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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

In re the Marriage of CRAIG S. and
NICOLE R. MORDOCK.

CRAIG S. MORDOCK,

Appellant,

v.

NICOLE R. MORDOCK,

Respondent.

G063950

(Super. Ct. No. 16D003500)

O P I N I O N

Appeal from orders of the Superior Court of Orange County,
Thomas James Lo, Judge. Affirmed. Motion to dismiss denied.

Craig S. Mordock, in pro. per., for Appellant.

Hunter Law Group, Daniel C. Hunter IV and Meri Lopez for
Respondent.

In this marital dissolution action, Craig S. Mordock stopped paying child and spousal support as required by the trial court's judgment and filed a request for an order modifying his support obligations. He asserted his monthly income had significantly decreased from \$48,291 to \$10,000, necessitating a downward modification of such obligations. In response, his former spouse, Nicole R. Mordock, propounded discovery on Craig¹ related to his then current income and earning capacity. Craig did not timely respond to the discovery requests. The court thereafter granted Nicole's motion to compel discovery responses and production of documents and ordered Craig to fully respond to such discovery within 20 days. Craig did not do so.

In this appeal, Craig challenges the trial court's subsequent order imposing issue, evidentiary, and monetary sanctions against him for abuse of the discovery process. He also challenges the court's order awarding Nicole need-based attorney fees under Family Code sections 2030 and 2032.² For the reasons we explain, the court did not abuse its discretion in issuing the challenged orders. We therefore affirm.

FACTUAL AND PROCEDURAL HISTORY

I.

THE DISSOLUTION OF THE PARTIES' MARRIAGE

Craig and Nicole married in 1992. After 23 years 10 months of marriage, they separated in March 2016. The parties had five children, four

¹ We hereafter refer to the parties by their first names for clarity; we intend no disrespect.

² Further undesignated statutory references are to the Family Code.

of whom were minors at the time of the separation. Nicole was a stay-at-home mother while Craig was the family's sole income-earner, employed as a partner in a law firm practicing "corporate/securities" law.

In April 2016, Craig filed a petition for the dissolution of the parties' marriage. In January 2017, judgment was entered providing only that the parties' marriage was dissolved. The trial court reserved jurisdiction over support and custody matters.

II.

THE JUDGMENT ON RESERVED ISSUES AND CRAIG'S SUPPORT OBLIGATIONS

In August 2021, judgment was entered on the reserved issues (the August 2021 judgment). The August 2021 judgment provided the parties would share joint legal and physical custody of their three children who were still minors at that time. The August 2021 judgment provided Craig earned a gross monthly income of \$48,291 and Nicole did not have any income. The judgment memorialized the parties' stipulation of their marital standard of living in the amount of \$43,915 per month.

The August 2021 judgment provided Craig was required to pay Nicole monthly child support for the three minor children in the amounts of \$1,242, \$1,861, and \$3,102, until they reached the age of majority. The trial court ordered Craig to pay Nicole monthly spousal support in the amount of \$5,600 as of December 27, 2020.

In the portion of the August 2021 judgment which summarized the trial court's findings regarding section 4320 factors for spousal support, the court observed, *inter alia*, "[Craig]'s earning capacity is arguably at least \$62,000 per month in self-employment income based on his earning during the pendency of this action. He is highly educated, trained, and has a considerable book of business. [Craig] took [two and one-half] months in

vacation time to Thailand, had [Nicole] care for the kids and then begrudges paying support.^[3] An earning capacity analysis may need to be applied to deter [Craig]’s ‘shirking of one’s family obligations.”

The August 2021 judgment further provided the trial court found: “Recently, [Craig]’s income has exceeded the marital standard of living. [Craig] argues that he does not have the ability to pay spousal support because his income is now decreased.^[4] However, as stated above herein, support is set as a percentage of income, so when [Craig’s] income goes down, so does the support which he is obligated to pay. He is not requesting a change to this structure. [Craig] blames his support obligation for his current debt level without addressing other weightier factors, including support of his new wife and her family in Thailand,^[5] his extensive travel, his increased

³ On January 12, 2021, seven months before the August 2021 judgment, Craig filed a request for modification of child and spousal support; he did not serve Nicole with a copy of that request for order. In March 2021, Craig stopped paying child support and spousal support as then ordered. In June 2021, Nicole propounded discovery on Craig, presumably seeking to discover information regarding Craig’s then current income; Craig did not respond to Nicole’s discovery requests. On August 13, 2021, Nicole filed a motion to compel Craig’s responses. Three days later, the trial court denied Craig’s request to continue his request for modification of support because the hearing on his request had already been continued twice and there was no proof of service. As a result of the request for modification of support going off calendar, Nicole’s motion to compel discovery was moot. In October 2021, an income withholding order was issued.

⁴ In the August 2021 judgment, the trial court stated it denied prior requests for orders which Craig filed on May 24, 2018 and August 7, 2018, respectively, seeking a modification of his support obligations. The court explained Craig had not alleged a change of circumstances and had not shown a change in income sufficient to constitute a change of circumstances.

⁵ The August 2021 judgment explained: “Soon after the parties separated, [Craig] immediately remarried and took on a second new family,

expenses, and his continued monthly support of his adult children as well as his continued attorneys' fees to litigate this matter [Craig] is a top attorney in Southern California with an earning capacity of between \$500,000 and \$700,000 per year—he has the ability to pay support at the current level.”

III.

A CONTEMPT ACTION IS INITIATED AFTER CRAIG FAILS TO PAY SUPPORT

In June 2022, Nicole filed a notice of support delinquency for Craig's failure to pay child support. On June 8, 2022, Nicole initiated a contempt action and the trial court issued an order to show cause why the court should not hold Craig in contempt for failing to pay \$156,203 in spousal and child support from March 2021 to May 2022. The contempt action was set for hearing.

IV.

CRAIG REQUESTS MODIFICATION OF HIS SUPPORT OBLIGATIONS

In August 2022, Craig filed another request for an order modifying his obligations to pay spousal and child support. He filed a declaration in support of his request in which he stated he had worked as a partner at a law firm but was asked to leave the partnership in March 2020; his last day at his law firm was May 31, 2020. He stated he obtained a new job, effective June 1, 2020, as general counsel of a technology company. He stated he thereafter had a gross monthly income of \$10,000.

and a new lifestyle, with its attendant overhead. . . . [¶] [Craig] blames child and spousal support rather than taking responsibility for living beyond his means. [Nicole] and the children should not be penalized for [Craig] over-extending himself.”

V.

AGAIN, NICOLE UNSUCCESSFULLY SEEKS DISCOVERY AS TO
CRAIG'S CURRENT INCOME

Nicole served Craig with a request to produce documents. On October 20, 2022, Craig served objections to Nicole's request by invoking his right against self-incrimination pursuant to the Fifth Amendment to the United States Constitution in light of the then-pending contempt action against him, which was set for trial on October 21, 2022. The contempt action was resolved in October 2022 when Craig agreed to pay Nicole \$50,000 within 60 days; he did pay that amount roughly within that timeframe. Although Craig, through his counsel, assured Nicole that Craig would comply with her document production request once the contempt action was resolved, he did not do so.

VI.

THE TRIAL COURT ORDERS CRAIG TO SUBMIT TO A VOCATIONAL EVALUATION

In April 2023, Nicole filed a request for a vocational evaluation after Craig refused to agree to submit to such an evaluation. She explained that in light of Craig's failure to comply with the August 2021 judgment's support orders and his refusal to comply with her discovery request, she sought expert analysis and opinion on Craig's earning capacity to present at the hearing on Craig's request for an order to modify his support obligations. She stated she would have brought the motion earlier, but she did not have the resources to retain an expert. Notwithstanding Craig's refusal to agree to

a vocational evaluation, forcing Nicole to file her request, Craig did not file any opposition to that request.⁶

The trial court granted Nicole's request and ordered Craig to submit to a vocational evaluation.

VII.

NICOLE AGAIN SEEKS DISCOVERY FROM CRAIG REGARDING HIS INCOME

On May 1, 2023, Nicole served on Craig another request for production of documents and one set each of special interrogatories and form interrogatories. Craig's responses to this round of propounded discovery were due on June 5, 2023.

On May 26, 2023, Nicole's attorney received an e-mail directly from Craig requesting an extension of time to respond to Nicole's discovery requests. Because Craig was represented by counsel at that time, Nicole's counsel could not directly respond to Craig. Instead, he forwarded Craig's e-mail to Craig's attorney of record and inquired whether a substitution of attorney form had been prepared. Craig's counsel responded that he was "waiting for signatures."

Nicole's counsel did not hear again from Craig or his attorney about the discovery responses or any request for an extension to provide such responses. Nicole's counsel eventually received a substitution of attorney on June 7, 2023, a couple days after the date the discovery responses were due. Nicole's counsel did not otherwise agree to an extension to respond to

⁶ Several weeks *after* Nicole had filed her moving papers, Craig informed her counsel he would agree to submit to a vocational evaluation after all.

discovery in light of the upcoming hearing on Craig's request for a downward modification of his support obligations scheduled for August 8, 2023.

VIII.

THE TRIAL COURT GRANTS NICOLE'S MOTION TO COMPEL DISCOVERY RESPONSES AND ISSUES MONETARY SANCTIONS FOR ATTORNEY FEES IN THE AMOUNT OF \$2,540.50

On June 14, 2023, Nicole filed a motion seeking an order compelling Craig to respond to the discovery requests without objections. She also sought an award of attorney fees of at least \$2,500 for fees she incurred in bringing the motion; nonmonetary sanctions and monetary sanctions of at least \$1,000 pursuant to Code of Civil Procedure sections 2023.030, subdivision (a), 2030.290, and 2031.300; and attorney fee sanctions pursuant to Family Code section 271.

The day before the hearing on the motion to compel, Craig sent Nicole's attorney responses asserting objections to her document request along with some documents but did not produce any responsive documents with the responses.

At the motion to compel hearing on September 1, 2023, the trial court granted the motion and ordered Craig to comply with the propounded discovery without objection within 20 days (the September 1, 2023 order). The court added: "And because of the time they spent to prepare and be here today, they are entitled to sanctions for the reasonable attorney fees. The amount that they provided was reasonable." The court explained to Craig: "I don't know what to tell you. You just have to comply; and if you don't, you come to court, and that just causes more time and expense; and they're entitled to be compensated for that."

The trial court ordered Craig to pay monetary sanctions in the amount of \$2,540.50 pursuant to Code of Civil Procedure sections 2030.290,

subdivision (c), 2031.300, subdivision (c), and 2023.030. The court, however, denied Nicole's request for additional sanctions, including those requested under section 271 of the Family Code, as the court stated it did not feel the circumstances "rose to that level."⁷

The trial court then warned Craig: "You're ordered to comply with the discovery, sir. [¶] And I just wanted to give you an admonishment that if you don't comply with the discovery without objection, we go to the next step, and possibly the other side could be asking for issue or evidentiary sanctions. You don't want that because what that means, the [c]ourt can make an order precluding you from introducing evidence on certain issues because of your failure to respond to discovery. [¶] So we're not there yet, and hopefully we won't get there, but you have to respond to discovery. What it does, it gets everything on the table, both sides; it facilitates settlement; it facilitates equal and fair resolution of the case. You just have to comply."

Craig responded: "Your Honor, I have complied. I have produced. I have responded to the discovery."⁸ The trial court replied: "All right. Well, hopefully, that's the case; and if it's not the case, I'd encourage you to reach out to [Nicole's counsel] and see . . . if there's any problems, and try to resolve it that way, rather than coming to court, because coming to court, it's a great

⁷ Section 271, subdivision (a) provides in part: "[T]he court may base an award of attorney's fees and costs on the extent to which any 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. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction."

⁸ Nicole's counsel informed the trial court that before the hearing that morning, Craig had "offered a thumb drive" to him, but counsel had no idea what was on it.

deal of time and expense, as you can see.” The court continued the hearing on Craig’s request for order pending the resolution of the outstanding discovery issues.

Craig does not challenge in this appeal any aspect of the September 1, 2023 order granting the motion to compel and awarding monetary sanctions.

IX.

AFTER CRAIG FAILS TO COMPLY WITH THE SEPTEMBER 1, 2023 ORDER AND MEET AND CONFER EFFORTS FAIL, NICOLE FILES A REQUEST FOR ISSUE, EVIDENTIARY, TERMINATING AND/OR MONETARY SANCTIONS

According to the September 1, 2023 order, Craig was required to produce code-compliant responses to Nicole’s request for production, special interrogatories, and form interrogatories, without objections, by September 21, 2023. Craig did not do so.

On September 26, 2023, Nicole’s counsel sent Craig a meet and confer letter reminding him of the September 1, 2023 order and requesting that he comply with that order by October 2, 2023. In his letter, counsel requested Craig respond to the request for production, the form interrogatories, the special interrogatories without objection and also produce all documents in response to the demands. He instructed Craig he “may upload *all* discovery documents to [the] secure document sharing application online at [his] firm’s website. This file sharing application allow[ed] for secure transfer of large documents so [Craig] should not have any issue dragging and dropping responsive documents.” He informed Craig he was “unable to access the information [Craig] provided on the thumb drive.” Counsel advised Craig: “If we are not in receipt of the full production and responses without objection by October 2nd, we will be filing a second motion to compel and will

be seeking further monetary and non-monetary sanctions, including evidentiary and/or terminating sanctions.”

On October 3, 2023, Craig sent Nicole an undated document entitled “Petitioner’s Withdrawal of Objections to Discovery Production” along with a copy of the same responses to the document request he served on August 31, 2023 (which included objections) and documents he asserted had been contained on the thumb drive he gave Nicole’s counsel before the hearing on September 1, 2023.

On October 9, 2023, Nicole’s counsel sent Craig a second meet and confer letter pointing out Craig’s “withdrawal” document was undated, did not include responses, was ambiguous, and not otherwise in compliance with the code. Counsel informed Craig his prior August 31, 2023 responses to Nicole’s document request were deficient as they lacked a definitive statement of compliance for each demand and included objections based on attorney client privilege and work product without an accompanying privilege log. He also stated, “As you should be fully aware, [Code of Civil Procedure section] 2031.280 requires that ‘documents produced in response to a demand . . . shall be identified with the specific request number to which the documents respond’. You have labeled the production as [e]xhibits A through Q. As a result, the request does not correspond to the response or the produced records. This is not code compliant.” Counsel also stated that it did not appear Craig had produced all responsive statements and documents that were in his possession, custody, or control.

Nicole’s counsel’s letter concluded: “Again, I have given you grace time to provide responses without objection and produce documents and responses in compliance with the [September 1, 2023] order, and you have not done so. [¶] Please provide code-compliant responses to [Nicole]’s

discovery requests ([r]equest for [p]roduction of [d]ocuments, [s]pecial [i]nterrogatories, and [f]orm [i]nterrogatories), without objection by October 16, 2023. Please also produce all documents in response to the demands in conjunction with your responses and be sure to include documents through the date of production. ¶ If we are not in receipt of the full production and responses without objection, we will be filing a second motion to compel and will be seeking further monetary and nonmonetary sanctions, including evidentiary and/or terminating sanctions.”

On October 16, 2023, and almost one month after the date Craig was ordered to provide complete responses to Nicole’s discovery requests, Craig served an amended response to Nicole’s request for documents and responses to interrogatories.

X.

NICOLE FILES A MOTION FOR ISSUE, EVIDENTIARY, AND/OR TERMINATING SANCTIONS ALONG WITH MONETARY SANCTIONS BASED ON CRAIG’S ABUSE OF DISCOVERY

On October 26, 2023, Nicole filed a motion seeking monetary, issue, evidentiary, and/or terminating sanctions dismissing Craig’s request for order modifying his support obligations on the ground Craig’s discovery responses were deficient and his document production was incomplete. She argued Craig’s “responses have been evasive and created more questions tha[n] resolved issues regarding his income and expenses, which will be at issue at the hearing regarding modification of support.”

Nicole’s motion was supported by the declaration of her attorney. Nicole’s counsel declared he believed Craig’s document production was deficient as to full categories of requests and provided several examples. First, Craig did not produce any bank statements in response to Nicole’s

requests with respect to undisclosed bank accounts from which evidence showed Craig transferred money to disclosed accounts. Second, Craig did not produce any mortgage documents in response to requests and represented under penalty of perjury no mortgage financing applications “ever existed,” and yet evidence showed he made payments to a mortgage company. Third, Craig did not produce any documents showing business income, business bank account statements, business assets and financial statements, books of account, and other documents in connection with GuGood, Inc., an entity Craig has with his current wife that is in the business of providing wellness services. Craig asserted under penalty of perjury that no documents responsive to requests regarding GuGood “ever existed.” Fourth, counsel pointed out that it was understood Craig and his wife “have a business selling avocados from their extensive orchard,” and yet Craig did not produce any document with respect to any such business. Finally, counsel believed Craig failed to include certain insurance policies on his schedule of assets and debts or otherwise produce documents regarding such policies in response to discovery requests, for which policies Craig has made payments to a life insurance company.

With respect to Craig’s responses to the form interrogatories, Craig identified as his current address a property that is a vacant lot; Craig did not produce documents showing he owned or leased any other property.

Notably, Craig did not file any opposition to Nicole’s motion for monetary, issue, evidentiary, and/or terminating sanctions.

XI.

NICOLE FILES A REQUEST FOR THE APPOINTMENT OF A FORENSIC ACCOUNTANT, AN AWARD OF NEED-BASED ATTORNEY FEES, AND SANCTIONS

On November 16, 2023, Nicole filed a request for the appointment of a forensic accountant and for an order requiring Craig to pay expert fees, an attorney fee award under Family Code section 2030, an attorney fee sanctions award under Family Code section 271, and terminating sanctions pursuant to Code of Civil Procedure sections 2023 et seq. and 2031 et seq.

As for her request for an award of need-based attorney fees under section 2030, Nicole sought an award in the amount of \$90,827.94 on the following grounds: “[Nicole] has struggled to pay her attorney’s fees since [the August 2021 judgment]. [Craig] has not paid support as ordered, has brought two [requests for orders] to modify support since January 2021, has failed to respond to [Nicole]’s discovery requests twice resulting in two motions to compel, and refused to agree to a [v]ocational [e]valuation. [In the] most recent [motion to compel], [Craig] did not obey the court’s order. [Nicole] was forced to file a contempt citation as well as other enforcement actions and a[] [request for order] for a vocational evaluation. [Craig] remains voluntarily underemployed and continues to hide his assets and income.”

In support of Nicole’s latest request, her counsel filed a declaration in which he stated Nicole had not yet received documents necessary to prepare her case in response to Craig’s request for modification of child support, which was at that time on calendar to be heard on February 21, 2024. Counsel stated, “The limited documents which [Craig] has produced are complex and have created more questions than answers” and that it was likely the trial court would need to appoint an expert to evaluate the documents and assist Nicole and the court in understanding Craig’s income.

In his declaration, Nicole's counsel also identified what appeared to be over \$1 million in assets that Craig had failed to disclose to the trial court or to Nicole before the August 2021 judgment and as such, would constitute unadjudicated assets for which there might be a community property interest. Specifically, counsel noted Craig had not previously disclosed to the court or to Nicole that he (1) invested in OCG Real Estate Holdings in July 2020 and in Precious metals-Delaware Depository in November 2020, (2) was issued stock and warrants from his current employer, and (3) purchased real property in May 2020 prior to or during the trial.

As to the stock, Nicole's counsel stated that it appeared Craig, in November 2019 and March 2020, "either received cash and/or purchased and/or was awarded preferred stock" from his now current employer even though would not begin work for that employer until June 2020. In addition, he was issued 400 fully vested warrants on March 28, 2020.

Nicole's counsel also summarized related discrepancies in the income and expense declarations Craig had filed over the years. For example, he noted that while Craig in August 2022 reported zero rental income for real property in Escondido, an unlawful detainer complaint he filed that same month showed at minimum he had rented the property to at least one person for \$900/month in January 2022.

XII.

THE TRIAL COURT GRANTS NICOLE'S MOTION AND ORDERS ISSUE, EVIDENTIARY, AND MONETARY SANCTIONS AGAINST CRAIG

At the hearing on January 19, 2024, the trial court summarized "the history of this case" including the September 1, 2023 order, which specifically required Craig to comply with discovery. The court remarked,

“[B]ased upon what the court read, there’s some gamesmanship by [Craig].”

The court continued:

“And at the time of the last hearing . . . on September 1st, there was a request for sanctions under [section] 271. The [c]ourt denied that, hoping that would give your client some incentive to get on board and comply with discovery and stop the gamesmanship, especially since he’s an attorney. He just needs to stop that. And from what I read, . . . it’s still happening. So that’s why . . . the [c]ourt’s tentative was issued.

“The [c]ourt believes that further sanctions are appropriate, issue and evidentiary sanctions. And also we’re back in court, and [Nicole] spends money trying to get [Craig] to comply, and they need to be compensated for that.”

The trial court added: “[W]hen you play hide the ball and you’re asking for a modification of support, it does not reflect well on the [c]ourt; seeming that you’re trying to hide something. And that’s what is apparent, looking at all of the documents that have been submitted. ¶ It’s very simple. You just—if you want a modification for an order, you have to comply with the discovery. And you may get it, but you can’t just keep playing these games.”

In its order (the January 19, 2024 order), the trial court explained its ruling as follows:

“Code of Civil Procedure, section 2023.030, authorizes the court to impose monetary, issue, evidentiary and terminating sanctions for misuse of the discovery process. [Craig] was ordered by this [c]ourt to comply with discovery on [September 1, 2023]. At that time, the [c]ourt denied [Nicole]’s request for sanctions under Family Code[] section 271. The [c]ourt had hoped this would have been incentive to [Craig] to comply with discovery and the

[September 1, 2023] order. [Craig] has still not complied. The [c]ourt realizes issue and evidentiary sanctions are not to be ordered without great consideration. But this [c]ourt previously issued monetary sanctions against [Craig] for his failure to comply with discovery and that did not get his attention. The [c]ourt believes any lesser sanction against [Craig] would have no effect and serve little or no purpose. [Citation.] The [c]ourt has also considered the fact that [Craig] is an attorney and should know better.”

The trial court ordered an issue sanction, pursuant to Code of Civil Procedure section 2023.030, subdivision (b), precluding Craig “from introducing any evidence showing [his] actual income at the hearing” on his request for an order modifying his support obligations. The court also ordered an evidentiary sanction, pursuant to Code of Civil Procedure section 2023.030, subdivision (c), similarly precluding Craig from introducing any documentary evidence showing his actual income at that hearing.

In the January 19, 2024 order, the court further stated: “Discovery sanctions are intended to assure compliance with the discovery statute and to provide reasonable compensation caused by the failure to comply. [Citation.] With this principal in mind, the [c]ourt awards reasonable discovery sanctions in the amount of \$10,000, payable to [Nicole’s counsel]. The [c]ourt finds this amount fair, reasonable and appropriate based on the evidence presented. . . . This monetary sanction is in addition to the issue and evidentiary sanctions ordered by the [c]ourt today.” The court denied Nicole’s request for sanctions under section 271.

At the end of the hearing, Nicole’s counsel proposed that if Craig agreed to take his request for an order modifying his child support obligations off calendar (it was then calendared for hearing on February 21, 2024), Nicole would consider taking her pending motion for attorney fees,

sanctions under section 271, and terminating sanctions, then set for February 9, 2024, off calendar as well. Craig rejected the proposal.

XIII.

THE COURT AWARDS NICOLE \$90,827.94 IN NEED-BASED ATTORNEY FEES

Before the hearing on Nicole's request for order for a need-based attorney fee award, her counsel sent Craig's counsel a letter on January 20, 2024, reiterating the proposal that if Craig withdrew his request for an order modifying his support obligations, Nicole would withdraw her attorney fees request. Nicole's counsel's proposal was not accepted.

At the hearing on February 13, 2024, Nicole withdrew her request for the appointment of a forensic accountant in light of the court's issue and evidentiary sanctions. Nicole's counsel then argued in support of her request for attorney fees.

In its order dated February 13, 2024 (the February 13, 2024 order), the trial court stated it considered the appropriate factors set forth in section 2030 and 2032 as well as all the evidence presented, including the parties' income and expense declarations. The court stated it had to "consider whether each side ha[d] access to legal representation to preserve each party's rights and present each party's case adequately." The court stated it found "a disparity in access to funds for retaining and employing counsel and that [Craig] is able to pay the attorney's fees of both sides." Consequently, and after stating at the hearing that it also "relied on its own experience and knowledge," as well as "the extent and nature of the services required for these proceedings," the court granted Nicole an award of \$90,827.94 in need-based attorney fees under sections 2030 and 2032, having expressly found that amount "fair, reasonable and appropriate considering the totality of the circu[mst]ances in this case."

The trial court denied both Nicole's request for sanctions under section 271 and her request for terminating sanctions.

XIV.

THE TRIAL COURT DENIES CRAIG'S REQUEST FOR AN ORDER MODIFYING HIS SUPPORT OBLIGATIONS

On February 21, 2024, following the hearing on Craig's request for an order modifying his support obligations, the court found Craig failed to show a material change in circumstances to warrant a change in his support obligations and denied that request (the February 21, 2024 order).

Craig filed a timely notice of appeal.

DISCUSSION

In his opening brief, Craig challenges (1) the February 13, 2024 order, arguing the trial court abused its discretion by imposing issue, evidentiary, and monetary sanctions pursuant to Code of Civil Procedure section 2023.030, subdivisions (a), (b), and (c); and (2) the February 21, 2024 order awarding Nicole need-based attorney fees under Family Code section 2030. For the reasons we explain, the trial court did not abuse its discretion in issuing either order.

I.

THE DISCOVERY SANCTIONS

A. *Overview of Governing Legal Principles and Standard of Review*

"A court, after notice and an opportunity for a hearing, may impose sanctions on a party, person, or attorney for misuse of the discovery process. [Citation.] [Code of Civil Procedure] [s]ection 2023.030 describes the types of sanctions that a court may impose, including monetary, issue, evidence, terminating, and contempt sanctions. (*New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1422.) "[T]he court may impose

an issue, evidence, or terminating sanction . . . only if a party fails to obey a court order compelling discovery.” (*Ibid.*)

“The statutory requirement that there must be a failure to obey an order compelling discovery before the court may impose a nonmonetary sanction for misuse of the discovery process provides some assurance that such a potentially severe sanction will be reserved for those circumstances where the party’s discovery obligation is clear and the failure to comply with that obligation is clearly apparent.” (*New Albertsons, Inc. v. Superior Court, supra*, 168 Cal.App.4th at p. 1423.)

A “court has broad discretion in selecting discovery sanctions, subject to reversal only for abuse.” (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 992.) Such sanctions ““should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery.”” (*Ibid.*) “If a lesser sanction fails to curb misuse, a greater sanction is warranted: continuing misuses of the discovery process warrant incrementally harsher sanctions until the sanction is reached that will curb the abuse.” (*Ibid.*) The court “cannot impose sanctions for misuse of the discovery process as a punishment.” (*Ibid.*)

“We review the trial court’s ruling on a discovery sanction under the deferential abuse of discretion standard. [Citation.] We will affirm the sanction order unless it is arbitrary, capricious, whimsical, or demonstrates a “manifest abuse exceeding the bounds of reason.””” (*In re Marriage of Chakko* (2004) 115 Cal.App.4th 104, 108.)

B. The Trial Court Did Not Abuse Its Discretion by Imposing Issue and Evidentiary Sanctions on Craig

In the September 1, 2023 order granting Nicole's motion to compel and at the hearing on that motion, the trial court clearly ordered Craig to serve responses to Nicole's special interrogatories and form interrogatories and request to produce documents, and to produce all responsive documents to that request, within 20 days of its order. The court also ordered that Craig not assert any objections in those discovery responses.

In the September 1, 2023 order, the trial court also imposed monetary sanctions in the amount of \$2,540.50 to compensate Nicole for attorney fees incurred in bringing the motion to compel. The court refused to impose greater sanctions at that time and denied Nicole's request for sanctions under section 271. At the hearing on the motion to compel, however, the court specifically warned Craig that if he failed to comply with the September 1, 2023 order to comply with discovery, he would be facing the possibility of issue or evidentiary sanctions.

Notwithstanding the trial court's clear instructions and admonishment, Craig did not serve *any* discovery responses or produce any documents after the September 1, 2023, hearing and before the September 21, 2023 deadline imposed by the court and thus violated the September 1, 2023 order. Instead, over a month after the September 21, 2023 deadline, Craig finally served responses without objections and produced documents. Some of those responses and documents, however, suggested that Craig had assets and sources of income that had not been previously disclosed, prompting Nicole to not only seek the subject issue and evidentiary sanctions for his untimely and arguably vague responses, but also to request the

appointment of a forensic accountant to help her piece together the produced evidence to determine Craig's current income. Some of the responses and documents also suggested the existence of additional documents and other information that appeared responsive to Nicole's discovery requests but were not disclosed or produced by Craig.

In addition, Nicole propounded the discovery requests at issue in response to Craig's request for an order seeking a significant reduction in his support obligations. And yet, Nicole had to expend significant time, effort, and expense to try to obtain from Craig discovery directly relevant to merit of that request for order.

Furthermore, the court's imposition of monetary sanctions in the September 1, 2023 order did not have the desired effect of deterring Craig from flouting his duty to comply with the subject discovery requests. Craig's failure to comply with the September 1, 2023 order notwithstanding the court's imposition of lesser sanctions supported the court's determination that greater sanctions were necessary to curb any further abuse of the discovery process by Craig.

In light of the foregoing, we cannot conclude the trial court abused its discretion by issuing the January 19, 2023 order whereby it imposed issue and evidentiary sanctions on Craig for his failure to comply with the September 1, 2023 order.

C. The Trial Court Did Not Abuse Its Discretion by Imposing Monetary Sanctions in the Amount of \$10,000

In the January 19, 2023 order, in addition to imposing issue and evidentiary sanctions, the trial court awarded Nicole attorney fees in the amount of \$10,000 as a discovery sanction, pursuant to Code of Civil Procedure section 2023.030, subdivision (a). The court expressly found that

monetary sanction to be “fair, reasonable and appropriate based on the evidence presented.”

The record supports the trial court’s findings. In his October 26, 2023 declaration, filed in support of the motion for issue, evidentiary, and monetary sanctions, Nicole’s counsel stated Nicole had already incurred \$4,819.50 in attorney fees in connection with the instant motion for issue, evidentiary, and monetary sanctions and had previously incurred \$4,500 in attorney fees for the motion to compel. He further stated he estimated Nicole would incur a total of \$15,819.50 in attorney fees in connection with both motions by the time the hearing on the sanctions motion would be completed. The court’s monetary sanction of \$10,000 was \$3,000 less than the difference between the total amount of fees Nicole was estimated to incur in connection with both discovery motions and the \$2,540.50 monetary sanction the court previously imposed at the September 1, 2023 hearing on the motion to compel. We find no abuse of discretion.

II.

THE ATTORNEY FEE AWARD

A. Overview of Governing Principles and Standard of Review

“The purpose of an attorney fees award in a marital dissolution proceeding is to provide, as necessary, one of the parties with funds adequate to properly litigate the matter.” (*In re Marriage of Bendetti* (2013) 214 Cal.App.4th 863, 868.) Sections 2030 and 2032 govern such awards.

Section 2030, subdivision (a)(2) provides: “When a request for attorney’s fees and costs is made, the trial court shall make findings on whether an award of attorney’s fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties.

If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs."

A trial court's attorney fee award must be limited in amount to that which is "reasonably necessary" to maintain or defend the proceeding (§ 2030, subd. (a)(1)), and must be "just and reasonable under the relative circumstances of the respective parties" (§ 2032, subd. (a)). In determining what is a just and reasonable attorney fee award under the circumstances, section 2032, subdivision (b) requires the court to consider the same circumstances listed in section 4320 which the court considers in ordering spousal support. Those factors include each party's respective earning capacity (§ 4320, subds. (a) & (c)), and "[a]ny other factors the court determines are just and equitable" (§ 4320, subd. (n)). (See *In re Marriage of Hearn* (2023) 94 Cal.App.5th 380, 394.)⁹

Section 2032 further provides that the fact a party requesting a fee award has resources to pay the party's own fees does not bar an order that the other party pay all or part of the fees requested, and that "[f]inancial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances." (§ 2032, subd. (b).) Among other things, the court may consider the party's litigation tactics in making an award under section 2030. (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 975.)

⁹ In making an attorney fee award under sections 2030 and 2032, the trial court is not required to expressly address its consideration of the section 4320 factors. (*In re Marriage of Hearn, supra*, 94 Cal.App.5th at p. 394, fn. 7.)

We review the trial court's attorney fee award under section 2030 for abuse of discretion. (*In re Marriage of Bendetti, supra*, 214 Cal.App.4th at p. 868.) We reverse an order awarding such fees “only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made.” (*In re Marriage of Smith* (2015) 242 Cal.App.4th 529, 532.)

B. The Trial Court Did Not Abuse Its Discretion in Awarding Nicole Need-based Attorney Fees

Here, after considering the evidence and making the statutory findings, the trial court awarded Nicole \$90,827.94 in attorney fees, an amount it found to be “fair, reasonable and appropriate” given the parties’ relative circumstances.

In his opening brief, Craig argues the trial court abused its discretion in awarding Nicole \$90,827.94 in attorney fees because it “made no inquiry into the support for [Nicole]’s combined requests of over \$100,000 in attorney’s fees as a result of the alleged discovery violations.” Craig’s argument is based on the incorrect assumption that the court awarded Nicole \$100,000 for attorney fees as a discovery sanction. As discussed *ante*, in the January 19, 2023 order, the court did award Nicole attorney fees as a discovery sanction in the amount of \$10,000 pursuant to Code of Civil Procedure section 2023.030, subdivision (a). The court awarded Nicole an additional \$90,827.94 in attorney fees at the February 13, 2024 hearing but that award was based on her need pursuant to sections 2030 and 2032 and not as a discovery sanction.

In the February 13, 2024 order, the trial court awarded Nicole \$90,827.94 for need-based attorney fees pursuant to sections 2030 and 2032 after reviewing the appropriate statutory factors, all the evidence presented,

including the parties' respective income and expense declarations, and the history of the case in general. The court acknowledged that, in determining whether to award need-based fees, it had "to consider whether each side has access to legal representation to preserve each party's rights and present each party's case adequately."

In addition, the trial court stated at the February 13, 2024 hearing that in making that award, it also relied on its own experience and knowledge, and the extent and nature of the services required in this case. The court expressly found that there was a disparity in access to funds for retaining and employing counsel between the parties and that Craig had the financial ability to pay the fees for both sides. In addition, the court expressly found the amount of \$90,827.94 was "fair, reasonable[,] and appropriate considering the totality of the circumstances."

Craig does not address these factors and does not argue the trial court erred by failing to make any finding required by sections 2030 and 2032. We find no abuse of discretion.

III.

MOTION TO DISMISS

During the pendency of this appeal, Nicole filed a motion to dismiss the appeal on several grounds. In view of our disposition, the motion is denied as moot.

DISPOSITION

The orders are affirmed. Respondent to recover costs on appeal.

MOTOIKE, ACTING P. J.

WE CONCUR:

MOORE, J.

GOODING, J.