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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Marriage of VIRGEN GUERRA and
ALBERTO GUERRA.

B233869

(Los Angeles County
Super. Ct. No. BD488415)

VIRGEN GUERRA,

Respondent,

v.

ALBERTO GUERRA,

Appellant.

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

Roberts and Roberts and Theodore K. Roberts for Appellant.

No appearance for Respondent.

I. INTRODUCTION

Alberto Guerra appeals from an order directing him to pay \$5,300 in monetary sanctions and to provide additional responses to a document production demand. The document production dispute arose in a marital dissolution proceeding with Virgen Guerra. Mr. Guerra argues the trial court lacked jurisdiction to enter the orders because the sanctions motion was untimely under Code of Civil Procedure¹ section 2031.310, subdivision (c). We affirm the order in its entirety.

II. PROCEDURAL HISTORY

On March 8, 2011, Ms. Guerra filed a motion pursuant to section 2023.030 for issue, evidentiary and monetary sanctions for willful disregard of document production orders. Ms. Guerra did not seek further responses to the production demand. Ms. Guerra's attorney, Annie Wishingrad, supported the sanctions motion with a declaration. Ms. Wishingrad declared she served a document production demand on Mr. Guerra on April 5, 2010. According to Ms. Wishingrad, Mr. Guerra's response was incomplete in form and substance. On August 11, 2010, the trial court ordered Mr. Guerra to provide further responses by September 30, 2010. He was also ordered to pay monetary sanctions in the amount of \$4,090 by October 15, 2010. Mr. Guerra filed a first supplemental response on October 15, 2010. Ms. Wishingrad described the supplemental response as "appallingly" inadequate. Ms. Wishingrad and Mr. Guerra's counsel, Theodore K. Roberts, then exchanged correspondence concerning the adequacy of the first supplemental response. They exchanged correspondence between November 12 and December 16, 2010. Mr. Guerra served a second supplemental response on December 22, 2010. Ms. Wishingrad objected to the initial and supplemental responses

¹ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

as incomprehensible due to systematic copying and pasting and failure to label and organize the documents.

On April 4, 2011, Mr. Guerra filed an opposition to the sanctions motion. Citing section 2031.310, subdivision (c), Mr. Guerra argued Ms. Guerra waived any right to compel further responses because her motion was filed 45 days after his supplemental responses were served. In the alternative, he asserted he complied with the document production demand. Mr. Roberts indicated he would not appear at the April 18, 2011 hearing.

On April 18, 2011, the trial court denied the issue and evidentiary sanctions portions of Ms. Guerra's motion without prejudice. However, the trial court ordered Mr. Guerra to provide the documents, which had not been produced. The trial court orally imposed \$5,300 in monetary sanctions. The oral pronouncement of judgment prevails over any written orders. This timely appeal followed.

III. DISCUSSION

Mr. Guerra challenges the orders compelling further responses and monetary sanctions as a violation of jurisdictional time limits set forth in section 2031.310. As noted, Ms. Guerra's motion did not seek further responses. Section 2031.310, subdivision (c) requires a motion to compel further responses to be filed within 45 days of service of the response. Lack of compliance with the 45-day statutory time limit results in a waiver and precludes the court from ordering additional responses. (§2030.310, subd. (c); *New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1427-1428; *Vidal Sassoon, Inc. v. Superior Court* (1983) 147 Cal.App.3d 681, 685.) However, Mr. Guerra's reliance on section 2031.310, subdivision (c) to support his jurisdictional argument is misplaced. This is because Ms. Guerra's March 8, 2011 motion did not seek additional responses. Accordingly, she was not required to comply with section 2031.010, subdivision (c). (See *Kayne v. The Grande Holdings, Ltd.* (2011) 198 Cal.App.4th 1470, 1476.)

Instead, she requested issue, evidentiary and monetary sanctions under section 2023.030 for *misuse of the discovery process*. The trial court was authorized to redress Mr. Guerra's misuse of the discovery process. (§ 2023.030.) Misuse of the discovery process includes: failing to respond or submit to discovery; disobeying a court order to provide further discovery; unsuccessfully opposing or making a discovery motion; and failing to meet and confer in good faith to resolve a discovery dispute. (§ 2023.010, subds. (d)-(i).) The misuse of the discovery process can result in a variety of sanctions. (§ 2023.030, subds. (a)-(e); *NewLife Sciences, LLC v. Weinstock* (2011) 197 Cal.App.4th 676, 68-687; *Karlsson v. Ford Motor Co.* (2006) 140 Cal.App.4th 1202, 1214.) At the hearing, the trial court denied the issue and evidentiary sanctions motion without prejudice but imposed monetary sanctions. The trial court ordered further responses by Mr. Guerra, who was already subject to an August 11, 2010 court order to produce the documents. Mr. Guerra does not challenge either the amount or propriety of the sanctions order pursuant to section 2023.030. Mr. Guerra's only argument is the trial court lacked authority to do so pursuant to section 2031.310, subdivision (c). This contention has no merit.

IV. DISPOSITION

The orders under review are affirmed in all respects including the award of \$5,3000 in monetary sanctions. Virgen Guerra is to recover her costs from Alberto Guerra.

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TURNER, P. J.

We concur:

ARMSTRONG, J.

KRIEGLER, J.