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Where the beginning meets the end: ignoring court orders

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The case of *In Re Marriage of Kahn*, 2013 DJDAR 5434 (Cal. App. 4th Dist., April 26, 2013), shows that even a party who “blows off” discovery and ignores a court’s orders to produce discovery responses is nevertheless protected from an award of substantial damages that are not supported by pleadings that provide adequate notice of the possibility of the damages.

The Court of Appeal upheld the striking of husband Robert Kahn’s response and the entry of Robert’s default in the parties’ marital dissolution as a discovery sanction due to the Robert’s willful disregard of the court’s orders to respond to discovery sought by the wife, Jessie Kahn. Despite the fact that Robert “blew off the discovery process,” the court found that the award of \$275,000 to Jessie was not supported by substantial evidence and exceeded the scope of the relief pled in Jessie’s petition. The fact that Robert’s response was struck did not enable Jessie to obtain an award greater than could be supported by substantial evidence and the relief pled on her petition.

After 48 years of marriage, Jessie and Robert separated. Jessie filed a petition for dissolution of marriage, to which Robert filed a response. Robert was representing himself when Jessie propounded two sets of discovery requests, but retained counsel the very next day. Robert wholly failed to respond to the requests. Approximately two weeks after discovery was due, Robert’s attorney represented that the responses would be forthcoming. After waiting a month and receiving nothing, Jessie filed a motion to compel. Prior to the hearing on the motion, Robert’s first attorney substituted out. He did not file an opposition to Jessie’s motion to compel.

The trial court granted Jessie’s motion, ordering Robert to respond within 30 days, which he did not do. Jessie next filed a motion to strike Robert’s response due to his failure to

comply with the trial court’s orders. He claimed he had no responsive documents to a number of requested categories, and ultimately produced only one document in response to the 43 categories of requested

documents. Robert did prevail upon was his challenge to the award of \$275,000. The Court of Appeal agreed that the award was void because it exceeded the scope of the petition.

Jessie’s petition had checked off relief sought, including “Other,” for which she typed in “Relief for [Robert’s] breach of fiduciary duty pursuant to Family Code sections 1100 et seq.” Code of Civil Procedure Section 580(a) provides that the relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint. Section 580(a) is applicable to marital dissolutions and instances where default was entered after the response was struck as a sanction. Jessie’s petition did not fulfill the primary purpose of guaranteeing the defaulting party adequate notice of the maximum judgment that may be assessed against him. The use of the standard petition form that provides for boxes to be checked may work for general provisions such as the termination of property rights, where a property declaration is attached to the petition, but Jessie’s petition was not sufficiently specific as to the “other” relief she sought.

The striking of Robert’s response and entry of default, and the motion denying his request to set aside his default were affirmed. The judgment awarding Jessie \$275,000 was void and the matter was remanded to the trial court to modify or vacate the award.

This case illustrates the importance of adding specific substance information to the petition, with an eye to future requests for property and sanctions. The petition should not just be viewed as a position statement.

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Robert opposed Jessie’s motion to compel, claiming he had been in pro per due to lack of funds, had suffered an injury that left him incapacitated, and that he was faced with a claim from the Internal Revenue Service for back taxes — responding to Jessie’s discovery would threaten his constitutional rights to avoid possible self-incrimination with the IRS. He also argued that his second attorney had prepared his discovery responses, but “for some reason” that attorney had not served them. Robert’s third attorney served his responses.

Jessie filed a reply that attached Robert’s late and untimely responses. The responses were verified, but did not have an attorney signature. Robert objected to a number of requests, and the responses he did provide were evasive — he asserted his privilege against self-incrimination in response to 23 out of 43 document re-

quests. He claimed he had no responsive documents to a number of requested categories, and ultimately produced only one document in response to the 43 categories of requested documents. The trial court granted Jessie’s motion for terminating sanctions, finding that there had been a total lack of cooperation — Robert’s failure to turn over requested discovery materials was willful. Robert had displayed a pattern of non-cooperation designed to frustrate the process, and the court denied his request to set aside the default.

documents.

As the Court of Appeal noted, “[Robert] simply blew off the discovery process.” He had no excuse for his inaction over the period which time he did have counsel, and the court was unimpressed by Robert’s claims of incapacity. The discovery sought by Jessie was reasonable given the fiduciary duties married persons owe each other — especially in a marriage of nearly 50 years. When Robert did provide discovery responses, they included objections (to which he had no right due to his untimely responses) and lacked an attorney’s signature.

The trial court properly disregarded Robert’s late and “grievously defective” discovery responses, and it was empowered to impose sanctions for the complete disregard of the discovery process. But the one argument that

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