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7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF KINGS
CIVIL DIVISION

8
9 Petitioner: A NOT VERY NICE GUY,
10 vs.
11 Respondent: A NICE LADY,

Case number:

REPLY TO PETITIONER'S POINTS &
AUTHORITIES IN OPPOSITION TO
RESPONDENT'S MOTION FOR
ATTORNEY'S FEES & COSTS

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15 **SUMMARY**

16 Apparently unwilling to follow a 2004 stipulation and order giving "reasonable
17 visitation" to Respondent A NICE LADY ("LADY"), Petitioner A NOT VERY NICE
18 GUY ("MR. JERK") refused her *any* access to her children, forcing LADY to again bring
19 the parties before a court with the power to provide her with access to her children. In
20 addition to being forced to litigate those family law issues relating to access to her
21 children, LADY also requested and received an order for support. LADY has now asked
22 the court for an order for attorney's fees and costs pursuant to Family Code section 2030.

23 Petitioner's Opposition ("Response") to LADY'S request consists of a lengthy
24 recitation of perceived sins alleged to have been committed by LADY. The Response is
25 therefore irrelevant to the issues to be decided by the court: Family Code section 2030
26 outlines the basis for requests for attorney's fees and costs in cases such as this one, sets
27 the standard of review for determining whether and to what extent such fees and costs
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1 shall be awarded and neither the issues litigated, nor any other perceived sins of either
2 party come within the ambit of the statute.

3 Whatever other issues the parties may wish to argue, *this* motion is concerned with
4 the question of the award of attorney’s fees and costs. We answer *that* question by
5 looking to Family Code section 2030 for guidance.

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7 **I**

8 **THE REPEATED USE OF THE WORD “SHALL” IN FAMILY CODE SECTION 2030**
9 **HIGHLIGHTS THE FACT THAT IT WAS MEANT TO COVER THE NEEDS OF**
10 **PERSON’S SUCH AS RESPONDENT LADY AND TO PROTECT THEIR RIGHT TO**
11 **LEGAL REPRESENTATION**

12 “The purpose of an award under Family Code section 2030 is to ensure that the
13 party in need has adequate legal representation to litigate the family law issues.” (*In re*
14 *Mariage of Kelso* (1998) 67 Cal.App.4th 374, 384-5 [79 Cal.Rptr.2d 39].) The “primary
15 right” which Family Code section 2030 intends to vindicate “is the right of a party to a
16 family law proceeding to an adequate opportunity to litigate, notwithstanding a disparity
17 in the parties’ income and assets.” (*Nicholson v. Fazeli* (2003) 113 Cal.App.4th 1091,
18 1102 [6 Cal.Rptr.3d 881].)

19 In this case, MR. JERK forced this action by LADY because he refused her
20 “reasonable visitation” with her children as required by the 2004 stipulation and order.
21 The family law issues and arguments here were extensive and complex. LADY could not
22 have proceeded against MR. JERK’S refusal to allow her access to her children and to
23 assert her legal rights without the assistance of an attorney. Attorneys in complex and
24 extensive cases can cost significant amounts of money. As noted in previously-filed
25 Declarations and other papers, LADY does not have access to the requisite amounts of
26 money, other than that received to cover her living expenses as ordered by the court.

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II

FAMILY CODE SECTION 2030 OUTLINES THE STANDARD AND PARAMETERS FOR DETERMINING WHETHER LADY IS ENTITLED TO RECEIVE ATTORNEY'S FEES AND COSTS IN THIS ACTION

Family Code section 2030 indicates the conditions under which the court

...shall ensure that each party has access to legal representation...by ordering, if necessary based on income and needs assessments, one party...to pay the other party, or the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.

(*In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 867 [89 Cal.Rptr.2d 525].)

While the court has "considerable latitude in fashioning or denying" the award, the court must consider "the appropriate factors" as outlined in the code section. (*Keech, supra*, 75 Cal.App.4th at 866.)

The primary considerations are the relative income and ability to pay of the parties to the action, the litigation needs of the parties, and whether the fees involved were reasonably necessary. (*Keech, supra*, 75 Cal.App.4th at 867.)

MR. JERK'S Declaration which accompanies his Response brief essentially attempts to relitigate the issues previously presented, rather than to address the question of income and needs assessments. Rather than discuss the factors outlined in Family Code section 2030, the Points & Authorities portion of the Response argues over which portions of a hearing were devoted to particular issues which MR. JERK argues may not factor into any award this court, in its discretion, may deem appropriate. Family Code section 2030 covers "a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, and in *any proceeding subsequent to entry of a related judgment.*" (Fam.Code § 2030(a)(1).) There is no indication that Family Code section 2030 required or suggested that the court parse the proceedings to determine how many minutes were allocated to subjects covered by Family Code section 3652 and how many minutes were allocated to other issues.

1 MR. JERK'S focus upon Family Code section 3652 and the dearth of argument
2 relating to section 2030 appears to be based on the belief that LADY "relies on Family
3 Code §3652 for her request...." (Response Brief at 7, line 27.) When MR. JERK *does*
4 address the Family Code section 2030 issues, he erroneously states that 1) respondent has
5 over \$3,300 in monthly tax-free income, 2) LADY has not shown that she was unable to
6 retain or pay counsel, and 3) others have been providing support which should be counted
7 as income because there is no indication from Ms. Good Samaritan, who loaned money to
8 LADY, that indicates she was to be paid back. (*Id.* at p. 17, lines 1, 18-24.)

9 Each of these allegations fails.

10 First, LADY relied upon Family Code section 2030 *and* section 3562 in her
11 request for attorney's fees and costs. The Declaration of Original Attorney In Support of
12 Respondent's Costs for Representation notes that

13 Said request is based upon Respondent's need for an award of attorney's
14 fees and costs, and Petitioner's ability to pay said attorney's fees and
15 costs on behalf of Respondent, pursuant to Family Code Section 2030.
16 (Declaration of Original Attorney in Support of Respondent's Costs for
17 Representation ("Original Attorney Declaration") at 1, lines 22-24.)

18 Although titled as a Declaration, that document also provides argument
19 concerning the factors outlined by Family Code section 2030. For example, it notes that
20 the fees were "based upon reasonable rates charged by me" (Original Attorney
21 Declaration at 1, line 26); that "substantial differences between the parties as to each of
22 [the] issues, and other issues, has lead to the issues being highly contested" (*Id.* at 2, lines
23 6-8); that "there is a significant disparity in income between the two parties" (*Id.* at 2,
24 lines 8-9); that the "fees and costs requested herein are reasonable, appropriate, and
25 necessary" (*Id.* at 2, lines 16-7); and that the award is necessary to support the purpose
26 behind Family Code section 2030 – "to ensure that the party in need has adequate legal
27 representation to litigate the family law issues" (*Kelso, supra*, 67 Cal.App.4th at 385) –
28 as argued in paragraph 8 of page 2 of the Original Attorney Declaration.

1 Second, the “tax-free income” to which MR. JERK alludes is based upon the
2 award of child support made by this court! The money thus awarded is intended for the
3 support of the children of LADY and MR. JERK; it is not intended to pay back money
4 loaned to LADY whilst she was unable to support herself, nor to pay attorney’s fees and
5 costs.

6 Third, LADY, through the submission of an Income and Expense Declaration, as
7 well as the current motion, has indeed shown that she is unable to retain or pay counsel.
8 Prior to the court’s award of fees for her children, the entire monthly amount of money
9 over which LADY had some control was \$649.00 from social security supplemental
10 income, compared with MR. JERK’S approximately \$11,000 per month income from
11 various sources. (Memorandum of Points and Authorities in Support of an Award of
12 Attorney Fees to Respondent at 2, lines 14-15.) Additionally, LADY was borrowing and
13 relying upon the largesse of friends in order to meet her expenses. (Original Attorney
14 Declaration at 2, lines 10-11.)

15 Fourth and finally, the largesse of LADY’S friends should not be counted as
16 income sufficient to release MR. JERK from the dictates of Family Code section 2030.
17 The fact that LADY’S friend stepped in to help her does not alter the fact that LADY was
18 destitute while MR. JERK’S enjoyed an \$11,000 per month income and that, even now,
19 LADY will receive only \$649 for herself from social security, plus the support awarded
20 by this court. Subtracting that award from MR. JERK’S side of the Family Code section
21 2030 balance shows he will still have an average monthly income of approximately
22 \$8,000-plus. Yet MR. JERK asserts that because LADY now receives \$3,300 in income
23 *if you include the support award*, she is able to pay the legal fees he forced her to incur to
24 protect her rights.

25 This is not what Family Code section 2030 requires. It is not within the spirit of
26 that law to require to pay her attorney’s fees and costs out of the support payments
27 ordered by this court and, in effect, reduce the size of the award which the court already
28 decided was fair.

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CONCLUSION

For the above reasons, LADY’S request for attorney’s fees and costs should be granted pursuant to Family Code sections 2030 *and* 3652.

DATED: December 5, 2008

ORIGINAL ATTORNEY,
Attorney for Respondent,
A NICE LADY