APPENDIX NO. 2: CA SUPREME COURT'S ORDER DENYING REVIEW FILED ON 8/14/2019

S256743

IN THE SUPREME COURT OF CALIFORNIA
EN BANC

LINDA SHAO, Plaintiff and Appellant

v.

Tsan-Kuen Wang, Defendant and Respondent

Court of Appeal, Sixth Appellate District No.
H040977
August 14, 2019

The request for judicial notice is denied. The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice

APPENDIX NO. 3: REHEARING DENIED BY CA SIXTH DISTRICT APPELLATE COURT ON 6/25/2019

Court of Appeal, Sixth Appellate District
Susan S. Miller, Clerk/Executive Officer
Electronically filed by M. Chang, Deputy Clerk
In re the Marriage of LINDA YI TAI SHAO and TSAN-KUEN WONG.
LINDA YI TAI SHAO,
Appellant,
v.
TSAN-KUEN WANG,
Respondent.
H040977
Santa Clara County Super. Ct. No. FL126882
BY THE COURT*:
Appellant's petition for rehearing and "suggestion" for en-banc is denied.
Date: June 25, 2019 _Mihara (signed)_ Acting P.J.
*Before Mihara, Acting P.J., Danner, J. and Duffy, J.**

**Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

APPENDIX NO.7 H040977
OPINION/JUDGMENT OF JUNE 4, 2019.
Filed 6/4/19
NOT TO BE PUBLISHED IN OFFICIAL REPORTS
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT
In re Marriage of LINDA YI-TAI SHAO and TSAN-KUEN WANG.
H040977
(Santa Clara County
Super. Ct. No. 1-05-FL126882)
LINDA YI-TAI SHAO,
Appellant,
v.
TSAN-KUEN WANG,
Respondent.

Representing herself, Linda Yi-Tai Shao (wife) appeals a post-judgment order issued by the trial court in this marital dissolution action following the remittitur from a prior appeal decided by this court. The post-judgment order directs Shao to pay respondent Tsan-Kuen Wang (husband) for her share of child-related expenses that husband incurred in 2008 and 2009. Shao contends the

post-judgment order lacks evidentiary support and violates our prior decision. More generally, Shao argues due process violations and bias by both the trial court and this court. For reasons explained below, we reject Shao's contentions and affirm the order.

I. FACTS AND PROCEDURAL BACKGROUND

Shao and Wang married and had two children, a son and a daughter. In 2008, they entered into a judicially-supervised settlement agreement (2008 agreement) that was later incorporated into the judgment of dissolution filed in May 2008. The 2008 agreement covered a variety of issues relating to the dissolution, including custody of the two minor children (the son has since become an adult) and child support.

The 2008 agreement has been subject to significant litigation between Shao and Wang, including a number of appeals in which Shao has challenged trial court orders and actions. Our prior appeals detail this litigation.[1] To resolve Shao's current

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[1] Our last opinion includes a history of prior appeals in this matter. (*In re Marriage of Shao and Wang* (Mar. 9, 2018, H043851) [nonpub. opn.].) Although Shao was designated a vexatious litigant in 2015 by the Santa Clara County Superior Court

appeal we need discuss only our first opinion in this matter, issued by this court in January 2012, and the trial court's subsequent actions following the remittitur from that appeal, particularly the trial court's post-judgment order from March 2014.

A. *2012 Opinion*

On January 27, 2012, this court filed an opinion addressing numerous contentions made by Shao, including that the trial court abused its discretion in ordering Shao to reimburse Wang for her share of medical and dental expenses, tuition, and extracurricular activities that Wang incurred in 2008 and 2009 for their children. (*In re Marriage of Shao and Wang* (Jan. 27, 2012, H035194) [nonpub. opn.] (2012 opinion).)

As relevant to this appeal, in the 2012 opinion we concluded that Shao and Wang had agreed in the 2008 settlement that "notwithstanding the support obligations, each would pay half of those unreimbursed expenses, the amount of which might vary from year to year depending on the children's medical and dental needs." (*In re Marriage of*

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in case No. 1-12-CV-220571, that fact does not affect our consideration of this appeal, which was filed prior to that designation.

Shao and Wang, *supra*, H035194.) We rejected many of Shao's arguments as to such unreimbursed expenses, for instance that Wang was solely responsible for many of these costs. However, with respect to the trial court's order that Shao pay Wang $1,718.22 for medical and dental expenses he had already paid for the period of May through December 2008, we held that the trial court erred because it relied on Wang's declaration and a conclusory spreadsheet rather than any documentary evidence. We considered "it both appropriate and fair to have the court redetermine Shao's share of the cost of past unreimbursed expenses based on the same sort of evidence that the court required Wang to provide Shao as prerequisite to reimbursement for future unreimbursed expenses."

Similarly, regarding son's extracurricular activities, we also concluded that "there was no documentary evidence to substantiate the expenses or their payment," and they "should be redetermined based on documentary evidence." (*In re Marriage of Shao and Wang*, *supra*, H035194.) Finally, with respect to the trial court's order that Shao pay Wang a portion of daughter's daycare tuition, we remanded the matter for a

redetermination by the trial court of the total cost of the tuition paid by Wang.

B. *Trial Court Proceedings and March 2014 Order*

During the pendency of the first appeal, the parties continued to litigate matters in the trial court. In June 2011, during a hearing related to pending discovery motions, Shao served papers seeking to disqualify the trial judge on various grounds including that the judge had a friendly relationship with her prior counsel (against whom she had a pending malpractice action) through a "club" that involved "many judges of this county and attorneys" to "promote justice and improve [the] judicial system." The trial court suspended proceedings in response to Shao's motion for disqualification. On August 30, 2011, a neutral judge selected by the Judicial Council denied Shao's request for disqualification of the trial judge.

Several months after the remittitur from our 2012 opinion issued, Wang's attorney filed a case management conference questionnaire regarding a "[r]emitter [*sic*] [h]earing [d]ate" and a "[d]iscovery [o]rder." At the case management conference, SHAO appeared representing herself; Wang's counsel also appeared. Wang's counsel requested a hearing

date to address the remittitur and pending motions to compel discovery against Shao.

Shao raised a pending motion relating to her challenge to the custody evaluator. The trial court calendared a case management conference to address Shao's motion as well as to set a hearing on the remittitur.

For reasons that are unclear from the record, no further action related to the remittitur appears to have occurred for some time. On September 11, 2013, during a case resolution conference, the trial court conducted a "special hearing" on the matters remanded to the trial court by our 2012 opinion. The record on appeal does not contain a reporter's transcript of this hearing. At Shao's request, the hearing was continued to December 16, 2013.

Prior to the December hearing, the parties submitted various papers. On October 31, 2013, Wang filed a declaration titled "Declaration of Tsan-Kuen Wang Re:Specification of Documents for the Remittitur." (Some capitalization omitted.) His declaration attached receipts and supporting documentation related to the children's

expenses.

On November 25, 2013, Shao filed a document titled "Objection to Evidence Contained in Declaration of Tsan-Kuen Wang re Specifications Filed on 11/6/2013;Opposition to Respondent's Requsts [*sic*] on Fee Reimbursement." Thereafter, on December 11, 2013, Shao filed a "Petitioner's Supplemental Request on Remittitur" (capitalization omitted) in which she made several requests, including that the hearing be calendared for half a day.

On December 16, 2013, the trial court conducted a hearing and addressed a variety of pending issues between the parties, including the remittitur. Shao appeared at the hearing and represented herself. In terms of the remittitur, Shao objected that many of the attachments to the Wang declaration were "illegible." She acknowledged that she hadnot asked Wang's counsel for clearer copies. She also sought a continuance based on payments she asserted she had made for their son's private tutor, although she did not provide opposing counsel with documentation of the payments. The trial court denied Shao's motion

to continue the hearing and ordered the matter submitted. Following the hearing, although the trial court had not granted either party leave to file any additional papers, Shao filed a declaration stating, among other claims, that certain pages attached to Wang's declaration were illegible. On March 14, 2014, the trial court filed a written decision (March 2014 order).[2] On May 3, 2018, this court denied Shao's motion to reconsider without prejudice to filing a motion to augment the record pursuant to California Rules of Court, rule 8.155(a)(2).

The trial court ordered Shao to pay Wang $710.15 for unreimbursed medical expenses related to the children, $3,125 for daughter's daycare tuition, and $1,129.92 for son's extracurricular activities.

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[2] The clerk's transcript for this appeal does not contain the March 2014 order. On our own motion, we order the record augmented with a copy of this order, which was attached to the civil case information statement Shao filed in this court. (See Cal. Rules of Court, rule 8.155(a)(1)(A).)

Shao timely appealed the trial court's March 2014 order.

C. *Procedural History of this Appeal*

Before turning to the merits, we address procedural matters that occurred subsequent to Shao's filing of her notice of appeal, as she claims this court committed errors in the processing of this appeal. In 2016, this court dismissed but later reinstated
Shao's appeal. At her request, this court also granted Shao's request for relief from default based on issues related to the preparation of the record. Ultimately, the record was not filed until 2017.
This court granted Shao multiple extensions of time to file her opening brief. On April 20, 2018, this court denied a further request by Shao for an extension of time. Shao filed a motion to reconsider our denial.

On May 8, 2018, Shao filed a "Motion to Augment the records pursuant to Rule 8.155(b)(2)." Although she sought to augment the record with three trial court documents, Shao did not attach any documents to her motion. On May 11, 2018, we

issued an order denying her request to augment.

In addition, on June 6, 2018, Shao filed a "Motion for Judicial Notice In Support of Appellant's Opening Brief," (some capitalization omitted) which we deferred for further consideration with this opinion and which we discuss further below. Father has not filed any brief in opposition or made any appearance in this appeal.

II. DISCUSSION

Shao asks us to reverse the trial court's March 2014 order that addressed the issues remanded to the trial court by our 2012 opinion and subsequent remittitur. As described above, in the 2012 appeal we reversed one of the trial court's post-judgment orders and ordered the trial court to "redetermine the amount that Wang owes Shao as additional bonus support and the amounts Shao owes Wang for her share of the children's unreimbursed medical and dental expenses, [daughter's] tuition at [daughter's school], and [son's] extracurricular activities." (*In re Marriage of Shao and Wang*, *supra*, H035194.) Following this directive, the trial court's 2014

order required Shao to reimburse Wang for her share of certain child-related expenses he incurred during 2008 and 2009.[3]

We first address Shao's claim that the March 2014 order lacks evidentiary support and violates our 2012 opinion.[4] We then

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[3] Shao does not appeal the trial court's order addressing the amount Wang owed Shao with respect to Wang's bonus.

[4] The March 2014 order also addressed two outstanding discovery motions filed by Wang against Shao that had been pending since 2010 but which are not relevant to the instant appeal. Shao's notice of appeal states that while the trial court "properly denied Respondent's two discovery motions," it "failed to issue monetary sanctions against Respondent for the attorneys fees and costs expended by Petitioner." Her notice of appeal also claims the trial court "has not released the $10,000 undertaking" she posted in January 2010 related to another one of her appeals (H035194). However, her brief does not address these issues of sanctions or the alleged undertaking, and Shao has thereby

examine Shao's claims of judicial bias and due process violations.

A. *Trial Court's Determination of Reimbursement*

An order of the trial court is presumed to be correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*).) " 'All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' " (*Ibid.*; see Cal. Const. art. VI, § 13.) An appellant has the burden of establishing that the lower court erred or abused its discretion. (*Denham*, *supra*, at pp. 564, 566.) An appellant must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Cal. Rules of Court, rule 8.204(a)(1)(C).) " 'The appellate court is not required to search the record on its

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waived any claimed error by the trial court as to them. (See, e.g., *Ellenberger v. Espinosa* (1994) 30 Cal.App.4th 943, 948.)

own seeking error.' Thus, '[i]f a party fails to support an argument with the necessary citations to the record, . . . the argument [will be] deemed to have been waived.' " (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 (*Nwosu*), citations omitted.) Further, "the party asserting trial court error may not . . . rest on the bare assertion of error but must present argument and
legal authority on each point raised." (*Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645, 649 (*Boyle*).)
Shao argues that the trial court failed to comply with the directives in our 2012 opinion related to her obligations to reimburse Wang for certain child-related expenses.

We review de novo whether the trial court correctly interpreted the directions contained in our remittitur. (*Ayyad v. Sprint Spectrum, L.P.* (2012) 210 Cal.App.4th 851, 859.)

Shao contends mainly that the trial court erred because it refused to conduct an evidentiary hearing, and she was unable to cross-examine Wang. However, no such mandate appears in our 2012 opinion. As discussed above, our 2012 opinion remanded

the case to the trial court for a determination of Wang's expenses based on documentary evidence. That is what the trial court did. Indeed, it rejected certain expenses alleged by Wang that it found "Wang failed to properly document" relating to the children's medical and dental insurance premiums. We further note that, prior to the hearing on the remittitur, Shao had a meaningful opportunity to respond to Wang's declaration and the documents attached to his declaration, and she filed several papers including objections and a "supplemental" request, which the trial court considered.

In terms of the amount of expenses ordered by the trial court, we review this amount for abuse of discretion. (See *In re Marriage of Furie* (2017) 16 Cal.App.5th 816, 825.) Shao does not meaningfully attack the particular determinations of the trial court regarding the expenses at issue or point to any portion of the record that would support her contention that the trial court's finding lacked evidentiary support. It is not "appropriate for us to comb the record" on her behalf. (*In re Marriage of Fink* (1979) 25 Cal.3d 877, 887–888.) Shao, who

is an attorney, has chosen to represent herself; a self-represented litigant must comply with the rules of appellate procedure, including by providing adequate citations to the record. (*Nwosu*, *supra*, 122 Cal.App.4th at pp. 1246–1247.)

Shao argues generally that the order "disregarded the fact that the child support was well below the child support guideline" but does not cite to the record or any authority for this contention. Her argument also ignores the trial court's findings that this argument was "not relevant to the matters set for hearing on December 16, 2013" and it "misstates the record, as the court has not issued a below guideline child support order in this action." In short, Shao has failed to carry her burden of establishing " 'a clear case' " of abuse of discretion. (*Denham*, *supra*, 2 Cal.3d at p. 566.) We find no error in the trial court's order.

B. *Due Process and Judicial Bias by the Trial Court*

Shao argues that her due process rights were violated because the trial court had a conflict of interest and was generally biased against her. We review de novo her claims related to the

trial judge's impartiality. (See *Haworth v. Superior Court* (2010) 50 Cal.4th 372, 385–386.)

It is axiomatic that adverse rulings on the part of a judge do not demonstrate his or her partiality or bias. (*Dietrich v. Litton Industries, Inc.* (1970) 12 Cal.App.3d 704, 719.) "[A] judge's 'rulings against a party—even when erroneous—do not establish a charge of judicial bias, especially when they are subject to review.' " (*People v. Armstrong* (2019) 6 Cal.5th 735, 798.) Moreover, "the due process clause should not be routinely invoked as a ground for judicial disqualification. Rather, it is the exceptional case presenting extreme facts where a due process violation will be found." (*People v. Freeman* (2010) 47 Cal.4th 993, 1005.) "Potential bias and prejudice must clearly be established by an objective standard." (*People v. Chatman* (2006) 38 Cal.4th 344, 363.)

Shao does not cite any legal authority supporting the proposition that the trial court violated her due process rights. By failing to present argument grounded in any legal authority, Shao has waived any due process

challenge. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) Shao also does not cite any record evidence that supports her assertions of improper conduct by the trial court. (Cal. Rules of Court, rule 8.204(a)(1)(C).) Nor does Shao address evidence in the record that undermines her argument. As noted above, she had previously sought to disqualify the trial court based on similar grounds, and a neutral judge selected by the Judicial Council denied her request for disqualification. Moreover, we have reviewed the entire record, including the reporter's transcripts from the December 16, 2013 hearing during which substantive issues relating to the remittitur were addressed and conclude they do not support her attacks on the trial court's fairness and impartiality. There is no evidence the trial court had any association that would create an apparent or actual bias in this proceeding, and the record reflects that the trial court acted appropriately and with patience toward the parties.

For similar reasons, we reject Shao's request to change the venue of this matter from the Santa Clara County Superior Court. Shao has not

cited any relevant authority for this request, and we therefore do not consider it further. (*Dabney v. Dabney* (2002) 104 Cal.App.4th 379, 384.)

We conclude Shao has not met her burden of demonstrating judicial misconduct or bias by the trial court that warrants reversal of its order or a change of venue.

C. Due Process in this Appeal

Shao contends that this court violated her due process rights and engaged in misconduct by "knowingly refus[ing] to allow material records on appeal to be given to Appellant, denying Appellant's motion to require the trial court to supplement records on appeal, and further denying augumenting [*sic*] the records on appeal, trying to dismiss this appeal at least twice with false notices, in conspiracy with the lower court."

We find no merit to her claims that she has been denied a full and fair opportunity to litigate her appeal. Shao's appeal, although initially dismissed, was reinstated, and this court provided Shao multiple extensions to complete her opening brief. With respect to Shao's request to augment the record, she

alleges there are three "essential" trial court records that were improperly excluded from the record, namely a notice of a case management conference from 2012 and her own "[o]bjection" and "[o]pposition" to the Wang declaration filed prior to the hearing on the remittitur.

The proper route for a civil litigant, where the record is incomplete, is to bring a motion to augment the record and attach the documents to the motion. (Cal. Rules of Court, rule 8.155(a)(2)).[5] Instead, as noted above, Shao

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[5] Rule 8.155(a) of the California Rules of Court states, "(1) At any time, on motion of a party or its own motion, the reviewing court may order the record augmented to include: [¶] (A) Any document filed or lodged in the case in superior court; or [¶] (B) A certified transcript—or agreed or settled statement—of oral proceedings not designated under rule 8.130. Unless the court orders otherwise, the appellant is responsible for the cost of any additional transcript the court may order under this subdivision. [¶] (2) A party must attach to its motion a copy, if available, of any document or transcript that it wants added to the record. The pages of the attachments must be

filed initially a motion "to [a]ugment the records pursuant to Rule 8.155(b)(2)." California Rules of Court, rule 8.155(b)(2) deals with "omissions" from a record previously designated, and it does not provide a basis for a motion to augment.[6] There is no indication

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consecutively numbered, beginning with the number one. If the reviewing court grants the motion it may augment the record with the copy. [¶] (3) If the party cannot attach a copy of the matter to be added, the party must identify it as required under rules 8.122 and 8.130." (Cal. Rules of Court, rule 8.155(a)(1)(A) & (B), (2) & (3).)

[6] Rule 8.155(b) provides, "(1) If a clerk or reporter omits a required or designated portion of the record, a party may serve and file a notice in superior court specifying the omitted portion and requesting that it be prepared, certified, and sent to the reviewing court. The party must serve a copy of the notice on the reviewing court. [¶] (2) The clerk or reporter must comply with a notice under (1) within 10 days after it is filed. If the clerk or reporter fails to comply, the party may serve and file a motion to augment under (a), attaching a copy

that Shao ever served a letter of omission on the trial court, as required under rule 8.155(b)(1). Moreover, her subsequent motion to augment did not attach any available documents as required for a motion to augment by rule 8.155(a)(2). Even assuming for the sake of argument that Shao complied with all the procedural rules for her appeal, Shao cites no authority for the proposition that her due process rights were violated by this court's denial of her motion to augment the record. (See *Boyle*, *supra*, 137 Cal.App.4th at p. 649.) Shao also alleges this court has a conflict of interest, is biased, and is involved in an overall "conspiracy" with the trial court. Shao relies on materials included in her "Motion for Judicial Notice In Support of Appellant's Opening Brief," (some capitalization omitted) which she filed after her notice of appeal. This document contains motions and other materials, such as a declaration from an "expert witness," that Shao submitted in support of some of her prior appeals.

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of the notice." (Cal. Rules of Court, rule 8.155(b)(1) & (2).)

With respect to Shao's motion for judicial notice, the California Evidence Code provides that "[t]he reviewing court shall take judicial notice of (1) each matter properly noticed by the trial court; and (2) each matter that the trial court was required to notice under Section 451 or 453." (Evid. Code, § 459, subd. (a).) The appellate court has discretion to take judicial notice of matter specified in Evidence Code section 452.[7] (Evid. Code, § 459, subd. (a).)

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[7] "Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451: [¶] (a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state. [¶] (b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States. [¶] (c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States. [¶] (d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United

Shao's request for judicial notice appears to be based mainly on Evidence Code section 452, subdivision (d), which grants the court discretion to take judicial notice of court records. The California Rules of Court provide "To obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a separate motion," which must state why the matter is relevant to the appeal, whether it was presented to the trial court, whether the trial court took judicial notice of

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States. [¶] (e) Rules of court of (1) any court of this state or (2) any court of record of the United States or of any state of the United States. [¶] (f) The law of an organization of nations and of foreign nations and public entities in foreign nations. [¶] (g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute. [¶] (h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code, § 452.)

the matter, and, if not, why the matter is subject to judicial notice. (Cal. Rules of Court, rule 8.252(a)(1) & (2)(A–C.)

The materials attached to Shao's request consist of arguments and conclusory statements she has previously raised in other appeals. Shao has not shown any reason for her failure to include these documents in the designated record, and they are not "of substantial consequence" to the determination of this appeal. (Evid. Code, § 459, subd. (c); see also Evid. Code, §§ 452, 453.) We therefore decline to take judicial notice of these documents.

After a careful review of the record and arguments made by Shao, we find no violation by this court of Shao's due process rights.

III. DISPOSITION

The order is affirmed.

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DANNER, J.

WE CONCUR:_____

MIHARA, ACTING P.J._____

DUFFY, J.*