

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of JANNA and JOSE  
FELICIANO.

JANNA FELICIANO,

Appellant,

v.

JOSE FELICIANO,

Respondent.

G039357

(Super. Ct. No. D137845)

O P I N I O N

Appeal from postjudgment orders of the Superior Court of Orange County,  
Michael J. Naughton, Judge. Reversed and remanded.

Law Offices of John G. McGill, Jr., and John G. McGill, Jr.; Greines,  
Martin, Stein & Richland LLP and Marc J. Poster for Appellant.

Law Offices of Marjorie G. Fuller and Marjorie G. Fuller for Respondent.

During their 13-year marriage, Jose and Janna Feliciano<sup>1</sup> co-wrote and produced many popular songs, such as *Feliz Navidad*. In addition to the copyrights and royalties generated from writing and producing songs and musical compositions, Jose also performed and recorded music and songs, giving rise to the potential for future community property income via performance and artist (also called record) royalties. Sadly, for the past 30 years the parties have been embroiled in a contentious court battle over the division of the community property royalties arising from these creative works.

This appeal concerns the trial court's July and August 2007 postjudgment final orders, ruling Janna was barred from seeking royalties, except for those earned between 1997 and 1999. The court concluded Janna's share of the royalties would not include artist royalties, as she bargained away her right to those in the marital dissolution agreement. Janna also appeals from the court's denial of her Family Code section 271<sup>2</sup> motion for sanctions based on evidence Jose had been uncooperative and obstreperous for decades. We conclude her arguments have merit and reverse the challenged orders. The matter is remanded for reconsideration.

## FACTS & PROCEDURAL BACKGROUND

### *A. The 1978 Dissolution Agreement*

In 1978, Jose and Janna divorced. They were represented by counsel when they negotiated and executed a settlement agreement disposing of all their property, which was entered as a stipulated interlocutory judgment of dissolution of marriage in November 1978.

The judgment listed the community property, which included:

---

<sup>1</sup> We refer to the Felicianos by their first names for clarity and ease of reference, and intend no disrespect. (See *In re Marriage of Olsen* (1994) 24 Cal.App.4th 1702, 1704, fn. 1.)

<sup>2</sup> All further statutory references are to the Family Code, unless otherwise indicated.

(1) “Ownership in Feliciano Enterprises, a California corporation, including, but not limited to, all stock, assets and liabilities in connection therewith”; (2) “Ownership in the corporation known as Mother Music West and entities know as J & H Music and JoHi Music, including, but not limited to, all stock, assets, and liabilities in connection therewith”; and (3) “All copyrights and musical compositions owned by the parties, as follows: [¶] . . . See Schedules A and B attached hereto and by this reference made a part hereof, plus any other musical compositions registered by the parties, or either of them, prior to January 1, 1978[.]”

Schedule A contained the “J & H publishing song file” listing three pages of song titles and the parties responsible for the words and music. Schedule B, titled “JoHi Music Publishing Co.,” listed 20 additional music compositions, and the parties credited with the words and music.

In the settlement agreement relevant to this case, Jose was awarded, “All right, title and interest in and to” Feliciano Enterprises, Mother Music West, J & H Music and JoHi Music. In addition, he received, “One-half of all net proceeds, if any, received from the presently pending lawsuit against Radio Corporation of America [RCA], subject to payment of one-half of all subsequent costs, expenses and attorneys’ fees in connection therewith.” He also obtained, “One-half interest in all copyrights and musical compositions, and royalties and performance society royalties therefrom, owned by the parties as community property which were written by or became the property of the parties during the course of their marriage relationship as set forth in” the list of community property assets and schedules A and B. Janna was awarded the other half of these property interests.

The agreement further specified, “In connection with the copyrights and musical compositions owned by the parties as community property, heretofore awarded to the parties, one-half interest to each, [Jose] shall notify Broadcast Music, Inc. and the American Society of Composers, Authors and Publishers, as well as RCA and Private

Stock in connection with any mechanical royalties, of the assignment directly to [Janna] herein and, where applicable, the parties shall be obligated to execute assignments of copyright granting each party one-half interest in the same. [¶] In the event that any monies are received by Feliciano Enterprises, JoHi Music, or J & H Music in connection with any mechanical royalties, from publishing or otherwise, or performance society monies, in connection with those musical compositions which are the community property of the parties, the same shall be taken into the possession of the firm of SATIN, TENENBUM, EICHLER & ZIMMERMAN [Satin firm], who shall make the [50] percent allocation to [Jose] and [Janna] herein, and shall report and account to the parties quarterly and, with said accounting, remit to each party their one-half of the proceeds of any monies so received in the prior quarter, without deduction or offset unless otherwise agreed in writing.”

The judgment noted Janna and Jose each owed Feliciano Enterprises \$216,500. Janna was ordered to pay by December 15, 1978, the sum of \$90,000 and the balance of \$126,000 not later than January 1979.

*B. The 1980 Modification to the Dissolution Agreement*

The parties modified the agreement by stipulation. Janna was relieved of her obligation to pay \$216,500 in exchange for granting Feliciano Enterprises the first \$100,000 of her share of any recovery in the RCA lawsuit, plus seven percent yearly interest until the debt was paid. The modification also reiterated the Satin firm must account for all royalties on a quarterly basis and “use its very best efforts to arrange for future payments to be made directly to [Jose] and [Janna] rather than” through the firm. Specifically, it was noted the Satin firm “shall forthwith provide to [Janna] an accounting from January 1, 1978, to present of all royalties due to [her] pursuant to . . . the interlocutory judgment of dissolution . . . including but not limited to payments from record companies and phonograph manufacturers, performance royalties and/or any other monies received by [Jose], Feliciano Enterprises and/or its subsidiaries, Mother Music

West, or any other entity in payment for the work and efforts of [Jose] during the marriage of the parties.”

*C. The Next 15 Years (1980-1995)—Collateral Litigation*

In 1982, Janna declared bankruptcy. Jose pursued the litigation against RCA. In 1984, Janna and Jose litigated the reasonableness of Jose’s proposed settlement of their claim against RCA. The court ordered Janna to sign the settlement agreement. In 1985, the bankruptcy trustee filed an application to notify the court of his intention to compromise various claims and disputes between Jose and Janna as follows: (1) Jose will pay \$10,000 from the RCA settlement and the trustee will waive the estate’s further rights to assert any further claim regarding that litigation; (2) Jose will pay the estate approximately \$60,000 for royalties (the exact figure to be established prior to the conclusion of the settlement); and (3) Jose will be granted a \$100,000 claim in the bankruptcy estate. In January 1993, Janna’s bankruptcy case closed.

*D. Janna returns to Family Law Court in 1996 and stays for 11 years (1996-2007)*

Almost 20 years after the 1978 dissolution judgment, Janna filed a motion for declaratory relief on October 4, 1996, in family court. She asserted Jose owed her over \$250,000 for her half interest in all copyrights, musical compositions, royalties, performance society royalties, and publishing money. Jose filed procedural objections, arguing Janna failed to identify what money she received and what specifically Jose failed to do. He noted she failed to attach a copy of the modified judgment to her motion, and failed to join the accounting firm in charge of collecting the royalties. The court denied the motion without prejudice.

Janna waited nine months to try again. On June 3, 1997, she filed a motion regarding her complaint seeking declaratory relief, imposition of a constructive trust, and an accounting. She declared there were over 100 compositions covered by the modified interlocutory judgment, and she had not received any royalty payments. She noted many of the songs were re-released and Jose collected the royalties. Janna believed she was

owed approximately \$500,000. To support her claim, Janna attached pages from the Jose Feliciano World Wide Web site listing recordings Jose made from 1967 to 1997. Jose opposed the motion stating the Satin firm was responsible for collecting the money, and the firm should be asked to provide an accounting of what was paid to each party. For reasons not disclosed in the record, the court ordered the matter off calendar.

The following month, on July 18, 1997, Janna filed a motion requesting a declaration of her rights, enforcement of the dissolution judgment, an accounting to determine the royalties due to her, and for imposition of a constructive trust on her share of the royalties. In her supporting declaration, Janna admitted she had received a small amount of money between November 1978 and August 1980. She noted that under the terms of the judgment the Satin firm, as well as Jose, was ordered to pay Janna her share of the royalties. She asserted Jose had not only failed to make the payments he received directly, but he also failed to notify every entity involved in paying royalties of the assignment to pay Janna directly as required by the dissolution judgment. She stated the royalty collection agencies refused to provide her with any information because they had no record of her being awarded one-half interest in those payments.

On August 14, 1997, Commissioner Julian Cimbaluk “re-affirmed” the judgment of dissolution and specifically ordered Jose to “assign the one-half interest in all copyrights on musical compositions, royalties and performance society royalties, recording royalties and other performance income, and publishing money derived therefrom, owned by [Jose] and [Janna] as community property, and which were written by the parties or became their property during the course of the marital relationship, to [Janna], and to notify and deliver said assignment to all entities responsible for the payments of said royalties to [Jose] and/or [his] agents. Proof of [Jose’s] compliance with this order is to be filed with the court no later than 9 October, 1997.”

Jose failed to comply with the court’s order by October and the scheduled hearing was continued. In December 1997, Janna moved for sanctions. She also made

several motions relating to Jose's failure to respond to her discovery requests. In January 1998, the court granted (1) the motion to compel responses to form interrogatories, (2) the motion to request admissions to be deemed admitted, and (3) the motion to compel responses to her demand for production. Related to these motions, the court awarded Janna's counsel over \$1,700 in sanctions. It continued Janna's request for an order requiring Jose to execute an assignment agreement for an evidentiary hearing scheduled for the end of the month.

Jose submitted supplemental points and authorities arguing Janna's claim was unenforceable because she failed to renew the judgment within 10 years. (Citing Code Civ. Proc., §§ 683.110 & 683.120.) He also argued the judgment was unenforceable under the equity theory of laches.

On February 26, 1998, the parties met in chambers with the trial judge. The court's minute order stated the court found the list of copyrights complete. The court ordered the court clerk to execute the assignment documents on Jose's behalf.

On April 17, 1998, the court held an evidentiary hearing. The court considered Janna's and Jose's testimony. It took judicial notice of requests for admissions. It considered testimony from Richard Heston, an expert in the field of bankruptcy. In its minute order, the court ruled Janna was not entitled to royalties more than 10 years old from the time of her July 1997 motion seeking declaratory relief. It ordered Jose to provide a full accounting from July 1987 to the present by April 24, 1998. The written order specified Jose was "to make a full accounting of all monies received by him, or by any company, agent, or other entity acting on his behalf, representing payments or other benefits derived from the aforesaid copyrights or musical compositions, royalties and performance society royalties, mechanical royalties, recording and other performance royalties, and any and all publishing monies derived therefrom, which were or became the community property" of the parties which were

received from 18 July 1987, to the present.” Jose was ordered to inform the court by April 1998 as to when the accounting would be ready. He failed to comply.

At the next hearing in August 1998, the court held a hearing on the accounting of royalties. The court found “they are not accurate” and gave Jose “30 days for execution.” In October 1998, the court held an evidentiary hearing and considered the testimony of attorney Marc Stollman. The court ordered “Stollman to make available to [Janna] all records and documents requested for copying, including all 3 music catalogues.” It ordered Jose to pay Janna \$12,860.36. The court deferred ruling on the issue of royalties until Janna’s counsel received all the music catalogues and arranged a new hearing date.

In February 1999, the court held another evidentiary hearing. It ordered that every “entity making payment of royalties of any kind (whether said royalties are writers’, or publishers’, artists’, mechanical, or any royalty or payment of money of any kind whatsoever) relating to those musical recordings, compositions, or performances thereof and which constitute the community property” of Jose and Janna “shall, upon receipt of notice of this order, immediately begin to pay all such royalties which are now, or shall in the future become due and payable to either [Jose] or [Janna] directly to” Stollman. The court ordered Stollman to keep the money in trust, pay Janna and Jose each 50 percent of money received, and provide an accounting of all moneys received and dispersed.

In 2000, Janna hired a new attorney who filed a motion to compel Jose to respond to her request for production of documents and requesting \$1,823 in sanctions. (Code Civ. Proc., former § 2023, subd. (b)(3); see now Code Civ. Proc., § 2023.010 [Stats. 2004, ch. 182, § 23, eff. July 1, 2005].) On July 7, 2000, the court denied the motion, ruling the “issues have already been ruled upon.” A few days later, the court held a conference in chambers with the parties and scheduled another hearing in September “as to compliance with discovery of royalties.” Janna filed a writ of mandate,

which this court summarily denied. The parties met again in September in the court's chambers and off the record "regarding document review."

In 2001, Janna hired a new attorney, who helped her file an order to show cause (OSC) for a determination of the royalties due, for sanctions (§ 271), a full accounting and a writ of execution on the money judgment. Attached to her motion was an expense declaration regarding the legal fees she had paid thus far in the action, as well as her personal income and expense declaration.

Due to judges leaving the bench and stipulated continuances, the matter was not heard for over a year. In September 2002, the parties filed a stipulation to continue Janna's OSC to October 16, 2002, where "the court shall review the status of discovery, receive evidence and/or testimony as the court deems necessary and make rulings and orders regarding discovery as appropriate." In addition, the parties stipulated the court would consider awarding attorney fees and costs.

The case was assigned to Judge Michael J. Naughton. There was no hearing in October. On January 22, 2003, the parties stipulated: (1) "The parties acknowledge that Judge Ryan ordered on . . . . April 17, 1998, that [Janna] may not collect royalties due her under the judgment prior to July 18, 1987. However, the parties stipulate that the cut off shall be June 30, 1987. (2) [Jose will] provide [Janna] with copies of his personal and Feliciano Enterprises' . . . tax returns for the years 1987 to and including 2002; and, all back up detail relating thereto . . . sufficient so that the nature of the income and its source can be identified."

In September 2003, the court ordered Janna to file and serve a supplemental declaration and itemized list of the documents requested. Jose's counsel was ordered to file and serve a declaration stating why the requested documents had not been provided and a list of what documents have been provided. The following month, Janna filed a demand for document production as directed by the court. In one document, she listed 122 requests for documents relating to cash receipts, tax returns, royalty statements, etc.

In a second 15-page document she requested other documents “needed in order to test the completeness” of the first document request list. In November, Jose provided the tax returns but no other documents, stating, “all documents which I have in my possession have been produced.”

A few months later, in January 2004, Janna filed another motion to compel production of documents. The court continued the hearing to February, then Jose’s counsel passed away and the hearing was reset to April, and then again to June 2004. Jose found a new attorney in June and the hearing was once again continued to July. The court took the matter off calendar. In September, Janna’s counsel requested the matter be restored to the calendar.

On January 28, 2005, Jose’s new counsel moved to dismiss Janna’s claim for failure to prosecute. In November 2005, the court denied the motion to dismiss on the ground the proceedings were not governed by the five-year limitations period set forth in Code of Civil Procedure section 583.310.

In its minute order, the court also addressed other issues raised in the OSC. First, it determined the marital dissolution judgment was subject to the 10-year rule on enforcement of judgments contemplated by Code of Civil Procedure section 683.020. It concluded the “‘reaffirmation’ in 1997” was not in legal compliance with the statutory provisions and therefore had no legal meaning, force, or effect. Second, the court determined that as a matter of res judicata, the royalties that should have been due as of the 1997 OSC should have been litigated at that hearing. The court concluded any arrears on royalties due “are not collectible/enforceable for any years prior to the 1997 OSC. The court finds any sums due and owing after the 1997 OSC are enforceable.”

The court’s minute order required Jose to produce by January 2006, all personal, corporate, and business tax returns from 1997 to the present. The court declined to rule on the issue of whether the royalties are the property of the bankruptcy trustee for Janna, stating, “the paucity of verifiable documents and the interpretation

therefore lead this court to defer to the federal bankruptcy court for decision of this question.” Jose was ordered to prepare a final order. Jose did not. The matter was continued several more times.

In February 2007, Jose’s counsel was ordered to prepare and submit an order reflecting the November 2005 ruling. It appears he did not. The court’s next minute order stated there would be no further continuances and trial was set for June 19, 2007. The parties filed trial briefs, declarations, and points and authorities. Janna also filed a request for judicial notice of various documents and her income and expense declaration. She itemized attorney fees totaling over \$430,000.

Jose’s trial brief, dated June 7, 2007, stated it was undisputed that from August 1997 to December 1999 publishing royalties collected by Stollman amounted to \$294,376 (thereafter Stollman paid each party their half share of the royalties). He stated after subtracting administration fees and costs of \$38,653, Janna was entitled to one-half of \$255,723. He noted her half share (\$127,856), like his share, was subject to taxes (approximately 38 percent) leaving her a sum of approximately \$79,271. Because the court previously ruled the division of community property was not a money judgment, Jose argued Janna would not be entitled to accrued interest. Jose reminded the court that under the terms of the judgment, Janna still owed him \$100,000 plus interests at the rate of 7 percent. Jose argued the \$79,271 owed should be offset by the \$100,000 plus interest she owed him.

Janna responded in her trial brief that in addition to publishing royalties (comprised of mechanical royalties, performance society royalties, and synchronizing royalties) she is entitled to artist royalties paid to Feliciano Enterprises by RCA. She disputed Jose’s claim she was not entitled to interest on the owed publishing royalties, arguing the payments were due in installments, and the interest began to accrue on the date each installment was due. Finally, she argued sanctions were warranted under

section 271 due to Jose's "persistent and consistent refusal to cooperate . . . ." She presented evidence she had expended over \$400,000 in attorney fees.

On July 27, 2007, the court issued a four-page "order after hearing" stating the court: (1) declines to rule on the net effect of Janna's bankruptcy; (2) refuses Janna's request to create a trust account to hold any royalty funds and Stollman shall continue to divide the income he collects on behalf of the parties; (3) the marital dissolution interlocutory judgment is not a money judgment as defined by Code of Civil Procedure section 680.270; (4) concludes Janna's 1997 OSC was not a motion to renew the judgment within the meaning of Code of Civil Procedure section 683.110, subdivision (a); (5) rules Janna's 1997 OSC is conclusive as to payments for royalties due at that time and since she had "her day in court in 1997" she cannot pursue a claim for royalties unpaid since August 14, 1997; and (6) orders Jose to produce tax returns for the year 1997 forward and Stollman must provide royalty records from 1997 forward.

On July 31, 2007, the court considered declarations, hearing transcripts, and additional briefing on the issues of artist royalties and whether interest is due to Janna. It ruled in a minute order: (1) the laches defense in non-child support cases was not precluded by section 291; (2) if Janna was "disgruntled" with the court's ruling in 1997 she should have availed herself of her appellate remedies, and not having done so, they are waived; and (3) the division of royalties in the 1978 judgment includes an extensive list of song titles deemed to be community property and "[t]he court finds that this division does not include Artist Royalties which are part of Feliciano Enterprises, [the] company awarded to [Jose] in the judgment. Simply put, [Jose's] post separation income from performances are his separate property, and any income as a result of contractual arrangements with Feliciano Enterprises are likewise [Jose's] separate property. This is a result of the bargain of the parties in the judgment to which they stipulated and which awarded Feliciano Enterprises to [Jose]. Obviously, that award included assets and contractual benefits."

The court's final minute order on the matter, dated August 3, 2007, stated "It has come to the [court's] attention . . . that one of the parties feels that the order submitted by counsel for [Jose] did not address all the issues of the OSC filed in June 2001. It was the impression of the court, based on the agreements of the parties that if the ruling was that [Janna] was not entitled to performance royalties under the judgment and in the event that this court persisted in using 1997 as a cut-off date, then there would be no arrears payable to [Janna] under the judgment. The parties heretofore agreed in court that the accounting provided by Sony and the royalty services would suffice as the accounting per section 1101. With respect to the request for accounting fees, no current income and expense declarations were filed by either side, and therefore the court does not feel it appropriate to order monetary relief or [section] 271 sanctions (cf. California Rules of Court[, rule] 5.128). Both requests are denied. In the event that counsel for [Janna] feels that there is an arrearage, he can do his writ and we will, I suspect, litigate that issue."

Janna filed a notice of appeal from the July and August orders. She then moved in superior court for reconsideration of the order denying her fees, pointing out she filed an income and expense declaration. The court denied the motion for reconsideration based on the fact she had already appealed the order.

#### DISCUSSION

##### *A. General Law Regarding Enforcement of Marital Dissolution Judgments*

"A judgment or order made or entered pursuant to [the statutory provisions governing family law] may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary." (§ 290.) "Thus, the Family Code generally confers on the trial court broad discretion to select appropriate enforcement remedies and terms; and, in

exercising that discretion, to take the equities of the situation into account [citations].” (Hogoboom et al., Cal. Practice Guide: Family Law (The Rutter Group 2008) ¶ 18:1.5, p. 18-1.)

In addition, some civil remedies provided for the enforcement of judgments generally may be available, including liens, executions, and wage garnishment. (Code Civ. Proc., §§ 680.010–694.090.) However, the specific civil statutory provisions relating to the period for enforcement and renewal of judgments “does not apply to a judgment or order made or entered pursuant to the Family Code” with a few exceptions not applicable here. (Code Civ. Proc., § 683.310;<sup>3</sup> see also Hogoboom et al., Cal. Practice Guide: Family Law, *supra*, ¶ 18:3, pp. 18-3 to 18-4 [rules regarding the “10-year limitations period on enforcing general civil judgments . . . are not applicable”].) To the contrary, “A judgment described in this section is exempt from any requirement that a judgment be renewed. Failure to renew a judgment described in this section has no effect on the enforceability of the judgment.” (§ 291, subd. (b).) Parties have the option of renewing the judgment to update the amount owed to reflect installments that have come due, plus costs and interest, but renewal is not essential to enforcement. (§ 291, subd. (c); Hogoboom et al., Cal. Practice Guide: Family Law, *supra*, ¶ 18:3.7, p. 18-5.) Finally, the code provides a money judgment, including judgments for child, family or spousal support, are enforceable “until paid in full or otherwise satisfied.” (§ 291, subd. (a).)

As noted above, the trial court in exercising its discretion when considering the appropriate means to enforce a Family Code judgment, should consider the equities of the situation. (Hogoboom et al., Cal. Practice Guide: Family Law, *supra*, ¶ 18:4,

---

<sup>3</sup> Code of Civil Procedure section 683.310 provides, “Except as otherwise provided in the Family Code, this chapter [titled Period for Enforcement and Renewal of Judgments] does not apply to a judgment or order made or entered pursuant to the Family Code.”

p. 18-5.) “The absence of a statutory limitations period on the enforcement of Family Code judgments generally does not preclude application of the equitable doctrine of *laches*—the defense of unreasonable delay in taking enforcement action to the prejudice of the judgment debtor.” (Hogoboom et al., Cal. Practice Guide: Family Law, *supra*, ¶ 18:5, p. 18-5.)

### *B. Laches*

“Laches may bar relief in equity to those who neglect their rights, where such neglect operates to the detriment of others. [Citation.] Given its nature as an equitable defense, however, there are recognized limits on application of the doctrine of laches. For one thing, the doctrine ‘is not applied strictly between near relatives [such as spouses].’ [Citations.] More generally, ‘laches is not technical and arbitrary and is not designed to punish a plaintiff. It can only be invoked where a refusal would be to permit an unwarranted injustice. Whether or not the doctrine applies depends upon the circumstances of each case.’ [Citation.] [¶] “‘The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay.’” [Citations.] [¶] ‘Laches implies that the plaintiff should have done something earlier.’ [Citation.] Whether the plaintiff should have acted sooner depends on the circumstances of the particular case.” (*Bono v. Clark* (2002) 103 Cal.App.4th 1409, 1417-1418.)

### *C. Janna’s Claim to Royalties Prior to 1997*

In 1998, the court ruled Janna was entitled to recoup 10 years of royalties starting from July 1987, up until the time she filed her motion in July 1997. The court ordered Jose to prepare an accounting. In 2007, after almost nine years had passed, Jose had yet to produce an accurate accounting, and a different trial court judge ruled Janna had her “day in court” back in August 1997 as to the royalties predating that hearing. The court reasoned Janna had the opportunity to litigate and obtain a ruling on how much money she was owed for the 10-year block of 1987 to 1997. The court recognized laches

was an appropriate consideration in deciding whether to enforce a family law judgment, but rather than analyze the equities of the parties' situation, the court expressly stated its ruling "relied more" on the barring effect of res judicata. It concluded Janna could not relitigate the pre-1997 royalty issues again, and to the extent she "was disgruntled with the ruling or the lack thereof, she should have availed herself of her appellate remedies. Not having done so, they are waived . . . ." It also found Janna's 1997 OSC failed to properly renew the judgment as required by Code of Civil Procedure sections 683.020 and 683.110. Janna claims this ruling was improper and seeks to enforce the prior order awarding her those 10 additional years of royalties (1987-1997).

As discussed above, a family law judgment dividing the community property of future royalties was not subject to the 10-year rule limiting enforcement of judgments. The judgment was exempt from having to be formally renewed. (§ 291, subd. (b); Code Civ. Proc., § 683.310.) In short, Janna was not limited by any limitations period on her family law judgment. Thus, not only was the court incorrect in citing the 10-year enforcement rule in 2007, the previous 1998 interm order limiting Janna to only 10 years of royalties earned before filing her OSC was also incorrect as it was based on application of the 10-year rule.

As for the issue of res judicata, we disagree with the court's conclusion on this legal point as well. If Janna had appealed from the court's August 1997 order, this court would have dismissed the appeal as arising from a nonappealable interlocutory order.

In California, the right to appeal is governed wholly by statute. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696.) This court, on its own motion, must dismiss an appeal from a nonappealable order. (See 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 14, p. 74.) Neither Code of Civil Procedure section 904.1 (the statute defining appealable judgments and orders in marital dissolution proceedings) nor any other statutory provision authorizes an immediate appeal from

intermediate, procedural rulings made in anticipation of trial. The practical effect of allowing immediate separate appeals on issues that are not ultimate issues in the lawsuit engenders costly piecemeal disposition and multiple appeals in a single action.

(*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1073.)

Under the so-called “one final judgment rule,” an appeal lies only from a final judgment, unless the ruling is otherwise made appealable by statute. (*Kinoshita v. Horio* (1986) 186 Cal.App.3d 959, 962-963; Code Civ. Proc., § 904.1, subd. (a)(1) [appeal may be taken from “a judgment” other than “an interlocutory judgment”].) A judgment is final for appeal purposes if it decides the parties’ rights and duties and effectively terminates the litigation. “[W]here anything further in the nature of judicial action on the part of the court is essential to a final determination of the right of the parties, the decree is interlocutory [and thus not appealable].” [Citation.] [Citation.]” (*In re Marriage of Griffin* (1993) 15 Cal.App.4th 685, 689 [minute order valuing community property not appealable where spousal support and other property issues remained to be tried]); see also *In re Marriage of Hafferkamp* (1998) 61 Cal.App.4th 789, 793-794 [no right of appeal from court’s tentative decision]; *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651 [“[d]espite the inclusive language of Code of Civil Procedure section 904.1, subdivision (b), not every postjudgment order that follows a final appealable judgment is appealable”].)

For example, the court in *In re Marriage of Levine* (1994) 28 Cal.App.4th 585, 589, determined that in a marital dissolution action a postjudgment order of the trial court finding that the court had the authority to approve the sale of certain assets and resolve any sale-related issues was not an appealable order. The court reasoned, “[s]uch an order is one which is ‘preliminary to later proceedings’ within the meaning of *Lakin v. Watkins Associated Industries* [(1993)] 6 Cal.4th [644,] 654, 656.” (*Ibid.*) Moreover, the court found that because the order was “not sufficiently final, it was not appealable

pursuant to Code of Civil Procedure section 904.1, subdivision (a)(2)[,] as a[n] order made after the judgment. . . .” (*Ibid.*) Similarly, in *In re Marriage of Ellis* (2002) 101 Cal.App.4th 400, 402-403, the court deemed an order finding a community interest in the husband’s health insurance subsidy benefits and the authority to divide that asset was a nonappealable order. That court explained, “the order determines that the trial court has authority to evaluate and divide the medical subsidy, but it is only preliminary to *actually* doing so.” (*Id.* at p. 403.) In addition, “[t]he order could be reviewed upon appeal from the subsequent final judgment on reserved issue that actually divides the asset. In other words, this purported appeal is an ‘interlocutory’ appeal, which normally is not permitted.” (*Ibid.*)

In the case before us, the court’s order on August 14, 1997, was preliminary to later proceedings and therefore interlocutory and nonappealable. In August 1997, the trial court ordered Jose to assign his half interest in all copyrights by October. It continued all issues raised in Janna’s OSC for a future evidentiary hearing. When Jose failed to make the required assignments, and then failed to comply with discovery requests prompting motions for discovery sanctions, the court scheduled an evidentiary hearing. The court’s next order, in April 1998, was also interlocutory. The court ruled (1) Janna could recover royalties from only 1987 to 1997, and (2) Jose was to make a full accounting of all money he received in royalties during that time to the present. The court anticipated a future hearing to evaluate, divide, and if necessary award any owed royalties owed to Janna for the 10-year period at issue. Due to many continuances, Jose’s production of inaccurate information, and his failure to timely produce discovery, the matter was left unresolved for a long time. If Janna had appealed from either the August 1997 or April 1998 orders, this court would have dismissed the appeals. We have searched the record and cannot find any ruling regarding division of the royalties earned from 1987 to 1997. We fail to see how the principles of *res judicata* can attach to an issue that has never been completely litigated or ruled upon.

Equitable principles, such as laches, would be the only appropriate basis upon which the court could have limited the scope of royalties available to Janna. However, the court expressly stated in its ruling that it was not relying on a theory of laches but rather *res judicata*. Because it is the trial court in the first instance who must exercise its discretion when considering whether to enforce a family law judgment, and it is the trial judge who is in the best position to weigh the equities of the situation first hand, we remand the issue. While it is tempting, we will refrain from offering our opinion on who appears to have suffered injustice, prejudice, or from unclean hands in the limited record before us.

#### *D. Artist Royalties*

The trial court determined Janna was not entitled to any share of the artist royalties because this type of royalty was owned entirely by Feliciano Enterprises, and the business and its assets were awarded in the dissolution judgment to Jose. Janna asserts the dissolution judgment awarded her half of all types of royalties, necessarily including artist royalties.

Before we analyze the parties' arguments, we believe some background information on music copyrights and royalties would be helpful. "A recorded composition gives rise to two copyrights: one in the sound recording and one in the underlying composition embodied in the recording. A sound recording is defined by the Copyright Act as the fixation of musical sounds by any method from which they can be 'perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.' As a result, one underlying composition may be recorded several times in separate sound recordings, each owned by a different copyright holder. [9] In contrast, the author of the composition underlying the recording enjoys a separate set of rights, regardless of how many times it is recorded by different artists. Included in these rights are the exclusive rights to reproduce, adapt, publicly perform, and distribute the work. . . ." (Kostiner, *Will Mechanicals Break the Digital Machine? Determining a Fair*

*Mechanical Royalty Rate for Permanent Digital Phonographic Downloads* (2005) 27 Hastings Comm. & Ent. L.J. 653, 657-658, fns. omitted.) In 1909, Congress established the mechanical royalty, granting “owners of the copyright in a musical work the right to benefit from the mechanical reproduction of their work, so named because of the mechanics involved in a player piano.” (*Ibid*, fn. omitted.) Thus, mechanical royalties arise from the songwriter’s recording of composed music on CD and tapes.

Owners of a sound copyright are entitled to a performance royalty on works each time it is performed or broadcasted by a television or radio station. “Artist royalties” (also called record royalties) are paid to the performing artist by the recording company that sells and collects for the records and CDs sold.

During the Feliciano’s marriage, their jointly-owned company, Feliciano Enterprises, entered into a contract with RCA Records. In the agreement, Feliciano Enterprises warranted it had the exclusive rights to Jose’s “services . . . for the purpose of recording material for master records, to be used in the manufacture and production of records . . . and that such exclusive right includes the right . . . to grant RCA all the licenses, rights, and privileges hereinafter referred to.” RCA agreed to purchase several master recordings “including the copyright in such recording.” In addition to payment for the master recordings, RCA agreed to pay Feliciano Enterprises the royalties on records sold, i.e., artist royalties.

When the parties drafted the marital dissolution judgment, Jose was awarded Feliciano Enterprises “and all its assets.” It certainly could be inferred the artist royalties were an asset of the business. However, a contrary inference could be made from a different provision in the dissolution judgment, dividing equally the community property copyrights and royalties to over 100 songs and musical compositions. The judgment did not expressly exclude “artist royalties” from this division of community property. In their trial briefs (and on appeal), the parties refer extensively to the specific provisions favoring their arguments. It appears the judgment contains inconsistent terms.

When a marital settlement is incorporated into a dissolution judgment, courts apply the principles generally applicable to contracts to interpret it. (*In re Marriage of Simundza* (2004) 121 Cal.App.4th 1513, 1518; *In re Marriage of Iberti* (1997) 55 Cal.App.4th 1434, 1439.) The focus is on ascertaining and implementing the parties' mutual intent when they entered into the settlement. (*In re Marriage of Simundza, supra*, 121 Cal.App.4th at p. 1518.) In performing this task, a court must construe the judgment as a whole rather than separately considering its individual clauses (*Yarus v. Yarus* (1960) 178 Cal.App.2d 190, 201), and consider the circumstances when the parties signed the settlement agreement. (*In re Marriage of Williams* (1972) 29 Cal.App.3d 368, 378.) “[E]xtrinsic evidence is admissible to prove a meaning to which the contract is reasonably susceptible. [Citation.]” (*In re Marriage of Simundza, supra*, 121 Cal.App.4th at p. 1518.)

The record reflects the trial court only scratched the surface of the artist royalty issue. Although we do not have the benefit of a reporter's transcript for the final hearing, the court's minute order shows its analysis was focused on the individual clause awarding Jose the “assets” of Feliciano Enterprises. It inferred the award would necessarily include the artist royalties, and thus the allocation of community property was “a result of the bargain of the parties.” Noticeably missing from this analysis was any consideration, or even recognition, the provision was inconsistent with another term in the judgment. The court failed to address the effect of the judgment's provision calling for an equal division of all “royalties,” which lacked any qualifying clause to exclude artist royalties. The court did not consider extrinsic evidence to ascertain the parties' mutual intent, or reflect on the circumstances existing when the parties signed the agreement. What benefit did Janna receive in return for “the bargain” of relinquishing her rights to the valuable community property artist royalties? No evidence was submitted or considered by the court on this point. Given the limited record on this issue, we cannot decide it in the first instances. On remand, the court must construe the

judgment as a whole and ascertain the parties' mutual intent in dividing the community property artist royalties.

*E. Janna's Motion for Attorney Fees and Costs*

The court denied Janna's motion for attorney fees and costs under section 271, stating, "With respect to the request for accounting fees, no current income and expense declarations were filed by either side, and therefore the [c]ourt does not feel it appropriate to order monetary relief or [section] 271 sanctions, cf. California Rules of Court, [rule] 5.128."

Section 271 provides, "(a) Notwithstanding any other provision of this code, the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award." Section 271 "advances the policy of the law 'to promote settlement and to encourage cooperation which will reduce the cost of litigation.'" (*In re Marriage of Petropoulos* (2001) 91 Cal.App.4th 161, 177.)

"A sanction order under . . . section 271 is reviewed under the abuse of discretion standard. [T]he trial court's order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order. In reviewing such an award, we must indulge all reasonable inferences

to uphold the court's order." (*In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1478, internal citations and quotation marks omitted.)

Jose recognizes that contrary to the court's stated reason for denying the section 271 motion, "the filing of an income and expense declaration is not a jurisdictional requirement for an award of fees." He also acknowledges the court's ruling is reviewed for abuse of discretion. Nevertheless, Jose argues we must affirm the ruling because "an order correct on any theory will be affirmed, even though the trial court's reasoning may have been erroneous; i.e., appellate courts do not review the reasons for the trial court's decision." Jose misunderstands our role in reviewing a court's ruling for "abuse of discretion." The trial court's stated reason for denying a motion does matter.

Alternatively, Jose faults Janna for failing to secure a statement of decision following the court's order. He argues a statement of decision was necessary to provide the trial court an opportunity to "exhibit[] the exact grounds on which the judgment rests" which makes the "case easily reviewable on appeal." He argues Janna cannot complain about the trial court's reasoning after having failed to request a statement of decision. (Citing *In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 649.)

We begin by noting the trial court would not have been required to issue a statement of decision if Janna had requested one. (*In re Marriage of Feldman, supra*, 153 Cal.App.4th at p. 1497; see also *Mechanical Contractors Assn. v. Greater Bay Area Assn.* (1998) 66 Cal.App.4th 672, 678 ["The general rule is that a trial court need not issue a statement of decision after a ruling on a motion"].) More importantly, in our record there is no question as to the court's reason for denying the motion. The court expressly stated in the minute order it was inappropriate to award fees because neither party had submitted income and expense declarations. Contrary to Jose's contention, this court has an adequate record to review the ruling.

We conclude the ruling must be reversed. As noted above, an income and expense declaration is not a prerequisite to awarding sanctions. Section 271,

subdivision (a), expressly provides: “In order to obtain an award under this section, the party requesting an award of attorney’s fees and costs is not required to demonstrate any financial need for the award.” All that was required was to give Jose notice of the sanction request and an opportunity to be heard. (§ 271, subd. (b).) The court is required to take into consideration evidence about the financial circumstances of the parties as the sanction cannot impose “an unreasonable financial burden” on the party sanctioned. (§ 271, subd. (a).) However, Jose cannot prevail on a sanction motion simply by refusing to respond to it. He had the opportunity to file declarations and evidence showing his financial situation. Given that the basis for Janna’s request for sanctions is Jose’s refusal to cooperate by sharing his income, his further misconduct in this regard cannot be the basis to deny the motion. The order denying sanctions under section 271 is reversed and remanded for further consideration.

#### DISPOSITION

The postjudgment orders are reversed. The matter is remanded. Appellant may recover her costs on appeal.

O’LEARY, J.

WE CONCUR:

SILLS, P. J.

IKOLA, J.