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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of CLAUDIA and
MICHAEL L. GARCIA.

CLAUDIA GARCIA,

Appellant,

v.

MICHAEL L. GARCIA,

Respondent.

B231782

(Los Angeles County
Super. Ct. No. GD039174)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Randall F. Pacheco, Judge. Dismissed.

Claudia Garcia, in pro. per., and Darryl S. Hallie for Appellant [*Retained*].

Rogers, MacLeith & Stolp and Thomas J. Stolp for Respondent.

Appellant Claudia Garcia (appellant) seeks to reverse the trial court's denial of her motion for reconsideration of its January 10, 2011 order imposing sanctions on her under Family Code section 2107, subdivision (c).¹ The order is not an appealable order, however, and we will dismiss her appeal.

FACTUAL AND PROCEDURAL BACKGROUND²

Appellant is married to respondent Michael Garcia (respondent) and the couple has two children. The couple is currently in the process of dissolving their marriage pursuant to a petition filed on March 30, 2006. A final judgment has not yet issued.

On November 29, 2010, respondent filed a noticed motion to compel the production of a preliminary declaration of disclosure and other documents and to seek attorneys' fees in the amount of \$1,500 as sanctions pursuant to Family Code section 2107, subdivision (c), for appellant's failure to comply with respondent's previous request for such disclosure. Appellant failed to appear at the January 10, 2011 hearing on the matter due to being on bed-rest. The trial court granted the motion and ordered appellant to pay \$1,000 in attorneys' fees.

¹ Family Code section 2107, subdivision (c), provides: "If a party fails to comply with any provision of this chapter, the court shall, in addition to any other remedy provided by law, impose money sanctions against the noncomplying party. Sanctions shall be in an amount sufficient to deter repetition of the conduct or comparable conduct, and shall include reasonable attorney's fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust."

² The factual and procedural background is based on the record, which consists of a two-volume Clerk's Transcript and a one-volume Reporter's Transcript.

On January 31, 2011, appellant filed a motion to set aside the order from January 10, 2011. The trial court accepted the filing and treated it as a motion for reconsideration. A hearing was held on the matter on March 7, 2011. Appellant appeared and produced copies of the preliminary declaration of disclosure and other requested documents. She testified that such materials were provided to respondent in September of 2010. The trial court noted that the introductory language in appellant's answers to form interrogatories allegedly prepared and signed by appellant on September 23, 2010 and mailed by Patricia Hooper on that same date is exactly the same as the introductory language in the answers to form interrogatories prepared by respondent's counsel and provided to petitioner sometime around October 25, 2010. Additionally, it was noted that the form titled Declaration Regarding Service of Declaration, includes a service date of "Sept. 23, 2011," on one line but a signature date of "Sept. 23, 2010," at the bottom of the page. The trial court denied appellant's motion and this appeal followed.

CONTENTION

Appellant contends that the trial court abused its discretion in denying her motion for reconsideration³ because she allegedly provided copies of the preliminary declaration of disclosure and other requested documents to respondent in September of 2010.

³ An order denying a motion for reconsideration pursuant to Code of Civil Procedure section 1008, subdivision (a), is not separately appealable; however, such an order is reviewable on appeal from the underlying appealable order for which the party sought reconsideration. (Code Civ. Proc., § 1008, subd. (g).)

DISCUSSION

Code of Civil Procedure section 904.1, subdivision (b), provides: “Sanction orders or judgments of five thousand dollars (\$5,000) or less against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.” By appellant’s own admission, there is no final judgment in the marital dissolution proceeding. Appellant has not submitted a petition for extraordinary writ, nor has she requested that we deem this appeal to be such a petition. Thus, the order at issue is not an appealable order and we do not have jurisdiction to review it. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696.)

DISPOSITION

The appeal is dismissed. Respondent shall recover costs on appeal.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

KITCHING, J.