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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

REGINALD GARCIA,  
Petitioner and Respondent,  
v.  
SUSAN RHOADES,  
Respondent and Appellant.

A126939  
(Solano County  
Super. Ct. No. FFL076491)

Respondent and appellant Susan Rhoades (Susan) appeals in propria persona following the conclusion of lengthy and contentious marital dissolution proceedings in trial court. Appellant’s ex-husband, petitioner and respondent Reginald Garcia (Garcia),<sup>1</sup> did not file a Respondent’s Brief.<sup>2</sup> Finding no merit in any of the contentions raised by Susan, we shall affirm the trial court’s orders and rulings in all respects.<sup>3</sup>

<sup>1</sup> We refer to Susan by her first name to avoid any confusion; Susan reverted to her maiden name during the course of the proceedings and in the reporter’s transcript is referred to as Susan Garcia as well as Susan Rhoades.

<sup>2</sup> Where no respondent’s brief is filed, California Rules of Court, rule 8.220(a)(2) provides that “the court [will] decide the appeal on the record, the opening brief, and any oral argument by the appellant.” We examine the record on the basis of appellant’s brief and reverse only if prejudicial error is found. (*Lee v. Wells Fargo Bank* (2001) 88 Cal.App.4th 1187, 1192, fn. 7.)

<sup>3</sup> Over the course of these protracted proceedings, the trial court issued a Statement of Decision and Judgment on Bifurcated Issue of Spousal Support in May 2007, an Amended Order After Trial in December 2008, made several rulings orally from the bench on specific items related to the division of property, and on August 17, 2009, issued a “Ruling” on the sole remaining issue of attorney fees; thereafter, no issues

## FACTUAL AND PROCEDURAL BACKGROUND<sup>4</sup>

### A. *Initial Proceedings*

On November 14, 2003, petitioner and respondent Reginald Garcia (Garcia) filed a petition for dissolution of his marriage to respondent and appellant Susan Garcia, now Susan Rhoades (Susan), together with an Order to Show Cause to appear regarding issues

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remained in the matter that required further consideration by the trial court. Susan filed an appeal from the “Ruling” on October 13, 2009. Accordingly, because no issues remain to be decided in the lower court and Susan will have no other opportunity to seek review of the rulings below by appeal, we shall construe the trial court’s “Ruling” as the final judgment in this matter for purposes of appeal. (See *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 698 [in determining “whether an adjudication is final and appealable ‘[i]t is not the form of the decree but the substance and effect of the adjudication which is determinative. As a general test, which must be adapted to the particular circumstances of the individual case, it may be said that where no issue is left for future consideration . . . that decree is final’ ”]; *id.* at p. 700 [“When . . . a trial court’s order from which an appeal has been taken disposes of the entire action, the order ‘may be amended so as to convert it into a judgment encompassing actual determinations of all remaining issues by the trial court or, if determinable as a matter of law, by the appellate court, and the notice of appeal may then be treated as a premature but valid appeal from the judgment.’ [Citations.]”]; *Estate of Miramontes-Najera* (2004) 118 Cal.App.4th 750, 755 [“[W]e may consider orders a final judgment for purposes of appeal when . . . they have all the earmarks of a final judgment.”]; *Bank of California v. Thornton-Blue Pacific, Inc.* (1997) 53 Cal.App.4th 841, 845-846 [order was effectively a final judgment where there remained nothing for judicial consideration, the order was the only judicial ruling on the issue, and there was no other opportunity to review the order by appeal].)

<sup>4</sup>. On April 25, 2011, Susan filed a Motion for Judicial Notice that was deferred pending consideration of the appeal on the merits. The motion requested judicial notice of numerous documents, labeled as exhibits A through L. Pursuant to Evidence Code section 452, we grant Susan’s motion for judicial notice as to Exhibits C, F, and K, and deny the motion for judicial notice as to the remainder of the exhibits.

On June 17, 2011, Susan filed a Motion to Augment the Record that was deferred pending consideration of the appeal on the merits. The motion sought to augment the record with numerous documents, numbered 1 through 34. Many of the documents submitted by Susan in her motion to augment were not filed or lodged in the case in superior court, and accordingly, as to those documents, the motion is denied. (See California Rules of Court, rule 8.155(a)(1)(A) [stating that upon motion of a party, we may augment the record to include “[a]ny document filed or lodged in the case in superior court”].) The motion to augment is granted as to document numbers 3, 6, 7, 8, 11, 13, 23, and 30-34, which were all filed or lodged in the case in superior court.

of spousal support to Susan, exclusive use of community property, allocation of community debts and the issuance of a non-CLETS restraining order against Susan.<sup>5</sup> The petition stated the date of marriage was June 24, 1978, the date of separation was October 24, 2003, the duration of the marriage was 25 years and 4 months, and there are no minor children of the marriage.

According to the declaration filed with the petition and order to show cause, Garcia is a lieutenant in the Vallejo Police Department and is the department's community outreach officer for education on domestic violence. On October 24, 2003, Susan entered the police sub-station and, to Garcia's embarrassment, contacted him over the department's communication system by using another officer's radio. That evening, Garcia and Susan argued and Susan asked Garcia to leave the home voluntarily. At that point a Benicia Police Officer arrived at the home; Susan told the officer Garcia had a gun and that she was afraid. Because Garcia was concerned any allegation of domestic violence would be detrimental to his career, he decided to leave the family home immediately. Garcia has not returned to the family home since that time and is afraid of meeting or communicating with Susan, fearing that if he does so, she would claim he threatened her. Based on these declarations, Garcia requested the court issue a non-CLETS restraining order that Susan stay away from him and not come to the police station unless on official police business.

On November 17, 2003, Susan filed a Temporary Restraining Order and Notice of Hearing in Contra Costa County (case number D-0305291) alleging Garcia shoved her,

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<sup>5</sup> CLETS is an acronym for the California Law Enforcement Telecommunications System, a computer system administered by the Department of Justice. (See *People v. Martinez* (2000) 22 Cal.4th 106, 113.) We assume petitioner requested a "non-CLETS" restraining order under the mistaken impression that a protective order issued pursuant to Code of Civil Procedure section 527.6 need not be reported to the Department of Justice through the CLETS system, as Family Code section 6380 requires the court to do when entering a protective order under the Family Code. However, that is not so. Section 6380, subdivision (b) requires the court to report to the Department of Justice protective orders issued pursuant to numerous provisions other than those in the Family Code, including Code of Civil Procedure section 527.6. There is thus no authority for the issuance of a "non-CLETS" restraining order by the trial court.

intimidated her, raped her and threatened her with a firearm. However, on November 26, 2003, Susan signed a Request for Dismissal of the case, and the case was dismissed.

On December 9, 2003, the parties filed a “Stipulation and Order Re: Mutual Stay Away Orders and to Continued Hearing.”<sup>6</sup> The parties stipulated that neither party shall contact, harass or communicate with the other and that each will stay 100 yards away from the residence and place of work of the other. The stipulation noted Susan is currently “on disability and not employed. Upon being notified of [Susan’s] return to work, [Garcia] agrees to stay away from the Benicia High School and Liberty High School where [Susan] is employed.” Garcia also agreed to pay \$1,481 per month in temporary spousal support, effective December 1, 2003, without prejudice to argue for a change in that amount at the continued hearing on the Order to Show Cause set for December 15, 2003. The parties further stipulated that pending further orders of the court, Susan would pay the mortgage of \$3,342 per month as long as she had exclusive use of the family residence, retaining the right to seek any credits for such payments, and Garcia would pay underlying mortgage debt on the community property vacation home located in Arnold, California, retaining the right to seek Epstein credits for payments made on this community debt.<sup>7</sup>

On December 15, 2003, the parties appeared before Commissioner Haet on the order to show cause. The issue of temporary spousal support was discussed. Based on the assumption the parties would file separate tax returns, the court ran a Dissomaster<sup>8</sup>

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<sup>6</sup> In the caption of the Stipulation, it states: “This case has been assigned for all purposes to Department 20, The Honorable David L. Haet, Commissioner.”

<sup>7</sup> A spouse who, after separation, uses separate property to pay a community debt or to maintain a community asset is generally entitled to “Epstein credits” from the community, unless the payment was in reality a discharge of the paying spouse’s duty to pay support to the other spouse. (*In re Marriage of Epstein* (1979) 24 Cal.3d 76, 84–85.) Conversely, a spouse with exclusive use of a community asset after separation may be required to compensate the community via a “Watts charge” for the reasonable value of that use. (*In re Marriage of Watts* (1985) 171 Cal.App.3d 366, 374.)

<sup>8</sup> This software program is described in *In re Marriage of Olson* (1993) 14 Cal.App.4th 1, 5, fn. 3.

software printout based on the parties' respective net monthly income. Dissomaster calculations showed that no temporary spousal support was owed by either party to the other.

The parties took up the issue of spousal support at the next hearing on May 20, 2004. The parties stipulated that Garcia would pay Susan \$1,000 per month spousal support, effective April 1, 2004, and Susan acknowledged receipt of \$2,000, representing spousal support payments for April and May. The parties also agreed to put the family residence in Benicia on the market and to retain George McCauslan to prepare qualified domestic relations orders (QDROS) for the purpose of dividing Garcia's California Public Employees' Retirement (CalPERS) benefits, Susan's State Teachers' Retirement System (CalSTRS), and Garcia's and Susan's respective tax sheltered annuities. The court continued the matter for a further two-hour hearing to address the issues of temporary spousal support and attorney's fees.

On May 25, 2004, Garcia filed an order to show cause set for a hearing on June 17, 2004. Garcia sought to modify spousal support to zero pending the outcome of the case and for an injunctive orders that Susan dismiss with prejudice the Temporary Order for Protection and Notice of Hearing she filed in Clark County, Washington (case number 04-2-08326-9). In his request, Garcia noted that at the hearing held on May 20, 2004, the parties stipulated to mutual stay-away orders and that Susan raised no "incident of domestic violence," yet Garcia was served with a summons in the Washington cases minutes after leaving the courthouse that day. Garcia requested orders precluding Susan from filing any further restraining orders against him in any other court without first seeking the permission of the Solano County Superior Court and to declare Susan a vexatious litigant. In addition, Garcia asked the court to order that Susan release her medical and psychological records to allow him to counter Susan's allegations of physical, sexual and emotional abuse allegations. Garcia also requested attorney fees for

having to defend the Washington action and attorney fees pursuant to Family Code section 271.<sup>9</sup>

Susan filed a responsive declaration, contending that “under the California Domestic Violence Act, there is no mandatory venue or court of jurisdiction in this state” and that any orders issued by the Washington state court are enforceable in California under the Full Faith and Credit Doctrine. Susan asserted the Washington court proceedings are related to the divorce proceeding in Solano County because “I fear for my life and have been living in shelters.” Susan argued there was no basis for an award of section 271 fees, stating she “should not be penalized by having to pay attorney’s fees and costs because I obtained orders in the State of Washington where I was residing in a shelter.” Susan also objected to Garcia’s request for her medical and psychological records on the basis of privilege and requested section 271 attorney fees.

On August 4, 2004, Susan filed a substitution of attorney. The following day, Susan’s new counsel filed a Notice of Non-Consent to hearing by a commissioner. Garcia objected to Susan’s Notice of Non-Consent, arguing it was untimely under the local rules of court because it was not filed within 15 days of the party’s first appearance in the action. In August 2004, Susan also filed an ex-parte request that the court enter a Wage Assignment Order because Garcia had not paid stipulated spousal support of \$1,000 per month for the months of July and August, 2004. The court issued an earnings assignment order in the amount of \$1,000 per month on August 24, 2004.

Susan appeared with her new counsel before Commissioner Haet on September 27, 2004. Susan’s counsel did not reference the Notice of Non-Consent previously filed, or otherwise object to appearing before the commissioner. Susan’s counsel informed the court that the current spousal support order was based on Susan’s being employed full-time at the Benicia School District, but Susan is now on disability and seeking an increase in pendente lite spousal support. Garcia’s counsel asked the court to continue the matter and set it for a full hearing on the bifurcated issue of

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<sup>9</sup> Further statutory references are to the Family Code unless otherwise noted.

permanent spousal support because “[i]t has been made clear at this point in time that [Susan] contends that she is incapable of working” due to “alleged domestic violence” and is seeking increased spousal support as a consequence. Yet there’s no records or documentation to support any of this, and we’re going around in circles.” Ultimately the parties stipulated to bifurcate the issue of permanent spousal support and to continue the current pendente lite support order, under which Garcia agreed to pay Susan \$1,000 per month, effective April 1st, 2004, subject to retroactive modification if necessary. The parties estimated 20 hours to try the issue of spousal support, which the trial court granted with the observation, “If you can’t do a bifurcated issue in 20 hours then we have problems.” Thereafter, presentation of evidence commenced on the bifurcated issue of spousal support.

***B. Bifurcated Spousal Support Proceedings***

Garcia was the sole witness to testify at the September 27 hearing. Garcia stated he has been a police officer with the City of Vallejo since 1974, and has held the rank of lieutenant since 1990. He testified he and Susan were married on June 24, 1978, and have two adult children, a daughter, Cheryl, aged 23, who lives at an apartment in Benicia, and a son, Sean, aged 20 who currently resides in the family residence. Garcia left the family residence on October 24, 2003, and has not been back. During the marriage, Susan worked full-time for the Benicia Unified School District as a special education instructor and resource specialist. Garcia testified that post-separation, he paid \$835 per month for an apartment and made monthly mortgage and impound payments of \$1,010 on the holiday cabin in Arnold. He also testified he had to take time off work on administrative leave due to restraining orders filed against him by Susan in Contra Costa County and Washington state. As to spousal support, Garcia testified he made payments of \$1,000 per month for the months of April-July, 2004, but did not make payments in August and September because he had to make the mortgage payments on the family residence for those months and had no funds left for spousal support.

The bifurcated proceeding on spousal support continued on November 4, 2004, with the resumption of testimony by Garcia. He testified the sale of the family residence

closed in October and netted proceeds of \$628,000; he received \$200,000, Susan received \$200,000 and the remainder had been deposited in a trust account. After Garcia's testimony concluded, the court ordered the parties to confer with the calendar clerk to determine future hearing dates after agreeing to a date for Susan's deposition.

On November 24, 2004, Garcia filed an order to show cause, asserting that Susan, without consulting her counsel, had unilaterally revoked authorization for release of medical records, thereby obstructing his counsel's ability to complete Susan's deposition. Garcia requested attorney fees pursuant to section 271. Susan opposed the release of her medical records.

A hearing on this discovery issue was held on December 22, 2004. Garcia's counsel reiterated the relevance of the records to Susan's request for increased spousal support, due to the many years of domestic violence she suffered. The court ordered Susan to provide the records of treating physicians to the court for in camera review. The court reserved on Garcia's request for section 271 fees.

At a hearing held on April 6, 2005, further testimony was offered on the bifurcated issue of permanent spousal support. City of Vallejo Police Captain JoAnn West testified that in April 2004, the Attorney General's Office (AG) contacted the Vallejo Chief of Police indicating the AG was investigating a complaint against Garcia by Susan. West received calls from several other agencies informing her Susan had contacted them with allegations and complaints against Garcia, including police departments in Clark County, Washington, Benicia and San Francisco. Vallejo Police launched an Internal Investigation (IA) against Garcia. As part of that investigation, West met with Susan and listened to telephone calls recorded by Susan. On the recordings, West heard no sounds like a gun being racked. The IA found no evidence of stalking, domestic violence or sexual abuse by Garcia. West subsequently heard the AG closed its investigation against Garcia. The IA investigation determined Susan's allegations were unfounded and the IA determination had been reviewed through the chain of command. West testified Garcia was required to take time off during the IA because where a restraining order is in force, Garcia is not permitted to carry a service weapon.

Testimony continued the following day, April 7, when the couple's 24-year old daughter, Cheryl Garcia, took the witness stand. Cheryl testified she left the parental home in May 2004. She was home on October 23, 2003, the day her parents separated.<sup>10</sup> Her father was not angry when he came home that day. Cheryl saw her mother and father go into the study to talk; they did not appear agitated. Shortly thereafter, a Benicia Police Officer came to the door and asked her father to leave the property. Cheryl fetched a small suitcase with some clothes for her father before he left. Cheryl testified that she did not ask to be included in the restraining order her mother filed against her father in Contra Costa County after separation. She further testified that she had never witnessed any domestic violence in the home or suffered any abuse by her father. There was also further testimony from Garcia, who stated he had used 283 hours of annual leave staying off work due to restraining orders filed by Susan.

At the next trial session on April 18, 2005 Garcia again resumed his testimony. Garcia sought Epstein credits on the Arnold property of \$13,178, covering the period from December 2003 to February 2005. He also sought credit for payments made on the family residence prior to its sale, for the period Susan had sole occupancy of the home. Garcia denied all allegations of domestic violence, abuse and spousal rape made against him by Susan.

Shawn Garcia, the couple's 20-year old son also testified during the April 18 session. Shawn testified he was at home the night his parents separated.<sup>11</sup> There was nothing unusual about his father's behavior that night. Shawn did not need protection from his father as stated in the Contra Costa restraining order filed by Susan, nor had he been assaulted by father as asserted by Susan in the Washington restraining order. Shaun never saw his father physically abuse his mother. Shawn testified his father never forced Shawn to report Susan's whereabouts to father after separation, as alleged by Susan, and

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<sup>10</sup> We refer to Cheryl by her first name to avoid confusing her with petitioner.

<sup>11</sup> We refer to Shawn by his first name to avoid confusing him with petitioner.

his father had never interrogated him about where his mother was living or what she was doing.

After Shawn, the court heard testimony from Dorothy Hackler, Susan's mother.<sup>12</sup> Hackler testified she lives with her husband in Moreno Valley, in Southern California. During Susan's marriage, Garcia obtained Hackler's unlisted phone number. Since October 2004, when Susan came to stay with her, Hackler has received numerous hang-up calls. On one call she heard someone say, "Shawnee, Shawnee," which is a nickname for her grandson Shawn. On other calls, she hears static noises or the clicking of a phone hanging up. On a couple of calls, she heard the "pop-pop" sound like a gun chamber clicking.

The court also heard testimony that day from Doctor John Chartier, a family practitioner and Susan's treating physician from 2000-2004. In September 2002, Susan presented to Chartier with symptoms of anxiety, depression and insomnia, and he prescribed Paxil. When Susan first consulted Chartier, she had already been diagnosed with fibromyalgia and took Elavil for that condition. Susan's medical history includes an anxiety disorder and recurrent major depression. When Chartier saw Susan on October 30, 2003, she was very distressed and had lost 25 pounds in the prior six months. She had suffered a relapse in her fibromyalgia, resulting in difficulty functioning in a social manner, which prohibited her from working for two months. Chartier's notes on Susan from November 3, 2003, read "panic attack/stress syndrome. Advised to apply for state disability insurance." Chartier recommended that Susan consult a therapist regarding her mental health problems for purposes of applying for long term disability. On cross-examination, Chartier stated Susan's symptoms of fibromyalgia, anxiety, depression and weight loss had waxed and waned between 2000 and 2003, but she was never under a work release during that time due to her health problems.

On April 20, 2005, Susan took the witness stand. Susan testified she was employed throughout her 25 years of marriage as a special education teacher, including

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<sup>12</sup> Although this was nominally petitioner's case, the parties presented witnesses out of order, depending on the availability of the witnesses.

20 years with the Benicia Unified School District. At date of separation, she earned approximately \$67,000 per year. In 1997, she was diagnosed with fibromyalgia and depression. Currently, she suffers from fibromyalgia, chronic fatigue syndrome, depression, anxiety, carpal tunnel syndrome and interstitial cystitis (IC), a bladder condition. IC was recently diagnosed by Dr. Silver, who also recently diagnosed her with hypoglycemia, a low blood sugar condition, which causes her to become confused at times. Susan submitted an application to receive state disability insurance through STRS. Susan stated she also suffers from post-traumatic stress disorder (PTSD).

Susan further testified that during the marriage she was subjected to physical abuse. Garcia forced her into having sexual intercourse throughout the marriage. Susan also suffered emotional abuse throughout the marriage because Garcia has a short fuse and gets irritated when people don't do what he wants. Susan described two incidents in October 2003; Garcia raped her on October 16; on October 5, while they were cleaning the garage, Garcia shoved her with his arm and knocked her into her son. During the week before she and Garcia separated, Susan was afraid Garcia might kill her and felt intimidated when he brought his service weapon into the kitchen. Susan was afraid and terrorized by what was happening at that time and had difficulty sleeping; she could not eat or keep fluids in her body.

Also, Susan testified that after the protective order issued by the Contra Costa Superior Court was overturned in December 2003, she has been receiving anonymous, threatening phone calls. Most traumatizing to Susan are calls where she can hear the sound of a clip being inserted into a gun. She also gets calls where she hears the noise of a police scanner in the background. No matter where she went, Susan continued to receive these threatening calls. Susan kept a log of the calls and the log contains 130 entries. She never received calls like this before her separation from Garcia and they continue to this day, leaving her in a constant state of fear. Currently, she is receiving psychiatric care from Dr. Chatz in Moreno Valley, which began in January 2005. Susan's last day at work as a teacher was April 1, 2004, and her employment with the School District terminated on March 15, 2005. Susan stayed at the family residence from

October 2003 to April 4, 2004, and left after receiving a threatening phone call in which she heard the sound of a gun being racked.

At the trial session the next day, on April 21, 2005 the trial court received jurisdictional facts regarding the petition for dissolution of marriage, and the court deferred on the effective date of the dissolution pending Susan filing her preliminary declaration of disclosure and further argument of counsel.<sup>13</sup> The parties also agreed Susan would buy out Garcia's interest in the holiday home by June 21 using the appraised value of \$359,000 to determine the equity in the home at \$224,000. The court reserved the issue of Epstein credits on the holiday home.

Testimony then resumed with Virginia Mosby, a marriage and family therapist intern testifying for Susan. Mosby met with Susan 12 times for one on one counseling from March 2004 to December 2004. At the first meeting, Susan presented as very distressed, tearful and anxious, and "had experienced a traumatic experience in her marriage." These are cluster symptoms associated with PTSD. Mosby authenticated a disability report she prepared on Susan's behalf and sent to CalSTRS. The disability report diagnoses major depressive disorder (single episode, severe) and PTSD (chronic). The report states the patient presented with persistent re-experiencing of traumatic events and reports multiple trauma associated with domestic violence and stalking. Also, the report states client continues to experience PTSD symptoms as well as major depression manifested by depressed mood, decreased interest in activities, weight loss and insomnia, psychomotor agitation, fatigue, diminished ability to concentrate and feelings of worthlessness. In regard to Susan's functional capabilities, the report states she has difficulty getting out of bed and takes several hours to complete basic self-care activities like brushing teeth and eating. She can do some light housework but is frequently too fatigued to do grocery shopping. The report concludes Susan's "current impairment is due to trauma; there does not appear to be etiology prior to traumatic experience."

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<sup>13</sup> Subsequently, a judgment of dissolution was filed on August 25, 2005, restoring the parties to the status of single persons as of that date.

At the next trial session on September 21, 2005, Garcia presented expert testimony from Dr. Mark Levy in the field of forensic psychiatry. Levy testified he has completed more than a thousand vocational rehabilitation examinations to determine if persons qualify for the California Department of Vocational Rehabilitation Services on psychiatric grounds. Levy conducted an independent psychiatric examination of Susan on March 31, 2005, in order to diagnose her mental condition and render an opinion on whether she is employable or disabled. Levy interviewed Susan for over two hours, then sent her for independent testing by a forensic psychologist, in this case, his partner, Dr. Saul Rosenberg. Rosenberg ran a battery of psychological tests on Susan, including the Personality Assessment Inventory; the Rorschach ink blot test; the Thematic Apperception test; the Sentence Completion test; the Inventory of Interpersonal Problems; and the Wechsler Adult Intelligence Scale. These tests showed an Axis 1 somatoform disorder, a mental condition causing a person to express emotional pain in physical forms. The second Axis 1 disorder identified in the tests was “depressive disorder (NOS),” meaning Susan evidenced depression, but not a depression falling into a sub-category of bipolar, unipolar, or major depression. The Axis 2 diagnosis from the test results was personality disorder (NOS) with histrionic, borderline and paranoid features.

Levy testified that the test results were “highly confirmatory of my own clinical impressions.” Levy’s own clinical diagnosis was Susan had an “adjustment disorder, mixed type” on Axis 1, displaying elements of depression, anxiety, and a dysthymic disorder, meaning she has a “low-level, chronic tendency to depression, which may wax and wane in relation to life experiences, but which is not . . . profoundly disabling. The other explicit Axis 1 diagnosis Levy arrived at was “undifferentiated somatoform disorder.” A person with this condition has “complaints in many organ systems of their body . . . that either are not substantiated by objective findings, objective pathophysiologic findings, or, if they are, the complaints are in excess of what would be expected for a given physical diagnosis.”

Furthermore, Levy stated that when he interviewed Susan, she was not, in his opinion, psychiatrically or psychologically disabled. Levy stated his opinion was borne out “during my deposition, when I witnessed her coming in, like today, with a legal briefcase on wheels, assisting her attorney, taking notes, talking to him, providing documents, just as she’s been doing here today. [¶] She’s a very competent, functional woman, from a cognitive point of view, except under some very particular circumstances. And that is certainly consistent with being employable.”

Levy testified that Susan attributes her disability to the threat of domestic violence. A prevalent theme during Levy’s interview with Susan was “victimhood”—Susan feels victimized, violated and abused by Garcia, physically and psychologically, and identifies with abused spouses of police officers. Susan told Levy she could not go back to work after March 2004 because Garcia posed a threat to her physical safety in the classroom; however, Susan did not offer Levy any medical reason why she could not return to work.

Levy concluded that Susan does not have PTSD. Levy opined Susan lacks “the A criteria” for PTSD—a major life-threatening traumatic experience. Levy also testified he reviewed Susan’s medical records compiled by Dr. Chartier. The records contain no evidence of spousal rape. Levy questioned Susan’s allegation of spousal rape because psychologically she is given “to hyperbole,” meaning she exaggerates and goes to extremes in describing events. In this regard, Levy observed that Susan’s reports of abuse escalated over time, culminating in the allegation she was raped by Garcia on October 16, 2003, and her report to Dr. Rosenberg that Garcia raped her with an inanimate object on that occasion.

Dr. Levy was followed to the stand by Dr. Ronald Huff, testifying for Susan as an expert in the field of clinical psychology and disability evaluations for purposes of state and federal disability benefits. Susan was referred to Huff after she applied for state disability benefits. When Huff assesses an applicant, he takes a brief history and asks the applicant to describe the problems they are currently experiencing, makes a clinical evaluation based on observations during the interview and administers certain

psychological tests. Huff interviewed Susan on February 18, 2005. After the interview, Huff prepared a report, which he submitted to the Division of Disability Evaluation within the Department of Social Services. In his report, Huff's diagnostic impressions on Axis 1 were major depressive disorder and PTSD. Huff reported Susan presented as anxious, hyper-vigilant, avoidant and feeling estranged from others. Also, Huff found Susan was in need of psychiatric care; her thinking was "saturated with anticipation that her husband might find her" and she described "a fairly long history of feeling like she was being stalked or . . . pursued by . . . her husband." Huff was convinced her symptoms were "real and deserved the attention of a psychiatrist." It also appeared Susan's description of her physical symptoms, such as fibromyalgia and chronic fatigue syndrome, were "consistent with her behavior and the history, as well as the test results." Huff concluded Susan was unable to maintain attention and concentration sufficiently enough to maintain reasonable persistence and pace on the job and was disabled from working as a special education teacher.

On cross-examination, Huff stated Susan did not complain of any physical discomfort during the two hour interview. Based on what Susan reported, the triggering events for her PTSD were related to stress she was under in her family relationships. Susan told Huff she was being stalked by her husband, that she has a bullet proof vest, and she believes her husband is capable of tracking her by using police equipment. Before adjourning for the day,<sup>14</sup> the court addressed counsel: "[T]he two of you keep complaining about the time this is taking, and you two keep adding time. [¶] I also would state to you both that on three separate occasions — so the parties hear this — I have offered the full day on a Monday . . . when the Court had a case go away. You two had priority on those [occasions]. . . . [T]he Court has attempted, at great efforts, to get this

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<sup>14</sup> Before court adjourned, Susan called Dr. David Linder to testify as an expert in the field of forensic psychiatry. Linder clinically examined Susan but did not conduct any forensic testing. Linder was unable to complete any further testimony before adjournment and Susan did not subsequently recall him.

case concluded, because it needs to be concluded. . . . So I hope you can be a bit more flexible, because if not, you are going to be back probably in 2006.”

Within days of the above trial proceedings, on September 28, 2005, Susan filed a motion to modify temporary spousal support. In a declaration in support of the motion, Susan asserted Garcia initially paid stipulated temporary spousal support of \$1,000 for April and May 2004, and then did not pay again, and his wages were garnished in October 2004. Citing new evidence, Susan stated she vacated the family residence in April 2004 and spousal support should have increased at that time; she was “disabled from October 24, 2003, per social security and now permanently retired as disabled through CalSTRS; and, she has no income aside from \$1,000 per month in temporary spousal support. Further, Susan claimed expenses of \$7,000 per month, including support of her son, who is in college. Susan concluded that based on her “current income of \$0 and the Petitioner’s income of roughly \$14,000 per month, temporary spousal support needs to be increased accordingly.”

In response, Garcia filed a declaration asking that Susan’s motion for modification be denied and requested section 271 fees on the ground’s Susan’s motion was frivolous and included misrepresentations to the court. Garcia noted the parties are currently on the eighth day of trial on the issue of permanent spousal support. Garcia also averred Susan had intentionally avoided receipt of approximately \$4,300 per month she could have received in benefits in 2005 by failing to claim her community share of Garcia’s CalPERS retirement account upon her 50th birthday. Garcia averred Susan is receiving undeclared CalSTRS disability payments and CalSTRS income totaling between \$7,684 and \$9,098, plus temporary spousal support of \$1,000 per month. Garcia argued Susan’s motion was filed to harass, annoy and be vexatious. Also, Garcia set forth 18 instances in Susan’s motion where she misrepresented facts to the court.

Susan filed a supplemental declaration attesting that the community property portion of Garcia’s CalPERS has yet to be paid to her and her claim for full disability under CalSTRS had not been decided. She declared she had to exist throughout the summer and fall on \$1,000 per month in temporary spousal support, “while it takes 18

months to try this issue.” She stated she had spent \$76,000 on attorney fees and costs from the money received from the sale of the family home and the remainder (of the \$200,000 she received in October 2004, see *ante*) “has been spent on necessities, i.e., food, clothing, shelter. I have no funds left with which to support myself.”

At a hearing on the modification motion held on November 30, 2005, the court noted the hearing was on “a request to modify a temporary stipulation as to spousal support pending the final four hours of this trial,” and that the next trial date had been set for June 19, 2006. In order to dispose of the issue sooner, the court offered the parties two-hour trial times on January 17 and January 24, 2006, which the parties accepted. Also, the court noted that since filing her modification motion, Susan had received \$25,149 in backdated CalSTRS disability payments and going forward would receive \$3,353 per month. Using the Dissomaster program, the court calculated when Susan begins to receive payments from Garcia’s CalPERS pension in addition to her CalSTRS benefits, the spousal support figure “comes up zero.”

Apparently, trial hearings were heard as scheduled on January 17 and January 24, 2006; however, the parties did not complete the presentation of evidence on the issue of spousal support.<sup>15</sup> The final trial session on the issue of spousal support was held on June 19, 2006, and commenced with Susan’s continued cross-examination. Susan testified she is currently in the process of purchasing a new home at a price of \$787,000, and borrowed \$100,000 against her Arnold home (the holiday cabin) to use as a down payment on the purchase. To qualify for the loan, Susan declared a monthly income of \$9,100, which includes \$1,000 in spousal support. Susan testified she is willing to spend two-thirds of her total monthly income servicing the mortgage on her new home, stating “I deserve to have a house.” Susan has nothing left of the \$200,000 she received in October 2004 as proceeds from the sale of the family home. She receives income from

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<sup>15</sup> The voluminous record does not include reporter’s transcripts of the January 2006 trial sessions. The clerk’s transcripts contains a minute order for the January 24th session, indicating that Susan testified on January 17th and resumed her testimony on January 24th. The order states the matter is referred to the calendar clerk for a further two hour trial on the issue of spousal support.

CalSTRS, CalPERS and spousal support. Susan testified that she wants the court to continue spousal support, that her monthly expenses are \$14,000 and that Garcia should provide spousal support to that level.

Susan further testified that she has not lived at the Arnold property for 10 months, nor has she rented out the property. Susan testified that Garcia has been stalking her since December 2003. In March 2006, Susan contacted Newport Beach Police and filed a complaint against Garcia. She files complaints with the police as the death threats arise, and has contacted the Moreno Valley Police Department, the San Bernadino Sheriff's Department and the Benicia Police Department.

After Susan completed her testimony, Garcia again took the witness stand. Garcia testified that he re-married in December 2005. He and his wife are in the market for a new home and expect to make home payments in the region of \$3,700-4,400 per month. Garcia testified that he has been contacted by about 18 different law enforcement agencies about Susan's allegations of threats and stalking, and told them all that the allegations are "totally spurious." Following Garcia's testimony, the court entertained argument of counsel, took the matter under submission and ordered the parties to set a trial date on the remaining issues.

### ***C. Statement of Decision***

The trial court issued a ruling from the bench at a hearing held on January 23, 2007, and a "Statement of Decision and Judgment on Bifurcated Issue of Spousal Support" (SOD) was subsequently filed on May 2, 2007. In its SOD, the trial court found that during the course of trial, Susan "obfuscated the issue of her need for support. . . . [Susan] had a lack of disclosure, [made] inflammatory and exaggerated allegations with regard to Petitioner and provided information to the court that was not correct." Regarding Susan's domestic violence allegations against Garcia, the court stated it "was tangentially involved in the allegations of domestic violence as alleged by [Susan] and the testimony presented therein by the parties and various witness [sic]. However, [Susan] never made a request to this Court of domestic violence and Petitioner has never

been charged or convicted of any domestic violence. [¶] There is no finding of domestic violence against Petitioner.”

In regard to the parties’ income, the SOD stated: “Both parties were employed during the marriage and lived off a combined annual income of approximately \$200,000. . . . [¶] [Susan] did not apply for “PERS” benefits [from Garcia’s pension] when she became eligible to do so at age 50. Her delay in applying for “PERS” benefits resulted in irreparable loss of said benefit of \$40,000 to \$45,000 which would have been available . . . for her own support. [¶] [Susan] while claiming to be destitute failed to disclose that she had applied for disability benefits from [CalSTRS]. [¶] The issue of [Susan’s] disability became moot with the receipt of her “STRS” disability retirement in 2005. [¶] . . . [¶] The court finds [Garcia’s] monthly net adjusted income is \$8,906.” Depending on the adjustments applied, Susan’s net monthly income is between \$6,630 and \$7,790, which in either case “is higher than it was during the parties’ marriage.” During trial, Susan “utilized a number of addresses and indicated she was not residing at the Arnold property. [Susan] also testified she was not renting out the Arnold property and her failure to do so is to under-utilize this asset. [¶] [Susan] has further encumbered herself during these proceedings by purchasing a new home with a substantial new mortgage obligation of approximately \$5,000 per month in addition to the Arnold mortgage obligation of \$1,600 per month. It is not Husband’s responsibility to subsidize Wife’s further encumbrances through spousal support. [¶] . . . [¶] Based upon [Susan’s] Income and Expense Declaration and tax returns, [Susan’s] charitable donations by check to charities in 2005 which averaged \$239 per month belie [her] request for spousal support. [¶] [Susan] during the marriage had \$6,250 per month gross income. Currently she has \$8,120 per month gross income from which there are no deductions for state disability, for Medicare or social security. Her adjusted net income is \$6,630.00.” Based on these findings, the court denied Susan’s request to increase spousal support and reduced the spousal support due to Susan from Garcia to zero, effective January 1, 2007, with no retroactive modification of support prior to that date.

***D. Remaining Issues***

The court held hearings on July 9, 2007, January 10, 2008, and August 18, 2008, during which the court received evidence and further testimony from the parties on the following issues: Garcia's claim for credits for mortgage payments he made on the family residence for the months of July-September, and November 2004; Garcia's claim for Epstein credits on the Arnold property; the assignment and valuation of vehicles; the distribution of proceeds from bank accounts held by the parties at the time of separation; Susan's claim for reimbursement under section 2641 for a Masters in Public Administration obtained by Garcia during the marriage; and assignment of accrued benefits from Garcia's employment following his retirement.

During these hearings the court ruled piecemeal on discrete issues after receiving evidence on the issue in question. Specifically, the court ruled Susan owed Garcia \$4,786.89, representing one-half of mortgage payments Garcia made on the family residence in 2004. Also, following the parties stipulation that between November 2003 and September 2005, Susan paid \$10,302.92 and Garcia paid \$12,089.44 toward mortgage payments on the Arnold property, the court ruled the parties were jointly responsible for said mortgage payments through August 2005, that Garcia "doesn't have any responsibility beyond August 30th," after Susan assumed sole ownership, and instructed the parties "you need to do the math" to determine how much Susan owed Garcia on that item. Further, the court ruled on the assignment and value of the family vehicles and ruled that Susan received a total of \$12,284.44 in community funds held in joint bank accounts at the time of separation.

On December 30, 2008, the court issued its "Amended Order After Trial (August 18, 2008)" (order), ruling on other issues presented during 2007 and 2008 trial sessions. In this regard, the court denied Susan's request for reimbursement under section 2641. Also, the court determined that "the total amount of community interest of sick leave, compensation time and annual leave is \$73,044.65, reduced by 35% taxes for a net value of \$47,479.02, which is credited to Husband. Also, the court noted there is a remaining community interest of 841.72 hours of sick leave not paid due to the City of

Vallejo's bankruptcy proceedings, and ordered the parties to file a creditor's claim for that with the bankruptcy court.

The final trial court session in the case was held on April 20, 2009, during which the court addressed the remaining issues of Susan's claim for Epstein credits and attorney fees. On the issue of Epstein credits, the parties stipulated that Susan has \$1,000 of Epstein credits for non household expenses and Garcia will pay Susan \$500 for one half of the Epstein credit. Thereafter, the trial court entertained argument of counsel on the issue of attorney fees. Garcia asked the court to order that Susan pay him \$50,000 in attorney fees pursuant to section 271. The court stated the matter would be deemed under submission on May 11, upon receipt of Susan's latest income and expenses declaration. Also, the trial court suggested the parties prepare a judgment on reserved issues incorporating the court's various rulings and orders issued during the course of trial proceedings in 2007 and 2008.

On August 17, 2009, the trial court filed a "Ruling" addressing the issue of attorney fees. Based upon the relative incomes and assets of the parties, the court concluded that neither party should be awarded attorney fees pursuant to section 2030 based on need. Additionally, the Ruling stated: "The Court however does realize that much of the monies expended by the parties as fees and costs (the previously estimated \$200,000 as combined expenditures) were generated by a no-holds-barred litigation stance by [Susan], and an unreasonable expectation as to the outcome. There was little if any compromise on the issues by [Susan]. Her desire to inflict damage on Husband was evident and her conduct was certainly not one of an attempt to minimize fees. As a result the parties spent far more in attorney fees than this case should have cost if reality had been present." Pursuant to section 271, the court ordered Susan to contribute the sum of \$25,000 to Husband's attorney fees and costs, with interest at the legal rate until paid. On October 13, 2009, Susan filed a Notice of Appeal.

## DISCUSSION

### A. *Section 271 Attorney Fees*

Susan contends the trial court's section 271 fee order against her in the amount of \$25,000 was an abuse of discretion and should be reversed. We find no abuse of discretion on this point.

Section 271 provides an independent basis for sanctions in family law actions and was enacted in recognition that the “ ‘policy of the law to promote settlement of litigation’ ” has special application to domestic relations cases, which tend to be more emotionally charged than most other forms of civil litigation. (*In re Marriage of Hargrave* (1995) 36 Cal.App.4th 1313, 1323-1324; *In re Marriage of Melone* (1987) 193 Cal.App.3d 757, 765.) Courts award sanctions under section 271 to punish attorneys or their clients for litigation tactics that frustrate the goal of resolving family law litigation. (See *In re Marriage of Abrams* (2003) 105 Cal.App.4th 979, 990-991.) A party requesting a section 271 award is not required to show any financial need for the award or any actual injury. (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1225.) The only stricture is that the sanction may not impose an unreasonable financial burden on the party sanctioned. (*Id.* at 1226.) In sum, section 271 authorizes a fees and costs award as a penalty for obstreperous conduct. (*Robert J. v. Catherine D.* (2009) 171 Cal.App.4th 1500, 1520.)

A section 271 sanctions order is reviewed for abuse of discretion. (*In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470.) Accordingly, the appellate court will overturn such an order only if, considering all the evidence viewed most favorably in its support and indulging all reasonable inferences in its favor, no judge could reasonably have made the order. (*In re Marriage of Corona, supra*, 172 Cal.App.4th at pp. 1225-1226.) The burden is on the party sanctioned to show error. (*Id.* at p. 1227.)

This record contains substantial evidence of irresponsible conduct by Susan that prolonged the proceedings and vastly increased the cost of litigation. For example, throughout the entirety of the proceedings, Susan persistently pressed allegations that Garcia stalked her using police equipment and made death threats against her. Also, she

persistently alleged Garcia inflicted domestic violence, domestic abuse and spousal rape upon her during the marriage. However, the evidence showed these allegations were baseless. As noted above, Cheryl and Shawn Garcia, the couple's two children, testified they had never witnessed any domestic violence by Garcia and that statements made by Susan about Garcia in her applications for a restraining order were untrue. Captain West testified that an internal investigation conducted by the Vallejo Police Department found no evidence to support Susan's allegations. In its SOD, the trial court noted that Susan "never made a request to this Court of domestic violence and Petitioner has never been charged or convicted of any domestic violence."

Moreover, despite the fact that Susan was already under the protection of a mutual restraining order filed in the trial court, she sought a restraining order in Washington state court. In this regard, Susan appeared in court on May 20, 2004, and stipulated to receiving \$1,000 per month in temporary spousal support; however, she did not allege any breach by Garcia of the mutual restraining orders already imposed by the trial court.<sup>16</sup> Nevertheless, within minutes of leaving court that day Garcia was served with a summons from the Washington state court on a temporary order for protection within. In response, Garcia sought an injunction from the trial court and section 271 attorney fees for having to defend the Washington action. And Susan continued to file complaints against Garcia with law enforcement agencies throughout California, despite the fact that he had been cleared by the Vallejo Police Department's internal investigation. Additionally, Susan's claim she could no longer work on account of domestic violence, spousal rape, stalking and death threats necessitated extensive discovery and testimony by competing medical experts, thereby vastly increasing the cost of the litigation.

Indeed, what the trial court characterized as Susan's "unreasonable expectation as to [] outcome" and "desire to inflict damage" on Garcia is evident throughout the record. For example, as noted above, Susan, unilaterally and without consulting her attorney, revoked an earlier authorization for release of her medical records and obstructed the

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<sup>16</sup> Yet Susan testified in Washington state court that "there have been numerous violations" of the non-CLETS mutual restraining order.

taking of her deposition. Also, during trial on the bifurcated issue of permanent spousal support, Susan sought a modification in September 2005 to increase temporary spousal support, claiming expenses of \$7,000 per month and zero income, despite the fact she received \$200,000 from the sale of the family residence less than a year beforehand. Several months later, the court rejected Susan's request for modification, noting that she had received over \$25,000 in backdated CalSTRS disability payments. Susan inflated her expenses by purchasing a house in 2006 at a cost of \$787,000, and minimized her income by leaving the Arnold home empty and unrented, and delaying her application for pension benefits under Garcia's CalPERS plan, resulting in "an irremediable loss" to her of income in the amount of \$40,000 to \$45,000.

In sum, the parties to these divorce proceedings were a husband policeman and teacher wife with no minor children and relatively modest community assets, yet between them they expended over \$200,000 in attorney fees in exceedingly protracted and contentious proceedings spanning several years. On this record, we cannot say the trial court abused its discretion by imposing section 271 sanctions on Susan in the amount of \$25,000.

***B. Denial of Attorney Fees to Susan***

Susan asserts the trial court erred by failing to award attorney fees in her favor and by failing to sanction Garcia. Specifically, Susan contends she incurred \$109,378 in attorney fees mostly because she had to "defend against . . . unfair trial tactics" by Garcia. The record does not support her contention. For example, Susan asserts that as a result of Garcia's threats, she dismissed the Contra Costa TRO and overturned the protective order issued by the Washington state court. In fact, the parties agreed to voluntarily dismiss the Contra Costa TRO with prejudice and stipulated to the entry of mutual restraining orders in trial court. As for the Washington state court proceedings, they were dismissed with prejudice for lack of jurisdiction.

Similarly, Susan complains Garcia pursued "fee-churning" discovery by deposing her, seeking medical records, and making her undergo an independent psychiatric examination in response to her allegations of domestic violence. However, Susan placed

her mental state squarely at issue by claiming she was unable to return to work and required spousal support due to mental health issues arising from domestic violence, abuse, threats and spousal rape perpetrated by Garcia. In sum, we conclude the trial court did not abuse its discretion by failing to sanction Garcia pursuant to section 271. (See *In re Marriage of Burgard* (1999) 72 Cal.App.4th 74, 82 [a trial court's section 271 ruling is reviewed for abuse of discretion, viewing the evidence in the light most favorable to the ruling].)

### **C. Due Process**

Susan contends the trial court “abused its discretion and committed reversible error that led to due process violations” because (1) her case was assigned to a commissioner for all purposes; (2) the commissioner should have disqualified himself due to an inherent conflict of interest; (3) the commissioner “became embroiled outside his jurisdiction” ; and, (4) the trial court erred by ordering the mutual stay-away order without a hearing. These contentions are meritless.

In regard to assignment, Garcia filed his petition for dissolution of marriage in November 2003 and the case was assigned to Commissioner Haet for all purposes. Susan, represented by attorney Weisinger, appeared before the commissioner without objection during the initial phase of the case. Only after attorney DeRonde substituted in as her attorney some nine months later in August 2004 did Susan file a notice of non-consent to a hearing by a commissioner. Although Garcia opposed the notice of non-consent as untimely, no ruling was issued on it, and Susan, assisted by attorney DeRonde, continued to appear before Commissioner Haet for the remainder of the proceedings through issuance of trial court rulings in 2008. Accordingly, on this record, we conclude the doctrine of tantamount stipulation clothed the commissioner with judicial authority through the conclusion of proceedings. (See *In re Courtney H.* (1995) 38 Cal.App.4th 1221, 1227 [the rationale behind the doctrine of tantamount stipulation “is simple: ‘An attorney may not sit back, fully participate in a trial and then claim that the court was

without jurisdiction on receiving a result unfavorable to him.’ [Citation.]”.) No due process violation occurred on this point.<sup>17</sup>

We now turn to the issue of judicial disqualification. Susan contends Commissioner Haet had a conflict of interest and should have disqualified himself because Garcia’s attorney is married to a Solano County Family Court judge and because Garcia “often came before the Solano County court system, as a law enforcement officer and as his department’s domestic violence coordinator.

The standard for disqualification is whether “[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.” (Code of Civ. Proc., § 170.1(a)(6)(A)(iii).) The standard for disqualification under this subdivision “ “[i]s fundamentally an objective one.” If a reasonable member of the public at large, aware of all the facts, would fairly entertain doubts concerning the judge’s impartiality, disqualification is mandated. The existence of actual bias is not required.’ [Citations.]” (*People v. Panah* (2005) 35 Cal.4th 395, 446.)

However, the grounds for disqualification must be raised at the earliest practicable opportunity after the disqualifying facts are discovered. (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 655-656, overruled on another ground in *Equilon Enterprises v.. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68; *Urias v. Harris Farms, Inc.* (1991) 234 Cal.App.3d 415, 424-425.) By failing to raise this issue at the earliest practicable opportunity, Susan has forfeited her right to object to the trial judge’s qualification. (*Reichert v. General Ins. Co.* (1968) 68 Cal.2d 822, 838; see *In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. 2 [stating that the correct legal term for loss of right

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<sup>17</sup> Susan argues *Elkins v. Superior Court* (2007) 41 Cal.4th 1337 (*Elkins*) compels the opposite conclusion. She is mistaken. In *Elkins*, the California Supreme Court held that a local rule of court, making written declarations admissible as a basis for decision in a contested marital dissolution, was inconsistent with the hearsay rule and with “the historically and statutorily accepted practice of conducting trial by means of the oral testimony of witnesses given in the presence of the trier of fact. [Citation.]” (*Id.* at pp. 1356-1357.) *Elkins* does not negate the doctrine of tantamount stipulation; moreover, unlike the husband in *Elkins*, Susan presented her case “by means of the oral testimony of witnesses given in the presence of the trier of fact.” (*Ibid.*)

based on failure to assert it in a timely fashion is forfeiture, not waiver].) Moreover, even if we were to reach the merits of the issue, we would reject Susan's claim of judicial disqualification. The average person on the street aware of the fact that the attorney of a local police officer involved in divorce proceedings was married to a *non-presiding* judge, would not reasonably or fairly entertain doubts about *the presiding judge's* impartiality. (*People v. Panah, supra*, 35 Cal.4th at p. 446.) Thus, contrary to Susan's assertion, she was not deprived of due process on account of judicial bias.

Susan also contends she was deprived of due process because Commissioner Haet "became embroiled outside his jurisdiction." We disagree.

"The term "due process of law" asserts a fundamental principle of justice which is not subject to any precise definition but deals essentially with the denial of fundamental fairness, shocking to the universal sense of justice.' [Citation.] "The trial of a case should not only be fair in fact, but it should also appear to be fair." [Citations.] A prime corollary of the foregoing rule is that "A trial judge should not prejudge the issues but should keep an open mind until all the evidence is presented to him." ' [Citation.]" (*In re Marriage of Carlsson* (2008) 163 Cal.App.4th 281, 290-291.)

Here, Commissioner Haet did not violate these precepts of due process by speaking over the telephone with Judge Eiesland, the presiding judge in Susan's application for a temporary protective order filed in Clark County, Washington in May 2004. Indeed, it appears from the record that Judge Eiesland was "in a quandary" about whether to issue an ex-parte restraining order over a California resident and called Commissioner Haet to enquire whether the California court was aware of the continuing threats against Susan. Judge Eiesland recited in court that Commissioner Haet stated "he was kind of puzzled as to why they didn't open up and say something when they were in front of him." Nothing about this exchange demonstrates that Commissioner Haet had prejudged the issues before him and could not "keep an open mind until all the evidence" had been presented. (*In re Marriage of Carlsson, supra*, 163 Cal.App.4th at pp. 290-291.) In sum, Susan suffered no due process violation on his point.

Furthermore, Susan asserts the trial court exceeded its jurisdiction by entering the mutual stay-away orders in December 2003 without making the findings required under section 6320.<sup>18</sup> Assuming the stipulation to mutual stay-away orders at issue here is subject to section 6305, and assuming, without deciding, that the trial court exceeded its jurisdiction by entering stay-away orders without “detailed findings of fact” indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense (see *Monterroso v. Moran* (2006) 135 Cal.App.4th 732, 736), the result is that the trial court’s act of entering the stay-away orders is “ ‘merely voidable’ ” and “ ‘is valid until it is set aside, and a party may be precluded from setting it aside by “principles of estoppel, disfavor of collateral attack or res judicata.” [Citation.]’ [Citation.]” (*Id.* at p. 737.) Here, Susan is precluded from setting aside the trial court’s entry of the mutual stay-away orders stipulated to by the parties because at all relevant times Susan showed legal sophistication and an understanding of the processes of obtaining restraining orders, was represented by counsel and entered the stipulation in question with the advice of counsel. (Cf. *Monterroso v. Moran, supra*, 135 Cal.App.4th at p. 737 [legally unsophisticated, non-English speaking wife who appeared without counsel and through an interpreter was not estopped from challenging mutual protective orders entered by stipulation where trial court failed to make findings required by section 6320].)

**D. Community Property**

Susan asserts the trial court divided the community property unfairly and erred in its spousal support rulings. We conclude Susan has failed to demonstrate reversible error in the trial court’s rulings on these matters. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 62 [“challenger of a trial court’s findings [must] demonstrate to the reviewing court wherein the trial court erred”].)

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<sup>18</sup> Section 6305, subdivision (a) states: “The court may not issue a mutual order enjoining the parties from specific acts of abuse described in Section 6320 (a) unless both parties personally appear and each party presents written evidence of abuse or domestic violence and (b) the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense.”

Susan challenges the division of the community property portion of the separation payment Garcia received from the City of Vallejo upon his retirement in lieu of accumulated time for sick leave, annual leave and comp time.<sup>19</sup> We review the trial court's division of community property for any abuse of its broad discretion to award such property in order to accomplish an equal allocation. (*In re Marriage of Andresen* (1994) 28 Cal.App.4th 873, 880.) On review, all conflicts in the evidence are drawn in favor of the judgment. The reviewing court may not reweigh the evidence or determine credibility. (*In re Marriage of Friedman* (2002) 100 Cal.App.4th 65, 71.)

Here, the record shows that upon retirement Garcia expected to receive a lump sum payment for 50% of his accumulated sick leave plus 100% of his accumulated annual leave and comp time—a total of approximately \$148,000. However, on March 21, 2008, Garcia accepted a separation payment from the City of Vallejo (City) in the amount of \$74,363.11, equivalent to 50% of the total separation pay to which he was entitled. Garcia accepted this payment on the understanding he would receive the remainder in December 2008 if the City did not enter bankruptcy proceedings, but the City filed for bankruptcy in July 2008.

The record also shows the City of Vallejo did not deduct federal or state taxes from the \$74,363.11 paid to Garcia. Also that sum included payment for all accumulated annual leave (475.78 hours), all accumulated comp time (85.18 hours) and part of allowable accumulated sick leave (360.28 hours out of the total allowable accumulated sick leave of 1,283.31 hours.) Payment of \$74,371.76 for the remaining accumulated sick leave of 923.03 hours was scheduled for December 31, 2008, unless the City filed for bankruptcy. Further, the record shows that at the time of separation, Garcia had accumulated 464.46 hours of annual leave, 129.68 hours of comp time and 1162.51 hours of allowable sick leave.

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<sup>19</sup> Contrary to Susan's contention there was no failure to disclose this asset. Garcia retired on February 15, 2008, and the issue of the division of the community property interest in his separation payment was fully addressed during the next court hearing on August 18, 2008.

Based on this information, the trial court calculated that the community interest in the \$74,363.11 separation payment received by Garcia was \$73,044.65, reduced by 35% taxes for a net value of \$47,479.02.<sup>20</sup> This calculation appears fair and reasonable given that the date of separation was more than four years before Garcia's retirement in February 2008. It also seems fair to reduce the amount by 35% to allow for the state and federal income taxes payable on the amount by Garcia. Thus, Susan's share of the community interest in the separation payment is \$23,739.51.<sup>21</sup> In sum, no error appears on this point.

Susan also challenges the trial court's ruling on spousal support, listing ten legal errors she alleges the trial court committed. Many of these alleged errors pertain to the issue of temporary spousal support. Susan, however, simply ignores the fact that in May 2004, while acting with the assistance of counsel, she stipulated to *temporary* spousal support in the amount of \$1,000 during the pendency of bifurcated trial proceedings on the issue of *permanent* spousal support.<sup>22</sup>

In regard to the issue of permanent spousal support, Susan asserts the trial court erred by failing to consider the relevant statutory factors and ordering zero permanent support. We disagree.

“An award of [permanent] spousal support is a determination to be made by the trial court in each case before it, based upon the facts and equities of that case, after weighing each of the circumstances and applicable statutory guidelines. [Citations.]<sup>[23]</sup>

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<sup>20</sup> As noted *ante*, the court also ruled that 841.72 hours of the sick leave not paid to Garcia due to the City's bankruptcy proceedings are community property.

<sup>21</sup> We note that the sum of \$23,739.51 owed by Garcia to Susan for her share of the community property in his separation pay, plus \$500 the parties stipulated Garcia owed Susan in Epstein credits (see *ante*), totals \$24,239.51, which is almost the amount the trial court ordered Susan to pay Garcia for attorney fees under section 271.

<sup>22</sup> Susan also stipulated to bifurcated proceedings on the issue of permanent spousal support.

<sup>23</sup> Family Code, section 4320 states: “In ordering spousal support under this part, the court shall consider all of the following circumstances:

“ (a) The extent to which the earning capacity of each party is sufficient to maintain the

In making its [permanent] spousal support order, the trial court possesses broad discretion so as to fairly exercise the weighing process contemplated by section 4320, with the goal of accomplishing substantial justice for the parties in the case before it. ‘The issue of

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standard of living established during the marriage, taking into account all of the following:

“ (1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.

“ (2) The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties.

“ (b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party.

“ (c) The ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living.

“ (d) The needs of each party based on the standard of living established during the marriage.

“ (e) The obligations and assets, including the separate property, of each party.

“ (f) The duration of the marriage.

“ (g) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party.

“ (h) The age and health of the parties.

“ (i) Documented evidence of any history of domestic violence, as defined in Section 6211, between the parties, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party.

“ (j) The immediate and specific tax consequences to each party.

“ (k) The balance of the hardships to each party.

“ (l) The goal that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration as described in Section 4336, a “reasonable period of time” for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court's discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section, Section 4336, and the circumstances of the parties.

“ (m) The criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award in accordance with Section 4325.

“ (n) Any other factors the court determines are just and equitable.”

[permanent] spousal support, including its purpose, is one which is truly personal to the parties.’ [Citation.]” (*In re Marriage of Kerr* (1999) 77 Cal.App.4th 87, 93 (*Kerr*)). “In awarding [permanent] spousal support, the court must consider the mandatory guidelines of section 4320.” (*Kerr, supra*, 77 Cal.App.4th at p. 93.) “In balancing the applicable statutory factors, the trial court has discretion to determine the appropriate weight to accord to each.” (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 304.) “Once the court does so, the ultimate decision as to amount and duration of [permanent] spousal support rests within its broad discretion and will not be reversed on appeal absent an abuse of that discretion. [Citation.] ‘Because trial courts have such broad discretion, appellate courts must act with cautious judicial restraint in reviewing these orders.’ [Citation.]” (*Kerr, supra*, 77 Cal.App.4th at p. 93.)

Here, in assessing the need for permanent spousal support, the trial court noted Susan was 52 years of age and Garcia was 56 years of age. The court noted the parties had been married for 25 years and had two adult children. In addition, the court noted that during the marriage Garcia was employed as a police officer and Susan was employed as a special education teacher and has a master’s degree and a teaching certificate. Also, the court considered the fact that during the marriage the parties owned two pieces of real property (a family home in Benicia and a vacation home in Arnold), lived off a combined annual income of approximately \$200,000 per annum, and enjoyed a “middle to upper-middle class standard of living.” Furthermore, the court considered the relative incomes of the parties; Garcia’s monthly net adjusted income was \$8,906 and Susan’s between \$6,630 and \$7,790. The court also noted Susan under-utilized the vacation home asset she now owned in full by failing to either live in it or rent it out, failed to timely apply for CalPERS benefits (resulting in a “irredeemable loss” of \$40,000-45,000) and recently encumbered herself by purchasing a new home, thereby incurring a mortgage obligation of \$5,000 per month. In sum, the record demonstrates that the trial court’s decision not to award Susan permanent spousal support was based on a careful weighing of “the relevant statutory factors” in light of the particular “facts and equities of the case.” (*Kerr, supra*, 77 Cal.App.4th at p. 93.)

**DISPOSITION**

The trial court's orders and rulings are affirmed in full. Susan shall bear her costs on appeal.

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Jenkins, J.

We concur:

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McGuiness, P. J.

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Siggins, J.