

THE RECORDER

Divorcee Slapped With Record-Setting \$552K Sanction in Custody Case

SAN JOSE — The Sixth District Court of Appeal has upheld record-setting sanctions of more than \$552,000 levied against a divorcee involved in a nasty custody battle with her ex-husband.

The unanimous panel also slapped “Wife” with an additional \$15,000 penalty for filing an appeal that “raised completely and undeniably meritless arguments.” Wife’s appellate attorneys, Richard Ducote of Pittsburgh, Pa., and Kim Robinson of Oakland, were also sanctioned \$5,000 each.

Attorneys for both parties said they did not know of any larger sanctions ever awarded under California’s Family Code §271, which allows courts to award fees and costs when one litigant tries to stymie settlement negotiations.

“It’s not only a record-setting award, this was an incredible case,” said James McManis, the San Jose attorney who represents Wife’s ex-husband. “You talk about the divorce from hell.”

Ducote said Wife would petition the state Supreme Court to reverse the appellate decision.

“To simply refuse to try to get [the trial court’s sanctions] reversed under the circumstances, I think, would be negligent of any attorney looking at this case,” Ducote said.

The case stems from December 2005 when Santa Clara County Superior Court issued an order mapping out custody and visitation rights for Wife and Husband and

their two young children. What followed were more than six years of cross-country legal filings and accusations of bad behavior between two wealthy people.

In April 2006, Wife petitioned the court to modify the custody agreement, leading to almost three years of household assessments, negotiations and a scheduled trial and settlement conference. After meeting with a retired judge in early 2009, the parents reached a new agreement that gave Wife, a Pennsylvania-based physician, sole physical custody of the children with Husband, a Silicon Valley tech executive, sharing joint legal custody.

But on March 17, 2009, one day after the court entered the new agreement, Wife told Husband that she had been coerced and now considered the deal “null and void,” according to the appellate court. Three months later, serving as her own attorney, Wife filed a “rescission” declaration, announcing that she would no longer abide by the agreement.

In July 2009, Wife filed papers in a Pennsylvania court declaring the state had the “exclusive jurisdiction” to handle all her future custody issues. In August 2009, Wife sued — unsuccessfully — then-Chief Justice Ronald George, seeking a pronouncement that California would cede its authority in the custody litigation to Pennsylvania.

After months of Wife failing to

appear in court to address various custody issues, Santa Clara County Judge Aaron Persky granted Husband’s motion for sanctions of \$552,153.

“Respondent cannot be faulted for aggressively litigating the enforcement of a custody order that [appellant] seems determined to ignore,” Persky wrote.

Ducote and Robinson became Wife’s attorneys in 2011, after Wife had already filed an appeal of Persky’s decision.

Ducote said questions about the validity of Husband’s legal bills alone “made the appeal nonfrivolous.”

But McManis said the sanctions were justified given Wife’s behavior and the high cost of trying to enforce the custody order on numerous fronts.

“The sanctions award itself was really an order the trial court judge made as a last resort after doing everything he could to reason with this person,” he said.

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