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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

EDWARD R. KAMEN,

Appellant,

v.

ELIZABETH J. ERNST,

Respondent.

B236728

(Los Angeles County  
Super. Ct. No. BD313591)

APPEAL from an order of the Superior Court of Los Angeles County.  
Christine Byrd, Judge. Affirmed.

Mary E. Gram, for Appellant.

No appearance by Respondent.

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Edward R. Kamen appeals from the trial court's order directing him to reimburse his former wife, respondent Elizabeth J. Ernst, for his half of their children's health care expenses. We affirm.

## **FACTS AND PROCEEDINGS**

Appellant Edward R. Kamen (husband) and respondent Elizabeth J. Ernst (wife) divorced in 2000. In 2005, they agreed to a parenting plan for their children which, among other things, obligated them to share equally the cost of their children's health care. The court's order adopting the parenting plan stated, "As additional child support, each party shall pay 1/2 of all uninsured medical expenses pursuant to Family Code [section] 4063[, subdivision] (b); and one-half of all medical insurance payments for the minor children."<sup>1</sup>

In 2011, wife filed a petition for an order to show cause for a determination that husband was in arrears to her for his half of the health care expenses that she had paid for their children. Wife alleged husband owed her \$8,309.14. In support of her petition, wife submitted a seven-page home-generated spreadsheet purporting to summarize the expenses she had paid. At the hearing on wife's petition, husband objected to the spreadsheet on multiple grounds, including hearsay. Sustaining in part and overruling in part husband's objections, the court admitted the spreadsheet as a summary of wife's "position but not as evidence of the truth of the matter."

On July 18, 2011, the court found husband owed wife \$1,274.46 in health insurance premiums and \$3,760 for uninsured health care expenses.<sup>2</sup> This appeal followed.

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<sup>1</sup> All further section references are to the Family Code unless otherwise noted.

<sup>2</sup> The court awarded wife the entire amount she requested for uninsured medical expenses, but awarded less than half of what she requested for reimbursement of insurance premiums because the court found wife's employer or the employer of her current husband paid the children's premiums starting in early 2009.

## DISCUSSION

We review a trial court's support order for abuse of discretion. We apply the substantial evidence standard of review to the court's factual findings, which requires us to view the evidence in the light most favorable to the prevailing party. (*Edwards v. Edwards* (2008) 162 Cal.App.4th 136, 141; *In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1151.)

Husband and wife's parenting plan obligated them to share equally the cost of their children's "uninsured medical expenses pursuant to Family Code [section] 4063[, subdivision] (b)." Section 4063 establishes the steps a parent who pays uninsured medical expenses must take to receive reimbursement from the other, nonpaying parent. The statute states the paying parent must present to the nonpaying parent an "itemized statement of costs" and "proof of payment" within 30 days of incurring the medical expense. The statute states: "[W]hen either parent accrues or pays costs pursuant to an order under this section, that parent shall provide the other parent with an itemized statement of the costs within a reasonable time, but not more than 30 days after accruing the costs. . . . If a parent has already paid all of these costs, that parent shall provide proof of payment and a request for reimbursement of his or her court-ordered share to the other parent."

Husband contends the court misapplied section 4063, subdivision (b) (and, by extension, the parenting plan which incorporated section 4063). Husband correctly notes that wife did not submit in support of her petition any of the sorts of documents customarily deemed "proof of payment," such as paid invoices, cancelled checks, or receipts.<sup>3</sup> At best, wife's spreadsheet was arguably an "itemized statement of costs," but

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<sup>3</sup> See, e.g., *Lupberger v. Lupberger* (La.App.4th Cir. 2011) 805 So.2d 264, 275 (former husband not entitled to reimbursement of medical expenses where he failed to produce "invoices or other reliable proof" the payments were made); *C.K. v. M.K.* (2011 N.Y. Misc.) 923 N.Y.S.2d 817, 821 (husband entitled to reimbursement of support overpayments "for which he has canceled checks or other similar proof of payment"); *Ware v. Dept. of Soc. and Health Servs.* (Wash.App. 2010) 157 Wash.App. 1071 (wife's

was not proof of payment, and in any case, the court did not admit the spreadsheet for the truth of its contents.<sup>4</sup> Thus, according to husband, wife offered no admissible evidence of proof of payment.

Husband appears to misread section 4063. The statute does not state the parent seeking reimbursement must submit to the court the “proof of payment”; rather, the parent must provide the nonpaying parent with proof of payment – the “parent [seeking reimbursement] shall provide proof of payment . . . to the other parent.” (§ 4063, subd. (b)(1).) Here, wife stated in her declaration in support of her petition that she ordinarily e-mailed to husband within 30 days all “bills in arrears of reimbursement” for the children’s health care. The only exception to her e-mailing bills within 30 days occurred some undetermined number of times when her busyness in attending to their son’s illnesses prevented her from e-mailing the bills on time, but untimely delivery of proof of payment does not bar reimbursement. (*In re Marriage of Rothrock* (2008) 159 Cal.App.4th 223, 236-237.)<sup>5</sup> Standard rules of appellate procedure obligate us to draw all reasonable inferences in support of the trial court’s rulings. (*Edwards v. Edwards, supra*, 162 Cal.App.4th at p. 141.) In ordering husband to reimburse wife, we infer the trial court took wife’s delivery of “bills in arrears of *reimbursement*” to mean wife had paid those bills, otherwise she would not have required reimbursement. The

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carbon copy of her check not sufficient proof of payment for reimbursement under support order requiring proof of payment because carbon copy established only writing of check, not that check had been negotiated and cleared by bank).

<sup>4</sup> The distinction between an itemization and proof of payment involving medical benefits also exists in the California Insurance Code statute covering disability insurance. (Ins. Code, § 10133.7.)

<sup>5</sup> *In re Marriage of Rothrock, supra*, 159 Cal.App.4th at pages 236-237 (“section 4063 does not prohibit a party from seeking reimbursement in case of a failure to timely present an itemization of costs. Rather, section 4063, subdivision (c) allows the court to award filing costs and reasonable attorney’s fees” if it finds the delay in presentment was unreasonable).

record thus contains sufficient evidence that wife provided husband with proof that she had paid medical expenses for which she was seeking reimbursement from him.

Appellant husband contends the court wrongfully ordered him to reimburse wife for certain medical expenses which her current husband's health insurance may eventually cover. He asserts the court's order violates section 4063, which applies only to *uninsured* medical expenses. Appellant husband's contention is unavailing. The court ordered wife to seek insurance coverage through her current husband's health insurer, and to split with appellant husband any insurance payments she receives. Because insurance coverage is not guaranteed, however, those medical expenses might remain uninsured, thereby permitting section 4063's application.

Finally, appellant husband contends he demonstrated that wife was untruthful to a non-California court in her current husband's litigation with his former wife. Whether or not appellant husband is correct does not matter on appeal because the trial court's credibility determinations bind us. (*Estate of Young* (2008) 160 Cal.App.4th 62, 76.)

**DISPOSITION**

The trial court's July 18, 2011 order is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

SORTINO, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.