IN THE
SUPREME COURT OF THE UNITED STATES

In RE- Marriage of PARVIN R. and PARVIZ MONTAZER

PARVIZ MONTAZER

Petitioner.

vs.

PARVIN R. MONTAZER

Respondent,

After a Decision of the California Court of Appeal, 4th District, Division Three

PETITION FOR WRIT OF CERTIORARI

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Petitioner in Pro Per

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I. QUESTIONS PRESENTED FOR REVIEW

This Court, in *Hicks v. Feiock*, 485 U.S. 624 (1988), has ruled that Cal. Civ. Proc. §1209.5 proceedings would be of criminal in nature and would violate the Fourteenth Amendment's Due Process Clause because it would undercut the State's [or prosecutor's] burden to prove guilt beyond a reasonable doubt. The "criminal nature" of the proceedings under §1209.5, as ruled by this Court, was partly inferred from the label attached to the notice sent to the contemnor (485 U.S. at 626).

Furthermore, this Court in *Strickland v. Washington* 466 U.S. 668 (1984) decided that, in criminal proceedings, the Sixth Amendment right to counsel is the right to the "effective assistance of counsel" and the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result (466 U.S. 667).

The questions presented are:

1. Is not an appellate court required to appoint

counsel to an indigent in a criminal case? If so, is not an indigent appellant entitled to the cost of production of the "reporter's transcript"?

2. Is a California criminal contempt proceeding under §1209.5, which carries a potential sentence of 180 days imprisonment and $36,000 penalty, which is subject to Fourth, Fifth, Sixth and Fourteenth Amendment of the United State Constitution concluded when sentencing is pronounced or when defendant enters a "no-contest plea"?

3. To the extent the contempt action is of a criminal nature, should a defendant prevail on showing: a) that his counsel's performance fell below prevailing professional standards and b) he was prejudiced; or only c) that there was a conflict of interest between his counsel and the opposing attorney?

4. When the trial court announces, in a criminal case, that the opposing counsel is appointed as a Commissioner, who has been working as temporary judge for the same court, does that create a conflict of interest for the attorney

representing Petitioner; and thereby, prejudging him?

5. Is an attorney who is representing a client and, to her own admission, is intimidated by the Judge and the opposition counsel inherently ineffective?

6. In showing of all of the above, did the trial court abused its discretion to deny defendant's request, while appearing in pro per, to withdraw his plea of "no contest"?

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II. PETITION FOR WRIT OF CERTIORARI

Petitioner, Parviz Montazer respectfully requests that the Court grant a writ of certiorari to review the decision of the Cal., Fourth Appellate Dist., Division Three (hereinafter, Cal. App. 4th, Div. 3) affirming his convictions and sentence, which Cal. Supreme Court declined to review.

The Petitioner is the defendant (Respondent) in trial court and appellant in the Cal. App. 4th, Div. 3 Court. The Respondent is Parvin R. Montazer, the Plaintiff (Petitioner) and Appellee in the same courts, respectively.

III. OPINIONS AND ORDERS ENTERED IN THE CASE BY LOWER COURTS

The Cal. App. 4th, Div. 3 entered and filed its opinion, affirming Parviz Montazer's conviction and sentence, on 12/27/17 as unpublished entitled "Marriage of Montazer" (Cal. App. 4th, Div. 3 Case No. G054063 and Super. Ct. No. 98D006995), and is reprinted in the Appendix at App. A. Order Modifying Opinion And Denying Petition For Rehearing by the Cal. App. 4th, Div. 3 on 1/16/2018 is presented in App. B. Cal. App. 4th, Div. 3 Opinion

Case No. G054423 (Super. Ct. No. 30-2016-00850959), which impacted penalty phase of this case is reprinted in App. C.

The California Supreme Court denying petitions on March 14, 2018 (S246866 Family Case and S246852 Civil Case) to review are reprinted in the Appendix at App. D.

IV. JURISDICTION

Petitioner invokes this Court's jurisdiction to grant the Petition for a Writ of Certiorari to the Cal. App. 4th, Div. 3 Court on the basis of 28 U.S.C. § 1257 (a). The California Supreme Court declined to review Petitioner's appeal on March 14, 2018. This petition follows timely pursuant to Supreme Court Rule 13.1.

V. CONSTITUTIONAL PROVISIONS

The questions presented implicate the following provisions of the United States Constitution:

A. U.S. Const. Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against

unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

B. U.S. Const. Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

C. U.S. Const. Amend. VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall

have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

D. U.S. Const. Amend. XIV, sec. 1:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VI. RELEVANT CALIFRONA STATE PROVISIONS

Standard Form FL-410: Order to Show Cause and Affidavit for Contempt Notice: A contempt proceeding is criminal in nature. If the court finds you in contempt, the possible penalties

include jail sentence, community service, and fine. You are entitled to the services of an attorney who should be consulted promptly in order to assist you. If you cannot afford an attorney, the court may appoint an attorney to represent you.

Cal. Civ. Codes §1209.5: When a court of competent jurisdiction makes an order compelling a parent to furnish support or necessary food, clothing, shelter, medical attendance, or other remedial care for his or her child, proof that the order was made, filed, and served on the parent or proof that the parent was present in court at the time the order was pronounced and **proof that the parent did not comply** with the order is prima facie evidence of a contempt of court.

VII. WHY REVIEW SHOULD BE GRANTED[1]

This case presents some of the most pressing constitutional and civil questions that have not been

[1] This Petition for Review is filed In re Marriage of PARVIN R. and PARVIZ MONTAZER; Court of Appeal Case No. G054063, where Petitioner (Parviz) was Appellant and Respondent (Defendant) in Orange County Superior Family Court. Petitioner was also appellant in Court of Appeal Case No. G054423 and Plaintiff in Orange County Superior Civil Court.

brought to this court in this intermingled manner. The essential questions are about the degradation of Petitioner's constitutional rights as a result of errors in judgments, mistakes by ineffective attorneys and the conflict of interest between his and the opposition's attorney in prosecuting the Petitioner in criminal proceedings, which has resulted in violation of petitioner's rights under State of California's and Federal's most cherished Constitutional guarantees of equal protection, due process, and privacy.

VIII. STATEMENT OF THE CASE

Petitioner, Parviz Montazer (Husband) was convicted of 10 counts of criminal contempt on January 10, 2016, for failure to make spousal support payments in 2014 after pleading no-contest. Penalty phase was suspended until the end of the trial on June 14, 2016. Petitioner was adjudged $554,300 and ordered to transfer property under his private corporation to wife (Parvin R. Montazer, Respondent). His conviction and suspended jail and community service sentence was affirmed on direct appeal by the Cal. App. 4th, Div. 3 on 12/27/2017 (App. A). His petition for rehearing was denied on

1/16/2018 (App. B). California Supreme Court declined to review on 3/14/2018 (App. D).

A. Factual background relevant to questions

Petitioner (Appellant) and wife (Respondent) were married in 1969 and terminated the marriage in 1999. The parties had two children born in 1984 and 1986.

In connection with the dissolution, the parties entered into a Marital Termination Agreement (MTA), dated September 1999, which was incorporated into the judgment of dissolution (Judgment), entered September 21, 1999. Prior to signing the MTA, Husband sent a letter to wife's attorney specifying that the division of the properties were unequal and the reason he was entering into the agreement was to ensure that wife will help the children through college from the proceeds (and implicitly appreciation of value) of the properties. Wife's attorney at the time replied to Husband's letter but erroneously cited a date that did not match Husbands letter. Neither wife nor Husband presented any letter, with the date wife's attorney

refers to, into the evidence. Husband contends that wife's attorney letter refers to his letter based on content. Respondent (wife) never contested this claim but Cal. App. 4th, Div. 3 has asserted that these letters are not connected (App. A p. 11 and App. C p. 3).

The Judgment and the MTA, in addition to child and spousal support, required husband to transfer his interest in four pieces of real property, three in Colorado (Colorado Property) and one in California. Husband received a property in Las Vegas and assumed all credit card debts.

For a period of 15 years (1999 to 2014), Husband and Wife amicably handled the terms of the divorce agreement without any significant disputes.

In October 10, 2014 wife retained a former temporary judge (App. E)[2] of the Orange County, California Superior Court as her attorney and filed a 36-count Order to Show Cause (OSC) re criminal contempt alleging husband failed to pay spousal

[2] Petitioner (App. A, p. 13) raised concern over conflict of interest but Cal. App. 4th, Div. 3 rejected his argument, citing *Strickland v. Washington* (1984) in App. B, p. 2.

support since November 2011[3]. Wife claimed that she was owed $72,000, admitting that "*Respondent [Petitioner] complied with the Judgment by paying child support and complying with property division*".

On January 20, 2015 wife filed a request for order (RFO) to determine spousal support arrearages. She claimed husband had not paid any amount of spousal support but admitting that "... *[Husband] paid child support pursuant to the Judgment...*". She claimed Petitioner owed $370,000 plus not quite $285,000 in interest[4].

On November 7, 2014 Husband retained Mr. Aris Artounian. In February 2015 Husband filed[5] a Request for Order to terminate spousal support (RFO Support Termination). He contended wife did not need spousal support. He stated she had received

[3] (limited by Cal. Civ Pro § 1218.5 Statute of Limitations)

[4] Response to this RFO was not filed by husband's attorneys (neither Mr. Artounian nor Mrs. Teinert) until a year later in February 2016, when husband filed it in pro per, supporting the argument of ineffectiveness of his attorneys.

[5] This is four months after wife filed her complaint, which shows ineffectiveness of his attorney who should have filed this earlier to minimize husband's debt.

four pieces of real property as part of the Dissolution Judgment, which had a total fair market value of $1.7 million, and with equity of more than $1.2 million, and rental income of $7,000 per month. Husband, 65 at the time, claimed he had no savings, real estate, or retirement income[6], had only $11,000 in assets, had health problems, and worked on a contract basis. He also stated he was giving financial support to the two adult children, with acknowledgment and encouragement of the wife. He explained he was the sole shareholder of GeoCubed, Inc., a Nevada corporation, for which he provided contract administration services. Those services were the company's only value and were terminated at the end of 2015. A year later, on February 18, 2016, Husband, as Pro Per, amended this RFO to update his status.

Until March 27, 2015, Petitioner was represented by Mr. Aris Artounian, when he substituted Ms. Martina Vigil (later became Mrs. Martina Teinert) in place of Mr. Artounian due to an argument that was ensued between Mr. Artounian

[6] Other than Social Security Benefits.

and Petitioner's then wife (Nasrin Vosogh-Sangary) resulting in Mr. Artounian disrespecting Nasrin. Nasrin was respectfully complaining why Mr. Artounian had suddenly become so very friendly with wife's [Respondent's] attorney, Mr. Paul Minerich (a former temporary judge of the same trial court; App. E).

In October 2015 the trial court granted wife's motion to compel production of documents not relevant to husband's financial status. These documents belonged to Petitioner's then wife (Nasrin) that were not in husband's possession (Nasrin is a State of Nevada citizen never having had any business in California). Also, financial status of GeoCubed, Inc., a Nevada Corporation, was ordered to be produced. Petitioner objected to these orders based on violation of privacy of Nasrin, piercing corporate veil, and lack of jurisdiction of the trial court over Nevada entities and citizens. Court overruled these objections[7].

[7] Petitioner believes this was in violation of IVth and XIVth Amendments.

On December 18, 2015 wife (Respondent) filed an ex parte request to specially set a request for order for child support arrearages (RFO Child Support), claiming she had learned about the arrearages in discovery[8]. This was objected to by Husband, for untimely filing, but it was overruled by trial court. In this RFO, she claimed $630,000 in spousal and child support arrears and $390,882 in interest. On the same day, Husband's attorney (Mrs. Teinert) filed a hand-written MC-300 form (a California standard form) objecting to this Ex-parte motion. Trial court overruled this objection. Wife did not present any evidence to substantiate changing her statements made in OSCs filed in January and October 2015 as mentioned above that stated "*child support was paid*".

On January 15, 2016 husband pleaded no contest to 10 counts of criminal contempt for failure to make spousal support payments in 2014. The remaining 26 counts were dismissed because he showed that he had paid spousal support for the 26

[8] This discovery was never presented to the family court as evidence.

months prior. Husband signed the plea form and initialed all provisions on the plea form explaining the consequences of the plea, an acknowledgement and waiver of his rights, and the actual plea. He admitted nonpayment of spousal support during the ten months in 2014 but did not admit to be guilty of criminal contempt[9]. He entered the plea, per the advice of his ineffective counsel (who was pregnant at the time, App. F and App. G), thinking that this was inconsequential[10]. A payment schedule was to be arranged. After this, Husband, while appearing as Pro Per[11], was subjected to testimony bearing burden of the proof for the remainder of the hearings[12].

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[9] Husband, in his mind, believed that nonpayment between January and October 2014 was not willful disregard for the court order (contempt) because he had overpaid above and beyond what the court had ordered.

[10] Petitioner's attorney never explained the consequences of the pleading despite the fact that Petitioner repeatedly explained to his attorney that he had overpaid the wife as of January 2014.

[11] Petitioner relieved Mrs. Martina Teinert on this day.

[12] Violation of Petitioner's Fifth Amendment rights.

On this day, Mrs. Martina Teinert (App. G) informed Petitioner and then his wife, Nasrin[13], that she was pregnant and that the Petitioner's case was putting too much stress on her and she was worried about the health of her unborn child.

The court indicated it would suspend imposition of sentence on condition husband obey all terms and conditions as ordered. The parties agreed to continue the sentencing until after all the hearings.

As a result of Mrs. Teinert's ineffectiveness and her stressful situation, Petitioner decided to relieve her in January 2016 and try to look for another attorney. He had no choice but to handle the case by himself as Pro Per until March 28, when Mr. John Schilling agreed to represent him. Mr. Minerich was adamantly refusing to agree with continuation.

The next month (February 18, 2016) husband filed a motion, in Pro Per, to withdraw his no-contest plea to the OSC re contempt. He claimed the

[13] Nasrin Vosogh-Sangary filed for divorce in Nevada during the proceedings of the case. The divorce was finalized in May 2016.

attorney representing him was ineffective by presenting affidavit supporting his claim and that he was not actually in contempt because he had overpaid support as of end of 2013[14].

On February 18, 2016, Husband as Pro Per, filed Declaration of payment history claiming that he has paid $178,322 child support, $579,522 spousal support (totaling $757,844) to wife through December 31, 2013. In his responsive declaration, Husband complained about malicious intent of wife and her attorney citing California Rules of Professional Conduct (CRPC) (Rule 3-200 (A), Rule 500 (B), and Rule 5-100 (A)). He also pointed his belief in wife's attorney's fraudulent intention in 1999 based on wife's informal discovery (never

[14] Petitioner believes that he was prejudiced as a result of his ineffective attorney. An effective attorney would have argued that because Petitioner believed that (with ample documents) in January 2014 he had overpaid wife, he could not be guilty of contempt.

recorded)[15] during deposition. Attached to this declaration, Husband included several e-mails from wife asking him to help their adult children, including paying their rent, buying their son a car, and helping them with their education. None of these were ever considered or discussed by the trial court, which Petitioner believed supported wife's consent to helping the adult children. Therefore, Petitioner believes that he was prejudiced as a result of his ineffective attorney (*Strickland v. Washington* (1984), 466 U.S. 668, 688, 694).

On March 18, 2016 hearing Husband's motion to withdraw his plea was denied (App. A, p.10). The court later (June 14, 2016) sentenced husband on the contempt. Here, the husband is appearing on a criminal contempt proceedings as Pro Per without any effort from the trial court to assist him with legal defense[16].

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[15] Another example of ineffectiveness of husband's attorney Mrs. Teinert. In this informal discovery meeting Wife quoted her attorney in 1999 (Mr. James Fouste) saying that: *"Petitioner must have been on drugs thinking that his letter* [pre-MTA agreement in August 1999] *held any weight"*

[16] Violation of Petitioner's Sixth Amendment rights.

On or about April 6, 2016 soon after Mr. Schilling took over the case[17], Petitioner was asked by Mr. Schilling's assistant to pay between $5,000 and $10,000 on the same day to opposing council. Mr. Schilling's assistant explained that this will go a long way with the judge (apparently in favor of Petitioner). He therefore refused to pay.

On April 28, 2016 the court issued an order for husband to appear at a judgment debtor examination. This was the same day Mr. Minerich was announced by the court to have been appointed as Commissioner of the same family court. After the examination, the court ordered husband to produce financial and bank statements for 2015 of GeoCubed, Inc. and to refrain from transferring or encumbering any real property held in his own name or by GeoCubed. Cal. App. 4th, Div. 3 rejected Petitioner's complaint (App. A, p.20, §5) stating that Petitioner had already pleaded no contest to the criminal

[17] On March 28, 2016 Husband retained Mr. John Schilling and relieved him on June 10, 2016.

contempt charges (prejudice) and owed money for the ten counts[18].

On May 9, 2016, after finding out that the opposition attorney, Mr. Minerich had been appointed the commissioner of the same family court and sensing favoritism, husband (in Pro Per) filed a civil action against wife for breach of contract and declaratory relief based on his letter of August 31, 1999 and wife attorney's (Mr. James Fouste) response on September 9, 1999. Husband claimed that wife had breached the contract by failing to provide for the education of the adult children, which was stipulated in those letters (Montazer v. Montazer (Super. Ct. Orange County, 2016, No. 30-2016-00850959; App. A, p. 10)[19].

Up to this point, there has been no discussion in the family court with regards to these letters

[18] As presented in App. B, Cal. App. 4th, Div. 3 erred in concluding that Petitioner was not prejudiced as a result of ineffective attorney.

[19] The reason for this action was for Husband to recover credit for payments he had made to his adult children. This credit would have relieved him from any debt to wife and possibly his conviction for contempt.

except in husband's motion to withdraw his no-contest plea to criminal contempt, which was denied by the family court.

Trial continued from June 9 until June 14, 2016 mostly with Petitioner's testimony. Petitioner was only represented by Mr. Schilling until end of June 10. Petitioner had prepared 15 pages of questions to be asked in cross examination from Respondent. For unknown reasons, Mr. Schilling never cross examined Respondent. Petitioner carried out the remainder of the trial on his own as Pro Per due to lack of funds.

The court considered the OSC re criminal contempt and all the RFO's together in a hearing that took place over several days in June 2016. It is noteworthy that Mr. Minerich (wife's attorney) was scheduled to take the oath for Commissioner of the same court on June 17, 2016 (App. E).

In July 2016 Mr. Minerich unilaterally filed Findings and Order after Hearing (FOAH). FOAH stated that the unallocated arrearages for child and spousal support were approximately $297,300 for principal and just under $257,000 in interest and set out a payment schedule. The amount due reflected

various credits given to husband for certain payments he made amounting to $325,643 (out of $938,858 that he claimed, including payments in kind and was entered into evidence, to have paid through February 2015). The trial court never gave any credit under *Helgestad v. Vergas* (2014) nor for any adult expenses Petitioner paid for on behalf of wife, even though wife implicitly had agreed to those in lieu of spousal support. These credits would have amounted to additional $344,000 support payments. These were the reasons Petitioner stopped spousal payments in January 2014.

The FOAH also required husband to transfer the real property that was owned by GeoCubed, Inc. in Nevada to wife (court declared value of $50,000). In addition court ordered $15,000 by December 31, 2016 to be paid directly to wife. The court terminated spousal support to wife as of February 2015 pursuant to the parties' stipulation, but reserved jurisdiction on the issue. Finally, the court suspended imposition of sentence on husband's criminal contempt conviction, placing him on three years' informal probation on condition he make the arrearage payments set out in the order, transfer the Nevada

property to wife by a date certain; and violate no law. Violation of the order would carry jail sentence of 50 days and community service.

The monthly amount of $600 ($100 was added later because he could not pay the $15,000 lump sum ordered) that the court has ordered Petitioner to pay to wife is half of $1,200 he receives from social security. Husband has been paying according to the order.

B. Is not an appellate court required to appoint counsel to an indigent in a criminal case?

Cal. App. 4th, Div. 3 has made numerous references to "inadequacy or insufficiency of the evidence" throughout its Opinions (App. A, p.7 and App. B) as a result of absence of "reporter's transcript". This inadequacy of evidence has hampered the appellate court's proper review of Petitioner's case in its own admission. Cal. App. 4th, Div. 3 approved Petitioner's request for waiver of

fees and costs (implying Petitioner's indigence[20]; App. I) citing Rule 8.26[21], which refers to California Government Code section 68634.5 (referring to Federal poverty level as standard). Petitioner in his petition for rehearing explained the prejudice this lack of reporter's transcript has caused him in the direct appeal.

Petitioner believes that this court's ruling in the cases of *Hicks v Feiock* (1988) 485 US 625 and *Gideon v. Wainwright* (1963) 372 U.S. 335 (1963) also applies to an appeal in a criminal case.

In *Gideon v. Wainwright* (1963) 372 U.S. 335 (1963), U.S. Supreme Court, considering the rights conferred under the Sixth Amendment of the U.S. Constitution, ruled that the right to counsel guaranteed under the federal Constitution also applies to the states (via the Fourteenth Amendment). This also is translated to the right to

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[20] Petitioner exhausted his retirement savings by the time he relieved Mr. Schilling on June 10, 2016. He has represented himself as proper during latter part of the trial as well as several appeal procedures.

[21] Rule 8.26 (Waiver of fees and costs) is under California Rules of Court.

counsel on direct appeal. The question here is if the case has been of criminal nature as under subheading VIII-C below, then Petitioner must have been entitled to assistance of counsel in his first direct appeal because the court has already approved him to appear in forma pauperis for the fees. When one is entitled to assistance of the counsel in a criminal case, he is naturally entitled to costs involved in production of evidence (i.e., reporter's transcripts).

The Cal. App. 4th, Div. 3 has repeatedly stated in its opinions that: "*As noted several times, without the reporter's transcript we cannot determine what occurred at the hearings*" and refers to insufficiency of the evidence (lack of Reporter's Transcript). Petitioner has explained that the clerk of the Appellate Court rejected the copies of the reporter's transcript he had obtained with his last bit of his savings for formatting errors. Cal. App. 4th, Div. 3 has not offered any assistance in this matter, which Petitioner believes is his inherent right under the *Gideon v. Wainwright* (1963) ruling. Obtaining extensive reporter's transcript for all the hearings was costly and beyond Petitioner's ability at the time

when he filed his appeal. This has prejudiced Petitioner during the proceedings resulting in Cal. App. 4th, Div. 3's ruling.

C. Were criminal contempt proceedings ended post sentencing or upon pleading?

The fact that the trial proceedings were of criminal nature is supported by this Court (*Hicks v Feiock* (1988) 485 US 625; *Gideon v. Wainwright* (1963) 372 U.S. 335 (1963)) during the entire duration of the trial (from Jan 15, 2016 through June 14, 2016) so long as they were addressing questions of the three years covered under statute of limitation (from November 2011 through November 2014) of Cal Civ. Pro § 1218.5). Therefore, the effectiveness of the Petitioner's attorneys was crucial in protecting his constitutional rights during all these times. Cal. App. 4th, Div. 3 (App. A and App. B), rejected Petitioner's arguments that he was represented by ineffective counsels based on an assessment that the proceedings were of civil nature citing *Chevalier v. Dubin* (1980) 104 Cal.App.3d 975, 979-980. Petitioner argues that criminal elements of the contempt were present during entire trial from

pleading until sentencing and appeal.

Constitution requires that a criminal judgment be overturned because of the actual ineffective assistance of counsel. *Strickland v. Washington* (1984) 462 U.S. 1105 (1983); *In re S.D.* (2002) 99 Cal.App.4th 1068, 1077. *In re S.D.* (2002) agreed with the appellants and remanded the case for ineffectiveness of their counsel. *In re S.D.* (2002) goes on further stating that:

> *"As pointed out in In re Eileen A., supra, 84 Cal.App.4th. at p. 1258, the parent is hardly in a position to recognize, and independently protest, her attorney's failure to properly analyze the applicable law. If we had some reasonable expectation that parents could do so, we would not need to hire attorneys for them at all."*

How do California courts expect an alleged first-time contemnor to know the consequences of a no-contest plea and how important it is for an attorney to educate his/her client of the consequences before encouraging the client to enter any plea?

Cal. App. 4th, Div. 3, citing *Strickland v. Washington* (1984) 466 U.S. 668, 688, 694, specified two of the three requisites by United State Supreme

Court for ineffective counsel: 1) husband must show performance fell below prevailing professional standards; and 2) was prejudicial. However, *Strickland v. Washington* (1984) also cites *Cuyler v. Sullivan*, 446 U.S. at 446 U. S. 344. Id. at 446 U. S. 345-350 (actual conflict of interest adversely affecting lawyer's performance renders assistance ineffective). In case of conflict of interest, husband is not required to show that he was prejudiced, it is presumed.

1. Attorney Performance Fell below Prevailing Professional Standards & Petitioner Was Prejudiced

Petitioner's first attorney, Mr. Aris Artounian, failed to file response to wife's RFO for spousal support, which Petitioner had to cure a year later as pro per. Mr. Artounian also failed to file Petitioner's RFO for termination of spousal support in a timely manner to minimize Petitioner's losses (prejudice). Furthermore, Mr. Artounian disrespectful behavior toward Nasrin Vosogh-Sangary (husband's then wife) was below prevailing professional standards. The change in attorneys resulted in Petitioner to be prejudiced.

Petitioner does not know when his second

counsel (Martina Vigil Teinert), who was supposed to defend him during the OSC for criminal contempt trial, found out that Mr. Minerich has become a prime candidate for the position of a Commissioner of the same trial court. The Superior Court of California County of Orange records (App. E) show that Mr. Minerich has volunteered as temporary judge in family law matters at least since 2007. This information must have been known by Mrs. Teinert. An effective counsel must investigate such matters and should file objections in trial court and possibly attempt to request for change of venue.

In *Strickland v. Washington* (1984) 466 U. S. 681 this court stated that: *"If there is more than one plausible line of defense, the court [693 F.2d at 1254] held, counsel should ideally investigate each line substantially before making a strategic choice about which lines to rely on at trial."* In the present case, Mrs. Teinert should have investigated and discussed with Petitioner how changing a not-guilty to no-contest plea would affect the rest of the trial and why she had to abandon a strong case of not-guilty to a contempt allegation.

However, as is evident in the Affidavit in App.

G (Exhibit A in trial court document) and its reference to the e-mail from Petitioner's attorney (App. F) that Mrs. Martina Teinert (AKA Martina Vigil) was intimidated by the presiding judge and had discussed this with Mr. Minerich. Below is the content of her e-mail to Petitioner (dated December 29, 2015 8:29 AM; two weeks before trial) for the convenience of the court:

> *"Because you are paying me to represent you, I have your best interests in mind, even at a detriment to myself. Judge Scott has ruled against me on every issue that has come before her including Petitioner's [wife's] Motion to Compel Discovery. It is clear to me that Judge Scott favors Mr. Minerich likely because I have appeared in her courtroom only a handful of times. I even brought this up to Mr. Minerich at the ex parte hearing and he didn't seem to object to that statement. Because Judge Scott has ruled against me on every motion including matters that I should have won, it is my advise to hire new counsel with whom Judge Scott is familiar.*
>
> *It pains me to write this email to you. I think you and I have made a great team so far and I appreciate being able to work on your case thus far. I realize that your trial date is coming soon but I*

am confident that you will be able to find an attorney that will be able to win some aspects of your case if that is what you choose to do. I have your best interests in mind and I want you to hire an attorney that will be able to effectively represent you in front of Judge Scott."

Based on the affidavit, Mrs. Teinert would have been six weeks pregnant at the time of writing of this e-mail.

It is irrelevant whether Mrs. Teinert was right about her feelings towards the judge. The point is that Petitioner believes that these feelings induced a weakness that rendered Mrs. Teinert ineffective (to her own admission; meeting Cal. App. 4th, Div. 3's requisite mentioned above) in defending Petitioner during the OSC proceedings. Petitioner believes that was why he was coerced (or encouraged by his attorney) to sign the no-contest order in trial on January 15, 2016 thinking that it was inconsequential to the case (Petitioner prejudiced). It appears, from Mrs. Teinert's e-mail, that she wanted to get on with her life attending her maternity. Petitioner took over the case as Pro Per from January 16 to March 28 searching for another attorney, during which time he made numerous

mistakes (prejudice; second requisite of the Cal. App. 4th, Div. 3). Mr. Schilling accepted the case on March 28, 2016. Because Petitioner had waived his sentencing time, the trial proceedings were still of criminal nature, potentially affecting his sentencing for the crime of contempt. At this time, Mr. Schilling informed Petitioner that Mr. Minerich had made it to the top ten candidates for commissioner of the same family court. Why didn't Mr. Schilling file an objection in the court for conflict of interest as expressed privately to his client?

During the period between January 16 and March 28, 2016, Petitioner appeared in Pro Per in the trial court. The trial court erred in allowing Petitioner to appear without counsel during this period, especially when on February 18, 2016 he filed a motion to withdraw his plea of no-contest and when he appeared in trial court on March 18, 2016 for the hearing.

In case of Mrs. Teinert, assuming that she had no conflict of interest but had admitted to be ineffective for whatever reasons going through her mind, Petitioner needs to demonstrate that he was prejudiced as a result of this ineffectiveness. In a

contempt of court proceeding of a criminal nature, prosecutor must prove, by admissible evidence, beyond reasonable doubt (*Hicks v Feiock* (1988) 485 U. S. 631-635)[22] that defendant knowingly and willfully disregarded the court's order (CCP 1209 et seq.[23]). This was not the case as the burden of proof of payments was placed on Petitioner throughout the entire trial proceedings. Cal. App. 4th, Div. 3 believes that this was alright because the proceedings were of civil nature (App. B and App. A, p. 19, §4). This was not the case as explained above; the sentencing of the criminal offense was not pronounced by the trial court until the end of the trial on June 14, 2016. Therefore, Petitioner should have been protected by his due process rights guaranteed by the constitution. As was presented to the trial court during the proceedings, Petitioner had the documentation, without any doubt that made

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[22] Petitioner in his Petition for Rehearing to Cal. App. 4th, Div. 3 referred to *Hicks v Feiock*; however, Cal. App. did not address this Federal question in its ORDER MODIFYING OPINION AND DENYING PETITION (App. B). This matter was raised in Petition to California Supreme Court, which declined to review (App. D).

[23] It is important to note that CCP §1209.5 only deals with "child support", which the initial OSC filed in October 2014 by respondent admitted that Petitioner was compliant with regards to child support payment.

him believe that by the end of 2013 he had overpaid the wife. It is irrelevant what the trial court found in 2016 trials by putting burden of proof on Petitioner; what was important was the knowledge of the Petitioner during the time for which he was accused of contempt.

2. Conflict of Interest

Soon after Mr. Schilling took over the case, on April 6, 2016, his office manager (Vicki) called, while Mr. Schilling was in court and meeting with Mr. Minerich to convince him for continuation of the case until Mr. Schilling had time to become familiarized. Vickie said that Mr. Schilling had suggested Petitioner make a $5,000 to $10,000 payment to Mr. Minerich because his client had not paid him for all the time he had spent on this case. His office manager, quoting Mr. Schilling, explained that this would go a long way in Petitioner's favor by the judge. Was Mr. Schilling trying to appease a future Commissioner of the court?

Shortly then after, Mr. Schilling informed Petitioner that he was hiring Mr. Minerich's secretary because he was closing his business to start his job as commissioner of the family court.

When Mr. Minerich filed subpoena dues tecum for the April 28, 2016 hearing, Mr. Schilling declined Petitioner's request to quash the subpoena. Was Mr. Schilling intimidated by a future commissioner in a court that he mostly conducted his business? In a criminal proceeding, one only needs to introduce a reasonable doubt (*Hicks v Feiock* (1988) 485 U. S. 631-635).

It is important to note that Cal. App. 4th, Div. 3 in App. A, p. 20, under §5 rejects Petitioner's argument related to judgment debtor examination based on Petitioner's no-contest plea to the criminal contempt charges. Therefore, Mr. Schilling was still defending Petitioner re "a criminal" charge and not a civil action on the same day that Mr. Minerich was announced to have been selected as the commissioner of the same court. Therefore, Petitioner's attorney was ineffective because of conflict of interest. It is not required for Peitioner to demonstrate that he was prejudiced (*Strickland v. Washington* (1984) 466 U.S, 686; *Cuyler v. Sullivan,* 446 U.S. at 446 U. S. 344. Id. at 446 U. S. 345-350 *"actual conflict of interest adversely affecting lawyer's performance renders assistance ineffective").*

During the trial of June 9 and 10 Petitioner realized that his attorney (Mr. Schilling) was intimidated in presence of a Commissioner of the court (Mr. Minerich representing the wife), which was announced by the trial court on April 28. This is a conflict of interest[24] on the part of Petitioner's attorney who was rendered ineffective by the presence of a commissioner as his adversary. The Cal. App. 4th, Div. 3 has erroneously tried to defend that the Commissioner's presence did not constitute conflict of interest. It is irrelevant whether Mr.

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[24] **Canon 4 G. Practice of Law (from CALIFORNIA CODE OF JUDICIAL ETHICS,** December 1, 2016)

A) judge shall not practice law:

ADVISORY COMMITTEE COMMENTARY: Canon 4G

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. .....

This prohibition ***applies to subordinate judicial officers,**** *magistrates, special masters, and judges of the State Bar Court.*

From the same code definition:

"Subordinate judicial officer." A subordinate judicial officer is, for the purposes of this code, a person appointed pursuant to article VI, section 22 of the California Constitution, including, but not limited to, a commissioner, referee, and hearing officer. See Canons 3D(3), 4G (Commentary), and 6A.

Minerich was procedurally allowed to continue the case; what is important is how this psychologically affected the effectiveness of Petitioner's attorney at the time[25]. However, Petitioner, in his Appellate briefs has attempted to clarify this misunderstanding to no avail. *Strickland v. Washington* (1984) *supra* considers conflict of interest the only requisite rendering an attorney ineffective (Prejudice is presumed only if the defendant demonstrates that counsel "actively represented conflicting interests"). This was during the period when Petitioner's sentence for criminal contempt was still pending with the trial court.

On July 21, 2016, Petitioner informed Mr. Schilling's office that wife's attorney (Commissioner Mr. Minerich) was late (court had ordered ten days after end of trial, i.e. June 24) in filing the FOAH and should include Petitioner's objection to the FOAH. Mr. Schilling, without telling Petitioner, alerted Mr. Minerich (who was working at the same Family Court at the time and had convenient access

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[25] Ellen E. Pastorino, Susann M Doyle-Portillo, 2009, What is Psychology?: Foundations, Applications, and Integration, 4th ed., p.451).

to the Clerk's window and was the one who served the papers to Petitioner). This surprised Petitioner that Mr. Minerich (Commissioner at this time) filed the FOAH that he knew was being objected to. It should be noted that Mr. Minerich took oath of office on June 17, 2016. Mr. Schilling was not representing Petitioner at this time because Petitioner did not have the money to pay for his services after June 10.

In summary, Petitioner believes that all his attorneys were ineffective either in presence of adversarial attorney (conflict of interest) who was to become a figure of authority or for personal reasons. Either way, Petitioner was prejudiced.

Petitioner believes that his constitutional rights were violated and respectfully request that this Court grants review of the Cal. App. 4th, Div. 3's decision.

I. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant this Petition for Review.

Respectfully submitted,

By _____

(Parviz Montazer)

APPENDECIES

Appendix A: Opinion, Cal. App. 4th, Div. 3 Case No. G054063 and Super. Ct. No. 98D006995

Appendix B: Order Modifying Opinion And Denying Petition For Rehearing by the Cal. App. 4th, Div. 3 on 1/16/2018.

Appendix C: Opinion, Cal. App. 4th, Div. 3 Opinion Case No. G054423 (Super. Ct. No. 30-2016-00850959)

Appendix D: The California Supreme Court denying petitions on March 14, 2018 (S246866 Family Case and S246852 Civil Case)

Appendix E: Mr. Minerich (wife's attorney) was scheduled to take the oath for Commissioner of the same court on June 17, 2016.

Appendix F: Martina Teinert's e-mail admitting her ineffectiveness in the trial court.

Appendix G: Nasrin's Notarized Witness Affidavit

Appendix H: Excerpt of Motion to Change Plea

Appendix I: Order Re Waiver of Fees

APPENDIX A - Opinion, Cal. App. 4th, Div. 3 Case No. G054063

Filed 12/27/17 Marriage of Montazer CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

In re Marriage of PARVIN R. and PARVIZ MONTAZER.	
PARVIN R. MONTAZER, Respondent, v. PARVIZ MONTAZER, Appellant.	G054063 (Super. Ct. No. 98D006995) O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Linda Lancet Miller, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Motion to Augment the Record. Order affirmed. Motion granted.

Parviz Montazer, in pro. per., for Appellant.

Parvin R. Montazer, in pro. per., for Respondent.

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Appellant Parviz Montazer (husband) appeals from a postjudgment order finding he owed respondent Parvin R. Montazer (wife) $554,000 in principal and interest for unpaid child and spousal support and imposing sentence on him as a result of his no contest plea to several counts of contempt.

Husband raises numerous arguments on appeal, including that child support terminated when his older child graduated from high school; he was entitled to credits for payments he made in lieu of support payments to wife; the marital termination agreement was modified to require wife to pay the children's college expenses; he should have been allowed to withdraw his no contest plea and plead not guilty to the order to show cause (OSC) re contempt; a judgment debtor examination was ordered

prematurely; and wife's attorney improperly continued to represent her after he had been hired as a commissioner by the superior court. Finding none of his arguments persuasive, we affirm the order.

Husband filed a motion to augment the record to include his trial exhibits admitted into evidence, an application for an order to appear at a judgment debtor examination, and a subpoena duces tecum, all of which are part of the superior court file. Wife did not file an opposition. We grant the motion. (Evid. Code, § 452, subd. (d)(1).)

DEFICIENCIES IN HUSBAND'S BRIEFS

Before we address the substance of husband's claims we must first discuss the problems with his briefs, which violate the California Rules of Court (all further references to rules are to the California Rules of Court).

Husband failed to "[p]rovide a summary of the significant facts limited to matters in the record." (Rule 8.204(a)(2)(C).) Further, because many of his arguments challenge the sufficiency of the evidence, husband was required to "'summarize the evidence on that point, favorable and unfavorable, and show how and why it is insufficient. . . . He cannot shift this burden onto respondent, nor is a reviewing court required to undertake an independent examination of

the record when appellant has shirked his responsibility in this respect.'" (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409, italics omitted.) Instead he set out only a one-sided version of the facts in his favor.

Husband also included facts that are not in the record. He did not designate a reporter's transcript as part of the record and often refers to what might have been testimony at trial. We may not consider any evidence outside of the record but are limited to what is included. (*State Comp. Ins. Fund v. WallDesign Inc.* (2011) 199 Cal.App.4th 1525, 1528, fn. 1 ["'if it is not in the record, it did not happen'"].) We may also disregard any facts or arguments not supported by adequate citations to the record. (*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1294.)

In addition, each issue in a brief must have its own discrete heading summarizing the point and must be supported by reasoned legal argument. (Rule 8.204(a)(1)(B).) Although husband included headings and a section entitled "Issues requested to be reviewed by the appellate court" (bold & capitalization omitted), as to many claims he failed to make any argument or mixed facts and argument indiscriminately throughout the brief, many repeated a number of times under various headings. This

significantly hindered our review. (*Provost v. Regents of University of California, supra*, 201 Cal.App.4th at p. 1294 ["we do not consider all of the loose and disparate arguments that are not clearly set out in a heading and supported by reasoned legal argument"].)

Furthermore, husband failed to provide authority to support most of his claims. (Rule 8.204(a)(1)(B).) Instead, except in one or two instances, he merely listed or quoted cases and statutes in a separate section and never discussed their applicability.

The fact husband is appearing in propria persona makes no difference. A self-represented litigant is not entitled to "special treatment" (*Stebley v. Litton Loan Servicing, LLP* (2011) 202 Cal.App.4th 522, 524) but is held to the same standards as a party represented by counsel (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247 [appellant's issues forfeited due to defects in opening brief]).

Nevertheless, we will do our best to address husband's arguments on the merits. To the extent we are unable to do so or we overlook an argument buried in the briefs, the claims are forfeited for the reasons set forth above and below.

FACTS AND PROCEDURAL HISTORY

Husband and wife were married in 1968 and terminated the marriage in 1999. The parties had two children born in 1984 and 1986, respectively.

In connection with the dissolution the parties entered into a Marital Termination Agreement (MTA), dated September 1999, which was incorporated into the judgment of dissolution (Judgment) entered September 21, 1999.

The Judgment and the MTA required husband to pay as child support the sum of $4,000 per month to "continue as to each said child until the child attains his or her eighteenth (18th) birthday; or if he or she is a full-time high school student residing permanently with [wife], until he or she graduates from high school or attains his or her nineteenth (19th) birthday, whichever first (1st) occurs; dies; marries; becomes otherwise emancipated; or until further order of court; whichever of the foregoing first (1st) occurs."

The MTA required husband to pay spousal support to wife in the sum of $2,000 per month until wife's death or remarriage, husband's death, or further order of the court, whichever occurred first.

The MTA also required husband agreed to transfer his interest in four pieces of real property, three in Colorado (Colorado Property) and one in California.

The MTA stated division of the community property was "fair and substantially equal."

According to the MTA, the parties intended "to make an integrated agreement, to reflect a final and complete settlement of our respective property and support rights, to provide for the support and custody of our minor children, and to make an agreement that shall survive its incorporation and merger into a judgment of dissolution of marriage." Just before the signature lines the parties again stated, "We each acknowledge and agree that except as specifically set forth in this [MTA], there have been no promises, agreements, or undertakings by or on behalf of either of us to the other which have been made to, or relied upon by, either of us as any inducement to enter into this [MTA]. We have each read this [MTA] and are fully aware of its contents and legal effect."

Further, in the MTA husband "acknowledges that he understands the legal consequences of each of the provisions hereof, and that he has executed [the MTA] freely and voluntarily and without any undue influence of coercion by [wife] or her attorney. [Husband] acknowledges and agrees that he understands each of the terms and conditions hereof, and he agrees to comply with, and be bound by, such terms and condition."

In October 2014 wife filed a 36-count OSC re contempt based on husband's failure to pay spousal support from and after November 2011, claiming she was owed $72,000. In January 2015 wife filed a request for order to determine spousal support arrearages and to order payment (RFO Spousal Support). She claimed husband had not paid any amount of spousal support and owed $370,000 plus not quite $285,000 in interest.

In February 2015 husband filed a request for order to terminate spousal support (RFO Support Termination)[1]. He contended wife did not need spousal support. He stated she had received four pieces of real property as part of the Judgment, which had a total fair market value of $1.7 million, and equity more than $1.2 million, and rental income of $7,000 per month. Husband, 65 at the time, claimed he had no savings, real estate, or retirement income, had only $11,000 in assets, had health problems, and worked on a contract basis. He also stated he was giving financial support to the two adult children. He further said he owed $24,000 in back taxes. He explained he was the

[1] He subsequently filed a motion to amend this request to seek attorney fees and costs.

sole shareholder of GeoCubed, Inc., a Nevada corporation, for which he provided contract administration services. Those services were the company's only value.

In October the court granted wife's motion to compel production of documents relevant to husband's financial status.

In December 2015 wife filed an ex parte request to specially set a request for order for child support arrearages (RFO Child Support), claiming she had learned about the arrearages in discovery.

The court considered the OSC re contempt and all the RFO's together in a

hearing that took place over several days.

In January 2016 husband pleaded no contest to 10 counts of contempt for failure to make spousal support payments. The remaining 26 counts were dismissed. Husband signed the plea form and initialed all provisions on the plea form explaining the consequences of the plea, an acknowledgement and waiver of his rights, and the actual plea. He admitted, among other things, that he entered the plea freely and without threat, because he was guilty and for no other reason. A payment schedule was to be arranged. The court indicated it would suspend imposition of

sentence on condition husband obey all terms and conditions as ordered.

The next month husband filed a request to withdraw his no contest plea to the OSC re contempt. He claimed the attorney representing him was ineffective and that he was not actually in contempt because he had overpaid support. Husband does not direct us to a ruling on the request. Wife states the motion was denied but the minute order she cites does not mention the motion. In any event it was apparently denied because the court later sentenced husband on the contempt.

In April the court issued an order for husband to appear at a judgment debtor examination. After the examination the court ordered husband to produce financial and bank statements for GeoCubed and to refrain from transferring or encumbering any real property held in his own name or by GeoCubed.

In May 2016 husband filed a civil action against wife for breach of contract and declaratory relief on these same grounds. (*Montazer v. Montazer* (Super. Ct. Orange County, 2016, No. 30-2016-00850959).)[2] In

[2] This is the subject of a separate appeal, (Montazer v. Montazer (Dec. 27, 2017, G054423) [nonpub. opn.]), the opinion in which we file concurrently herewith.

July 2016 the court issued the Findings and Order After Hearing (FOAH)[3]. It found the unallocated arrearages for child and spousal support were approximately $297,300 for principal and just under $257,000 in interest and set out a payment schedule. The amount due reflected various credits given to husband for certain payments he made.

The FOAH also required husband to transfer certain real property he owned in Nevada to wife. The court terminated spousal support to wife as of February 2015 pursuant to the parties' stipulation, but reserved jurisdiction on the issue. Finally, the court suspended imposition of sentence on husband's contempt conviction, placing him on three years' informal probation on condition he make the arrearage payments set out in the order, transfer the Nevada property to wife by a date certain, and violate no law.

DISCUSSION

1. Lack of Reporter's Transcript

Husband elected to proceed without a reporter's transcript on appeal. But it was his burden to provide the transcript if he intended to "raise any issue that

[3] The court issued minute orders after each of the hearings.

require[d] consideration of the oral proceedings in the superior court." (Rule 8.120(b).) Without that transcript we have no idea what occurred during the hearings except what is noted in the minute orders. Unless an error appears on the face of a minute order, we cannot make any determination as to the sufficiency of the evidence or whether the court abused its discretion. (*Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362 (*Oliveira*).) "[N]or can we assess the merits of [any] contentions about certain rulings or statements made by the trial court during the hearings in question." (*Rhule v. WaveFront Technology, Inc.* (2017) 8 Cal.App.5th 1223, 1228-1229, fn. omitted.)

Rather, the FOAH is presumed correct. (*Oliveira, supra*, 206 Cal.App.4th at p. 1362.) "'"All intendments and presumptions are indulged to support it on matters as to which the record is silent. . . ."'" (*Ibid.*) "'The absence of a record concerning what actually occurred at the trial precludes a determination that the trial court [erred].'" (*Ibid.*)

2. Child Support

Husband challenges the FOAH ruling the $4,000 per month child support was unallocated and payable until the younger child reached 18 and was out of high school. He claims that, under the Judgment and MTA, child support ended when the first child

graduated from high school. He relies on the following italicized language in the MTA requiring him to pay $4,000 per month to "continue *as to each said child* until the child attains *his or her* eighteenth (18th) birthday, or if *he or she* is a full-time high school student residing permanently with [wife], until he or she graduates from high school or attains his or her nineteenth (19th) birthday, *whichever (1st) first occurs;* dies; marries; becomes otherwise emancipated; or until further order of court; whichever of the foregoing first (1st) occurs." He argues this provided for a "step-down as to each child," when that child turn 18 or graduated from high school, whichever occurred first. (Boldface omitted.) We disagree.

Interpretation of the MTA is a question of law, which we review de novo if there is no extrinsic evidence or if any extrinsic evidence is not conflicting. (*Lucas v. Elliott* (1992) 3 Cal.App.4th 888, 892. Again, husband did not designate a reporter's transcript and we cannot determine if any extrinsic evidence was admitted. Thus, we must construe the MTA based on its contents alone.

The language of the MTA and the identical language in the Judgment contradict husband's claim. The MTA and Judgment both provide if the child was 18 and still in high school and residing with wife,

support was to continue until the earlier of the child turning 19 or graduating from high school.

Further, as husband's italicized language highlights, the MTA and Judgment state support is to continue "as to each child." If we accepted husband's interpretation, he would not have paid any child support for his younger child once the older child reached 18 or graduated from high school. This violates the law and public policy.

A parent has a duty to support his minor children. (Fam. Code, §§ 58, 3900, 3901, 6500; *In re Marriage of Ayo* (1987) 190 Cal.App.3d 442, 449.) This duty is owed directly to the child and a parent may not limit or modify it. (*In re Marriage of Comer* (1996) 14 Cal.4th 504, 517.) Thus, husband and wife could not have agreed to terminate child support before the younger child reached age 18 or graduated from high school.

Although unclear, it could be that husband is arguing the MTA provided the amount of child support would be halved once the first child turned 18[4]. But this is

[4] Husband asserts the judge to whom the case had previously been assigned agreed with this interpretation. But husband's support for this claim consists of an affidavit of his present wife who reported husband's lawyer had told her of the prior judge's position. This is incompetent evidence consisting of multiple

contrary to the plain language of the MTA, which did not allocate the amount of child support to either child.

Husband maintains he was entitled to a credit pursuant to *Jackson v. Jackson* (1975) 51 Cal.App.3d 363 and *Helgestad v. Vargas* (2014) 231 Cal.App.4th 719. Under *Jackson* a credit is given where a party has satisfied child support by taking physical custody of a child. (*Jackson* at p. 368.) Husband fails to direct us to any evidence he took physical custody of either child.

A credit under *Helgestad* is equitable and it may be given for a period where the parties began living together to attempt reconciliation. (*Helgestad v. Vargas, supra,* 231 Cal.App.4th at p. 735.) To be eligible, husband had the burden to show he provided "actual in-kind or in-the-home support." (*Ibid.*)

Husband claims he moved in with wife and children for a period of 21 months in an attempt to reconcile. The FOAH noted the cohabitation and ordered a credit of $18,000. This directly contradicts husband's assertion the court rejected his claim he moved in

layers of hearsay, among other problems. And, even if competent, it is irrelevant. Husband points to nothing in the record that shows the previous judge made any orders on the issue.

with wife to reconcile but found it was merely for business purposes.

Husband argues he overpaid both child and spousal support by at least $72,000. He maintains he presented documents showing he paid almost $838,000 for support, $553,000 for spousal support and the balance paid directly to the children for college expenses.

Here again husband is challenging the sufficiency of the evidence. But as discussed above, due to the lack of a reporter's transcript, we have no basis to evaluate the claim and must presume the evidence was sufficient to support the court's findings.

Moreover, husband did not set out the substantial amount of credit the court did award him. This failure to fairly summarize all material evidence on the issue is another basis for rejecting this claim. (*Huong Que, Inc. v. Luu, supra*, 150 Cal.App.4th at p. 409.)

In cursory fashion, husband mentions he should have been given credit for support of his incapacitated adult child. This argument fails for several reasons, including the lack of any evidentiary support or reasoned legal argument. (Rule 8.204(a)(1)(B); *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) His reference to his argument

in points and authorities in the trial court is not sufficient to meet his burden on appeal.

3. Modification of MTA

As noted above, husband maintains he should have been given credit of approximately $285,000 for payment of the children's college expenses. In support he relies on two pieces of evidence extrinsic to the MTA that he attached to the RFO Spousal Support and also introduced into evidence. The first was an August 31, 1999 letter he sent to wife's attorney when the parties were negotiating the MTA (Husband's Letter). In Husband's Letter, he referred to a provision in the draft MTA stating the community property was equally divided. He asserted division was not equal and said he would not sign "such a statement." He stated his only purpose in buying the Colorado Property was to have "backup for when my kids reach the college age. I trust that is [wife's] intention also."

The second piece of evidence was a letter he received from wife's counsel dated September 9, 1999 (Fouste Letter). The Fouste Letter stated: "Section 3.4 of the [MTA regarding husband's company car] has been revised. The text you requested in the September 8, 1999, letter [not Husband's Letter] has been copied into the Agreement verbatim." (Italics omitted.)

Husband argues the two letters are sufficiently connected to the MTA such that they were all part of the same transaction. They required wife to pay for children's education, which he claims she did not. He claims wife falsely promised she would use the Colorado Property for that purpose to induce him to agree to an unequal division of community property. Husband argues wife breached the MTA and the properties should be divided equally and/or he should be given a credit toward spousal support[5].

The FOAH found Husband's Letter did not modify the Judgment and did not make wife responsible for the children's education. We agree and conclude the trial court correctly interpreted the MTA.

There are several problems with husband's argument, not all of which need to be enumerated. Husband points to nothing in the record to show wife or her counsel agreed to the terms of Husband's Letter. And, importantly, the MTA was an integrated agreement as made manifest by the several provisions to that effect it contained. "Terms set

[5] As noted above, this is the claim made in husband's breach of contract claim in Montazer v. Montazer No. 30-2016-00850959. We do not understand husband's contention "the trial court should not have made a ruling related to the breach of contract, which was never pleaded by [husband] in the trial court."

forth in a writing intended by the parties as a final expression of their agreement with respect to such terms included therein may not be contradicted by evidence of prior agreement or of a contemporaneous oral agreement." (Code of Civ. Proc., § 1856, subd. (a).) Thus neither Husband's Letter nor the Fouste Letter may be used to vary the terms of the MTA.

Further, contrary to husband's position, the MTA stated the community property division was equal and husband signed it. Moreover, the MTA did not require wife to use the Colorado Property for the children's education. Factual recitals in a written contract "are conclusivelypresumed to be true as between the parties thereto." (Evid. Code, § 622.)

4. Contempt Action

Husband makes two arguments regarding the OSC re contempt. He contends the court should have allowed him to change his no contest plea to not guilty and also asserts the court erred in putting the burden of proof on him.

Taking the latter argument first, there is nothing in the record to support husband's claim the court placed the burden of proof on him. He pleaded no contest so there was no hearing on the matter. We also note husband brought his RFO Spousal Support, for which he did have the burden of proof.

A motion to withdraw a plea is within the discretion of the trial court. (See *People v. Nocelotl* (2012) 211 Cal.App.4th 1091, 1097.) Because there is no reporter's transcript we must presume the court properly exercised its discretion. (*Oliveira, supra*, 206 Cal.App.4th at p. 1362.)

5. Judgment Debtor Examination, Discovery, and Nevada Property

Husband argues the court should not have ordered the judgment debtor examination until after finding he owed support to wife. But by the time the examination was ordered, husband had already pleaded no contest to the OSC re contempt, admitting he owed support under the Judgment. A judgment debtor examination is a procedure "to furnish information to aid in enforcement of [a] money judgment." (Code Civ. Proc., § 708.110, subd. (a).)

Husband claims the court erred in requiring him to produce GeoCubed financial documents, claiming they were not relevant to the contempt action. Husband does not direct us to the documents nor make reasoned legal argument in support of the claim, which therefore fails.

Husband also challenges the FOAH requirement to transfer certain Nevada real property to wife, arguing the court had no jurisdiction over a Nevada property owned by a Nevada corporation. Once more, without a

reporter's transcript we are unable to evaluate this claim because we have no evidence about the Nevada property.

Husband also complains the court "arbitrarily" attached a $50,000 value to the Nevada property when it was actually worth over $75,000. But the minute order states the parties agreed transfer of the Nevada property would be a credit of $50,000 toward the principal amount in arrears.

6. Appointment of Commissioner

While the hearing was ongoing, wife's attorney, Paul Minerich, was hired by the Superior Court of Orange County as a commissioner. The court disclosed this to husband's counsel, noting "this court was not part of the selection process." Husband claims it was a conflict of interest for the court to allow Minerich to continue representing wife. We disagree. The record does not reflect when Minerich actually assumed his duties as a commissioner. There is nothing to show he represented wife at a time when he was a commissioner.

Husband challenges certain rulings in wife's favor, including granting wife's ex parte application to specially set her motion to determine child support arrearages, arguing it was "clear favoritism by the trial court toward . . . Minerich" who was being

considered for or after his selection as a commissioner. Husband also asserts Minerich abused his position as a commissioner "to coerce" favorable rulings on behalf of wife. This argument fails for several reasons.

Primarily, there is not a shred of evidence to support the claim. Further, the fact a judge makes unfavorable rulings does not demonstrate bias. "When making a ruling, a judge interprets the evidence, weighs credibility, and makes findings. In doing so, the judge necessarily makes and expresses determinations in favor of and against parties. How could it be otherwise?" (*Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1219.)

7. Miscellaneous Claims

Husband complains he was not given the opportunity to cross-examine wife. Nothing in the clerk's transcript shows he asked to do so. As discussed above, because there is no reporter's transcript, we are unable to determine whether the court abused its discretion. (*Rhule v. WaveFront Technology, Inc., supra*, 8 Cal.App.5th at pp. 1228-1229.) For the same reason we cannot consider husband's claim the court erred by refusing to allow him to read his opening

statement, prejudging it "[a]rgumentative."[6] (Italics omitted.)

Husband asked us to review whether the court had jurisdiction over his second wife, a citizen of Nevada who owned no property in California. But except for a one-sentence claim of lack of jurisdiction in the reply brief, husband never makes an

argument on this issue or any further reference. It is forfeited for this reason (rule 8.204(a)(1)(B); *Benach v. County of Los Angeles, supra*, 149 Cal.App.4th at p. 852) and for lack of a reporter's transcript.

Husband also asked us to review salary wife purportedly was paid after her employment by the company they co-owned was terminated. It is forfeited for the same reasons as the jurisdiction issue mentioned just above.

Husband claims wife waived her right to recover because she unreasonably delayed in filing the OSC re contempt and RFO's, causing him to lose records. But again, without a reporter's transcript we cannot evaluate the argument. The same is true regarding the source of wife's income and balances in her bank account.

---

[6] One minute order states husband's counsel offered a trial brief in lieu of an opening statement.

Husband complains the matter was transferred to a different judge without his attorney being present. The minute order reflects it was assigned to Judge Miller to conduct the hearing. It also reflects both counsel were present. Husband's explanation of what occurred in the hallway is not in the record and we cannot consider it.

Husband challenges a reference to his attorney in one of the minute orders, asking that we strike it because he was self-represented at the time. The misstatement, if any, does not warrant action on our part because husband was not prejudiced by it and no different result is likely had the order stated he was acting in propria persona (Code Civ. Proc., § 475.) Further, the first page of the minute order shows husband appeared without counsel as did the FOAH itself.

Husband maintains his attorneys were ineffective. This claim is legally irrelevant here. Any dispute husband may have with his lawyers is not before us in this appeal. We may not reverse a civil judgment based on alleged incompetency of counsel. (*Chevalier v. Dubin* (1980) 104 Cal.App.3d 975, 979-980.)

Husband also claims wife is vindictive and out to destroy his life, stating the reporter's transcript would support this claim. We have already discussed

the consequences of the absence of a reporter's transcript. In addition, husband has not shown why this is legally relevant.

DISPOSITION

The order is affirmed. The motion to augment is granted. Wife is entitled to costs on appeal.

THOMPSON, J.

WE CONCUR:

FYBEL, ACTING P. J.

IKOLA, J.

Appendix B - Order Modifying Opinion And Denying Petition For Rehearing

Court of Appeal, Fourth District, Division Three
Kevin J. Lane, Clerk/Administrator
Electronically FILED on 1/16/2018 by Denise Jackson, Deputy Clerk

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

In re Marriage of PARVIN R. and PARVIZ MONTAZER.	G054063 (Super. Ct. No. 98D006995)
PARVIN R. MONTAZER, Respondent, v. PARVIZ MONTAZER, Appellant.	ORDER MODIFYING OPINION AND DENYING PETITION FOR REHEARING; NO CHANGE IN JUDGMENT

FOURTH APPELLATE DISTRICT, DIVISION THREE

It is ordered that the opinion filed on December 27, 2017 be modified as follows:

On page 7, the last full paragraph is deleted and replaced with the following:

"Husband maintains his lawyers, who were criminal, not family law attorneys, were ineffective in several instances, including advising him to plead no contest to the OSC re contempt, failing to quash the subpoena duces tecum in connection with the judgment debtor examination. To the extent these claims relate to civil matters, the argument fails. We may not reverse a civil judgment based on alleged incompetency of counsel. (*Chevalier v. Dubin* (1980) 104 Cal.App.3d 975, 979-980.)

To the extent the contempt action was a criminal proceeding, to prevail on this claim husband must show performance fell below prevailing professional standards and was prejudicial. (*Strickland v. Washington* (1984) 466 U.S. 668, 688, 694.) Husband has failed to show either. As noted several times, without the reporter's transcript we cannot determine what occurred at the hearings. This is not the rare case where we would review an ineffective assistance of counsel claim on direct appeal. (*In re S.D.* (2002) 99 Cal.App.4th 1068, 1077.)"

The petition for rehearing is DENIED. This modification does not change the judgment.

THOMPSON, J.

WE CONCUR:

FYBEL, ACTING P. J.

IKOLA, J.

Appendix C - Opinion, Cal. App. 4th, Div. 3 Opinion Case No. G054423

Filed 12/27/17 Montazer v. Montazer CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PARVIZ MONTAZER, Plaintiff and Appellant, v. PARVIN R. MONTAZER, Defendant and Respondent.	G054423 (Super. Ct. No. 30-2016-00850959) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Frederick P. Aguirre, Judge. Affirmed.

Parviz Montazer, in pro. per., for Plaintiff and Appellant.

Parvin R. Montazer, in pro. per., for Defendant and Respondent. ***

The trial court sustained a demurrer without leave to amend to the complaint filed by plaintiff and appellant, Parviz Montazer (husband), against defendant and respondent, Parvin R. Montazer (wife). The court ruled jurisdiction over the matter resided in the family court and the complaint failed to state a cause of action.

Husband argues the trial court had jurisdiction, the complaint stated a cause of action, and he should have been allowed to amend the pleading. He also claims the case should not have been dismissed because he had good cause for not attending the order to show cause (OSC) re dismissal.

We agree the court lacked jurisdiction and properly dismissed the action. Consequently we have no need to discuss any other arguments. We affirm.

FACTS AND PROCEDURAL HISTORY

This case has its roots in a dissolution action between the parties. Concurrently with the filing of this opinion we are filing an opinion in a related case, *In re Marriage of Montazer* (date, G054063 [nonpub. opn.]) (*IRMO Montazer*)[1]. *IRMO Montazer* sets out the background of the parties' dissolution action, including the marital termination agreement (MTA) that was incorporated into the dissolution judgment (Judgment) filed in 1999. We incorporate by reference the facts and procedural history in that opinion.

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[1] We have designated the parties husband and wife in this opinion for consistency and clarity.

As explained in *IRMO Montazer* in 2014 wife filed an OSC re contempt. In 2015 she filed a request for order re spousal support arrearages (RFO Spousal Support), and a request for order re child support (RFO Child Support). In 2015 husband filed a request for order to terminate spousal support (RFO Support Termination).

As part of the RFO Support Termination husband filed a declaration "in lieu of personal testimony." In the declaration he stated the MTA provided for unequal division of community property, with wife receiving four pieces of real property (Real Property), including three in Colorado (Colorado Property) while he received one. He also attached a copy of a letter he sent to wife's counsel while they were negotiating the MTA (Husband's Letter).

Referring to a provision in the MTA entitled "Equal Division," Husband's Letter stated the division of community property was not equal. Husband stated he would not sign the MTA if it included such a provision. He also stated he had purchased the Colorado Property "for the sole purpose of having the backup for when my kids reach the college age. I trust that is [wife's] intention also[;] however, if I sense any deviation from that goal I will reserve the right to open up this settlement case and request for equal division of everything."

Husband also attached a reply from wife's counsel (Fouste Letter) in which Fouste referred to a letter husband sent Fouste subsequent to Husband's

Letter. Fouste stated he had revised a section of the MTA dealing with husband's company car. The Fouste Letter did not mention Husband's Letter.

The OSC re contempt and all three RFO's were tried together. The July 2016 Findings and Order After Hearing (FOAH) stated in part: "The court considered [husband's] evidence and argument that [Husband's Letter] modified the terms of the [MTA] filed with this court on September 21, 1999, the executory terms of which were incorporated into the Judgment . . . . The court found that [Husband's Letter] did not modify the terms of the Judgment and did not provide a legal basis for [husband's] claim that [wife] was responsible for the college education of the children."

In May 2016 husband filed this action against wife for "breach of contract, decla[ra]tory relief, monetary damages, restitutionary remedies, and coercive remedies." (Capitalization omitted.) The three-and-a-half-page complaint alleged wife "claims" to own the Real Property the parties had previously owned jointly. It further alleged husband and wife entered an agreement in September 1999 "that set conditions for transfer" of the Real Property. The complaint appears to allege the "agreement" consisted of Husband's Letter, the Fouste Letter, and the MTA, all attached to and incorporated by reference into the complaint.

Husband alleged the section of Husband's Letter dealing with equal division of community

property set out conditions on which he agreed to transfer the Real Property. "The prime condition was for the [wife] to provide funding for the[] children's college education." The complaint pleaded wife acknowledged receipt of this condition by virtue of the Fouste Letter. It also alleged husband then signed the MTA and transferred the Real Property. According to the complaint, husband paid for the children's college education in the sum of not quite $268,000.

In the breach of contract cause of action husband sought "to reverse the unequal division" (bold & capitalization omitted) of the Real Property. In the alternative, he asked the court to transfer ownership of the Colorado Property to him. He also sought approximately $268,000 in damages "for his contribution to the education of the children."

Wife filed a demurrer to the complaint on the grounds the court had no jurisdiction over the breach of contract cause of action, there was another action pending, the complaint did not state sufficient facts to constitute a cause of action for breach of contract, declaratory relief, or restitution, and the breach of contract cause of action was uncertain.

In conjunction with the demurrer wife filed a request for judicial notice of the dissolution Judgment and the RFO Support Termination. Husband filed requests for judicial notice of his objections to the proposed FOAH and the FOAH. The court granted all requests.

The court sustained the demurrer without leave to amend on several grounds. First, it ruled it had no jurisdiction because jurisdiction rested in the family law court in connection with dissolution of the marriage and division of community property. Second, as to the breach of contract claim, it found the allegations were "ancillary to the division of community property addressed" in the Judgment. The MTA expressly reserved jurisdiction over matters such as those pending in the family law court.

The court also found the complaint failed to state sufficient facts to constitute a cause of action for breach of contract because neither the MTA nor Husband's Letter showed wife agreed to pay for the children's college education. As to declaratory relief, although it was listed in the caption, there were no allegations to support that cause of action. Moreover, because there was no viable breach of contract cause of action, there was no written contract on which to base a declaratory relief claim. Finally, the court sustained the demurrer to the cause of action for restitution. It is a remedy and not a cause of action, and there was no separate pleading.

The court scheduled an OSC re dismissal. On the date of the hearing of the OSC husband telephoned to ask for a continuance, representing he could not appear because he was in Las Vegas. He did not agree to appear through Court Call. The court dismissed the action with prejudice.

DISCUSSION

1. Introduction

We review a judgment after order sustaining a demurrer without leave to amend de novo. (*Del Cerro Mobile Estates v. City of Placentia* (2011) 197 Cal.App.4th 173, 178.) "'[W]e treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusions of law'" (*National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc.* (2009) 171 Cal.App.4th 35, 43) or speculative allegations (*Rotolo v. San Jose Sports & Entertainment, LLC* (2007) 151 Cal.App.4th 307, 318,' disapproved on another ground in *Verdugo v. Target Corp.* (2014) 59 Cal.4th 312, 333, 334, fn. 15).

"Under the doctrine of truthful pleading, the courts 'will not close their eyes to situations where a complaint contains allegations of facts inconsistent with attached documents, or allegations contrary to fact which are judicially noticed.'"

(*Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 400; see *Brakke v. Economic Concepts, Inc.* (2013) 213 Cal.App.4th 761, 767 ["[w]hile the 'allegations [of a complaint] must be accepted as true for purposes of demurer,' the 'facts appearing in exhibits attached to the complaint will also be accepted as true and, if contrary to the allegations in the pleading, will be given precedence'"].)

2. Jurisdiction

In sustaining the demurrer, the court ruled it had no jurisdiction over the case. Instead, jurisdiction resided in the family law court to dissolve the marriage and divide the parties' community property. We agree.

"After a family law court acquires jurisdiction to divide community property in a dissolution action, no other department of a superior court may make an order adversely affecting that division." (*Askew v. Askew* (1994) 22 Cal.App.4th 942, 961 (*Askew*).)[2] In *Askew*, after the wife filed a dissolution action, the husband filed a civil suit to impose a constructive trust on certain real property, alleging the wife had misrepresented her affection for him to induce him to transfer title to the property in both of their names. The court held the civil action improperly "usurped the power and obligation of the family law court to determine the character of the . . . properties. . . . Given that the family law court already had subject matter jurisdiction to divide the community property, the civil trial court had no jurisdiction to so act." (*Id.* at p. 962, italics omitted.) Thus, the civil action had to be dismissed because it "sought to preempt the family law court from determining issues it already

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[2] The discussion in Askew about anti-heart balm statutes does not vitiate the principle for which we cite the case. Moreover, while there are circumstances where "spouses can sue each other for torts after marriage" (Askew, supra, 22 Cal.App.4th at p. 946), they are limited and husband has not directed us to any case authorizing such an action here.

had jurisdiction to determine" and which "were the province of the family law court in the first place." (*Id.* at p. 965.)

That the pleadings in the family law court here did not refer to a breach of contract claim is irrelevant. Likewise, the fact the family law court minute order terminating spousal support did not mention breach of contract has no significance.

Husband made the same claims in the family law court that are the subject of the complaint in this action, i.e., Husband's Letter created a contract whereby wife became obligated to pay for the children's college education. This was litigated in and rejected by the family law court, which found there was no such agreement. Without an agreement, wife could not be liable for breach. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821 [elements of breach of contract cause of action].)

Husband's breach of contract cause of action is merely a family law issue camouflaged as a civil claim. Almost any family law claim "can be reframed as civil law actions if a litigant wants to be creative with various causes of action. It is therefore incumbent on courts to examine the substance of claims, not just their nominal headings." (*Neal v. Superior Court* (2001) 90 Cal.App.4th 22, 25.) In *Neal*, the court ruled a demurrer to a civil law complaint should be sustained, stating, "In substance this case is a family

law OSC with civil headings." (*Id.* at p. 26.)[3] A "reframed" civil action is improper even if it is filed after the final judgment in the family law proceeding has been entered. (*Burkle v. Burkle* (2006) 144 Cal.App.4th 387, 396-397 [discussing cases].)

Husband argues the family law court's jurisdiction had expired because the MTA stated it retained jurisdiction over the children's support only until they were emancipated. Husband is wrong.

The MTA stated: "We each acknowledge and agree that in addition to the jurisdiction specifically conferred by this [MTA], the court having jurisdiction over the dissolution of our marriage shall reserve and retain jurisdiction to: [¶] . . . [¶] . . . Supervise the overall enforcement of this [MTA]. [¶] . . . We further acknowledge and agree that the court having jurisdiction over the dissolution of our marriage shall reserve and retain jurisdiction to make such other and further orders as may be reasonable or necessary to give effect to the foregoing provisions. Any judgment of dissolution of marriage . . . shall include a reservation of jurisdiction as herein provided, and if any such judgment does not contain an express specific reservation as herein provided, such reservation shall be implied and may be made express

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[3] Husband's reliance on Neal, apparently for the proposition that unless the family law judgment specifically retained jurisdiction he had the right to file the civil action, is misplaced. This was an argument made by the party who filed the civil suit, and the court rejected it. (Neal v. Superior Court, supra, 890 Cal.App.4th at p. 26.)

upon the motion of either of us." The parties also acknowledged they were told and understood the court must reserve jurisdiction over spousal support for marriages lasting 10 or more years when a party requested it.

In a slightly different iteration of that argument, husband claims the family law court retained jurisdiction only over the dissolution. But he points to nothing in the Judgment to support this claim and, as shown above, the MTA, incorporated into the Judgment, is to the contrary.

Husband challenges the court's reliance on the Judgment when it ruled the complaint was ancillary to the community property division set out in the Judgment. He claims the court ignored the allegations of the complaint and should not have relied on the Judgment because it was not disclosed in the complaint. We disagree.

In ruling on a demurrer, the court may consider any matter which it may judicially notice. (Code Civ. Proc., § 430.30, subd. (a).) Judicial notice may be taken of records of any court of this state. (Evid. Code, § 452, subd. (d)(1).) The court properly took judicial notice of the Judgment.

Husband also complains the court should not have taken judicial notice of the RFO Support Termination because wife allegedly misrepresented its contents when she stated husband sought credits against spousal support for money he had paid for the

children's education. She also stated husband argued Husband's Letter and the MTA and Judgment created an agreement requiring wife to pay the children's college expenses from the real property she was awarded in the Judgment. This is a fair summary of husband's position in the family law court. And contrary to husband's claim, the RFO Support Termination was relevant and properly considered by the court in this action.

We reject husband's argument that when the family law court ruled there was no contract requiring wife to pay for the children's college education, it "relieved itself from jurisdiction over the Breach of Contract." Husband is also incorrect when he states the FOAH did not mention wife's obligation to pay for the children's college expenses. Rather, the "court found [the Fouste Letter] did not modify the terms of the Judgment and did not provide a legal basis for [husband's] claim that [wife] was responsible for the college education of the children."

We are not persuaded by husband's claim the family law court had no jurisdiction because support of adult children in college is not covered in the Family Code. Husband's contention wife owes for the children's college education arises directly out of his claim wife promised in the MTA to pay for their education, an issue over which the family law court does have jurisdiction.

Husband's assertion wife's lawyer in the family law matter breached a duty to "introduce" this action

in that case pursuant to California Rules of Court, rule 3.300, which deals with related cases, does not provide a ground for reversing the judgment of dismissal here. Husband had a coequal duty to do so. (*Id.*, rule 3.300(b), (f).) More importantly, husband had a duty to file a notice of related case, i.e., the action in the family law court, in this action. (*Ibid.*)

Finally, we reject husband's argument there was no discovery or "pre-trial due process" regarding this issue in the family law court. Husband points to nothing in the record showing he was denied the opportunity to conduct discovery. We are unclear as to what husband means by "pre-trial due process," and the claim fails for lack of citation to the record or reasoned legal argument. (Cal. Rules of Court, rule 8.204(a)(1)(B); *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

3. Leave to Amend

In conclusory fashion husband argues he should have been given leave to amend his pleadings. To be granted leave to amend a husband must show there is a "'reasonable possibility'" he can do so. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) "'To satisfy that burden on appeal, a plaintiff "must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." [Citation.] . . . The plaintiff must clearly and specifically set forth the "applicable substantive law" [citation] and the legal basis for amendment, i.e., the elements of the cause of action and authority for it.

Further, the plaintiff must set forth factual allegations that sufficiently state all required elements of that cause of action. [Citations.] Allegations must be factual and specific, not vague or conclusionary. [Citation.]'" (*Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1491.)

Husband failed to make the requisite showing. It is not merely a mislabeling of causes of action that made the complaint defective. Nor did the court require husband to produce evidence. Because the complaint and judicially noticed evidence show the court does not have jurisdiction to litigate the breach of contract claim, to merit leave to amend husband is required to set out facts he could plead that would correct the deficiency. He has not and we do not see any way he could.

4. Dismissal

Husband claims the case should not have been dismissed because he had a good reason for not appearing at the OSC re dismissal. But the case was not dismissed due to husband's failure to appear. The demurrer had been sustained without leave to amend. There was no operative pleading and thus no case to be litigated. Dismissal was proper for that reason alone. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967 [dismissal must be affirmed if demurrer properly sustained without leave to amend].)

Husband appears to claim that by sustaining the demurrer the court vacated jurisdiction. On that

basis, he argues, it cannot dismiss the action with prejudice. But the court did not lose jurisdiction when it sustained the demurrer and it had the power to dismiss it. (See *Gogri v. Jack in the Box Inc.* (2008) 166 Cal.App.4th 255. 261.)

DISPOSITION

The judgment is affirmed. Wife is entitled to costs on appeal.

THOMPSON, J.

WE CONCUR:

FYBEL, ACTING P. J.

IKOLA, J.

SUPREME COURT FILED MAR 14 2018 by Jorge Navarrete Deputy Clerk

Court of Appeal, Fourth Appellate District, Division Three -No. G054063

S246866

IN THE SUPREME COURT OF CALIFORNIA

En Banc

PARVIZ MONTAZER, Plaintiff and Appellant,

v.

PARVIN R. MONTAZER, Defendant and Respondent.

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice

APPENDIX D – California Supreme Court Denying Petition.

SUPREME COURT FILED MAR 14 2018 by Jorge Navarrete Deputy Clerk

Court of Appeal, Fourth Appellate District, Division Three -No. G054423

S246852

IN THE SUPREME COURT OF CALIFORNIA

En Banc

PARVIZ MONTAZER, Plaintiff and Appellant,

v.

PARVIN R. MONTAZER, Defendant and Respondent.

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice

Appendix E - Mr. Minerich as temprary judge and taking oath for commissioner

Superior Court of California
County of Orange
News Release

Public Information Office
Contact: Gwen Vieau, 657-622-7097
PIO@occourts.org

May 25, 2016

Judges Elect Two New Commissioners

Santa Ana, CA - The Judges of the Superior Court of California, County of Orange, have elected Sheila Recio and Paul Minerich as Commissioners, announced Presiding Judge Charles Margines. Commissioners serve as subordinate judicial officers of the Court. They may be assigned to hear cases such as family, juvenile, traffic, small claims, and landlord/tenant matters. Ms. Recio has served the Court in multiple positions, including as a Senior Research Attorney, Counsel to the Presiding Judge, and most recently, as Deputy General Counsel overseeing the Court's Legal Research Attorney unit. While at the Court, she has volunteered as a temporary judge on civil law and motion matters and case management conferences, as needed. Before joining the Court in 2005, Ms. Recio was an Associate with the law firm of Morrison & Foerster LLP and, prior to that, worked as a Research Attorney for the Los Angeles County Superior Court. She earned her Juris Doctor degree from the University of Southern

California and her Bachelor of Arts degree from the University of California, Los Angeles. Mr. Minerich has had a private law practice in Santa Ana since 1979, practicing civil, criminal, and family law litigation. He has volunteered as a temporary judge for traffic, small claims, and family law matters. For family law cases, he has assisted with mandatory settlement conferences. case resolutions. and status conference hearings. He has been a Certified Specialist in Family Law since 2007. He also served as an arbitrator for the Court on personal injury and business cases for about 10 years. Mr. Minerich earned his Juris Doctor degree from Pepperdine University School of Law and his Bachelor of Arts degree from California State University, Fullerton. Ms. Recio will take the Oath of Office on May 27 and Mr. Minerich will take the Oath of Office on June 17. The annual salary for a Commissioner is $160,680.

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Appendix F - E-mail from Martina Vigil

From: Martina A. Teinert [mvigil@vigildefense.com]
Sent: Tuesday, December 29, 2015 8:29 AM
To: perry.montazer@geocubed.com; Nasrin Sangary
Subject: Results of Ex Parte Hearing
Attachments: Ex Parte Application.pdf; Ex Parte_response.pdf

Perry,

I have attached Petitioner's RFO to include determinations of spousal support. I have also included my response. My response is written and not typed because Mr. Minerich did not provide a copy of the Ex Parte Application to my office until the morning of the hearing.
Judge Scott granted Mr. Minerich's Ex Parte application. This came as a shock to me. Because of the late addition to Petitioner's claim, we did not have an opportunity to propound discovery on that issue. Because the Court allowed Petitioner to include an additional $145,038.61 to be litigated in January, this is not only shocking, but likely reversible upon appeal.
Because you are paying me to represent you, I have your best interests in mind, even at a detriment to myself. Judge Scott has ruled against me on every issue that has come before her including Petitioner's Motion to Compel Discovery. It is clear to me that Judge Scott favors Mr. Minerich likely because I have appeared in her courtroom only a handful of times. I even brought this up to Mr. Minerich at the ex parte hearing and he didn't seem to object to that statement. Because Judge Scott has ruled against me on every motion including matters that I should have won, it is my advise to hire new counsel with whom Judge Scott is familiar.

It pains me to write this email to you. I think you and I have made a great team so far and I appreciate being able to work on your case thus far. I realize that your trial date is coming soon but I am confident that you will be able to find an attorney that will be able to win some aspects of your case if that is what you choose to do. I have your best interests in mind and I want you to hire an attorney that will be able to effectively represent you in front of Judge Scott. Please tell me your thoughts.

Sincerely,

Martina A. Teinert, Esq.
VIGIL DEFENSE
1043 Civic Center Drive West #200 Santa Ana, California 92703
www.vigildefense.com
(714) 543-5840 (o)
(714) 542-0468 (f)

Appendix G – Nasrin's Notarized WITNESS AFFIDAVIT

I solemnly declare under penalty of perjury and under the laws of the State of Nevada that the below statement is true and to the best of my knowledge.

On January 15, 2016, before the scheduled hearing on 1:30 PM, outside L-74 Orange County Court House room, my husband's attorney (Mrs. Martina Vigil AKA Martina A. Teinert) informed us (my husband Parviz Montazer and I) that she is 8 weeks pregnant and this case (my husband's divorce case) is so stressful for her that she cannot carry on with this case as she has to think about the health of her baby.

In the morning of that day, Mrs. Vigil told my husband and I that Honorable Judge Scott has assigned the case to Honorable Judge Miller. Following the in-chamber meeting, Mrs. Vigil informed my husband and I that Honorable Judge Miller has told her that my husband should change his plea to "no contest" instead of "not guilty", which was originally entered by Honorable Judge Scott. Mrs. Vigil failed to explain to us what the consequences of changing the plea and signing the (Order Re Contempt) form would be and how seriously it could harm my husband's life, career, and his future as well as my life.

My husband asked Mrs. Vigil to present the letter he wrote to Mr. James Fouste in 1999 regarding the condition of signing the divorce. However, Mrs. Vigil adamantly refused to do so. When my husband insisted, Mrs. Vigil got angry and told my husband: "fire me and do it yourself".

When we entered the court room at 1:30, at the very beginning without hearing any aspects of my husband's case, he was put on the spot to sign the Order Re Contempt form and Mrs. Vigil insisted Parviz to sign in order to move on with the case. As my husband has sever hearing problem and seemed under a lot of stress and confused, I went to her while she was giving my husband the form to sign and opposition counsel was arguing with Honorable Judge Miller about Jail sentences as well as Community Work, and I asked Mrs. Vigil why my husband has to sign this form. I told her that you know that he never avoided the payments, why does he have to go to jail in his age. Mrs. Vigil told me that "oh, sorry I didn't explain, as long as he pays he does not need to be worried".

In addition, on that day (January 15, 2016) in the morning, Mrs. Vigil and Mr. Minerich met in chamber with Honorable Judge Miller. After the meeting in chamber, Mrs. Vigil told me and my husband that Honorable Judge Miller also has rejected Honorable Judge Scott's assessment and considers that my husband has to pay child support arrearage up to the time the last child reached the

age of 18 or graduated from high school without any step down in payment. Into our astonishment, I reminded Mrs. Vigil of Honorable Judge Scott decision on Oct 16 2015, but Mrs. Vigil expressed that agreements in chamber are not binding.

On October 16, 2015, after Mrs. Vigil and Mr. Minerich had an in-chamber conference with Honorable Judge Scott, Mrs. Vigil came out very happy and told me and my husband that Honorable Judge Scott has agreed with her that the child support should be stepped down to the time when each child reached the age of 18 or graduated from high school, whichever occurred first.

On December 29, 2015 I saw a copy of an e-mail Mrs. Vigil had sent to my husband after ex parte hearing regarding addition of child support by Mr. Minerich to the case. I called her after the holiday (in 2016) with my husband present in conference call. Mrs. Vigil told us that she is concerned about her representing my husband because of the result of the ex-parte hearing. Mrs. Vigil expressed in her e-mail that Honorable Judge Scott has ruled against her on every issue that has come before Honorable Judge Scott. She referred to the Petitioner's Motion to Compel Discovery and expressed that it is clear to her that Honorable Judge Scott favors Mr. Minerich. She seemed to think that is because she has only appeared in Honorable Judge Scott's courtroom a few times. Mrs. Vigil thought that Honorable Judge Scott has ruled against her on every motion including

matters that she thought she should have won. Mrs. Vigil advised my husband to look for another lawyer. This was two weeks before the trial scheduled on Jan 15, 2016. My husband and I have desperately searched for competent family attorney with experience in the Superior Court of Orange County without success. We were told by attorneys we contacted that this case is too "screwed up" and "messy" to take up at this stage.

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s/Nasrin Vosogh-Sangary3472 Wordsworth St., Las Vegas, Nevada 89129, Tel: (702) 951-1862

Notary Block: State of Nevada, Clark County. s/Diane Tulli, Notary Public No. 13-12015-1

Parviz Montazer
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Pro Per

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER

IN RE THE MARRIAGE OF: PARVIN R. MONTAZER PETITIONER, vs. PARVIZ MONTAZER RESPONDENT.	CASE NO.: 98D006995 DECLARATION RE CHANGING PLEA (Permit the plea of "no-contest" to be withdrawn and a plea of "not guilty" substituted for Good Cause)

POINTS AND AUTHORITIES

I - INTRODUCTION AND STATEMENT OF FACTS

This matter arises out of a marital dissolution entered by this Court on September 21, 1999 (the "Marital Dissolution"). On or about October 10, 2014, Petitioner filed an Order to Show Cause re Contempt alleging non-payment of spousal support, and on or about January 20, 2015, Petitioner filed a Request for an Order to determine spousal support arrearages. Petitioner alleges that Respondent has failed to make any spousal support payments pursuant the Marital Dissolution. Respondent filed a Request for Order to Show Cause for spousal support termination on or about February 18, 2015, to seek termination of his spousal support obligations based on his current income and inability to continue to make support payments to Petitioner under the Martial Dissolution. On January 15, 2016; Respondent changed his "not-guilty" plea to "no-contest" plea per the advice of his attorney of the record; Mrs. Martina Vigil. This Court entered 'Order Re Contempt", which Execution of Sentence

was Suspended. Respondent has since substituted himself as "Pro Per" in place of Mrs. Vigil.

Presently at issue before this Court is for the Respondent to change his plea back to "not guilty" for good cause.

II – LEGAL SUPPORT to ARGUMENTS

1- CALIFORNIA PENAL CODE 1018 PC

a) "*On application of the defendant at any time before judgment or within six months after an order granting probation is made if entry of judgment is suspended, the court may, and in case of a defendant who appeared without counsel at the time of the plea the court shall, for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted*".

2- CA CODE 1624 (b) (3) (B)

"*A confirmation in writing sufficient to indicate that a contract has been made between the parties and sufficient against the sender is received by the party against whom enforcement is sought no later than the fifth business day after the contract is made (or any other period of time that the parties may agree in writing) and the sender does not receive,*

on or before the third business day after receipt (or the other period of time that the parties may agree in writing), written objection to a material term of the confirmation. For purposes of this subparagraph, a confirmation or an objection thereto is received at the time there has been an actual receipt by an individual responsible for the transaction or, if earlier, at the time there has been constructive receipt, which is the time actual receipt by that individual would have occurred if the receiving party, as an organization, had exercised reasonable diligence. For the purposes of this subparagraph, a "business day" is a day on which both parties are open and transacting business of the kind involved in that qualified financial contract that is the subject of confirmation."

3 - FAMILY.CODE -SECTION 3910 (a)

"The father and mother have an equal responsibility to maintain, to the extent of their ability, a child of whatever age who is incapacitated from earning a living and without sufficient means."

4 - CASE LAW

a) People v. Cruz [Crim. No. 17561. Supreme Court of California. September 20, 1974.]

"Mistake, ignorance or any other factor overcoming the exercise of free judgment is good cause for withdrawal of a guilty plea. (People v. Barteau (1970) 10 Cal. App. 3d 483, 486 [89 Cal. Rptr. 139]; People v. Brotherton (1966) 239 Cal. App. 2d 195, 200201 [48 Cal. Rptr. 513], and cases cited therein.) But good cause must be shown by clear and convincing evidence. (People v. Fratianno (1970) 6 Cal. App. 3d 211, 221222 [85 Cal. Rptr. 755]; People v. Brotherton, supra; see also, In re Dennis M. (1969) 70 Cal. 2d 444, 457, fn. 10 [75 Cal. Rptr. 1, 450 P.2d 296].). See also PEOPLE V. SANDOVAL, 140 Cal.App.4th 111 (Cal. Ct. App. 2006."

b) Crabtree v. Elizabeth Arden Sales Corp [305 N.Y. 48, 110 N.E.2d 551 (1953)]

*"[4] [5] [6] The language of the statute 'Every agreement * * * is void, unless * * * some note or memorandum thereof be in writing, and subscribed by the party to be charged', Personal Property Law, § 31-does not impose the requirement that the signed acknowledgment of the contract must appear from the writings alone, unaided by oral testimony. The danger of fraud and perjury, generally attendant upon the admission of parol evidence, is at a*

minimum in a case such as this. None of the terms of the contract are supplied by parol. All of them must be set out in the various writings presented to the court, and at least one writing, the one establishing a contractual relationship between the parties, must bear the signature of the party to be charged, while the unsigned document must on its face refer to the same transaction as that set forth in the one that was signed. Parol evidence to portray the circumstances surrounding the making of the memorandum serves only to connect the separate documents and to show that there was assent, by the party to be charged, to the contents of the one unsigned. If that testimony does not convincingly connect the papers, or does not show assent to the unsigned paper, it is within the province of the judge to conclude, as a matter of law, that the statute has not been satisfied. True, the possibility still remains that, by fraud or perjury, an agreement never in fact made may occasionally be enforced under the subject matter or transaction test. It is better to run that risk, though, than to deny enforcement to all agreements, merely because the signed document made no specific mention of the unsigned writing. As the United States Supreme

Court declared, in sanctioning the admission of parol evidence to establish the connection between the signed and unsigned writings. 'There may be cases in which it would be a violation of reason and common sense to ignore a reference which derives its significance from such (parol) proof. If there is ground for any doubt in the matter, the general rule should be enforced. But where there is no ground for doubt, its enforcement would aid, instead of discouraging, fraud.' Beckwith v. Talbot, supra, 95 U.S. 289, 292, 24 L.Ed. 496; see, also, Raubitschek v. Blank. supra, 80 N.Y. 478; Freeland v. Ritz, 154 Mass. 257, 259, 28 N.E. 226, 12 L.R.A. 561; Gall v. Brashier, 10 Cir., 169 F.2d 704, 708-709, 12 A.L.R.2d 500; 2 Corbin, op. cit. § 512, and cases there cited."

5 - Section 14. Of Marital Termination Agreement – Child Custody, Visitation and Support (September 30, 1999)

14.2.1. "*Pay to PARVIN the sum of four thousand dollars ($4,000.00) per month, payable one-half (1/2) on the first (1st) day and one-half (1/2) on the fifteenth (15th) day of each month commencing September 1, 1999, and continuing thereafter in a like manner as herein provided;*

...

14.4. "*The foregoing provisions for the support, care, education and maintenance of the minor children, PAMELA and PAUL, shall continue as to each said child until the child attains his or her eighteenth (18th) birthday, or if he or she is a full-time high school student residing permanently with PARVIN , until he or she graduates from high school or attains his or her nineteenth (19th) birthday, whichever first (1st) occurs : dies : marries : becomes otherwise emancipated ; or until further order of court ; whichever of the foregoing first (1st) occurs.*"

In the following, Respondent is presenting clear and convincing evidence supporting "Good Cause" for his plea of "no-contest" to be withdrawn and a plea of "not guilty" substituted.

III - GOOD CAUSES

Respondent Declares under penalty of perjury under the laws of the State of California that the following is true and correct:

a) Respondent did not willfully or knowingly disobey the Court's order at any time during the

period alleged (November 1, 2011 to October 1, 2014) in OSC filed by Petitioner on October 10, 2014 in the subject Case Number 98D006995.

b) Respondent believes that he was misled by his ineffective counsel who was under duress due to her pregnancy (see Exhibit A; Affidavit by Nasrin Sangary).

c) Respondent's counsels did not present to this Court the relevant facts that were presented to the Petitioner's attorney during discovery and at the meeting of September 3, 2015 in the counsel's office.

d) This Court did not examine the evidence to determine whether Respondent was truly in contempt during the time he is being accused of committing this crime. This resulted in Order in Contempt (Exhibit D).

e) What Respondent has been told since the beginning of filing of the OSC (October 10, 2014) is irrelevant to his knowledge and belief during the time of the alleged Contempt.

f) His knowledge and belief were based on the legal arguments presented in the Case Laws cited above during the time of the alleged Contempt.

g) Respondent made a mistake in relying on the advice of his ineffective attorney when signing the Order Re Contempt (dated January 15, 2016). Respondent should have relied on the state of his mind during alleged contempt of Court period specified in order to show cause (OSC; filed by Petitioner in October 10, 2014 in this Court).

h) What is relevant is what Respondent knew and believed before Petitioner filed OSC on October 10, 2014.

i) Respondent believed that he had overpaid Petitioner for both spousal and child support as of December 31, 2013. He intended to file RFO to terminate spousal support with this Court early in 2014 but he fell seriously sick and in death bed in a remote camp in Basra Iraq, making it impossible for him to take action (February 2014). In the process, his work client found out about Respondent's serious heart condition and did not clear him to work in Iraq until August 2014 (see Exhibit B). Respondent went under surgery in April 2014 and was in rehabilitation and did not completely recover until end of July 2014.

j) Respondent believed that, as of December 31, 2013, he had paid $554,603 to Petitioner. Respondent's calculation has showed that, as of December 31, 2013, he was required only to pay an amount of $520,947 ($342,677 for alimony and $178,270 for child support). Therefore, he believed he had overpaid Petitioner by $33,655.63 (554,603-520,947) by the end of 2013. Therefore, Respondent believed that he had pre-paid for at least another year and a half and did not owe any more money to Petitioner as of end of year 2013. In addition, Respondent has paid $247,982 directly to the adult children for their education, which Respondent believed was the responsibility of the Petitioner per the agreement (see Exhibit C).

k) Respondent interpretation of the MTA Section 14.0 (referenced above under II-Legal Arguments, Paragraph 4.0) has been that child support stopped for Pamela Montazer when she graduated from high school in June 2002. Furthermore, he believed child support stopped for Paul Montazer in June 2004 when he graduated from high school. Exhibit A signifies the fact that even Honorable Judge Scott's opinion differed from that of Honorable Judge Miller.

Respondent naturally interpreted this section of MTA as described in the foregoing.

l) Respondent believed, before Petitioner filed OSC on October 10, 2014, that his unemployment and serious illness would be an acceptable reason for delay in filing RFO for termination of spousal support.

m) Respondent urged both his attorneys (Mr. Artounian and Mrs. Vigil) in several occasions to bring the agreement in Exhibit C to this Court 's attention but both refused and one of them even threatened to quit if Respondent attempted to bring the agreement up in this Court (see Exhibit A).

n) Respondent believed that Petitioner would comply with the written agreement (see Exhibit C) and verbal agreement between them (numerous e-mails) that our adult children are priority in receiving support. The verbal agreement is emphasized and is evident by the fact that Petitioner never came before this court during the fifteen years since September 1999. It has only been since the beginning of this case (October 10, 2014) that Respondent has learned that Petitioner's attorney is

challenging the agreement between Respondent and Petitioner.

o) Respondent has not had traffic or even a parking violation ticket for the last nine years and has never been charged with any crime during all his life and specifically for the past 40 years that he has lived in the United States of America. How could Respondent deliberately commit to contempt of Court crime?

p) Respondent was overseas at the time when Petitioner filed with this Court on or about October 2014. Respondent was not served but voluntarily appeared in this Court to answer to Petitioner's Allegations.

q) Respondent is a registered Professional Geologist and Certified Engineering Geologist in the State of California and will lose his license with this conviction on his record.

r) Although Respondent is close to being 66, he still hopes to find a job. With this conviction on his records, he will not be able to find a job not even working for department stores as a clerk.

IV - EXPLANATION OF FACTS

a) From 1999 until October 2014, Respondent was not represented by an attorney, whereas Petitioner has always been represented by a competent attorney. Respondent has realized that both of his attorneys (Mr. Aris Artounian and Mrs. Martina vigil) were ineffective in Family Court.

b) Respondent presented the facts to the attorneys mentioned above that by the end of December 2013, Respondent had realized that he had overpaid the Petitioner.

c) On November 9, 2014, Respondent presented to Mr. Artounian answers to questions and a spreadsheet indicating that he has paid substantial amount of monev to Petitioner since the execution of the MTA. Petitioner had already agreed that our children, especially Paul, who is still in graduate school but has issues, needed financial support. Respondent believed that, per the agreement (Exhibit C), which set conditions to signing the subject Marital Termination Agreement (MTA), Petitioner was not performing what has been stipulated in the agreement. Respondent has reminded Petitioner's responsibility to help our adult

children to go through college. Respondent believes that the agreement (the signed MTA combined with Respondent's letter to Mr. Fouste in September 1999) established a contractual relationship between the parties and is a legally binding written contract (CA Civil Code Section 1624 (b) (3) (B) and (Crabtree v. Elizabeth Arden Sales Corp. 305 N.Y. 48, 110 N.E.2d 551 (1953). supra). Furthermore, California Family Code Section 3910 specifically makes both father and mother of the incapacitated adult child equally responsible. Our adult son has been incapacitated since 2008 from earning a living.

d) Respondent, in numerous occasions, asked both of his attorneys, Mr. Artounian and Mrs. Vigil, to present this agreement to this Court . However, these attorneys refused to comply with Respondent's wishes and wrongfully jeopardized Respondent's Contempt defense in the process. The attorneys had told Respondent that Mr. Paul Minerich has told them that the agreement will not be considered by this Court as valid evidence to justify paying adult children in lieu of spousal support. Competent Family attorney knows that contempt of Court is "the deliberate and willful

violation of the Court order at the time of the alleged crime." It is evident that Respondent believed that he had a legally binding agreement with the Petitioner and that he was performing Petitioner's duty whom he believed was in breach of contract according to the Laws of the State of California.

e) Respondent has since learned by his own research and consultation with various attorneys that Respondent's belief and his state of thoughts and reasoning, during the time he is being accused of Contempt of this Court, should be considered. Contempt of Court has to be willing and deliberate disregard for the authority of this Court and that has never been the intention of the accused Respondent.

f) Respondent was contemplating to file RFO to terminate Spousal support in 2014; however, he became severely ill at the DS6 security camp in Basra, Iraq on February 7, 2014 to the point that he was put in quarantine and was put under antibiotic intravenous injection for five days to recover. He had a temperature of 107 F (42 C) and in death bed. The camp physician ran an EKG (see Exhibit B) and recommended him to see a cardiologist in Dubai.

After that, he was sent to a hospital in Dubai (American Hospital), where he was told that he had severe heart condition. He had angioplasty in April 2014 and was under treatment and rehabilitation until end of July 2014, when he was finally cleared to go back to work (see Exhibit B). After this time, Respondent was mainly overseas and focused on recovering until he realized that there was a potential legal action against him in October 2014 (through receiving a mail by his wife that Petitioner had filed for attorney substitution to retain Mr. Paul Minerich in place of Mr. James Fouste, who was Petitioner's attorney of the record since 1998). That was when Respondent retained Mr. Aris Artounian to find out the nature of the legal action, while Respondent was overseas. This substitution of Petitioner's attorney (Form MC-050) is not stamped by this Court as filed.

g) Petitioner and Respondent agreed during Respondent filing of bankruptcy in 2000, to retain the loans on the four properties that Petitioner had received as part of the MTA so that Petitioner could develop the credit required to refinance all properties to her name. She also agreed

to remain on MET payroll in lieu of spousal support so that she could develop both credit and work experience to be able to find jobs in the area of accounting. Respondent even helped Petitioner prepare resumes.

h) Respondent is disadvantaged in this case because several competent family law attorneys he has approached has declined to take over the case because the attorneys (e.g., Mr. Robert Farzad of Orange County) consider this case too messed up to get involved.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 18th day of February, 2016

s/Parviz Montazer

3472 Wordsworth St.
Las Vegas, Nevada 89129

Appendix I - Order Re Waiver of Fees

Court of Appeal, Fourth District, Division Three
Kevin J. Lane, Clerk/Administrator
Electronically FILED on 9/30/2016 by Denise Jackson, Deputy Clerk

COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

In re the Marriage of PARVIN R. MONTAZER and PARVIZ MONTAZER.

PARVIN R. MONTAZER,
Respondent,
v.
PARVIZ MONTAZER,
Appellant.

G054063
Orange County No. 98D006995

Pursuant to the filing of a Request to Waive Court Fees and Costs, and with good cause appearing therefor, IT IS ORDERED that appellate court fees and costs for the above-entitled action are waived pursuant to rule 8.26.

s/___O'Leary, P.J._____
Presiding Justice