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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of ERIN K.
FLEMING and MICHAEL
ACKERMAN.

B282176

(Los Angeles County
Super. Ct. No. BD500837)

ERIN K. FLEMING,

Appellant,

v.

MICHAEL ACKERMAN,

Respondent.

APPEAL from an order of the Superior Court of Los Angeles County, Rolf M. Treu, Judge. Affirmed.

S. Roger Rombro, Melinda A. Manley and Kelly A. Tufts for Appellant.

Michael B. Ackerman, in pro. per., for Respondent.

In their marital dissolution action, Michael Ackerman filed two unsuccessful orders to show cause re contempt against Erin Fleming in an attempt to compel her to release from escrow funds from the sale of the marital home. Fleming then sought sanctions against Ackerman under Family Code¹ section 271. The family court denied her request for sanctions, and Fleming appeals. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In the marital dissolution judgment entered in 2014, the family court granted Ackerman's request for reimbursement of \$66,837 for his separate property funds contributed to purchase the marital home. The judgment provided that Ackerman "shall receive these funds out of the net sales proceeds before the rest are divided." Both Fleming and Ackerman appealed from the judgment, and Fleming challenged this particular award. (*Fleming v. Ackerman* (Dec. 20, 2017, B259749) [nonpub. opn.])

While the appeal was pending, Ackerman filed an order to show cause re contempt against Fleming on June 29, 2016. Item No. 8 of the order to show cause form requires a party to identify "[e]ach order disobeyed and each instance of disobedience." Ackerman checked box 8(c), indicating that the order that was disobeyed was an injunctive or other order, and the form instructed him to "specify which order was violated, how the order was violated, and when the order was violated." Ackerman asserted that Fleming had disobeyed the judgment because the house had been sold, but she refused to authorize the escrow company to release the funds he was to be reimbursed.

¹ All further statutory references are to the Family Code.

Ackerman acknowledged that Fleming disputed and appealed \$17,737 of the amount ordered; he claimed to be entitled to immediate payment of the undisputed \$49,100 plus interest.

Fleming demurred. On August 2, 2016, the court advised Ackerman that Item No. 8(c) of the order to show cause was “completely unclear as to what the order was that is alleged to have been violated,” such that Fleming had “no reasonable notice on what charge she is being brought before the court.” The family court sustained Fleming’s demurrer and gave Ackerman leave to amend within 10 days.

On August 8, 2016, Ackerman filed a new order to show cause alleging contempt. Although Ackerman dramatically expanded his allegations of contempt, the gravamen of his order to show cause remained the same: Fleming did not release funds to him from escrow while the appeal was pending, as he claimed was required by the judgment.

Fleming again demurred. On September 19, 2016, the court sustained her demurrer on the ground that Ackerman’s order to show cause contained “a fatal defect”: it failed to state the name of the person alleged to have violated court orders. Ackerman was again given leave to amend.

On November 18, 2016, Fleming requested that the court order Ackerman to pay her attorney fees arising from the contempt proceedings as a sanction pursuant to section 271. The court denied her request after a hearing in January 2017. Fleming appeals.

DISCUSSION

Section 271 “provides that a family court may impose an award of attorney fees and costs ‘in the nature of a sanction’ where 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.’ [Citation.]” (*In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1316.) Sanctions are appropriate when a party’s dilatory and uncooperative conduct has frustrated the policy of promoting settlement of litigation and cooperation among litigants. (*Id.* at p. 1317.) We review the court’s decision to deny attorney fees under section 271 under an abuse of discretion standard. (*Id.* at p. 1316.)

The family court did not abuse its discretion when it denied Fleming’s request for sanctions. At the time Fleming sought sanctions, Ackerman had filed two orders to show cause re contempt, each with a different flaw: the first failed to identify with clarity “what the order was that is alleged to have been violated,” affording Fleming “no reasonable notice on what charge she is being brought before the court;” and the second failed to identify the alleged contemnor. On this record, the family court could reasonably conclude that Fleming had not shown that Ackerman’s conduct in filing the two contempt proceedings²

² Fleming informs this court that Ackerman filed additional contempt proceedings after the two that are the subject of this appeal, and she argues that these subsequent orders to show cause “reflect Mr. Ackerman’s pattern of abusing the court system by use of contempt filings.” This appeal, however, arises from the denial of her request for sanctions based on Ackerman’s first two orders to show cause. Subsequent filings are irrelevant to the resolution of this appeal. (See *California School Bds. Assn. v. State of California* (2011) 192 Cal.App.4th 770, 803 [“It is a fundamental principle of appellate law that our review of the trial court’s decision must be based on the evidence before the court at the time it rendered its decision”].)

frustrated the policy of the law to promote settlement of litigation and cooperation between parties and attorneys.

Fleming argues, however, that the court abused its discretion in denying her request for sanctions because Ackerman had “filed those [two contempt] actions without basis upon unequivocal, clear and precise language.” She characterizes the court’s ruling on the first order to show cause as a determination that “the provision of the judgment does not contain specifics for which the contempt could be enforced against Ms. Fleming.” She then describes the second order to show cause as being “based on that same, unspecific[] provision of the judgment” and concludes that Ackerman engaged in sanctionable conduct by “initiating and pursuing multiple contempt actions based on the same already-decided grounds.” The record on appeal does not support these assertions. The court ruled that Ackerman’s first order to show cause failed to describe with specificity the court order that Fleming was alleged to have violated, but it made no ruling on whether the underlying judgment could support a contempt action. As the court made no ruling on the merits of Ackerman’s contempt claim in connection with the first order to show cause, the second order to show cause was not based on an “already-decided ground[.]” Fleming has not demonstrated an abuse of discretion.³

³ Ackerman requests that Fleming be sanctioned for bringing a frivolous appeal. We decline to impose sanctions because Ackerman has not demonstrated that Fleming’s appeal constitutes a frivolous appeal under the applicable legal standard. (See *In re Marriage of Flaherty* (1982) 31 Cal.3d 637.)

DISPOSITION

The order is affirmed. Each side shall bear his or her own costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.