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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of NORMAN and
CYNTHIA FEAKINS.

NORMAN FEAKINS,

Appellant,

v.

CYNTHIA FEAKINS,

Respondent.

A132338

(San Mateo County
Super. Ct. No. FAM016920)

Norman Feakins (Norman) and Cynthia Feakins (Cynthia)¹ were married for 17 years. After Norman was arrested for molesting Cynthia's son from a prior marriage, he deeded his interest in their marital home to Cynthia as her separate property. Cynthia expressed her desire to continue their marriage at the beginning of Norman's incarceration, but almost three years later, she filed for dissolution. Norman appeals from the judgment of dissolution, maintaining the court erred in determining the home was Cynthia's separate property. He also maintains the court erred in denying him spousal support and attorney fees, reimbursement for what he asserted was his separate property contribution toward the purchase of a condominium and in valuing some of the community property. Norman lastly claims the court erred in ordering he appear by

¹ We refer to the parties by their first names for clarity. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1 .)

telephone rather than being transported from prison to court for the trial. We find no merit in any of these claims, and affirm.

PROCEDURAL AND FACTUAL BACKGROUND

Norman and Cynthia were married on April 21, 1989. At the time, Cynthia was a registered nurse and had a seven-year-old son from a previous marriage. Norman was employed as a freight manager for a freight forwarding company.

Approximately three months prior to their marriage, in January 1989, Norman purchased a condominium on Shorebird Circle in Redwood City. He testified he made the \$18,445 down payment from his separate property funds. After the marriage, he deeded the home to himself and Cynthia jointly. The couple lived in the home during the marriage, and the two of them made payments on the home's mortgage. In 1993, Norman and Cynthia purchased a home together on Bay Harbour Drive in Redwood City, and held title "jointly." They rented out the Shorebird Circle property and lived in the Bay Harbour Drive home. The Shorebird Circle property was sold in 2003, and the proceeds totaling about \$240,000 were placed in an E*Trade account, which the parties agreed to divide equally, subject to Norman's claim for reimbursement of the \$18,445 down payment.

On September 11, 2003, Norman was arrested for molesting Cynthia's son, allegedly over a 10-year period. Cynthia found an attorney for Norman and paid the bill of approximately \$60,000 from community property funds.² Norman did not post bail.

About three weeks after Norman's arrest, he executed a power of attorney giving Cynthia authority to handle his finances while he was incarcerated. They also discussed putting title to the Bay Harbour Drive home in Cynthia's name alone. Cynthia testified Norman told her "he had spoken to his attorney and he was thinking about deeding the house to me as my separate property." In a letter from Cynthia to Norman while he was in county jail, she stated " '[I]f you want to deed the house to me, let me know.' " Norman asked her to "go ahead" and have the deed prepared. Cynthia had it prepared at

² Cynthia sought recovery of this sum at trial, which the trial court denied.

a title company, then had the Volunteer Service League bring it to Norman in the county jail about a week before he was sentenced. Cynthia was not present when Norman signed the deed and his signature was notarized. After the deed was returned to Cynthia, she had it recorded.

Cynthia testified she never promised to put Norman's name back on the title to Bay Harbour Drive, and he never indicated, until the dissolution action was filed, that he wanted his name put back on the title. Norman admitted Cynthia "did not say she would put him back on" the title after he was released. Norman testified there was nothing on the deed indicating "ownership comes back to me at any time," and he wrote nothing on the deed other than his signature. He believed he "still had 50 percent of the equity of the house" "because of Cynthia's commitment to the marriage." Norman testified he "was under extreme duress" at the time he signed the deed because he "was going through an utter trauma. My life had collapsed." Norman "understood that [Cynthia] was committing to sharing the assets equally when [he] was released" based on a letter she wrote him while incarcerated. He testified he did not recall Cynthia ever telling him she would put his name back on the title. He made "an assumption" that his name would be put back on the title to the Bay Harbour Drive property after he was released from prison.

Norman pleaded no contest to 32 charges regarding his molestation of Cynthia's son, and was sentenced to 32 years in prison. He is incarcerated at the La Palma Correctional Facility in Arizona. The court denied his request to be transported to San Mateo County for the court trial, and instead ordered Norman to appear telephonically, which he did.

DISCUSSION

The Bay Harbour Residence

Norman asserts the trial court erred in determining the Bay Harbour Drive residence was Cynthia's separate property, claiming the deed he signed was the result of undue influence and constructive fraud. We review the trial court's factual determinations in this regard for substantial evidence. (See *In re Marriage of Balcof*

(2006) 141 Cal.App.4th 1509, 1520; *In re Marriage of Mathews* (2005) 133 Cal.App.4th 624, 631.)

Family Code section 850 provides “married persons may by agreement or transfer, with or without consideration . . . [¶] (a) [t]ransmute community property to separate property of either spouse.” (Fam. Code, § 850, subd. (a).) Although spouses may financially transact in this way, “such transactions ‘are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. . . . [W]hen an interspousal transaction advantages one spouse, public policy considerations create a presumption that the transaction was the result of undue influence. [Citation.] A spouse who gained an advantage from a transaction with the other spouse can overcome that presumption by a preponderance of the evidence.’” (*In re Marriage of Starr* (2010) 189 Cal.App.4th 277, 281 (*Starr*)). A rebuttable presumption of undue influence arises when one spouse obtains an advantage over the other in a community property transaction. (*In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 297.)

“ ‘ “[A]s a general principle constructive fraud comprises any act, omission or concealment involving a breach of legal or equitable duty, trust or confidence which results in damage to another even though the conduct is not otherwise fraudulent.” ’ ” (*Assilzadeh v. California Federal Bank* (2000) 82 Cal.App.4th 399, 415.)

“[C]onstructive fraud due to breach of a confidential relationship amounts to undue influence” (*Starr, supra*, 189 Cal.App.4th at p. 285.) “ ‘The betrayal of such confidence is constructively fraudulent, and gives rise to a constructive trust. This is independent of any element of actual fraud.’ ” (*Id.* at p. 285, citing *Brison v. Brison* (1888) 75 Cal. 525, 529 (*Brison I*)).

Cynthia, as the advantaged spouse, had the burden to rebut the presumption by establishing by a preponderance of the evidence “the quitclaim deed was freely and voluntarily made, with a full knowledge of all the facts and with a complete

understanding of the transfer.” (*In re Marriage of Mathews, supra*, 133 Cal.App.4th at p. 631.) The evidence showed Norman, not Cynthia, proposed the transfer after consultation with his attorney. In a letter from Cynthia to Norman while he was in county jail, she stated “On to the letter of the 24th—If you want to deed the house to me, let me know.” Norman asked her to “go ahead” and have the deed prepared. Cynthia was not present when Norman signed the deed and his signature was notarized. Norman admitted Cynthia “did not say she would put [him] back on” the title after he was released, and there was nothing on the deed indicating “ownership comes back to me at any time.” He believed he “still had 50 percent of the equity of the house” “because of Cynthia’s commitment to the marriage,” and “an assumption” Cynthia would put title back in both their names after he was released from prison. Substantial evidence supports the trial court’s conclusion that Cynthia rebutted the presumption of undue influence.

Norman claims the court erred by applying “a myopic and restrictive reading of the constructive fraud doctrine.” He maintains the letter from Cynthia contained an implied promise to reconvey, and that constructive fraud can be found even in the absence of an express promise to reconvey the property.

Norman relies on *Brison I, supra*, 75 Cal. 525, *Brison v. Brison* (1891) 90 Cal. 323 (*Brison II*) and *Jones v. Jones* (1903) 140 Cal. 587 (*Jones*) for his assertion that there was constructive fraud based on an implied promise by Cynthia. The *Brison* cases provide no aid to Norman because they involved an express promise to reconvey. In *Brison I*, the husband alleged he conveyed real property to his wife prior to leaving on a trip, “relying on her parol promise that she would reconvey to him upon his request.” (*Brison I*, at p. 526.) In reversing the judgment following the trial court’s sustaining of the wife’s demurrer, the court held there was both actual and constructive fraud alleged. (*Id.* at pp. 527-528.) At trial, the husband testified that prior to his departure on a long trip he deeded property to his wife, based on her promise to reconvey, and that he intended her to have the property only if he died. (*Brison II, supra*, 90 Cal. at pp. 330-331, 334.) The court affirmed the order denying a new trial, holding the wife’s “refusal to reconvey was

not merely the breach of an agreement, but was the betrayal of a confidence, and the violation of a trust, constituting a constructive fraud” (*Id.* at p. 336.) Contrary to Norman’s assertion, the *Brison* cases did not require the trial court to focus “on the level of confidence of the transferring spouse that the recipient spouse will reconvey the deed” rather than a promise to reconvey. As the *Brison II* court explained, “the evidence of a verbal agreement between husband and wife that will create a constructive trust should be clear, satisfactory, and conclusive. . . .” (*Id.* at p. 334.)

In *Jones*, wife owned real property from which she wanted to evict a tenant. (*Jones, supra*, 140 Cal. at p. 589.) “Upon the advice of an attorney, who, in the presence of her husband, advised her that she could not maintain the action in her own name, and that it would be necessary to transfer the title to some other person for the purpose of bringing the action” to oust the tenant, she deeded the property to her husband. (*Id.* at pp. 589-590.) The court held “the husband, who, by accepting the deed upon the statement made in his presence of the purposes for which he was to hold the land, became a party to the transaction, and by implication promised to fulfill the purpose of the trust.” (*Id.* at p. 591.)

Norman asserts the following language in a letter Cynthia wrote him in jail constituted an implied promise to reconvey the Bay Harbour property to him: “Re the investments and whose name they are in—When you are released everything will be shared—stocks are in my name for convenience at this point. Putnam, your 401K, and the Union Bank Acct (do you have one) are as they were. I’ll take care of Schwab as we discussed when the paperwork goes through.” Norman testified the couple’s Bay Harbour home was one of the “investments” to which Cynthia referred because it had increased in value. The letter, however, distinguished between the Bay Harbour home, which would be deeded to Cynthia, and the investments, which were specifically listed and would be “shared” after Norman’s release. Whether considered under a substantial

evidence or de novo standard of review,³ this letter does not evidence an agreement, express or implied, that Cynthia would reconvey the home to Norman at any time.

The circumstances are more akin to those in *In re Marriage of Matthews, supra*, 133 Cal.App.4th 624. In that case, the wife signed a quitclaim deed to the couple's residence to husband, so they could obtain a lower interest rate on the mortgage. (*Id.* at pp. 627, 632.) The wife was Japanese, and contended language barriers prevented her from fully understanding the effect of the quitclaim deed, although there was evidence she "was above average in her English skills" and had worked as a translator. (*Ibid.*) The wife "admitted to knowing her name was not on the title and *assumed* it would be added later." (*Id.* at p. 632, italics added.) The court held there was substantial evidence "the quitclaim deed was the voluntary and deliberate act of [the] Wife, taken with full knowledge of its legal effect." (*Ibid.*)

Similarly here, the deed was the "voluntary and deliberate act" of Norman, taken after discussions with his attorney. He had deeded an interest in property to Cynthia before (the Shorebird Circle property), and testified he understood the "effect that signing a deed would have." The deed did not simply quitclaim the residence to Cynthia, but specifically granted it to her as her separate property. Norman admitted Cynthia never told him she was going to put his name back on the title, he simply "assumed" she would do so because she was committed to their marriage at the time. Substantial evidence supports the trial court's implied findings,⁴ and thus there was no error in finding the Bay Harbour residence was Cynthia's separate property.

³ Norman asserts we must "review de novo the interpretation of [the letter]," which the trial court found "did not constitute an agreement to equally divide the house." (Italics omitted.)

⁴ Moreover, Norman did not request a statement of decision. "In nonjury trials, unless a statement of decision has been requested and rendered, we will presume that the trial court made all the factual findings necessary to support the judgment, so long as those implied findings are supported by substantial evidence." (*Starr, supra*, 189 Cal.App.4th at p. 287.)

Norman's Section 2640 Claim for Reimbursement

Norman asserts the trial court erred in not ordering him reimbursement of the down payment on the Shorebird Circle property, which he claims came from his separate property funds.

A party is entitled to reimbursement for his contributions to the acquisition of community property to the extent he traces the contributions to a separate property source. (Fam. Code, § 2640, subd. (b).) “Whether the spouse claiming a separate property interest has adequately traced an asset to a separate property source is a question of fact for the trial court, and its finding must be upheld if supported by substantial evidence.” (*In re Marriage of Braud* (1996) 45 Cal.App.4th 797, 823 (*Braud*).) “[T]he mere commingling of separate property and community property funds does not alter the status of the respective property interests, provided that the components of the commingled mass can be adequately traced to their separate property and community property sources. [Citation.] But if the separate property and community property interests have been commingled in such a manner that the respective contributions cannot be traced and identified, the entire commingled fund will be deemed community property pursuant to the general community property presumption of section 760. [Citation.]” (*Id.* at pp. 822-823; see § 760 [“Except as otherwise provided by statute, all property, real or personal, . . . acquired by a married person during the marriage . . . is community property.”].)

The evidence before the court showed Norman deeded the Shorebird Circle property to himself and Cynthia three months after he purchased it, after they married. The couple lived in the property for about four years, paying the mortgage with community property funds. When the property was sold in 2003, the proceeds were placed in the couple's E*Trade account and commingled with other community funds. The parties agreed the value of the account “fluctuated.”

Because no statement of decision was requested, we presume the trial court made factual findings to the extent they are supported by substantial evidence. The record demonstrates Norman testified the down payment came from his separate property bank

account. Three months after he purchased it, he deeded the property to himself and Cynthia jointly, and the mortgage and expenses were paid from community property. When it was sold, the proceeds were commingled with the couple's community property held in their E*Trade account, the value of which they agreed fluctuated over time. There was no evidence, however, about the amount of those fluctuations, or whether the value of the account had gone up or down over time. Thus, there was no evidence of how much, if any, of the E*Trade account was attributable to separate property of Norman. Given this record, the court did not err in dividing the E*Trade account equally between Norman and Cynthia.

Valuation of Community Property Assets

Norman maintains the trial court erred in valuing certain community property assets which he and Cynthia had stipulated would be divided equally. He asserts the evidence was undisputed that the value of the couple's two cars was \$9,000 to \$10,000, and that the court "failed to make any findings as to the value of the parties' community property items" other than the antiques. Cynthia testified those community property items were about 15 years old and consisted of "[v]arious items of furniture [other than the community property antiques], kitchen ware, [and] some electronics." She testified she believed they were worth between \$3,000 and \$5000, and Norman testified he would "accept" a \$5,000 valuation. Cynthia believed the two automobiles, a 1999 Jaguar XJ8 and a 2002 Mercedes C230 coupe, were together worth about \$9,000 to \$10,000. The trial court's order indicated the value of both vehicles was \$1,000, and did not mention the community property household items, effectively finding they had no value. Neither party requested a statement of decision. (Code Civ. Proc., § 632.)

"In nonjury trials, unless a statement of decision has been requested and rendered, we will presume that the trial court made all the factual findings necessary to support the judgment, so long as those implied findings are supported by substantial evidence." (*Starr, supra*, 189 Cal.App.4th at p. 287.) "[I]f the court issues such a statement, a party claiming deficiencies therein must bring such defects to the trial court's attention to avoid

implied findings on appeal favorable to the judgment.” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1134.)

Norman contends “[i]t was not necessary . . . to request a statement of decision, because the trial court, in issuing its tentative decision, specifically ordered [Cynthia’s] trial counsel to prepare a final order incorporating the trial court’s tentative decision,” relying on *Slavin v. Borinstein* (1994) 25 Cal.App.4th 713 (*Slavin*). In that case, “the statement of intended decision specifically provided that it would become the statement of decision in absence of a request pursuant to Code of Civil Procedure section 632, [thus] by operation of law the statement of intended decision became the statement of decision.” (*Id.* at pp. 718-719.) Even had that happened here, and we deemed the order a statement of decision, Norman still forfeited his claim by failing to raise any claimed deficiencies in the trial court. (*In re Marriage of Arceneaux, supra*, 51 Cal.3d at p. 1134.) “Where, as here, no statement of decision was requested, all intendments will favor the trial court’s ruling and it will be presumed on appeal that the trial court found all facts necessary to support the judgment.” (*In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 649.)

Accordingly, we presume the trial court made all factual findings necessary to support the judgment. The court could have found the 15-year-old used household items, which Cynthia valued at \$3,000 to \$5,000, had no value. It also could have found the two old automobiles were worth much less than the \$9,000 to \$10,000 Cynthia estimated as the value for both of them. Norman’s failure to request a statement of decision or bring any claimed deficiencies to the trial court’s attention operated as a forfeiture of this claim.

Spousal Support

Norman contends the court erred in denying him spousal support. He maintains Family Code section 4325, on which the trial court partially relied, is inapplicable to situations in which violence has been perpetrated against a family member rather than a spouse.

“ “[T]he ultimate decision as to amount and duration of spousal support rests within [the trial court’s] broad discretion and will not be reversed on appeal absent an abuse of that discretion. [Citation.]’ [Citation.]” (*In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 207.) “ “ “Because trial courts have such broad discretion, appellate courts must act with cautious judicial restraint in reviewing these orders.” [Citation.]’ [Citation.]” (*Ibid.*)

Family Code section 4325 provides in part: “In any proceeding for dissolution of marriage where there is a criminal conviction for an act of domestic violence perpetrated by one spouse against the other spouse entered by the court within five years prior to the filing of the dissolution proceeding, or at any time thereafter, there shall be a rebuttable presumption affecting the burden of proof that any award of temporary or permanent spousal support to the abusive spouse otherwise awardable pursuant to the standards of this part should not be made.” (Fam. Code, § 4325, subd. (a).)

Family Code section 4320 sets forth the following factors to be considered: “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 standard of living established during the marriage, taking into account all of the following: [¶] (1) The marketable skills of the supported party [¶] . . . [¶] (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 time. . . . [¶] (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.*” (Italics added.)

“ ‘In making its 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.’ [Citation.] In balancing the applicable statutory factors, the trial court has discretion to determine the appropriate weight to accord to each. [Citation.] But the ‘court may not be arbitrary; it must exercise its discretion along legal lines, taking into consideration the applicable circumstances of the parties set forth in [the statute], especially reasonable needs and their financial abilities.’ ” (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 304.)

The trial court acknowledged that Norman’s conviction did not come precisely within the requirements of section 4325, but explained “in this horrific case the intent and purpose of [section 4325] is a strong and overwhelming factor for the court to consider under Family Code section 4320[, subdivisions] (i)[,] (m) and (n). Balancing this factor against all the other factors of Family Code Section 4320, it is clear to the court that [Norman’s] request for spousal support from [Cynthia] should be and is denied.”

The other section 4320 factors before the court included the fact that Norman had his own community and separate property financial resources, the bulk of Norman’s living expenses were paid by the state, he had marketable skills based on his prior employment and earnings, his ability to earn was impaired only because he engaged in crimes resulting in his incarceration, and his only claimed expenses were \$430 per month for telephone, books, electronics, stamps and food from the prison canteen he asserted

was required because the prison meals “are inadequate both in terms of portion and nutritional value.” Given this record, we cannot find the trial court abused its discretion in denying any spousal support.

Evidence of Norman’s Felony Convictions

Norman urges the court erred in allowing evidence of his felony convictions and sentence for molesting Cynthia’s son, claiming it was “legally irrelevant and highly prejudicial.”

“ ‘ “Broadly speaking, an appellate court reviews any ruling by a trial court as to the admissibility of evidence for abuse of discretion.” ’ [Citation.] The court’s ‘ “discretion is only abused where there is a clear showing [it] exceeded the bounds of reason, all of the circumstances being considered.” ’ [Citation.] However, even where a trial court improperly excludes evidence, the error does not require reversal of the judgment unless such error resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13.) [Norman] has the burden to demonstrate it is reasonably probable a more favorable result would have been reached absent the error.” (*Poniktera v. Seiler* (2010) 181 Cal.App.4th 121, 142.)

Norman objected to evidence of his arrest on 32 felony counts of molesting Cynthia’s minor son and his prison sentence on the grounds of relevance. Norman specifically objected to questions about the minor son’s date of birth, the number of counts to which he pleaded, and the question to Cynthia “Were you advised at that time what [Norman] had been arrested for?”

Evidence of Norman’s convictions and sentence for molesting Cynthia’s son was relevant to his claim for spousal support. Norman asserted he needed spousal support because he was unable to work and required additional food from the prison canteen. His incarceration was thus relevant to his financial needs and his ability to work. The court, in overruling Norman’s objections, correctly held the evidence was relevant to “one of the issues of spousal support that’s been raised.”

Norman asserts, without any evidentiary or legal support, that “there is no question” admission of the evidence to which he objects “had a highly prejudicial effect

on the trial court's judgment” “ ‘As an aspect of the presumption that judicial duty is properly performed [(Evid. Code, § 664)], we presume . . . the court knows and applies the correct statutory and case law [citation] and is able to distinguish admissible from inadmissible evidence, relevant from irrelevant facts, and to recognize those facts which properly may be considered in the judicial decisionmaking process.’ [Citation.]” (*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1526) “These presumptions are based on the difference between lay jurors and judges: ‘ ‘The juror does not possess that trained and disciplined mind which enables him . . . to discriminate between that which he is permitted to consider and that which he is not. Because of this lack of training, he is unable to draw conclusions entirely uninfluenced by the irrelevant prejudicial matters within his knowledge.’ ” (*Ibid.*, quoting *People v. Albertson* (1944) 23 Cal.2d 550, 577.) The trial court, in contrast, is presumed to be uninfluenced by “irrelevant prejudicial matters,” and Norman has made no contrary showing.

Norman himself relied on evidence of his arrest and incarceration as evidence of his distressed mental state and circumstances, which he claimed allowed him to be unduly influenced. Norman also introduced a letter Cynthia wrote to him which referenced his molestation of Cynthia's son and quoted Norman's letter to her in which he stated “ ‘You also brought a beautiful boy into my life [and] I also abused him. This ended up costing my relationship with him, seriously [and] adversely affecting my relationship w[ith] you (indulging my love for him more than for my true partner was an outrage by any standard in any culture) and getting me in this mess.’ ”

The trial court did not abuse its discretion in admitting the evidence of Norman's convictions and incarceration. Even had admission of the evidence been an abuse of discretion, Norman has demonstrated no prejudice as a result.

Denial of Norman's Motion For Transport From Prison

Norman asserts the trial court abused its discretion in denying his motion for transport from prison in Arizona to the court trial and ordering him to appear telephonically via CourtCall, which he did. He was also represented by an attorney at the

trial, who was personally present in court. Norman claims this procedure “did not adequately protect [his] due process rights.”

Penal Code section 2625, subdivision (e), gives the trial court discretion to order a prisoner transported in a proceeding adjudicating the prisoner’s marital rights. It provides in part “In any other action or proceeding in which a prisoner’s parental or marital rights are subject to adjudication, an order for the prisoner’s temporary removal from the institution and for the prisoner’s production before the court may be made by the superior court of the county in which the action or proceeding is pending, or by a judge thereof.” (Pen. Code, § 2625, subd. (e).) “Because the trial court has discretion whether to order the prisoner’s removal in this category of cases, ‘it follows that such a case may proceed without attendance by the prisoner . . .’” (*In re Jesusa V.* (2004) 32 Cal.4th 588, 599, quoting *In re Barry W.* (1993) 21 Cal.App.4th 358, 370.)

Norman asserts the procedure itself violated his due process rights, because “the quality of the telephone line was very poor and [he], on several occasions, . . . could not hear what was being said by the witness or the attorneys . . .” A review of the record reveals the minor issues that arose regarding Norman’s ability to hear the proceedings were immediately resolved by the court. The court asked at the outset of the hearing if Norman could “hear us all right?” Norman responded “I can hear you, yes.” The court further noted: “If at any time, Mr. Feakins, you cannot hear, go ahead and interrupt and let me know.” The few times that occurred, questions or answers were repeated for Norman’s benefit.⁵ Our review of the entire transcript reveals that Norman, contrary to his assertions now, understood the proceedings and questions.

Norman also claims he was prejudiced because the court could not observe his demeanor. While the court could not observe his physical demeanor, it could observe his vocal demeanor. Moreover, Norman does not identify how the trial court’s inability to observe his physical demeanor prejudiced him in any way.

⁵ For example, at one point Norman stated “Excuse me. I didn’t hear that response.” The court directed the witness to “repeat that a little bit closer to the microphone?”

The trial court did not abuse its discretion by denying Norman's request to be physically transported from prison in Arizona to the court trial in San Mateo.

Denial of Attorney Fees

Norman maintains the court erred in not awarding him attorney fees, asserting Cynthia had "superior annual earnings and great separate property values," and that it improperly considered his "criminal sentence" as a factor. We review the denial of attorney fees for abuse of discretion. (*In re Marriage of Cheriton, supra*, 92 Cal.App.4th at p. 315.)

Family Code section 2030, subdivision (a)(1) provides in part: "In a proceeding for dissolution of marriage . . . the court shall ensure that each party has access to legal representation, including access early in the proceedings, to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party . . . to pay to the other party . . . whatever amount is reasonably necessary for attorney's fees [¶] When a request for attorney's fees and costs is made, the court shall make findings on whether an award of attorney's fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties. If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs. . . ." (Fam. Code, § 2030, subd. (a)(1)-(2).)

The trial court made the following finding and order regarding attorney fees: "[Norman] had approximately \$248,000 in England in 2009. It was not explained in any satisfactory manner what, if anything, has happened to diminish those funds. That fact, combined with the fact that his current economic situation was caused by his own serious felonious conduct, warrants the court in denying his request for a contribution toward his attorney's fees."

Norman had been earning \$100,000 to \$200,000 per year during the marriage. The only reason he had no earnings at the time of trial was because he was incarcerated for committing 32 felonies against Cynthia's son. Thus, the trial court appropriately found Norman's "current economic situation" was due to his own conduct. The evidence

also demonstrated Norman had substantial separate property funds in England. He indicated in his settlement conference statement “that the monies in [the United Kingdom] account consist of his inheritance from his father (separate property), the sales proceeds of a residence he used to own in the United Kingdom before his marriage to [Cynthia] (separate property) and the remaining proceeds from his sale of his Kamino International stock (community property).” He testified the “original amount” from the Kamino International stock when the couple separated was “about \$40,000.” He testified that amount had been “depleted” and was now “[p]robably down to [\$]10,000 or even less.” He had paid his attorney \$17,500 from those funds, and indicated before trial he owed an additional \$12,000. Norman testified that in October 2009, approximately one and a half years before trial, he had \$248,000 worth of assets in England, including “ ‘holdings from the sale of [his] English house, mixture of cash and shares.’ ” There was no evidence these assets, with the exception of the Kamino International stock proceeds, had been depleted.

Given Norman’s assets, and the fact his absence of income was due to his own volitional acts, we find no abuse of discretion in the trial court’s denial of his request for attorney fees.

DISPOSITION

The judgment is affirmed. Respondent to recover costs on appeal.

Banke, J.

We concur:

Marchiano, P. J.

Dondero, J.