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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re the Marriage of ANASTASIYA VOLOVIK and PAVEL PARCHIN.	B280980 (Los Angeles County Super. Ct. No. BD585783)
ANASTASIYA VOLOVIK, Respondent, v. PAVEL PARCHIN, Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Richard J. Burdge, Jr., Judge. Affirmed.

Pavel Parchin, in pro. per., for Appellant.

Anastasiya Volovik, in pro. per., for Respondent.

The notices of appeal filed by appellant Pavel Parchin (Parchin), as further limited by the issues properly raised in his appellate briefing, define the scope of our review in this case. Parchin appeals from (1) a January 24, 2017, order that required him to pay $30,000 in sanctions to respondent Anastasiya Volovik's (Volovik's) attorneys and denied his motion to compel Volovik to pay him spousal support (the First Order); and (2) a March 28, 2017, order denying Volovik's motion to enter a default judgment nunc pro tunc (the Second Order). Parchin presents no cognizable argument challenging the Second Order, so we consider only his arguments concerning the First, i.e., whether the record shows the family law court's attorney fees and costs sanction was an abuse of its discretion and whether the court properly denied Parchin's spousal support request.

I

This is the second time we have been asked to review actions taken by the family law court in this contentious litigation. We provided a succinct overview of the proceedings in our prior opinion: "Just over three years after marrying Parchin, Volovik filed a petition to dissolve the marriage. During the ensuing proceedings, Parchin flouted court orders to pay temporary spousal support (plus attorney fees and sanctions) and to provide adequate responses to certain of Volovik's discovery requests. This had two consequences. [¶] First, as to the discovery non-compliance, the family law court struck his response to the marriage dissolution petition and entered his default [and later a default judgment] . . . . Second, as to the failure to pay spousal support and other court-ordered amounts, the court proceeded with two rounds of contempt proceedings

against Parchin, ultimately finding him in contempt each time. [Fn. omitted.]" (*Volovik v. Parchin* (Mar. 13, 2017, B269566 [nonpub. opn.] (*Volovik I*).) We will fill in some of the pertinent procedural details in light of the issues raised in this appeal.

A

After Volovik filed her petition to dissolve the marriage, the family law court entered a temporary spousal support order in April 2014 requiring Parchin to pay her $11,473 per month. Based on Parchin's repeated failures to comply with document production requests, Volovik thereafter moved to compel responses and further moved to strike Parchin's answer to the dissolution petition, which would result in the entry of his default. The family law court granted both motions, but stayed its order striking Parchin's answer to give him a final opportunity to fully comply with the court's discovery orders. Parchin did not comply, and the court entered his default.

Parchin moved to set aside the entry of default, but before his motion was heard, the family law court entered a default judgment against him in December 2014. The default judgment ordered Parchin to pay spousal support in the same amount as the temporary support award, $11,473 per month. Attached to the default judgment as entered were certain prior filings in the case, including the order entering Parchin's default. Parchin noticed no timely appeal from the entry of the default judgment against him.

Approximately one month after entering the default judgment, the family law court generated an unsigned minute order purporting to vacate it. The minute order states: "Please be advised the judgment entered on 12/23/14 was entered in error

and is hereby vacated per order of the Court. The judgment incorporated by reference herein contained exhibits as attachments. The corrected judgment may be re-submitted to Department 27 for further processing."[1]

During the ensuing court proceedings, Parchin was twice sentenced for contempt of court for failing to pay spousal support and disobeying court orders, first in August 2015 and again in April 2016. The appellate record provided by Parchin does not include complete information concerning either contempt finding; there are minute orders reflecting the contempt sentences imposed but there are no reporter's transcripts of any of the contempt hearings and it appears certain written submissions by the parties concerning contempt are missing as well.

The August 2015 minute order indicates Parchin was sentenced to 30 days in county jail, with that sentence suspended pending completion of 480 hours of community labor via Caltrans, plus an award of attorney fees and costs to Volovik's lawyers in the amount of $19,845. Apparently due to Parchin's continuing non-compliance, contempt proceedings were reinstituted and the family law court in April 2016 executed the suspended 30-day jail sentence and ordered Parchin to complete 240 hours of community service upon release.

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[1] In November 2014, Parchin moved to set aside the entry of the default judgment against him under Code of Civil Procedure section 473, subdivision (d)—arguing the judgment was void. The family law court denied his motion, finding the default judgment's support award may have been incorrectly calculated but the motion to set aside the judgment was untimely because the judgment was merely voidable, not void. We affirmed the family law court's ruling in *Volovik I*.

B

1

The proceedings that led to the orders Parchin now challenges began in July 2016. At that time, notwithstanding the default judgment that had been entered against him, Parchin filed a motion to "modify" the spousal support award that had been entered against him in the default judgment. Specifically, Parchin asked the family law court to terminate that support award and instead order Volovik to provide *him* with spousal support "in the amount of 125% of poverty level." As later clarified in supplemental briefing requested by the trial court, Parchin's theory was that Volovik was obligated to pay him spousal support because she signed a United States Citizenship and Immigration Services I-864 affidavit in January 2011 when sponsoring his permanent residency application. That affidavit committed her to providing Parchin (as the immigrant) "'any support necessary to maintain him . . . at an income that is at least 125 percent of the Federal Poverty Guidelines for . . . his household size.'"

Volovik opposed Parchin's motion to modify her spousal support award. Among other arguments, Volovik contended: Parchin failed to raise the issue of the I-864 affidavit at the time of the first spousal support hearing in the case; the Family Code section 4320 spousal support factors, and not the I-864 affidavit in isolation, must govern a support award; and her support obligation under the I-864 affidavit had terminated because Parchin had been employed for 40 qualifying quarters under the Social Security Act.

While the litigation concerning Parchin's spousal support modification motion was ongoing, Volovik filed a motion asking

the family law court to compel Parchin to pay $70,964 in attorney fees and costs pursuant to Family Code sections 271 and 2030.[2] Volovik argued she incurred such attorney fees "solely because of [Parchin's] failure to comply with Court orders regarding his payment of spousal support and attorney[ ] fees" and she asserted Parchin had refused numerous settlement offers and filed "numerous frivolous motions and oppositions." Volovik's declaration supporting her motion attached attorney declarations and billing statements as exhibits and detailed the amount of fees sought for particular time periods during the case.[3]

Parchin opposed Volovik's motion for fees and costs. He argued no award was warranted because the family law court had already ordered him to pay attorney fees and costs for the period from May 29, 2015, through August 21, 2015. He also

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[2] Family Code section 271 permits a court to compel a party to pay attorney fees and costs of the other party "in the nature of a sanction" by considering the extent to which the conduct of each party furthers or frustrates the policy to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties. (Fam. Code, § 271, subd. (a).) Family Code section 2030, on the other hand, permits a court to make an attorney fees award if necessary to equalize a disparity in access to funds to retain counsel among the parties. (Fam. Code, § 2030, subd. (a).)

[3] The declaration specified $20,479.82 in fees and costs incurred fully after the first contempt sentencing in August 2015. The declaration further specified $50,484.18 in fees and costs incurred between May 2015 and January 2016, i.e., partly before and partly after the first contempt sentencing.

maintained Volovik's motion and declaration were based on various "untru[e] statements."

Both the I-864 support motion and the attorney fees and costs motion were heard by the family law court on January 24, 2017 (which resulted in the entry of the First Order from which Parchin appeals). The court heard argument by the parties (both of whom were self-represented at this point), denied Parchin's motion for an order compelling Volovik to pay him spousal support pursuant to the I-864 affidavit, and granted Volovik's attorney fees motion (in part).

As to Parchin's spousal support motion, the family law court found his I-864 affidavit argument for support was raised untimely. Parchin acknowledged on the record (and under oath) that he was aware Volovik had signed the affidavit in 2011 and he had filed a prior spousal support motion in the case without raising the I-864 argument. The court found Parchin's belated reliance on the I-864 affidavit "seems to ask to have all of the prior hearings reconsidered" and was "like a [reconsideration] motion filed way too late, and with no new evidence that wasn't available to you at the time of the prior hearings."

With regard to Volovik's motion for attorney fees and costs, the family law court ordered Parchin to pay $30,000 (not the full $70,964 requested)—making the award solely under Family Code section 271. The family law court stated the reasons for sanctioning Parchin with the $30,000 fee award on the record: "At this point, given all the orders back and forth, and all the fee orders, and the sort of convoluted picture about financial conditions, I don't think I need to level the playing field for that period of time [from May 2015 through July 2016]. [¶] So I'm not going to make an award under [Family Code 2030], however

there is considerable motion practice and evidence in the file, a couple of contempt hearings, a number of other time consuming and costly litigation efforts that don't seem to have produced much of value to me." The family law court continued, addressing Parchin directly: "[O]ver the course of the litigation, you failed to participate, such that you default was ordered, then there was a contempt that was ordered. You haven't been cooperating to try and move this case forward to trial."

The family law court initially ordered Parchin to pay the $30,000 within 30 days. Parchin complained he did not have the money to make such a payment and asked the court to permit him to pay the amount over time. The family law court agreed and modified its order to require Parchin to pay $1,000 per month, with the condition that if any payment were more than 10 days late, the entire amount would become due and payable.

2

Shortly after the January 2017 hearing just summarized, Volovik learned of the aforementioned unsigned minute order purporting to vacate the original default judgment. She filed in February 2017 a motion to have the original default judgment entered nunc pro tunc. Volovik argued: "[N]o one was notified of the minute order that vacated the judgment and no information regarding it was entered into the court's computer. The certificate of mailing on the minute order predates the minute order itself and the date when the judgment was entered. [¶] . . . [¶] During the course of these proceedings both parties, their attorneys and judges in Superior and Appellate Courts have relied on the Judgment." Parchin opposed Volovik's motion.

At a March 2017 hearing (which resulted in the Second Order from which Parchin appeals), the family law court denied Volovik's motion to re-enter the default judgment nunc pro tunc. The court explained the reasons for its ruling: "The general rule of law is that once a judgment is entered, the trial court loses jurisdiction to set aside or amend the judgment, except in accordance with certain statutory procedures, such as a motion for new trial, or a motion for a judgment notwithstanding the verdict, or in the case that the judgment is void. [¶] . . . [¶] It does retain the power to correct clerical errors which have been entered, however it may not amend the judgment to substantially modify it, or materially alter the rights of the parties under its authority to correct clerical error. [¶] This general rule is applicable, even though the time for appeal from the judgment has not yet passed, which is what we have in this case, and there subsequently was an appeal from the motion to set aside the default and the judgment, which went up to the Court of Appeal, and the Court of Appeal rejected the appeal from the order denying the motion to set it aside, and affirmed the judgment. [¶] It also found that the judgment was not void on its face. So based on that, the minute order vacating the judgment is invalid, and the judgment stands. [¶] . . . [¶] So the request to file an amended judgment is moot."

II

The bulk of Parchin's appellate briefing attempts to challenge on sundry grounds the original December 2014 default judgment and its spousal support award. These arguments are not properly before us and we do not address them. We rejected Parchin's effort to set aside that judgment in *Volovik I*, the

remittitur in that appeal has issued, and the existence of the invalid, unsigned minute order purporting to vacate the default judgment is immaterial for the reason given by the family law court.[4] (*Rochin v. Pat Johnson Manufacturing Co.* (1998) 67 Cal.App.4th 1228, 1237 ["'The general rule is that once a judgment has been entered, the trial court loses its unrestricted power to change that judgment"'].)

We also need not discuss the propriety of the Second Order, i.e., the family law court's denial of Volovik's motion to re-enter the default judgment nunc pro tunc. This is so because (1) Parchin was not aggrieved by the court's denial of *Volovik's* motion (Code Civ. Proc., § 902; *In re Marriage of Brockman* (1987) 194 Cal.App.3d 1035, 1041-1042), and regardless, (2) his briefs in this appeal present no proper argument challenging the Second Order (see Cal. Rules of Court, rule 8.204(a)(1)(B)).

We therefore consider only Parchin's challenges to the First Order, specifically his contentions that the family law court erroneously (1) sanctioned him to pay attorney fees and costs pursuant to Family Code section 271 and (2) denied his motion to compel Volovik, his erstwhile immigration sponsor, to pay spousal support to him.

As we shall explain, neither contention has merit. Parchin has not provided a record that establishes the family law court's fees award was an abuse of discretion and the family law court

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[4] The minute order purporting to vacate the judgment is effectively a nullity. The family law court did not need to take, and did not take, any action to invalidate it during the March 2017 hearing.

correctly ruled Parchin had forfeited any right to seek support based on the I-864 affidavit by failing to raise the issue earlier.[5]

A

Family Code "section 271, subdivision (a) provides the [family law] court with authority to order the opposing party to pay attorney fees and costs in the nature of a sanction when 'the conduct of each party or attorney . . . frustrates the policy of the law to promote settlement of litigation.' Specifically the statute provides: 'Notwithstanding any other provision of this code, the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or

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[5] Volovik filed a motion to dismiss this appeal, arguing Parchin's failure to pay spousal support and the attorney fees and costs awards, including the Family Code section 271 sanction at issue in this appeal, precluded him from maintaining the appeal under the disentitlement doctrine. In light of our resolution of this appeal on the merits, we deny the motion to dismiss as moot. But we shall affirm the Family Code section 271 sanction Parchin challenges, and we note his opposition to the motion to dismiss indicates he has only paid $197 of the $30,000 amount due (exclusive of interest). The parties are advised that, on proper motion, further appeals from these dissolution proceedings may be dismissed on disentitlement grounds absent proof of satisfaction of the Family Code section 271 sanction and compliance with any other lawful family law court orders. (*MacPherson v. MacPherson* (1939) 13 Cal.2d 271, 277; *Ironridge Global IV, Ltd. v. ScripsAmerica, Inc.* (2015) 238 Cal.App.4th 259, 265-266; *Stoltenberg v. Ampton Investments, Inc.* (2013) 215 Cal.App.4th 1225, 1229 ["An appellate court has the inherent power, under the 'disentitlement doctrine,' to dismiss an appeal by a party that refuses to comply with a lower court order"].)

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. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award.' ([Family Code,] § 271, subd. (a).) Section 271 'advances the policy of the law "to promote settlement and to encourage cooperation which will reduce the cost of litigation."' [Citation.]" (*In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1477-1478 (*Feldman*).)

Family Code "'[s]ection 271 does not require that the sanctioned conduct be frivolous or taken solely for the purpose of delay. Rather, the statute is aimed at conduct that frustrates settlement of family law litigation. Expressed another way, [Family Code] section 271 vests family law courts with an additional means with which to enforce this state's public policy of promoting settlement of family law litigation, while reducing its costs through mutual cooperation of clients and their counsel.'" (*Parker v. Harbert* (2012) 212 Cal.App.4th 1172, 1177-1178.) Furthermore, Family Code "section 271 is not a need-based statute and does not require a correlation between the sanctioned conduct and specific attorney fees . . . ." (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1226.)

We review a Family Code section 271 sanctions order "'under the abuse of discretion standard. "'[T]he [family law] court's order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order.'" [Citation.] 'In reviewing such an award, we must indulge all reasonable inferences to uphold the court's order.' [Citation.]" (*Feldman*, *supra*, 153 Cal.App.4th at p. 1478.)

These accepted principles of review take on added dimension when we are presented, as here, with an incomplete record on appeal. In that situation we must further adhere to the "'cardinal principle of appellate review'" that requires us to presume the First Order is correct and requires Parchin to affirmatively show error. (*In re Julian R.* (2009) 47 Cal.4th 487, 498-499; see also *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574 ["It is well settled, of course, that a party challenging a judgment has the burden of showing reversible error by an adequate record"].)

Without a complete record of what occurred in the family law court—including with respect to the events surrounding the second round of contempt proceedings, which, according to the family law court's remarks, figured significantly in the court's ruling—Parchin has not affirmatively shown the First Order's attorney fees and costs sanction constitutes reversible error. (See *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 448 ["The absence of a record concerning what actually occurred at the trial precludes a determination that the trial court abused its discretion" in awarding attorney fees].) We reject his challenge to the sanction for that reason. And we hasten to observe, in any event, that based on the materials that *are* in the record—

including the mere fact that a *second* contempt finding that resulted in a jail sentence was determined to be necessary—the family law court appears to have been well within its discretion to impose the sanction it did for Parchin's litigation conduct.

B

Parchin further contends the family law court erred in denying his motion to terminate his spousal support obligation and instead impose such a support obligation on Volovik in light of her execution of the I-864 affidavit in 2011. Here we will not tarry. Suffice it to say the family law court correctly denied Parchin's motion for the correct reason: Parchin forfeited the I-864 affidavit argument by failing to raise it earlier in the proceedings. (See *ECC Capital Corporation v. Manatt, Phelps & Phillips, LLP* (2017) 9 Cal.App.5th 885, 906.)

DISPOSITION

The family law court's orders are affirmed. Volovik is awarded her costs on appeal.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

DUNNING, J.*

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