Filed 1/31/17 Marriage of Prewitt CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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| In re Marriage of GEORGE P. and JENNIFER L. PREWITT. | B268946<br><br>(Los Angeles County Super. Ct. No. MD036223) |
| GEORGE P. PREWITT,<br><br>Respondent,<br><br>v.<br><br>JENNIFER L. PREWITT,<br><br>Appellant. | |

APPEAL from orders of the Superior Court of Los Angeles County, Robert J. Palazzolo, Commissioner. Affirmed.

Jennifer L. Prewitt, in pro. per., for Appellant.

No appearance for Respondent.

After a judgment was entered dissolving Jennifer and George Prewitt's[1] marriage, Jennifer asked to modify child support. George in turn sought discovery about Jennifer's financial and employment status. He also sought reimbursement for their children's orthodontia. Because Jennifer refused to comply with discovery, the family court awarded George $2,000 in sanctions. The court also ordered Jennifer to pay orthodontia expenses. Jennifer appeals from the sanctions and orthodontia orders. We affirm.

## BACKGROUND

Jennifer's and George's marriage was dissolved in 2011. Under the stipulated judgment, George had primary physical custody, and Jennifer had the children one weekend per month and specified holidays. The parties were responsible for supporting the children when in their care. Medical costs not covered by insurance were to be borne by the parties equally: "Reasonable and necessary health care costs of the minor children not covered by insurance including . . . dental, orthodontic and mental health costs of each minor child shall be *equally* shared by the parties and *equally* paid by the parties."

In September 2014, Jennifer requested an order modifying child custody, child support and visitation. George opposed the request and asked the court to impute an income to Jennifer. In December 2014, the family court, having heard no valid reason to modify custody, took the child custody and visitation matters off-calendar, leaving only child support at issue.

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[1] We refer to parties by their first name to avoid confusion. (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 475, fn. 1.)

In connection with the child support issue, George asked Jennifer to produce documents, but Jennifer objected because there was no automatic right to discovery in postjudgment proceedings. The family court, at a hearing in March 2015, noted that Family Code section 218[2] had just become effective in January 2015, and therefore discovery was automatically reopened. The court indicated it was likely to grant a motion for discovery and advised Jennifer, who was unrepresented, that, given her request for child support, George had a right to seek relevant financial information from her.

George, represented by counsel, then propounded discovery requests. Subpoenas, one to the Lancaster School District and a second to the Antelope Valley Union High School District, sought Jennifer's employment records, including ones regarding her salary from January 2013, "employee file, disciplinary actions," and time records. A third subpoena sought her bank records. George also propounded document demands for bank and employment records. Most requests were limited to a period after January 2012. George also asked 29 special interrogatories about, for example, Jennifer's employment history and sources of income.

In response, Jennifer took the position that the information she provided on her income and expense declarations was all

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[2] All further undesignated statutory references are to the Family Code. Section 218 provides, "With respect to the ability to conduct formal discovery in family law proceedings, when a request for order or other motion is filed and served after entry of judgment, discovery shall automatically reopen as to the issues raised in the postjudgment pleadings currently before the court. . . ."

George was entitled to and that George was punishing her with discovery. She also asserted privacy, overbreadth, and remoteness objections and that section 218 applied prospectively and not to her case.[3] She also refused to pay orthodontic expenses, interpreting the judgment to allow only "reasonable and necessary" health care costs and not cosmetic and voluntary ones.

Jennifer then moved to quash the subpoena to the Lancaster School District, where she hadn't worked since 1998, on the grounds it violated her right to privacy, sought irrelevant and immaterial records, and was overbroad. George responded that the subpoenas were necessary to establish Jennifer's actual income, as he believed she'd understated her income by over $1,000.

At a hearing in June 2015, Jennifer asked that her motion to quash and request for support be determined, and she repeated her position that there was no right to discovery. Although the family court believed that discovery was automatically reopened under section 218, the court nonetheless granted George's motion to reopen discovery and asked Jennifer if she wanted additional time to respond to discovery. She refused, saying she wouldn't be providing responses. The court asked if she really wouldn't "give them anything?" She answered, "correct." The court advised Jennifer that there "is a point where we need to be reasonable under the law; provide information that's relevant." The court then put the motion to quash over to June 23, 2015.

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[3] She maintained her position in response to a meet and confer letter.

On that day, Jennifer argued that the request for 17-year-old employment records violated her right to privacy. George's counsel responded that the issue was moot because the school district said it had no documents. And although Jennifer's motion was targeted to the Lancaster subpoena, counsel also argued that discovery in general was necessary because Jennifer had said she'd quit her job, but it was unclear if she was fired, so her personnel records would "really go to earning capacity." The court denied Jennifer's motion to quash. But, at George's request, the court put over her request for sanctions.

Because Jennifer had not provided responses to his discovery demands, George moved to compel further answers, for $5,000 in sanctions (later increased to $11,000), and for reimbursement of $4,482.25 for the children's orthodontia. He asserted that Jennifer had turned down a full-time job because she only wanted to work part-time, and she'd lied on her income and expense declarations.[4]

By the time of the July 21, 2015 hearing on George's discovery motions, Jennifer had withdrawn her support request, which mooted George's motions but not the attendant sanctions

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[4] Jennifer submitted income and expense declarations stating she averaged $1,400 monthly income as a substitute teacher and $1,500 in monthly expenses. Her updated income and expense declarations in February and April 2015 estimated her average monthly income at $961 and expenses at $1,666. Her May 2015 income and expense declaration reflected $1,392 in average monthly income and $1,271 in expenses, and she attached tax returns.

request.[5] As to sanctions, the court considered the parties' financial circumstances and the public policy underlying section 271, i.e., the promotion of settlement to reduce the costs of litigation and the encouragement of cooperation between the parties. The court found that Jennifer frustrated the "policy of the law to promote settlement and reduce costs and refusing to provide documents due to some kind of a right to privacy regarding issues that were certainly at issue, and her ignorance of the law is not going to be an excuse . . . ." The court imposed $2,000 in sanctions on Jennifer under section 271.

As to George's request that Jennifer pay one-half the orthodontic expenses, Jennifer said she was "fine" with the children having braces but argued that they were not "reasonable and necessary" under the judgment. The family court rejected Jennifer's definition of "reasonable and necessary" as something "dire"; rather, sometimes "it is just a mere quality of life issue." The court found that Jennifer "had time to object to the services themselves, but you, obviously, you admitted that you have no objection to the service itself." The court therefore ordered her to pay $4,482.25, in monthly installments.

Jennifer appeals the orders to pay orthodontic expenses and sanctions.

## DISCUSSION

### I. Orthodontic expenses

The family court ordered Jennifer to pay half the cost of the braces. She argues that the order was erroneous because there was no showing the braces were reasonable and necessary. Such

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[5] Jennifer had inadvertently requested spousal support, and so she withdrew that request as well.

a showing was unnecessary. Rather, the judgment provides she is responsible for one-half of "[r]easonable and necessary health care costs of the minor children not covered by insurance *including* . . . dental, *orthodontic* and mental health costs of each minor child." (Italics added.) The judgment thus defines orthodontia as a reasonable and necessary health care cost.

Even if orthodontia were not defined as a reasonable and necessary expense, the judgment, at a minimum, implies that orthodontia is such an expense. Therefore, to the extent anyone had a burden, it was Jennifer's burden to show that braces were unreasonable and unnecessary. Her notion of reasonableness and necessity, however, was "something that is keeping [the children] from . . . eating" or "hinder[s] their health." The court rejected, as do we, such a restrictive interpretation. As the court said, something far short of life-threatening and that merely improves the children's "quality of life" may be reasonable and necessary. Orthodontia undoubtedly fits that definition.

Moreover, Jennifer failed to object to the braces, although she had the opportunity to do so. George approached her five years ago about getting braces for the children, and she only told him she didn't have the money. She never spoke to the orthodontist because George "had taken care of that." Jennifer was otherwise "fine" with the children having braces.

## II. The discovery orders

Jennifer contends that her motion to quash should have been granted and that the sanctions order should be reversed.

### A. *Discovery in family law cases*

In a family law matter, each spouse has a compelling interest in "*complete* disclosure of all relevant information" to allow an independent review for purposes of determining

disputed issues, including appropriate child support payments. (*Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 715.) Absent unusual circumstances, the right to full and complete information outweighs privacy rights in financial documents, particularly when there are disputed questions involving financial condition and child support. (See *In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1316-1320; *In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1475-1479.)

For a violation of discovery, section 271 authorizes the trial court to award attorney fees and costs as sanctions based "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." (§ 271, subd. (a).) Sanctions may be appropriate if a party takes an unreasonable position or engages in uncooperative conduct that frustrates settlement and increases litigation costs. (*In re Marriage of Fong* (2011) 193 Cal.App.4th 278, 290; *In re Marriage of Tharp*, *supra*, 188 Cal.App.4th at pp. 1317-1318.) The court is required to consider the parties' financial situations and should not order a sanction that would impose an unreasonable financial burden on a party. (§ 271, subd. (a).)

We review discovery and sanctions orders for abuse of discretion, and we apply a substantial evidence standard of review to any findings of fact. (*In re Marriage of Tharp*, *supra*, 188 Cal.App.4th at pp. 1316-1317; *In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 995; *In re Marriage of Feldman*, *supra*, 153 Cal.App.4th at p. 1478.)

B. *Jennifer's motion to quash*

Although Jennifer argues on appeal that the family court should have granted her motion to quash the subpoenas to Lancaster School District, Antelope Valley High School District, and her bank, she does not properly characterize her motion. The motion was directed to and discussed only the Lancaster subpoena. Jennifer objected to that subpoena because she hadn't worked at Lancaster since 1998. Although the objection had some merit (see, e.g., *Thomas B. v. Superior Court* (1985) 175 Cal.App.3d 255, 264 [court abused its discretion by ordering production of financial records more than five years old because there was no showing they were relevant to party's present ability to pay child support]), Lancaster had already responded it didn't have documents. The court therefore didn't directly address the issue. In any event, we cannot find that the court abused its discretion by failing to quash a subpoena to which no documents would be produced. Given that the court denied the motion, and had reason to do so, we reject Jennifer's related contention that the court should have granted her request for sanctions.

Although Jennifer's motion concerned only the Lancaster subpoena, to the extent the family court considered the Antelope Valley and bank subpoenas, the court did not abuse its discretion by finding the information discoverable. Jennifer sought child support, and therefore her financial and employment situation was at issue. (See generally *Schnabel v. Superior Court*, *supra*, 5 Cal.4th at p. 711.)

C. *The sanctions order*

Before the July 21, 2015 hearing, Jennifer withdrew her request for spousal and child support, and George also withdrew

any support issues. This rendered discovery issues moot, except for George's request for sanctions, which the family court granted. Jennifer asserts that the court "made a generic finding" that sanctions against her were justified because her motion to quash was denied. There is no such finding in the record. Instead, the court based its sanctions order on a finding that Jennifer frustrated the "policy of the law to promote settlement and reduce costs and refusing to provide documents due to some kind of a right to privacy regarding issues that were certainly at issue, and her ignorance of the law is not going to be an excuse . . . ."

The record supports that finding. Even if some of Jennifer's objections to discovery had merit—for example, her objection to the Lancaster subpoena—Jennifer refused, wholesale, to provide discovery. She refused, for example, to identify her employers and sources of income. She refused, despite her concession on appeal that "her current financial condition was at issue on her motion for child support." We therefore cannot conclude that sanctions under section 271 were inappropriate given that she took an unreasonable position or engaged in uncooperative conduct that frustrated settlement and increased litigation costs. (§ 271, subd. (a); *In re Marriage of Fong*, *supra*, 193 Cal.App.4th at p. 290; *In re Marriage of Quay* (1993) 18 Cal.App.4th 961, 970; *In re Marriage of Petropoulos* (2001) 91 Cal.App.4th 161, 177.)

Nor can we agree that sanctions were improper because Jennifer relied on a lawyer-friend's advice. Self-represented litigants are held to the same standard as those represented by legal counsel. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th

814, 830.) Moreover, the family court advised Jennifer it was inclined to allow discovery and that, because she'd asked for support, she'd put her financial and employment history at issue. Jennifer ignored this advice and refused to provide *any* discovery, even when the court expressly reopened discovery.

Jennifer also faults the family court for failing to rule on her evidentiary objections to George's declaration. But she never asked for a ruling on them at the July 2015 hearing. Moreover, she withdrew her support request, and it was therefore unclear that the objections remained at issue.

Finally, to the extent Jennifer suggests that the sanctions award was motivated by improper judicial bias against her, the suggestion is meritless. (See, e.g., *In re Marriage of Tharp*, *supra*, 188 Cal.App.4th at p. 1328 [mere fact a judicial officer rules against a party does not show bias].)

## DISPOSITION

The orders are affirmed. No costs on appeal are awarded.

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ALDRICH, J.

We concur:

EDMON, P. J.

LAVIN, J.