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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of ROBERT and JESSICA
RIDDLE.

2d Civil No. B237512
(Super. Ct. No. FL080945)
(San Luis Obispo County)

ROBERT RIDDLE,

Appellant,

v.

JESSICA RIDDLE,

Respondent.

Robert Riddle appeals the judgment dissolving his marriage to Jessica Riddle. Robert¹ contends the trial court erred in awarding spousal support and denying charges and credits as contemplated in *In re Marriage of Epstein* (1979) 24 Cal.3d 76 (*Epstein*)² and *In re Marriage of Watts* (1985) 171 Cal.App.3d 366 (*Watts*). We affirm.

FACTS AND PROCEDURAL HISTORY

¹ "As is customary in family law cases, we refer to the parties by their first names for purposes of clarity and not out of disrespect. [Citations.]" (*Kuehn v. Kuehn* (2000) 85 Cal.App.4th 824, 828, fn. 2.)

² *Epstein* has been superseded on a ground not relevant here.

The parties were married on November 25, 1995. They had no children together. The parties separated on September 1, 2007, after Robert was arrested for assaulting Jessica. That same date, a restraining order was issued that prohibited Robert from coming near the marital residence in Paso Robles (the marital residence) for a period of three years.

Robert earned significantly more than Jessica during the marriage. Robert's gross monthly income was \$10,000 from the time of separation until he lost his job on September 15, 2010. Since December of 2010, Robert has had a monthly gross income of \$5,980. Jessica earned \$5,000 in gross monthly income from the date of separation until her employment was terminated on February 14, 2008. After receiving unemployment benefits for several months, Jessica was employed for six months at a monthly salary of approximately \$3,000. On June 1, 2009, she was hired as a chef and began earning approximately \$4,000 a month. In November 2009, Jessica stopped working due to an industrial injury and began receiving \$3,832 a month in workers' compensation benefits. After those benefits ended in November 2011, she began receiving \$2,000 a month in disability benefits.

After the parties separated, Robert continued to pay the \$3,349.16 monthly mortgage payment on the marital residence. Robert eventually stopped making the mortgage payments, and the property was lost to foreclosure in June 2011. Jessica had exclusive possession of the marital residence from the date of separation until the foreclosure. Jessica has since been living rent-free with her boyfriend in Huntington Beach.

Trial of the matter was held on October 7, 2011. At the time of trial, Jessica claimed total monthly expenses of \$1,080 and credit card debt with an outstanding balance of \$9,000. Robert claimed total monthly expenses of \$3,140, \$2,000 of which is for ongoing "miscellaneous expenses" incurred every month on credit cards. Robert asked the court to award no spousal support. On the issue of property division, Robert among other things sought \$49,917.44 in *Epstein* credits for the mortgage payments he had made following the parties' separation. Robert also sought *Epstein*

credits of \$14,754.95 to compensate the community for repairs he made to the marital residence after the parties separated and prior to foreclosure, and \$10,514.32 for the utility bills he paid during the same period.

In addition, Robert sought *Watts* charges totaling \$75,600 for Jessica's exclusive possession of the marital residence post-separation. Robert offered the testimony of a realtor, who opined that the marital residence had a fair rental value of at least \$1,800 a month. Although the realtor had been in the residence three or four times prior to the parties' separation, he did not inspect it during the period in question. He also conceded that the rental value would be diminished if portions of the house had been left under construction.

Jessica sought spousal support. She also asked the court to deny Robert's request for *Epstein* credits for his post-separation mortgage payments and repairs to the marital property, as well as his request for *Watts* charges for her exclusive possession of the marital residence after the parties' separation. In support of her position, Jessica among other things testified that she had never sought spousal support with the understanding that Robert had agreed to continue making the mortgage payments in lieu of paying support. She also argued that Robert was not entitled to any credits for the mortgage payments or repairs to the marital residence because the property was lost in foreclosure. She did not dispute that Robert was entitled to *Epstein* credits for the utility bills he paid while she had exclusive possession of the property. Although Jessica expressed no opinion regarding the fair rental value of the marital residence during the period in question, she testified that the kitchen and all three bathrooms were "still under construction" from a remodeling project that began before the parties separated and that only one of the bathrooms was available for use.

The court filed a judgment of dissolution on November 16, 2011. On the issue of spousal support, the court stated: "The Court has considered all relevant Family Code³ section 4320 factors, including: (a) this was a long term marriage in excess of

³ All statutory references are to the Family Code unless otherwise stated.

ten years; (b) the parties lived on the high end of a middle class lifestyle during the marriage; (c) although [Jessica] is currently disabled, she does have marketable skills, particularly as a chef; (d) there was a history of domestic violence perpetrated by [Robert] upon [Jessica] on September 1, 2007; (e) [Robert] has the ability to support [Jessica]; (f) [Jessica] currently resides with her boyfriend who contributes to her financial needs, particularly by allowing [Jessica] to live rent free with monthly expenses of \$1,090." Based on these factors, the court ordered Robert to pay \$200 a month on October 1, 2011, and November 1, 2011. Robert was to thereafter begin paying \$1,350 a month in spousal support and continue to do so until the death of either party, Jessica's remarriage, or further order of the court. The court also "issue[d] a *Gavron*⁴ warning to [Jessica] to make efforts to be self-supporting." A review hearing on the issue of spousal support was set for March 5, 2012.

After noting that the marital property had been foreclosed upon and was thus no longer part of the marital estate, the court ruled that "[Robert] shall not be awarded any *Watts* charges for [Jessica's] use of the house since the date of separation, or any *Epstein* credits for [Robert's] post-separation mortgage payments because the Court finds that they were made in lieu of paying [Jessica] spousal support." The court did, however, award *Esptein* credits for Robert's post-separation repair and utility bill payments.

Based upon the overall division of property, Robert was ordered to make an equalization payment of \$825 to Jessica, plus \$1,339.43 for her community interest in an individual retirement account. Robert was also ordered to contribute \$2,250 to the \$13,566 in attorney fees and costs that Jessica had incurred to date in the proceedings. This appeal followed.

DISCUSSION

Spousal Support

⁴ (*In re Marriage of Gavron* (1988) 203 Cal.App.3d 705.)

Robert contends the court abused its discretion in awarding Jessica spousal support. We disagree.

"An award of spousal support is a determination to be made by the trial court in each case before it, based upon the facts and equities of that case, after weighing each of the circumstances and applicable statutory guidelines. [Citation.] 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. 'The issue of spousal support, including its purpose, is one which is truly personal to the parties.' [Citation.] In awarding spousal support, the court must consider the mandatory guidelines of section 4320. Once the court does so, the 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. [Citation.] 'Because trial courts have such broad discretion, appellate courts must act with cautious judicial restraint in reviewing these orders.' [Citation.]" (*In re Marriage of Kerr* (1999) 77 Cal.App.4th 87, 93, fn. omitted.)

Robert does not dispute that the court conducted the weighing process as contemplated in section 4320.⁵ He claims, however, that the court was effectively

⁵ Section 4320 provides: "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; 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

compelled to deny spousal support under section 4323 because Jessica is living rent-free with her boyfriend and her monthly income exceeds her stated expenses.

We are not persuaded. Section 4323 merely provides "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." (Italics added.) The court took this presumption into account in addressing the factors enumerated in section 4320. Moreover, Robert fails to make any showing that his income, which is three times that of Jessica's, is insufficient to pay spousal support while also maintaining his own standard of living. Of Robert's claimed monthly living expenses, \$2,000 is for ongoing "miscellaneous expenses" that are not otherwise identified. By contrast, Jessica's claimed monthly expenses of \$1,080 includes only \$300 in discretionary spending.⁶ The court also gave Jessica a *Gavron* warning—which puts her on notice that she is expected to become self-supporting—and set the matter for a three-month review hearing. Acting with the requisite "cautious judicial restraint," there is simply no basis for us to conclude that the spousal support order exceeds the bounds of reason so as to amount to an abuse of discretion. Robert's claim to the contrary accordingly fails.

Epstein Credits and Watts Charges

parties, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party. [¶] (j) The immediate and specific tax consequences to each party. [¶] (k) The balance of the hardships to each party. [¶] (l) The goal that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration as described in Section 4336, a 'reasonable period of time' for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court's discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section, Section 4336, and the circumstances of the parties. [¶] (m) The criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award in accordance with Section 4325. [¶] (n) Any other factors the court determines are just and equitable."

⁶ Jessica lists monthly expenses of \$50 for eating out, \$200 for clothing, and \$50 for entertainment, gifts, and travel. Robert's income and expense declaration does not expressly identify any such expenses. Instead, he merely lists \$2,000 in monthly "miscellaneous expenses" that are "ongoing."

Robert asserts the court abused its discretion in failing to award *Epstein* credits for the mortgage payments Robert made on the marital property after the parties separated. He further claims the court erred in declining to impose *Watts* charges for Jessica's exclusive possession of the property during that same period. We conclude otherwise.

Section 2550 requires the trial court, upon dissolution of marriage, to divide the community estate of the parties equally. (*In re Marriage of Fonstein* (1976) 17 Cal.3d 738, 748 [construing former Civ. Code, § 4800, subd. (a)].) In equalizing the division of community property, the trial court has the authority to reimburse the community for the value of one spouse's exclusive use of a community asset between the date of separation and the date of trial—commonly referred to as *Watts* charges. (*Watts, supra*, 171 Cal.App.3d at p. 374; *In re Marriage of Falcone and Fyke* (2012) 203 Cal.App.4th 964, 978.) The court also has discretion to order reimbursement of payments made post-separation to satisfy a community debt, which are commonly referred to as *Epstein* credits. "It is important to note that both '*Epstein* credits' and '*Watts* charges' are, respectively, to be paid from or paid to *the community*. Inasmuch as both spouses have an equal interest in community assets (§ 5105), and in light of a trial court's obligation under the Family Law Act to divide community assets equally between the parties upon a dissolution of the marriage (§ 4800, subd. (a)), it follows that the *net* effect of allocating '*Epstein* credits' and '*Watts* charges' in a division of community assets should be (1) the equal sharing of '*Epstein* credits' by both spouses and (2) the equal bearing of '*Watts* charges' by both spouses." (*In re Marriage of Jeffries* (1991) 228 Cal.App.3d 548, 553.) The trial court has discretion, based on equitable considerations, whether to allow *Epstein* credits or *Watts* charges. (See *In re Marriage of Hebring* (1989) 207 Cal.App.3d 1260, 1272.)

Epstein makes clear that reimbursement is inappropriate ". . . where the payment on account of a preexisting community obligation constituted in reality a discharge of the paying spouse's duty to support the other spouse" [Citation.]" (*Epstein, supra*, 24 Cal.3d at pp. 84–85, fns. omitted; *In re Marriage of Smith* (1978) 79

Cal.App.3d 725, 747-748.) Here, the court determined that Robert was not entitled to *Epstein* credits for his post-separation mortgage payments because he made those payments in lieu of paying spousal support. In making this finding, the court found credible Jessica's testimony that she had not sought spousal support with the understanding that Robert had agreed to continue making the mortgage payments instead of paying support. It is undisputed that if Jessica had sought support, she would have been entitled to receive \$1,881 a month. Accordingly, of the \$3,349.16 in monthly mortgage payments that Robert made, \$1,881 came from spousal support funds that were effectively Jessica's separate property.⁷ When viewed in this context, it cannot be said the court abused its discretion in declining to award *Epstein* credits for Robert's post-separation mortgage payments.⁸

The court also acted within its discretion in denying *Watts* charges for Jessica's sole possession of the residence following the parties' separation. As the preceding discussion reflects, Robert actually came out ahead by agreeing to make the mortgage payments in lieu of spousal support. Moreover, Robert's evidence that the marital residence had a monthly rental value of \$1,800 did not account for Jessica's undisputed testimony that the kitchen and two of the bathrooms were left in a state of incomplete remodeling when the parties separated. *Watts* charges are also based on the presumption that both parties have an equal right to possession of the community property at issue. Robert had no right to possession of the marital residence during the

⁷ Robert attempts to account for the mortgage payments made in lieu of spousal support by simply subtracting the guideline support figure of \$1,881 from each of the monthly mortgage payments he made, then requesting the remainder ($\$1,468.16 \times 34 \text{ months} = \$49,9917.44$) as *Epstein* credits. This formulation is inaccurate because the support payments would have been Jessica's separate property. In other words, \$1,881 of the mortgage was paid from Jessica's separate property, while the remaining \$1,468.16 was paid from Robert's separate property. It thus becomes apparent that Robert actually contributed less toward the monthly mortgage payments, a community debt for which both parties were equally responsible.

⁸ In light of our conclusion, we need not address Jessica's claim that *Epstein* credits could not be awarded because the marital property was lost through foreclosure prior to dissolution. (§ 2640, subd. (b); see, e.g., *In re Marriage of Walrath* (1998) 17 Cal.4th 907, 913.)

period in question due to the restraining order that was issued against him after he assaulted Jessica. Under the circumstances, it cannot be said that the court abused its discretion in disallowing *Watts* charges notwithstanding the fact that Jessica had exclusive possession of the marital residence following the parties' separation.

The judgment is affirmed. Costs are awarded to Jessica.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Gayle L. Peron, Commissioner
Superior Court County of San Luis Obispo

Robert H. Mott for Appellant.

Regan & Associates, James J. Regan and Lorne Lilienthal for Respondent.