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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of AMY MOFFAT
AFONT and ALFREDO AFONT.

AMY MOFFAT AFONT,

Respondent,

v.

ALFREDO AFONT,

Appellant.

D058489

(Super. Ct. No. DN136145)

APPEAL from an order of the Superior Court of San Diego County, Tamila E.

Ipema, Judge. Affirmed.

I.

INTRODUCTION

Alfredo Afont appeals from an order of the trial court in which the court denied his request to modify and/or terminate his spousal support obligation to his ex-wife, Amy

Moffat Afont (Amy),¹ and granted in part his request to modify his child support obligation. Alfredo contends that the trial court abused its discretion in denying his request to impute income to Amy for purposes of determining his spousal and child support obligations. Alfredo also argues that the trial court failed to consider all of the factors that it was statutorily required to consider with respect to his request to modify or terminate his spousal support obligation, and that the court ignored the existence of the so-called *Gavron* warning² that was issued to Amy in 2005 as part of the parties' marital settlement agreement (MSA).

We reject Alfredo's assertion that the trial court abused its discretion in not imputing additional income to Amy for purposes of determining either spousal support or child support, and conclude that the court did not otherwise err in its consideration of the spousal support issue. We therefore affirm the order of the trial court.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Factual background*

Amy and Alfredo were married from 1990 to 2004. The parties entered into an MSA that was filed with the court on December 27, 2005. The parties have two children together, a 15-year-old daughter and a 12-year-old son. At the time of the dissolution of the marriage, both parties were employed full time. Amy worked as a teacher and

¹ We will refer to the parties by their first names for the sake of clarity.

² See *In re Marriage of Gavron* (1988) 203 Cal.App.3d 705.

Alfredo was employed as a pilot. Amy had worked as a teacher during some portion of the 14-year marriage, as well.

The MSA was predicated on the parties' employment status and income at the time it was entered. At that time, Amy was making approximately \$50,000 a year as a teacher. Alfredo was employed by UPS as a pilot.³

Pursuant to the MSA, Alfredo agreed to pay Amy \$1,152 per month in spousal support and \$1,450 per month in child support.

The MSA included the so-called *Gavron* warning language. This language advised Amy that she had an obligation to become self-supporting within a reasonable period of time. In June 2008, Amy was laid off from her teaching position in Fallbrook due to budget issues. Amy began collecting unemployment benefits in the amount of approximately \$1,800 per month.

³ The record on appeal is devoid of information pertaining to Alfredo's income. The record does not contain the page or pages of the parties' MSA on which it would appear that Alfredo's income is presented, even though other portions of the MSA are contained in various parts of the record. Nor does the record contain an income and expense declaration filed by Alfredo. The income figure that the trial court used in a "DissoMaster Data Screen" document appended to the court's ultimate order indicates that Alfredo's salary at the time of the trial court's order was \$17,769 per month. It is unclear from the record on what evidence that figure is based.

Although Alfredo's attorney, who is apparently also his current wife, suggested at the hearing on these matters that Alfredo had incurred some sort of reduction in pay, there is no evidence of this in the record, and the trial court did not make a finding to this effect. In fact, it appears from the transcript of the discussion at the hearing that Alfredo received an increase in pay in 2008, and a subsequent decrease in pay in 2009. We are unable to assess the effect of any actual increase or decrease in Alfredo's pay because this information is not presented in the record.

On January 7, 2009, the parties entered into a stipulated order in which they agreed that Alfredo's child support obligation would be increased to \$3,000 per month, effective January 1, 2009.⁴ The order also prohibited Amy from seeking modification of spousal support for a period of three years, unless she were to make such a request in response to a motion for modification brought by Alfredo.

On March 5, 2009, the parties entered into a stipulated addendum to the January order. Pursuant to the addendum, Amy was to make five job contacts per week, in an effort to secure full-time employment, and was to report those contacts to Alfredo. Amy presented evidence that she had been making the requisite five job contacts per week ever since she agreed to do so, and had been reporting to Alfredo, as agreed.

B. *Procedural background*

In January 2010, Alfredo filed two requests for orders to show cause (OSCs), in which he requested that the trial court impute income to Amy based on an earning capacity of approximately \$62,500 per year, for purposes of calculating new child support and spousal support figures.⁵ Amy filed a declaration in opposition to Alfredo's OSC requests.

The trial court held a hearing on the matter on August 26, 2010. At the conclusion of the hearing, the court took Alfredo's requests under submission.

⁴ The agreement also provided that Alfredo would waive any right to reimbursement for any past overpayments of child support or spousal support.

⁵ In his first request for an OSC, filed January 5, 2010, Alfredo asked the court to modify child support. In his second request for an OSC, filed January 15, Alfredo asked the court to either terminate or modify spousal support.

On September 2, 2010, the trial court filed a document entitled Order after Hearing. In the order, the court found that a change of circumstances existed such that the court could reexamine the spousal support and child support amounts to determine whether modification of either amount was warranted. After determining that Alfredo had failed to demonstrate what the marital standard of living had been during the marriage, the court concluded that no change in spousal support was warranted. With respect to child support, the court used the parties' actual incomes to determine what amount of child support Alfredo was required to pay, and reduced Alfredo's monthly child support payment from \$3,000 to \$2,617.

Alfredo filed a timely notice of appeal from the trial court's order.

III.

DISCUSSION

A. *The basis on which the trial court undertook consideration of Alfredo's request to modify child and spousal support was flawed*

Although the issue was not raised in the briefing on appeal, we address, at the outset, the propriety of the trial court's decision to consider, on their merits, Alfredo's requests to modify child support and to terminate and/or modify spousal support in the absence of any showing of a change in circumstances that would have warranted the modifications that Alfredo was seeking. We conclude that Alfredo failed to demonstrate changed circumstances that would have justified the trial court's consideration of his requests to reduce his support obligations, since the only evidence of changed circumstances subsequent to the time the parties agreed to Alfredo's support obligations

was evidence that Amy was no longer employed as a full-time teacher and that she was earning *less* income than she was earning at the time the parties originally entered into the MSA.

The trial court correctly stated the rule that "[b]efore the court can consider the merits of [Alfredo's] request to modify child support and to modify or terminate spousal support, it must first determine whether it has jurisdiction to do so" by determining whether the moving party has demonstrated a change in circumstances. In this instance, however, the trial court misapplied that rule.

" It is well settled that although a trial court has broad discretion in modifying or revoking an award of spousal support [citation], the court's discretion is not unlimited. [Citations.] "To obtain a modification of a previous spousal support order, the moving party must show a material change of circumstances since the time of the prior order." [Citations.]' [Citation.] "The "change of circumstances" which can be considered includes all factors affecting need and ability to pay. [Citations.]' [Citation.]" (*In re Marriage of Mosley* (2008) 165 Cal.App.4th 1375, 1387-1388.)

The trial court based its finding of a "change of circumstances" on the fact that the MSA had been predicated on Amy being employed full-time and earning \$50,000 per year, but that at the point in time that Alfredo filed his requests to modify the spousal and child support orders, Amy was no longer employed full-time (and had not been since July 2008), and her income was only approximately \$23,400 per year, from unemployment benefits. The trial court stated, "As the MSA plainly provides that a change in [Amy's]

income may serve as a basis for modification of support, [Alfredo] has met his burden with regard to establishing a change of circumstances."

Alfredo was seeking to *reduce* his child support payments and to *terminate or reduce* his spousal support payments. In order to demonstrate a change of circumstances that would justify a reduction (or termination) of those support payments, Alfredo would have had to demonstrate either that his own personal income had been reduced, or that Amy's income had increased, or some other such change that would reasonably warrant a reduction of Alfredo's support obligations. (See *In re Marriage of Bardzik* (2008) 165 Cal.App.4th 1291, 1303 ["A *modification* proceeding by definition presumes a change in an already-determined status quo. As is *almost* [always] the case throughout the law, the moving party in a modification proceeding bears the burden of proof of showing changed circumstances *that justify a new court order*" (last italics added)].) Alfredo made no showing of a change of circumstance that would warrant a reduction of his support obligations, and the record provides no factual basis that would support Alfredo's request for a reduction of his current support obligations.

At oral argument, counsel for Alfredo suggested that the trial court had made a "mistake" in stating in its statement of decision that the change in circumstances that permitted the court to decide Alfredo's requests to reduce his child and spousal support obligations was Amy's reduction in income, and that in fact, the change in circumstances that had occurred was a reduction in Alfredo's income. Counsel did not raise this contention in briefing, and there is nothing in the record to suggest that counsel attempted to clarify this issue in the trial court or to correct the trial court's statement of decision.

The transcript reveals that Alfredo proffered several purported changes in circumstances that, he maintained, justified his requests to reduce his support obligations. The transcript further reveals that the trial court implicitly rejected each of Alfredo's contentions. For example, although Alfredo's counsel argued that Alfredo had suffered a \$5,000 decrease in pay during the relevant time period, it was also revealed that Alfredo had attained a higher rank during that time. When the court asked whether the higher rank meant "higher pay," Alfredo's counsel admitted that Alfredo's higher rank had led to increased pay. Alfredo's counsel did not reveal the amount of the increase in pay. In response to the court's suggestion that the change in rank would affect only Alfredo's ability to take time off, counsel replied that the change in rank "affects his request for everything—time off, open time, which is nonexistent anymore." The court then asked, "And then how is that relevant to what we are discussing?" Alfredo's counsel responded, "It just is. It's a change in circumstances. But I can withdraw that argument." Counsel then attempted to return to the subject of the \$5,000 pay decrease that Alfredo purportedly suffered. The court said, "But I don't understand why there's a pay decrease if his rank is higher than before." Counsel admitted that Alfredo's "base pay went up," but said that just prior to Alfredo receiving the change in rank, he had been "training for captain," and that his pay had been slightly higher that year due to all of the mandatory training he had to complete before attaining the higher rank.

Later, the court asked, "When the Respondent signed the stipulation, he knew that his pay was going to be decreased – [?]" Counsel at first responded, "No," but later admitted, "Yes. Absolutely he did know. And that's why he said this is very temporary,

60 days." Counsel was apparently suggesting that the stipulation that Alfredo entered into was intended to be temporary. However, it is clear from the document that it was not a temporary agreement, and is further clear that the agreement required that there be a change in circumstances before the amount of support that Alfredo was agreeing to pay could be modified.

The court made no finding that Alfredo's income had decreased. In fact, the record appears to demonstrate that Alfredo received a base salary *increase* as a result of his higher rank. Further, we are unable to assess the validity of Alfredo's contention that the trial court should have relied, or intended to rely, on his decreased income as the change in circumstances that would allow the court to reconsider Alfredo's support obligations, since Alfredo has failed to include any information in the record on appeal as to his income, either prior to the time he signed the stipulation, or after. There is thus no basis for us to conclude, as Alfredo's attorney suggested at oral argument, that the trial court made a "mistake" in relying on Amy's reduction in pay as the "changed circumstance" that would allow the court to consider Alfredo's requests to reduce his child and spousal support obligations. Rather, it is clear from the record that the trial court relied solely on Amy's reduced income as the change in circumstance that would allow the court to examine the issues on their merits.

Amy's income had already decreased as a result of the loss of her job as a full-time teacher at the time the parties entered into the January 2009 agreement concerning child support. Despite this fact, the trial court determined that "the decrease in [Amy's] income constitutes a change of circumstances sufficient for the court to modify child support." In

fact, at the time the trial court made its order reducing Alfredo's child support obligation from \$3,000 to \$2,617 per month, there was no demonstration of any change in circumstance that would have permitted the trial court to make any adjustment to the child support amount.

Given the state of the record, the trial court abused its discretion in considering the merits of Alfredo's requests. (See *In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 398 [an abuse of discretion occurs when there is no substantial evidence of a material change of circumstances].) Nevertheless, because Amy has not raised the issue, we consider Alfredo's contentions on their merits.⁶

However, given the fact that the trial court should not have undertaken to address the merits of Alfredo's requests to modify the child and spousal support orders in the absence of a showing of a change of circumstances that would have warranted the requested modifications, we cannot conclude, as Alfredo urges us to do on appeal, that the trial court somehow abused its discretion by denying his request to reduce and/or terminate his spousal support obligation, or by failing to reduce Alfredo's child support obligation even more than the trial court already reduced it.⁷

⁶ The trial court's error inured to Amy's detriment, not Alfredo's. However, Amy has not appealed from the court's order.

⁷ We discuss the trial court's abuse of discretion in considering Alfredo's requests to modify his support obligations merely to provide background for the remainder of our consideration and analysis of Alfredo's specific contentions of error on appeal.

B. *The trial court did not abuse its discretion in a manner that aggrieved Alfredo when it reduced the child support*

Assuming that the trial court had properly found the existence of change of circumstance sufficient to justify its consideration of Alfredo's request to modify the child support order, we would nevertheless reject Alfredo's contention on appeal that the trial court abused its discretion in not further reducing his child support obligation.

Child support orders are subject to an abuse of discretion standard of review. (*In re Marriage of Chandler* (1997) 60 Cal.App.4th 124, 128 (*Chandler*)). As is standard in this type of review, we do not substitute our judgment for that of the trial court, and we will disturb the trial court's decision only if no judge could have reasonably made the challenged decision. (*Ibid.*) We review factual findings by determining whether there is any substantial evidence to support them. (*Ibid.*)

"A child support order may be modified when there has been a material change of circumstances. [Citation.] The party seeking the modification bears the burden of showing that circumstances have changed such that modification is warranted.

[Citation.] 'The ultimate determination of whether the individual facts of the case warrant modification of support is within the discretion of the trial court. [Citation.] The reviewing court will resolve any conflicts in the evidence in favor of the trial court's determination.' [Citation.]" (*In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1054.)

As we have already discussed, Alfredo did not show that the circumstances of the parties had changed in a manner that would warrant a reduction in child support—the

modification that Alfredo requested. The trial court therefore should not have considered Alfredo's request for modification of child support. The fact that the court did consider Alfredo's request to modify his child support obligation, and, in fact, reduced Alfredo's child support payment, was a benefit to Alfredo. In light of the fact that the trial court should not have reduced his obligation at all, his contention on appeal that the reduction in child support should have been even greater falls flat.

We specifically reject Alfredo's contention that the trial court should have imputed additional income to Amy and reduced his child support obligation even more, on the basis that Alfredo demonstrated that Amy had the ability and opportunity to find full-time employment as a teacher.

"If one parent seeks to *modify* an existing order so as to have income imputed to the other parent, the parent seeking imputation—that is, in that context, the parent seeking to overturn the status quo—bears the burden of proof of showing that the other parent has the ability and opportunity to earn that imputed income. [Citations.]" (*In re Marriage of Bardzik, supra*, 165 Cal.App.4th at p. 1294.) Alfredo contends that "the trial court was presented with hundreds of pieces of credible evidence that met appellant's burden of showing respondent's opportunity to earn an annual income of \$62,484.00." He argues that the trial court did not analyze the "mounds of evidence" and also failed to "distinguish any of the legal authority cited by [Alfredo]," and that the court's order was

generally "overrun with error in all respects."⁸ In making this argument, Alfredo ignores the evidence that Amy presented that rebuts his evidence of the existence of opportunities that would allow Amy to earn what he claims she should be able to earn, and also ignores the plain language of the statute, which gives the trial court *permissive discretion* as to whether to impute income to a party (if it would be in the best interests of the children) when determining parental income for purposes of determining child support. (See Fam. Code, § 4058, subd. (b)⁹ ["The court *may*, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children" (italics added)].)

The evidence supports the trial court's decision not to impute income to Amy for purposes of determining child support. Contrary to Alfredo's implied suggestions, based on evidence that Amy presented, the court could have reasonably concluded that Amy is not unemployed by choice. Amy presented evidence that she was laid off from her teaching job with the Fallbrook Unified School District for budgetary reasons approximately three years prior to the hearing. While Alfredo presented a number of advertisements for full-time teaching opportunities that appeared after Amy was laid off from her full-time position, Amy provided evidence that she has been applying for at

⁸ In asserting that the trial court's order was "overrun with error in all respects," Alfredo suggests that this was "possibly because the trial court was anxious to start vacation." Such disparaging speculation has no place in an appellate brief, and we remind Alfredo's counsel that "[d]isparaging the trial judge is a tactic that is not taken lightly by a reviewing court." (*In re S.C.* (2006) 138 Cal.App.4th 396, 422.) Comments like this undermine the credibility of counsel and serve no useful purpose.

⁹ Further statutory references are to the Family Code unless otherwise specified.

least five jobs per week, but has been unable to secure a position. Although Alfredo is not required to demonstrate the existence of an employer who is willing to hire Amy, specifically (a point that Alfredo makes repeatedly in his briefing), this does not mean that the court could not consider evidence that Amy has been applying for full-time teachings jobs and has been unable to secure full-time employment.

What Alfredo fails to acknowledge is that regardless of how much evidence of "opportunities" for employment he presented, Amy countered that evidence with her own evidence demonstrating that she has been actively seeking employment and has not been able to find work. Amy also presented evidence that she is taking classes to become trained to be a special education teacher in the hope that this additional credential will make her a more attractive candidate to potential employers. Based on this evidence, the trial court could have reasonably concluded that Amy's evidence demonstrates that she is not unemployed by choice, and that she has made reasonable efforts to attempt to secure full-time employment. In such circumstances, the court acted well within its discretion in declining to impute additional income to her for purposes of setting child support.

Alfredo suggests that Amy is content with her part-time employment status and has chosen not to be employed full-time, and/or that she has somehow sabotaged her applications or interviews in order to remain unemployed. However, the evidence in the record does not support these contentions. Rather than cite actual evidence in the record to support these claims, Alfredo points to excerpts of Amy's deposition testimony and converts that testimony into global assertions about how Amy has been spending her time. For example, Alfredo complains that Amy spends her days lunching with friends

and training for triathlons, implying that Amy has not focused on her job search. However, the transcript of Amy's deposition demonstrates that in response to an inquiry as to "what other things [she does] during the day while the kids are at school," Amy stated that she runs, sometimes sees friends, and "possibly" goes to lunch. One cannot reasonably infer from this testimony that Amy engages in these activities to the exclusion of a job search; many people undertake these activities even while employed full-time. Similarly, Alfredo asserts that Amy "spends no more than two[]minutes a day on her job search efforts." Amy's actual testimony was that it took her approximately two minutes to forward her resume to apply for a job through the "AppleOne" service. The record therefore does not support Alfredo's contentions. Rather, the assertions in Alfredo's briefing appear to be attempts to mischaracterize the record in order to make Amy look bad.¹⁰ The trial court clearly did not find Alfredo's disingenuous arguments to be persuasive.

With respect to Alfredo's contention that the trial court abused its discretion in denying his request to impute income to Amy, although Alfredo argued to the trial court that Amy had "overlook[ed] the very principles set forth in sections 4053, subdivision (d) and 4058, subdivision (b)," in failing to acknowledge that those statutes "impose[] no

¹⁰ Alfredo also claims that Amy "has never denied that she has not made diligent good faith efforts to become self-supporting." This assertion is belied by the record below, and Amy disputes this assertion in her briefing on appeal, which she filed in *propia persona*. The record discloses that Amy has, in fact, attempted to gain full-time employment in her profession by applying for a number of teaching jobs, and also demonstrates that she views her attempts as constituting diligent and good faith efforts to become self-supporting.

limitation on the court's broad discretion to impute income," Alfredo fails to recognize the other side of the coin—i.e., that the court also has broad discretion *not* to impute income, particularly when the best interests of the children would not be served by doing so. Although the trial court could have imputed income to Amy if it had found that doing so would have been in the best interests of Amy and Alfredo's children, the court decided not to impute income, and there is evidence to support a finding that imputing income to Amy under these circumstances would have served only to harm the children. It appears from the record that Amy cares for the children the majority of the time, and that Alfredo's time-share is approximately 35 percent. An income and expense report that Amy filed shows that she spends approximately \$1,750 per month in housing costs (including property taxes, homeowner's insurance, and maintenance costs), and that her total monthly expenses are approximately \$4,700. There is also evidence in the record that at the time the trial court made its decision, Amy had a part-time job, working three to four hours per day, five days a week, for \$12.38 per hour, and was receiving approximately \$1,800 in unemployment benefits. Amy's unemployment benefits will come to an end at some point in time, if they have not already.¹¹ Under these circumstances, the court could reasonably have concluded that if it were to impute income to Amy, despite her inability to find full-time employment at this juncture, and reduce Alfredo's child support obligation, Amy would have difficulty providing for the

¹¹ Although there is nothing in the record that indicates when Amy's unemployment benefits would terminate, in her briefing on appeal Amy asserts that she stopped receiving unemployment benefits in late 2010.

children. In addition, there is substantial evidence from which the court could reasonably have concluded that this is not a case where one parent voluntarily gave up his or her employment, either to stay at home to care for the children or to start a new career for which he or she has no training, but rather, that Amy finds herself in a circumstance that is facing many teachers in this struggling economy—a dwindling number of teaching positions.

The fact that Alfredo may have provided sufficient evidence of Amy's ability to work and opportunity to work (evidence that could have supported the trial court's imputing income) did not require that the court impute income to Amy. Evidence of ability and opportunity is necessary to a court's decision to impute income, but it is not sufficient to *require* that the court do so. Unless the court's decision not to impute income to Amy can be shown to fall outside the bounds of reason, we have no basis for reversing that decision. Here, we simply cannot say that the trial court's decision to use the parties' actual incomes to calculate the guideline child support amount was unreasonable, particularly since Amy presented evidence that rebutted Alfredo's evidence of the various opportunities for full-time teaching employment.

C. *The court did not abuse its discretion in denying Alfredo's request to modify the spousal support order*

Assuming that the trial court had properly found the existence of change of circumstance sufficient to justify its consideration of Alfredo's request to modify and/or terminate the spousal support order, we would nevertheless reject Alfredo's contention on

appeal that the trial court abused its discretion in denying his request to terminate or modify his spousal support obligation.

It is clear that even if a moving party demonstrates a material change of circumstance, the court may nevertheless deny a request to modify spousal support. (See *In re Marriage of Poppe* (1979) 97 Cal.App.3d 1, 10.) We review a trial court's ruling regarding the modification of spousal support for an abuse of discretion. (*In re Marriage of Hoffmeister* (1987) 191 Cal.App.3d 351, 357-358 ["Whether a modification of a spousal support order is warranted depends upon the facts and circumstances of each case, and its propriety rests in the sound discretion of the trial court[,] the exercise of which this court will not disturb unless as a matter of law an abuse of discretion is shown".]) Thus, "[a]s long as the court exercised its discretion along legal lines, its decision will be affirmed on appeal if there is substantial evidence to support it." [Citation.]" (*In re Marriage of Blazer* (2009) 176 Cal.App.4th 1438, 1443.)

In denying Alfredo's request to terminate or reduce his spousal support obligation, the trial court rejected Alfredo's suggestion that the trial court impute income to Amy. Alfredo's main contention on appeal with respect to the trial court's ruling regarding spousal support is that the trial court should have imputed an income of \$62,484 per year to Amy, and, based on this figure, should have terminated Alfredo's spousal support obligation entirely.

Alfredo concedes that this court reviews the trial court's order regarding modification of a spousal support order for an abuse of discretion. (See *In re Marriage of Schmir* (2005) 134 Cal.App.4th 43, 47.) Alfredo also concedes that a trial court has

discretion to consider a spouse's earning capacity, as opposed to actual income, in determining spousal support. Alfredo errs, however, in assuming that because a trial court *may* impute income to a supported spouse, the trial court erred in declining to impute income to Amy.

Alfredo argues, for example, that "[h]ad the trial court completed step one and correctly imputed a monthly income of \$5,207.00 to respondent based on ability and opportunity, under every scenario respondent[] is self-supporting and her need for spousal support no longer exists." In making this argument, Alfredo presumes that the trial court should have imputed income to Amy based on Alfredo's having presented evidence that Amy is able to work and that opportunities for full-time employment as a teacher exist. This presumption is incorrect.

Although Alfredo presented evidence of Amy's ability to work as a teacher and also presented evidence of the opportunity for Amy to work by way of advertisements of full-time teaching positions, as we have already discussed, Amy presented evidence that she has been trying to find full-time work but has not been hired. In these circumstances, where there is evidence to support a finding that Amy is not simply choosing to be voluntarily unemployed, we cannot conclude that the trial court abused its discretion in declining to impute income to Amy.

Further, Alfredo suggests that Amy has been sabotaging her job prospects. However, there is simply no evidence in the record to support this assertion. Rather, the evidence is that Amy is unemployed because she was laid off from her teaching job with the Fallbrook Unified School District due to budget cuts, and that the school district hired

a younger teacher, at a lower salary, to replace her. There is evidence that Amy has been applying for at least 20 jobs per month, and that she has forwarded the information concerning these applications to Alfredo each month, as she agreed to do.

In challenging the trial court's ruling with respect to spousal support, Alfredo also argues that the trial court failed to "consider and weigh all of the factors in Family Code section 4320 as it was obligated to do." (Original formatting omitted.) Section 4320 provides in full:

"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 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."

Alfredo asserts that rather than considering all of these factors, the trial court considered only one factor—i.e., the parties' standard of living during the marriage. The court stated in its order that Alfredo "failed to provide any evidence on the principal point

of reference in determining spousal support: The marital standard of living," and concluded that "[i]t would be an abuse of discretion for the court to terminate or modify spousal support when [the court] lacks competent credible evidence on the needs of the supported party in relation to the parties' marital standard of living. [Citation.]"

The court concluded that it was difficult to assess Alfredo's request to modify or terminate the existing spousal support award because he failed to provide information concerning the central factor for purposes of setting spousal support—the marital standard of living. In fact, section 4332 expressly requires the court to make specific factual findings with respect to the standard of living during the marriage. With respect to other factors, the statute provides that, "at the request of either party, the court shall make appropriate factual determinations with respect to other circumstances." In the absence of information as to the standard of living during the parties' marriage, it was impossible for the court to assess how the other factors might weigh in the analysis. Further, as section 4332 makes clear, it was incumbent on Alfredo to request that the court make factual determinations as to the other circumstances listed in section 4320.

It was neither error nor an abuse of discretion for the trial court to require that Alfredo—the party who was seeking a change in the support award—present sufficient evidence to allow the court to adequately address in its order all of the factors set forth in section 4320.

Alfredo also complains that the trial court abused its discretion "when it ignored the *Gavron* warning issued to [Amy] in 2005 and failed to consider [Amy's] lack of good faith, reasonable efforts to become self-supporting." (Original formatting omitted.)

Alfredo argues that the court's "silence on the *Gavron* warning issued to [Amy] six years ago, made a mockery out of the warning that was issued to ensure that supported spouses become self-supporting." Among the things that Alfredo accuses the court of doing is ignoring the "substantial evidence showing [Amy's] lack of reasonable good faith efforts to become self-supporting," thereby "g[iving] [Amy] the go ahead to continue her antics indefinitely."

The MSA included a so-called *Gavron* warning, which provided:

"The parties acknowledge having hereby reviewed the provisions of Family Code section 4320 and section 4330, and acknowledging that, pursuant to Family Code section 4330[, subdivision] (b) a support recipient should make reasonable efforts to assist in providing for his or her own needs. The parties further acknowledge Family Code section 4320[,subdivision] (l) which includes the following as a factor which the Court shall consider in ordering spousal support:

"The goal that the supported party shall be self-supporting within a reasonable period of time 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."

Alfredo also notes that subdivision (l) of section 4320, which the parties acknowledged having reviewed, provides that the court consider the following factor in setting spousal support: "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."¹²

According to Alfredo, by declining to impute income to Amy, thereby requiring her to be self-supporting, the trial court "made a mockery" out of the *Gavron* warning that had been given to Amy in 2005. Much of Alfredo's argument in this regard is simply a rehashing of the evidence that he presented in the trial court—evidence that, in his view, demonstrates that Amy has not tried to find employment. In addition to subtly mischaracterizing the record in numerous ways, Alfredo completely fails to acknowledge the evidence that Amy presented that demonstrates that she has, in fact, been attempting to find a full-time job as a teacher, the position for which she has training and experience. This evidence supports the trial court's implicit finding that Amy has been making diligent, good faith attempts to become self-supporting.

To the extent that Alfredo complains that the court's "order did not address or analyze the evidence presented which demonstrated respondent's lack of diligent good

¹² Alfredo and Amy's marriage of approximately 14 years would be considered to be a "marriage of long duration as described in Section 4336." Section 4336 describes a marriage of 10 years or more as a "marriage of long duration." There is thus no presumption that one-half the length of their marriage would be a "reasonable period of time" for purposes of determining when Amy is to be self-supporting. Rather, the determination of what constitutes a "reasonable period of time" is left to be determined by the court.

At the time Alfredo sought to reduce and/or terminate spousal support, approximately five years had passed since the parties entered into the MSA. Half the length of the parties' marriage would be seven years. Thus, even under the presumption of what constitutes a "reasonable period of time" for marriages that are not of long duration, there would have been no presumption that Amy should have become self-supporting within the elapsed time period.

faith efforts to become self-supporting," although the trial court does not specifically refer in its order to Amy's diligence or good faith efforts to gain full-time employment, it is clear from the trial court's questioning during the hearing that the court was aware of the *Gavron* warning and the fact that Amy continues to be under an obligation to become self-supporting. In fact, the court specifically asked Amy's attorney about the *Gavron* warning contained in the MSA.

Alfredo has cited no authority that would require the court to specifically refer to the *Gavron* warning in rejecting a request to modify or terminate a spousal support order. The existence of a *Gavron* warning simply permits the court to consider a party's lack of diligent good faith efforts to become self-supporting when determining whether to reduce or terminate spousal support. In fact, the *Gavron* warning contained in the MSA indicates that nothing in the warning 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.*" (§ 4320, subd. (l), italics added.) Clearly the trial court had the discretion to determine whether to modify or terminate spousal support in this case, even in light of the overarching goal that Amy become self-supporting. Alfredo has shown no abuse of the court's exercise of its discretion in this regard.

This is not to say that there may not come a point in time where Amy might have to try to find work in a profession other than her chosen profession of teaching. However, it will be up to the trial court to determine whether that point has come, and, if so, the degree to which it should impute income to Amy. Under the circumstances in this

case, at this point in time, however, we cannot say that the trial court's denial of Alfredo's request to terminate or modify his spousal support obligation constituted an abuse of the court's discretion.

IV.

DISPOSITION

The order of the trial court is affirmed.

AARON, J.

WE CONCUR:

HALLER, Acting P. J.

IRION, J.