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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff, v. TAE JEONG, Defendant; DEIRDRE L. O'CONNOR, Objector and Appellant.	B237998 (Los Angeles County Super. Ct. No. BA 374577)

APPEAL from an order of the Superior Court of Los Angeles County, Daviann L. Mitchell, Judge. Affirmed.

Deirdre L. O'Connor, in pro. per., for Objector and Appellant.

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Under the authority of Code of Civil Procedure section 177.5 (section 177.5),[1] the trial court sanctioned Attorney Deirdre L. O'Connor, who represents the defendant in the underlying case, the sum of $500 for having failed to appear at a hearing on a motion to quash a subpoena. O'Connor appeals[2] but we affirm because the statutory prerequisites for the award were met and substantial evidence supports the trial court's order.

Because appellant contends principally that the trial court abused its discretion, we note at the outset that there is a two-pronged standard of review when it comes to sanction orders under section 177.5. First, the procedural prerequisites must be met, i.e., there must be notice, an opportunity to be heard and the order imposing sanctions must be in writing, stating the reasons for the sanctions; review here is de novo. Second, if the court's factual findings are assailed, we determine whether the findings are supported by substantial evidence. (*Conservatorship of Becerra* (2009) 175 Cal.App.4th 1474, 1481-1482.)

PROCEDURAL HISTORY

On August 22, 2011, O'Connor caused a subpoena to issue requiring Deputy Public Defender Justin Sterling to appear in department A6 of the superior court located in Lancaster. The public defender filed a motion on September 1, 2011, to quash the

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[1] "A judicial officer shall have the power to impose reasonable money sanctions, not to exceed fifteen hundred dollars ($1,500), notwithstanding any other provision of law, payable to the court, for any violation of a lawful court order by a person, done without good cause or substantial justification. This power shall not apply to advocacy of counsel before the court. For the purposes of this section, the term 'person' includes a witness, a party, a party's attorney, or both. [¶] Sanctions 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 sanctions shall be in writing and shall recite in detail the conduct or circumstances justifying the order." (§ 177.5.)

[2] An order imposing sanctions on an attorney pursuant to section 177.5 is appealable as a final order on a collateral matter directing the payment of money. (*Caldwell v. Samuels Jewelers* (1990) 222 Cal.App.3d 970, 975-976.)

subpoena. The motion to quash was set for September 13, 2011, in department A6 at 8:30 a.m.

On September 6, 2011, O'Connor filed a motion for new trial by facsimile. On September 7, 2011, the court manager called O'Connor and left a message that the motion for new trial could not be filed by facsimile. The minute order chronicling this telephone call also states that O'Connor was "reminded of upcoming court date of 09-13-11 for a motion to quash."

On September 13, 2011, the motion to quash the subpoena was called for a hearing in department A6, the Honorable Daviann L. Mitchell presiding.[3] Judge Mitchell opened the hearing by noting that the defendant, Tae Jeong, was present but that O'Connor, his attorney, was not. Judge Mitchell then requested the clerk, Michelle Milligan, to state whether any phone calls from O'Conner had been received. Milligan stated O'Connor had called that morning at 9:17, inquiring whether there was a matter on calendar. Milligan went on to state: "I told her there was. She told me to let the court know that she was unaware of the motion and that she was not available." Milligan suggested that O'Connor call the public defender's office. O'Connor told Milligan she would call back.

Judge Mitchell instructed Milligan to call O'Connor and tell her there was a motion set for September 13, 2011, and that the court required O'Connor's presence. Milligan did as she was told. She told O'Connor that she should be aware of the motion to quash because the September 7, 2011 minute order reminded O'Connor of the pending motion to quash and its hearing date. O'Connor replied she had not been informed of the motion to quash by the court manager. Milligan went on to state: "I then informed her that the court wanted her here, either her here or someone from her office here, and she said that was not possible and I told her the court was still inclined to call the matter and

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[3] It is not known whether the motion to quash was actually called for a hearing at 8:30 a.m. The hearing that is summarized below took place shortly before 2:00 p.m. on September 13, 2011. Why the hearing was called at that time is explained by the summary that follows.

that she should be here and she said she would call me back and she has not called me back." The second conversation with O'Connor took place at approximately 9:30 a.m.

After Milligan had given her account of the second telephone call with O'Connor, Judge Mitchell noted that it was now 10 minutes to two o'clock and she asked Milligan whether she had heard from O'Connor; the answer was no.

Judge Mitchell now engaged the deputy public defender who was appearing on the motion, Roberto F. Dager, in a discussion about the service of the motion to quash. The proof of service was examined and the judge determined that the address used was the usual address given by O'Connor; Dager confirmed that he had mailed the motion to quash. He also stated that he called O'Connor's telephone number but was unable to reach her and there was no answering machine on the phone. He also tried to fax her the motion but her fax number was continually busy. Judge Mitchell closed this aspect of the hearing by noting that O'Connor had not called and had not appeared. Judge Mitchell then went ahead with the motion to quash and granted it, noting no opposition had been filed.[4]

Judge Mitchell closed the hearing by stating that an order to show cause regarding monetary sanctions under section 177.5, to be imposed on O'Connor, would be held in department A6 at 8:30 a.m. on October 7, 2011. Judge Mitchell also prepared a separate written order giving notice of the order to show cause hearing; the written order sets forth the events of September 13, 2011, that were summarized above.

There were two hearings that addressed the order to show cause. The first hearing took place on October 7, 2011. The second hearing was held on November 18, 2011. O'Connor addressed the court at length on both occasions. Judge Mitchell handed down a lengthy oral ruling at the end of the second hearing.

The court filed its seven-page written order on November 18, 2011, giving detailed reasons for its order imposing sanctions.

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[4] The court also resolved the matter of shortened time for the motion to quash.

THE PROCEDURAL PREREQUISITES WERE SATISFIED

Notice of the court's intention to hold a hearing whether to impose sanctions for O'Connor's failure to appear was given in writing on September 13, 2011. The notice is detailed and fully informed O'Connor of the facts and circumstances that gave rise to the hearing.

O'Connor had ample opportunity to be heard and availed herself of that opportunity during both hearings.

The order imposing sanctions was in writing and recited in detail the conduct and circumstances that justified the order.

The requirements of section 177.5 were met in an exemplary fashion.

THE SANCTIONS ORDER IS SUPPORTED BY SUBSTANTIAL EVIDENCE

We set forth in the margin a classic statement of the substantial evidence rule that governs when there is an appeal of a trial court's ruling.[5]

As the trial court's written order of November 18, 2011 (Order) states, O'Connor had notice of the September 13, 2011 hearing. Notice was not only given by the motion to quash, it was also given by the court manager on September 7, 2011. O'Conner's call to the court the morning of September 13, 2011, reveals that she knew of the hearing. In any event, two telephone calls by the clerk in the morning of September 13, 2011, are ample assurance that O'Conner knew of the hearing and also knew the court was waiting for her to appear.

It is undisputed that O'Connor did not come to court on September 13, 2011, and that, after the first two calls with the clerk, she did not bother to call.

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[5] "[I]n examining the sufficiency of the evidence to support a questioned finding, an appellate court must accept as true all evidence tending to establish the correctness of the finding as made, taking into account, as well, all inferences which might reasonably have been thought by the trial court to lead to the same conclusion. Every substantial conflict in the testimony is, under the rule which has always prevailed in this court, to be resolved in favor of the finding." (*Bancroft-Whitney Co. v. McHugh* (1913) 166 Cal. 140, 142, cited in 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 365, p. 422.)

The Order states the court did not find O'Conner credible when she denied knowing of the hearing. Although under the substantial evidence standard credibility determinations are for the finder of fact, we deem it appropriate to note this finding of the Order is compelled by the facts. A stronger set of facts showing O'Connor knew of the September 13, 2011 hearing cannot be pictured; her denials do her no service.

The Order notes that O'Connor's failure to appear cost the court valuable time and expense and jeopardized her client's right to the effective assistance of counsel. We add to this two lengthy hearings in the trial court and this appeal, including this court's time. Given the extraordinary lengths to which O'Connor has gone to waste judicial time, not to speak of the time of lawyers and court staff, sanctions of $500 appear to be the height of restraint. On the latter note, we commend the trial court for the patience, restraint and fairness with which it handled this matter.

Although our review is under the substantial evidence standard, we note there is virtually no evidence that supports O'Connor's side of the case. Thus, it is undisputed that she never appeared in department A6 on September 13, 2011, and it is also undisputed the court clerk passed on to her Judge Mitchell's order that O'Connor had to appear in department A6 that same day. This is certainly substantial evidence that supports the ruling.

O'CONNOR'S CONTENTIONS ARE WITHOUT MERIT

O'Connor contends there was no court order issued prior to the morning of September 13, 2011. Because section 177.5 applies only if there was a court order, O'Connor reasons, she cannot be sanctioned.

The answer to this is that O'Connor was told by court clerk Milligan around 9:30 a.m. on September 13, 2011, the court required her presence or someone from her office. This was clear, unambiguous and was conveyed to O'Connor at the direction of Judge Mitchell.

Given that there was a court order that O'Connor clearly disobeyed, it is not necessary to discuss whether the noticed motion to quash required O'Connor's presence in department A6 at 8:30 a.m. on September 13, 2011, i.e., whether O'Connor's failure to

appear at that time was a violation of a court order. Thus, O'Connor's extended discussion of this point is beside the point.

O'Connor next contends that it is "illogical" to suggest that, having personally appeared at 10 of 14 court appearances, she would not appear on September 13 or file a motion to continue. Logical or not, the fact of the matter is that it is undisputed that she did not appear on September 13, 2011; nor is it disputed that clerk Milligan clearly told her the court expected her to appear in department A6 on September 13, 2011.

O'Connor also claims that she was ill on September 13, 2011, and that it was therefore a severe abuse of discretion to sanction her. Judge Mitchell addressed this point in her oral order, pointing out that, according to O'Connor's own submission, she became ill on August 30 and was home ill from that day until September 12. Judge Mitchell found there was nothing in O'Connor's declaration that she was home ill on September 13, i.e., according to her own submission her last day home ill was September 12, 2011. We add to this the observation that O'Connor spoke with the court clerk twice on the telephone the morning of September 13, 2011. One would think if she was ill and could not come to court for that reason, she would have said so.

CONCLUSION

Vigorous advocacy is always welcome. In this case, however, we have a lawyer who made false statements to the court and whose conduct was disrespectful in the extreme.

On the topic of O'Connor's lack of judgment, we take note of her argument that she should be compensated for the time spent defending the sanctions order. This argument is peppered with adjectives describing the rulings of the court below as "preposterous," "bizarre" and a "bizarre scenario." She characterizes some of Judge Mitchell's comments as "[i]mproper, uninformed, unsolicited and inflammatory." Not only is this argument beyond the pale substantively, it is scandalous in its references to Judge Mitchell. Intemperate characterizations of the trial court are inexcusable (*Lazzarotto v. Atchison, T. & S. F. Ry. Co.* (1958) 157 Cal.App.2d 455, 462) and lead us

to striking this argument from the opening brief. (*Sear v. Starbird* (1888) 75 Cal. 91, 92-93.)

DISPOSITION

The order is affirmed. Argument III of the appellant's opening brief, at pages 26 through 39, is ordered to be stricken.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.