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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re the Marriage of LORRAINE and
ROBERT GLICK.

LORRAINE LIMBIRD,

Respondent,

v.

ROBERT GLICK,

Appellant.

A138146

(Mendocino County Super. Ct.
No. SCUKCVFL06-98330)

Appellant Robert Glick (husband) asks this court to overturn the judgment and order, entered below, requiring him to pay to Lorraine Limbird, formerly Lorraine Glick (wife), the sum of \$2,600 per month in spousal support. We affirm the trial court's order.

I. BACKGROUND

Husband and wife separated in October 2006, after a 28-year marriage. The parties have two children, Caitlin and Christopher, who are now both adults. During their marriage, the parties lived an upper middle class lifestyle in Huntsville, Alabama. Following separation, wife moved to Ukiah, California, where she had family, and filed for divorce in Mendocino County in December 2006.

In March 2008, the trial court issued a spousal support ruling in which it ordered husband to pay wife spousal support of \$4,000 per month effective February 1, 2008. The support was to continue until wife's death or remarriage or until husband reached age

65. The basis for this ruling included the court's findings that the parties had been married for 28 years, wife's primary role during the marriage was as a homemaker for the parties and their children, and that husband had been the primary earner during the marriage. At the time of divorce, wife was 54 years old and working at her maximum earning capacity as a full-time employee with the City of Ukiah earning a salary of \$2,445 per month. Husband was 55 years old and working for Lockheed Martin Space Systems (Lockheed) at a base salary of \$13,845 per month.

In March 2010, husband retired from Lockheed due to "downsizing." At that time, husband learned that there was an additional Lockheed pension benefit, the "Lockheed Martin Corporation Salaried Employee Retirement Program" (the Lockheed Pension), which he became eligible to receive due to his retirement. The parties subsequently entered into a stipulation and order dividing husband's Lockheed Pension. Pursuant to the terms of the stipulation, wife received a 40.26 percent interest in this retirement benefit. Following entry of a qualified domestic relations order (QDRO), wife began receiving gross payments of \$2,750 per month out of the \$6,830 monthly benefit, with the remaining \$4,080 going to husband. The stipulation additionally provided that husband would pay wife a tax-free lump sum of \$53,644, representing after-tax pension arrearages. Husband paid the \$53,644 with a withdrawal from his 401(k) plan.

On July 24, 2012, husband filed a motion for reduction or termination of wife's spousal support based on changed circumstances. Husband claimed that wife's receipt of the Lockheed Pension benefits, as well as an increase in wife's monthly salary from \$2,445 to \$3,210, constituted a change in circumstances.

A. Hearing on Husband's Motion to Reduce or Terminate Spousal Support

On October 31, 2012, the trial court held an evidentiary hearing on husband's motion to reduce or terminate spousal support.

1. Wife's reasonable support needs

At the time of dissolution in 2008, the trial court found that "the [parties] had lived an upper middle class lifestyle for the last several years of their long term marriage

[(Fam. Code, § 4320, subds. (a) & (f))¹]. They were able to save money in their 401K retirement accounts, take vacations, and assist their college age children financially.” Following the divorce it was not possible for either party to continue the lifestyle enjoyed during the marriage “due to the reality that it costs more to maintain two households than one.”

At the hearing on husband’s motion for modification of spousal support, the trial court found that husband’s salary and benefits had increased since the divorce in 2008. According to husband’s income and expense declaration dated July 24, 2012, his gross income from salary, bonuses and pension was \$21,386 per month. Wife’s income had also increased since 2008. According to wife’s income and expense declaration, her gross income from salary and pension was \$5,189 per month and she was receiving \$4,000 in spousal support.

Wife submitted evidence that her reasonable monthly expenses were \$8,511.79, including \$1,352 for “Entertainment, gifts, and vacation.” Subsumed in this category were gifts to her children such as birthday gifts.

2. Wife’s relationship with Mr. Grandi

Wife testified at trial that she has a personal relationship with Mr. Mel Grandi, who stays at her home in Ukiah on a part-time basis. Mr. Grandi, who is the Electrical Utility Director for the City of Ukiah, maintains his own home in Galt, California, where he lives during the half-time per month that he does not stay at wife’s home. Wife and Mr. Grandi travel together, sometimes for business and sometimes for pleasure. Mr. Grandi pays \$155 per month for wife’s cable television and internet (which he must have access to for work) and on occasion purchases groceries and paper products for wife’s home. “[Wife] and Mr. Grandi are not engaged or married; they have no long term relationship plans. They do not co-mingle finances and share no bank accounts. [Wife] does not expect or require Mr. Grandi to support her given the nature of their relationship.”

¹ All undesignated statutory references are to the Family Code.

B. Trial Court's Ruling on Husband's Motion to Reduce or Terminate Spousal Support

On December 10, 2012, the trial court filed an "Order Granting Motion to Modify Spousal Support" (the December order) in which the court held that husband had demonstrated a significant change of circumstances to warrant a reduction in spousal support from \$4,000 per month to \$2,800 per month effective July 24, 2012. Support was to continue until wife's death or remarriage or until husband turned 65 years old.

In granting the motion to modify support, the trial court found that husband had proven changed circumstances due to the distribution of the Lockheed Pension and the fact that wife's salary had increased.

Husband also asserted that wife's relationship with Mr. Grandi decreased her need for spousal support pursuant to section 4323, subdivision (a)(1), which states that "there is a rebuttable presumption, affecting the burden of proof, of decreased need for spousal support if the supported party is cohabiting with a person of the opposite sex." The court held, however, that wife had rebutted the section 4323 statutory presumption with respect to her relationship with Mr. Grandi. Specifically, the court found that wife and Mr. Grandi reside together only part time, "are not engaged or married [and] have no long term relationship plans." Based on the evidence presented at the hearing, the court concluded that wife's relationship with Mr. Grandi did not justify a downward modification of spousal support.

The trial court also found that husband's request that spousal support be terminated or reduced to \$890 per month was unreasonable. "Both parties are entitled to live at the marital standard of living if this is financially possible. . . . [Husband] can continue to pay spousal support to [wife] while maintaining an upper middle class standard of living for himself and his new partner."

C. Husband's Motion for Reconsideration

On December 20, 2012, husband filed a motion for reconsideration in which he requested that due to mathematical errors in the court's December order, husband's spousal support obligation be reduced further. At the hearing, the trial court

acknowledged that “there are issues that need to be corrected.” In relevant part for purposes of this appeal, the court held that it would correct its prior ruling to state:

(1) Wife’s share of the Lockheed Pension is \$2,750 per month as opposed to the incorrect figure of \$2,059 per month listed in the December order; (2) “the comparison of salaries that [the court] referred to as almost five times was the court’s comparison of the current earnings of the parties; that is, approximately \$14,500 a month in salary for [husband] and approximately \$3,000 a month for [wife]”; and (3) wife had investment accounts worth approximately \$900,000 as of the October 31, 2012 hearing, rather than \$764,000.

At the hearing, wife objected to husband’s attempt to relitigate the issue of wife’s relationship with Mr. Grandi. Husband did not raise any new facts or law with respect to wife’s relationship with Mr. Grandi and, therefore, did not have grounds to ask the court to reconsider her ruling. Husband’s counsel responded, “This court can bring your own reconsideration motion at any point if you want.”

D. Trial Court’s Ruling on Husband’s Motion for Reconsideration

In February 2013, the trial court filed a “Findings and Order After Hearing on Respondent’s Motion for Reconsideration of Order Dated December 10, 2012, and Petitioner’s Request for Order Re. Attorney’s Fees and Costs.” The trial court held in relevant part for purposes of this appeal, that it would correct its prior ruling to state: (1) wife’s share of the Lockheed Pension is \$2,750 per month; (2) wife had investment accounts worth approximately \$900,000 as of the October 31, 2012 hearing and she earned dividend/interest income of approximately \$2,917 per month, which is automatically reinvested; (3) the court’s reference to husband’s income being almost five times more than wife’s referred to the fact that husband’s base salary is approximately \$14,000 per month while wife’s base salary is approximately \$3,000 per month; and (4) “the court had the discretion to make a reduction or termination of spousal support retroactive to June 1, 2012 based on the terms of the Stipulation and Order Regarding Pension Distribution.”

The court then adopted its findings from the December order, except as corrected above, and found that “[b]alancing all of the factors set forth [in the December order],

permanent spousal support will be decreased to \$2600.00 per month, effective June 1, 2012.” Husband filed a timely appeal.

II. DISCUSSION

“ ‘Modification of spousal support, even if the prior amount is established by agreement, requires a material change of circumstances since the last order. [Citations.] Change of circumstances means a reduction or increase in the supporting spouse’s ability to pay and/or an increase or decrease in the supported spouse’s needs. [Citations.] It includes all factors affecting need and the ability to pay.’ [Citation.] ‘A trial court considering whether to modify a spousal support order considers the same criteria set forth in Family Code section 4320 as it considered in making the initial order.’ [Citation.]” (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 396; Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2014) ¶ 17:146, p. 17-36.3 (rev. #1, 2014) [“a court asked to modify spousal support must consider and weigh *all* of the appropriate spousal support factors” under § 4320], original italics.)

Section 4320 sets forth numerous factors the trial court must consider in determining the appropriate amount of an award of spousal support, including the earning capacities of the parties, the ability of the supporting spouse to pay spousal support, the needs of each party based on the marital standard of living, the assets and obligations of each party, the duration of the marriage, and the age and health of the parties.

A. Spousal Support as a Conduit for Adult Child Support

Pursuant to the Family Code, child support for a child that is not incapacitated “ends, at the latest, at age 19,” and after that time, “ ‘a court has no authority to order a parent to support an adult child.’ ” (*In re Marriage of Serna* (2000) 85 Cal.App.4th 482, 483–484 (*Serna*)). Husband argues that wife’s “Entertainment, gifts, and vacation” expenses “clearly impacted the court’s \$2,600/month spousal support award,” and that the trial court erred by awarding spousal support as a conduit for adult children expenses.

At trial, wife submitted an income and expense declaration which included an entry for “Entertainment, gifts, and vacation” in the amount of \$1,352 per month.

Incorporated in the amount wife spends on gifts are gifts to her adult children such as birthday and Christmas gifts.

Husband alleges that wife's gifts to the children constitute adult child support. Husband's reliance on *Serna, supra*, 85 Cal.App.4th 482, to support his assertion is misplaced. In *Serna*, husband's income decreased and he moved to reduce his spousal support payments. Wife included in her income and expense declaration expenses for two adult children and one grandchild living at home with her. The trial court specifically considered wife's support of the two adult children in setting a new, lowered, level of support. Two years later when the husband moved again to reduce spousal support after one adult child had moved out, the wife again listed expenses for one adult child and now two grandchildren living with her, as well as monetary support she was still providing to the adult child who had moved out. The trial court denied the motion to reduce spousal support further. In reversing, the appellate court stated that "[wife's] subsidies, either by way of the additional expenses incurred for the one child (and the two children of that child) still living at home, or directly for the child who had moved [out], should not have been considered. They were [a] form of indirect child support . . . [that] were beyond the trial court's jurisdiction." (*Id.* at pp. 485, 487.)

In this case, there is no evidence that the spousal support the court ordered husband to pay wife was a conduit for adult child support. Unlike *Serna*, in the present case neither one of the adult children lives with wife and the only "expenses" related to the children that the wife listed on her income and expense account are gifts. At the time of dissolution, the trial court found that the parties had lived an upper middle class lifestyle which included assisting their adult children financially. After balancing all of the section 4320 factors, the trial court granted husband's motion to modify support and significantly reduced husband's spousal support from \$4,000 per month to \$2,600 per month. Husband's argument that the trial court's order was, in effect, an order that husband pay spousal support as a "conduit" for the expenses of their adult children finds no support in the record or in the language of the trial court's orders.

B. Mr. Grandi

Husband argues that the court disregarded “wife’s cohabitation as a spousal support factor.” Section 4323, subdivision (a)(1) states: “Except as otherwise agreed to by the parties in writing, there is a rebuttable presumption, affecting the burden of proof, of decreased need for spousal support if the supported party is cohabiting with a person of the opposite sex. Upon a determination that circumstances have changed, the court may modify or terminate the spousal support”

The evidence presented at the hearing on husband’s motion to reduce spousal support established that wife’s friend, Mr. Grandi, spends half of his time at wife’s residence and half of his time at a home he owns in another city. “Mr. Grandi contributes to [wife’s] household expenses by paying the cable TV and internet charges, and occasionally purchasing groceries or household supplies.” Wife and Mr. Grandi travel together regularly for business and pleasure and Mr. Grandi pays most of wife’s travel expenses. The court found that while wife and Mr. Grandi live together half time, they are “not engaged or married; they have no long term relationship plans[;] [t]hey do not co-mingle finances and share no bank accounts. [Wife] does not expect or require Mr. Grandi to support her given the nature of their relationship.” After thoroughly analyzing the evidence pertaining to wife’s relationship with Mr. Grandi, the court found that wife had rebutted the presumption in section 4323, subdivision (a)(1). The court concluded that “[wife’s] relationship with Mr. Grandi does not constitute a significant change in circumstances which justifies a modification of spousal support.”

In arguing for a reduction in spousal support, husband relies on a series of cases where wife is living full time with her new partner and her financial needs have changed substantially since the date of dissolution. In the first case, *In re Marriage of Leib* (1978) 80 Cal.App.3d 629 (*Leib*), wife and her son resided full time with her new partner, Mr. Elbaum, in a house he purchased. (*Id.* at pp. 633, 638.) Wife did not know the purchase price of the house they lived in, the amount of the mortgage payments or the monthly utility expenses. (*Id.* at p. 639, fn. 8.) Wife traveled to Europe with Mr. Elbaum at his expense and drove a Ferrari which he provided to her. (*Id.* at p. 639.) Wife did not work

and “provide[d] to [Mr. Elbaum] the identical services a nonworking wife is expected to and generally does furnish to a working husband.” These services included housekeeping, cooking and companionship. (*Id.* at p. 640.) In reversing the trial court’s denial of a motion to reduce spousal support, the Second Appellate District held that wife had not overcome the statutory presumption of decreased need for spousal support due to her cohabitation and relationship with Mr. Elbaum. (*Id.* at p. 644.)

In *In re Marriage of Schroeder* (1987) 192 Cal.App.3d 1154, wife and her new partner, Mr. Lara, were also living together full time. Wife paid for the mortgage, utilities, groceries and household expenses. Mr. Lara did not contribute to the household expenses, but “made up for it by doing a lot of work around the house.” (*Id.* at p. 1158.) He also paid for travel, entertainment and dining out. (*Id.* at p. 1157.) Relying on the rationale set forth in *Leib, supra*, 80 Cal.App.3d 629, the Second Appellate District again emphasized that a supported spouse cannot accept “ ‘gifts’ in lieu of monetary reimbursement for joint household expenses, and thereby create a situation of apparent continuing need. [Citation.]” (*Id.* at p. 1163.) Finally, husband’s reliance on *In re Marriage of Bower* (2002) 96 Cal.App.4th 893, 898 (*Bower*), is equally misplaced. In *Bower*, wife and Mr. S. were living together full time and maintained a joint savings account into which they contributed equally to pay for vacations together. In affirming the trial court, the Second Appellate District found that wife’s cohabitation and relationship with Mr. S. constituted a “material change of circumstances triggering the presumption of section 4323.” (*Id.* at p. 901.)

In the case at bar, wife and Mr. Grandi do not live together full time and do not maintain a household together. Each of them maintains a separate residence and they reside together only part time. In addition, each of them is employed full time by the City of Ukiah and receives a regular monthly paycheck. There is no evidence that they have current or future plans to establish a household together or to provide financial support to each other. As the trial court found, “[t]hey do not co-mingle finances and share no bank accounts. [Wife] does not expect or require Mr. Grandi to support her given the nature of their relationship.” We conclude the trial court did not abuse its

discretion in finding that husband had failed to establish a change of circumstances to warrant a modification of spousal support based on wife's relationship with Mr. Grandi.

C. Wife's Entitlement to Spousal Support

Husband argues that spousal support should be terminated or reduced to \$890 per month. After a thorough analysis of the section 4320 factors, the court found that husband's "suggestion that spousal support be terminated or reduced to \$890 per month is unreasonable. Both parties are entitled to live at the marital standard of living if this is financially possible. . . . [Husband] can continue to pay spousal support to [wife] while maintaining an upper middle class standard of living for himself and his new partner." The trial court did not abuse its discretion in reducing spousal support from \$4,000 per month to \$2,600 per month. The \$2,600 spousal support payment creates a reasonable balance in the financial condition of parties to a 28-year marriage.

III. DISPOSITION

The trial court's judgment is affirmed. Wife shall recover her costs on appeal.

Bolanos, J.*

We concur:

Reardon, Acting P.J.

Rivera, J.

* Judge of the San Francisco City and County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.