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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re Marriage of ELIZABETH and
RICHARD KLIMKOWSKI.

ELIZABETH KLIMKOWSKI,

Respondent,

v.

RICHARD KLIMKOWSKI,

Appellant.

D070456

(Super. Ct. No. 07D002251)

APPEAL from a judgment of the Superior Court of Orange County, Kenneth A. Black, Temporary Judge. (Cal. Const., art. VI, § 21.) Affirmed.

John S. Cate; John L. Dodd & Associates, John L. Dodd and Benjamin Ekenes for Appellant.

Law Office of Patrick A. McCall and Patrick A. McCall for Respondent.

This judgment of dissolution of the marriage of appellant Richard Klimkowski (Husband) and respondent Elizabeth Klimkowski (Wife) was filed in November 2014, seven years after the filing of the petition. Seven trial sessions took place between

February 2013 and January 2014, with each party represented by counsel. Before the last scheduled trial date of May 21, 2014, Husband learned that his attorney was seeking to withdraw as his counsel and was filing a motion to that effect. Although Husband has been on disability status from work since 2010 for visual problems, he signed a form in April 2014 substituting himself in propria persona. He then sought a trial continuance on the ground that his serious vision, health and stress problems were rendering him unable to represent himself effectively. The court proceeded with trial, with Husband appearing on his own behalf, telephonically and then in person.

On appeal, Husband initially contends the trial court erred or abused its discretion in denying his request for a trial continuance. He argues that as a matter of fact and law, he showed entitlement to a trial continuance as an accommodation request under the Americans with Disabilities Act of 1990. (42 U.S.C. § 12101 et seq. (ADA).) He alternatively relies on established legal principles for granting continuances to claim it was an abuse of discretion for the court to allow trial to proceed.¹ On the same basis, he challenges the trial court's denial of his new trial motion.

Husband additionally argues the trial court abused its discretion in failing to compensate him, in the form of management and dispositional fees, for his postseparation efforts in managing and disposing of several community commercial properties.

Husband next challenges the trial court's award to Wife of attorney fees and accountant

¹ California Rules of Court, rule 3.1332, sets forth the procedural and substantive grounds for showing "good cause" to continue a trial date (e.g., the "unavailability of a party because of death, illness, or other excusable circumstances"). (Rule 3.1332(c)(2); all further rule references are to these rules unless noted.)

fees, on the basis that the trial court's statement of decision and judgment prejudicially misidentified the authority for the award. He also contends it is not properly supported either on the basis of Wife's need or as a sanctions finding. (Fam. Code, § 271 [sanctions]; Fam. Code, §§ 270, 2030 [need based awards that may take litigation conduct into account]; all further statutory references are to the Family Code unless noted.)

Our review of the record persuades us that the trial court did not err or abuse its discretion in denying the continuance of trial. Even accepting, as the trial court did, that Husband established that he had been disabled for several years for employment and other purposes, the record does not show as a matter of fact or law that Husband followed the appropriate procedure to invoke an ADA accommodation, as established by the rules of court.² Also, under traditional standards for evaluating continuance requests, it was not an abuse of discretion for the trial court to determine that the circumstances of Husband's request, based on his status as a self-represented litigant, were inadequate to justify his request for an indefinite continuance, in light of the extent and nature of the remaining issues at trial. The court had an adequate basis in the record to evaluate Husband as intelligent, involved, and choosing to participate on his own behalf in the proceedings at the relevant times.

² Rule 1.100 provides procedures and standards for evaluating requests for accommodations from persons with disabilities, under the definitions of applicable state and federal laws. (E.g., Civ. Code, § 51 et seq.; the ADA.)

Moreover, Husband is not able to show prejudice from the denial of the continuance request. The issues remaining, mainly for argument, included the proper allocation of certain expenditures made by Wife out of community funds, during 2007 and 2008, of approximately \$298,000 ("the \$298,000 expenditures"). Except for certain potential adjustments to Husband's financial evidence, the evidence had been closed at the end of the January 2014 hearings, and the trial court had an adequate basis to conclude that Husband did not carry his burden to produce such additional evidence, by making available additional testimony from the parties' former joint certified public accountant (CPA), who was then refusing to participate due to lack of payment. Husband has failed to support his contentions that the failure to pay the former joint CPA and thus to produce him as a witness was wholly attributable to Wife, or that the ruling lacks support in the evidence. Rather, the trial court took into account the relevant factors, including the lack of any interim or formal spousal support order in place until April 2008. (See *In re Marriage of Stallworth* (1987) 192 Cal.App.3d 742, 745-746, 752-753 (*Stallworth*) [spouse who requires support after separation but before support order issued may, in discretion of court, be allowed use of "reasonable" amounts of community funds for that purpose without being charged for those funds].)

In addition, the record does not reveal any lack of sufficient evidence in support of the ruling on management and dispositional fees, or any abuse of discretion in the court's award of attorney fees and accountant fees. We affirm.

*OVERVIEW OF RECORD**A. Assets and Disputes*

Husband and Wife were married from 1977 until Wife filed the petition for dissolution in 2007. Husband was a licensed physician who operated a private dermatology practice. During the marriage, Wife participated in handling the practice's business expenses. After the parties separated in 2007, they each retained counsel and they jointly hired Glenn R. Mehner as their community accountant (CPA Mehner). Husband's attorney, Steven E. Briggs, represented him from November 2009 through April or May 2014. After separation, counsel litigated the matter in superior court and worked out the division of most of the community assets, amounting to several million dollars each. Wife had continued access to the community funds from the medical practice for some period after separation, and there was no interim spousal support order effective until April 2008. Going forward, Husband was to pay \$8,000 per month support to Wife. Retroactive support issues were reserved.

By 2010, Husband had developed severe vision problems and qualified for disability status through private insurance and through Social Security. In 2011, he began receiving benefits (about \$14,000 per month by the time of trial), and by July 2011, he sold the medical practice. The spousal support award was reduced by stipulations in December 2010 and December 2012, to \$4,175 per month to Wife. The dissolution judgment was filed in 2011 and reserved certain issues for resolution. As of

April 2012, the parties stipulated that they would go to trial before a retired judge who would be privately compensated, and the stipulation went into effect in August 2012.

Until the end of 2011, Wife continued to make payments to CPA Mehner as the joint CPA. She started having disagreements with him and in January 2012, Wife hired her own accountant, Robert Plante (CPA Plante), and she no longer paid CPA Mehner. However, as will be further discussed in connection with the continuance issues, it appears from the record that CPA Mehner kept working for the community and/or Husband, and kept billing both parties. At trial in 2012, Husband presented evidence prepared by CPA Mehner for litigation of his claims of entitlement or credits to the \$298,000 expenditures. This included Exhibit UUU prepared by CPA Mehner, "a postseparation accounting of transactions," covering expenses from March 2007 to April 2008, and showing a printing date in 2012. Between 2008 and 2012, Mehner also prepared Exhibit 110, setting forth Husband's cash flow from 2005 through 2011.

During 2008 through 2010, Husband participated as seller for four commercial properties owned by the community, which he had managed during the marriage (Mariblu, Down Under LLC, Hawn Freeway Sale, and North Mopac Mini-Storage; "the commercial properties"). He participated in extensive negotiations with his own and other real estate professionals, and sought compensation for his personal postseparation efforts (the management and dispositional fees).

Sometime in 2012, Wife's accountant, CPA Plante, prepared Exhibit 115, setting forth his analysis of the \$298,000 expenditures and whether they were made for community purposes or on behalf of the medical practice. Although some checks were

written by Wife for her personal expenses, he stated that was done prior to April 2008, when she began to receive support payments. These CPA prepared documents were not admitted into evidence at trial until August 2013.

B. Trial Proceedings from February 2013 through January 2014

In preparation for court trial before the retired judge, which began in February 2013, counsel for each party prepared a trial brief in April 2012 that outlined the interrelated remaining property and support disputes. During all of trial through January 16, 2014 (seven sessions), each party was represented by counsel and they met at a private facility off site from the courthouse. Husband served an extensive discovery request in January 2013. In court in August 2013, Wife presented her own version of the \$298,000 expenditures through testimony from CPA Plante, and counsel for Husband cross-examined him. At court sessions in May and August 2013, CPA Mehner was called to testify as a witness for Husband, about the business valuation, cash flow and other items.

At the court session held January 13, 2014, Wife was direct and cross-examined about her use of community money for the \$298,000 expenditures. She had supplied additional documents to supplement her response to Husband's 2013 discovery request. Husband was requesting an award of management and dispositional fees for his efforts on behalf of the community. (We defer outlining those facts until our discussion of Husband's claims of error in the ruling that denied him such fees; pt. III, *post.*)

At the January 16, 2014 hearing, Wife produced a suitcase of additional documents, in support of her accounting of the \$298,000 expenditures she had made.

The suitcase contained bank statements from 2007, receipts, accountings from the mortgage and insurance companies, and health insurance records. At that hearing, counsel for the parties agreed that CPA Mehner would provide further services in reviewing the financial documents that Wife had produced and discussing them with CPA Plante, and if necessary, adjusting the conclusions he had previously reached in the exhibits he prepared for Husband that had been provided to the court. Specifically, the issue was whether Mehner should update Exhibit UUU, his document of the postseparation accounting of transactions, prepared in 2012.

At the January 16, 2014 hearing, both counsel agreed with the trial court that the evidence was closed, with the understanding that the identified financial document review by the CPAs would take place, and that a bifurcated attorney fee issue remained for trial. After the January 16, 2014 hearing, as instructed, CPA Plante contacted CPA Mehner. Mehner told Plante that he had a large outstanding bill for recent professional services and would not be participating until he was paid. These issues about the planned document review that was not completed will be discussed further in part II, *post*, since they are crucial to Husband's continuance requests, among other issues.

C. Status of Remaining Issues for Trial

As of March 17, 2014, counsel for Husband prepared a brief listing the "remaining issues," and it was anticipated that trial would take place on them in May 2014. These remaining substantive dissolution issues included, as relevant here, Husband's claims for reimbursement from Wife of a portion of the \$298,000 expenditures, made before a

support order was put into place in 2008.³ Retroactive spousal support issues were in dispute, as well as any proper credits or rental charges for Wife, due to her occupation of the family residence until 2010. (*In Re Marriage of Watts* (1985) 171 Cal App.3d 366 (*Watts*)). Also to be litigated were the issues of attorney fees, costs and sanctions as requested by both sides.

In her respondent's brief, Wife somewhat inaccurately states that retroactive spousal support issues are not the subject of this appeal. It is true that the *Watts* issue, about charging Wife rent for living in the community residence, is no longer being briefed.⁴ However, both that issue and the dispute over the \$298,000 expenditures required the court to take into account the reserved issues on unpaid support (e.g., that no interim support order was in place until April 2008). At the May 21, 2014 hearing, the court agreed with Husband's attorney's written summary, thus outlining the remaining issues as including the rental value issue about the family home (*Watts* issue), retroactive

³ At the outset of the case, Husband referred to Wife's 2007 through 2008 disputed expenditures from the medical practice as amounting to \$300,000. The briefs on appeal and the judgment use the \$298,000 figure for the same expenditures.

⁴ The judgment set the initial charge against Wife for the fair rental value of the community residence, under *Watts, supra*, 171 Cal.App.3d 366, at \$299,000. That amount was later adjusted by retroactive support owing to her from 2008 through 2010. It is important here to distinguish between the \$298,000 expenditures and the separate issue of the *Watts* charges and credits. In general, the trial court treated the reserved retroactive support issues mainly as applying to the *Watts* issues, and kept the two time periods of back due support considerations separate (2007-2008 and 2008-2010). During the new trial motion arguments, the concepts sometimes overlapped, but not to any significant degree.

support, and "somewhat of an issue about \$298,000 as to whether or not Wife should be charged for same." Sanctions and fees also remained in dispute.

D. Substitution of Counsel Filings

The next watershed event in the record, relevant to both the procedural continuance issues and the substantive merits of the judgment, was an April 2014 falling out between Husband and his attorney. As of April 11, 2014, Attorney Briggs filed a declaration on an attorney fee matter stating that as of March 21, approximately \$11,000 was owed him for legal services and costs. In preparation for an upcoming hearing set for April 25, 2014, Attorney Briggs filed a notice on April 21, 2014 that sanctions were being sought against Wife under sections 270 and 271, on the basis of her claimed lack of cooperation with Husband.

In the respondent's appendix, the record includes an executed form, "Substitution Of Attorney -- Civil (Without Court Order)," filed April 30, 2014 and stating that Husband consented to substitute himself in propria persona, effective April 24, 2014 upon Attorney Briggs's signature. Numerous e-mails in the record, dated around the end of April, are attached to Wife's attorney's declaration and show that Husband, acting on his own behalf, objected to the resumption of trial and sought a telephone conference call, but none was achieved. Wife's attorney sent out a notice of resumption of trial to Husband in propria persona, by e-mail and mail on April 25, 2014. She had a pending request for fees and sanctions as well. As of April 2014, CPA Mehner was still owed at least \$15,562.

On April 29, 2014, Attorney Briggs filed a motion and declaration seeking to be relieved as Husband's attorney. He represented that Husband was not responding to his communications. The motion was set to be heard at the next trial date, May 21, 2014.

E. Trial Continuance Requests on May 20 and 21, 2014 are Denied

On May 20, 2014, Husband sent an e-mail to the trial judge stating that he had just been instructed, by the office staff of his former attorney Briggs, to e-mail the judge and opposing counsel that he has a medical problem. Husband requested that trial not take place the next day, representing to the court that he could not proceed "with trial issues, at this time and for some indefinite period, depending on the results of new medication and other factors. In short, my vision has dramatically deteriorated and episodically worsens, with each attempt to deal with the issues surrounding the divorce proceedings, and especially the last several weeks." Among other factors, Husband represented that CPA Mehner was unavailable and out of town, that Husband had not been consulted on the continued trial date, that opposing counsel was not communicating with him, and that he was unclear on whether he could telephone the court without opposing counsel on the telephone.

At this point, we shall note only that the requested continuances were denied and Husband appeared at the hearing first telephonically and then personally, to represent himself. (See pt. II.A., *post.*) In his closing argument on May 21, 2014, Husband for the first time specifically mentioned the ADA, arguing that he did not think that his "health issues should take away my civil rights to be able to have the trial, to be able to review the items, select alternate counsel, and go forward if I – you know, in that basis. I have

not had that opportunity, not even having received the records from the community forensic accountant. [¶] . . . [¶] That's my feeling of it. And I don't see any way around that, and I don't know what – *I have not explored what the American Disability Act [sic] has to do with this sort of thing, but I am disabled.* [¶] Now, could I get to the point where I could be able to read these later? Possibly. Would it take a while? Yes. Could I have someone read them to me? Possibly. Would it still take a while? Oh, yes." (Italics added.) The court denied the continuance request and issued rulings on all the remaining issues, as later finalized in the statement of decision and judgment. (See pt. II, *post.*)

F. Statement of Decision

At the conclusion of trial, Husband requested a written statement of decision, and Wife objected. Ultimately, the court issued its statement of decision in November 2014, and judgment was prepared accordingly. The court incorporated the stipulated rulings made before the court trial began, and stated that all reserved issues were being resolved on the division of community property, according to the Propetizer analysis attached that set forth the community balance sheet (about \$10 million in equity).

As particularly relevant here, paragraph 13e of the statement of decision denied Husband's request that Wife be charged with taking postseparation monies from the medical practice, during the period between March 2007 and March 2008, on these grounds: "The Court finds that during said period, there was no support order in place and [Wife] was entitled to receive fifty percent of the community medical practice. *In addition, the court finds that [Wife] expended said monies for the parties' joint benefit and/or support and expenses relating to the medical practice.*" (Italics added.)

In paragraph 15 of the statement of decision, the court ruled on the issue of assessing attorney fees and costs against Husband, noting it had considered the court file, the evidence presented, its recall of all the hearings, the issues that were litigated, the time spent on preparation, and its observations of the parties. The court had considered declarations submitted by the respective trial counsel and CPAs. The court made findings that in light of the necessary skill involved, the extremely contentious nature of the case, and the prolonged litigation, it had good cause to award against Husband fees and costs. The decision cites not only to sections 270 and 2030, but also to section 271 (sanctions). The court determined that Husband has sufficient income of over \$14,000 per month in nontaxable income, in addition to passive income and substantial assets, and he could pay a fee award of a total of \$135,000, consisting of fees to Wife's attorney of \$115,000 and \$20,000 to CPA Plante. At the hearing, the court had refused to resolve the parties' remaining dispute about how CPA Mehner was to be paid, since he was not a court appointed expert pursuant to Evidence Code section 730.

In paragraph 16 of the statement of decision, the court denied Husband's request for sanctions under section 271 against Wife, on the grounds that unlike Husband, she was not found to have caused any delay in this proceeding or to have inappropriately litigated issues before the court.

G. Denial of New Trial Motion

Still in propria persona, Husband filed a new trial motion, renewing his objections to the denial of the continuance and arguing that an ADA accommodation was required. He contended that the order was prejudicial to him, because he could have made further

inquiry concerning the \$298,000 expenditures, if Wife had not caused delay in providing the records, and if CPA Mehner had been able to clarify the issues. He also challenged the awards of fees and sanctions, on the ground that Wife had unjustifiably stopped paying the joint forensic accountant, CPA Mehner, and she had caused the delays in settling the issues. Husband argued that the court should have treated CPA Mehner's claim as a community obligation and allocated the payment obligation to Husband but then given him credit on the balance sheet for payment made on behalf of Wife. He also contended the court abused its discretion in failing to compensate him for his efforts after separation in managing and disposing of the commercial properties.

In Husband's declaration in support of the new trial motion, he attached exhibits, including medical records and reports that suggested a four-month continuance (evidently to begin in November 2014) would be appropriate, to allow Husband time to rest and recover to stabilize his condition and reduce his stress. His declaration also attached his 2013 discovery request for financial records, as well as CPA Mehner's prepared Exhibit UUU (the postseparation accounting of transactions from March 2007 through April 2008, of checks written by Wife from the medical practice, prepared or printed out in April 2012).

By the time of the hearing on December 23, 2014, Husband had retained counsel, who argued the motion to the trial court. (We will set forth some of the trial court's reasoning on the related denial of continuance issues in pt. II.C, *post.*) The rulings included a finding that Husband had not met the requirements for requesting an ADA accommodation, within the meaning of the court rule, by contacting the ADA coordinator

in a timely manner. (Rule 1.100.) Although the proceedings were somewhat informal, having taken place before a retired judge away from the courthouse, the court found that the late night e-mail and oral continuance requests were unjustified and untimely, particularly in light of the limited nature of the issues that were still before the court at the time. The court determined that Husband was unjustified in making himself the arbiter of whether the case would proceed or not, without offering a reasonable alternative to proceeding, and it found that Wife had a competing interest in achieving finality of the case. The ruling found that allowing the indefinite continuance would have fundamentally altered the governmental service provided, within the meaning of the rules of court. (Rule 1.100(f)(3).)

At the new trial hearing, the court clarified during argument that the attorney fees and accountant fees that had been awarded to Wife were authorized by section 2030, and were not imposed as sanctions under section 271. Both sections 2030 and 270 allowed the court to take the parties' litigation conduct into account in making the fees awards, and the court had done so. Other factors justifying the award to Wife were the disparity in access to funds and the existence of a support order. The court observed that Husband had made an offer of proof and had shown some ability to represent himself at trial in an articulate and precise manner. The new trial motion was denied and Husband appeals the judgment and related orders, which we construe as including the denial of the ADA continuance.

II

CHALLENGES TO THE COURT'S DENIAL OF CONTINUANCE

A. Expanded Summary of Record Pertaining to Continuance Issues

Husband argues on several bases that the trial court erred in denying him his requested continuance of the May 21, 2014 hearing. The night before the hearing, in response to Husband's e-mail, Wife's attorney replied to Husband and to the court that he would be present on May 21, with the understanding Attorney Briggs's motion to be relieved would be heard first, then trial would commence at 9:00 a.m. Husband responded that his vision was terrible, and "I have to stop and will not be there tomorrow." The next e-mail was from the trial court at 6:51 p.m., stating "I will be at [the private dispute resolution facility] at 8:00 tomorrow morning to rule on Mr. Briggs' Motion to Withdraw as Dr. Klimkowski's counsel of record. I will also be there at 9:00 a.m. to hear and decide the remaining trial issues."

Husband continued to object by e-mail, requesting a continuance on the grounds of his health problems and lack of preparation, and also suggested "There have been several irregularities, since my last trial date, that need to be addressed, when I am well, or at least better and able to read without difficulty, that now makes that impossible, on more than a very short term basis." Husband sought to have examined "the circumstances of my signing the substitution form, the correct and complete, chronology of preceding and subsequent events," but said he could not do that for some time, due to his medical problems related to stress. The court again declined to grant a continuance that night.

At the hearing on May 21, 2014, the trial court issued an order granting Attorney Briggs's motion to withdraw as counsel for Husband. The court then went on the record and Wife's attorney made an offer of proof that she could testify that Husband had recently been participating in a family filming project and did not seem to be disabled at that time. The court suggested to counsel that a courtesy call be made to Husband so that trial could proceed, which was done. Husband appeared telephonically, in propria persona, renewing his objections that CPA Mehner was out of town, that Husband had not received and reviewed the necessary records because of his poor health, vision and recent medication changes, that he did not understand whether he could telephone the judge, and that he had only signed the substitution of attorney form because he thought, at the time, it would be less injurious to his health to keep the trial date in place and go forward in propria persona. Husband admitted that he had not recently been responding to communications from Attorney Briggs about the case but said he still had some understanding that Briggs might be continuing to represent him.

The court responded that the issues remaining for trial were fairly limited, including attorney fees and sanctions, the rental value issue about the family home (*Watts* issue), retroactive support, and "somewhat of an issue about \$298,000 as to whether or not Wife should be charged for same." The court clarified that it had previously instructed Husband that they could not talk on the telephone without counsel for Wife participating in the conversation. The court then had CPA Plante sworn in to testify as a witness about his discussions with CPA Mehner, and the court and the parties (Wife's counsel and Husband) asked questions of him. Husband asked about the adequacy of

CPA Plante's efforts to communicate with CPA Mehner about the \$298,000 expenditures disputes. The two CPA's had talked by telephone in March 2014, but they did not complete the planned document review.

The court explained that some of the relevant issues, such as the lack of an original support order, had already been litigated by January 2014, except for the effect of the newly produced documents. The trial court showed its concern about why Husband, who was being treated as the moving party with regard to the \$298,000 expenditures, had not somehow made sure that CPA Mehner had talked to CPA Plante within the 10- to 14-day period that was planned, between counsel, for review of the newly produced documents. The court was treating the \$298,000 expenditure issue as having a common underlying issue, back due support, with the *Watts* charges for rental value, although dealing with different time periods. (See fn. 4, *ante.*)

Next, Husband asked for a brief continuance so that he could drive to the hearing, the court agreed and Husband arrived.⁵ The proceedings resumed and Wife's attorney questioned CPA Plante about his accounting of the retroactive support issues after March 2008, and the potential charges for Wife occupying the family residence until 2010 (*Watts* issue). Before Husband started cross-examining CPA Plante, he said he was appearing under protest because of his headache and fatigue. Having said that, he cross-examined CPA Plante about why he had not communicated further with Mehner, and also about Plante's study of the support obligation issues.

⁵ Husband has been diagnosed with having only monocular vision, which does not preclude him from driving in California.

In response to Husband's renewed arguments that the court needed to hear from CPA Mehner again, the court said that it did not matter why Mehner would not review the records, the point was that the joint review did not happen within the time allowed, and the burden of production was on Husband. After counsel for Wife objected to Husband's inquiries, the trial judge said the reasons for the failure of the document review plan were irrelevant and if elicited, he would have excluded the reasons for the miscommunication pursuant to Evidence Code section 352.

Toward the end of the hearing, Husband started to ask CPA Plante about the earlier expenditures for the house, such as insurance, gardeners and pools. The court explained to Husband that because there had not been any support order in place from March 2007 through April 2008, and because those expenses had been paid out of community funds, Wife was not going to be charged for them. The court stated several times that it was focusing upon the relevant evidence on the remaining issues in an effort to reach accurate conclusions. The court did not believe that CPA's Mehner's attendance, even if obtained, would have made any difference, based on the back support issue and the issues under *Stallworth, supra*, 192 Cal.App.3d at pages 745 to 746, and pages 752 to 753. Also, the court determined that Wife was a credible witness on the subject of the expenditures she had made on behalf of the community, even though some of the medical practice checks she wrote were illegible. On the *Watts* issues, the court ruled that some of Wife's expenditures were going to be factored in on that basis as offsets against her, taking into account the support calculation from 2008 to 2010, so that Husband was prevailing on the *Watts* issues and need not keep arguing the point.

The court noted that the management and dispositional fee request had already been resolved in January 2014 (denied) and was not before the court in May. The court then turned to the issues concerning attorney fees and costs and sanctions. Husband made an offer of proof about why he believed that Wife and her counsel should be sanctioned. The court acknowledged that Husband was receiving private disability benefits for serious health issues and was in fact disabled for some purposes. The court commented that continuing the matter would impose more financial costs on the parties and possibly health costs upon Husband.

On the topic of CPA Mehner's employment, the court noted that after some period when both parties utilized him as a joint accountant, Wife had hired her own CPA, and that was not improper. The court stated it was not presented with issues about the contractual obligations to CPA Mehner, which were civil matters between the parties, although the court questioned why Wife had not made further payments if she owed him money.

B. ADA Standards

We first address Husband's claim that he was entitled as a matter of law to an ADA accommodation in the form of a continuance. It has been held that a court's failure to comply with the "mandatory dut[ies]" required in ruling on a request for accommodation under rule 1.100 is "structural error" that requires a reversal without the necessity of establishing prejudice. (*Biscaro v. Stern* (2010) 181 Cal.App.4th 702, 710 (*Biscaro*).

For purposes of analysis, we accept, as did the trial court, that Husband is disabled, as shown by his receipt of private and public disability benefits. We assume that he is a person with a disability as provided in rule 1.100.⁶ It is accepted that a trial continuance is an authorized "[a]ccommodation[]." (Rule 1.100(a)(1), (a)(3); *Vesco v. Superior Court* (2013) 221 Cal.App.4th 275, 279.)

Under rule 1.100(c)(1), an accommodation request may be made orally and should be forwarded to the ADA coordinator. The request should describe the accommodation sought, and should be made "as far in advance as possible, and in any event . . . no fewer than 5 court days before the requested implementation date." (Rule 1.100(c)(2), (c)(3).) In this case, trial was taking place by stipulation before a retired judge, off site from the courthouse, and there was no known ADA coordinator involved.

Where an appropriate accommodation request has been made, rule 1.100(e)(1) and (e)(2) prescribe the appropriate response by the trial court. The court must consider the relevant disability law, and must promptly inform the applicant of the determination to grant or deny an accommodation request. If the accommodation request is denied in whole or in part, the response must be in writing or an alternative format, "and must indicate: (A) Whether the request for accommodation is granted or denied, in whole or in part, or an alternative accommodation is granted; (B) *If the request for accommodation is*

⁶ The definition in rule 1.100(a)(1) of "persons with disabilities" is stated as including "persons who have a physical or mental impairment that limits one or more of the major life activities, have a record of such an impairment, or are regarded as having such an impairment."

denied, in whole or in part, the reason therefor." (Rule 1.100(e)(2)(A), (e)(2)(B); italics added.)

Under rule 1.100(f), three possible grounds are set forth for the court's denial of an ADA request for accommodation, such as where the court determines that: "(1) The applicant has failed to satisfy the requirements of this rule; (2) the requested accommodation would create an undue financial or administrative burden on the court; or (3) the requested accommodation would fundamentally alter the nature of the service, program, or activity." (See *In re Marriage of James & Christine C.* (2008) 158 Cal.App.4th 1261, 1265 ["Rule 1.100(f) permits a trial court to deny a request for accommodation under the ADA only if the court makes a determination of at least one of three specifically identified grounds."].)

C. ADA Analysis: No Error Shown

The request for continuance that Husband made by e-mail the night before the May 21, 2014 hearing, and his telephonic and personal requests during the hearing that the matter not proceed, all took place in the factual context of Husband stopping communication with and paying his attorney. Attorney Briggs had obtained Husband's written consent to withdraw as counsel, but he nevertheless brought a motion and obtained a ruling on it the day of the hearing. Over this month long period, there was an evident breakdown in the attorney-client relationship, made known to the court and counsel.

At times, Husband had indicated that he thought his attorney would be returning to the case, or that the circumstances of his withdrawal were problematic, or that Husband

wanted to represent himself. He represented to the trial court that he could not represent himself adequately in his current state of health, because of his vision and headache problems and the new medication he was taking, which had side effects. It was not until the conclusion of the trial hearing that he first referred to the ADA by name, saying that he had not yet researched its provisions. Husband said he had not yet "*explored what the American Disability Act [sic] has to do with this sort of thing, but I am disabled.* [¶] Now, could I get to the point where I could be able to read these later? Possibly. Would it take a while? . . . yes." (Italics added.)

During the new trial motion, the court suggested to Husband's newly retained attorney that in May 2014, Husband had not made clear the nature of his accommodation request. Clearly, he was seeking more time, but the court suggested that he also could have been requesting that he be allowed to have a reader assist him, such as a relative or friend. The court pointed out that Husband had not explained how long a continuance he was seeking, instead stating only that he was on new medication and was unable to appear. However, he eventually appeared at the hearing first by telephone and then by driving to the courthouse, where he participated in examining the witness, CPA Plante, about the problems in obtaining further review of documents by CPA Mehner. Husband continued to indicate that he was appearing under protest, but did not make any proposals about obtaining a new attorney or a time frame for his recovery, instead arguing that the stress of dealing with the dissolution issues was bad for his conditions.

At the time Husband made his indefinite continuance request, seven days of trial had been completed with counsel, in a case that had been filed about seven years before.

It is doubtful that under the circumstances shown in this record, Husband could reasonably be deemed to have satisfied the technical requirements of rule 1.100 in order to invoke the trial court's "mandatory dut[ies]" to make an appropriate ruling on a proper request for accommodation. (*Biscaro, supra*, 181 Cal.App.4th at p. 710.) Due to the previous extensive litigation that had taken place, the trial court had limited remaining issues before it. Mainly an opportunity for argument was presented, except for the examination of CPA Plante about why no consultation with CPA Mehner had been achieved on the planned further document review, and the *Watts* issue. Although the trial court was well acquainted with the nature of the serious health issues with which Husband was grappling, the court considered the motion for withdrawal of counsel in light of Husband's substitution of attorney form, signed earlier. The court had a basis in the record to allow Husband to act as his own legal representative to question the witness, make arguments, and make an offer of proof directed toward his sanctions request. (Code Civ. Proc., § 284; see *In re Jackson* (1985) 170 Cal.App.3d 773, 778 [where substitution of attorney form signed by client, substitution of client in propria persona is not fully effective where further court action is required, such as an order in a criminal case].)

It was not until the new trial stage that Husband first provided documentation from his medical consultants that he would likely be better able to participate in meaningful litigation after four months of rest (as of Nov. 2014). During the new trial hearing, the court acknowledged that Husband had been on disability for his work situation, but stated its view that a person can be disabled from one thing but not another, such as driving,

which Husband was able to do when he arrived midway through the hearing. The court questioned whether Husband had been disabled from participating as a litigant, noting that he had the means to and could have retained counsel, but at times expressed an intention to do so and at other times to represent himself. Husband had expressed some uncertainty about whether Briggs was going to stay on board as his attorney, although the court questioned the reasonableness of the belief, and noted there was still a debate about whether the withdrawal as counsel had been conditional, as Husband was claiming. Husband had known since the end of April that he was losing his attorney and he did not select a new one until December 2014, the time of the new trial motion.

A request for accommodation under rule 1.100 may be denied when the court determines that "[t]he applicant has failed to satisfy the requirements of this rule." (Rule 1.100(f).) That is what happened here. Husband cannot demonstrate compliance with the requirement set forth in rule 1.100(c)(3) that "[r]equests for accommodation must be made . . . no fewer than 5 court days before the requested implementation date." Allowing an indefinite continuance would have fundamentally altered the governmental service provided, an ongoing trial, within the meaning of the rule of court. (Rule 1.100(f)(3).)

It makes no difference in this case that the "order" denying the accommodation took the form of an e-mail denying the continuance and saying the motion for withdrawal of Husband's counsel would be heard the next day and trial would proceed, or it took the form of oral rulings during the proceedings. Under the circumstances, we cannot say that the trial court erred by failing to provide a formal written response to the request for

accommodation pursuant to rule 1.100(e)(2)(B). As of the time of the May 21, 2014 hearing and for purposes of his new trial motion, Husband did not bring himself within the ADA accommodation procedures. Nevertheless, the issue remains whether the continuance was improperly denied for other reasons.

D. Alternate Contentions on Abuse of Discretion in Denial of Continuance: Procedural Issues

We review for an abuse of discretion a trial court's order denying a request to continue a trial. (*Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1126.) "The trial court's exercise of that discretion will be upheld if it is based on a reasoned judgment and complies with legal principles and policies appropriate to the case before the court. [Citation.] A reviewing court may not disturb the exercise of discretion by a trial court in the absence of a clear abuse thereof appearing in the record." (*Ibid.*; *Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 881-882 ["if the trial court's conclusion was a reasonable exercise of its discretion, we are not free to substitute our discretion for that of the trial court"].)

The criteria for ruling on a request for a continuance, under rule 3.1332(d), allow the court to "consider all the facts and circumstances that are relevant to the determination," not just a showing of good cause under the rule's preceding paragraph (c). As relevant here, such other facts and circumstances could have included: "(d)(1) The proximity of the trial date; [¶] . . . [¶] (3) The length of the continuance requested; (4) The availability of alternative means to address the problem that gave rise to the motion or application for a continuance; (5) The prejudice that parties or witnesses will suffer as a

result of the continuance; [¶] . . . [¶] (10) Whether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance; and (11) Any other fact or circumstance relevant to the fair determination of the motion or application." (Rule 3.1332(d).)

As discussed above in connection with the ADA issues, the continuance requests took place in the context of Husband substituting himself in propria persona in place of his attorney, with whom he had stopped communicating. The reasons for that evidently included Husband's health problems that were exacerbated by stress, and he argues that the court should have given him more of an opportunity to recover his health before representing himself further. Husband also sought more time to seek out and produce CPA Mehner to provide further opinions on the validity of the \$298,000 expenditures that Wife had made of community funds. Husband wanted to question Wife further about the records she had recently provided, and he argues the failure to allow him to do so effectively "distorted" the truth finding process and precluded due process from occurring at the hearing. (See *People v. Gonzales* (1994) 22 Cal.App.4th 1744, 1757-1758.)

Initially taking a procedural viewpoint, we examine Husband's two main subjects of argument, whether he knowingly chose to represent himself, and whether Wife was wholly at fault for the failure of CPA Mehner to complete the anticipated document review. (We delay consideration of the merits of the underlying issues until pt. II.E, *post*.) First, Husband argues his former attorney did not give him adequate instructions about how to seek a continuance regarding his medical condition, and states he had not yet obtained all of his own voluminous file. At times, Husband told the court that he had

only signed the substitution of attorney form in late April because he thought at that time that it might be less injurious to his health to keep the trial date in place, and go forward in propria persona. He later changed his mind. He believes that the substitution of attorney form he signed, placing himself in propria persona, was somehow conditional and should not have been effective or controlling, even though it was filed with the court April 30, 2014.

In any event, Husband's attorney nevertheless pursued the motion to be relieved as counsel and obtained a ruling granting the motion on the morning of May 21, 2014. On this record, Husband is not justified in claiming on appeal that the status of his counsel's motion to be relieved was "in limbo," as of the eve of the May 21 continued trial date. Husband agreed he would place himself in propria persona and did not, later, consistently or clearly ask for more time to retain new counsel. Husband now takes the position on appeal that due to his health and vision problems, he was unable to adequately represent himself at the time (e.g., in terms of analysis of documentary evidence). However, his disability status was not new, even assuming that stress exacerbated it, and the court had some basis to question his claimed inability to proceed at all, given that he was known to be an intelligent and articulate person who was evidently able to argue and ask questions telephonically and was able to drive to court that day. The court had enough reason in the record to evaluate the continuance request, based on lack of counsel, as unjustified.

On the next issue, CPA Mehner's refusal to participate in the proposed document review, Husband argues there was no specific order made to compel such further action, and he should not be held responsible. He also claims that the chief or only cause of the

noncooperation was Wife's failure to pay her share of CPA Mehner's bill for recent professional services. Husband argues he did not have his own forensic accountant and that CPA Mehner remained the parties' joint accountant. He contends it is a "fallacy" argued by Wife, that CPA Mehner was no longer acting for the community. To support his contention that he was denied due process of law and incurred prejudice from the denial of his continuance request, because of his inability to effectively cross-examine witnesses on the proper allocation of the \$298,000 expenditures, Husband would have to show this deficit was dominantly or solely attributable to Wife's failure to honor her continuing liability to CPA Mehner. However, the court declined to decide the liability issue in the current proceeding, finding it was a civil matter.

The record remains ambiguous on the parties' respective remaining liability to CPA Mehner. Mehner's bills still had both parties' names and addresses on them. At the August 7, 2013 hearing, CPA Mehner testified that his role had changed from preparing a community balance sheet, when Wife, through her son, instructed him to stop working. The record indicates that Wife stopped paying the joint accountant in 2011, when she retained her own. In his declaration attached to Husband's new trial motion, CPA Plante stated that the total amount he had billed to Wife between February 2012 and February 2014 was approximately \$106,400.

In CPA Mehner's testimony, he stated that he had received about \$17,000 in payment from Wife. On the subject of Mehner's balance due for services rendered, the record indicates that since the inception of the case, he had received payment for most of the charges for the total fees incurred, \$142,590.73. As of March 13, 2014, CPA Mehner

represented that the outstanding balance was \$15,562.99, and as of April 17, 2014, the outstanding balance was \$20,963.28. Evidently, Husband had been paying Mehner a lot of money after 2011, and Husband presented at trial exhibits on his own behalf that were prepared by CPA Mehner in 2012, at the instruction of Husband's then attorney.

Husband does not point to anything in the record supporting the parties' continuing adherence to any 50-50 agreement on fees, or Wife's existing obligation to pay not only her own CPA Plante but also CPA Mehner.

The court could reasonably have concluded that Husband did not and could not prove that the failure of CPA Mehner to pursue the document review was all the fault of Wife. Thus, even though the evidence was closed after the January 16, 2014 hearing except for that identified financial document review and the bifurcated attorney fee issue, Husband did not show he retained an entitlement to pursue the review, as he now claims. Arguably, by failing to present and discuss the evidence that would have supported Husband's claim that there was such a contractual or other payment arrangement in place, he has forfeited his arguments that the court erred in refusing to rule in his favor on that continuance ground. (See *Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 410 [before appellate court considers substantiality of evidence, appellant must first present "a fair summary of the evidence bearing on the challenged finding, particularly including evidence that arguably supports it"].)

We cannot accept Husband's argument that he was unfairly foreclosed from further inquiry into CPA Mehner's opinions, merely because of the state of the payment arrangements for the professional services. Any failure to pursue the further document

review allowed by the trial court after the evidence was otherwise closed cannot be attributed solely to Wife's activity or inactivity.

E. Alternate Contentions on Abuse of Discretion in Denial of Continuance: Substantive Issues and Prejudice Analysis

Husband's abuse of discretion arguments require us to address, to some extent, the explanation in the statement of decision of the trial court's rulings on the merits on the issues that were remaining as of that date. Otherwise, it is not possible to determine whether Husband was substantively prejudiced by the ruling. (Rule 3.1332(d)(5).) Generally, an appellate court presumes a judgment is supported and will read the statement of decision as containing implied findings that are favorable to the judgment. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1134-1135.) In Husband's new trial motion, he had to show grounds for overturning the issues resolved in the statement of decision, such as errors of fact or law. "[A]s a general matter, orders granting [or denying] a new trial are examined for abuse of discretion. [Citations.] [¶] But it is also true that any determination underlying any order is scrutinized under the test appropriate to such determination." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 859 (*Aguilar*).

"As a general rule, the 'party desiring relief' bears the burden of proof by a preponderance of the evidence." (*Aguilar, supra*, 25 Cal.4th at p. 861.) The trial court had jurisdiction to make an award compensating for past due spousal support, since there was a delay in resolving the amount of the monthly award. (*In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 166.)

Litigation of the \$298,000 expenditures began during the August 2013 trial session, when Husband's counsel cross-examined Wife's CPA Plante about his conclusions on what community funds were available from 2005 to 2008, in several community bank accounts. Husband's documents request had been served in January 2013. In court on January 13, 2014, Wife testified about the purposes of those expenditures and was cross-examined about them, stating she identified them by her notes on the memo portion of the checks. She supplied further documentation on January 16, when she brought in the suitcase.

Husband strenuously argues that if he had been granted the continuance in May 2014, he could have satisfied his burden of proof on his claims for reimbursement from Wife of those \$298,000 expenditures, by using the new documents to question both Wife and CPA Mehner. The trial court had before it related spousal support issues, including the lack of any interim support order until April 2008. It applied the rule of *Stallworth, supra*, 192 Cal.App.3d 742, providing that in the absence of a support order, a spouse can spend a reasonable amount of community funds for support expenses without incurring a charging order. "The measure of what is reasonable is the amount which the court would have ordered for support during that period." (*Id.* at p. 746.)

On the issue of the validity of the \$298,000 expenditures, the trial court was entitled to determine and did determine that Wife was a credible witness on the subject of the expenditures and how they were made on behalf of the community, even though some of the medical practice checks she wrote were illegible. The court explained that CPA Mehner's attendance would not have made any difference, based on the rule stated in

Stallworth, supra, 192 Cal.App.3d at pages 745 to 746. Because there had not been any support order in place from March 2007 to April 2008, and those expenses were paid out of community funds, Wife was not going to be charged for them. (*Ibid.*)

Unavoidably, the court discussed the \$298,000 expenditure issue as related to the *Watts* issues, with a common underlying issue of back due support, although for different time periods. Although the judgment determined that during the two years between March 2008 and March 2010, Husband owed Wife about \$76,000 in back due spousal and child support, that calculation was essentially limited to the *Watts* issues about whether Wife should be charged for living in the family residence from 2008 to 2010. The court stated several times that it was focusing upon the relevant evidence on the remaining issues in an effort to reach accurate conclusions. Regarding the *Watts* issue, Husband was told he was the prevailing party and need not keep arguing the point.

At the new trial motion, the court asked Husband's new attorney to explain why the ruling on the \$298,000 expenditures was wrong, but did not receive any significant response. Even assuming that Husband could have made a further showing, the arithmetic concerning the \$298,000 expenditures suggests that if any support order had been in place for the period between March 2007 and April 2008, Husband would likely have been paying Wife approximately \$8,000 per month, or about \$72,000 (the amount ordered in April 2008). Assuming that only Husband's half of the \$298,000 expenditures might have been wrongfully expended by Wife, she would have theoretically misspent \$149,000. If some \$72,000 in unpaid support is then factored in, Wife might be liable to Husband for about \$77,000. But she was able to provide testimony about the nature of

the majority of the expenditures, which the court reasonably concluded were properly attributable to the community and not to her personal postseparation needs alone (related to the living situation of the parties and/or their adult children, or expenses of Husband's medical practice).

The point is that Wife had previously been managing the community expenses, continued to do so after the separation, and the court found her accounting to be creditable. Husband has not shown why it was error for the court to make an express finding in the statement of decision that Wife had expended those monies for the parties' joint benefit and/or support and expenses relating to the medical practice, or how CPA Mehner's renewed efforts would have changed that conclusion.

The dissolution issues had been pending for seven years. Husband was the moving party in pursuing the allocation issue, since the filing of his original trial brief in April 2012 and in the "remaining issues" filing in March 2014, but did not carry his burden of proof. We concluded above that he was not unfairly prevented from doing so, through the denial of his requested continuance, in light of all the relevant factors. (Rule 3.1332(d)(10) [whether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance]; rule 3.1332(d)(11) [considerations allowed of any other fact or circumstance relevant to the fair determination of the motion or application]; rule 3.1332(d)(5) [prejudice consideration on whether parties or witnesses will suffer as a result of the continuance].) The nature and extent of Husband's participation during the eighth day of trial did not distort the truth finding process or deprive him of a "true adversary hearing." (See *Olivera v. Grace*

(1942) 19 Cal.2d 570, 577; *People v. Gonzales, supra*, 22 Cal.App.4th 1744, 1757-1758.)

No abuse of discretion has been demonstrated in this respect.

III

DENIAL OF MANAGEMENT AND DISPOSITION FEES

At trial on January 16, 2014, Husband contended he was entitled to compensation for his postseparation efforts on behalf of the community, in participating as seller of the commercial properties that it owned. (*In re Marriage of Duncan* (2001) 90 Cal.App.4th 617, 626 [valuation of a community business or asset can include factor of managing spouse's skill and industry].)

A trial court "is required only to state ultimate rather than evidentiary facts" in its statement of decision. (*People v. Casa Blanca Convalescent Homes, Inc.* (1984) 159 Cal.App.3d 509, 524.) A statement of decision is adequate if it fairly and completely sets forth the factual and legal basis for the court's decision, by listing all the ultimate facts necessary to decide the issues placed in controversy by the pleadings. (*Ibid.*; *Onofrio v. Rice* (1997) 55 Cal.App.4th 413, 424-425.) Here, the statement of decision merely identifies each of the commercial properties and recites that each of the applicable requests for dispositional, management and leasing fees was denied.

In his opening brief, Husband makes only cursory claims that the denial of management and disposition fees was an abuse of discretion or was made without sufficient evidence to support it. In the reply brief, he adds citations to testimony from a real estate witness who was involved in one of the transactions and who testified that Husband was active in the negotiations and could have received a reasonable fee for his

efforts, although he was not a licensed professional in the field. Husband has still not made any significant effort to show how those determinations were in error. He has the task of demonstrating reversible error, through providing an adequate record and citations to it. (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) If an appellant does not provide an adequate record to support a contention of insufficiency of the evidence to support a finding, that contention may be deemed waived. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132.)

Arguably, we could treat these contentions as waived, and determine that the statement of decision meets applicable requirements for identifying the material issues and resolving them. Even examining the evidence further, we conclude the ruling is well supported. At the May 22, 2013 hearing, Husband presented as his witness commercial real estate broker George Economos, who assisted Husband and Wife in purchasing and then Husband in selling several of the commercial properties. He testified that Husband was an extremely hands-on type of client with great attention to detail. During his testimony, Husband presented Exhibit 59, his declarations of disclosure, and Exhibit 63, approximately 95 pages of e-mails between Husband, Economos and others, showing the negotiations for the deals, including a suggestion from an associated counsel for the seller's LLC that disposition fees should be handled in escrow without concerning the buyer. The transcript of the January 16, 2014 proceedings includes at least 30 pages of argument and discussion about the claims for management and dispositional fees. Three

of the commercial properties had professional managers as provided for in the operating agreements for the associated limited liability corporations.

When the trial court orally ruled on this issue on January 16, 2014, denying Husband's request for an award of management and dispositional fees, it noted that the evidence was conflicting on whether a layperson owner was entitled to such fees in the real estate context. Husband had not shown a separate contractual entitlement to that type of fee. The court referred to expert testimony that had been presented which showed that allowing dispositional fees to a layperson client was not a routine practice in such transactions. The court declined to make a finding that Husband's efforts had unjustly enriched Wife or somehow increased the value of the assets. Impliedly, the court found that his personal efforts had not been of such a nature as to exceed those that would ordinarily or reasonably be required during the process of disposing of community assets.

On May 21, 2014, the trial court noted that the management and dispositional fee request had already been resolved in January 2014 (denied) and was no longer before the court. The continuance arguments did not add more evidence on the subject. The record supports the denial of Husband's request for such compensation.

IV

BASIS OF PROFESSIONAL FEES AWARDS

Husband contends that the award of professional fees to Wife is inadequately supported by the record, either on the basis of a showing of her need for such an award, or as sanctions. He claims prejudice from an inability to determine, from the statement of decision, what was the true ruling of the court on fees.

A. Background

In awarding Wife attorney fees of \$115,000 and \$20,000 accountant fees, the trial court considered several statutory bases for her request. Attorney fees as sanctions awardable under section 271, subdivision (a) may be based on findings "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." Under section 271, subdivision (a), the party requesting such a sanction need not demonstrate any financial need for the award. Husband's own request for such sanctions was denied.

As to Wife's request, section 270 required the court, in ordering a party to pay such dissolution related attorney fees or costs, first to determine that the party has or is reasonably likely to have the ability to pay. An alternate basis for an award of attorney fees and costs under section 2030, subdivision (a)(1) requires a finding on a need for access to legal representation, based on the receiving party's income and needs assessment. The court must take into account "whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties," among other things. (§ 2030, subd. (a)(2).) The litigation conduct of the parties can properly be taken into account under these related provisions, sections 2030 and 2032. (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1167.)

On the issue of any need of Wife for such an award, Husband simply contends that in light of the division of community assets that had amounted to millions of dollars, she should have borne her own professional fees. The award and judgment must be read in

context, which includes related findings on support and on the *Watts* issue. For the period of March 2008 through March 2010, the court determined that Husband should have paid an additional \$76,921 in spousal support, and it offset that amount from the charge to Wife for occupying the residence at that time. In ruling on the professional fees requests, the court appropriately took into account the back due support entitlements, as well as the litigation conduct of the parties. Another factor stated as justifying the award to Wife was the disparity in access to funds, since at separation, she had become an outsider to the community assets.

Husband contends his offer of proof at the May 21, 2014 hearing amounted to a persuasive showing that Wife and her attorney failed to cooperate in property disposition matters and should not be entitled to these awards. In his opinion, her professionals did not actually provide valuable services, and the trial court should have resolved a disputed issue of the liability of Wife to pay CPA Mehner's fees. (As previously noted, however, Husband has not carried his burden on appeal to show prejudicial error about the lack of finding on which party was responsible for Mehner's remaining fees entitlement.)

The fees award in the judgment includes findings that in light of the necessary skill involved, the extremely contentious nature of the case and the prolonged litigation, the court had good cause to award against Husband fees and costs. In rendering its ruling, the court took note that about \$1.2 million in attorney fees had been incurred over the course of the case, and that in its opinion, it should instead have been about a \$20,000 case. Based on the retired judge's experience of what such a dissolution case would normally require, he believed the actual identified issues should not have warranted such

a high expenditure. For various reasons, the court had reduced the awards made to somewhat less than half of the amounts Wife had requested (e.g., CPA Plante's testimony did not hold up well under Husband's attorney's cross-examination). These were not inappropriate considerations: "[T]he trial court may employ its own experience in fixing the amount of the award." (*In re Marriage of Dick, supra*, 15 Cal.App.4th 144, 167.)

Later, at the new trial hearing, the court clarified that its intention was to award fees under sections 2030 and 270, as it had evaluated Husband's litigation conduct as falling short of sanctionable actions.

B. Basis of Award

Notwithstanding the court's later oral explanation of its reasoning to justify the award to Wife, the statement of decision includes all three statutory bases for the award of fees against Husband, by referencing both section 271 (sanctions), and also the need-based sections (§§ 270, 2030, subd. (a)(1).) Evidently, the trial court intended that the award was not imposed as a sanction but rather, was need-based and related to Husband's litigation conduct. Husband thus argues the statement of decision and judgment are prejudicially erroneous and should have been corrected or modified, or doing so on appeal is appropriate, to show the appropriate reasoning and findings.

A trial court has broad discretion to make an appropriate award of attorney fees and costs during dissolution proceedings. (*In re Marriage of Dick, supra*, 15 Cal.App.4th 144, 167.) The court considers factors such as the nature and complexity of the litigation, the amounts involved and the financial circumstances of the parties, as well as the attorneys' skills and reputations. (*Ibid.*) Section 2030, subdivision (a)(1) allows the court

to evaluate what amount is "reasonably necessary" for attorney fees and costs, as appropriate and based on the income and needs assessments of the parties.

The findings in the statement of decision set forth the factual and legal basis for the court's decision on the professional fees issues. (*People v. Casa Blanca Convalescent Homes, Inc.*, *supra*, 159 Cal.App.3d 509, 524; *Onofrio v. Rice*, *supra*, 55 Cal.App.4th 413, 424-425.) To the extent the statement of decision is arguably defective, an alternative standard of review may control if the judgment is otherwise supported. (See *Kemp Bros. Construction, Inc. v. Titan Electric Corp.* (2007) 146 Cal.App.4th 1474, 1477 [even where trial court states incorrect reason for decision, it may be upheld if sufficient under an alternative method of review].)

Here, the statutory basis for the award as set forth in the statement of decision and judgment (including all three citations) differs from the reasoning expressed in the reporter's transcript of the new trial motion (no sanctions imposed against Husband). When the record is in conflict and cannot be harmonized, " 'that part of the record will prevail, which, because of its origin and nature or otherwise, is entitled to greater credence.' " (*People v. Smith* (1983) 33 Cal.3d 596, 599; see *People v. Cleveland* (2004) 32 Cal.4th 704, 768.) The record as a whole and the reporter's transcript provide a sufficient basis for upholding the ruling on the basis of need and litigation conduct under sections 270 and 2030. With this background, the extraneous statutory citation to section 271 in the statement of decision is of no effect. (See *Cleveland*, *supra*, at p. 768.) The awards are otherwise well supported in the record and there was no abuse of discretion or showing of prejudicial error in this respect.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to Respondent.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

IRION, J.