765 per month as “spousal support,” and this obligation was incorporated, without modification, into the subsequent judgment. In ordering Louis to pay over \$96,000 in spousal support arrears, the trial court accepted Clementine’s characterization, concluding it had no authority to “‘retroactively modify a prior order for temporary spousal support.’” (Italics omitted.) The parties agree the arrears order is proper only if the pendente lite order required Louis to pay monthly spousal support to Clementine. We conclude it did not.

Our review of an order premised on the interpretation of a written instrument is de novo. (*In re Marriage of Hibbard* (2013) 212 Cal.App.4th 1007, 1012.) “The interpretation of a written instrument is essentially a judicial function to be exercised according to the generally accepted canons of interpretation so that the purposes of the instrument may be given effect.” (*In re Marriage of Smith* (2007) 148 Cal.App.4th 1115, 1120; *In re Marriage of Simundza* (2004) 121 Cal.App.4th 1513, 1518 [“‘Marital settlement agreements incorporated into a dissolution judgment are construed under the statutory rules governing the interpretations of contracts generally.’”].) “In interpreting a written agreement, we ‘look first to the language of the contract . . . to ascertain its plain meaning or the meaning a layperson would ordinarily attach to it.’” (*In re Marriage of Facter* (2013) 212 Cal.App.4th 967, 978.) “A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.” (Civ. Code, § 1636.) The intent is to be inferred, if possible, solely from the written provisions of the contract. (Civ. Code, § 1639.) “Language in a contract must be interpreted as a whole and in the circumstances of the case, and cannot be deemed ambiguous in the abstract.” (*In re Marriage of Facter*, at p. 978; see also Civ. Code, §§ 1641, 1647.)

We conclude the operative language of the pendente lite order unambiguously directs Louis to pay Clementine her one-half community property interest in his monthly CalPERS benefit payments, consistent with the property division mandate of section 2550, during the pendency of the

dissolution proceedings.⁵ This is not a spousal support obligation, as the text of the order makes clear. The operative language reads: “Respondent [Louis] shall pay to Petitioner [Clementine] *as her 1/2 interest in that certain PERS monthly payment* the sum of \$2,056.00 (paid sum is nontaxable to [Clementine]) commencing [May 1, 2008]. [Clementine] shall pay nontaxable nondeductable support to [Louis] in the sum of \$291.00. [Louis] shall write a net monthly check in the sum of \$1,765.00.” (Italics added.) The italicized text unambiguously refers to Clementine’s one-half community property interest in Louis’s monthly CalPERS benefit. In contrast, the next line unambiguously refers to Clementine’s obligation to “pay nontaxable nondeductable *support* to [Louis]” in a monthly offsetting amount. The clear intended consequence of the distinct language used in each sentence was to impose a property division obligation on Louis with respect to Clementine’s one-half interest in the CalPERS benefits, while imposing a spousal support obligation on Clementine based on the parties’ respective incomes and expenses.

Our interpretation of the pendente lite order’s principal clause is bolstered by a subsequent provision requiring the parties to “jointly retain a QDRO preparer forthwith to divide [Louis’s] PERS.” Taken together, these provisions demonstrate the parties’ unambiguous intent to require Louis to transmit to Clementine her share of the benefit payments until such time as the parties could have a QDRO prepared directing CalPERS to make the payments directly.

Despite the distinct obligations spelled out in the principal clause’s first two sentences, Clementine argues the third sentence, referring to “a net monthly check in the sum of \$1,1765.00,” somehow imposed a spousal support obligation on Louis that was later incorporated into the judgment. The pendente lite order is not susceptible of this interpretation. Reasonably

⁵ Section 2550 provides, subject to certain exceptions, “in a proceeding for dissolution of marriage or for legal separation of the parties, the court shall, either in its judgment of dissolution of the marriage, in its judgment of legal separation of the parties, or at a later time if it expressly reserves jurisdiction to make such a property division, divide the community estate of the parties equally.”

construed, this sentence's intended purpose was merely to account for the offsetting obligations imposed on each party by directing Louis to transmit a single check to Clementine for the "net" amount, rather than requiring each party to send a separate check to the other. This essentially procedural provision did not alter the underlying character of the parties' obligations.

Finally, Clementine contends the arrears order was proper because the pendente lite order did not stipulate that Louis could discontinue the monthly net payments once CalPERS stopped sending him Clementine's share. Further, she argues Louis's obligation to pay the net monthly check was incorporated into the judgment, without modification, by the provision stating, "A pendente lite order regarding spousal support was entered May 5, 2008, and remains in full force and effect." This argument merely begs the question. As the language of the judgment makes clear, Louis's obligation to transmit a net monthly check would remain "in full force and effect" only if it was an obligation to pay "spousal support." As we have explained, it was not.⁶

Under the pendente lite order, Louis's unambiguously stated obligation was to transmit to Clementine her one-half community property interest in his monthly CalPERS benefit payments. The performance of that obligation naturally depended upon his continued receipt of her share of the benefit payments. Thus, once CalPERS began impounding Clementine's share, Louis was impliedly excused from future performance. (See *Gibbs v. Hersman* (1925) 73 Cal.App. 732, 739 ["when the contract relates to any dealing with specific things, in which the performance necessarily depends on the existence of the particular things, the condition is implied by law that the impossibility arising from the destruction of the things, without fault in the party, shall excuse the performance"].) Moreover, Clementine ultimately

⁶ To be clear, the only spousal support obligation contemplated by the pendente lite order was the obligation imposed on Clementine to "pay nontaxable nondeductable support to [Louis] in the sum of \$291.00." That is the only spousal support provision incorporated into the judgment. It appears Clementine may be in arrears on the \$291 monthly spousal support obligation she owed to Louis under the pendente lite order of May 5, 2008, as incorporated into the judgment.

received the impounded benefit payments, after CalPERS received the QDRO contemplated by the pendente lite order. There was no legal or factual basis for the order requiring Louis to pay Clementine spousal support arrears.

2. *The Award of Attorney Fees for Louis's Purported Breach of Fiduciary Duty Was Not Supported by Sufficient Evidence that Louis Impaired Clementine's Interest in the Community Estate*

Louis contends the evidence was insufficient to support the order awarding Clementine \$17,500 for attorney's fees incurred in connection with his withdrawal of funds from the TIAA-CREF accounts. The court made the award pursuant to section 1101, which requires a finding that the offending spouse committed a breach of fiduciary duty that "result[ed] in impairment to the claimant spouse's present undivided one-half interest in the community estate." (§ 1101, subds. (a) & (g).) Louis argues the evidence was undisputed that he withdrew funds only from the retirement accounts he funded while working for the University of Delaware and the University of Maryland prior to marriage. Thus, he maintains there was no evidence to support a finding that he impaired Clementine's interest in the community estate. We agree the evidence was insufficient to support a finding of impairment.

Section 1101, subdivision (a) states, "A spouse has a claim against the other spouse for any breach of the fiduciary duty that results in impairment to the claimant spouse's present undivided one-half interest in the community estate, including, but not limited to, a single transaction or a pattern or series of transactions, which transaction or transactions have caused or will cause a detrimental impact to the claimant spouse's undivided one-half interest in the community estate." If the claimant spouse proves the other spouse breached his or her fiduciary duty, remedies under section 1101, subdivision (g) "shall include, but not be limited to, an award to the other spouse of 50 percent, or an amount equal to 50 percent, of any asset undisclosed or transferred in breach of the fiduciary duty plus attorney's fees and court costs." (See also *In re Marriage of Fossum* (2011) 192 Cal.App.4th 336, 347.)

We review a breach of fiduciary duty finding under section 1101 for substantial evidence. (See *In re Marriage of Murray* (2002) 101 Cal.App.4th 581, 600-604.) Under this standard, we are bound by the trial court's determination of facts based upon substantial evidence and all reasonable inferences drawn therefrom. "However, a trier of fact may not indulge in inferences rebutted by clear, positive and uncontradicted evidence. [Citation.] Moreover, an inference drawn from facts must be distinguished from a *question of law*. [Citation.] Where the question is one of law derived from undisputed facts, the appeal court is not bound by the trial court's finding on an ultimate issue." (*Fullerton Union High School Dist. v. Riles* (1983) 139 Cal.App.3d 369, 383.)

At trial, Louis testified that he withdrew funds exclusively from his University of Delaware and University of Maryland TIAA-CREF accounts. He testified that he chose these accounts because they had been established and funded entirely prior to his marriage to Clementine. On appeal, Louis maintains this testimony was the only evidence presented concerning the source of the funds he withdrew in violation of the sequestration order. Our review of the record confirms this assertion. Because the trial court found, consistent with Louis's testimony, that he "contributed to his [University of] Maryland and [University of] Delaware [TIAA-CREF] Accounts entirely prior to marriage," and that "[t]hese accounts are his separate property," we conclude there was no evidence to support a finding that he impaired Clementine's community property interest.⁷ The evidence was insufficient to support an award of attorney's fees pursuant to section 1101.

⁷ In her respondent's brief, Clementine merely invokes the court's finding that Louis "impaired Clementine's interest in the [TIAA-CREF] accounts"; she does not, however, point to any evidence that contradicted Louis's testimony regarding the source of the withdrawn funds. Absent affirmative evidence demonstrating Louis made the withdrawals from an account containing community assets, Clementine could not meet her burden as the claimant spouse under section 1101.

3. *The Court Reasonably Exercised Its Discretion to Order Need-Based Attorney's Fees*

In addition to the attorney's fees awarded as sanctions, the trial court ordered Louis to pay Clementine \$35,000 for need-based attorney's fees pursuant to sections 2030 and 2032. In challenging the order, Louis contends there was "no evidence in the record supporting his ability to pay a contribution to Clementine's fees, nor was there a showing of need on the part of Clementine." We conclude there was sufficient evidence to support the court's findings that Louis was able to contribute and that there was a disparity in access to funds for the retention of legal counsel. We find no abuse of discretion.

"A motion for attorney fees and costs in a dissolution action is addressed to the sound discretion of the trial court, and in the absence of a clear showing of abuse, its determination will not be disturbed on appeal. [Citations.] The discretion invoked is that of the trial court, not the reviewing court, and the trial court's order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made. [Citations.]" (*In re Marriage of Cueva* (1978) 86 Cal.App.3d 290, 296.)

Under section 2030, subdivision (a)(1), "In a proceeding for dissolution of marriage . . . and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation . . . by ordering, if necessary based on the income and needs assessments, one party . . . to pay to the other party . . . whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding."

Under section 2030, subdivision (a)(2), "When a request for attorney's fees and costs is made, the court shall make findings on whether an award of attorney's fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties. If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs."

With respect to the amount of the award, section 2032 provides, “The court may make an award of attorney’s fees and costs under Section 2030 . . . where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties. [¶] . . . 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 [the factors for determination of permanent spousal support]. . . . Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances.” (Fam. Code, § 2032, subds. (a) & (b); *In re Marriage of Terry* (2000) 80 Cal.App.4th 921, 933.)⁸

“In reviewing an attorney fee order, the record must reflect that the trial court considered the factors set forth in sections 2030 and 2032. [Citation.] The purpose of section 2030 is to ensure parity. ‘The idea is that both sides should have the opportunity to retain counsel, not just (as is usually the case) only the party with greater financial strength.’ [Citation.] As for section 2032, it not only requires that the court consider the financial resources of each party, but also requires a broader analysis of the parties’ relative circumstances.” (*In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1056.)

⁸ Section 4320 lists the following relevant circumstances which the trial court “shall consider” in ordering spousal support: “(c) The ability of the supporting party to pay spousal support, taking into account the supporting party’s earning capacity, earned and unearned income, assets, and standard of living. [¶] (d) The needs of each party based on the standard of living established during the marriage. [¶] (e) The obligations and assets, including the separate property, of each party. [¶] . . . [¶] (h) The age and health of the parties. [¶] . . . [¶] (k) The balance of the hardships to each party. [¶] . . . [¶] (n) Any other factors the court determines are just and equitable.”

The record reflects that the trial court considered the disparity in access and ability to pay between the parties in ordering need-based fees. Specifically, in assessing the parties' relative circumstances, the trial court found that "Louis has a greater share of available cash resources than Clementine," and that "Clementine is not in particularly good health," which impacts her future prospective earning capacity and expenses.

Louis argues these findings are not supported by the evidence, citing the parties' respective income and expense declarations, which showed Louis had a monthly income of \$4,629.00 with cash totaling \$54,600, while Clementine had a monthly income of \$7,819.47 with cash and easily liquidated stock totaling \$104,000. Louis's contention, however, overlooks the significant disparity in the parties' monthly expenses. Due to her deteriorating medical condition, which the court noted, Clementine's income and expense report showed she had monthly expenses totaling \$13,353.59, as compared to Louis's monthly expenses of \$4,248. In view of the evidence that Clementine was burdened with a monthly deficit of over \$5,500 a month, we cannot say the court acted unreasonably in ordering need-based attorney's fees.⁹

4. *The Sanctions Order Improperly Requires Payment from Louis's Exempt Retirement Account; The Order Otherwise Constitutes a Reasonable Exercise of Discretion*

Louis challenges the trial court's order imposing \$40,000 in sanctions pursuant to section 271 for his admitted violation of the order prohibiting the withdrawal of funds from the TIAA-CREF accounts. Section 271 authorizes the family court to award sanctions for "attorney's fees and costs on the

⁹ Though Louis does not challenge the amount of the fee award on appeal, we note that the court properly considered evidence that Louis had access to financial information that he failed to make available to Clementine, and that he "created considerable controversy between the parties by the documents he signed under penalty of perjury with regard to the [TIAA-CREF] pension accounts." (See, e.g. *In re Marriage of Kozen* (1986) 185 Cal.App.3d 1258, 1264 [approving order to pay over \$100,000 in need-based fees based in part on evidence of "husband's lack of cooperation, such as failures to show up for scheduled interviews or make records available"].)

extent to which the conduct of [a] party or attorney . . . frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys.” (§ 271, subd. (a).) “Sanctions under section 271 are appropriate whenever a party’s dilatory and uncooperative conduct has frustrated the policy of promoting settlement of litigation and cooperation among litigants.” (*In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1317.) There is no prerequisite that a party suffer actual injury, and “the party requesting an award of attorney’s fees and costs is not required to demonstrate any financial need for the award.” (§ 271, subd. (a); *In re Marriage of Tharp*, at p. 1317.)

While “financial need” is irrelevant to the section 271 analysis, the statute prohibits the court from ordering a sanction that “imposes an unreasonable financial burden on the party against whom the sanction is imposed.” (§ 271, subd. (a).) In assessing whether the sanction will impose an unreasonable financial burden, section 271 directs the trial court to “take into consideration all evidence concerning the parties’ incomes, assets, and liabilities.” (*Ibid.*)

We review a trial court’s decision to award sanctions under section 271 for an abuse of discretion. (*In re Marriage of Tharp, supra*, 188 Cal.App.4th at p. 1316.) “As long as the court exercised its discretion along legal lines, its decision will be affirmed on appeal if there is substantial evidence to support it.” (*In re Marriage of Duncan* (2001) 90 Cal.App.4th 617, 625.) We will overturn the order only if, “considering all of the evidence viewed most favorably in its support and indulging all reasonable inferences in its favor, no judge could reasonably make the order.” (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1225-1226.)

Louis does not challenge the trial court’s basis for ordering sanctions pursuant to section 271. Rather, Louis contends the court failed to consider his financial circumstances in assessing whether the amount of the sanction would impose an unreasonable financial burden. Louis also argues the court improperly ordered the sanctions to be paid from his exempt TIAA-CREF retirement account. We conclude the court adequately considered Louis’s

financial circumstances, but agree the order improperly places a lien on an exempt retirement account.

As discussed above with respect to the award of need-based attorney's fees, the evidence showed that Louis had liquid assets totaling \$54,600. Additionally, Louis's income and expense report showed that he had real and personal property worth \$200,000. Further, the trial court specifically found that the imposition of sanctions would not impose an undue financial hardship on Louis given his separate property interest in the TIAA-CREF accounts, which the evidence showed were worth over \$500,000 before he began withdrawing funds in violation of the sequestration order. Viewing the evidence in the light most favorable to the trial court's ruling, we cannot say the court erred in determining a \$40,000 sanction award would not impose an unreasonable financial burden on Louis.

While the trial court properly considered "all evidence concerning the parties' incomes, assets, and liabilities" in assessing whether sanctions would impose an unreasonable financial burden (§ 271, subd. (a)), we conclude the court erred in placing a judicial lien upon the TIAA-CREF retirement accounts for the purpose of satisfying the sanctions order. Code of Civil Procedure section 704.115, subdivision (b) provides, "All amounts held, controlled, or in process of distribution by a private retirement plan, for the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan are exempt." (Code Civ. Proc., § 704.115, subd. (b).) "The purpose of this exemption is to safeguard a source of income for retirees at the expense of creditors." (*Yaesu Electronics Corp. v. Tamura* (1994) 28 Cal.App.4th 8, 13.) The undisputed evidence established that the TIAA-CREF accounts are qualified retirement accounts subject to the exemption set forth in Code of Civil Procedure section 704.115.¹⁰

¹⁰ The trial court found the TIAA-CREF accounts were qualified retirement accounts that required a QDRO to accomplish the payment of sanctions. Despite this finding, the court did not consider whether the accounts were subject to Code of Civil Procedure section 704.115's anti-alienation provision.

Clementine does not dispute that the TIAA-CREF accounts are qualified retirement accounts. She nevertheless argues the order was proper under the exception for amounts payable in “satisfaction of a judgment for . . . spousal support.” (Code Civ. Proc., § 704.115, subd. (c).) Her reliance on the spousal support exception is misplaced. Section 271 plainly states that “[a]n award of attorney’s fees and costs pursuant to this section is in the nature of a *sanction*.” (§ 271, subd. (a), italics added.) Section 271 is “not a need-based statute” and it is not subject to the strictures required for an award of attorney’s fees as spousal support under section 2330. (*In re Marriage of Corona, supra*, 172 Cal.App.4th at pp. 1226–1227; *In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 990.) Because the TIAA-CREF accounts are qualified retirement accounts, and no exception to Code of Civil Procedure section 704.115’s exemption applies, the trial court erred in placing a judicial lien on the accounts for the purpose of satisfying the section 271 sanctions award. In that respect, the order is reversed.

DISPOSITION

The portions of the order requiring Louis to pay over \$96,000 in accrued spousal support arrears and \$17,500 in attorney's fees pursuant to section 1101 are reversed. The portion of the order placing a judicial lien on Louis's interest in the TIAA-CREF retirement accounts for the purpose of satisfying the section 271 sanctions award is also reversed. In all other respect the order is affirmed. The case is remanded to the trial court for further proceedings consistent with this opinion. The parties shall bear their own costs on appeal.

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STRATTON, J.*

We concur:

EDMON, P. J.

ALDRICH, J.

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