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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

(Yolo)

In re the Marriage of FARAH TAGHAVI
and JAFAR AFKHAM.

C068768

(Super. Ct. No. CV-FL-07-1845)

FARAH TAGHAVI,

Appellant,

v.

JAFAR AFKHAM,

Respondent.

In short order, the parties met in April 2005, married in October 2005, had a son in May 2006, separated in September 2007, and instituted the instant dissolution action in November 2007 on the petition of appellant Farah Taghavi. It then took until July 2011 for those proceedings to come to a judgment. This incorporated both an April 2011 statement of decision after trial and a May 2011 order that was in response to Taghavi's posttrial request (in February 2011) for a modification of custody and to her objections (in April 2011) to the statement of decision.

On appeal, Taghavi contends the trial court’s decision to deny her any visitation with her son fails to make the necessary finding that visitation would be detrimental to the child, did not consider supervised visitation as a less restrictive option, imposed improper criteria (that she seek work and document her educational accomplishments) in order for her to demonstrate a change of circumstances with respect to visitation, and did not limit a criterion of undergoing mental health counseling to the statutory one-year period. With respect to issues regarding property division, she argues the trial court erred in finding that she had failed to carry her burden to establish there had been community contributions to an investment account that was the separate property of her ex-spouse, respondent Jafar Afkham, and in failing to determine whether there was any community interest in another investment account (the existence of which Afkham acknowledged in trial court briefing, but which apparently was not otherwise addressed at trial) despite her request to reserve jurisdiction over it in posttrial briefing.

Affecting our review of Taghavi’s contentions is Afkham’s request to expand the record on appeal to include an April 2012 order denying Taghavi’s request for a modification of visitation. (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 260 [under Code Civ. Proc., § 917.7, trial court retains jurisdiction to address any issue of visitation in any civil action notwithstanding pending appeal embracing the issue].) While Afkham styles his request as a motion to augment, we will deem it to be a motion to take judicial notice of this order, because we cannot “augment” the record with matters that were not part of the record before the trial court in rendering its judgment. (*People v. Jones* (1997) 15 Cal.4th 119, 171, fn. 17.) We will grant the request.¹

¹ Taghavi in response requested that we take judicial notice of a May 2011 order (subsequent to the May 2011 order incorporated in the judgment) denying another request for visitation. As it does not have any relevance to our discussion of the issues in the present appeal, we deny the request. (*People v. Eubanks* (2011) 53 Cal.4th 110, 129,

We find Taghavi’s arguments either without merit, judicially estopped, or moot.² We therefore shall affirm the judgment. We will deny Afkham’s offhand request for an award of legal fees (for the costs of consulting with “an advising attorney”) that appears in the final sentence of his “Conclusion” without any authority or elaboration.

FACTUAL AND PROCEDURAL BACKGROUND

Taghavi’s challenges do not, for the most part, contest the *evidence* that underlies the judgment’s findings (as opposed to their legitimacy). We therefore focus on the judgment’s factual and legal findings pertinent to her claims.

Custody: Statement of Decision

The statement of decision noted that this litigation “has been an extraordinarily high[-]conflict case” in which neither of the parties had been “entirely credible.” However, Taghavi’s claims of domestic violence on Afkham’s part were without any documentation and the court did not find her to be a credible witness. The court modified the parenting plan that had been in effect at trial based on Taghavi’s “erratic behavior” and “inability to organize her own life,” and discredited her testimony to the contrary on this issue. Her behavior left the court concerned about Taghavi’s desire (announced on the last day of trial) to move herself and the minor to the Bay Area. This would separate the minor from the stable home Afkham could offer and any connection with Taghavi’s family, which the court concluded was not in the minor’s best interests. While Afkham was capable of facilitating visitation with Taghavi if given primary physical custody, she by contrast was “not capable without high conflict in co-parenting issues.”

fn. 9.) We also deny Afkham’s motion for leave to file a reply to Taghavi’s opposition as unnecessary to our consideration of the issue.

² Where subsequent events prevent this court from granting effective relief because our decision would not affect the outcome in the proceedings on remand, the appeal is moot. (*In re Anna S.* (2010) 180 Cal.App.4th 1489, 1498.)

The court thus awarded Afkham sole legal and physical custody. It allowed Taghavi to have three weekend visitations each month and shared holidays.

Custody: May 2011 Order After Trial/Rulings on Objections

In its order regarding Taghavi's posttrial request for visitation, the court spent 18 pages detailing her behavior over the course of the litigation (also finding her "allegations and defenses lack[ed] credibility" on various grounds). This included her suspect and unverifiable claims of seeking work in accordance with numerous court orders and of pursuing higher education (which involved her changing schools and programs every six months) despite vocational tests that showed her incapable of the critical thinking necessary for the latter.³ She had obtained sole legal and physical custody in January 2008 based on numerous allegations of domestic violence that were never subsequently substantiated and which taxed the resources of the Davis Police Department. The court also identified an incident in which Taghavi drove off from a planned child exchange after the minor had seen her, causing him to cry. The court credited Afkham's declarations filed over the course of the litigation attesting to Taghavi's numerous efforts to obstruct his parenting time. The court further noted that following the trial in this matter, Taghavi made a claim that Afkham had tried to kill her, which the court did not find credible.

This led the trial court to conclude that her "erratic and unstable conduct" was "not in the best interest" of the minor. "Based on the totality of the circumstances, the mother's conduct shows a lack of commitment to co-parenting the minor child with the father. Her history of starts-and-stops at college studies, of domestic violence allegations never substantiated, of obstruction of the father's parenting time, of claiming [an]

³ Even though Taghavi showed a lack of vocational or educational progress, her parents supported her at a level comparable to her marital standard of living, allowing her "to enjoy the luxuries of life without working."

outrageous amount of expenses on her [income and expense] statements, of failing to secure employment, of moving away without thoughtful consideration, of pursuing unsubstantiated claims of contempt, of requesting trial continuances without cause, of delaying participation in mediation and the vocational evaluation, all demonstrate that she is not currently capable of acting in the best interest of the child.” On balance, Afkham’s “failings are minor compared to the pattern of misconduct engaged in by the mother.”

The court reaffirmed its previous award of sole legal and physical custody to Afkham. It ruled Taghavi should not have any visitation rights without further court order. To obtain any modification of its order, the court generally required Taghavi to “produce specific and substantial evidence that she will not be a barrier to co-parenting and that she will act in the best interest of the child,” and of her strict compliance with the provisions of the order. As is pertinent, the provisions included orders to “seek work and show proof to the Court,” to “obtain a full mental health assessment,” to “enroll in mental health counseling,” to submit notarized proof of any subsequent educational efforts (including grades), and to “obtain a declaration from [a vocational evaluator] summarizing her higher education . . . in Iran and the United States” (including authenticated transcripts). The court declared its intention “to put an end to the mindless and irresponsible litigation” of the dissolution through “strict compliance” with the terms of its judgment.

Custody: April 2012 Order

In April 2012, the court issued its findings in an order after a hearing on Taghavi’s motion for visitation with the minor to celebrate his sixth birthday in May.⁴ It summarized the five criteria for Taghavi to obtain a modification that we related above.

⁴ Taghavi filed the motion in propria persona after appellate counsel filed her opening brief in this appeal.

It referred to the evidence in the prior order on which it had rested its “finding of detriment to the child pursuant to Family Code [section] 3100.”⁵ It then noted (though its previous order did not expressly reflect this) that it had offered the option of supervised visitation to Taghavi, but she rejected it. Therefore, a finding of detriment was not previously necessary, and was not necessary in the April 2012 proceedings because she continued to reject the option of supervised visitation. It noted, “There is no reason for the Court to order supervised visitation if the parent will not accept it.”

Because Taghavi had not complied with the criteria in the judgment to obtain modification “in any meaningful way” (which included her refusal to enroll in therapy, purportedly because it was not limited to a term of one year), she had failed to support a request for unsupervised visitation (even though her parents had obtained grandparent visitation rights).⁶ The court modified the judgment to limit the requirement of mental health counseling to a period of one year, and specified that the work and educational provisions in effect would not be tied to the issue of custody but of child support.

Property Division: Issues Identified in Trial Briefing

The parties had executed a prenuptial agreement in October 2005 under which Taghavi relinquished any claim to Afkham’s listed separate property, which included investment accounts. The trial court, however, had declared it unenforceable in July 2009.

In Afkham’s February 2010 trial brief, his attorney noted among the issues that “[t]he bank accounts were commingled” and that an unspecified account had grown in value by over \$250,000, but after credit for payment of community taxes there would be

⁵ Undesignated statutory references are to the Family Code.

⁶ The court noted that Taghavi’s parents “are unable to help her” with her issues, although it did not elaborate further.

at most about \$211,000 to divide. The trial brief also noted, “There is no retirement fund, except \$13,000 in IRAs.”

Taghavi’s attorney was less specific (claiming additional discovery was necessary), contending only that there was an increase in the community interest in “savings” of over \$500,000.

(We skip any summary of testimony at trial on the issue of the division of bank accounts. We will return to the subject in the course of the Discussion.)

In the posttrial brief, Afkham’s counsel noted that among assets *not covered at trial* was “an IRA into which the community deposited \$8,000” that had been identified *at a settlement conference*. Counsel requested that the court award the community \$8,000 for these deposits while awarding the account to Afkham as his separate property. What was now identified as Afkham’s separate property Bank of America account (on which his mother was a co-account holder) had a balance at the date of marriage of about \$470,000 and at the date of separation of about \$775,000, though “[t]here was no testimony as to the source of deposits during marriage and effective tracing.” Afkham had paid about \$109,000 in community taxes from this account. Counsel requested the account be confirmed as Afkham’s separate property “less any order the Court may make regarding any community share of payments made during marriage.”

Taghavi’s counsel asserted in the posttrial brief that “[t]here is no evidence of any source of income during the marriage other than [Afkham’s] dental practice, so this growth in [the Bank of America account] is community property.” As for the IRA, counsel asserted the amount was unknown, and made a request for the court to retain jurisdiction until Afkham produced records establishing the community interest in it. In response to the court’s tentative statement of decision, Taghavi requested the court to “set forth its reasoning for concluding that the . . . growth during the marriage of the Bank of America savings account was not community property.”

Property Division: Judgment

The court confirmed the primary residence, which Afkham had paid for in full before the marriage, was his separate property in which Taghavi had failed to establish any community interest or entitlement to reimbursement. It found Afkham was entitled to a credit of \$9,000 for Taghavi's exclusive use of the residence after separation for three months. (*In re Marriage of Watts* (1985) 171 Cal.App.3d 366, 374.)

The court awarded a 2006 Volvo that was community property to Taghavi, which was worth four times the value of a 1997 BMW she held as separate property. (The May 2011 order noted that her family paid off an outstanding \$12,000 loan on the Volvo.)

“The Bank of America account is the separate property of [Afkham] and [Taghavi] has no interest in it. The account was established prior to the marriage. The fact that it increased in value during the marriage does not transform the separate property into community property, no more than had the account decreased in value would the community be responsible for the loss. What is relevant is whether the community contributed to the account during the marriage. [Taghavi] failed to trace to the community any contribution to this separate property. There was no evidence as to the basis for the increase during the marriage.”

After finding a \$13,000 community interest in Afkham's dentistry practice, the court concluded Taghavi was not entitled to any equalizing payment because the *Watts* charges and the value of the Volvo more than offset the community interest in the dental business. The trial court reserved jurisdiction over property division.

In its May 2011 order, the court overruled the objections that Taghavi made to the statement of decision. It stated, “she . . . submitted a rambling dissertation . . . [that] fails to cite to the record to support her argument,” with “objections . . . not clearly articulated” and “inadmissible self-serving allegations.” (In the midst of these ramblings appeared a tangential reference to the “evaluation of [the parties'] community

[interests],” including Afkham’s IRA. She also reasserted her objection that the increase in the Bank of America account necessarily came from community assets. The court then declared its statement of decision was now final as to all reserved issues.

DISCUSSION

I. Custody

A. Denial of Visitation

We note Taghavi does not dispute the sufficiency of the evidence to support the trial court’s factual findings in its visitation order. After reciting general principles of law relating to the issue of visitation, Taghavi at last identifies the error she perceives in the order denying her any visitation with the minor. She asserts, “there was no finding that it would be detrimental to [the minor] to have continued contact with [her],” and that “it was apparent” the decision rested instead on the court’s announced desire to put an end to the fruitless litigation of the parties’ dissolution.

In making custody determinations, a trial court must afford a noncustodial parent reasonable visitation with a child absent a finding that visitation would be detrimental to the child’s best interests. (§§ 3100, subd. (a), 3011, subd. (a) [defining best interests as including health, safety, and welfare of child]; 2 Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2012) ¶¶ 7:480 to 7:481, pp. 7-182 to 7-183 (rev. #1, 2011) (Hogoboom); *Camacho v. Camacho* (1985) 173 Cal.App.3d 214, 219.) A trial court’s visitation decision is reviewed for abuse of discretion. (*In re Marriage of Birdsall* (1988) 197 Cal.App.3d 1024, 1028; Hogoboom, *supra*, ¶ 7:485, p. 7-187 (rev. #1, 2011).) An intent to thwart the custodial rights of the other parent, which can be inferred from dishonest or recalcitrant acts, supports the restriction of the visitation rights of the noncustodial parent. (*In re Marriage of Economou* (1990) 224 Cal.App.3d 1466, 1486-1487; Hogoboom, *supra*, ¶ 7:493, p. 7-193 (rev. #1, 2007).)

Taghavi's contention is thus sophistic and borders on the frivolous. The trial court's findings summarized above show its concerns that Taghavi's conduct is sufficiently erratic to give it concern about her mental stability, that her word is entirely to be distrusted, that she has acted throughout the litigation with a motive to deprive Afkham of rightful custody and to do anything to achieve that aim (including the false reports of domestic violence), and that she has not given any thought for the minor's best interests as opposed to her own convenience (e.g., abandoning him at the child exchange after he saw her, or intending to reside with him far from the father and maternal grandparents). This led the trial court to find expressly that Taghavi was not capable of acting in the minor's best interests.

Taghavi argues there is a distinction between a finding of "best interest" and one of "detriment," invoking the analogous requirement in the context of determining nonparent visitation rights over the objection of a parent. *In re Marriage of Gayden* (1991) 229 Cal.App.3d 1510 held that a finding of best interest was *not sufficient* to grant nonparent visitation of itself; there must be a showing that denial of the visitation would be detrimental to the child in order to overcome the objection of the parent. (*Id.* at p. 1520.)⁷ This simply means there are many choices that might be in a child's best interest, but a court cannot select an objectionable one absent a showing of detriment if it is *not* chosen. That is not the equivalent of holding that a finding of visitation "*not* being in a child's best interests" is *different* than finding the visitation *is* "detrimental." *Rich v. Thatcher* (2011) 200 Cal.App.4th 1176 makes this exact point: "If grandparent visitation *is* in the grandchild's 'best interest,' it is *not* 'detrimental.' If grandparent visitation is *not* in the grandchild's 'best interest,' it *is* 'detrimental.'" (*Id.* at p. 1179, italics added.) Moreover, even if the failure to use the word "detriment" in the judgment *had* any legal

⁷ We indicated agreement as a matter of constitutional law with respect to grandparent visitation in *Fenn v. Sherriff* (2003) 109 Cal.App.4th 1466, 1484-1485, 1486-1487.

import, the April 2012 order indicates the trial court would simply issue the exact same judgment employing the magic word, which obviates any basis for reversal. (*Rojas v. Mitchell* (1996) 50 Cal.App.4th 1445, 1450 [failure to make finding harmless where under facts of case it necessarily would be adverse to appellant].)

Taghavi also appears to suggest that the factual findings do not establish behavior egregious enough to warrant the denial of visitation in its entirety. (*Devine v. Devine* (1963) 213 Cal.App.2d 549, 553.) To this end, she cites express statutory authorization for the denial of all visitation to a parent in certain circumstances. (§§ 3027.5, subd. (a) [false report of child sexual abuse], 3030, subds. (a)-(c) [conviction of certain sex offenses or murder of other parent], 3048, subds. (b)(1) & (2) [risk of child abduction], 3100, subd. (b) [subject of protective order], 3118, subd. (f) [investigation of child sexual abuse].) However, in reviewing a decision for an abuse of discretion, the existence of situations at the far end of the continuum of behavior in which the restriction of visitation is mandated or authorized does not undermine the reasonable basis for a similar decision in the present case. Taghavi's extreme behavior in the present case warranted the trial court's reasonable conclusion that she could not be trusted even with temporary custody until she demonstrated affirmatively that she was willing to remedy its underlying causes. As a result, we do not find an abuse of discretion.

B. Failure to Consider Supervised Visitation

In a single paragraph, Taghavi asserts it was mandatory for the trial court to consider the lesser alternative of supervised visitation. Though the judgment does not include this fact, the April 2012 order (as we noted above) reflects the trial court's recollection that it *had* offered this option before entry of judgment, but Taghavi refused it, and also documents the fact that she continued to refuse it at the time of the April 2012 order. Contrary to Taghavi's argument, we can take judicial notice of the documentation in the April 2012 order of her litigation posture with respect to supervised visitation in

the trial court. (See *Bach v. McNelis* (1989) 207 Cal.App.3d 852, 865; *People v. Tolbert* (1986) 176 Cal.App.3d 685, 690; cf. *Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 148 [may take judicial notice of issues raised in one proceeding to compare with issues raised in another for purposes of issue preclusion].)

While it is true that a trial court cannot modify its findings nunc pro tunc in a subsequent order for the purpose of affirming the judgment (*Elsea v. Saberi* (1992) 4 Cal.App.4th 625, 629), Taghavi is precluded from raising this issue on appeal for a different reason. The April 2012 order is competent to establish that in the trial court, Taghavi has and continues to refuse to accept supervised visitation as an alternative. As a matter of *judicial estoppel*, she consequently cannot maintain a contrary position here to trifle with this court.

Judicial estoppel applies where a party asserts a position for strategic advantage in one phase of a case, having taking a contrary position deliberately in a different phase for strategic reasons that the court accepted as true in that phase. (*Aguilar v. Lerner* (2004) 32 Cal.4th 974, 986; *Milton H. Greene Archives, Inc. v. Marilyn Monroe LLC* (9th Cir. 2012) 692 F.3d 983, 993, 994 [under federal law, judicial estoppel is set of related doctrines, not a cohesive theory, governed by three equitable general principles without any fixed prerequisites].)

Taghavi refused supervised visitation in the trial court in an effort to obtain unrestricted visitation and continues to refuse it. The trial court accepted this litigation stance. We will not allow her to play “fast and loose” with this court, attempting to seek reversal with a contrary stance in perversion of the judicial machinery. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 841.)

Taghavi continued to insist at oral argument that various points in the record demonstrate that the trial court did not broach the issue of supervised visitation with her before entry of the 2011 judgment (even though this had been a recommendation of the

district attorney as early as February 2010 to deal with its recurrent involvement in the custody arrangements, and Afkham made a pretrial request to this effect as well). This necessarily carries the unpleasant implication that the trial court's finding in April 2012 was either mistaken or dishonest. However, as with the other May 2011 minutes involving visitation (of which we have refused to take judicial notice), the happenings in 2011 are ultimately immaterial. Even if we ignore them entirely, her position at the *April 2012* proceedings demonstrates that reversal for reconsideration of supervised visitation would be an idle act. We respectfully decline to waste scarce judicial resources in this fashion.

C. Improper Conditions on Modification of Order

In two additional one-paragraph arguments, Taghavi asserts it is improper to condition a future modification of visitation on compliance with conditions of seeking work and documenting her postsecondary educational efforts, and to impose a condition of mental health counseling for a period of more than one year in violation of section 3190. We may properly take judicial notice of the conditions in the present April 2012 order, in which the trial court expressly severed any connection between the issue of visitation and the work/education conditions, and expressly limited the condition of undergoing counseling to a period of one year. This moots her two arguments, because she has failed to demonstrate any benefit to her in modifying the judgment at this point in the manner she requests, where she did not make any effort to comply with the conditions before the trial court itself modified them. We therefore cannot grant any effective relief.

II. Property Issues

A. Bank of America Brokerage Account

Once a party demonstrates there is commingled in an account both separate funds and funds having their source in the community, a presumption arises that the entirety of the account is community property unless the party asserting a claim of separate property

can overcome this presumption with adequate tracing. (11 Witkin, Summary of Cal. Law (10th ed. 2005) Community Property, § 113, pp. 675-676; *Estate of Luke* (1987) 194 Cal.App.3d 1006, 1018, 1019.)

Taghavi contends substantial evidence does not support the finding in the judgment that she had failed to establish the deposit of any community funds in Afkham's Bank of America brokerage account. She cites the following isolated pieces of evidence from the trial. We note that it is her obligation as an appellant to identify the portions of the record in support of her argument, because this court will not search through the record independently in evaluating her claim. (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.) Thus, to the extent there is any *other* evidence on the issue in the record, she has forfeited our consideration of it.

Afkham's accountant prepared his tax returns for 2006 to 2009. He was not aware of any other businesses from which Afkham derived any income other than his dentistry practice. Taghavi was also not aware of any other sources of income.

Taghavi's forensic accountant provided an exhibit of more than 150 copies of checks and deposit slips from February and March 2008, which showed deposits of business income to an unspecified Bank of America personal account ("3414," to use the final four digits) in a net amount of nearly \$45,000 (\$20,000 later having been transferred back to the business account). As Afkham's expert later established, Afkham ultimately transferred the balance of the sum back to his business account because it was erroneously deposited in the 3414 account, and amended his business tax return to include it. We note, however, the September 2007 statement for the Bank of America brokerage (and linked checking) accounts on which the experts relied (showing the \$775,000 (rounded) balance at the time of separation) had account numbers ending in "8855" (brokerage account) and "4562" (checking account), respectively.

All this evidence demonstrates is that Afkham had *earnings* solely from his dentistry practice during coverture, and there apparently were deposits to his separate account that increased the principal in excess of accrued interest (and withdrawals to pay community debts). Taghavi, however, utterly failed to supply any affirmative proof in support of her threshold burden to show that the deposits had their source in Afkham's earnings, as opposed to investment income or other separate property, or gifts from his mother (who was a co-account holder). Taghavi's entire claim thus rests on the unproven speculation that the deposits *must* have come from Afkham's earnings. The trial court was not required to indulge that speculation. The evidence that Afkham mistakenly made deposits of business income to an *unrelated* personal bank account *after* separation does not have any bearing on the issue whatsoever.

Bereft of evidence, Taghavi seizes upon the representations in Afkham's trial briefing and claims we should treat these as binding "judicial" admissions of a community interest in the Bank of America brokerage account. This displays a fundamental misunderstanding of the nature of true judicial admissions.

A *judicial* admission is the waiver of proof of a fact in a *pleading*, in a response to a *request for admissions*, or in a *stipulation*, which is *conclusive on the party*. (4 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 452, p. 585, § 454, p. 587; 2 Witkin, Cal. Evidence (4th ed. 2000) Discovery, § 171, p. 1000.) Admissions or concessions in *briefs*, on the other hand, are *not* conclusive on a party; a trial (or appellate) court is not *bound* to accept them. (*Bell v. Tri-City Hospital Dist.* (1987) 196 Cal.App.3d 438, 448-449 [refusing to accept concession that attorney did not intend to name party as a defendant].) While there may be overly broad language in cases Taghavi cites that describe the latter as "judicial" admissions, the more accurate application of the principle is limited to a representation that is the equivalent of a formal stipulation.

The statements in Afkham's trial briefing do not pass the stipulation muster. A pretrial brief generally makes arguments based only on perceived issues of anticipated evidence. Afkham's attorney was asserting what the attorney believed the evidence would show at trial with respect to property issues, including commingling of bank accounts. This cannot reasonably be read, however, as a representation to the trial court or Taghavi's attorney that *proof* of the facts on the issue would not be necessary. This is made clear in Afkham's posttrial brief. Counsel expressly took the position that there was an absence of any proof that traced the source of deposits to the account, and requested that the trial court find Taghavi did not have any interest in it (by reason of "equitable estoppel").

Taghavi thus fails to show any basis for treating the trial briefing as a species of judicial admission that is binding on Afkham on appeal. As the evidence otherwise does not impeach the finding of the trial court, we reject her claim of error.

B. IRA

As early as Afkham's settlement conference statement (which is itself inadmissible evidence (2 Haning et al., Cal. Practice Guide: Personal Injury (The Rutter Group 2012) ¶ 4:317, p. 4-157 (rev. #1, 2008)), as Taghavi concedes, Taghavi was put on notice of the existence of an IRA into which Afkham had purportedly deposited community income. However, Taghavi apparently did not litigate the issue at trial, and simply asked the court *after trial* to reserve its jurisdiction over the issue until she received discovery from Afkham regarding the amounts. The court did not address this issue expressly, either in its original reservation of jurisdiction in the statement of decision or in its later order deeming all property adjudications final.

Taghavi now attempts to obtain a ruling in this court in the first instance on the community interest in this alleged account on the basis of the prayer for relief in Afkham's posttrial brief (requesting an award to the community of \$8,000 in the account

and an award of the account otherwise to Afkham), once again asserting this was an admission. Once again, this was not a formal judicial admission that obligated the trial court to accept it in the absence of *any* evidence on the issue at trial.

More importantly, Taghavi has not explained why she may make initial application to this court for a ruling on the issue. Even where the judgment does not expressly reserve jurisdiction, a party may move *in the trial court* to adjudicate a community property interest not adjudicated in the judgment at any time. (§ 2556; 2 Hogoboom, *supra*, ¶¶ 8:1514, 8:1515, 8:1516, p. 8-364 (rev. #1, 2008); see also 2 Hogoboom, *supra*, ¶¶ 8:1520 & 8:1521, pp. 8-365 to 8-366 (rev. #1, 2012).) We thus reject her claim on appeal without prejudice to pursuing it in the trial court where the parties can introduce *evidence* establishing the IRA's existence and the community's share in it.

III. Request for Legal Fees

Afkham's one-sentence request for an award of legal fees on appeal does not explain the basis for the request. If it is premised on a belief that the appeal is frivolous and warrants sanctions, then his failure to file a motion supported with a declaration establishing the amount of any sanctions sought forfeits his entitlement. (Cal. Rules of Court, rule 8.276(b).)

If there is some other basis for an award of legal fees on appeal under the Family Code, then the better practice is to apply to the trial court in the first instance for a determination of his entitlement to them and the amount. (Cf. *Milman v. Shukhat* (1994) 22 Cal.App.4th 538, 546.) We therefore deny the request without prejudice.

DISPOSITION

Afkham's motion to augment the record, which we construe as a motion to take judicial notice, is granted. Taghavi's motion to take judicial notice is denied. Afkham's

motion for leave to file a response is denied. The judgment (which includes the May 2011 order) is affirmed. Afkham's request for an award of attorney fees on appeal is denied without prejudice to any request for fees in the trial court. Respondent Afkham is awarded his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

BUTZ, J.

We concur:

HULL, Acting P. J.

DUARTE, J.