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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re Marriage of LOIS C. YU and CRAIG
SWANSON.

LOIS C. YU,

Appellant,

v.

CRAIG SWANSON,

Appellant.

D058273

(Super. Ct. No. DN143066)

CROSS-APPEALS from a judgment of the Superior Court of San Diego County,
Lorna A. Alksne, Judge. Affirmed.

Craig Swanson appeals from a judgment on reserved issues in the dissolution proceedings concerning his marriage to Lois C. Yu. Craig asserts the trial court abused its discretion in (1) allocating the parties' community property and postseparation obligations, (2) ordering him to pay for minor's counsel, and (3) allocating the cost of supervised visitation. Lois also appeals, contending the trial court erred in (1) denying

her application for a protective order, (2) finding Craig had a First Amendment right to post information on the Internet about the case, (3) not adopting recommended protective measures before extending Craig's visitation, (4) concluding the evidence supported its findings that she had obsessive/compulsive disorder or coached the children, (5) not sanctioning Craig, and (6) not ordering Craig to pay spousal support. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Craig and Lois (together, the parents) married in March 1989 and separated in August 2006. The couple had two daughters who were age three and almost one when the petition was filed in 2006. All issues before the trial court were hotly contested. After hearing testimony from both parents and other numerous witnesses over the course of 15 days, the trial court issued a form judgment on reserved issues in this matter on July 21, 2010. Attached to the form judgment were its factual findings and orders. The trial court found the following:

The parents' testimony was self-serving, not responsive and not credible. With regard to Craig, the trial court found that Lois had provided 100 percent of the child care for the last two and a half years and that the children were doing well, but Craig could still not find anything positive to say about her. Craig's opinion of Lois was "unreasonable" and his desire to show that Lois was dangerous was detrimental to the children and displayed his "extremely poor judgment."

Craig allowed others to hold the children down while he "excessively, inappropriately and intrusively photographed the[ir] genitals." More than 50 separate

genital photos existed and Craig directly misrepresented the number of photographs.

Dr. Steven Sparta, the court-appointed expert witness, testified he had never seen a case with as many photographs. Craig, however, did not understand how his conduct harmed the children and child protective services made a true finding of emotional abuse against him.

Since the beginning of the case, Craig has been in conflict with third parties and law enforcement. Craig also harassed and disregarded medical professionals, causing them to refuse to treat his children. Craig "blogged" about the details of this case; this information could potentially remain in cyberspace forever, and this activity along with the court's other findings showed Craig's lack of good judgment in the privacy of his children. Craig's "relentless e-mail campaign detailing the medical conditions in minute detail is another example of his poor judgment." Craig continues to engage in unreasonable harassment, including using the Internet, taking photos at the exchanges, and photographing third parties at the exchanges. Craig, however, could not "comprehend his culpability." The trial court found that although Craig testified that the pictures had been modified and that a conspiracy existed between the police and the district attorney's office against him, there was no evidence to support these claims. Craig also "incessantly" opined that his daughter was burned without any evidence to support the claim.

As to Lois, the trial court found that "nobody" except Craig had any complaints about her and that third party witnesses testified Lois was appropriate with the children.

Based on the evidence presented, the trial court concluded that Lois had "taken very good care of the girls."

Based on these factual findings, the court made certain orders, portions of which are challenged by the parents.

DISCUSSION

I. *Appellate Legal Principles*

"[T]he trial court's judgment is presumed to be correct, and the appellant has the burden to prove otherwise by presenting legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited. [Citations.]" (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655–656.) The appellant is also required to support claims of error with citation and authority; we are not obligated to perform that function on the appellant's behalf. (*Id.* at p. 656.) To the extent the trial court's written findings constitutes its statement of decision, the parties were obligated to point out any deficiencies in the statement to give the court an opportunity to clarify its ruling. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133–1134; Code Civ. Proc., §§ 632, 634.)

II. *Craig's Appeal*

A. Allocation of Community Property and Postseparation Obligations

Craig asserts the trial court erred by (1) denying him almost \$9,000 in *Epstein* credits that he paid from postpetition separate property to enable the community property to be sold (*In re Marriage of Epstein* (1979) 24 Cal.3d 76 (*Epstein*), superseded by statute on other grounds as stated in *In re Marriage of Prentis-Margulis & Margulis*

(2011) 198 Cal.App.4th 1252, 1280), (2) not crediting him for \$7,500 in community funds distributed directly to Lois during the pendency of the litigation, (3) denying his request that the community reimburse him \$14,568 for the costs of supervised visitation, (4) ordering him to pay \$25,426 in attorney's fees for minor's counsel, and (5) denying him reimbursement for payments to preserve the community's primary unliquidated asset, an unfinished custom home.

As a threshold matter, Craig's first two contentions were unsupported by cognizable legal argument or citations to the record and we deem them to be abandoned. (*Keyes v. Bowen, supra*, 189 Cal.App.4th at pp. 655–656.) We address Craig's next two contentions pertaining to reimbursement of supervised visitation costs and the payment of attorney's fees to minor's counsel in parts II.B and II.C, *post*. Below we examine Craig's remaining contention that the trial court erred when it denied him reimbursement for payments to preserve the unfinished community home.

1. Background

Craig testified that exhibit AA listed a total of about \$28,918 in postseparation payments he made on community property real estate for such things as real estate taxes, interest-only loan payments and home owner's association fees. Craig requested *Epstein* credits of 50 percent of the total. The trial court made it clear that this exhibit and others were not independent evidence because Craig created the exhibits to prepare for his testimony and that it was accepting the exhibits into evidence as a recordation of Craig's testimony. Craig's counsel agreed. Exhibit AA listed reimbursable expenses as including

real estate taxes, casualty insurance, water bills, interest payments on a community loan, home owner's association fees and deposits to a community checking account.

In relevant part, the trial court granted Craig's request for reimbursement of postseparation payments made by him on real property taxes in the amount of about \$5,481, representing Lois's 50 percent of this expense. It denied Craig's reimbursement request for other postseparation expenses that he paid.

2. Analysis

Both spouses have an equal interest in community assets (Fam. Code, § 751) and a trial court is obligated to divide community assets equally between the parties upon a dissolution of the marriage (Fam. Code, § 2550). (Undesignated statutory references are to the Family Code.) Generally, debts incurred after the date of marriage but before the date of separation must be divided equally. (§ 2622, subd. (a).) The family court has discretion to order one spouse reimbursed from community assets for community debts that the spouse paid from separate property after separation but before trial (*Epstein* credits). (*Id.*, subd. (b); *Epstein, supra*, 24 Cal.3d at pp. 84–85.) A spouse is generally entitled to *Epstein* credits unless the payment was in reality a discharge of the paying spouse's duty to pay support to the other spouse. (*Epstein*, at pp. 84–85; § 2626.) Whether to award *Epstein* credits and in what amount is left to the trial court's discretion based on equitable considerations consistent with an equitable distribution of the community property. (*In re Marriage of Hebring* (1989) 207 Cal.App.3d 1260, 1272.)

Craig argues that the trial court erred when it failed to reimburse him about \$28,918 in postseparation payments he made to maintain the community home so that it

could be sold. He complains that the trial court only awarded him about \$5,481 and that it erroneously denied his other requests without comment. Lois contends the trial court acted well within its discretion when it denied some of the *Epstein* credits requested by Craig because she had sole custody and care of the children for the first two years of litigation. We agree with Lois.

The court noted at the start of trial that Craig needed to contribute to the children's food, clothing and support and that Lois was currently bearing the brunt of these costs. It ultimately found that the children were doing well and that Lois had provided 100 percent of "the [children's] care" for the last two and a half years. Thus, the trial court could have reasonably denied reimbursement on the remaining items finding that these payments were made in lieu of paying child support to Lois. (*Epstein, supra*, 24 Cal.3d at pp. 84–85.) To the extent Craig wanted an explanation of the trial court's reasoning, he should have requested clarification of the trial court's findings. (*In re Marriage of Arceneaux, supra*, 51 Cal.3d at pp. 1133–1134.)

B. Order to Pay for Minor's Counsel

1. Background

The trial court appointed counsel for the minor children. After a dispute arose as to the hourly rate to be paid to minor's counsel, the parties entered into a stipulation agreeing to a billing rate. The stipulation provided that each party was responsible for one-half of the payment to minor's counsel and that the court would "reserve jurisdiction over the issue of attorney's fees and costs incurred herein by Minor's Counsel and the enforcement of the agreement herein." The trial court signed the stipulation as an order

of the court. Thereafter, the court ordered that minor's counsel was to receive \$31,782, and that Craig was responsible for 80 percent of this cost and Lois was responsible for 20 percent.

2. Analysis

Craig asserts the trial court exhibited bias against him and committed error by ignoring the parties' stipulation. Lois asserts there was no error because she was blameless in these proceedings and the trial court reserved jurisdiction over the issue.

As a preliminary matter, we do not read the stipulation as reserving jurisdiction over the *apportionment* of the expense of minor's counsel; rather, the stipulation is clear that the trial court reserved jurisdiction over the *amount* of fees and costs incurred by minor's counsel. Thus, we are left with a situation where the trial court either forgot about the stipulation or ignored its terms to apportion the fees as it deemed just. (§ 3153, subd. (a) [Counsel for children appointed under section 3150 "shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. . . . [T]his amount shall be paid by the parties in the proportions the court deems just."].) Craig, however, has not cited any portion of the record showing he raised this issue below.

"[A]n appellate court will ordinarily not consider procedural defects or erroneous rulings where an objection could have been, but was not raised below. [Citation.] The policy behind the rule is fairness. 'Appellate courts are loath to reverse a judgment on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider.'" (*In re Marriage of Falcone & Fyke* (2008) 164

Cal.App.4th 814, 826.) Craig had ample opportunity to raise this issue below as the trial court issued its oral findings on February 19, 2010, and its written findings on July 21, 2010. His failure to do so deprived Lois of the chance to argue the issue and prevented the trial court from correcting or explaining its ruling. Accordingly, we decline to consider the issue now.

Similarly, a party may forfeit a claim of judicial bias by failing to raise the issue in the trial court. (*Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1218.) Again, Craig has not cited any portion for the record showing he raised this issue below and we deem the issue forfeited.

C. Allocation of Supervised Visitation Costs

1. Background

In November 2007, the trial court ordered that Craig's visitation be supervised through Hannah's House based on an ongoing criminal investigation regarding his conduct toward the children. The court ordered that the costs of supervised visitation be paid out of the community "attorney-client trust fund." At a March 2008 hearing, the trial court was asked whether each parent would be paying for the costs of Hannah's House. In response, the court stated that it previously ordered payment from the trust and that it would determine allocation at a later time. At a July 2008 hearing, the trial court interpreted an earlier minute order regarding payment to Hannah's House and concluded that an equal division was not ordered and that the court reserved jurisdiction to decide how to allocate the costs.

During trial, Craig presented evidence that the community paid \$21,223 toward the supervised visitation costs and that he paid an additional \$14,536 out of his own pocket. In the judgment, the trial court ordered that Craig pay all of the costs of Hannah's House. It also denied a request that the cost of court-ordered visitation be paid using community property.

2. Analysis

Craig claims the trial court abused its discretion when it ordered him to pay all the supervised visitation costs. He asserts that none of the allegations resulting in the need for supervised visitation were substantiated and he lacks the financial ability to absorb these costs.

A trial court has broad discretion in defining a parent's "reasonable visitation" rights and establishing a visitation schedule with the sole guideline being the best interests of the child. (§ 3100, subd. (a).) As a preliminary matter, Craig does not challenge the propriety of the supervised visitation order, which the trial court imposed in "an abundance of caution" based on the ongoing investigation. Accordingly, we turn to whether the trial court abused its discretion by ordering that Craig pay these costs. We conclude the trial court did not abuse its discretion.

At the start of the November 2007 hearing, where the court ordered supervised visitation, minor's counsel informed the court that she spoke with child protective services and Detective Tim Williams and learned that an "extended investigation" would be required. Minor's counsel stated that "[s]ome of the issues [arose] from digital pictures that were taken of the little girls." Craig later explained to the court that the

photographs "were of medical use" taken to diagnose and document problems the children had in their genital areas.

At trial, Dr. Sparta considered it "plausible" that Craig had subjected the children to multiple episodes of picture taking not for an erotic motive, but to document possible neglect by Lois. He explained that regardless of Craig's intent in taking the photographs, Craig's actions displayed poor judgment, were very detrimental to the children, and future picture taking of the children's genitalia should never happen again. Dr. Sparta considered the picture taking to constitute grounds to either stop Craig's visitation with the children or require that visitation be supervised.

This evidence amply supported the trial court's order for supervised visitation. Simply put, Craig's acts of photographing his children's genitalia presumably led to Lois's allegations of sexual molestation, the extended investigation regarding the allegations and the supervised visitation order. We see no abuse of discretion in requiring that Craig bear the cost of the supervision necessitated by his own actions.

III. *Lois's Appeal*

A. Findings Regarding Lois

Lois challenges the trial court's findings that she had coached the children and was "obsessive/compulsive." We examine the court's factual findings under the substantial evidence standard of review. (*In re Marriage of Rothrock* (2008) 159 Cal.App.4th 223, 230.) On review for substantial evidence, we examine the evidence in the light most favorable to the prevailing party and give that party the benefit of every reasonable inference, accepting all evidence favorable to the prevailing party as true and discarding

contrary evidence. (*Ibid.*) We do not reweigh the evidence or reconsider credibility determinations. (*In re Marriage of Calcaterra & Badakhsh* (2005) 132 Cal.App.4th 28, 34.) "Even when there is a significant amount of countervailing evidence, the testimony of a single witness that satisfies the standard is sufficient to uphold the finding." (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1052.)

The trial court found that neither party was credible. As such, it relied on the testimony of third party witnesses and Dr. Sparta's report. Dr. Sparta testified that he found Lois was "highly anxious, with an obsessive risk to ruminate about perceived fears." This testimony is sufficient to support the trial court's finding that Lois was "obsessive/compulsive."

Dr. Sparta examined whether Lois had made "suggestive statements" to the children about Craig touching them, stating, "I did consider that, and it is possible that the mother had influenced the child in that regard, but I couldn't determine that that was the case based on the information that I had." At another point, Dr. Sparta testified that he did not find Lois to be "'over[ly] solicitous,'" meaning he did not believe that Lois's influence on the children invalidated what the children had reported to him. Dr. Sparta also addressed "learned memories" or the risk that a child can come to believe something they have heard over time as opposed to something they would know from their own personal knowledge. Dr. Sparta cited an example of this happening where one child stated, "'Mommy told me that,'" when asked about physical violence by Craig toward Lois. Thus, while Dr. Sparta found that Lois had not influenced the children so as to invalidate what the children reported to him, he cited at least one example of Lois

"coaching" or telling a child what to say. This evidence is sufficient to support the trial court's finding about coaching.

B. Domestic Violence Protective Order

1. Background

In August 2006, the court issued a domestic violence temporary restraining order (TRO) in favor of Lois. The court continued the TRO to January 2007. In November 2008, the parties stipulated among other things that neither party would "harass, attack, strike, threaten, assault, hit, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, photograph, record" the other. The trial court signed the stipulation as a court order. At trial, Dr. Sparta testified that his report acknowledged the possibility that domestic violence had occurred, but concluded that the contradictory evidence did not support a domestic violence allegation. After trial, the court made a factual finding that it did not believe Lois's allegations of domestic violence. Lois claims the trial court should have found that the allegations she made in her application for a TRO were true and that they constituted domestic violence.

2. Analysis

The Domestic Violence Prevention Act (§ 6200 et seq., the Act) authorizes a trial court to issue a restraining order "for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit . . . shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (§ 6300.) The Act defines "abuse" as an act that causes or attempts to cause bodily injury, an act of sexual assault, an act that places a person in reasonable apprehension of

imminent serious bodily injury to himself or herself or to another, or an act that involves any behavior that has been or may be enjoined under section 6320. (§ 6203.) The behavior that may be enjoined under section 6320 includes "molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, [and] telephoning." (§ 6320.) We review an order denying injunctive relief for abuse of discretion. (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 849–850.)

Here, the parties' stipulation to essentially the terms of section 6320 rendered moot Lois's claim that the trial court abused its discretion in not granting a TRO under the Act. Additionally, although the trial court made a factual finding that it did not believe Lois's allegations of domestic violence, this finding does not eliminate the prior stipulation, which became a court order. Since this order remained in place, there was no need for the trial court, even if it believed Lois's allegations of domestic violence, to render another order on this issue. Accordingly, we reject Lois's contention that the trial court abused its discretion when it failed to issue another order under the Act or that it had an obligation to make findings on Lois's TRO application.

C. Posting Information on the Internet

1. Background

At a November 2007 hearing, Lois's counsel mentioned the existence of a "website" attacking him and Lois. The trial court stated that the "freedom of speech issue" required more than a one-hour hearing, but it would consider a permanent restraining order at the next hearing. The hearing on the requested TRO took place in July 2008. The trial court heard from witnesses, but did not complete the hearing

because it ran out of time. Accordingly, it reluctantly continued the hearing. Before it closed the record, Lois's counsel mentioned an Internet blog attacking Lois. The court commented, "It is shocking. I have never seen anything this outrageous in my entire seven years on the bench. But can I prevent him from his [F]irst [A]mendment right to blog freely? No. Does it impact his ability to have custody and visitation? Yes, . . ." The trial court concluded by stating that while blogging "may not be grounds for [a] permanent injunction, it [would] have an impact on [the] custody case."

Thereafter, the parties stipulated and were ordered that "[n]either party shall make any Internet postings regarding the other, the others employer, family, friends, attorney, co-workers, witnesses at trial, former roommates. Any postings presently being displayed shall be taken down. [¶] . . . Neither party shall make false statements and complaints based on such false statements to the police or child protective services.

[¶] . . . Neither party shall make complaints about the other to NCIS, the FBI, the CIA.

[¶] . . . Neither party shall cause third parties to do any of the aforementioned acts."

2. Analysis

Lois asserts that the trial court's statements at the conclusion of the TRO hearing amounted to a finding that Craig had a First Amendment right to post information on the Internet about the case, and this finding caused her to agree to the "useless" stipulation that Craig continues to violate.

The trial court's comments at the end of the July 2008 TRO hearing suggest the court questioned its ability to issue a permanent injunction preventing Craig from blogging. The trial court, however, never made factual findings or ruled on Lois's request

for a TRO because it never completed the hearing. Additionally, the parties' stipulation to not "make any Internet postings" mooted the issue. Accordingly, there is no finding for us to review.

Lois claims that the stipulated order is "useless" and that Craig continues to violate it. However, she has not cited any portion of the record showing a violation of the order or that she raised such an issue below. To the extent Lois asserts that Craig lacks a First Amendment right to post information on the Internet, we reject this claim. Speech on the Internet is accorded the same First Amendment protection as speech on other forums. (See *Reno v. ACLU* (1997) 521 U.S. 844, 870; *Krinsky v. Doe 6* (2008) 159 Cal.App.4th 1154, 1164.) Nonetheless, a trial court has the power to restrict speech to promote the welfare of children. (*In re Marriage of Hartmann* (2010) 185 Cal.App.4th 1247, 1251.) Thus, the trial court could properly adopt the parties' stipulation as a court order. The question of whether Craig has ever violated the stipulated order has never been adjudicated below and is not before us.

D. Visitation Protective Measures

1. Background

Dr. Sparta testified as to what contingencies he believed should be in place to allow Craig's continued visitation with the children. These included that (1) Craig continue his consultations with Dr. Parker so that he understands his role in the conflict, (2) the children continue their therapy, and (3) minor's counsel continue her involvement. To prevent Craig from inappropriately photographing the children again, Dr. Sparta recommended objective monitoring, obtaining feedback from the children regarding both

parents, appointing a parenting coordinator, psychotherapy for both parents, and continuing the appointment of minor's counsel.

When asked what he would recommend if the parties could not afford to implement his suggested safety measures, such as paying for therapists and minor's counsel, Dr. Sparta stated there was no good choice and he would need to think about it to determine if there was an alternative middle ground. Dr. Sparta testified that he had not heard of any concerns regarding Craig's conduct since the children started unsupervised visitation with him in April 2009. Dr. Sparta's concern was Craig's level of insight and understanding about his role in the conflict.

The trial court gave Lois sole legal and physical custody of the children, but granted Craig visitation on Wednesday afternoons and overnight visitation on alternating Saturdays. It also ordered that "[t]here shall be no photographs taken of the children without their clothes on" and that the parties and the children remain in counseling.

2. Analysis

Lois asserts that the overnight visitation part of the order must be reversed because (1) the trial court erred in not adopting the protective measures recommended by Dr. Sparta prior to extending Craig's visitation, and (2) Craig had the financial ability to pay for these protective measures.

We review child custody and visitation decisions for abuse of discretion. (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32.) We find no abuse of discretion as the trial court adopted the majority of Dr. Sparta's recommended safety measures by ordering that the parties and the children remain in therapy and that the children not be

photographed without their clothes on. Although the court did not order the continued involvement of minor's counsel, there is nothing preventing the court from doing so in the future should the need arise. Moreover, to the extent Lois is concerned that Craig will engage in inappropriate conduct with the children during visitation, such conduct would likely be discovered during the children's therapy sessions. On this record, we find no abuse of discretion.

E. Sanctions

The trial court denied Lois's request for section 271 sanctions against Craig, noting that it "struggled" with the issue. The trial court also denied the parties' requests for attorney fees under section 2030. Lois asserts the trial court erred when it refused to sanction Craig under sections 271 or 2030 in light of his consistent aberrant behavior towards the children, her, and the court. We reject this assertion.

A trial court may base an attorney fees and costs award "on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys." (§ 271, subd. (a).) Thus, this statute "advances the policy of the law 'to promote settlement and to encourage cooperation which will reduce the cost of litigation.'" (*In re Marriage of Petropoulos* (2001) 91 Cal.App.4th 161, 177.) "Family law litigants who flout that policy by engaging in conduct that increases litigation costs are subject to the imposition of attorneys' fees and costs as a sanction." (*Ibid.*) Whether to impose sanctions and the

amount thereof is addressed to the trial court's sound discretion. (*In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 122.)

Here, Lois asserts Craig should be sanctioned based on his behavior and because he continues to blog about this case. To obtain sanctions under section 271, however, a party must have engaged in conduct that increased the cost of litigation. (*In re Marriage of Petropoulos, supra*, 91 Cal.App.4th at p. 177.) Lois has cited no such conduct. Nonetheless, based on our review of the record and the trial court's findings, we note that Craig's essentially false allegations against Lois necessarily increased the length and cost of this litigation. The trial court stated that it "struggled" with the issue of sanctioning Craig under section 271 and we assume that Craig's unfounded allegations against Lois caused this struggle.

On appeal, the trial court's decision will be reversed "'only if, considering all of the evidence viewed more favorably in its support and indulging all reasonable inferences in its favor, no judge could reasonably make the order.' [Citations.]" (*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1524.) After careful consideration, the trial court declined to award section 271 sanctions. While Lois may disagree with the trial court's conclusion, she has not shown it was an abuse of discretion.

Lois also claims that the trial court erred by not awarding her attorneys fees and costs based on need under section 2030. We disagree.

A trial court may award attorneys fees and costs under section 2030 based on need. (*In re Marriage of Braud* (1996) 45 Cal.App.4th 797, 827.) The purpose of a section 2030 fee award is to ensure that the parties have adequate resources to litigate the

family law controversy and to effectuate the public policy favoring "'parity between spouses in their ability to obtain legal representation.'" (*Ibid.*) The applicant bears the burden of establishing need for such an award. (*In re Marriage of Falcone & Fyke, supra*, 164 Cal.App.4th at p. 824.)

At the time of the court's order, subdivision (a)(2) of section 2030 provided, "Whether one party shall be ordered to pay attorney's fees and costs for another party, and what amount shall be paid, shall be determined based upon, (A) the respective incomes and needs of the parties, and (B) any factors affecting the parties' respective abilities to pay." We review a pendente lite attorney fee award for abuse of discretion. (*In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 866.)

Lois's most recent income and expense declaration dated November 2006 listed monthly income of \$3,333, earned working part-time as an engineer. She stated that she has paid \$8,000 in attorney fees and still owed \$5,000. We reviewed Lois's trial testimony, but her income or ability to pay for this litigation was not addressed. Turning to Craig, the evidence showed that when he worked full-time in 2006, he earned about \$11,000 a month. Craig's most recent income and expense declaration dated May 2010 showed he had zero income because he had lost his job. Craig had worked at Qualcomm until January 2009 when he was forced to resign. Prior to his resignation, he worked part-time and earned an average salary of \$6,511 and \$2,702 in private disability insurance. Craig stated that he lived with his parents and borrowed money from them to pay his attorney fees.

There is a paucity of evidence showing that Lois had inadequate resources to litigate this matter. In contrast, Craig did not even have the ability to pay his own attorney fees. Based on this evidence, we cannot find that the trial court abused its discretion in declining to award Lois need-based attorney fees under section 2030.

F. Spousal Support

1. Background

Lois requested spousal support in her August 2006 dissolution petition. The trial court apparently made no interim award of spousal support during the proceedings. After trial, the court found there was "no evidence regarding need" and stated the evidence on the section "4320 factors was minimal at best, and the Court [was] going to reserve jurisdiction over [spousal support]." Nonetheless, the trial court found that the marriage was long-term, the parties enjoyed an upper-middle-class standard of living, both parties suffer from disabilities, neither party is currently able to work full-time, both had careers, and this case has impacted their ability to work. The trial court's written findings reiterated most of its oral findings and again stated that it "reserve[d] jurisdiction over spousal support."

2. Analysis

Lois argues that Craig should have been paying spousal support since the inception of these proceedings, but that the matter "fell through the cracks" and was never heard. She admits that no testimony was taken on the issue of spousal support and that the only documents considered by the trial court were the income and expense declarations submitted by both parties at trial. Lois asserts we should remand the matter

and order the trial court to consider the issue of spousal support. Lois has failed to demonstrate any error.

If Lois wanted the trial court to rule on her request for interim spousal support, it was incumbent on her to bring the matter to the court's attention. Lois cannot raise the issue of interim spousal support for the first time on appeal. Similarly, to the extent she wanted the trial court to award her spousal support at the conclusion of trial, it was her burden to submit evidence on all the factors the trial court is required to consider in making such an award. (§ 4320.) Lois admitted that she did not present such evidence and the trial court commented that the parties presented "minimal" evidence on the section 4320 factors. Moreover, Lois never argued during closing for an award of spousal support; instead, she merely mentioned during rebuttal that spousal support had never been awarded. On this record, the trial court did not err in declining to award spousal support to Lois.

IV. Requests to Augment, for Sanctions and Judicial Notice

A. Motion to Augment

Craig's unopposed second motion to augment the record on appeal dated March 12, 2012 is granted.

B. Lois's First Motion for Sanctions

On February 9, 2012, Lois filed a motion for sanctions on appeal under California Rules of Court, rule 8.204. (All Rule references are to the California Rules of Court.) She contends that Craig misled the court on page 24 of his opening brief when he stated, without citation to the record, that "[n]one of the allegations resulting in the need for

unsupervised visitation were ever substantiated.'" Craig contends that the motion should be denied because Lois's allegations that he had sexually molested his children were never substantiated.

Craig is correct that child protective services never substantiated the allegation that the children had been sexually abused and law enforcement never filed charges against him. Nonetheless, Craig's act of excessively photographing the genital areas of his children, together with statements by one of the children that she had been touched while being photographed would lead any reasonable person to suspect the possibility of sexual molestation. Thus, Craig's statement that "[n]one of the allegations resulting in the need for supervised visitation were ever substantiated" while not inherently false, is extremely misguided.

On appeal, each brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Rule 8.204(a)(1)(C).) While an argument can be made that Craig's assertion should have been followed with a citation to the record, we believe the assertion was not a statement of fact; rather, it is an example of Craig's misguided view of the record. Accordingly, Lois's motion for sanctions is denied.

C. Lois's Second Motion for Sanctions and Request for Judicial Notice

Lois asserts Craig should be sanctioned because his attorney failed to stipulate to an extension of time for her to file her reply brief. As a result, Lois's counsel filed a written request for an extension of time, in which we allowed her until April 9, 2012 to file her reply. In response, Craig filed a lengthy opposition documenting the

communication between counsel regarding the request, including an e-mail from Craig's appellate counsel that he was willing to stipulate to an extension to April 9, 2012. In turn, Craig requests an award of sanctions.

Lois also argues that Craig should be sanctioned for "financial misbehaviors, perjury, and non-disclosure of actual available funds." To prove her allegations, Lois requests that we take judicial notice of documents previously lodged with the trial court purportedly showing that Craig may have cashed out retirement benefits to fund this appeal. Lois claims that these documents will show that Craig has considerable assets and that his income and expense declarations were false.

We may impose sanctions for a frivolous appeal or appealing solely to cause delay, including in the record any matter not reasonably material to the appeal's determination, filing a frivolous motion, or committing any other unreasonable violation of these rules. (Rule, 8.276(a).) Lois has not articulated a valid request for sanctions on appeal. (*Ibid.*) Accordingly, her request for sanctions and for judicial notice is denied. Craig's request for sanctions is also denied.

V. *Conclusion*

We feel compelled to reiterate a few of the statements made by minor's counsel during closing argument:

"This [matter] has been going on since mid-2006. And what I can't imagine is worse for a little kid is knowing 'my Mom hates my Dad and my Dad hates my Mom.'

"And these are high-functioning, intelligent people. We do know they both love their kids, but we also know they're both hurting their

kids because they cannot put their differences aside. And they couch their differences in 'I'm protecting the kids.'

"[¶] . . . [¶]

"Here we are three years later, and I've watched both of them testify, and it's unfortunate. I don't think we're any better off than we were two years ago when I was involved in this case. We've had three years of litigation. We've had a lot of money exhausted on each side. I think both counsel have talked about that.

"What I don't see and what I've not heard, possibly to different degrees, is that either party has put aside their personal distrust, their personal hatred, their vendetta, their animosity toward the other parent."

At the end of closing argument, the trial court commented that it found the conduct of both parents to be "completely inappropriate" as it related to the children. The trial court was so disgusted with the parents that it stated, "if I had the children I would see if I could find somewhere else to take them. Because what you have put your children through in the last three years is very traumatic. [¶] And, you know, this case may end up in juvenile court eventually with the way you two treat your children."

The parties filed their appellate briefing in 2011 and 2012. Our review of the record and the briefing shows that the parents continue to have a distorted view of themselves and each other. Craig continues to minimize his responsibility and Lois continues to obsessively focus on the past. The parents must put this unfortunate conflict behind them and move forward, cooperatively, for the sake of their children. If they cannot do so, the trial court's ominous prediction about this becoming a dependency matter might come true.

DISPOSITION

The judgment is affirmed. Each side shall bear its own costs on appeal.

McINTYRE, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.