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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

EMILIA KIPERSHMIT,

Respondent,

v.

CRAIG PEARCE,

Appellant.

B281056

(Los Angeles County  
Super. Ct. No. BD617310)

APPEAL from an order of the Superior Court of Los Angeles County, Shelley Kaufman, Judge. Affirmed.

Law Offices of Benjamin N. Sternberg and Benjamin N. Sternberg for Appellant.

Emilia Kipershmit, in pro. per., for Respondent.

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**I. INTRODUCTION**

Appellant Craig Pearce appeals from an order in a dissolution of marriage proceeding granting respondent Emilia

Kipershmit attorney fees as sanctions and based on need. On appeal, Pearce contends the trial court abused its discretion in awarding Kipershmit \$50,000 in attorney fees for sanctions under Family Code section 271,<sup>1</sup> and \$15,000 pursuant to section 2030 for “needs based” attorney fees.<sup>2</sup> We affirm the order.

## II. BACKGROUND

Kipershmit contends that she and Pearce were married in or about February 2013. In March 2015, Kipershmit petitioned for marriage dissolution.

On March 13, 2015, Kipershmit filed an Income and Expense declaration stating that she had no income other than \$3,930 in voluntary spousal support from this marriage, almost \$151,000 in assets, and \$5,050 in expenses.

On April 20, 2015, Pearce purportedly submitted to the trial court an Income and Expense declaration stating that he had \$12,500 per month in salary income, \$5,000 in spousal support from a different marriage, \$10,000 in assets, and \$7,370 in expenses, of which \$2,500 was paid by others.

On May 12, 2015, the trial court ordered Pearce to pay Kipershmit spousal support in the amount of \$4,000 per month until April 30, 2016. On May 31, 2016, the trial court extended the spousal support order through October 2016.

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<sup>1</sup> All statutory citations are to the Family Code unless otherwise indicated.

<sup>2</sup> Orders awarding attorney fees under sections 271 and 2030 are appealable. (*In re Marriage of Burgard* (1999) 72 Cal.App.4th 74, 82; *In re Marriage of Weiss* (1996) 42 Cal.App.4th 106, 119.)

During the course of the divorce proceedings, Kipershmit filed several motions to compel further discovery responses by Pearce. The motions appear to have related to interrogatories and document requests for information regarding Pearce's income. For instance, a request for production of documents sought, among other things, records pertaining to business expense reimbursements, savings accounts, checking accounts, and every other account at any bank "either in YOUR name alone, or together with any other person or entity, or into which YOU have made any deposits or withdrawals." The document request defined "YOU" as Pearce, his "agents, servants, employees, officers, directors and any and all PERSONS and/or entities acting for or on behalf of the for[e]going." In October 2015, the trial court granted Kipershmit's motion to compel further answers to form interrogatories and request for production of documents, and ordered Pearce to pay \$10,000 in sanctions. Pearce paid these sanctions. On February 10, 2016, the trial court granted Kipershmit's motion to compel further answers to the same discovery requests, and ordered Pearce to pay \$7,500 in sanctions. As of September 29, 2016, Pearce had not paid these sanctions. On June 28, 2016, the trial court granted Kipershmit's motion to compel further answers to the same discovery requests, plus special interrogatories, and ordered Pearce to pay \$2,500 in sanctions. As of September 29, 2016, Pearce had not paid these sanctions.

On June 26, 2015, Kipershmit issued a subpoena to Wells Fargo requesting information for accounts in "the name of Craig Pearce or under signature authority of Craig Pearce" (first Wells Fargo subpoena). On October 16, 2015, the trial court partially granted Pearce's motion to quash and for a protective order,

striking “under signatory authority of Craig Pearce” from the subpoena.<sup>3</sup>

On February 24, 2016, Kipershmit issued a second subpoena to Wells Fargo, requesting “BANK STATEMENTS . . . IN THE NAME OF PEARCE (INDIVIDUALLY OR JOINTLY WITH ANY OTHER INDIVIDUAL OR ENTITY) AND/OR HOL’N JAM ENTERPRISES FROM FEBRUARY 1, 2012 TO PRESENT” (second Wells Fargo subpoena). The second Wells Fargo subpoena defined “PEARCE” as including Pearce’s “AGENTS, SERVANTS, EMPLOYEES, ATTORNEYS, BUSINESSES, AND EACH OF THEIR AGENTS, SERVANTS, EMPLOYEES, OFFICERS, DIRECTORS, AND ANY AND ALL PERSONS AND/OR ENTITIES ACTING FOR OR ON BEHALF OF THE [FOREGOING].” It defined Hol’n Jam Enterprises as including “THEIR AGENTS, SERVANTS, EMPLOYEES, ATTORNEYS, BUSINESSES, AND EACH OF THEIR AGENTS, SERVANTS, EMPLOYERS, OFFICERS, DIRECTORS, AND ANY AND ALL PERSONS AND/OR ENTITIES ACTING FOR OR ON BEHALF OF THE [FOREGOING].”

On March 16, 2016, Pearce filed a motion to quash the second Wells Fargo subpoena. On May 31, 2016, the court granted the motion in part striking the “definition of Craig [Pearce] and Hol’n Jam Enterprises.” The court found that “the [second Wells Fargo] subpoena is otherwise relevant for purposes of discovery.”

Wells Fargo produced requested bank statements regarding Hol’n Jam Enterprises from May 1, 2014 through March 2016.

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<sup>3</sup> On April 1, 2016, the trial court issued an order clarifying its October 16, 2015 order and striking the language “under his signature authority” from the first Wells Fargo subpoena.

These bank statements reflected numerous withdrawals for “Paychex Tps Taxes . . . Craig Pearce” and “Paychex Invoices” for Pearce; payments for bills in Pearce’s name; and numerous transfers to Holly Pearce, Pearce’s daughter.

On September 30, 2016, Kipershmit filed a request for orders, seeking, among other things: an order that Pearce pay Kipershmit’s attorney \$87,824.71 in attorney fees and costs pursuant to section 271, “for frustrating and delaying this litigation and [in] breaching his fiduciary duties”; and a “need based award” in the amount of \$87,824.71 in attorney fees and costs. Also on that date, Kipershmit filed an Income and Expense declaration stating that she had no income other than \$2,333 in spousal support from this marriage, \$35 in assets plus an unknown amount from a parcel of property located in the Dominican Republic, and \$5,020 in expenses.

Kipershmit’s attorney submitted a declaration in support of the request, detailing Kipershmit’s efforts to propound discovery requests and Pearce’s refusal to respond to those requests, despite numerous orders requiring him to do so as well as the imposition of sanctions. Specifically, Pearce never produced bank statements for Hol’n Jam Enterprises. Kipershmit’s counsel only obtained these statements after issuing the subpoenas to Wells Fargo. According to Kipershmit, the bank statements demonstrated that Pearce had withdrawn, written checks for, and transferred, on average, approximately \$67,636 monthly, which was inconsistent with Pearce’s April 20, 2015 declaration stating that he earned \$12,500 monthly.

Pearce submitted a declaration in opposition to the request for attorney fees, stating that although he was a “signor” and “authorized manager” for Hol’n Jam Enterprises bank accounts,

he was “not the only authorized manager on the account.” He also stated that he did not “access” one of the bank accounts and that his daughter Holly Pearce was employed by Hol’n Jam Enterprises.

At the November 14, 2016 hearing on Kipershmit’s request for orders, the trial court stated: “This case is a case that falls within [section] 271 where sanctions should be awarded to [Kipershmit]. The litany of complications that [Kipershmit] has been involved in to try to get truth and information is ongoing.” The trial court also responded to Pearce’s declaration: “He has made a vague response, ‘other people withdrew money,’ but he has done very little to help promote cooperation in obtaining information.” The court continued, “The court finds that there has been unnecessary attorney fees incurred by [Kipershmit] that warrant 271 sanctions. The court has awarded sanctions for discovery sanctions. [¶] And so in looking at the billing statements, the court has endeavored to remove what appears to be related to discovery. And the court awards sanctions in favor of [Kipershmit] under 271 and against [Pearce] in the amount of \$50,000.”

Next, the court ordered Pearce to pay \$15,000 for section 2030 “needs based” attorney fees. The court concluded that in applying section 2030, Pearce had a superior ability to pay attorney fees.

Pearce timely filed a notice of appeal.

### III. DISCUSSION

#### A. *Standards of Review*

An order granting sanctions pursuant to section 271 is reviewed for abuse of discretion. (*In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1312.) Similarly, we review an award of attorney fees under section 2030 for abuse of discretion. (*In re Marriage of Rosen* (2002) 105 Cal.App.4th 808, 829.)

Under the abuse of discretion standard, “we will overturn . . . an order only if, considering all of the evidence viewed most favorably in its support and indulging all reasonable inferences in its favor, no judge could reasonably make the order.’ [Citations.]” (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 995 (*Falcone*).) Any findings of fact forming the basis for the order are viewed for substantial evidence. (*In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1479.) “““““In reviewing the evidence on . . . appeal all conflicts must be resolved in favor of [the prevailing party], and all legitimate and reasonable inferences indulged in [order] to uphold the [finding] if possible.”””” (*Ibid.*)”

#### B. *Section 271*

Pearce contends the trial court abused its discretion in awarding Kipershmit \$50,000 in attorney fees for sanctions under section 271, subdivision (a), which allows the court to “base an award of attorney’s fees and costs on the extent to which the conduct of each party or attorney furthers or 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.” (§ 271, subd. (a).) “Family law litigants who flout that policy by engaging in conduct that increases litigation costs are subject to the imposition of attorney’s fees and costs as a sanction.” (*In re Marriage of Petropolous* (2001) 91 Cal.App.4th 161, 177.)

Pearce contends the trial court erred in granting attorney fees because: “Pearce was [f]orthright in providing information.” The trial court’s finding to the contrary is supported by substantial evidence. The Wells Fargo bank records detailed numerous payments for Pearce’s benefit, and Pearce admitted in his declaration that he had signatory authority over the bank accounts. Yet Pearce never produced the Wells Fargo Hol’n Jam Enterprises bank records during discovery, despite being ordered to provide further discovery responses and sustaining numerous discovery sanctions.<sup>4</sup>

Pearce next contends that the trial court erred when it based its award on the “difficulties in obtaining even the records from Wells Fargo” because “the Wells Fargo Bank records referenced the bank account statements of [Hol’n] Jam Enterprises, which was protected under the October 16, 2015 protective order which . . . was reaffirmed on February 10, 2016 . . . , and the subsequent subpoena was quashed [on] May 25, 2016.” Pearce does not cite to the record in support of his contention, in violation of California Rules of Court, rule 8.204(a)(1). Our independent review of the record

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<sup>4</sup> By the time Kipershmit issued the second Wells Fargo subpoena on February 24, 2016, the court had granted two motions to compel further discovery responses and ordered Pearce to pay two separate sanctions.



believes Pearce's assertions. As described above, on October 16, 2015, the court struck "under signature authority of Craig Pearce," but did not otherwise quash the first Wells Fargo subpoena. The record does not contain a May 25, 2016 order quashing a subpoena. On May 31, 2016, the trial court struck the broad definitions for Pearce and Hol'n Jam Enterprises from the second Wells Fargo subpoena, but stated that the subpoena was otherwise relevant.

Pearce further contends that the amount of the section 271 sanctions awarded was "[e]gregious" because Kipershmit pursued frivolous litigation. Once again, Pearce's contention is unsupported by any citations to the record and our review of the record, which includes the trial court's granting of motions to compel and imposition of sanctions for discovery violations, demonstrates that the trial court found Kipershmit's motions to be meritorious.

Thus, Pearce has failed to establish the trial court abused its discretion in awarding Kipershmit \$50,000 in attorney fees for sanctions under section 271.

### C. *Section 2030*

Pearce contends the trial court abused its discretion in awarding Kipershmit \$15,000 in "needs based" attorney fees under section 2030, subdivision (a)(1), which provides: "In a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation, including access early in the proceedings, to preserve each party's rights by ordering, if

necessary based on the income and needs assessments, one party, except a governmental entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding."

Pearce contends that Kipershmit has been dishonest about her ability to pay her own fees because she failed to provide an updated Income and Expense declaration in connection with her September 30, 2016 request for orders and instead used her March 13, 2015 Income and Expense declaration. Pearce's assertion is contrary to the record. Kipershmit filed an updated Income and Expense declaration on the same day that she filed her request for orders, on September 30, 2016. Pearce further contends that Kipershmit failed to provide information about the amount of attorney fees she sought. Our review of the record demonstrates she stated that she owed her attorney \$84,524.71. Pearce argues that Kipershmit stated in the March 13, 2015 Income and Expense declaration that she had real and personal property valued at \$150,000, showing that she could afford to pay her own attorney fees. This assertion ignores her September 30, 2016 Income and Expense declaration, in which Kipershmit explained that her real and personal property was of an unknown value because both Kipershmit and her sister had claimed an interest in a parcel of property valued at \$89,370 in 2009.

Pearce also contends that Kipershmit and her attorneys over-litigated this case. Pearce does not cite to the record to establish his contention (other than to the 19-page case summary), nor does he develop the argument. Thus, we deem his argument on this ground waived. (*Falcone, supra*, 164

Cal.App.4th at p. 830 [“The absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived”].)

Finally, Pearce cites to an exhibit attached to his brief purporting to be a settlement agreement, contending that “Kipershmit . . . never incurred [the \$15,000 in fees awarded to fund her legal representation for the bifurcated trial] as she did not go to trial and settled all issues in the case save for Pearce’s reservation of appealing the attorney fees awards.” The exhibit attached to Pearce’s brief, however, has never been designated as part of the record on appeal. As such, we disregard the exhibit, and Pearce’s argument is unsupported by the record.

Pearce has thus failed to establish the trial court abused its discretion in awarding Kipershmit \$15,000 in “needs based” attorney fees under section 2030.

*D. Request to Strike Respondent’s Brief*

We need not reach the merits of Pearce’s request to strike Kipershmit’s brief on appeal because it is deficient in form and content as we do not rely on any of her arguments in reaching our decision.

#### **IV. DISPOSITION**

The order is affirmed. Kipershmit is awarded her costs on appeal.

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KIM, J.

We concur:

BAKER, Acting P. J.

JASKOL, J.\*

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