

SUPREME COURT  
FILED

Court of Appeal, Fourth Appellate District, Division Three - No. G059762 AUG - 9 2023

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Jorge Navarrete Clerk

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**IN THE SUPREME COURT OF CALIFORNIA**

Deputy

**En Banc**

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In re the Marriage of RYAL W. and ALICIA MARIE RICHARDS.

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RYAL W. RICHARDS, Respondent,

v.

ALICIA MARIE RICHARDS, Appellant.

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The petition for review is denied.

**GUERRERO**

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*Chief Justice*

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of RYAL W. and ALICIA  
MARIE RICHARDS.

RYAL W. RICHARDS,

Respondent,

v.

ALICIA MARIE RICHARDS,

Appellant.

G059762

(Super. Ct. No. 15D009634)

OPINION

Appeal from a postjudgment order of the Superior Court of Orange County, Andre De La Cruz, Judge. Affirmed. Appellant's and respondent's requests for judicial notice are granted.

Alicia Marie Richards, in pro. per., for Appellant.

Law Offices of Kevin E. Robinson and Kevin E. Robinson for Respondent.

“This court is unaware of anyone more befitting being deemed a vexatious litigant than Mrs. Alicia [Marie] Richards. Her rampage of litigation conduct has been an unwavering, flagrant abuse of the system with her filing after filing having a shred or no reasonable probability of success, lack[ing] reasonable or probable cause or excuse, and are clearly meant to abuse the process and to harass the party.” Based on this conclusion, and other findings, the trial court determined Alicia’s<sup>1</sup> “actions and conduct approach being found a vexatious litigant pursuant to [Code of Civil Procedure section 391, subdivision] (b)(2),” however, “it [was] more appropriate . . . to deem [her] a vexatious litigant pursuant to subdivision (b)(3).”<sup>2</sup>

In addition, the trial court determined that pursuant to section 391.1, Alicia must provide security prior to filing any new documents. Pursuant to section 391.7, Alicia must also obtain a prefiling order from the presiding judge before filing any new documents. Finally, the court barred any additional claims filed by third parties (Alicia’s family members) in this marital dissolution case. Alicia raises multiple issues challenging the court’s orders. We conclude her contentions lack merit, and we affirm the orders.

## FACTS

Over the past four years, we have considered numerous appeals concerning Alicia’s highly acrimonious dissolution action. Alicia unsuccessfully tried to vacate the dissolution judgment ordering the sale of a family residence. (*In re Marriage of Richards* (Jan. 9, 2020, G055927) [nonpub. opn.] (*Richards I*) [affirming order denying motion to set aside stipulated judgment].) She filed multiple unsuccessful appeals in connection with ex-husband Ryal Richards’s efforts to enforce the dissolution judgment. (*In re*

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<sup>1</sup> We will refer to the parties by their first names to avoid confusion.

<sup>2</sup> All further statutory references are to Code of Civil Procedure, unless otherwise indicated.

*Marriage of Richards* (Jan. 9, 2020, G056626) [nonpub. opn.] (*Richards II*) [regarding postjudgment orders]; *In re Marriage of Richards* (May 18, 2020, G056921) [nonpub. opn.] (*Richards III*) [postjudgment orders]; *In re Marriage of Richards* (Oct. 6, 2020, G057803) [nonpub. opn.] (*Richards IV*) [affirmed 2018 orders denying motions to quash/vacate Ryal's writ of possession].) Alicia's litigation tactics have stalled the sale of the family residence for several years.

For the sake of efficiency, we incorporate by reference our factual summary of the underlying 2017 dissolution case outlined in *Richards I, supra*, G055927. Since this court filed the opinion in *Richards I*, Alicia has gone to great lengths to relitigate the validity of the dissolution judgment, as well as the legitimacy of our opinion refusing to vacate the judgment. In addition to filing a petition for rehearing in this court, and a petition for review in the Supreme Court, Alicia filed a motion asking this court to recall the remittitur, reinstate the appeal, and then dismiss the appeal. She asserted this court did not have jurisdiction to consider the appeal. Indeed, the trial court's, and this court's, purported lack of jurisdiction is a common theme in all of Alicia's briefs. In every appeal since *Richards I*, Alicia has asked us to reconsider whether the dissolution judgment was void and, therefore, hold the court lacked jurisdiction to issue any postjudgment orders.

We mention this history because it speaks volumes that Alicia, facing the high hurdle of persuading this court the vexatious litigant decree should be reversed, devoted the introduction (13 pages) her opening brief to the worn-out issue of whether the 2017 dissolution judgment was void due to lack of jurisdiction. Alicia's factual allegations and complaints on this subject have been addressed in prior opinions and will not be repeated here.

Turning to the facts underlying the vexatious litigant ruling, on January 9, 2020, Ryal filed a request to declare Alicia a vexatious litigant under section 391, and that she be prohibited from filing any new litigation without prior approval pursuant to section 391.7. The matter was scheduled to be heard on February 21, 2020. Our record

reflects Alicia did not file opposition to Ryal's requests. Instead, she spent her time delaying the hearing by seeking continuances for a variety of reasons and by filing multiple frivolous petitions to remove the case to federal court. Alicia successfully managed to postpone the hearing until October 23, 2020.

A few days before the October 2020 hearing, Alicia filed a petition to remove the entire case to the United States District Court for the Central District of California (District Court). On October 22, 2020, the District Court sua sponte denied the removal petition and remanded the matter to the trial court. The order stated the matter was remanded for lack of subject matter jurisdiction.

The following morning, on October 23, 2020, Alicia filed another petition for removal with the same District Court.<sup>3</sup> Later that same day, at 1:30 p.m., the trial court held the vexatious litigant hearing. Alicia did not appear in the courtroom. She informed the court clerk she could not attend due to "exposure" to the coronavirus disease 2019 (COVID-19). She did not mention that she had filed a second removal petition with the District Court earlier that morning. The court granted Ryal's counsel's request to continue the hearing to give Alicia additional time to appear.

The court resumed the hearing approximately 20 minutes later (at 2:32 p.m.). It recalled Alicia had continued the matter nine times, and on three or four of those occasions she had postponed the hearing based on the claim she had been exposed to COVID-19.

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<sup>3</sup> The record shows that at 11:09 a.m., Alicia filed in the Orange County Superior Court a document titled, "notice of removal of family law case to District Court filed October 23, 2020." (Some capitalization omitted.) The certificate of service stated Alicia mailed the document to the court and Ryal on October 23, 2020. In the notice, Alicia wrote the case's removal to the District Court took "jurisdiction away from" the trial court. She attached a copy of her removal petition. On October 29, 2020, the District Court, sua sponte, remanded the matter to the Orange County Superior Court after concluding it lacked subject matter jurisdiction.

The trial court chronicled the history of its efforts to accommodate Alicia's many nonappearance excuses. The court recalled that at first it attempted to conduct the hearing using a video conference platform; however, Alicia claimed she was unable to participate because of technical problems. Next, the court arranged to hold the hearing in person, which required additional safety precautions due to the COVID-19 pandemic. However, at every subsequent hearing date, Alicia had given the excuse she could not appear due to COVID-19 exposure.

The trial court concluded: "So the court is very clear, the court does not find [Alicia] to be credible at all with her contention regarding exposure to [COVID-19]. [¶] In fact, as a result of her prior three or four attempts for the same reasons, the court has ordered her to bring in documentation to support her diagnosis of either having been infected . . . or a test that would indicate that she was tested for COVID-19 exposure. To date, nothing has been shown to the court. [¶] In light of our constant troubles with getting [Alicia] in the courtroom today, the court is inclined to proceed in her absence."

Ryal's counsel reminded the court that at the last hearing, it ordered Alicia to personally appear at the October 23, 2020, hearing, and warned her that a bench warrant would be issued for failure to appear. The court confirmed this statement was accurate.

The court stated that in addition to the vexatious litigant matter, it would also consider a claim made by the parties' son, Jonathan Richards's, regarding the same property litigated in his parent's dissolution action. It noted Alicia was making this claim on behalf of her adult son and used a standardized form typically applicable only in unlawful detainer proceedings. It concluded, "This activity serves to highlight yet another of [Alicia's] desperate and meritless attempts to defy the court's order that she leave the premises and prepare it for sale so that these parties can move on with their separate lives."

After explaining why Jonathan's third party claim lacked merit, the court commented it was "not amused by the constant subterfuge, tricks[,] and maneuvering of [Alicia] in her insistence that she remain in the family residence years after a judge ordered her to sell the home. [¶] Moreover, not only is it appalling enough that a self-represented litigant has mocked the judicial process, it now appears that [she] is getting third parties to be complicit in her contempt for the court process."

Because the trial court suspected Alicia would continue to involve other family members to postpone sale of the property, it decided to issue an order barring all third party claims on the family residence. It stated, "It has long been past the time that [Alicia] needs to be removed from her property, by force if necessary, since it appears that after years of litigation nothing will convince her to leave peacefully."

Turning to Ryal's vexatious litigant request, the trial court noted Alicia was given an opportunity to be heard and was ordered to attend the hearing but failed to appear. The court expressed regret in having to consider for the first time a vexatious litigant request. It stated, "This court prides itself in dispensing justice in an even-handed and fair manner. [¶] The instant case is truly an extraordinary case that has resulted in filing levels that are completely unprecedented, unwarranted, and only serve to cause delay and confusion. Among the thousands of cases in this court's inventory of cases, this case sticks out as needing a substantial amount of the court's time to untangle the mess of filings attributable to [Alicia.]"

The trial court stated that after the parties entered the stipulated judgment, Alicia was responsible for over 100 separate docket entries. It stated, "Many of her filings span dozens upon dozens of pages that are largely copy and paste jobs, repetitive, unintelligible, and otherwise a complete waste of the court's time in having to review and analyze these filings in search for any plausible legal argument that [Alicia] raises."

The court also discussed Alicia's decisions to file an unmeritorious separate civil action against Ryal and a bankruptcy proceeding to prevent the dissolution case from progressing. It counted 10 appeals to the appellate court and multiple unsuccessful efforts to remove the case to the District Court.

With respect to Alicia's recent attempts to remove the case to federal court, the trial court explained its clerk contacted the District Court to determine the status of the removal petition. It stated, "As of this morning, or earlier yesterday, the court staff has been advised by Judge James Selna's court staff that the remand is not affected by [Alicia's] latest parade of delay tactics."

The court repeated Alicia had a history of making excuses and not appearing every time it attempted to hold a hearing on the vexatious litigant request. The court recalled it advised Alicia multiple times that she cannot control the court's calendar. It had repeatedly warned Alicia that if she did not stop her practice of filing "superfluous and unwarranted" filings, the court would have no choice but to declare her a vexatious litigant. Alicia ignored these warnings. The court concluded, "All of these games will no longer be tolerated by this court," and it declared Alicia a vexatious litigant pursuant to section 391, subdivision (b)(3) (section 391(b)(3)). The court declared, "In this particular case, the record is rife with examples of vexatious conduct; unmeritorious filings, unmeritorious appeals, unmeritorious appeals after the appeal, unmeritorious filings with the federal courts and on and on and on."

After deeming Alicia a vexatious litigant, the court ordered that she must obtain consent and provide security for any further actions or filings. It ordered the Orange County Sheriff's office to proceed with the writ of execution within 96 hours. "Any and all future court filings will need to be expressly authorized by the presiding judge of the Orange County Superior Court and, if authorized, a security payment shall be made of \$4,000 per filing pursuant to section 391[, subdivision (d)]. [¶] Filings made

by [Alicia] prior to the motion to deem her a vexatious litigant will still be entertained by this court . . . .”

## DISCUSSION

Alicia challenges the vexatious litigant order on the following grounds: (1) the order is void because the trial court lacked jurisdiction; (2) the vexatious litigant statute applies to plaintiffs, not defendants; and (3) there was insufficient evidence to support the court’s application of sections 391.1 or 391(b)(3). We address these contentions separately, concluding each lacks merit.

### I. *Alicia’s Jurisdiction Challenges Lack Merit*

Alicia maintains the trial court abused its discretion by proceeding with the vexatious litigant hearing because it lacked jurisdiction over the case and the parties. She explains the trial court lost jurisdiction when she removed her case to the District Court on a federal question of whether she “was denied due process and equal protection to the family law code statutes.” Alicia demands we set aside the vexatious litigant and pre-filing orders filed on October 23, 2020, the same morning she filed her second petition for removal in the District Court. We decline her request.

This court considered and rejected a similar request in *ClipperJet Inc. v. Tyson* (2019) 38 Cal.App.5th 521, 528 (*ClipperJet*). We applied a narrow exception to the general rule a state court loses jurisdiction of a case as soon as a petition for removal is filed and served on the state court. (*Id.* at p. 526.) In that case, after a defendant’s first attempt to remove the case to federal court failed, his codefendant filed a second notice of removal that was essentially identical to the first petition. (*Id.* at pp. 522, 529.) Codefendant filed the second petition despite the federal court’s order summarily remanding the case to the superior court, which explained there was no basis for removal. (*Id.* at pp. 524-525.)

Despite notice of the second removal petition, the trial court held a hearing and denied defendant’s untimely motion to strike. (*ClipperJet, supra*, 38 Cal.App.5th at

p. 525.) A few weeks later, the federal court summarily remanded the case on the same grounds as it denied defendant's first petition for removal. (*Ibid.*) This court determined the trial court had jurisdiction to rule on the motion to strike because the second removal notice was frivolous and duplicative. (*Id.* at p. 529.) After examining the statutory history of the removal statute, this court followed existing case authority recognizing "a narrow exception providing that a state court retains jurisdiction where the removal notice is frivolous or duplicative. [Citations.]" (*Id.* at pp. 527-528.)

In *ClipperJet*, this court stated the following: "We infer the court made an implied finding that defendant and codefendant . . . were acting in concert to delay the proceeding, and that [the second] notice of removal should not be given effect. As expected, the federal court once again summarily remanded the case. [¶] 'We do not believe Congress intended to allow a defendant to repeatedly file notices of removal and endlessly delay state court proceedings.' [Citation.] Under the specific circumstances of this case, we conclude the second removal was both frivolous and duplicative, and for that reason the court retained jurisdiction to rule on defendant's untimely motion to strike. We decline defendant's implicit invitation to condone his attempt to game the system and to trifle with the court. We are confident Congress did not intend to allow this conduct." (*ClipperJet, supra*, 38 Cal.App.5th at p. 529.)

Similarly, in this case, Alicia made two frivolous attempts to remove the case to the District Court. She believed these petitions would permit her to dodge the vexatious litigant trial court proceedings. The District Court summarily denied Alicia's first petition for removal on the grounds she lacked subject matter jurisdiction. The District Court's order was filed on October 22, 2020, the day before the scheduled trial court hearing. Undeterred by the District Court's order, Alicia filed a

second—substantively identical—removal notice. The District Court again summarily denied Alicia’s petition on the ground she lacked subject matter jurisdiction.<sup>4</sup>

As stated in the *ClipperJet* case, this court will not condone a party’s clear attempt to game the system and trifle with the court. Congress did not intend for parties to repeatedly file notices of removal for the purpose of delaying state court proceedings. We conclude the trial court retained jurisdiction to rule on the vexatious litigant motion.

## II. *Alicia’s Procedural Challenges Lack Merit*

Alicia asserts the trial court improperly ruled on the vexatious litigant motion and issued the prefiling order because she was not present for the hearing. She acknowledges she received notice of the hearing, but maintains she was justified in skipping it because she thought the court lacked jurisdiction and she was exposed to COVID-19. Alicia was wrong on the first point (see above ruling), and we have no reason to question the court’s determination Alicia’s “exposure” excuse was not credible. The court reasonably rejected this excuse because it had been used repeatedly in the past and was never verified by a neutral third party (e.g., a doctor’s note confirming actual

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<sup>4</sup> In her reply brief, Alicia asserts the removal petitions were not based on the same grounds. Apparently, she did not expect us to independently review the petitions. Both petitions suffer from the same subject matter jurisdiction problem, as reflected in the identical orders summarily remanding the case back to the trial court. Alicia did not remedy this defect before filing her second removal petition. Indeed, closer examination of the documents reveals that Alicia changed only the introductory paragraphs but both petitions have identical wording under the heading “grounds for removal and subject matter jurisdiction.” (Capitalization and boldface omitted.) It appears Alicia cut and pasted the same legal discussion of cases and statutory authority from her first removal petition to her second one.

We note the Ninth Circuit issued identical orders in response to Alicia’s appeals from the District Court’s orders. “A review of the record suggests that this appeal may be frivolous.”

testing and results). Given the history of continuances, Alicia should have supported her nonappearance with supporting documentation before the hearing.<sup>5</sup>

### III. *Vexatious Litigant Statutes*

The rest of Alicia’s claims relate to the vexatious litigant statutes. Before addressing these contentions, a review of the statutory scheme is helpful.

As described in *In re Marriage of Deal* (2020) 45 Cal.App.5th 613, 618 (*Deal*), “[A] “[v]exatious litigant” is one who, proceeding in propria persona, ‘repeatedly relitigates or attempts to relitigate’ matters already finally determined against them or ‘repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to

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<sup>5</sup> In her reply brief, Alicia maintains the trial court unfairly declared her a vexatious litigant while she was home sick with COVID-19. This assertion misstates the record. When the hearing started at 1:30 p.m., the court clerk contacted Alicia, who said she had been *exposed* to COVID-19. Alicia’s new assertion she was actually infected is based on a document not considered by the court. She relies on a letter, electronically signed by a doctor at 3:32 p.m. on October 23, 2023. The letter states, “As per our conversation, please follow the [Centers for Disease Control and Prevention (CDC)’s] isolation guidelines,” and it includes a summary of CDC recommendations. However, the doctor does not indicate whether the document was generated after Alicia self-reported a purported positive home test, or the doctor determined Alicia was infected with COVID-19. The doctor’s letter is one of two exhibits attached to Alicia’s January 4, 2021, notice designating the record on appeal, which was incorporated into the clerk’s transcript.

The second exhibit supports the conclusion the trial court was unaware of Alicia’s infection status. This exhibit contains a copy of an e-mail Alicia purportedly sent to Ryal and the court at 11:25 a.m. the day of the hearing. In addition to asserting the court lacked jurisdiction following her removal petition, Alicia stated she planned to attend the hearing to personally deliver a copy of the notice of removal. She added that she “may be infected” with COVID-19. Nevertheless, she stated, “I will be there though if you insist because I will not waive any of my rights.”

There is no indication the trial court read either of these exhibits before ruling on Ryal’s motion. Moreover, these exhibits do not prove the court ruled on the vexatious litigant motion while knowing Alicia was home sick with COVID-19. The reporter’s transcript reflects the court ruled on the motion at 2:32 p.m., one hour before the doctor signed the letter regarding the CDC guidelines.

cause unnecessary delay’ . . . . [Citation.] “‘Litigation’” for purposes of section 391 means ‘any civil action or proceeding, commenced, maintained or pending in any state or federal court.’ [Citation.] A vexatious litigant may be prohibited from filing new litigation unless he or she obtains leave to do so from the presiding justice or judge of the court where he or she intends to file. [Citations.] This prefiling requirement ‘does not deny the vexatious litigant access to the courts, but operates solely to preclude the initiation of meritless lawsuits and their attendant expenditures of time and costs.’ [Citation.]’

A. *Alicia’s Argument Defendants Cannot Be Vexatious Litigants Lacks Merit*

“‘The vexatious litigant statute (§ 391 et seq.) was enacted “‘to curb misuse of the court system’” by “‘persistent and obsessive’ litigants.” [Citation.]’ [Citation.]” (*Deal, supra*, 45 Cal.App.5th at p. 618.) For this reason, it is easy to resolve Alicia’s first contention she is technically a defendant in the lawsuit, and a nonplaintiff that cannot be deemed a vexatious litigant. She maintains that because Ryal initiated the dissolution proceedings, he is the only plaintiff and/or petitioner in these proceedings. She is wrong.

This same issue was addressed in the *Deal* opinion, a case where the husband was declared a vexatious litigant in a marital dissolution action initiated by the ex-wife. (*Deal, supra*, 45 Cal.App.5th at pp. 620-621.) The *Deal* court rejected the husband’s argument a nonplaintiff cannot be designated a vexatious litigant. (*Id.* at p. 621.) Following well-established rules of statutory interpretation, the court examined the plain meaning of section 391, concluding the language was clear and unambiguous, supporting the “‘“manifest purposes of the legislation as a whole””” (*Deal, supra*, 45 Cal.App.5th at p. 620.)

The court in *Deal* reasoned: “‘Section 391 defines “vexatious litigant” as “a person,” not a plaintiff, whose litigation history contains particular behaviors (e.g., repeated attempts to relitigate [citation] . . . . [¶] . . . Section 391[(b)(3)] applies to any litigant—plaintiff or defendant—who, “acting in propria persona, repeatedly files

unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.” [Citation.] Applying section 391[(b)(3)] to both plaintiffs and defendants advances the purpose of the statute—curbing abuse of the judicial system. Likewise, applying section 391, subdivision (b)(2) to any litigant, whether plaintiff or defendant, who repeatedly litigates prior determinations is consistent with the statutory purpose.’ [Citation.]” (*Deal, supra*, 45 Cal.App.5th at p. 620.)

The court in *Deal* concluded section 391, subdivision (b)(2) and (3), on their face, “apply to any person—whether a plaintiff, defendant, petitioner, respondent[,], or appellant—based on the nature of his or her conduct during litigation rather than his or her party designation. [Citations.]” (*Deal, supra*, 45 Cal.App.5th at pp. 620-621.) The court distinguished and disapproved of the appellant’s case authority. (*Id.* at p. 621.) For these same reasons, we reject Alicia’s contention her technical status in the dissolution action as a defendant immunized her from being designated a vexatious litigant.

*B. Alicia’s Substantive Challenge Lacks Merit*

Alicia argues the trial court’s vexatious litigant order was not supported by substantial evidence. She asserts she does not qualify under section 391, subdivision (b)(1), of the statute because she has been “defending herself” against a plaintiff who has “refused to stop his unlawful acts.” However, the court did not apply this subdivision of the statute when making its ruling. Section 391, subdivision (b)(1), requires evidence a party commenced, prosecuted, or maintained at least five litigations. The court recognized this provision was inapplicable.

Alicia also asserts she does not qualify as a vexatious litigant under section 391, subdivision (b)(2), because the litigation has not been “finally determined” against her. The trial court did not apply this subdivision of section 391, although there was evidence to support it. As mentioned earlier in this opinion, Alicia steadfastly refuses to accept the marital dissolution judgment is final. She has repeatedly sought to relitigate

the validity of the judgment at the state court level and sought review of these challenges in appeals to this court, the California Supreme Court, the District Court, the Ninth Circuit, and the United States Supreme Court. Her extraordinary efforts to block enforcement of the dissolution judgment have clogged the dockets of courts across the nation. The trial court reasonably concluded it was time for the parties to sell the family residence and move on with their lives.

The trial court relied on section 391(b)(3) when declaring Alicia a vexatious litigant. Alicia argues there was insufficient evidence to support this ruling because Ryal's *reference* to the court's docket was insufficient to support a vexatious litigant designation. Alicia maintains case authority holds trial courts also cannot make a determination under section 391(b)(3) by simply looking at the docket. (Citing *Holcomb v. U.S. Bank Nat. Assn.* (2005) 129 Cal.App.4th 1494 (*Holcomb*)). She also cites to numerous cases holding statements by counsel are not evidence (presumably to refute Ryal's arguments about the number of frivolous motions). She asserts it would be an "absurd result" to declare her a vexatious litigant because she has only been defending her rights. Noticeably missing from her briefing is any attempt to refute the court's statements regarding its personal recollection of Alicia's history of repeatedly filing unmeritorious motions and other papers solely intended to cause unnecessary delay.

A trial court may deem a litigant acting in propria persona vexatious if he or she "repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay." (§ 391(b)(3).) "What constitutes 'repeatedly' and 'unmeritorious' under [this subdivision], in any given case, is left to the sound discretion" of the court. (*Morton v. Wagner* (2007) 156 Cal.App.4th 963, 971 (*Morton*)). To qualify under section 391(b)(3), courts have required that motions, pleadings, or other papers be "so devoid of merit and be so frivolous that they can be described as a "flagrant abuse of the system," have 'no reasonable probability of success,' lack 'reasonable or probable

cause or excuse' and are clearly meant to “‘abuse the processes of the courts and to harass the adverse party.’”” (*Morton, supra*, 156 Cal.App.4th at p. 972.)

Under well-established rules of appellate procedure, Alicia, as the appellant, had the burden to provide an adequate record on appeal and to affirmatively show error. (*In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498.) Alicia cannot avoid her burden on appeal to affirmatively prove error by merely labeling the court’s orders as “absurd” or condemning Ryal’s reliance on certain facts in his moving papers and the respondent’s brief. (*Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645, 649.) “Because the trial court is best situated to receive evidence and hold hearings on the question of whether a litigant is vexatious, on appeal, we are required to presume the order declaring a litigant vexatious is correct.” (*Morton, supra*, 156 Cal.App.4th at p. 969.) “We review the trial court’s ruling that [a party] is a vexatious litigant for substantial evidence.” (*Ibid.*)

Our review of the reporter’s transcript shows the trial court did not merely count the number of entries on its docket or blindly accept Ryal’s assertion everything Alicia filed was frivolous. The court stated it was familiar with the pleadings after years of being forced to read, untangle, and decipher convoluted and repetitive arguments. It witnessed firsthand the quantity of frivolous contentions and pages of cut and pasted arguments from prior filings. Having reviewed and ruled on many of the court’s ruling on these matters, it cannot be said the court’s recollection of Alicia’s flagrant abuse of judicial system was absurd or unjustified.

The *Holcomb* case does not assist Alicia. A different panel of this court determined there was insufficient evidence to support a trial court’s determination appellant was a vexatious litigant under section 391, subdivision (b)(2). (*Holcomb, supra*, 129 Cal.App.4th at p. 1502.) In reversing the order, this court rejected respondent’s argument the appellate court could affirm the vexatious litigant orders by applying a different subdivision of section 391. (*Holcomb, supra*, 129 Cal.App.4th at

p. 1506.) Respondent argued the appellate court could affirm the order under section 391(b)(3) because the 15-page docket showed multiple entries related to appellant's excessive activity in the case. (*Holcomb, supra*, 129 Cal.App.4th at p. 1506.) This court reasoned it is "difficult, if not impossible" *for an appellate court* to discern whether a particular motion was completely meritless or if the outcome was successful. (*Ibid.*) The *Holcomb* court did not say a trial court could not refer to its own docket to refresh its memory about the quantity of duplicative and frivolous filings. (*Ibid.*)

Here, the trial court determined Alicia filed over 100 unmeritorious documents in the case. It noted the case had not progressed in two years because Alicia "repeatedly files unmeritorious motions, pleadings, or other papers" and has engaged "in other tactics that are frivolous or solely intended to cause unnecessary delay." (§ 391(b)(3).) Accordingly, given Alicia's unsupported assertions the court's order was absurd, we conclude she has failed to prove the October 23, 2020, order lacked the support of substantial evidence. (*Tokerud v. Capitolbank Sacramento* (1995) 38 Cal.App.4th 775, 780 [presumption of correctness applies in vexatious litigant proceedings].)<sup>6</sup>

### C. Alicia's Constitutional Challenge Lacks Merit

Alicia maintains section 391 as applied to a defendant is unconstitutional and overbroad as it prevents her from defending herself against a lawsuit filed by Ryal. She maintains the prefiling order and \$4,000 fee impermissibly chills her Fourteenth Amendment right of due process and denies equal access to the courts. Alicia devotes a different section of her brief to discuss how the statutory scheme is unconstitutionally overbroad because the Family Code provides that all litigants should be equally represented in dissolution cases dealing with property. To support these arguments,

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<sup>6</sup> In light of this ruling, we need not consider Ryal's contention this court should sua sponte declare Alicia a vexatious litigant.

Alicia cites to many cases discussing constitutional rights, but none directly supports Alicia's theory the vexatious litigant statutory scheme is unconstitutional.

State and federal courts have repeatedly rejected constitutional challenges to the vexatious litigant statutes. (See *Moran v. Murtaugh Miller Meyer & Nelson, LLP* (2007) 40 Cal.4th 780, 786 [no improper denial of due process/constitutional right to jury trial, or discrimination against "vexatious litigants of 'modest means'"]; *Fink v. Shemtov* (2010) 180 Cal.App.4th 1160, 1170 ["The vexatious litigant statutes . . . have been upheld as constitutional"]; *Wolfgram v. Wells Fargo Bank* (1997) 53 Cal.App.4th 43, 59 ["vexatious litigant statute does not impermissibly 'chill' the right to petition and does not 'penalize' the filing of unsuccessful, colorable suits"]; *Wolfe v. George* (9th Cir. 2007) 486 F.3d 1120, 1124-1127 [rejecting due process, equal protection, bill of attainder, and other constitutional challenges].) We need not say more.

#### IV. *Alicia's Arguments Relating to Other Appeals Will Not be Considered*

As mentioned earlier in this opinion, the first section of Alicia's opening brief rehashes the validity of the marital dissolution judgment entered in 2018. These issues were settled in our prior opinions. "Pursuant to the law of the case doctrine ""the decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case."" [Citation.] The doctrine applies to decisions of intermediate appellate courts as well as courts of last resort. The doctrine promotes finality by preventing relitigation of issues previously decided. [Citation.]' [Citations.]" (*San Francisco Baykeeper, Inc. v. State Lands Com.* (2018) 29 Cal.App.5th 562, 569, fn. 4.)

Sprinkled through the briefing are references to trial court orders filed after the vexatious litigant decision in October 2020. For example, in her opening brief, Alicia refers to a ruling made on November 6, 2020. Challenges to orders entered *after* October 23, 2020, fall outside the scope of this appeal and need not be considered.

V. *Challenges to Alicia's Standing to Appeal Lack Merit*

Ryal asserts we must summarily deny this appeal because Alicia failed to obtain pre-filing permission before filing her notice of appeal. He is incorrect. Alicia is “entitled to bring this appeal without prior approval from the presiding justice and without a showing of a reasonable probability that [her] appeal has merit notwithstanding [her] designation in the trial court as a vexatious litigant because [she] did not initiate this action below. [Citation.]” (*Deal, supra*, 45 Cal.App.5th at p. 618, fn. omitted.)

“While an order declaring a person to be a vexatious litigant is not itself appealable [citation], such order may be reviewed ‘in conjunction with an appeal from some subsequent otherwise appealable judgment or order.’ [Citation.] Relevant here, an order requiring a person to obtain permission from the presiding judge or justice before filing ‘new litigation’ in propria persona [citation] is injunctive in nature and therefore appealable under section 904.1, subdivision (a)(6). [Citation.]” (*Deal, supra*, 45 Cal.App.5th at pp. 618-619.)

DISPOSITION

The October 23, 2020, postjudgment order is affirmed. We grant appellant’s and respondent’s requests for judicial notice of various court records. (Evid. Code, § 452, subd. (d).) Respondent shall recover his costs on appeal.

O’LEARY, P. J.

WE CONCUR:

GOETHALS, J.

DELANEY, J.