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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re the Marriage of LORETTA J. WAHL and DREW PERKINS LORETTA J. WAHL, Appellant, v. DREW PERKINS, Respondent.	H035712 (Santa Clara County Super. Ct. No. 1-99-FL-085666)

Dr. Loretta Wahl appeals from an order requiring her to pay $552,153.28 as a sanction to respondent Drew Perkins, her former husband, pursuant to Family Code section 271.[1] This award arose from appellant's conduct with respect to two post-dissolution orders issued March 16, 2009: "Permanent Order Regarding Custody and Visitation" ("Permanent Order") and "Stipulation and Order re Co-Parent Coordinator" ("Co-Parent Coordinator Order"). Appellant asserts that the court abused its discretion in making the sanctions award.

The record discloses no abuse of discretion and, accordingly, we affirm. In addition, on the court's own motion, we find sanctions on appeal are warranted.

[1] All further statutory references are to the Family Code unless otherwise stated. The parties proceeded by way of appendixes in lieu of a clerk's transcript.

A. *Procedural Background*

The court issued a Permanent Order Regarding Custody and Visitation in December 2005. The order stated: "This order is a final adjudication of custody and visitation and shall be subject to modification only where there is a showing of a substantial change in circumstances."

In April 2006, appellant sought modification of child custody and visitation.

On August 9, 2006, the court appointed a child custody evaluator to make recommendations regarding custody and visitation.

On February 23, 2009, the scheduled mandatory settlement conference did not proceed because, even though appellant's repeated requests to appear by telephone had been denied, she did not personally appear. Later that day, the parties agreed to hold a private settlement conference with a JAMS judge and the court ordered both parties to appear for that settlement conference. The trial remained set for March 2, 2009. The court reserved the issues of sanctions and attorneys' fees and costs for the failure to proceed with the mandatory settlement conference that day.

The parties ultimately reached a written settlement, which the court approved and made orders of the court in the March 16, 2009 Permanent Order and the March 16, 2009 Co-Parent Coordinator Order. The parties' agreements were in writing and signed by both the parties and their attorneys.

On April 13, 2009, appellant filed a "Substitution of Attorney—Civil" form indicating that she was no longer represented by counsel.[2] Notices of withdrawal of Attorney of Record were later filed by appellant's attorneys.

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[2] A party who chooses to represent himself is not entitled to a different standard than an attorney. (See *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639; *Taylor v. Bell* (1971) 21 Cal.App.3d 1002, 1009.) "[M]ere self-representation is not a ground for exceptionally lenient treatment. . . . A doctrine generally requiring or permitting exceptional treatment of parties who

On June 10, 2009, appellant filed a 13-page document entitled "Rescission of Signature and Agreement Affixed Thereto." The document stated that appellant "hereby rescind[ed]" her signature on the March 16, 2009 Permanent Order and rescinded "any perceived agreement to the terms of" that order. She claimed that she had not freely consented due to her "cognitive disability," which she defined as "a physiological condition, [qualifying] for accommodations under the Americans with Disabilities Act Title II, predisposed by domestic violence and precipitated by the retraumatizing conditions and stress of litigation which causes [her] to become symptomatic interfering with [her] ability to be functional during that litigation." Another asserted ground for rescission was the fact that she was "the victim of ineffective assistance of counsel . . . ." In the document, appellant stated that her attorneys had used "coercive, threatening, demeaning, abusive and unconscionable tactics" to obtain her signature that "chronically and acutely instilled profound fear and paralyzing terror which permeates [her] existence and the existence of [her] children."

On June 25, 2009, respondent sought an emergency screening, a child custody evaluation to assist the court in making permanent orders regarding custody and visitation, and an order temporarily transferring sole legal and physical custody of the children to him pending the evaluation. A hearing was set for July 16, 2009.

On July 14, 2009, respondent filed a motion for sanctions pursuant to section 271 based upon appellant's violations of the March 16, 2009 orders. Respondent filed a supporting declaration. The hearing on the sanctions motion was initially set for September 21, 2009.

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represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation." (*Rappleyea v. Campbell, supra,* 8 Cal.4th at pp. 984-985.) "[A]s is the case with attorneys, pro per litigants must follow correct rules of procedure. [Citations.]" (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247; cf. *In re Marriage of Falcone* (2008) 164 Cal.App.4th 814, 830 [affirming sanctions].)

After the hearing on July 16, 2009 at which appellant did not appear, Judge Aaron Persky issued "Findings and Order after July 16, 2009 Hearing," compelling appellant's compliance with the March 16, 2009 orders, among other things. Both parties were ordered to appear for further hearing on August 10, 2009.

On August 7, appellant filed a letter addressed to Judge Persky and former Chief Justice Ronald George in which she asserted that "procedural and substantive due process deprivations regarding the July 16, 2009 hearing . . . render[ed] the July 16, 2009 'Findings and Order After Hearing' void under any established objective procedural or substantive due process jurisprudence consideration."

Appellant appeared by phone at the August 10, 2009 hearing. Karin Huffer, who was not an attorney and stated that she was appellant's ADA advocate and had power of attorney to speak for appellant, was present in person. Appellant told the court with respect to the March 16, 2009 Permanent Order that she had "rescinded" her signature, she was not waiving "Pennsylvania jurisdiction in this matter in any way," and she could not "humanly honor that order. . . ." The court ordered the parties to appear for an emergency screening on August 17, 2009 and continued the matter to that date.

On August 17, 2009, appellant filed a "Declaration re: Clarification of Rescission filed June 10, 2009" and a document entitled "Conditional Objection Asserting Non Waiver of 28 USC 1738A Pennsylvania Jurisdiction."

On August 17, 2009, after the emergency screening, the court ordered the March 16, 2009 Permanent Order to remain in full force and effect without prejudice to final determination of respondent's request for a change of child custody. The court was willing to proceed with the required judicial custody conference to attempt to settle the custody and visitation issues but respondent's counsel declined to proceed, deeming it "a colossal waste of time." The court admonished appellant that her "compliance with those current existing court orders could have an impact on [her] custody and visitation rights in the future."

On August 25, 2009, respondent brought a motion to compel the depositions of appellant and Karin Huffer. A hearing was set for October 5, 2009.

Respondent then filed an ex parte application to continue the hearing on the section 271 motion, still set for September 21, 2009, and to set a case management conference (CMC) for October 5, 2009. The court granted the application by order filed September 1, 2009.

On September 17, 2009, respondent filed a motion to compel deposition testimony from Walter Hammon, appellant's former counsel.

On October 2, 2009, appellant filed a Case Management Statement in which she asserted that "Pennsylvania is the indisputable 'home state' of the children as defined in 28 USC 1738A(b)(4)" and that "all future custody and visitation issues are under the exclusive jurisdiction of the Court of Common Pleas of Allegheny County, Pennsylvania."

On October 5, 2009, respondent filed a motion to compel the deposition testimony of Robin Yeamans, the second attorney formerly representing appellant.

On October 5, 2009, appellant made no appearance. The court ordered appellant to appear on October 27, 2009 and ordered Karin Huffer to appear on October 30, 2009 for deposition in San Jose. The matter was continued to November 11, 2009 for a CMC.

On October 27, 2009, appellant did not appear for deposition. Appellant did not contact respondent's counsel or seek any relief from the court.

On November 13, 2009, respondent filed a motion to modify the Permanent Order to eliminate the step in the ADR process requiring the parties to attempt to resolve their child custody and visitation disputes with the co-parent counselor prior to resorting to the co-parent coordinator. The declaration of the co-parent counselor indicated that appellant had failed to participate or communicate with her and, consequently, the parties had never engaged in co-parent counseling as ordered. A hearing was scheduled for January 4, 2010.

Also, on November 13, 2009, respondent filed a motion for attorney fees and costs and terminating, issue, evidence, monetary, and contempt sanctions for discovery abuses related to the section 271 sanctions motion. (See Code Civ. Proc., § 2023.030.) A hearing was scheduled for December 21, 2009.

Appellant did not appear at the December 21, 2009 hearing. Following the hearing, the court imposed issue and evidence sanctions against appellant, specifically stating that all facts set forth in respondent's moving papers would be taken as established and barred appellant from presenting any evidence. The court also ordered appellant to pay respondent $20,000 in monetary sanctions. The court set a mandatory settlement conference for February 8, 2010 and a long-cause hearing for February 26, 2010.

Appellant did not appear at the January 4, 2010 hearing. Following the hearing, the court granted respondent's unopposed modification motion to eliminate the co-parent counselor provisions from the March 16, 2009 Permanent Order.

On February 8, 2010, appellant did not appear for the settlement conference.[3]

A hearing on respondent's section 271 motion was held on February 26, 2010. Respondent had filed a number of supplemental declarations in support of the motion after July 2009 and he testified in his own behalf at the hearing. Declarations from attorney Carolyn Helwick, an associate with the law firm representing respondent in this matter, and from the attorneys defending respondent in Pennsylvania state court and in federal court against appellant had been filed in support of the motion. Attorney Carolyn Helwick briefly testified about service of notice on appellant. In addition, a declaration from a financial analyst had been submitted in support of the sanctions motion. Appellant did not appear.

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[3] Respondent subsequently filed an order to show cause regarding contempt for appellant's failure to appear on February 8, 2010. Following a hearing on March 22, 2010 at which appellant failed to appear, the court issued a bench warrant for appellant's arrest.

The court issued written findings and ordered appellant to pay $552,153.28 to respondent pursuant to section 271.

B. *An Award Pursuant to Section 271*

1. *Standard of Review*

Section 271, subdivision (a), states in full: "Notwithstanding any other provision of this code, the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award."

"A sanctions order under section 271 is reviewed for abuse of discretion. (*Feldman, supra,* 153 Cal.App.4th at p. 1478 . . . .)" (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1225.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.) " 'The abuse of discretion standard . . . reflects the trial court's superior ability to consider and weigh the myriad factors that are relevant to the decision at hand. A trial court will not be found to have abused its discretion unless it "exercised its discretion in an arbitrary, capricious, or patently absurd manner that results in a manifest miscarriage of justice." ' (*People v. Roldan, supra,* 35 Cal.4th at p. 688 . . . .)" (*People v. Lancaster* (2007) 41 Cal.4th 50, 71.) A sanctions order pursuant to section 271 will be overturned " 'only if, considering all of the evidence viewed more favorably in its support, and

indulging all reasonable inferences in its favor, no judge could reasonably make the order.' [Citations.]" (*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1524, fn. omitted.)

2. *Evidence and Judicial Findings*

The uncontroverted evidence in support of the sanctions motion pursuant to section 271 showed the following.

Appellant and respondent were "divorced" in 1999.

In April 2006, appellant filed a motion to modify custody.

A child custody evaluator recommended that respondent be given custody of the children for at least one year, pending further follow-up assessments.

A three-week trial on the motion was eventually scheduled to begin on March 2, 2009.

After appellant failed to personally appear at the mandatory settlement conference scheduled for February 23, 2009, the parties were ordered to meet with a retired judge. The parties reached agreements, which were made orders of the court: the March 16, 2009 Permanent Order and the March Co-Parent Coordinator Order.

The March 16, 2009 Permanent Order stated that it "shall be deemed to supersede all prior orders regarding custody and visitation of the minor children." It awarded joint legal custody of the parties' two children and awarded sole physical custody of the children to appellant.

As to visitation, the Permanent Order set forth respondent's general visitation schedule and his rights to visitation on specific holidays, school breaks, and summer vacation. The order indicated that the appellant's home was in Pennsylvania.

The Permanent Order further established, among other things, that "Father [respondent] shall provide flight transportation for the Children to travel to the San Francisco Bay area for the Christmas and Spring Breaks." The order contained a provision requiring respondent to give appellant $500 "to provide sufficient changes of

clothing for both children for the duration of *all visits with Father*, except for Summer Vacation." (Italics added.) The order also provided: "Either parent may drive up the other's driveway to exchange the children . . . ."

Under the Permanent Order, appellant mother was required to provide their children with cell phones with texting and voicemail capabilities at her expense. Both parents were entitled to call their children's cell phones at any time except during their children's normal sleeping hours. The children were entitled to use email, their cell phones, videoconferencing and any other method of telephone or electronic-based communication to contact the parent who did not have them currently in his or her care. As to communication between the parties, the Permanent Order generally provided for them to communicate by telephone, email, or fax. The order required appellant to "maintain a working fax line that accepts facsimiles from numbers with blocked or unidentified caller identification, including facsimiles from the eFax system."

The Permanent Order established an alternative dispute resolution (ADR) process involving a "co-parent counselor" to help the parties informally resolve disagreements and a "co-parent coordinator" to resolve minor disputes that the parties were unable to resolve with the help of the co-parent counselor. The order provided that, if the parties were unable to mutually agree on the individuals to serve in those capacities, they were each required to submit a name for each position to Dr. Atwell, who would decide. The order also stated that the parties would equally share the costs associated with the co-parent counselor and co-parent coordinator.

The March 16, 2009 Co-Parent Coordinator Order specified the co-parent coordinator's authority to make binding decisions on certain minor issues and to make non-binding recommendations on other issues. This order reiterated Dr. Atwell's authority to determine the person to serve as co-parent coordinator if the parties were unable to agree and instead proposed names to Dr. Atwell.

On March 17, 2009, the day after the court's orders were entered pursuant to the terms of the parties' agreement, appellant claimed that "the Orders were 'coerced' and invalid." Appellant told respondent that, in essence, their agreement was null and void.

Appellant failed to comply with the ADR process in that she "refused to participate at all in the process of nominating and appointing a Co-Parent Counselor and [Co-Parent] Coordinator." After respondent had nominated individuals to serve in those capacities, Dr. Atwell faxed a letter, dated June 1, 2009, to appellant that indicated that respondent had submitted names to him and appellant had 30 days to submit names before he made decisions based on the submissions. Appellant's written response to Dr. Atwell, dated June 30, 2009, stated that she was retroactively terminating "any and all contracts (implied or imposed)" with Dr. Atwell, she was objecting to his appointment, and she was reserving "all rights pursuant to UCC 1207(a) to seek all remedies, including criminal." She stated that the letter "serves as a notice of intent to file and pursue claims if this letter is ignored." Appellant did not provide Dr. Atwell with names of proposed individuals to serve as co-parent counselor and co-parent coordinator. At the time of respondent's July 2009 declaration, respondent had advanced the full $4000 retainer to Dr. Atwell.

Appellant refused to comply with the Permanent Order during Spring break in 2009. Respondent paid appellant "$500 to ensure that [she] would pack clothing for the children's visit" over Spring break in 2009. Appellant faxed a letter, dated April 3, 2009, to respondent in which she refused to abide by the Permanent Order's clothing provision concerning "all visits with Father" since the stipulation and order did not reflect their actual agreement and indicated that she would provide the children with clothing only for his weekend visits in Pennsylvania but only if he provided $500 for each visit "as agreed." Appellant's fax message further stated that she did not agree to the contract and was forced to sign under duress. Respondent stated in his July 2009 declaration that, when he picked up their children from the San Francisco Airport for their Spring break

visit on the evening of April 3, 2009, appellant had not provided clothing for their visit and she had instead sent "both of [their] children, ages 10 and 11, with $250.00 in cash in their backpacks." (Emphasis omitted.)

On June 10, 2009, appellant filed the purported "rescission" of the parties' settlement agreements underlying the court's March 16, 2009 orders.

On June 16, 2009 at 5:00 p.m., appellant tried to enforce a superseded provision in a prior order that provided for videoconferencing at that specific time. Respondent told appellant that he "was in a meeting, but she could call the children directly if she wanted to speak with them." Several times that day, appellant told respondent that "she 'rescinded' the Permanent Order, and would no longer be complying with it." Appellant sent him several faxes demanding that he comply with superseded court orders.

In his July 2009 declaration, respondent reported that, between March 13, 2009 (the date of the parties' signed agreements) and April 2, 2009, appellant had failed to provide him with a working fax number. Respondent stated: "[Appellant] refuses my calls, and rarely returns my messages." According to respondent's declaration, on or before June 16, 2009 through at least June 26, 2009, "[appellant] disabled or turned off her fax machine so that [respondent] had no way of getting in touch with her." On June 25, 2009, when appellant called to speak with the children (impliedly in respondent's care), respondent asked appellant why the fax machine was off and appellant stated that it was turned on. Although the fax line responded when respondent called it from his cell phone a few minutes later, when respondent then tried to fax a letter regarding the children's travel arrangements for their next visit, his attempts did not go through. In a fax dated June 29, 2009, appellant gave respondent a new fax number, limited its availability to between 8:00 a.m. and 9:00 p.m. eastern time, and put him "on notice" that she would "only check that number weekly at best . . . ." In that same fax, appellant stated: "I have rescinded the coerced, rushed, involuntary signature under sever

duress," "I fully reinstate all my rights in effect with the 12/05 final order . . . ," and I "revoke all agreements other than that which is in the final order of 12.05."

Respondent's July 2009 declaration additionally described his problems contacting his children by cell phone because appellant "refused to permit or assist them to clear their voicemail inboxes." His son had answered his cell phone only once and his daughter had never answered her cell phone. When they did not answer, respondent was notified that their mailboxes were full. Over summer break in 2009, respondent asked his children if they "could work together to clean out their voicemail so [he] would be able to leave messages for them . . . ." Their daughter told him that appellant had set up her voicemail and appellant had not given her access. Their son told appellant about respondent's request and, in his July 2009 declaration, respondent stated his belief that appellant had told their son to not allow respondent to do so. Appellant sent respondent "a fax, dated June 14, 2009, claiming that [he] was pressuring [their son] and somehow violating [their son's] privacy."

On or about July 1, 2009, appellant filed a document, entitled "Petitioner's Affidavit Invoking Residency and Domicile in Pennsylvania," in a Pennsylvania state court declaring Pennsylvania to be her and the children's home state. In the document, appellant indicated they had been living in Pennsylvania since October 2000. She asserted that Pennsylvania was the "indisputable 'home state' of the children as defined in 28 USC 1738A(b)(4) [full faith and credit provision applicable to child custody and visitation determinations] . . . , which means that all future custody and visitation litigation issues are under the exclusive jurisdiction of the Court of Common Pleas of Allegheny County . . . . In this document, appellant "invoke[d]" her "exclusive contractual rights" set forth in a superseded child custody and visitation order that she reportedly had filed in the Pennsylvania court in November 2006, and appellant "determine[d] that Pennsylvania is "the 'home state' where all future litigation, if any, regarding custody and visitation are [sic] to be conducted."

Respondent had to hire counsel to represent him in Pennsylvania state court proceedings initiated by appellant.

After a hearing on July 16, 2009, the Santa Clara County Superior Court ordered appellant to comply with the terms of the March 16, 2009 orders, it appointed the co-parent counselor and the co-parent coordinator, and it ordered appellant to maintain a fax line that accepts facsimiles from the eFax service at any time and to provide the children with cell phones with unlimited voicemail message capacity. The court also ordered appellant to participate in the ADR process, to reimburse respondent for one-half of the retainer paid by respondent to Dr. Atwell, and to pay retainers and fees to the co-parent counselor and the co-parent coordinator but appellant never complied.

In a letter, dated July 17, 2009, appellant informed the appointed co-parent coordinator that "any and all contracts (implied or imposed)" between them were immediately terminated retroactively, and "[a]ny prior document obtained previously by involuntary coercion/directives for such services is null and void in full, effective immediately . . . ." Appellant told the co-parent coordinator any communications concerning her would be considered to be "a minimum of a violation of ethics as well as a basic standard of care" and indicated that any disparagement of her could be considered "libel/defamation/slander" and "retaliation for not succumbing to an involuntary document/contract." Appellant also sent a letter to the co-parent counselor appointed by the court.

On or about August 3, 2009, appellant filed a document entitled "Petition for Enforcement of a Custody Order" in Pennsylvania. Appellant sought to enforce the superseded "Permanent Order Regarding Custody And Visitation," which she stated had been registered with the Pennsylvania court in November 2006. She asked the Pennsylvania court to recognize it had "exclusive jurisdiction over any further custody proceedings in this matter" and "to ensure that the lives of my children are not disrupted by any foreign orders . . . ."

On August 10, appellant filed "Petitioner [sic] for Order to Address Violation of Pa. C.S.A. 18 2904" in a Pennsylvania state court. In this document, appellant proclaimed that her recently-filed "Petition for Enforcement of a Custody Order" "factually demonstrates that . . . sham proceedings held in Superior Court of California, County of Santa Clara Closed/Inactive case on July 16, 2009 resulted in an invalid alleged July 16, 2009" order altering the child custody and visitation order registered with the Pennsylvania court in November 2006. She again asserted in the document, "Pennsylvania is the 'home state' where all future litigation, if any, regarding custody and visitation issues are [sic] to be conducted."

On August 13, 2009, appellant filed a federal complaint against Chief Justice George and respondent in a Pennsylvania federal court. She sought declaratory relief that Pennsylvania was her and their children's "home state" and "all future child custody and visitation issues are properly determined in The Court of Common Pleas of Allegheny County Pennsylvania." Respondent hired an attorney to represent him in federal court.

On August 17, 2009 (the date of the emergency screening in Santa Clara County Superior Court), appellant filed a "Declaration re: Clarification of Rescission filed June 10, 2009" in Santa Clara County Superior Court. Although she claimed it was not her intention to "defy any court orders regarding the custody and visitation schedule," she nevertheless asserted that it was "an involuntary contract." She stated in the declaration that she had not received ADA accommodations in evaluating the stipulations and she had been coerced and had signed them under duress, she did not trust Dr. Atwell because he had made a "severely flawed" and unethical diagnosis of her son, and she had been advised by legal counsel in Pennsylvania that jurisdiction was more appropriate in Pennsylvania.

On August 17, 2009, appellant also filed a document entitled "Conditional Objection Asserting Non Waiver of 28 USC 1738A Pennsylvania Jurisdiction" in Santa Clara County Superior Court. In it, she stated "I do not nor will I ever waive

Pennsylvania 28 USC 1738A(b)(4) defined 'home state' jurisdiction, but instead, I herein invoke and assert it." She also asserted that respondent and his attorneys "recognize that jurisdiction to modify any existing custody order rests exclusively in Pennsylvania . . . ."

On August 26, 2009, appellant filed a document entitled "Praecipe for Hearing to Contest Plaintiff's [respondent's] Affidavit Application for Registration of an Out of State Custody Order" in the Pennsylvania state court.

On September 22, 2009, appellant filed "Petitioner's Contest of Validity of Registered Out-of-State Custody Order" in the Pennsylvania state court. In this document, appellant stated that she "does herein and hereby rescind her signature affixed on the March 16, 2009" orders of the Santa Clara County Superior Court. She also rescinded "any perceived agreement to the terms of either document . . . ." She requested the Pennsylvania state court to "regard said documents [as] vacated."

On September 23, 2009, appellant filed "Petitioner's Affidavit for Registration of an Out-of-State Custody Order" in the Pennsylvania state court. She sought to register the August 17, 2009 Santa Clara County Superior Court order that followed the emergency screening, which ordered the March 16, 2009 Permanent Order to remain in full force and effect (except as to the timing of the children's return to appellant on August 17, 2009) and stated that the court "may make a decision regarding [appellant's] Rescission Request upon [appellant's] appropriate motion."

Appellant filed various other documents in the Pennsylvania state court related to child custody and visitation, to which respondent's Pennsylvania state court counsel responded.

On January 5, 2010, Pennsylvania Judge David Wecht ordered appellant to pay respondent $1,500 in attorneys' fees and costs for filing the same request three times.

Also on January 5, 2010, appellant filed a federal lawsuit against Judge Wecht and the Pennsylvania Court of Common Pleas of Allegheny County, seeking protection under

the Americans with Disabilities Act. Respondent's federal counsel also represented him in that case.

Respondent's January 2010 declaration reported that his children's voice mailboxes had been full since March 16, 2009 and they rarely answered their cell phones when he called and he was not sure they actually received his emails.

In a February 12, 2010 fax, after respondent was in flight from California for a week-long visit with the children, appellant demanded $250,000 plus a $250,000 retainer. Although respondent had informed appellant of the intended visit on December 18, 2009, appellant had not responded to his faxes about the visit or "confirm[ed] that she would let [him] have the children for this period." Because of severe weather, respondent was forced to delay his visit by about a day and he had tried to notify appellant but she "refused to call [him] back or confirm that she had received [his] urgent messages." In the February 2010 fax, appellant informed respondent: "No further weeklong [sic] visits will be permitted until this rescission is addressed, and prompt payment as outlined with repayment of any [and] all losses/costs and retainers is received; while the coerced 3.13.09 document is being addressed." In addition, she announced in the fax that she "***must and will arrange any [and] all travel for the children while in my care*** and under my supervision" and informing respondent that he would be required to meet the children on the street in front of the driveway, despite contrary provisions in the Permanent Order. Appellant provided only two changes of clothing for the children's seven-day visit with respondent.

In her February 2010 declaration in support of the sanctions motion, attorney Helwick indicated that appellant had filed a number of documents in Pennsylvania state court. She reported that, in many instances, appellant's court papers represented that a copy had been sent to respondent's counsel but no copy was ever received.

Respondent's February 18, 2010 supplemental declaration stated that, since March 17, 2009, he had incurred attorneys' fees and costs of *more than* $552,153.28. In

his February 26, 2010 supplemental declaration, respondent indicated that he had incurred $306,177.09 in fees in connection with motions filed by petitioner. In argument, respondent's counsel acknowledged that these attorneys' fees included the Pennsylvania motion practice. In her February 2010 supplemental declaration in support of respondent's motion, attorney Helwick stated that respondent had incurred a total of $582,493.02 in attorney's fees and costs from March 17, 2009 through February 24, 2010.

Respondent's July 2009 declaration stated that appellant "received approximately $30,000,000 in cash and stock in their divorce settlement in 2001." Appellant's February 13, 2009 income and expense declaration showed that she had liquid assets of about $5,700,000 plus about $1,000,000 in other property. Attorney Helwick's November 2009 and January 2010 declarations in support of respondent's motion had both stated: "[Appellant] has access to significant assets, as evidenced by her December 17, 2008, and February 13, 2009, income and expense declarations. [Appellant] has at least $7,000,000 in assets, $5,000,000 of which she could easily access. Upon information and belief, [appellant] also has significant funds in trust vehicles."

In addition, the financial analyst's declaration that was filed by respondent estimated, based upon a number of projected investment scenarios, the growth of stock received by appellant in the marital dissolution. The lowest estimate, "net of normalized living expenses," was that appellant's stock portfolios would have grown to at least $18,046,341 by February 1, 2010.

In argument, respondent's counsel explained that the amount of attorneys' fees incurred over and above the attorneys' fees attributable to motion practice related to reviewing and responding to documents, faxes, and letters, research, file maintenance, the ADR process, and "constant" maintenance and oversight of the Pennsylvania matters. Counsel implied that they had to be vigilant since appellant often did not serve papers that she filed at court and she sent a lot of faxes. The law firm needed to check dockets

and was in "constant contact" with respondent's Pennsylvania attorneys, counsel for Chief Justice George, and counsel for Pennsylvania Judge Wecht. Billing statements were lodged with the superior court.

The superior court found that respondent had met his burden of showing that appellant had "frustrate[d] the policy of the law to promote settlement of litigation." It stated that respondent's declarations were "replete with examples of [appellant's] behavior that has frustrated the letter and the spirit of the Permanent Order." As to her attempt to rescind the parties' agreement, the court observed that appellant had not filed a motion to set aside the parties' agreement, she had not followed the court's orders, she had not appeared in court, and she had not accepted the court's authority to make orders.

As to the amount of the award, the court indicated that it had reviewed the lodged billing statements. It found that, in light of appellant's reckless conduct, $552,153.28 was not an unreasonable amount of attorneys' fees and costs to have incurred since issuance of the Permanent Order. The court stated: "Respondent cannot be faulted for aggressively litigating the enforcement of a custody order that [appellant] seems determined to ignore. By attempting to 'rescind' the Permanent Order in California, and by commencing custody litigation in Pennsylvania, [appellant] has forced Respondent to fight to retain his custodial time (and his bond) with his two children. By refusing to comply with discovery requests and by absenting herself from this sanctions proceeding, [appellant] has forfeited her opportunity to present evidence that such a sum is unreasonable."

3. *No Abuse of Discretion*

Appellant first argues that the magnitude of the award "appears to be unprecedented." She maintains that her conduct following the March 16, 2009 Permanent Order "simply cannot reasonably justify the sanctions." Appellant incorrectly implies that the court predicated its award on only her June 10, 2009 rescission document and her February 11, 2010 fax, which she now attempts to excuse and argues do not

justify the award. She points out that, on August 17, 2009, she filed a declaration to clarify her "rescission," indicating that she had no intention of defying the custody and visitation provisions of the March 16, 2009 Permanent Order. She characterizes her February 10, 2010 fax to respondent as merely a "hyperbolic financial demand" that "may have been better left to daydream" and explains that it was an expression of her "frustration with [respondent's] pattern of unreliability in visiting the children . . . ." She further asserts that the impact of the custody litigation on their children is not a "proper factor" to be considered by the court in making an award under section 271.

The superior court clearly based its award on the totality of appellant's conduct that frustrated the parties' settlement agreements that were made orders of the court on March 16, 2009. Although appellant claimed in her August 2009 declaration that the rescission document did not reflect an intention to disobey the court's orders, appellant took many actions inconsistent with that claim. The fact that the court was mindful of the adverse effect of acrimonious litigation on the children does not establish that the court acted unreasonably.

Appellant emphasizes that she was not held in contempt for violating the Permanent Order. She also states that respondent never sought "any judicial declaration concerning the status of the Permanent Order in light of the rescission." Without any citation to authority, appellant insists that the trial court cannot sanction her based on the filing of that rescission document without first finding that her position was unreasonable or the document had any actual effect on the March 16, 2009 Permanent Order.

Neither statute nor case law required the court to issue a contempt order or a judicial declaration regarding the effect of her purported rescission before imposing an award under section 271. The court was entitled to consider the filing of appellant's purported rescission as part of her overall conduct aimed at repudiating the court's March 16, 2009 orders and thwarting the underlying settlement agreements to which she was a party.

Moreover, respondent as the moving party was "not required to establish any particular harm as a prerequisite to a sanctions award under section 271. (*Feldman, supra,* 153 Cal.App.4th at pp. 1479-1480 . . . .)" (*In re Marriage of Corona, supra,* 172 Cal.App.4th at p. 1226.) "Sanctions under section 271 are appropriate whenever a party's dilatory and uncooperative conduct has frustrated the policy of promoting settlement of litigation and cooperation among litigants. (*Feldman, supra,* 153 Cal.App.4th at pp. 1479-1480 . . . .) There is no requirement that a party suffer any actual injury as a prerequisite to requesting an award of attorney fees as sanctions under section 271. (*Feldman,* at p. 1480 . . . .)" (*In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1317.)

Appellant contends that the trial court has no right or jurisdiction to sanction her based on the Pennsylvania litigation but she cites no authority. She maintains that "any amount ordered for reimbursement of fees for Pennsylvania litigation is error." In appropriate circumstances, a court has authority to impose sanctions under section 271 for attorneys' fees incurred in a different case. (See *Burkle v. Burkle* (2006) 144 Cal.App.4th 387, 400, 403, fn. 7 [wife filed separate civil action to avoid litigating matter before family court].) It appears from the evidence presented below that appellant's Pennsylvania proceedings were closely connected to her efforts to unilaterally repudiate the Santa Clara County Superior Court's March 16, 2009 orders and to reject the California court's authority and jurisdiction. Appellant has not demonstrated that any of her Pennsylvania litigation had any legitimate legal basis.[4] Her refusal to comply with

[4] Once a California court has made a child custody determination under specified provisions of California's Uniform Child Custody Jurisdiction and Enforcement Act, the court generally retains exclusive, continuing jurisdiction over the determination while a parent remains a resident of California. (See § 3422; *Grahm v. Superior Court* (2005) 132 Cal.App.4th 1193, 1200; cf. 23 Pa. C.S.A. §5422 and Uniform Law com. thereto; Uniform Child Custody Jurisdiction & Enforcement Act (UCCJEA), §202 and com. thereto.) Pennsylvania law generally provides that, while a parent continues to reside in a state that has made a custody determination, "a court of this Commonwealth may not

the California court orders and her concomitant litigious conduct in Pennsylvania caused litigation costs to increase and "frustrate[d] 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).) The court did not act beyond the bounds of reason in including attorneys' fees incurred in response to the Pennsylvania litigation.

Lastly, appellant contends that the amount of the award was unreasonable because it included over $200,000 of attorneys' fees, above and beyond the fees incurred in motion practice, that were not adequately explained. She also argues that the award improperly includes attorneys' fees incurred by respondent to bring motions unrelated to "alleged 'settlement thwarting.' " She suggests that an award of attorneys' fees was unwarranted, for example, for attorneys' services related to respondent's application for an order awarding him sole legal and physical custody of the children, to his motions to compel depositions, and to his opposition to her request to appear by telephone at the continued sanctions hearing.

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modify a child custody determination made by a court of another state unless a court of this Commonwealth has jurisdiction to make an initial determination under section 5421 (a)(1) or (2) (relating to initial child custody jurisdiction) and: [¶] (1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under section 5422 (relating to exclusive, continuing jurisdiction) or that a court of this Commonwealth would be a more convenient forum under section 5427 (relating to inconvenient forum) . . . ." (23 Pa. C.S.A., § 5423; see Uniform Law com. to 23 Pa. C.S.A., § 5423; cf. § 3423; UCCJEA, § 203 and com. thereto.) Pennsylvania law provides with respect to simultaneous proceedings, a Pennsylvania court "may not exercise its jurisdiction . . . if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter [Pennsylvania's Uniform Child Custody Jurisdiction and Enforcement Act] unless the proceeding has been terminated or is stayed by the court of the other state because a court of this Commonwealth is a more convenient forum under section 5427 (relating to inconvenient forum)." (23 Pa. C.S.A., § 5426, subd. (a), and Uniform Law com. thereto; cf. § 3426; UCCJEA, § 206 and com. thereto.)

Appellant did not show below, and has not shown on appeal, that the court's award included attorneys' fees for particular attorney services that were unrelated to her defiant attempts to thwart the court's March 16, 2009 orders. Moreover, "a sanctions award under section 271 need not 'be limited to the cost to the other side resulting from the bad conduct.' (*In re Marriage of Quay* (1993) 18 Cal.App.4th 961, 970 . . . [addressing former Civil Code section 4370.6, the substantively identical predecessor statute to Family Code section 271].)" (*In re Marriage of Corona, supra,* 172 Cal.App.4th at p. 1226.) A "correlation" between the sanctioned conduct and specific attorney fees need not be established. (*Ibid*.) Here, the court examined the lodged billing statements and found that the amount of the award was warranted.

It is a cardinal principle of appellate review that error must be affirmatively shown. (See *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Appellant has failed to establish that the superior court manifestly abused its discretion in imposing an award of $552,153.28 against her pursuant to section 271.

C. *Sanctions on Appeal*

"When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just." (Code Civ. Proc., § 907.) On its own motion, a Court of Appeal may impose sanctions on a party or an attorney for "[t]aking a frivolous appeal or appealing solely to cause delay." (Cal. Rules of Court, rule 8.276(a)(1).) Prior to oral argument, this court gave written notice to appellant that it was considering the imposition of sanctions on its own motion. (Cal. Rules of Court, rule 8.276(c).)

Here, appellant Wahl pursued an appeal that raised completely and undeniably meritless arguments. "An appeal taken for an improper motive represents a time-consuming and disruptive use of the judicial process" and an appeal that is indisputably meritless "ties up judicial resources and diverts attention from the already burdensome volume of work at the appellate courts." (*In re Marriage of Flaherty* (1982) 31 Cal.3d

637, 650.) We find that this appeal is frivolous (*ibid*.) and, consequently, impose sanctions against appellant and her attorneys of record, Kim M. Robinson and Richard Ducote, appearing as counsel pro hac vice.

DISPOSITION

The order pursuant to section 271 is affirmed. Respondent shall recover costs on appeal. As sanctions for bringing this frivolous appeal, appellant shall pay $15,000 and attorneys Kim M. Robinson and Richard Ducote shall each pay $5,000 to the clerk of this court within 40 days after the clerk sends notice of issuance of the remittitur.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.

Trial Court:	Santa Clara County Superior Court
Trial Judge:	Hon. Aaron Persky
Attorneys for Appellant:	Richard Ducote and Kim M. Robinson
Attorneys for Respondent:	McManis Faulkner, James McManis, Michael Reedy and Carolyn Helwick

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