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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of JAMES M. and
CATHRYN E. LAMPE KLIEGEL.

JAMES M. KLIEGEL,

Appellant,

v.

CATHRYN E. LAMPE KLIEGEL,

Appellant.

A133008

(San Mateo County
Super. Ct. No. FAM072758)

The family court ordered husband, appellant and cross-respondent James M. Kliegel to pay approximately eight-and-a-half years of temporary spousal support and another one-and-a-half years of permanent support to his former wife, respondent, and cross-appellant, Cathryn E. Lampe Kliegel. After considering numerous factors relevant to determining whether to maintain or terminate jurisdiction, the family court also terminated jurisdiction. Wife contends the court erred in terminating jurisdiction because, given her disability, there is no evidence she will ever become fully self-supporting, let alone in a year. Husband challenges the number of years of temporary support ordered, but only if we reverse the jurisdiction termination order. Given the family court’s broad discretion in shaping spousal support awards, and given the purpose

of spousal support as discussed in California court decisions, we affirm the court's termination order and dismiss husband's conditional appeal.

FACTUAL AND PROCEDURAL BACKGROUND

We summarize here only the facts and procedure relevant to the issues on appeal. After a 13-year marriage, husband petitioned for dissolution in November 2002. A status-only judgment of dissolution was entered three years later, in 2005. The couple had no children, but other issues kept the dissolution proceedings before the court.

Wife eventually filed a motion for spousal support in September 2010, seeking "[g]uideline support" retroactive to the filing of the dissolution petition in 2002.¹ Wife asserted she needed past and future support because she suffers from Lupus, cannot work full time, and cannot realistically hope to become self-sufficient. Her part-time teaching job provided her approximately \$2,500 per month. She requested \$4,000 a month in support.

Husband objected to the request for retroactive temporary support as untimely. As for permanent, future support, husband sought a "*Richmond*" order.² Husband also contended any support awarded should be below guidelines, at \$1,500 a month, because, although he was earning more than his wife, he faced expenses related to his two children from his new marriage and was obligated on a mortgage securing his new family's home. While husband had for several years during the marriage earned \$300,000 a year, he no longer had such a high-paying job and was earning approximately \$130,000 per year.

¹ Wife delayed filing her motion because of an arrangement she and husband had regarding her use of joint accounts.

² "An order providing for contingent termination of spousal support on a specific date unless, before that time, the supported spouse brings a motion to modify for good cause is denominated a *Richmond* order." (*In re Marriage of Khera & Sameer* (2012) 206 Cal.App.4th 1467, 1476, citing *In re Marriage of Richmond* (1980) 105 Cal.App.3d 352 (*Richmond*).)

After an initial hearing, the family court granted below-guideline temporary support of \$2,600 a month for the period September 1, 2010 through December 31, 2010, and \$2,500 a month for January 2011, forward. The issues of temporary support retroactive to the 2002 petition filing date and permanent support were continued.

Following a second hearing, the family court filed its “Decision on Reserved Issues Surrounding Support.” The court concluded *In re Marriage of Dick* (1993) 15 Cal.App.4th 144, authorized retroactive temporary spousal support to the date of the filing of the dissolution petition, and it awarded wife \$124,680³ for the period between the filing of the petition, November 2002, and the start of its previous temporary support award, September 1, 2010. The family court found the retroactive award proper because while wife had been free to use community funds during that period, she had to reimburse the community. Thus, she effectively had received no spousal support until September 2010, even though she would have been entitled to support had she sought it. Because wife had use of community funds, she also reasonably believed there was no urgency requiring her to move for support.

As to permanent spousal support, the family court reviewed the factors enumerated in Family Code section 4320.⁴ It noted the spouses’ differing earning capacity, and it noted husband had supported wife’s pursuit of an undergraduate and master’s degree. It found neither husband, given his familial obligations, nor wife, given her medical condition, could sustain their former marital standard of living, though husband was closer to it. Given the passage of time since separation, however, the court viewed the marital standard of living of diminished importance. Neither party had liquid assets remaining, but husband had \$190,000 in a retirement account. The court credited

³ The family court offset this amount by \$38,000 for wife’s sole occupation of the family residence.

⁴ All further statutory references are to the Family Code unless otherwise indicated.

wife's evidence that she suffers from Lupus, could work no more than two-fifths time, and likely would be unable to work full time in the future. Taking account of her condition, the court believed the "goal that the supported party shall be self-supporting within a reasonable amount of time" was "not a significant factor," but instructed wife to avail herself of any programs that could "help financially compensate her for her disability." Citing to *In re Marriage of Wilson* (1988) 201 Cal.App.3d 913 (*Wilson*), the court concluded husband "should not bear the obligation of supporting [wife] through her disability forever. That responsibility," it continued, "should pass to society in the near future."

The court ordered \$2,500 per month of support until December 31, 2012. That would give wife approximately a year-and-a-half to "take whatever steps are necessary to obtain financial assistance or opportunities available to her to increase her income." Husband's support obligation would then "forever terminate," and the court did "not retain jurisdiction to extend the duration of support." Wife thus received support for a total of just over ten years.

Husband and wife both appealed, husband challenging the award of retroactive support and wife challenging the permanent support order terminating jurisdiction.

DISCUSSION

Upon dissolution of marriage, "the court may order a party to pay for the support of the other party an amount, for a period of time, that the court determines is just and reasonable, based on the standard of living established during the marriage, taking into consideration the circumstances as provided in Chapter 2 (commencing with Section 4320)." (§ 4330, subd. (a).) Section 4320 specifies a broad array of considerations, all of which the family court must weigh in ordering spousal support. (§ 4320; *In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 207 (*Ackerman*).) These considerations, or factors, are:

“(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; 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,^[5] a ‘reasonable period of time’ for purposes of this section

⁵ Section 4336 states: “For the purpose of retaining jurisdiction, there is a presumption affecting the burden of producing evidence that a marriage of 10 years or more, from the date of marriage to the date of separation, is a marriage of long duration.” (§ 4336, subd. (b).) For such lengthy marriages, “the court retains jurisdiction indefinitely” over spousal support, unless the court explicitly terminates jurisdiction in an order or the parties agree to termination in a written agreement. (§ 4336, subd. (a).) In this case, the parties agree the court’s order terminated jurisdiction.

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 4324.5 or 4325.

“(n) Any other factors the court determines are just and equitable.” (§ 4320.)

The “ ‘purposes of spousal support inevitably vary from case to case, depending upon the parties and the facts and circumstances of the case.’ [Citation.] ‘The facts and the equities in one case may call for no spousal support, or for very short-term support At the other end of the spectrum are cases where the purpose of spousal support is to provide financial assistance to the supported spouse until . . . death In between are the myriad of factual circumstances which the trial court must consider in making its order for purposes which vary from case to case.’ ” (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 312 (*Cheriton*).

“Given the variety of purposes to be served by spousal support, it follows that the trial court must be invested with broad discretion in fashioning such awards.” (*Cheriton, supra*, 92 Cal.App.4th at p. 312) “The trial court has broad discretion in balancing the applicable statutory factors and determining the appropriate weight to accord to each, but it may not be arbitrary and must both recognize and apply each applicable factor.” (*Ackerman, supra*, 146 Cal.App.4th at p. 207.) “ ‘[T]he ultimate decision as to amount and duration of spousal support rests within its broad discretion and will not be reversed on appeal absent an abuse of that discretion,’ ” and “ ‘ “appellate courts must act with cautious judicial restraint in reviewing these orders.” ’ ” (*Ibid.*; *In re Marriage of Campi* (2013) 212 Cal.App.4th 1565, 1572 [applying abuse of discretion standard].) If an appeal, however, “raises a question regarding the proper interpretation of a statute, or the proper application of the law to uncontested facts, the standard of review is de novo.” (*In re Marriage of Left* (2012) 208 Cal.App.4th 1137, 1145.)

Wife contends the family court misapplied the law and, under *In re Marriage of Morrison* (1978) 20 Cal.3d 437, 453–454 (*Morrison*), the court was required to continue support and retain jurisdiction. In *Morrison*, the husband and wife were married 28 years. During the marriage, husband insisted wife quit her job, and wife did so, devoting her time principally to maintaining the home and raising two children. At the time of dissolution, wife was 54 years old and suffered from a low blood sugar condition that left her enervated and possibly precluded full time employment. She had no job skills or training, and received \$100 a month as a part-time newspaper collator. She sought \$700-\$800 a month in support. Husband had a net monthly income of \$1,456 and claimed expenses of \$1,367 a month. The family court awarded “spousal support to the wife in the amount of \$400 a month ‘for a period of eight years, thereafter jurisdiction shall be reserved for three years, thereafter spousal support is to terminate absolutely.’ ” (*Morrison, supra*, 20 Cal.3d at pp. 440–4441.) On appeal, wife contended the court had abused its discretion by specifying jurisdiction over spousal support would terminate after 11 years. (*Id.* at p. 441.)

The Supreme Court focused on the Family Law Act of 1969, which had, for the first time, called on the courts to consider a supported spouse’s “ability to engage in gainful employment.” (*Morrison, supra*, 20 Cal.3d at p. 451.) The court acknowledged financial independence as a “commendable goal,” but cautioned:

“Although increasing numbers of married women today are employed, many others have devoted their time, with their spouse’s approval, to maintaining the home and raising the children, leaving them no time for employment outside the home. This willingness of the wife to remain at home limits her ability to develop a career of her own. If the marriage is later dissolved, the wife may be unable, despite her greatest efforts, to enter the job market.” (*Morrison, supra*, 20 Cal.3d at p. 452.)

In this context, *Morrison* concluded, “[a] trial court should not terminate jurisdiction to extend a future support order after a lengthy marriage, unless the record clearly indicates that the supported spouse will be able to adequately meet his or her

financial needs at the time selected for termination of jurisdiction.” (*Morrison, supra*, 20 Cal.3d at p. 453.) However, a court need not “retain jurisdiction in every case involving a lengthy marriage.” (*Ibid.*) Thus, if a supported spouse is employed or otherwise has sufficient assets—that is, if the marriage cannot be said to have impaired that spouse’s earning ability—no support or limited support “without a retention of jurisdiction” may be proper. (*Ibid.*) On the other hand, if the marriage did impair earning ability and the supported spouse cannot find employment despite best efforts, the supporting spouse “ ‘simply has to face up to the fact that his support responsibilities are going to be of extended duration—perhaps for life.’ ” (*Ibid.*, quoting *In re Marriage of Brantner* (1977) 67 Cal.App.3d 416, 420 (*Brantner*)). Since there was no evidence the wife would be able to support herself at the end of the 11-year period, *Morrison* held the family court abused its discretion by terminating jurisdiction over future support; the court could only have “speculated” about wife’s future independence. (*Morrison*, at pp. 453–454.)

Given *Morrison*’s citation to *Brantner* for the proposition spousal support may, if appropriate, extend indefinitely, some discussion of that case is also in order. In *Brantner*, the appellate court reversed an order fixing a date certain for termination of spousal support. (*Brantner, supra*, 67 Cal.App.3d at pp. 418, 424.) During the parties’ 25-year marriage, wife bore and raised two children and “confined her activities to those of a mother and housewife” while husband pursued his career. (*Id.* at pp. 418, 420.) At the end of the marriage, wife was not qualified for a well-paying job. “Had she not been married those 20-odd years, she might [have become] . . . well qualified” (*Id.* at p. 420.) In reversing the termination order, however, *Brantner* did “not hold that the husband must support wife for the rest of her natural life.” It recognized:

“A marriage license is not a ticket to a perpetual pension and, as women approach equality in the job market, the burden on the husband will be lessened in those cases in which, by agreement of both parties, the wife has remained employed or

at least has had the opportunity to maintain and refresh her job skills during marriage. However, in those cases in which it is the decision of the parties that the woman becomes the homemaker, the marriage is of substantial duration and at separation the wife is to all intents and purposes unemployable, the husband simply has to face up to the fact that his support responsibilities are going to be of extended duration—perhaps for life. This has nothing to do with feminism, sexism, male chauvinism or any other trendy social ideology. It is ordinary commonsense, basic decency and simple justice.”

(*Brantner, supra*, 67 Cal.App.3d at p. 420.)

Morrison also cited *In re Marriage of Rosan* (1972) 24 Cal.App.3d 885, 895 (*Rosan*), and *In re Marriage of Dennis* (1973) 35 Cal.App.3d 279, 281 (*Dennis*), agreeing with their “reasoning . . . concerning the retention of jurisdiction.” (*Morrison, supra*, 20 Cal.3d at pp. 452–453.) *Rosan* involved a 17-year marriage with two children “during which the wife was not expected to and did not work for compensation because of the lifestyle of the parties and the attention required by the minor children.” (*Rosan, supra*, 24 Cal.App.3d at p. 895.) The appellate court reversed an order that terminated spousal support after three years without reserving jurisdiction, explaining “[i]n a long marriage during which the wife has not taken outside employment but has devoted herself to wifely and parental duties, the wife has not only failed to develop her own earning capacity, she has presumably contributed to the development of the husband’s earning capacity.” (*Id.* at p. 898.) Under such circumstances, “it would be grossly inequitable to cut the wife off from any possibility of support after a period of three years.” (*Ibid.*)

Similarly, *Dennis* concerned a marriage of about 25 years that produced one son. (*Dennis, supra*, 35 Cal.App.3d at p. 281.) Although the wife had previously been a riveter and could sew, she had not worked in 25 years and “had not attempted to get any training: ‘I raised a family.’” (*Ibid.*) The appellate court reversed an order that terminated spousal support after four years without reserving jurisdiction. (*Id.* at pp. 284–285.) Even though the wife appeared unwilling to find work, the trial court should not have assumed she would fail to make a good faith effort to do so. (*Ibid.*)

Read together, *Morrison*, *Brantner*, *Rosan*, and *Dennis* do not support wife's claim that *Morrison* fixes a bright-line rule of law precluding a family court from terminating jurisdiction over spousal support after a "long marriage" unless there is evidence the supported spouse will be self-sufficient by the date jurisdiction ends.

While *Morrison*, in the context before it, concluded the family court could not terminate jurisdiction in the absence of evidence of self-sufficiency, the high court did not purport to make that one statutory factor (see § 4320, subd. (l)) determinative or a threshold requirement, or to preclude the court from weighing the numerous other factors set forth in section 4320 and exercising broad discretion in connection with support under section 4330. The Court of Appeal in *In re Marriage of Christie* (1994) 28 Cal.App.4th 849, 861 (*Christie*), recognized exactly this point in stating, "self-support and length of marriage are each but one factor in the formula which involves balancing of each in light of the others, even where a permanently disabled spouse may be denied support." (See also *Cheriton*, *supra*, 92 Cal.App.4th at p. 304 ["In balancing the applicable statutory factors, the trial court has discretion to determine the appropriate weight to accord to each."]; *In re Marriage of Schulze* (1997) 60 Cal.App.4th 519, 525 (*Schulze*) ["permanent spousal support is supposed to reflect a complex variety of factors established by statute and legislatively committed to the trial judge's discretion".])

Morrison also did not address the full panoply of scenarios in which a supported spouse is unlikely to support himself or herself at the prior, marital standard. Rather, the Court addressed the situation where the marriage relationship, itself, is the cause of the supported spouse's reduced ability or inability to support himself or herself. In *Morrison*, the wife acceded to the husband's desires that she devote herself to maintenance of the home and care of their two children. Thus, it was the *marriage* relationship that impaired the wife's earning capacity, making continued spousal support both appropriate and fair. (*Morrison*, *supra*, 20 Cal.3d at pp. 440–441; see also *Rosan*, *supra*, 24 Cal.App.3d at p. 898; *Dennis*, *supra*, 35 Cal.App.3d at p. 281.) The more recent case of *In re Marriage*

of *Heistermann* (1991) 234 Cal.App.3d 1195, also illustrates this point. Because the wife in that case assumed “domestic responsibilities when she was in her forties” at husband’s request, termination of support could not “be justified absent some changed circumstance which shows she will be self-supporting at a particular date or other factors which justify modification.” (*Id.* at p. 1204.)

Wilson, supra, 201 Cal.App.3d 913, on which the family court here relied, involved a different situation. In that case, the husband and wife were married almost six years and had no children. Wife was injured two years before separation, could no longer work, and her doctor and psychologist believed her injury was permanent. The parties initially stipulated to two years of spousal support. Thereafter, the wife moved for additional support, which the court ordered on two occasions, for a total of four years 10 months. In its second order, the court terminated support even though the husband could afford support payments and the wife had a need for support. (*Id.* at pp. 914–916.) Among other considerations, the court observed “[t]his was not a marriage in which [wife’s] present or future earning capacity was impaired by periods of unemployment incurred to permit her to attend to domestic duties.” (*Id.* at p. 918.)

The Court of Appeal affirmed, pointing out the trial court had weighed all of the section 4320 factors. (*Wilson, supra*, 201 Cal.App.3d at pp. 917–918.) The appellate court rejected wife’s contention “it was an abuse of discretion to terminate spousal support where there was no present evidence of her ability to be self-supporting.” (*Id.* at p. 918.) In distinguishing *Morrison* and rejecting her contention, the court emphasized “the instant case deals with neither a lengthy marriage nor a typical ‘displaced homemaker.’ ” (*Wilson*, at p. 918.) Further, wife’s lifestyle had been established before the marriage (she had an adult child and a job) and both parties had initially stipulated to support for a fixed term. (*Id.* at pp. 918–919.) The appellate court also recognized it did not have “a case in which the trial court terminated support to encourage the supported spouse to seek employment. The [trial] court recognized both the grievous and

permanent nature of [wife's] disability. It was beyond the court's power to render her self-supporting." (*Id.* at p. 919, fn. omitted.)

Wilson also rejected the spouses' competing paradigms: it rejected the wife's effort to make the self-support factor of paramount importance, and rejected the husband's "suggest[ion] duration of the marriage is paramount." (*Wilson, supra*, 201 Cal.App.3d at p. 919.) The Court of Appeal explained, each spouse's desire "to emphasize that factor most favorable to his or her argument, . . . misses the forest for the trees." (*Ibid.*) "[T]he clear trend is for trial courts to consider the totality of circumstances Self-support and length of marriage are each but one of [numerous] important factors." (*Id.* at p. 920.)

Wife's dismissal of *Wilson* as a "short term" marriage case, pointing out her marriage lasted 13 years, likewise misses the forest for the trees. The marriage in *Wilson* was shorter, six years. But *Wilson* expressly rejected the proposition that any one factor set forth in section 4320—including length of the marriage—is controlling or of paramount importance. (See also *In re Marriage of Shaughnessy* (2006) 139 Cal.App.4th 1225, 1249 [length "alone does not justify an unlimited spousal support award"].) Rather, as the statute, itself, provides, and as the courts have regularly stated, the courts must take into account a myriad of factors in determining the amount and duration of support. (§ 4320; see, e.g., *Schulze, supra*, 60 Cal.App.4th at p. 525; *Wilson, supra*, 201 Cal.App.3d at p. 919.) Indeed, a disabled spouse's need for support is what it is, regardless of the length of the marriage. Thus, there is no justification for an inflexible, bright line rule that, under *Wilson*, support for a disabled spouse of a marriage of less than 10 years may be terminated if section 4320 factors warrant, but under *Morrison*, it cannot.

Apart from the somewhat longer marriage, the circumstances in this case are similar to those in *Wilson*. The marriage here did not in any way compromise wife's ability to support herself. On the contrary, during the marriage, wife earned both

undergraduate and graduate degrees, and obtained a teaching credential. She worked outside the home, and the marriage produced no children. Thus, like *Wilson*, this case does not deal with “a typical ‘displaced homemaker.’” (*Wilson, supra*, 201 Cal.App.3d at p. 918.) And while there is no question as to “the grievous and permanent nature of [wife’s] disability,” it “was beyond the [family] court’s power to render her self-supporting.” (*Id.* at p. 919.)

Wife’s invocation of the presumption set forth in section 4336 does not assist her in connection with the issue before the court. As noted, that statute provides that, in a “marriage . . . of long duration,” the court “retains jurisdiction indefinitely” over spousal support unless it explicitly terminates jurisdiction in an order or the parties agree to termination in a written agreement. (§ 4336, subd. (a).) The statute further provides that, “[f]or the purpose of retaining jurisdiction, there is a presumption affecting the burden of producing evidence that a marriage of 10 years or more, from the date of marriage to the date of separation, is a marriage of long duration.” (§ 4336, subd. (b).) In short, the presumption set forth in subdivision (b) is operative for purposes of subdivision (a), which spells out whether a court continues to have jurisdiction over spousal support and the procedure for terminating such jurisdiction. (See generally *Christie, supra*, 28 Cal.App.4th at p. 858 [“All this [presumption] means here, however, is that the court retained jurisdiction indefinitely until it entered ‘a court order terminating spousal support’”]; *In re Marriage of Ostrander* (1997) 53 Cal.App.4th 63, 66 [describing section 4336 as setting forth a procedural default: “retention of jurisdiction is the rule; it is divestment of jurisdiction which requires an affirmative act”].) The presumption does not alter, or give priority or conclusive weight, to any of the factors listed in section 4320 that the courts are to consider in determining the amount and duration of support.

Wife also raises the possibility husband might once again earn \$300,000 a year and claims the family court should have kept the door open to spousal support modification on that basis. However, she never advanced this argument in the family

court and therefore has waived it. (*In re Marriage of Cauley* (2006) 138 Cal.App.4th 1100, 1109; *In re Marriage of Lionberger* (1979) 97 Cal.App.3d 56, 61.) In any event, the case she cites in support of her argument, *In re Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1173, merely establishes that “an increase in the [supporting spouse’s] ability to pay may be considered a change” warranting modification of spousal support. This well-established proposition does not prevent a family court from ordering a relatively short period of transitional support without retaining jurisdiction to account for speculative change posited by the supported spouse. (See *Wilson, supra*, 201 Cal.App.3d at p. 916 [four-month transition]; see also Hogoboom and King, Cal. Practice Guide: Family Law (The Rutter Group 2013) ¶ 6:1012, p. 6-359 [when to terminate jurisdiction “cannot be decided in a vacuum,” but is bound up with the section 4320 factors and the facts of each case].)

The family court faced a very difficult situation in this case. Wife’s disabling condition certainly evokes great sympathy. Husband’s need to provide for his new family, which includes two young children, is also of weighty concern. All the court could do was carefully review and thoughtfully weigh the relevant factors set forth in section 4320. It did so, and given the nature of the parties’ marriage and their respective situations, we conclude the court did not abuse its broad discretion and reached a “just and reasonable” result within the confines of the law. (§ 4330, subd. (a).)⁶

DISPOSITION

The family court’s spousal support and termination order is affirmed. Husband’s cross-appeal is dismissed. Each party to bear their own costs on appeal.

⁶ Given our disposition affirming the order terminating jurisdiction over spousal support, we dismiss husband’s appeal, as he has requested.

Banke, J.

We concur:

Dondero, Acting P. J.

Sepulveda, J.*

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