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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

OLANREWAJU “LANRE” IDEWU et
al.,

Plaintiffs and Respondents,

v.

CHASTITY RICHETTE CLARK,

Defendant and Appellant.

B266573

(Los Angeles County
Super. Ct. No. BC494315 related to
BC549888)

APPEAL from an order of the Superior Court of Los Angeles County, Terry A. Green, Judge. Reversed and remanded with directions.

Sanchez Law Firm and Jorge W. Sanchez for Plaintiffs and Respondents.

Costa Besser & Childress, Robert S. Besser, JD Sanchez, and Darius A. Vosylius for Defendant and Appellant.

Defendant Chastity Richette Clark appeals from an order of sanctions for “bad-faith actions or tactics” pursuant to Code of Civil Procedure section 128.5.¹ We express no opinion about the propriety of the sanctions award, but simply reverse and remand because the trial court failed to comply with the statutory mandate to “recite in detail the conduct or circumstances justifying the order.” (*Id.*, subd. (c).)

FACTUAL AND PROCEDURAL BACKGROUND

Defendant Clark and plaintiffs Olanrewaju Idewu and Cynthia Stafford are former business associates. After a dispute arose between the parties, plaintiffs sued defendant on a variety of theories, and defendant moved to compel arbitration. An arbitration hearing proceeded for several days, but was terminated when defendant failed to pay her share of the arbitration fees. The matter then was returned to the trial court.

Plaintiffs moved for monetary sanctions pursuant to section 128.5, which permits a court to order a party to pay the reasonable expenses, including attorney fees, incurred by another party “as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.” (§ 128.5, subd. (a).) The trial court granted the motion and awarded plaintiffs \$17,000. Defendant timely appealed.²

¹ All subsequent statutory references are to the Code of Civil Procedure.

² Plaintiffs did not file a respondents’ brief. Plaintiffs’ failure to file a respondents’ brief does not mandate automatic reversal, however. Instead, we examine the record and reverse only if prejudicial error is found. (Cal. Rules of Court, rule 8.220(a), (b); *Estate of Supeck* (1990) 225 Cal.App.3d 360, 365.)

DISCUSSION

Section 128.5 provides that “[a] trial court may order a party, the party’s attorney, or both to pay the reasonable expenses, including attorney’s fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.” (Subd. (a).) Expenses pursuant to this section “shall not be imposed except on notice contained in a party’s moving or responding papers or, on the court’s own motion, after notice and opportunity to be heard. An order imposing expenses *shall be in writing and shall recite in detail the conduct or circumstances justifying the order.*” (*Id.*, subd. (c), italics added.)

“[T]o impose sanctions pursuant to Code of Civil Procedure section 128.5, the trial court must (a) state specific circumstances giving rise to the award of attorney fees and (b) articulate with particularity the basis for finding the sanctioned party’s conduct reflected tactics or actions performed in bad faith and that were frivolous or designed to harass or cause unnecessary delay. (*County of Imperial v. Farmer* (1988) 205 Cal.App.3d 479, 486.)” (*Childs v. PaineWebber Incorporated* (1994) 29 Cal.App.4th 982, 996 (*Childs*).)³ The trial court’s failure to recite any details of the conduct or circumstances justifying their imposition is an abuse of discretion requiring reversal. (*Ibid.*)

³ *Childs* was decided under an earlier version of section 128.5. However, the relevant statutory language—“[a]n order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order”—appears in both the former and current version of the statute. (See § 128.5, subd. (c).)

In the present case, the trial court issued a one-page minute order that stated in relevant part: “The Court orders Chastity Clark to pay \$17,000.00 in arbitration fees to counsel for Plaintiff[s] by October 30, 2015.” This order does not “recite in detail”—or, indeed in any fashion—“the conduct or circumstances justifying the order.” (§ 128.5, subd. (c).) We therefore reverse and remand to allow the trial court to comply with the statutory mandate. (See *Childs*, *supra*, 29 Cal.App.4th at p. 997 [reversing and remanding section 128.5 sanctions order that “stated the amount of the sanctions but failed to recite any details of the conduct or circumstances justifying their imposition.”]; *Lieppman v. Lieber* (1986) 180 Cal.App.3d 914, 920-921 [reversing and remanding sanctions order that failed to make findings required by section 128.5, subd. (c)].) Thus, the matter must be remanded and the superior court must either (1) enter a new order in accordance with section 128.5, subdivision (c), or, in the alternative, (2) vacate the imposition of sanctions.

DISPOSITION

The sanctions order is reversed and remanded to the trial court to either (1) enter a new sanctions order in accordance with section 128.5, subdivision (c), or, in the alternative, (2) vacate the imposition of sanctions. The parties shall bear their own costs on appeal.

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EDMON, P. J.

We concur:

LAVIN, J.

STRATTON, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.