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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of MEHMET ELGIN and GANNA YENYK.	B285857
MEHMET ELGIN, Respondent, v. GANNA YENYK, Appellant.	(Los Angeles County Super. Ct. No. YD061507)

APPEAL from an order of the Superior Court of Los Angeles County, Glenda Veasey, Commissioner. Affirmed.

Ganna Yenyk, in pro. per., and Matthew Mickelson for Appellant Ganna Yenyk.

No appearance for Respondent Mehmet Elgin.

In this marriage dissolution case, Ganna Yenyk appeals from an order: (1) denying in part her request that her former husband Mehmet Elgin contribute to her attorney fees pursuant to Family Code section 2030;[1] (2) denying her request for sanctions under section 271; and (3) denying her request that Elgin pay all costs associated with a prospective court-ordered child custody evaluation. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

Yenyk and Elgin separated in 2012 and their divorce became final in 2015. They have joint legal and physical custody of their daughter, who resides primarily with Yenyk.

In 2012, the court ordered Elgin to pay $1,682 per month in child support. The court modified that order on several occasions and, as of August 2017, Elgin was required to pay $972 per month in child support.

In early 2017, Yenyk requested an order to appoint a child psychologist, and Elgin responded by requesting a child custody evaluation pursuant to Evidence Code section 730. On June 14, 2017, the court granted Elgin's request and ordered Elgin to pay 60 percent and Yenyk to pay 40 percent of the cost of the evaluation, "subject to reallocation."

On June 26, 2017, Yenyk filed a request for orders: (1) to have Elgin "pay guideline child support"; (2) imposing a $20,000 sanction against Elgin under section 271; (3) requiring Elgin to pay a share of her attorney fees under section 2030; and (4) requiring Elgin to pay all costs associated with the child custody evaluation. Yenyk supported the request with her declaration in which she stated that her monthly gross income is $10,226, and Elgin's gross

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[1] Unless otherwise specified, statutory references are to the Family Code.

monthly income is $24,071. Yenyk described generally Elgin's aggressive litigation of the case, his refusal to cooperate on parenting issues, and his rejection of Yenyk's efforts to resolve outstanding issues. More particularly, Yenyk pointed to the following events:

(1) Yenyk needed to hire counsel with respect to a hearing in February 2017 because Elgin had "bombarded [Yenyk] with several motions, extensive objections to [her] declarations, and witness lists."[2]

(2) Yenyk and her attorney appeared for a hearing on March 8, 2017, for which Yenyk incurred $1,150 in attorney fees. Elgin's counsel failed to appear and, because of his absence, the hearing was continued.

(3) In March 2017, Elgin refused Yenyk's recently-appointed counsel's request to continue two hearing dates, requiring Yenyk's counsel to seek and obtain continuances by ex parte application.

(4) In March 2017, Elgin unsuccessfully requested the court's permission to travel with their daughter to Turkey, and Yenyk incurred attorney fees to oppose the request.

In connection with her request, Yenyk filed an income and expense declaration showing that she works full time as a credit risk manager for Southern California Gas Company.[3] She is paid a gross salary of $7,333 and receives an average monthly bonus of $1,477. She has monthly expenses of $7,585, $78,320 in installment debt and personal loans, and $11,718 in liquid assets.

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[2] Yenyk does not indicate the purpose of the February hearing. According to Elgin, the hearing was held on Yenyk's request to modify the custody order.

[3] Yenyk's income and expense declaration appears to be inconsistent with the statement in her declaration that she has a monthly gross income of $10,226, including her 2017 bonus.

Elgin opposed Yenyk's request with his declaration in which he described Yenyk as "litigious and uncooperative," and asserted that Yenyk has "promoted" this "costly litigation." Yenyk, he claims, misled the court in calculating his average monthly income by adding an annual bonus that Elgin received in the first half of 2017 and income earned over a five and a half-month period, then dividing that sum by four and one-half months.

Elgin provided an updated income and expense declaration showing that he is employed full time as a finance director for a health insurance company and receives a gross monthly salary of $14,132, plus an average monthly bonus of $3,677. He has monthly expenses of $7,342, about $3,400 in installment debt, and approximately $45,000 in liquid assets. Although it appears from the parties' income and expense declarations that Elgin has more income and liquid assets, and less debt than Yenyk, Elgin asserted that Yenyk "actually has more financial resources than [he]." He pointed to Yenyk's ownership of real property, in which she has "built up substantial equity," and her recent purchase of a $40,000 vehicle. Elgin, by contrast, states that he does not own any real property and has only one asset—a 2009 model year car—"worth less than $10,000." He has also paid more than $85,000 in child support during the preceding five years.

In addition to asking that Yenyk's request be denied, Elgin requested that the court impose a $10,000 sanction against Yenyk pursuant to section 271.

Yenyk filed a reply declaration in which she stated that "it is a fact that [Elgin's] income is far greater than [hers]," but did not dispute Elgin's claim that she miscalculated his income. She further stated that, contrary to Elgin's claims of owning only a car, Elgin has "over $200,000 in 401K alone and other forms of liquid

assets."[4] Regarding the responsibility for the contentiousness of the litigation, Yenyk pointed to actions by Elgin's former attorney, who "aggressively and maliciously" represented Elgin.

Yenyk appeared at the hearing on her request with counsel; Elgin appeared in propria persona. Commissioner Glenda Veasey, who had overseen the case for five years, noted that she "know[s] the case well," and that it has been "grossly over-litigated" with "fault in both directions." She directed the parties to run a DissoMaster report,[5] which, after taking into account taxes, insurance, and child support, showed that Elgin had net spendable income of $7,604, and Yenyk had net spendable income of $6,798—a $806 difference in Elgin's favor.

After hearing argument, the court noted that Yenyk's "moving papers, frankly, were not well-taken," and that "Elgin is correct." The court found that "there is a small disparity in the incomes of the parties," "both of the parties have cash and assets available from which to pay attorney's fees," and "both of [the] parties continue to come back and forth to court." The court did, however, grant Yenyk's request for attorney fees in the amount of $1,500 based on the fees she incurred for the March 8, 2017 hearing at which Elgin's counsel failed to appear. The court otherwise denied

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[4] Yenyk argues that the court erred by failing to order "Elgin to disclose all of his liquid assets and his 401K." It does not appear from our record, however, that Yenyk ever requested such an order. We therefore decline to address the point. (See *Franz v. Board of Medical Quality Assurance* (1982) 31 Cal.3d 124, 143 [appellate courts generally will not consider matters not raised below].)

[5] "The DissoMaster is a privately developed computer program used to calculate guideline child support under the algebraic formula required by section 4055." (*In re Marriage of Williams* (2007) 150 Cal.App.4th 1221, 1227, fn. 5.)

Yenyk's request. The court also denied Yenyk's request to change the existing child support order.[6]

With respect to Yenyk's request for an order that Elgin pay all costs associated with the child custody evaluation, the court "reserve[d] making any further orders regarding reallocation until the later hearing date."

Yenyk timely appealed.

DISCUSSION

I. Attorney Fees under Section 2030

Under section 2030, "the court shall ensure that each party has access to legal representation . . . to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party . . . to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding." (§ 2030, subd. (a)(1).) "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." (§ 2030, subd. (a)(2).)

Further guidance is provided in section 2032, which provides that the court may award fees 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

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[6] Yenyk does not challenge the court's order regarding child support.

parties." (§ 2032, 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. The fact that the party requesting an award of attorney's fees and costs has resources from which the party could pay the party's own attorney's fees and costs is not itself a bar to an order that the other party pay part or all of the fees and costs requested. 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." (§ 2032, subd. (b).)[7]

The person requesting an award of attorney fees under section 2030 has the burden of establishing a need for the award. (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 824.) The request "is left to the sound discretion of the trial court" and 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.' " (*In re Marriage of Sullivan* (1984) 37 Cal.3d 762, 768-769; accord, *In re Marriage of Bendetti* (2013) 214 Cal.App.4th 863, 868.)

In marital dissolution cases, as in other cases, it is the appellant's burden to demonstrate error and provide an adequate record for review. (*In re Marriage of Lusby* (1998) 64 Cal.App.4th 459, 470, citing *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.)

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[7] Section 4320 lists circumstances the court may consider when determining spousal support. The circumstances include the "obligations and assets . . . of each party," the "tax consequences to each party," and the "balance of the hardships to each party." (§ 4320, subds. (e), (j) & (k).)

Here, Yenyk's request for attorney fees is based upon her claim that there is a "significant disparity in [her and Elgin's] financial resources" and that she needs to have counsel "due to [Elgin's] continuous and relentless litigation." She based the alleged significant disparity in part on her assertion that Elgin has "an average gross monthly income of $24,071." Elgin pointed out in his response that this calculation was made by taking the sum of Elgin's pay during a five and a half-month period, which included payment of a one-time *annual* bonus of $28,070, and dividing that sum by four and one-half months. Yenyk did not dispute Elgin's point, and the patently misleading calculation presumably contributed to the trial court's view that Yenyk's "moving papers . . . were not well-taken."

The court, having reasonably rejected Yenyk's calculations, relied on the DissoMaster report, to which Yenyk did not object, as an aid to evaluating financial disparity.[8] (See *In re Marriage of Whealon* (1997) 53 Cal.App.4th 132, 144 [failure to object to DissoMaster calculation waives challenge to it on appeal].) That report showed a difference in the parties' "net spendable" income of $806. In light of the net spendable incomes of the parties—$7,604 for Elgin and $6,798 for Yenyk—the court could reasonably characterize the difference as "a small disparity."

The court could also, as Yenyk asserts, consider the parties' "trial tactics" in evaluating a request under section 2030. (See *In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1167; *In re*

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[8] Although courts have cautioned trial courts against relying on a DissoMaster report in determining permanent spousal support (see, e.g., *In re Marriage of Schulze* (1997) 60 Cal.App.4th 519, 523-524; *In re Marriage of Zywiciel* (2000) 83 Cal.App.4th 1078, 1082), Yenyk does not refer us to any authority suggesting that the court may not consider the report, along with other facts, in connection with the issues presented by her request.

Marriage of Sorge (2012) 202 Cal.App.4th 626, 662.) As noted above, Yenyk points to Elgin's refusal to stipulate to continue certain hearings, necessitating her counsel's ex parte application to obtain the continuances, Elgin's request for permission to take their daughter to Turkey, and the need to respond to "several motions, extensive objections to [her] declarations, and witness lists" in connection with a February 2017 hearing.[9] The court considered these incidents, but rejected Yenyk's attempt to place all blame on Elgin for the contentiousness of the litigation. Commissioner Veasey, who noted her familiarity with this five-year proceeding, observed that both parties share responsibility for over-litigating this case. Based on the limited record before us, we cannot conclude that the court's assessment is incorrect.

For the foregoing reasons, we conclude that Yenyk has not shown that the court's denial of her request for attorney fees under section 2030 constituted an abuse of its discretion.

II. Sanctions under Section 271

Section 271, subdivision (a) provides: "Notwithstanding any other provision of this code, the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or 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. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction." (§ 271, subd. (a).)

We review a ruling on a request for sanctions under section 271 for abuse of discretion. (*In re Marriage of Fong*

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[9] Yenyk also relied on an incident where she incurred attorney fees when her counsel appeared for a hearing and Elgin's attorney failed to appear. The court granted her motion as to such fees, and neither party challenges that ruling on appeal.

(2011) 193 Cal.App.4th 278, 291; *In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1316.) Deference to the trial court is particularly appropriate where, as here, the court is familiar with the history of the litigation. (See *Cates v. Chiang* (2013) 213 Cal.App.4th 791, 808.)

Our discussion in the preceding part regarding Yenyk's evidence of Elgin's litigation tactics generally applies here. Yenyk's selective and limited description of incidents is insufficient to establish that the court abused its discretion in denying her request for sanctions.

III. Cost of Custody Evaluation

On June 14, 2017, the court, in granting Elgin's request for a child custody evaluation, ordered Yenyk to pay 40 percent and Elgin to pay 60 percent of the costs, "subject to reallocation." Twelve days later, Yenyk filed her request for an order that Elgin "pay all costs associated" with the evaluation. The court denied the request and "reserve[d] making any further orders regarding reallocation until the later hearing date." Yenyk contends that that ruling was error.

Under rule 5.220 of the California Rules of Court, the trial court shall determine and allocate between the parties any fees or costs of child custody evaluations. (Cal. Rules of Court, rule 5.220(d)(1)(D).) According to a respected treatise, an initial allocation of the responsibility for the fees and costs of the evaluation is ordinarily "subject to reallocation . . . after the evaluator submits his or her report." (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2018) ¶ 7:256.10, p. 7-102.)

Yenyk relies on the disparity in financial resources between her and Elgin and on "the incontrovertible fact that it was solely . . .

Elgin who had requested a custody evaluation." We reject these arguments.

The court's finding regarding financial disparity is addressed above and our discussion on that point applies equally here. Even if we assume a significant financial disparity between the parties, the court's preliminary 40/60 split of the responsibility for the costs reasonably reflects that disparity. We also reject Yenyk's unsupported assertion that the expense of the child custody evaluation should be borne by the party that requested the evaluation. That view, if adopted, would discourage parties from requesting custody evaluations even when it would be in the child's best interest to perform them. Because there is neither law nor sound policy to support the point urged by Yenyk, we decline to adopt it.

IV. Request to Assign Case to Different Department

Yenyk requests that, if we reverse any of the court's rulings, we direct that the case be reassigned to a different superior court department. Because we are not reversing the court's order in any respect, the request is moot.

DISPOSITION

The order issued on September 12, 2017 is affirmed. Respondent Elgin is awarded his costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.