Filed 1/27/26 Marriage of Alexander CA1/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of OLGA ALEXANDER and TIMOTHY ALEXANDER.	
OLGA ALEXANDER, Appellant, v. TIMOTHY ALEXANDER, Respondent.	A172184 (San Mateo County Super. Ct. No. 18-FAM-01724)

Former spouses Petitioner/Respondent Timothy Alexander and Respondent/Appellant Olga Cristina Alexander have been involved in this domestic relations litigation for over seven years, since July, 2018 when Timothy filed a petition for dissolution—litigation that has generated a 91-page register of actions.[1] Whatever their disputes over the years, Olga's appeal here involves one simple issue, an appeal from a discovery sanction against her. We affirm.

[1] As is typical in cases where the parties have the same last name, and for clarity, we refer to the parties by their first names.

BACKGROUND

Introduction

At some point not apparent in the record, Timothy and Olga were married and apparently had two children. We say apparently because these facts, and many others, we learned only inferentially from the Register of Actions, which reflects that on July 18, 2018, representing himself, Timothy filed a "Petition-Dissolution with minor child," and on October 10, represented by counsel, Olga filed a response. And thus began a saga that continues to this day, with the parties—sometimes represented by counsel, sometimes not—engaging in these years of litigation.

But Olga's advocacy here does little to clarify what transpired leading to the order appealed from, a September 5, 2024 order by the Honorable Chinhayi Cadet, made because Olga ignored an earlier ruling by Commissioner Rosendo Padilla ordering further discovery. That is all this appeal is about. But the record here complicates this, beginning with the appellant's appendix Olga has provided, however belatedly. Specifically:

In mid-August, 2025, Olga, represented by attorney Yang Wenyao, filed an appellant's opening brief with a record that was not compliant with the Rules of Court. This led to an order from our Presiding Justice that read as follows:

"On August 13, 2025, appellant submitted her opening brief and appendix. The opening brief has been filed. However, the appendix is not in compliance the California Rules of Court. The appendix must: 1) have chronological and alphabetical indices; 2) contain all the required documents under rule 8.122(b)(1)(A)–(D); and 3) be consecutively paginated.

"Due to the noncompliance noted above, the Clerk of this Court is directed to reject appendix forthwith.

"Within 7 days of the date of this order, counsel for appellant shall file a corrected appendix that complies with the content and formatting requirements of the California Rules of Court. If the citations to the appendix in the opening brief change, appellant should file an amended opening brief."

On September 3, Mr. Yang filed what he labeled, "Appellant's Amended Opening Brief." It contained some 19 pages of substance, within which were six sections, themselves broken out into some 35 different items, listed in the index. It is most unhelpful, not to mention it fails to include in its "key chronological events" the ruling by Commissioner Padilla that led to Judge Cadet's order. The Appellant's Appendix, called "Appendices," are set forth at the end of that amended brief, divided into three sections, the second of which is "Master Chronological Index of Court Documents." That index is, to say the least, unusual as it not only lists items but also editorializes about them, as these few entries illustrate:

"Jan. 9, 2024 Declaration by Petitioner introducing phantom Sets Two/Three";

"Jan. 17, 2024 Minute order-Transcript of hearing compelling phantom Sets Two/Three";

"Feb. 21, 2024 FOAH signed by disqualified Judge Padilla (void)";

"Sept. 18, 2024 Email from Robert Cummings confirming Set Two objected to; Set Three fabricated";

"Dec. 20, 2024 Subpoena to Laughlin Legal seeking phantom sets; no production."

The editorializing is hardly in compliance with the Rules of Court. Likewise the brief itself.

California Rules of Court, rule 8.204(a)(2)(C) that provides that an appellant's opening brief shall "[p]rovide a summary of the significant facts . . . ." And the leading California appellate practice guide instructs about this: "Before addressing the legal issues, your brief should accurately and fairly state the critical facts (including the evidence), free of bias; and likewise as to the applicable law. [Citation.] [¶] Misstatements, misrepresentations and/or material omissions of the relevant facts or law can instantly 'undo' an otherwise effective brief, waiving issues and arguments; it will certainly cast doubt on your credibility, may draw sanctions [citation], and may well cause you to lose the case." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2024) [¶] 9:27 (Eisenberg), italics omitted.) Such fair summary is missing here.

The cases hold that where "the appellant fails to provide an adequate record of the challenged proceedings, we must presume that the appealed judgment or order is correct, and on that basis, affirm." (*Jade Fashion & Co., Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, 644.) As our Supreme Court explained: "[I]t is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment. [Citations.] . . . 'In the absence of a contrary showing in the record, all presumptions in favor of the trial court's action will be made by the appellate court. "[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented." ' [Citation.] ' "A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of

the trial court should be affirmed." ' [Citation.] 'Consequently, [the appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [the appellant].' " (*Jameson v. Desta* (2018) 5 Cal.5th 594, pp. 608—609, fn. omitted.)

We were sorely tempted to apply those principles here, and end the appeal at this point. But we resist the temptation and will proceed to the issues presented, especially as doing so will allow us to recognize the exemplary work of two judicial officers—then-Commissioner and now Judge Padilla and Judge Cadet—who in this messy, contentious litigation showed remarkable patience and, most importantly, a complete grasp of the entire background of the discovery dispute. It is appropriate that such efforts are acknowledged, even if only in an unpublished opinion.

The Discovery Dispute

To illustrate, we begin with Judge Cadet's September 5, 2024 description of the history of the issue, a "discovery dispute [that] has been before this Court on an ongoing basis since November 18, 2022." As Judge Cadet earlier described:

"The file shows that the Court has continuously retained jurisdiction over that RFO [request for order] to compel at all times since it was filed.

"The file shows a long series of proceedings on that RFO to compel throughout 2023: February 15, May 16, June 1, September 18, and October 20.

"On October 20, 2023, the Court directed petitioner [Timothy] to file a supplemental declaration related to the RFO to compel and set the matter for another hearing.

"Petitioner proceeded to file a supplemental declaration on January 9, 2024, as directed.

"And the Court ordered further responses on January 17, 2024."

Appellant's appendix here contains some of the referenced filings, including the document filed by Timothy's attorney on January 9. That document begins with this procedural history:

"Petitioner, TIMOTHY ALEXANDER, 'Petitioner', filed a motion to compel further responses to Supplemental Interrogatories, Set 1 and Supplemental Request for Production, Set 1, ('Supplemental Discovery') on November 22, 2022. Department 15 indicated that the Court believed that supplemental discovery requests were to be specific as to the request the party was seeking supplementation on, and later reversed its ruling on the issue. In the mean time, to comply with the initial court order . . . , Petitioner served an amended set 1 for Supplemental Discovery, which was not adequately responded to by Respondent. This matter was placed back on calendar for further ruling."

This procedural history is followed by a declaration under penalty of perjury by Timothy's attorney describing at length this history, along the way authenticating the five attached exhibits confirming the above.

On January 16, representing herself, Olga filed her response to the above. It was four-pages long, under penalty of perjury, and asserted what it refers to as "Chronology of Respondent's Motion to Compel," all addressing a motion she had filed in July, 2023—not Timothy's motion. Then, after brief sections entitled, "Our Fundamental Right of Due Process" and " 'Trial by Ambush,' " Olga's response ends with this "Conclusion":

"I will be glad to discuss Respondent's Motion to compel trailing from July 2023. I am not prepared to discuss other Motions brought in by

[Timothy's counsel] in a last-minute effort to mislead this, Court," going on to accuse Timothy's counsel of "unethical stunts."[2]

On Jan. 17, 2024, the two motions came on for hearing before Commissioner Padilla who heard several issues. Olga appeared with attorney Matthew Phillips, who indicated he "understood that I am not going to be appearing today, but . . . wanted to appear out of an abundance of caution, and . . . hoping to be relieved as counsel in this matter," to which Olga ultimately agreed. Timothy was represented by attorney Erin Stratte.

Commissioner Padilla first addressed the need for a stipulation to allow him to hear the matter, as he patiently explained to Olga. After some discussion, she asked to make a phone call, Commissioner Padilla took a recess, and Olga returned to advise the Commissioner she would stipulate.

The next 35 or so pages were devoted to the issues presented by the motions, in the course of which the Commissioner indicated how familiar he was with the papers and the issues. And then Commissioner Padilla announced his rulings, first on Timothy's motion, then on Olga's. As reflected in the minute order entered on January 17, he ruled as follows:

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[2] The accusations included the following: "Her lack of ethics proves her belief there are no consequences to her outrageous behavior. Her misconduct is so flagrant that on December 6, 2023, I filed for Judge Franchi's [*sic*] a mandatory misconduct reporting to the State Bar, Section 6086.7(2) . . . [¶] I urge Commissioner Padilla not to allow Petitioner's Counsel strategy of last minute surprises that deter the issue, which is to cure deficiency in the Motion with an order and sanctions or both. [¶] . . . It is the Court's prerogative [*sic*] to order that the copy of the alleged Discovery is supplied or to sanction Counsel and Petitioner for abuse of the Discovery process."

Moreover, we note that to the extent Olga's declaration contains argument, such argument is inappropriate in a declaration. (*Marriage of Heggie* (2002) 99 Cal.App.4th 28, 30; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2025) ¶ 9:49.5.)

"Having considered the submitted matter, the Court rules as follows:

"Petitioner's request in regards to the motion to compel responses (RFO filed 11/18/22, ITEM #8) is GRANTED. Respondent to provide amended, objection free, code compliant responses within 50 days of today with the following exceptions:

"- Set 1: Items #33–36, 41, 43 and 46 as no further documents exist Respondent to provide objection free, code compliant responses within 50 days of today in regards to Set #2 and #3, plus special interrogatories.

"No further responses required for interrogatories.

"Respondent to amend responses for any documents she does not have.

"Respondent's motion to compel and sanctions is DENIED as Respondent has not shown good cause to produce further documents.

"Matter is set for review and potential sanctions on 4/10/24 at 9 AM."

At some point in the next few days Olga filed a challenge to Commissioner Padilla. We do not know when, or whether she was represented, as the challenge is not in the appellant's appendix. What is there reveals that on January 22, the Presiding Judge granted the challenge and ordered the case transferred to Judge Cadet.

On April 30, this time represented by Mr. Yang, Olga filed a motion to vacate or in the alternative for reconsideration (and apparently also seeking joinder).

On June 3, Timothy filed a request for sanctions, accompanied by a declaration of Timothy's counsel testifying as to the attorney fees.

The matters came on for hearing on September 5, before Judge Cadet, with Timothy represented by Chris Norris and Olga by Robert Cummings and Mr. Yang, the former advising Judge Cadet that he was to "handle the joinder motion and [Mr. Yang] the discovery." Following argument by

counsel, Judge Cadet announced her rulings which, as pertinent here, Timothy's request for discovery sanctions, said this:

"Regarding petitioner's supplemental declarations on—declaration on sanctions filed June 3, 2024, the Court notes that this declaration was filed pursuant to instructions from the Court at the January 17, 2024, hearing at which respondent was present.

"The Court overrules all of respondent's objections to the declaration.

"Based on the declaration, the Court will award discovery sanctions to petitioner.

"In determining the amount of sanctions, the Court has considered the long ongoing history regarding the underlying motion to compel, including the Court's initial ruling, that there were issues with petitioner's original demands as well as the Court's subsequent rulings regarding ongoing deficiencies with respondent's responses.

"Based on this, the Court awards discovery sanctions petitioner in the amount of $15,975 payable by respondent within 15—1–5—15 days of this order.

"And in calculating that amount, the Court finds that it was reasonable for Ms. Stratte to have spent 25 hours on this issue at $525 an hour; and for Mr. Norris to have spent 5 hours on recent compliance issues at $570 an hour.

"The Court finds the underlying filings on this case are not so complex to have required more time than this. So accordingly, the Court calculates reasonable sanctions at $13,125 plus $2,850 equally $15,975. . . . [¶] . . .

"The Court notes that the orders anticipated a response within 50 days of January 17, 2024, which the Court calculates to be April 11, 2024. So in other words, these responses should have been completed by April 11, 2024.

"The Court notes that this discovery dispute has been before this Court on an ongoing basis since November 18, 2022. And the trial is now coming up on January 28, 2025."

Judge Cadet then turned to a concern involving attorney Yang, saying that "[t]he Court also has concerns with respondent's apparent basis for failing to comply with a February 21, 2024, order. [¶] The Court also notes that in respondent's response filing on June 6, 2024, respondent contended that per California Rules of Court, her RFO to reconsider required an immediate stay of the matter."

This colloquy followed:

"Mr. Yang, the Court was not able to locate any authority to suggest that Code of Civil Procedure section 1008 motion to reconsider imposes an automatic stay.

"Were you aware of any legal authority for that proposition that there's a stay?

"MR. YANG: Your Honor, I think—no. I needed to make more research.

"THE COURT: All right. So to the extent that this assertion regarding a stay was made without any substantive basis, the Court admonishes counsel to ensure that their filings conform to the requirements of Code of Civil Procedure section 1287(b)(2) regarding taking frivolous provisions of law.

"Accordingly—

"MR. YANG: Understood.

"THE COURT:—I'm still reading my ruling—accordingly, the Court directs respondent to provide the amended responses immediately, and in no event—later than 17—I'm sorry—later than 15 days from today's date.

"The Court will further set a review hearing on this issue that will be held on the same date as the other matter, October 28, 2024."

The findings and hearing order filed for the September 5 hearing included these entries:

"5. Discovery sanctions are awarded in the amount of $15,975.00, payable by Respondent Olga Alexander to Petitioner Timothy Alexander within 15 calendar days of 9/5/2024.

"6. The Court finds that it has concerns if Respondent does not take immediate action to comply with the 2/21/2024 FOAH, that might impede Petitioner's ability to adequately prepare for the upcoming trial. The Court notes that supplemental responses were contemplated within 50 days of the 1/17/2024 order, which the Court calculates to be 4/11/2024, and finds that the dispute has been ongoing since 11/18/2022, with a trial upcoming on 1/28/2025.

"7. The Court further finds that it has concerns regarding Respondent's apparent basis for failing to comply with the 2/21/2024 FOAH, specifically in the 6/6/2024 filing contending that the motion for reconsideration required an immediate stay of the underly[ing] order. To the extent that the assertion regarding a stay made without any substantive basis, the Court admonishes Respondent's counsel to ensure that their filings conform to CCP § 128.7(b)(2) regarding taking frivolous positions of law.

"8. Supplemental Discovery responses, pursuant to the Findings and Order After Hearing filed 2/21/2024, are ordered to be provided immediately, but in no event more than 15 calendar days from 9/5/2024.

"9. A review hearing on compliance with the discovery orders is set for 10/28/2024 at 1:30pm."

The compliance hearing came on as scheduled on October 28. Timothy was represented by Mr. Norris, Olga by Mr. Cummings and Mr. Yang. Judge Cadet had reviewed the "filings considered at the prior hearing" and also four other supplemental briefs, two by each side. After discussing an issue of joinder, the hearing turned to the discovery, in connection with which Mr. Norris stated that "no significant efforts to comply with the Court's orders have been made." Judge Cadet then heard from Mr. Norris and Mr. Yang who gave quite conflicting versions of the state of discovery. Following that, Judge Cadet ruled as follows:

"[T]he Court has reviewed the file in this issue and it has determined that Respondent's contention lacks merit.

"Petitioner's supplemental demands were attached as Exhibit B to his declaration, filed January 9, 2024. And these form the basis of the Court's February 21, 2024, order.

"The supplemental demands contain not only clear language referencing production demands Sets 2 and 3, but they also attached copies of production demands, Set 2 and 3.

"To the extent that Respondent objected to the inclusion of those sets, she had the opportunity to present those objections at the hearing on January 17, 2024.

"Further, the Court notes that Respondent recently attempted to challenge the same orders through an RFO filed on April 30, 2024, and denied on September 5, 2024.

"The Court notes that she did not raise the issue in connection with that RFO.

"The Court finds that Respondent is in noncompliance with the February 21, 2024, order regarding the supplemental responses to production

demand, sets 2 and 3. The Court directs Respondent to insure [*sic*] compliance within 10 days of today's date."

We do not know what happened next concerning discovery, but on December 30 Olga filed a notice of appeal.

DISCUSSION

Olga's Appeal Has No Merit

Olga's opening brief asserts that there are five "core issues on appeal," going on to list them.[3] We see but two issues here: (1) whether Commissioner Padilla's January 17, 2024, ruling was void, and (2) whether the sanctions award was an abuse of discretion. We easily answer "no" to both questions.

Commissioner Padilla's Ruling Was Not Void

As quoted, Olga's first issue states the question as whether Commissioner Padilla's "February 21, 2024 order is void," the date apparently referring to the date the formal order was entered. But the Commissioner's ruling, point-blank adverse to Olga, was on January 17. That was the ruling that ultimately led to Judge Cadet's sanction. Not the formal order. As the court put it in *Perez v. Perez* (1952) 111 Cal.App.2d 827,

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[3] This is the list:

"1. Whether the February 21, 2024 order is void because it was issued by a disqualified judge;

"2. Whether the sanctions order lacks a valid factual basis, as there is no evidence that Supplemental Sets Two and Three were ever served;

"3. Whether the sanctions motion and order fail to specify the alleged discovery deficiencies;

"4. Whether Appellant was deprived of due process and notice;

"5. Whether the amount of sanctions awarded was excessive and unsupported by the record."

830, where one judge granted a motion and a different judge signed the formal order, the formal order was a "more or less perfunctory act." Moreover, the record here contains a minute order filed on January 17, which minute order became effective when entered in the minutes by the clerk. (Code Civ. Proc., § 1033.)

Olga cites no case supporting her position, which is perhaps not surprising, as it cannot be that a litigant who has heard an adverse ruling can, before any formal order is entered, rush to file a Code of Civil Procedure section 170.6 challenge and thereby negate the adverse ruling. Such would wreak havoc.

The Sanctions Order

We have set forth in exhaustive detail the pleadings and hearings leading to Judge Cadet's October 5 order assessing sanctions against Olga, a version of events one would hardly get from a reading of Olga's brief.

And as to that order, our review is well-settled, as we set forth in the leading case of *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1285: " 'We review the trial court's order imposing the sanction for abuse of discretion. (*Sears, Roebuck & Co. v. National Union Fire Ins. Co. of Pittsburgh* (2005) 131 Cal.App.4th 1342, 1350.) We resolve all evidentiary conflicts most favorably to the trial court's ruling (*ibid.*), and we will reverse only if the trial court's action was " ' "arbitrary, capricious, or whimsical[.]" ' " [Citations.]' [Citation]; see, e.g., *In re Marriage of Michaely* [(2007)]150 Cal.App.4th 802, 809.) ' "It is [the appellant's] burden to affirmatively demonstrate error and, where the evidence is in conflict, this court will not disturb the trial court's findings." [Citation.]' " (See *Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1435 [imposition of discovery sanctions is subject to

reversal only for "manifest abuse exceeding the bounds of reason" (internal quotes omitted)].)

Olga has not made, indeed has not even attempted, any such showing here.

SOME CLOSING OBSERVATIONS

We alluded to the contentious nature of the domestic relations dispute, and the litigation it has generated. But in addition to this case, several others are referred to in the briefing here, including a civil case in San Mateo County (No. 20-CIV-03314) (the civil case); an action in Nevada (apparently a nullity action); and an action in Florida. Whatever the nature of these litigations, each side has attacked the other's conduct. One specific example is Timothy's criticism of Olga's conduct in the civil case, which he asserts she dismissed after pursuing it for five years, with particular criticism to the effect that in attempting to remove that case to Federal Court, Olga represented that her residence was San Mateo County, while in this case she has taken the position that she is living in Peru. There is also criticism by Timothy that Olga claims to be a resident of Nevada. And criticism by Olga of unpaid sanctions by Timothy.

We, of course, do not know the veracity of these criticisms, but the fact is they are there. And confronted with them, this is all Olga says in response: "[Timothy's] brief also devotes substantial space to collateral accusations about Appellant's alleged conduct in other forums—such as asserted residency inconsistencies, proceedings in Florida or Nevada, and unrelated allegations of 'gamesmanship.' *Whatever their accuracy*, those issues do not bear on the narrow questions before this Court." (Italics added.) While Olga might be technically correct, we would not be so sanguine, as litigation is not a game—and gamesmanship has no place in it.

Our second observation is that, as also noted above, Olga's advocacy throughout the discovery dispute has included criticism of the conduct of Timothy's counsels, including references to "phantom" pleadings, untrue testimony, and other things along these lines. Such criticisms continue into Olga's opening brief, and indeed are greatly enhanced in her reply brief, to the point that there are over eight pages broken out into two items, X and XI, labeled as follows: "Opposing Counsel's Misconduct and Request for Remedies" and "Chronology [of] Perjury and Subornation of Perjury."

Section X begins with this accusation: "The procedural errors and due process violations detailed above did not arise in a vacuum. They are the direct result of a pattern of professional misconduct by Respondent's counsel, who has repeatedly sought to mislead the court through false statements and deceptive tactics, in clear violation of ethical duties. This conduct warrants not only the reversal of the sanctions order but also the imposition of sanctions against counsel and referral to the State Bar." And it is downhill from there, the reply brief setting forth the claimed, "Most Egregious Acts," and how it is all part of a "documented modus operandi." There are specific charges that Timothy's "Counsel Ignores Objections and Misrepresents the Law" and "Disobey[ed] a Court Order and Submitt[ed] a False Declaration."

Section XI has a several page "Chronology [of] Perjury and Subornation of Perjury," ending with a request for sanctions under Code of Civil Procedure section 128.5, and a request that this Court refer the matter to the State Bar.

The leading appellate commentator has a section on brief writing that admonishes the writer to maintain a professional and courteous tone, going on to note, with citation of numerous cases, that "[h]yperbole, exaggeration, belligerence, disrespect and arguments belittling your opponent, the trial judge or the appellate court do nothing to advance your client's position; quite

the contrary, a shrill and abusive tone is more likely to diminish the persuasive force of your brief and ultimately injure your client's case." (Eisenberg, *supra*, ¶ 9:29.) One of the cases cited notes that "unwarranted personal attacks on the character or motives of the opposing party, counsel, or witnesses are inappropriate and may constitute misconduct . . . [¶] . . . While exaggeration may not violate rules of court and standards of review, it is not an effective tool of appellate advocacy." (*In re S.C.* (2006) 138 Cal.App.4th 396, 412, 416.) Olga's attorney is well advised to read such commentary and other guidebooks, not to mention the law.

We note from Mr. Yang's State Bar number that he is relatively early in his career. He has already been chastised both orally and in writing by Judge Cadet, and our observations here speak for themselves. We are occasionally called on to swear in new lawyers, offering advice when we do. We also talk to groups of young lawyers. And the advice we give is some version of this: "You have only one reputation. Guard it zealously."

DISPOSITION

The order is affirmed. Timothy shall recover his costs on appeal.

RICHMAN, J.

We concur.

STEWART, P. J.

MILLER, J.

(A172184N)