Filed 4/5/17 Marriage of McDermit CA4/1

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of ANTHONY and KATHRYN MCDERMIT.	
ANTHONY GLEN MCDERMIT, Appellant, v. KATHRYN MARIE MCKEON, Respondent.	D070115 (Super. Ct. No. ED76618)

APPEAL from a judgment of the Superior Court of San Diego County, Robert O. Amador, Judge. Affirmed.

Anthony Glen McDermit, in pro. per., for Appellant.

Kathryn Marie McKeon, in pro. per., for Respondent.

In this family law case, the trial court granted in part appellant's request to reduce his spousal support obligation and reduce the amount of life insurance he was required to maintain as security for that support. The trial court denied appellant's request for an

offset for amounts he paid on a student loan for which both parties were obligated and for which they had previously agreed they would share equal responsibility. The trial court stated that it had unresolved questions about the request and that its denial of appellant's request was without prejudice to appellant's ability to make a further request for an offset.

On appeal, appellant argues he was entitled to a greater reduction of his spousal support obligation, a greater reduction of his life insurance obligation and a ruling on his request for an offset. As we explain, we find no abuse of discretion in the trial court's reduction of appellant's spousal support and life insurance obligations; in light of the fact the record shows the parties' daughter appears to have contributed substantial amounts to reduction of the student loan balance, the trial court did not abuse its discretion in denying the offset without prejudice.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant Anthony Glen McDermit and respondent Kathryn Marie McKeon were married in 1981 and separated in 2009. They have two children who are now adults. Their marriage was dissolved, and, under the terms of a 2011 marital settlement agreement (MSA), McDermit was obligated to pay McKeon $2,706 in monthly spousal support; as security for his support obligation, McDermit was also obligated to maintain a life insurance policy that would pay McKeon $400,000 in the event of his death. In computing McKeon's spousal support, the parties agreed McDermit had $8,950 a month in gross earnings plus $1,541 in monthly pension benefits from his previous employer; the MSA imputed to McKeon $1,387 in monthly earning capacity. The MSA also contained a so-called *Gavron* admonition, which advised McKeon that the law expected

she would become as self-supporting as possible.

On December 14, 2015, McDermit filed a request for order (RFO) with respect to three issues. As we indicated, he asked the trial court to modify his spousal support obligation and reduce the amount of life insurance he was required to maintain as security for his support obligation. Because McDermit owed McKeon a substantial amount by virtue of pension benefits he had been receiving in the previous five years, and which were community property, he asked that he be given an offset for student loan obligations he had been paying and for which McKeon was equally responsible. Payroll statements and a letter from an accountant he filed in support of his RFO indicated that he continued to earn approximately $8,950 a month as a lineman for a local utility, but that the pension benefits he received from his former employer had been reduced to $771 a month. His statement of income and expenses showed that he paid his domestic partner $1,500 a month in rent.

McKeon conceded that she had recently started receiving a $771 a month in benefits from the pension—which, in the previous five years, had been paying 100 percent of the benefits due to the marital community solely to McDermit—and that she was employed full time and earning approximately $2,253 a month. However, McKeon argued that McDermit's earnings had not decreased since the time of the MSA, and he was living with his registered domestic partner in a home his partner owned free and clear of any encumbrances. She also advised the court that she suffers from precancerous esophageal lesions, which require continuing medication and periodic invasive procedures. With respect to McDermit's request for an offset for amounts paid on student

loans, McKeon argued that in fact their daughter had been paying McDermit approximately $300 a month on the loans.

At the time of the hearing on the RFO, McDermit was 59 years old and McKeon was 58.

The trial court granted McDermit's requests in part. It reduced his spousal support obligation to $2,000 a month and his insurance obligation to $250,000. The trial court noted that during most of the parties' 27-year marriage, McKeon had not worked outside the home and that her earning capacity was therefore somewhat limited; the trial court also noted that McDermit was able to earn substantially more than McKeon. In light of McKeon's contentions with respect to payments being made by the parties' daughter, the trial court advised the parties it would need more information in the form of declarations from the parties on the issue. Accordingly, without prejudice to McDermit's right to request an offset, the trial court denied the request for an offset.

McDermit filed a timely notice of appeal.

DISCUSSION

I

With respect to the trial court's $700 reduction in his spousal support obligation, McDermit argues that in light of what he views as the parties' disparate living circumstances, McKeon's increased earnings, and his own stress-related health issues, a greater reduction was required. He argues that for a number of years following the parties' separation, he lived in a mobilehome; that he now must commute two hours to work because of the high cost of rent more proximate to his employment; that his income

statement and pay stubs show that he pays for his domestic partner's medical care; and that McKeon has been enjoying a more comfortable lifestyle, including home ownership in Rhode Island. Because the trial court did not provide him with a greater reduction of his spousal support obligation, he contends the trial court either misunderstood these factual circumstances or ignored them.

We review a trial court's spousal support orders for abuse of discretion. (*In re Marriage of Shaughnessy* (2006) 139 Cal.App.4th 1225, 1235; *In re Marriage of Khera & Sameer* (2012) 206 Cal.App.4th 1467, 1480; Fam. Code, § 4320.) Under that standard of review, we may not substitute our judgment for the judgment of the trial court; rather, we only determine whether there is substantial evidence in the record for whatever factual findings the trial court made and whether, in light of the facts for which there is substantial evidence, the trial court's ruling is reasonable and otherwise lawful. (See *Shaughnessy*, at p. 1235; *People v. McDonough* (2011) 196 Cal.App.4th 1472, 1489.)

Where, as here, the record lacks express findings of fact or a statement of decision, all intendments favor the ruling below and we must assume the trial court made whatever findings are necessary to sustain its order. Of course, each implied finding must be supported by substantial evidence. The evidence is viewed in the light most favorable to the respondent, who is entitled to the benefit of every reasonable presumption. We accept as true all evidence favorable to the respondent and discard contrary evidence as unaccepted by the trier of fact. (*In re Marriage of Catalano* (1988) 204 Cal.App.3d 543, 548.) Importantly, in moving to reduce his spousal support obligation, McDermit was required to show a material change in circumstances. (*In re Marriage of Khera &*

Sameer, supra, 206 Cal.App.4th at p. 1480; *In re Marriage of Shaughnessy, supra,* 139 Cal.App.4th at p. 1237.)

Plainly, the trial court found McKeon's recent receipt of pension benefits was a material change that warranted a reduction in McDermit's spousal obligation commensurate with McKeon's additional income. The trial court's unwillingness to reduce spousal support any further is fully supported by the record. The fact that McKeon's earnings increased from an imputed $1,387 a month to $2,253 a month did not warrant any further reduction in support in light of the fact that her increased earnings were not sufficient to meet her monthly expenses. We also note McDermit's payment of $1,500 a month to his domestic partner in rent on a home for which there are no encumbrances did not represent any net loss to his household. Moreover, the trial court was not required to accept McDermit's appraisal of the parties' relative lifestyles or to attempt to quantify the fact McDermit has chosen to live in a location that requires a two-hour commute to his work. Thus, we find no abuse of discretion in the trial court's $700 reduction in McDermit's support order.

II

Under Family Code section 4360, trial courts may require that a supporting spouse obtain life insurance sufficient to secure payment of the support obligation in the event of the supporting spouse's death.[1] As we have noted here, the parties initially agreed

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1 Family Code section 4360 states: "(a) For the purpose of Section 4320, where it is just and reasonable in view of the circumstances of the parties, the court, in determining the needs of a supported spouse, may include an amount sufficient to purchase an annuity

McDermit would maintain a policy that would provide McKeon with $400,000 in benefits, and the trial court lowered that amount to $250,000.

The record shows that McDermit maintains an employer-sponsored insurance policy, which provides a total of $800,000 in death benefits, and that the premium for that policy is $15 per month. Because McDermit plans to retire at the age of 65, at which point his support obligation will either cease or be considerably diminished, he argues that a policy of $250,000 is excessive and that, in the event he dies before he retires, McKeon would receive a substantial windfall. He points out that such a windfall would come at the expense of his two children, who would otherwise be the sole beneficiaries of his policy.

There is some logic to McDermit's contention, in that from the time of the hearing until McDermit is likely to retire, he will likely pay McKeon less than $130,000 in support. Importantly, however, there is also logic in the trial court's decision to limit the reduction. Given the relatively nominal premium McDermit pays, designating McKeon as the beneficiary of $250,000 of those benefits does not impose an onerous burden on McDermit. We also note that while at the time of the hearing McKeon was in relatively good health and employed, she was 58 years old and suffering from a chronic disorder.

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for the supported spouse or to maintain insurance for the benefit of the supported spouse on the life of the spouse required to make the payment of support, or may require the spouse required to make the payment of support to establish a trust to provide for the support of the supported spouse, so that the supported spouse will not be left without means of support in the event that the spousal support is terminated by the death of the party required to make the payment of support.

"(b) Except as otherwise agreed to by the parties in writing, an order made under this section may be modified or terminated at the discretion of the court at any time before the death of the party required to make the payment of support."

Thus, until McDermit's likely retirement at 65, there is some risk that McKeon's need for support will increase. We must also recognize that while McDermit currently plans to retire at age 65, his plans may change and his current support obligation may be extended. Under these circumstances, and given the relatively modest cost to McDermit, the trial court could reasonably conclude that providing McKeon with some additional security was prudent. Thus, we find no abuse of discretion in its order requiring $250,000 in life insurance.

III

Finally, we find no abuse of discretion in the trial court's unwillingness to determine whether and how much of an offset McDermit should receive for payments he made on the parties' student loan obligations. As McDermit points out, he did provide the trial court with documentation that the principal outstanding on the loans had been substantially reduced. We also recognize that, for her part, McKeon conceded she had made no payments on the loans. On the other hand, however, McKeon pointed out and McDermit conceded their daughter paid varying amounts to her father on the loans. In particular, the parties made conflicting representations as to how much their daughter paid. The trial court advised the parties that in order to resolve the issue, it would need further declarations from them.

Contrary to McDermit's argument on appeal, his representation as to how much his daughter paid on the loans was not sufficient to permit the trial court to determine the amount, if any, of any offset. McKeon disputed that representation, and the trial court acted well within its discretion in requiring the parties provide it with more definitive

evidence with respect to their daughter's contribution. Thus, because that information was not available to the court, the trial court could properly deny McDermit any relief on his request for an offset.

DISPOSITION

The trial court's order is affirmed. McKeon to recover her costs of appeal.

BENKE, J.

WE CONCUR:

McCONNELL, P. J.

NARES, J.