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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

SKYLA GRACE KARRAKER,

Plaintiff and Appellant,

v.

MARTIN M. HERNANDEZ, JR.,

Defendant and Respondent.

F070220

(Super. Ct. No. S-1501-PT-30020)

OPINION

APPEAL from a judgment of the Superior Court of Kern County. James L. Compton, Commissioner.

Law Offices of Michael R. Kilpatrick and Michael R. Kilpatrick for Plaintiff and Appellant.

The Law Offices of Edward J. Quirk, Jr., and Edward J. Quirk, Jr., for Defendant and Respondent.

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A mother appeals an award of child support for two daughters and an award of attorney fees, contending each was set too low. The trial court ordered monthly support of \$7,520 for the 11-year-old and \$5,000 for the four-year-old. The aggregate amount of

the child support was below the presumptively correct child support calculated under the statewide uniform guideline set forth in Family Code sections 4050 through 4076.¹ The departure from guideline support was based on the trial court's findings relating to the needs of the children and the father's extraordinarily high income.

We conclude the mother has not demonstrated the trial court abused its discretion in ordering aggregate child support below the guideline amount. First, the court's express findings relating to the father's station in life were supported by substantial evidence. Second, the discretionary determination that the father's annual income of over \$2 million was extraordinarily high was not contrary to established legal principles or unreasonable under the circumstances. Third, the trial court's explicit findings regarding the aggregate needs of the children and implied findings regarding their best interests were supported by substantial evidence. Fourth, the trial court's allocation of *above* guideline support to the older daughter was not supported by the statutorily required findings about her needs, but the aggregate award was supported by the court's findings about the children's needs. As a result, we will reallocate the total support ordered between the two daughters based on the formula provided in section 4055. Fifth, the trial court did not commit factual error in finding that the father's income had remained constant at over \$2 million per year and in finding he held no income producing property.

As to the award of attorney fees, the court's findings about the amount of fees incurred and requested by the mother are not supported by substantial evidence and, therefore, the matter of fees is remanded for further consideration.

We therefore modify the judgment as to child support and reverse and remand the judgment as to attorney fees.

¹ All unlabeled statutory references are to the Family Code.

FACTS

The Parties & Children

Appellant Skyla Grace Karraker (Mother) and respondent Martin M. Hernandez, Jr. (Father) began a relationship in 2000, having met in a bar where she worked and he was a frequent patron. They were married in December 2000. The marriage was dissolved by judgment of nullity in August 2004, apparently because Mother was still married to Richard Karraker at the time. Mother had misinformed Father about the status of her prior marriage.

Mother and Father have two minor daughters (the daughters). The eldest daughter was born in 2002 (D02) and the youngest was born in 2008 (D08). At the beginning of the August 2013 hearing, Mother testified that D02 was attending a public elementary school, would enter the sixth grade in a few days, and was doing well in school with a 3.82 to 4.0 grade point average. She also testified that D08 would be starting preschool in the coming week, was a normal, happy child, and healthy (except for having acid reflux that limits the things she can eat).

Mother maintains a household in Bakersfield where the daughters and two other children live. The oldest of the other children is about a year older than D02, is the daughter of Father from another relationship, and is the ward of Mother as the result of a guardianship proceeding. (D01) Father pays Mother \$5,000 per month as child support for this child. Father pays a total of \$17,520 to Mother per month (about \$210,000 annually) as support for his three daughters.² (D01 \$5,000; D02 \$7,520; D08 \$5,000)

The other child in the household is the daughter of Mother and Richard Karraker; she is about four years younger than D02 and two years older than D08. Mother receives \$650 per month for this child plus clothing and other items purchased by the father.

² Father has four other children.

Father

Father was born in 1965 and did not complete high school. He does not hold a job. Father is an enrolled member of the San Manuel Band of Mission Indians and receives distributions based on its profits from a gaming casino. Father has received yearly distributions of \$2,825,000 (2007), \$2,485,000 (2008), \$2,277,736 (2010), \$2,187,736 (2011), and \$2,049,257 (2012). His 2012 annual income was the equivalent of \$170,771 per month.

During 2008, Father usually received monthly checks in the gross amount of \$100,000, from which \$40,000 was withheld for federal taxes and \$15,020 was withheld for child support. In addition, three times a year he received lump sum distributions that varied in amount. Father paid federal income tax for the 2008 and 2010 tax years in the amounts of \$840,813 and \$676,904, respectively.

Father testified that he shops for his clothing at Kohl's and had never owned a suit. He has been on an airplane four times, taking two round trip flights to Las Vegas. Other than trips to Las Vegas, he have not been outside California during the last 20 years.

Most of Mother's evidence about Father's lavish spending and lifestyle dates back to their marriage. This opinion does not go into the details of his spending habits because profligate spending is the only reasonable inference to be drawn from the evidence—namely, that over the past dozen years Father's gross income was about \$25 million and he has relatively few assets to show for it.

Father's Real Estate

Father lives in a game room above a six-car garage on a lot he owns on the Indian reservation in Highland, California. The lot is adjacent to a lot owned by his sister and both lots have the same street address.

Father also owns houses in Yucaipa and Las Vegas. The house in Yucaipa is approximately 5,800 square feet and is located on an acre and a half lot. The Las Vegas house is in a gated community and was purchased for approximately \$500,000. The trial

court found that he “has no real property with net value,” meaning the loans secured by the properties exceed the value of the properties. Father’s 2010 federal tax return shows itemized deductions for (1) real estate taxes paid for the Yucaipa and Las Vegas properties and no others and (2) mortgage interest paid in the amount of \$33,073.

Father once owned a house in San Diego that he bought for \$510,000 and sold to his brother for the same amount in 2009 or 2010. His brother is paying for the property over time at his convenience rather than with set periodic payments.

Vehicles

Father owns (1) a 2006 Rolls Royce Phantom coupe, (2) a 2009 Rolls Royce Phantom coupe,³ (3) a 1999 Mercedes S500 with a seized engine, and (4) a customized Suburban with engine problems. Other vehicles that he once owned include a 2006 Bentley, a Cadillac Escalade, a 1999 Porsche Carrera, an Acura NSX, a Dodge Magnum, a Ford F-650 pickup, a Ford Excursion with lift kit, a Mitsubishi Spyder, a 2009 Camaro and a BMW 650. He gave the Bentley to his sister for her 21st birthday.

State Tax Battle

Father is involved in a dispute with the State of California over state income taxes. Father’s position is that he does not owe state income tax for the years he lived on the reservation. He testified that there has been some confusion related to identity because he has the same name as his father and his son, who live off the reservation. In 2009, the Franchise Tax Board claimed he owed over \$700,000 in taxes, levied his bank accounts, and took all his funds. In August 2013, Father testified the Franchise Tax Board was claiming he owed over a million dollars and, in connection with this dispute, his California driver’s license had been taken away recently. To pay part of the tax bill, Father borrowed as much money against future distributions as the tribe would allow

³ He traded in his Lamborghini when he bought the second Rolls Royce.

(i.e., \$500,000). That loan is being repaid by deductions from Father's monthly distribution check.

Mother

In May 2013, Mother was 39 years old, had been working part time for about one year as a licensed realtor, and was paid on a commission basis. Her May 2013 income and expense declaration estimated her average monthly income at \$1,106 and indicated she had been paid \$4,426 the prior month. By the time of the August 2013 hearing, Mother had sold three houses in 2013, earning commissions of approximately \$15,000. The trial court found Mother earned an average of \$1,250 per month for the last eight months of 2012 and an average of \$2,000 per month for the first seven and a half months of 2013. The court also found she had no income producing assets and no rental income.

Mother maintained a four bedroom, two and three-quarter bathroom house for herself and the four children. Mother estimated the house was worth about \$400,000, which was a little less than was owed on it. Mother testified she would like to move into a larger home so that each child could have her own bedroom, along with a separate playroom and computer room for study. Mother's vehicle is a 2007 Cadillac Escalade.

Mother argued guideline support would improve the children's lives by allowing them to live in a larger home, attend private schools, travel on vacations, have private tutors instead of commuting to the Sylvan Center, eat organic food, wear more upscale clothing, and start participating in educational programs and activities.

PROCEEDINGS

In October 2005, the Orange County Superior Court filed a judgment on reserved issues that (1) awarded joint legal custody of their first daughter (02), (2) specified the details of physical custody and visitation, (3) ordered both parents not to drink while having custody of their daughter, (4) ordered both parents to attend 12-step programs, (5) ordered Father to continue to participate with his therapist for an additional six months,

and (6) ordered Father to pay \$7,520 per month of child support and provide their daughter with medical insurance.⁴

In May 2009, Mother filed a petition in Kern County Superior Court to establish paternity of D08, who was born in December 2008. As part of that case, Mother also filed an order to show cause regarding child support and attorney fees.

In a supplemental declaration filed in June 2009, Mother set forth a list of monthly expenditures totaling \$43,278.49 she believed would be necessary to live a lifestyle similar to Father's. The items listed included \$5,200 for a live-in nanny; about \$9,000 as a mortgage payment on a larger house; approximately \$3,000 for a Mercedes S600; \$4,200 for private school; \$3,250 for tutoring; and \$6,000 for entertainment and vacations. After illustrating the amount of money required to live a lifestyle similar to Father's, Mother requested guideline support.

In July 2009, the trial court entered findings and an order addressing custody and visitation of the second daughter (D08) and directing Father to pay (1) interim child support of \$5,000 per month for the second daughter and (2) \$10,000 in attorney fees to the law firm representing Mother. The court also ordered unsupervised two-hour visitation sessions for Father on Mondays, Wednesdays and Fridays. Two weeks later, Mother filed a request for a temporary restraining order. The allegations underlying this request relate directly to the issues of custody and visitation, but are peripheral to the issues presented in this appeal relating to child support and attorney fees.

On September 9, 2009, the trial court ordered an Evidence Code section 730 evaluation to be conducted by Robert M. Bernstein, Ph.D. Father was directed to advance the cost, subject to possible reallocation at the next hearing.

⁴ The court found that Father had two DUI's, one of which was in 2004, and had two assaults that were remote in time. The court also found that he had successfully completed a 52-week anger management course. The court stated its belief Father "has been physically violent in the past with [Mother]."

On September 18, 2009, the trial court addressed Mother's request for attorney fees by finding (1) Mother did not have the financial ability to litigate the matter and (2) Father had the ability to assist with her attorney fees. The court ordered Father to pay Mother's law firm \$7,500 in fees, stating the order was without prejudice to future motions for attorney fees.

In December 2009, the Orange County case relating to D02 was transferred to Kern County Superior Court and consolidated with the paternity and child support case relating to the younger daughter, D08.

In September 2012, Mother filed a request for an order modifying child support. She requested guideline child support for both daughters, D02 and D08, arguing that "it is essential that the children receive guideline child support in order to enjoy a lifestyle that is comparable to that of their biological father." She also requested \$62,500 toward her attorney fees and costs.

On November 6, 2012, Father filed a motion to exclude the report of the court-appointed expert, Dr. Bernstein. After the December 2012 hearing on the motion, the trial court found the purpose of Dr. Bernstein's evaluation was a comprehensive family evaluation and denied the motion to exclude his report. The following April, the court stated that, over the objection of Father, the report would be considered for purposes of child custody and visitation.⁵

In May 2013, the trial court held a hearing on the pending issues and subsequently filed an order directing the parties to attend counseling with Charree Kashwer, Ph.D., for reunification relating to the relationship between Father and the two daughters. The court

⁵ The report stated there was insufficient information to ascertain the validity of the allegation that Father mistreated his children, but did not exonerate him. The report also stated that the personality profile of Father supported a portrayal of him as showing poor judgment, impulsivity, impatience, and being at risk for outbursts of anger. The report noted that Father's history of irresponsible behavior placed him at risk of false allegations about his conduct.

also ordered the psychological evaluation report of Dr. Bernstein be provided to Dr. Kashwer and directed Father to pay \$20,000 in attorney fees to the law firm representing Mother.

In August 2013, a further hearing on the issues of custody, visitation and child support was held. On the first day of that hearing (August 12, 2013), the parties expressed a willingness to enter a stipulation relating to visitation based on Dr. Kashwer's views. The next day, the parties had worked out the details and stipulated that (1) D02 had suffered a traumatic event that necessitated and continued to necessitate a change in the existing custody order, (2) Father believed the event was caused by parental alienation and other inappropriate actions by Mother, (3) Mother believed that the traumatic event was a result of abuse at the hands of Father, (4) each party denied the other's allegations, (5) during the next six months, Father would have therapeutic sessions and visitation with the children at the frequency recommended by Dr. Kashwer, and (6) Mother would make the children available for all the visitation recommended by Dr. Kashwer. As a result of this stipulation, the remainder of the hearing addressed child support and attorney fees.

In January 2014, the trial court issued its ruling on child support and attorney fees. The court found Father was an extraordinarily high wage earner and found it appropriate to deviate from guideline child support, which would have been about \$20,000 per month for both daughters and well above the children's needs. The court set monthly child support at \$5,000 per daughter and subsequently corrected that amount to \$5,000 for D08 and \$7,520 for D02.

In April 2014, after further submissions by the parties, the trial court issued a minute order setting forth its findings as to child support and attorney fees. For the period after December 1, 2013, the court found guideline child support was \$7,481 for D02 and \$12,472 for D08. These amounts equal \$19,953 per month. The court ordered monthly child support of \$7,520 for D02, which was \$39 *above* guideline support. In

contrast, the court ordered monthly child support of \$5,000 for the younger daughter, which was \$7,472 *below* guideline support. The court did not provide reasons for treating the two girls differently. The aggregate of child support ordered for the two girls was \$12,520 per month, or approximately 62.75% of the guideline support. The court found that this monthly amount “will adequately ensure that the children’s needs will be provided for.” The court also stated, “The current orders for child support have been in place for some time and [Mother] failed to show that the children’s needs are not being met in even the slightest way.”

As to attorney fees, the court found that Mother had incurred \$69,423.21 in fees through the date of the hearing and ordered Father to pay an additional \$15,000 as a fair amount.

On July 30, 2014, the trial court signed a judgment that incorporated its determinations regarding the paternity of D08, custody, visitation, child support, and attorney fees. The judgment also provided for therapeutic sessions with Dr. Kashwer and gave Father the right to request a modification of this visitation with the children if he followed the direction of Dr. Kashwer and attended all recommended sessions.

Mother filed a timely appeal from the judgment.

DISCUSSION

I. CHILD SUPPORT

A. Basic Principles

1. Statewide Child Support Guideline

Child support awards in California are governed by the legislation that established a statewide uniform child support guideline. (See §§ 4050-4076.) The child support guideline is a mathematical formula set forth in section 4055 and the amount generated by the formula is presumptively correct. (§§ 4053, subd. (k), 4057, subd. (a).) The presumption can be rebutted with evidence of the factors set forth in section 4057,

subdivision (b). Also, any determination that the presumptively correct guideline amount is unjust or inappropriate must be consistent with the principles set forth in section 4053. (§ 4057, subd. (b).)

2. *Principles Underlying the Guideline Amount*

The principles from section 4053 that courts must observe when implementing the child support guideline include the following: “The guideline seeks to place the interests of children as the state’s top priority.” (§ 4053, subd. (e).) “A parent’s first and principal obligation is to support his or her minor children according to the parent’s circumstances and station in life.” (§ 4053, subd. (a).) “Each parent should pay for the support of the children according to his or her ability.” (§ 4053, subd. (d).) “Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children.” (§ 4053, subd. (f).)

3. *Factors Relevant to Departing from the Guideline Amount*

Subdivision (b) of section 4057 contains five factors that might establish the “application of the formula would be unjust or inappropriate in the particular case.” For instance, a downward adjustment of the guideline amount is warranted where “[t]he parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children.” (§ 4057, subd. (b)(3).) Also, subdivision (b)(5) for section 4057 sets forth a nonexclusive list of “special circumstances” that render the application of the formula unjust or inappropriate.

B. Standard of Review

Child support awards are reviewed for an abuse of discretion. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 282 (*Cheriton*).) In conducting this review, appellate courts determine whether the trial court’s factual findings are supported by substantial evidence and whether the trial court reasonably exercised its discretion—that

is, whether any judge reasonably could have made such an order. (*In re Marriage of Alter* (2009) 171 Cal.App.4th 718, 730-731 (*Alter*).

The concept of a reasonable exercise of discretion means that trial courts must follow established legal principles. (*Alter, supra*, 171 Cal.App.4th at p. 731.) In the context of child support awards, which are highly regulated by the statewide uniform guideline, the only discretion trial courts possess is the discretion provided by statute or rule. (*In re Marriage of Smith* (2001) 90 Cal.App.4th 74, 80-81 (*Smith*).

For purposes of this opinion, we note three statutory restrictions on the trial court's discretion to determine the amount of child support. First, trial courts have the discretion to depart from guideline amount only upon finding one or more of the statutorily enumerated factors exist. (*Smith, supra*, 90 Cal.App.4th at p. 81; see § 4057, subd. (b) [factors].) Second, the trial court must state, in writing or on the record, the reasons the amount awarded differs from the guideline amount. (§ 4056, subd. (a)(2).) Third, any departure from the guideline amount “must be consistent with the principles in section 4053, which designates interests of the children as a top priority and provides that parents should support their children at a level commensurate with their ability.” (*In re Marriage of de Guigne* (2002) 97 Cal.App.4th 1353, 1361; see pt. I.A.3, *ante*.)

C. Station in Life

Any award of below guideline child support must be consistent with the principles set forth in section 4053. (§ 4057, subd. (b).) Under subdivision (a) of section 4053, the “first and principal obligation” of a parent “is to support his or her minor children according to the parent’s circumstances and *station in life*.” (Italics added.)

Mother contends the trial court erred in finding Father had a low station in life. She also contends “[t]here was no substantial evidence of a low station in life for Father.”

The trial court did not expressly find Father's station in life was "low." Instead, the court's April 30, 2014, minute order states:

“[Father's] station in life is that in spite of making in excess of \$2,000,000 per year he has no real property with net value, he has not been a good manager of his income and may owe the State of California as much as \$1,000,000 in back taxes (that is being challenged). He owns vehicles which have depreciating value, he has two Rolls Royce and a Suburban, these vehicles appear to have a substantial value. He is responsible for a \$500,000 loan from the tribe which is repaid through his casino payments.”

We first conclude that Mother's statement that the court found Father's station in life was "low" does not accurately describe the trial court's findings as to station of life. The court's findings are quoted above and speak for themselves.

We also conclude that the findings, insofar as they go, are supported by substantial evidence, which includes Father's testimony about his real estate, his vehicles and numerous transactions, his tax dispute and his tribal loan. Therefore, we conclude the trial court did not abuse its discretion in connection with the findings related to Father's station in life.

D. Extraordinarily High Income

Subdivision (b) of section 4057 states the presumption that guideline support is correct is a rebuttable presumption affecting the burden of proof. It may be rebutted by evidence showing guideline support would be "unjust or inappropriate in the particular case, consistent with the principles set forth in Section 4053," because of one or more of the factors listed in the statute. (§ 4057, subd. (b).) One such factor is that the parent paying child support "has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children." (§ 4057, subd. (b)(3).)

Under subdivision (b)(3) of section 4057, Father has the burden of proving that (1) he has an "extraordinarily high income" *and* (2) guideline support "would exceed the needs of the children."

1. *Theory of Error*

Mother contends the trial court erred in finding Father had an “extraordinarily high income” for purposes of section 4057, subdivision (b)(3). She argues that the determination must be made by comparing Father’s income with the income of others in his primary community—that is, his Indian tribe whose members receive equal monthly payments of the profits generated by the tribe’s casino. In her reply brief, Mother also argues that this court should give no deference to the trial court’s determination and independently decide the issue.

2. *Applicable Legal Principles*

The term “extraordinarily high income” is not defined by a statutory figure that sets a particular dollar amount as the threshold. Also, the statute does not list criteria, such as the relevant geographical area, to be weighed in determining whether a parent’s income is extraordinarily high. The absence of a statutory definition or criteria leads to the conclusion that the Legislature committed the application of that term to the discretion of the trial court. (*Cheriton, supra*, 92 Cal.App.4th at p. 297.)

Although the statute does not provide criteria, it links the concept of an “extraordinarily high income” with “the needs of the children.” (§ 4057, subd. (b)(3).) As a result of this link, some courts have partially conflated the two elements, stating: “Because the definition of extraordinarily high income is tied to the children’s needs in each instance, the evidentiary focus must be on the children’s needs and not the absolute amount of the parent’s income. [Citation.]” (*Cheriton, supra*, 92 Cal.App.4th at p. 297.) In any event, the statutory link between the parent’s income and the children’s needs does not negate the principle that the determination whether a parent’s income is extraordinarily high is committed to the discretion of the trial court. (*Ibid.*)

As to the proper geographical basis for analyzing whether a parent’s income is extraordinarily high, one could infer from the statutory references to the “statewide

uniform guideline” (§§ 4050, 4053, subd. (a)) that the supporting parent’s income should be compared to income levels throughout the state. This statutory construction has not been adopted. Rather, “[w]hat constitutes extraordinarily high income also may vary from one geographical area of the state to another.” (*Cheriton, supra*, 92 Cal.App.4th at p. 297.)

3. *Application of Principles to the Facts Presented*

Our inquiry into Mother’s theory of error addresses four issues. As to the standard of review, we (1) reject Mother’s argument that we should independently decide whether Father had an extraordinarily high income and (2) follow the precedent that applies the abuse of discretion standard to the trial court’s determination. (*Cheriton, supra*, 92 Cal.App.4th at p. 297.)

The next three issues relate to whether the trial court abused its discretion. First, we consider whether the trial court followed applicable legal principles. (*Alter, supra*, 171 Cal.App.4th at p. 731.) Second, we consider whether the trial court reasonably exercised the discretion given to it by applicable legal principles. (*Ibid.*) Third, we address whether the trial court’s findings of fact are supported by substantial evidence. (*Ibid.*)

Mother’s argument that Father’s income must be compared to his primary community—that is, the other members of his tribe who also receive distributions of casino profits—does not refer to any legal principle that requires the trial court to identify a “primary community” and use that community in determining whether Father’s income is extraordinarily high. Therefore, Mother has not shown the trial court failed to follow an applicable legal principle when it analyzed income at the county level. (See *Alter, supra*, 171 Cal.App.4th at p. 731 [failure to follow established legal principles is an abuse of discretion].)

Next, the trial court reasonably exercised its discretion when it chose Kern County as the geographical basis for comparing incomes. Kern County is where the children reside and the court's use of their county of residence is reasonable because it bears a logical connection to the expenses associated with the children's needs. Therefore, Mother has not shown the trial court acted unreasonably in its choice of the geographical area used in the comparison.⁶

As to evidentiary support, the trial court's finding is supported by substantial evidence in the form of an exhibit containing information about family incomes in Kern County prepared by the U.S. Census Bureau. That exhibit stated that approximately 2.5 percent of total households in Kern County had *annual* incomes of \$200,000 or more in 2009. Because Father's annual income was approximately 10 times greater than this threshold, the court's finding that it was extraordinarily high is supported by the evidence presented.

In summary, we conclude Mother has failed to demonstrate the trial court abused its discretion in finding Father had an extraordinarily high income.

E. Needs of the Children—Financial Future

1. *Contentions of the Parties*

Mother contends the trial court erred by measuring the children's reasonable needs by their historical expenses. More specifically, Mother contends the court erred in refusing to consider child support for savings to be used for the children's education and should have awarded guideline child support to help secure the children's financial future, including higher education.

⁶ Furthermore, the trial court stated its finding that an income of over \$170,000 per month was extraordinarily high would have been the same using Orange or San Bernardino Counties as standards. Consequently, the choice of Kern County was not essential to the ultimate finding that Father's income of over \$2 million annually was extraordinarily high.

In response, Father contends a court's jurisdiction to make child support orders is limited to the conditions and circumstances existing at the time of the order and cannot anticipate what might happen in the future and provide for future contingencies. (*Cheriton, supra*, 92 Cal.App.4th at p. 298, citing *Primm v. Primm* (1956) 46 Cal.2d 690, 694.) Father also contends he has no responsibility to support his adult children because the statutory duty to support an able-bodied child usually terminates when the child completes the 12th grade or reaches age 19. (§ 3901, subd. (a).)

2. *Legal Principles Relating to Financial Future*

Mother's argument that the relevant needs of the children include the security of their financial future and savings for higher education is based on footnote 8 of *In re Marriage of Kerr* (1999) 77 Cal.App.4th 87, 97 (*Kerr*), which states in full:

“We note the children are entitled to share in their father's higher standard of living, permitting an award of additional child support from [his stock] option income. *Their needs will necessarily include the continued security of their financial future.*”⁷ (Italics added.)

Mother argues that the present case “is an opportunity for the appellate court to settle whether the needs of children necessarily include the continued security of their financial future”

In *Kerr*, a substantial portion of the father's income came from yearly stock options provided by his employer, Qualcomm. (*Kerr, supra*, 77 Cal.App.4th at p. 91.) The trial court found the amount of guideline child support, without the option income, was insufficient to meet the family's former standard of living and awarded monthly child support of \$2,806 plus 15 percent of the income the father would realize from the exercise of his Qualcomm stock options. (*Id.* at p. 97.) The appellate court stated that the percentage of option income represented an extremely high dollar amount because of

⁷ The footnote cited no authority for the proposition that the children's needs necessarily included the continued security of their financial future.

the enormous increase in the price of Qualcomm stock. (*Ibid.*) Consequently, the court reversed the part of the child support order providing for a percentage of the option income, stating that such an award was inappropriate without a finding that the amount would not exceed the children's needs. (*Ibid.*) As guidance for remand, the court stated that "a percentage award based on the realized income from the exercise of stock options would be permissible, as long as the court sets a maximum amount that would not exceed the children's needs." (*Ibid.*)

The first thing we note about the statement in footnote 8 of *Kerr* that the children's "needs will necessarily include the continued security of their financial future" (*Kerr, supra*, 77 Cal.App.4th at p. 97, fn. 8) is that there is no explicit statement about the relevant timeframe for that future. Consequently, the statement is ambiguous because the court might have intended to refer only to the time the children remained minors. Alternatively, the court might have intended to refer to their entire futures—that is, until they died.

We conclude the footnote in *Kerr* should be interpreted so that it is consistent with the statutory scheme governing child support and precedent of the California Supreme Court. Accordingly, we conclude the court meant the security of the financial future of the children until they reached 19 years of age or completed the 12th grade. (§ 3901.) This narrow interpretation of the footnote is compatible with the California Supreme Court's statement that a trial court's "jurisdiction to make [child support] orders is limited to the conditions and circumstances existing at the time they are made, and the court cannot then anticipate what may possibly thereafter happen and provide for future contingencies." (*Primm v. Primm, supra*, 46 Cal.2d at p. 694.) This statement remains accurate under the present statutory scheme and has been relied upon by courts applying the statewide uniform child support guideline. (See *Cheriton, supra*, 92 Cal.App.4th at p. 298 ["insofar as it attempts to provide for future contingencies, the court's order is in excess of its jurisdiction"]; *In re Marriage of Chandler* (1997) 60 Cal.App.4th 124, 130

[father's gross monthly income of \$117,000 was an extraordinarily high income; error to order him to pay more than half of guideline support into a trust to cover daughter's unidentified future needs or provide for her when she became an adult].)

Based on the foregoing, we conclude the relevant "needs of the children" for purposes of subdivision (b)(3) of section 4057 do not include saving for the children's future education. Furthermore, assuming that the security of the children's financial future until they complete 12th grade is a relevant need, the particular facts of this case did not compel the trial court to find that the period while they remained minors was financially insecure. The evidence shows, and the trial court found, that Father (who had been receiving over \$2 million a year for over a decade and had no savings or real estate equity) had not been a good manager of his money. However, his ineffective management of his cash flow does not support an inference that his children's future is financially insecure for the period of their minority. Rather, the evidence presented shows the source of his income—namely, the casino distributions—has been relatively stable. Also, there was no showing of insecurity based on the possibility that Father might lose his status as an enrolled member in the San Manuel Band of Mission Indians. Therefore, it is unlikely the distributions from the casino will decrease to such an extent that Father could no longer pay child support during his children's minority. Had the source of Father's income been in peril, the analysis of the children's financial security during their minority might have been different.

In summary, Mother's argument about securing the financial future of the children, including their higher education, does not demonstrate that the trial court failed to follow an applicable legal principle or acted unreasonably in evaluating the needs of the children.

F. Needs of the Children—Division between the Children

1. *Contentions of the Parties*

Mother contends the trial court erred in its allocation of child support between the two children. The court allocated \$7,520 in monthly support to the older daughter (D02) and \$5,000 to the younger daughter (D08). Mother contends the awards were inverted because (1) the younger child should receive support for one child and (2) the amount allocated to the older child should equal the aggregate award minus the amount allocated to the younger child. (See § 4055, subd. (b)(8).)

Father contends that the court used the formula for guideline support, “then diverged from the guideline formula pursuant to Family Code §4057(b)(3). The court could not arbitrarily distribute more support to the younger child because the court is to base support on the ‘needs of the children.’ (Family Code §4057(b)(3).)”

2. *Legal Principles*

The formula for guideline support is set forth in section 4055. The allocation of support among multiple children is addressed by subdivision (b)(8) of section 4055 as follows:

“Unless the court orders otherwise, the order for child support shall allocate the support amount so that the amount of support for the youngest child is the amount of support for one child, and the amount for the next youngest child is the difference between that amount and the amount for two children, with similar allocations for additional children.”

3. *Analysis of Allocation*

First, the trial court did not allocate the amount of support ordered using the statutory method. The court, however, “order[ed] otherwise” and thus literally complied with the terms of section 4055, subdivision (b)(8).

Second, under the abuse of discretion standard, we consider whether the trial court failed to follow any other established legal principles when it allocated the support ordered between the two daughters. There is an obvious failure because the court

allocated \$7,520 of monthly support to D02, which was \$39 *above* the guideline support for her, and allocated \$5,000 of monthly support to D08, which was \$7,472 *below* guideline support. This allocation is not supported by findings that the needs of the older daughter made it appropriate to award above guideline support for her. (§ 4056, subd. (a)(3).) Thus, the trial court did not comply with applicable statutory requirements when it allocated the support awarded between the daughters.

The next step of the analysis is to determine the appropriate remedy for this error. Specifically, can the misallocation be cured by this court modifying the judgment or, alternatively, should the matter be remanded for further proceedings?

Based on the record before us, the only reasonable inference to be drawn from the trial court's support order is that the court determined the total amount of support based on the needs of both children and not individually. For instance, the order refers to the "needs of the children" and not the needs of D02 and the needs of D08 separately. Also, aside from the younger daughter's acid reflux condition, the evidence did not establish needs that were significantly different than would be expected for children of their ages. Consequently, there are no findings and no evidence that justifies deviation from the allocation contemplated by section 4055, subdivision (b)(8).

Accordingly, we will modify the judgment as to child support by reallocating the amount ordered between the two daughters using the formula in section 4055. Pursuant to the formula, the total child support for two children is a multiple of 1.6 over the support that would have been ordered for a single child. (§ 4055, subd. (b)(4).) Of this multiplier, 1.0 relates to the younger child and 0.6 relates to the older child. As a percentage, 1.0 is 62.5 percent of 1.6 and 0.6 is 37.5 percent of 1.6. Therefore, we will allocate the aggregate award of \$12,520 between the two children using these two percentages—that is, 62.5 percent of the support ordered should be allocated to the younger daughter, D08 and the remaining 37.5 percent to the older daughter. Applying these percentages, \$7,825 is be allocated to D08 and \$4,695 is allocated to D02.

We note that this allocation is without prejudice to any future requests to modify child support.

4. *Reliance on Historical Awards*

Mother also argues the trial court erred by measuring the children's needs against their historical child support awards. Mother refers to the trial court's initial award of \$5,000 per child as monthly support, which she asserts was based on historical expenses and was made without the statutorily required findings. She argues that the court's later attempts to justify the downward adjustment was by faulty reasoning *as set forth elsewhere in her brief*.

Based on the way Mother presented this argument, we next address her claims of faulty reasoning regarding the children's best interests and the mandatory findings.

G. Children's Best Interests and Mandatory Findings

Section 4056, subdivision (a)(3) provides that whenever the court orders support that differs from the guideline amount, the court shall state, in writing or on the record, the "reasons the amount of support ordered is consistent with the best interests of the children." This requirement has been described as a sua sponte obligation of the court. (*Rojas v. Mitchell* (1996) 50 Cal.App.4th 1445, 1452.)

1. *Theory of Error*

Mother contends the trial court committed reversible error by not making the mandatory finding as to the reasons the amount of support ordered was consistent with the best interests of the children. She has emphasized that guideline support would allow for the improvement of the children's lives. She argues consideration of improving their lives is just and appropriate based on the principle contained in subdivision (f) of section 4053, which provides: "Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children."

Mother argues the children's lives could be improved with private school, more tutoring, travel, extracurricular activities and a larger home that would include separate bedrooms for each child, a study room with a computer, and a playroom. Part of Mother's rationale for allowing each child to have her own room is the fact that Father's standard of living includes a residence on the reservation, a house in Las Vegas and a house in Yucaipa. Based on the idea that the children should share in the standard set by Father's living accommodations, Mother suggests it is appropriate for the children to have separate rooms because Father has multiple homes.

2. *Trial Court's Findings*

The trial court's written orders did not use the statutory phrase "is consistent with best interests of the children" or use the term "best interests." The court, however, did explicitly find that the guideline amount "would be well above the children's needs." The court also found that the below guideline support that it ordered "will adequately ensure that the children's needs will be provided for." The court concluded that Mother "failed to show that the children's needs are not being met in even the slightest way," noting the level of support previously provided was similar to the level ordered in its decision. The trial court did not explicitly address Mother's argument about separate bedrooms and relate it to the standard of living established by Father or whether it would improve the lives of the children in accordance with section 4053, subdivision (k).

3. *Analysis of the Findings*

The findings listed in section 4056, subdivision (a) are mandatory and the failure to make them "may constitute reversible error if the missing information is not otherwise discernible from the record." (*In re Marriage of Hubner* (2001) 94 Cal.App.4th 175, 183.) One way to discern the missing information from the record is to determine whether "the missing finding may reasonably be found to be implicit in other findings. [Citation.]" (*Rojas v. Mitchell, supra*, 50 Cal.App.4th at p. 1450.)

We conclude that the trial court's explicit findings regarding the needs of the children adequately identify the "reasons" (for purposes of section 4056) why the trial court ordered below guideline support. Furthermore, we conclude that these findings reasonably support an implicit finding that the below guideline support ordered by the court was "consistent with the best interests of the children" for purposes of section 4056, subdivision (a)(3). (See *Cheriton, supra*, 92 Cal.App.4th at p. 292 [best interests of the children is based on an assessment of their reasonable needs].) It follows that the failure to make an explicit finding using the phrase "best interests of the children," if required by law, was harmless.

As to Mother's argument that the court erred when it did not "consider" whether below guideline was consistent with the best interests of the children, we reject this argument because the court did consider the needs of the children, which are closely correlated to their interests.

Mother also contends that there was no preponderance of the evidence to support a finding that below guideline support was consistent with the children's best interests. As she acknowledges in her reply brief, the applicable standard of review for the trial court's finding of fact is substantial evidence. (See pt. I.B., *ante*.) The preponderance of the evidence standard is mentioned in section 4057, subdivision (b) and is the standard of proof that the trial court must apply.

Mother appears to argue that the statutory phrase "one or more of the following factors is found to be applicable by a preponderance of the evidence" in section 4057, subdivision (b) means that the trial court must recite that its findings are based on a preponderance of the evidence. Mother has cited no authority for the proposition that trial courts must refer to this particular standard of proof when making their findings. We will not infer that the Legislature intended the trial court to reference this standard of proof when making findings required by the provisions of the Family Code because it is the most common standard for findings of fact and, therefore, there is little danger the

trial courts will apply the wrong standard. Based on our rejection of Mother's statutory interpretation regarding the need for an explicit reference to the standard of proof, it follows that she has not shown the trial court failed to comply with applicable legal principles.

Mother also contends there is no evidence that a deviation downward from guideline support is in the children's best interests. We disagree. Determining what is best for the children in the context of a parent with an extraordinarily high income is an inherently subjective inquiry that requires the court to strike a balance between providing enough to fulfill the needs of the children, but not so much as to be detrimental to their development. Stated from another perspective, the best interests of the children is a finding of ultimate fact that involves drawing inferences from the evidence. Here, the trial court struck that balance after receiving testimony about the transportation provided to the children, the home in which they live, their schooling, their diets and other information. The inferences drawn by the trial court, while not the only reasonable inferences possible, are reasonable and, therefore, the express findings regarding the needs of the children and the implied findings regarding their best interests are supported by substantial evidence. Therefore, those findings have adequate evidentiary support.

H. Income Producing Property

In its April 30, 2014, written ruling the trial court found: "Neither party has income producing property or assets and they receive no rental income.... Any money received by [Father from] the sale of his residence is not income but princip[al] only."

Mother contends the trial court abused its discretion by failing to impute earning capacity to Father based on the use of the sale proceeds from his sale of the house in San Diego to his brother.

Under applicable law, where the supporting parent has chosen to invest funds in assets that do not produce income, the trial court has the *discretion* to impute income to

those assets based on an assumed reasonable rate of return. (*In re Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361, 1373-1374; see § 4058, subd. (b) [discretion to consider earning capacity in lieu of parent’s income].) In *In re Marriage of Dacumos* (1999) 76 Cal.App.4th 150, the appellate court concluded that the trial court did not abuse its discretion “in imputing rental income based on the fair market rental value of the property and [the father’s] equity therein in calculating his income.” (*Id.* at p. 155.)

In this case, we conclude that the trial court was not *required* it to impute income to Father, as imputing income is not mandatory.

As to the discretionary imputation of income, it is appropriate “to the extent necessary to meet the children’s reasonable needs.” (*Cheriton, supra*, 92 Cal.App.4th at p. 292.) In this case, the trial court found that the children’s reasonable needs were being met by below guideline support. Based on this finding, it was not necessary to add imputed income to Father’s extraordinarily high income to meet the children’s reasonable needs. In other words, even if the trial court had imputed more income to Father, it would not have changed the amount of support awarded to meet the needs of the children. Therefore, we conclude the trial court did not abuse its discretionary authority by choosing not to impute income to Father.

I. Constant Income

The trial court’s judgment includes the written finding that Father’s “gross income has remained constant at \$170,771 or over \$2,000,000 a year.” The next page of the judgment restates this finding as follows: “[Father] makes over \$2,000,000 annually or over \$170,000 per month.”

1. *Theory of Error*

Mother contends the trial court unexpectedly used the finding that Father’s income was *constant* to buttress its downward deviation from guideline support. Mother infers that the trial court determined “that support should remain the same because Father’s

income has not changed.” She argues the court’s finding of constant income was error because Father’s income has increased since 2005 when support was established for D02.

Mother supports her factual assertion that Father’s income has increased by referring to the guideline calculation generated in September 2005 for the Orange County proceeding related to D02. That document listed Father’s monthly income at \$116,666 (\$1.4 million annually) and his custodial time with D02 as 25 percent. The guideline child support generated from the use of these two figures was \$7,520 per month, which is the amount the court ordered in the present case.

2. *Interpretation of Judgment*

Mother’s interpretation of the judgment and her inference about the court’s reasoning present this court with the question of how we should interpret the judgment of the trial court.

The general rules for interpreting writings apply to the interpretation of a trial court’s judgment. (*Smith v. Selma Community Hosp.* (2008) 164 Cal.App.4th 1478, 1501.) Generally, the questions whether a judgment is ambiguous and, if so, how to resolve that ambiguity present the appellate court with questions of law. (*Id.* at pp. 1501-1502.)

Applying these rules, we conclude the trial court’s finding was ambiguous because it is susceptible to more than one reasonable interpretation as to the period during which Father’s income “remained constant.” For instance, the court may have meant that the Father’s income had been constant since the birth of D02 in July 2002. Alternatively, the court may have intended to refer to the period since the birth of D08 in December 2008 or some other period.

To resolve this ambiguity, the finding should be read in context with the other findings and in light of the evidence and issues presented to the trial court. The direct evidence presented shows that Father’s income varied from \$2.82 million in 2007 to

\$2.05 million in 2012, with intermediate figures during the intervening years. The issues presented concerned the child support that should be provided for the two girls since the birth of D08. Therefore, we infer that the trial court addressed the period starting around 2008.

A second ambiguity relates to whether the trial court meant Father's income was constantly \$170,771 per month or constantly over (i.e., at least) \$2 million per year. We reject the former interpretation because the evidence clearly shows (1) Father's monthly distributions were usually \$100,000, supplemented by two or three additional payments during the year and (2) his average monthly income varied from year to year. Therefore, we conclude the trial court meant that Father's income "remained constant" in the sense that it always was greater than \$2 million annually during the period from 2008 through 2012. In short, the court found that Father's gross income was constantly "over \$2,000,000 a year" since the birth of D08 and perhaps longer.

3. *Inference as to Court's Reasoning*

Mother has cited no authority for the proposition that this court is required to draw inferences favorable to her when reviewing her attempts to demonstrate reversible error. Based on the absence of cites to contrary authority, we will resort to the general rule of appellate practice that holds the trial court's judgment is presumed correct and all intendment and presumptions are indulged in favor of its correctness. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.)

Applying this general rule to Mother's argument, we reject Mother's description of the trial court's reasoning—namely, the court decided the child support should remain the same because Father's income had not changed. Instead, we conclude the trial court reached its determination to order below guideline support based on the needs of the children and its finding that those needs were being met.

Therefore, Mother's arguments challenging the finding that Father's gross income remained constant have failed to demonstrate reversible error. (See *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [appellant has burden to affirmatively show error].)

II. ATTORNEY FEES

A. September 2012 Request

In connection with her September 2012 request for an order modifying child support, Mother included a request for attorney fees and costs. Mother (1) asked for fees and cost totaling \$62,500; (2) stated she had incurred attorney fees and costs from the beginning of representation until the request in the amount of \$69,423; (3) estimated that additional fees and costs at \$10,000; and (4) acknowledged that the court previously had ordered Father to pay \$17,500 of her fees and costs.

Father does not contest the amount of fees Mother incurred through September 2012. The proposed findings he filed on March 28, 2014, included the following: "1. The total attorney's fees and cost charged by [Mother's] attorney as of September 26, 2012 was \$69,423.21."

B. Updated Request

In May 2013, over seven months after Mother's request for attorney fees and costs, Mother filed an income and expense declaration that stated she was requesting attorney fees of \$80,043 and, to date, had paid her attorney \$79,129 for fees and costs.

During the August 2013 hearing, Mother testified that she paid these fees by charging them to her credit cards over the four years the matter was pending and, at the time of the hearing, she owed about \$80,000 on her credit cards. It is unclear from her testimony whether this debt is based in part on the \$5,000 Mother paid to her former attorney.

In November 2013, Mother filed her written closing argument regarding child support and attorney fees. She requested a total of \$117,500 as her attorney fees and

costs to that date and compared that request to the \$130,000 in attorney fees that Father incurred prior to the August 2013 trial or hearings.

In January 2014, Mother filed a written reply to Father's closing argument regarding child support and attorney fees. She reiterated her request for an additional \$80,000 in attorney fees. She also challenged Father's claim that she had falsely accused him of child abuse, noting the parties had stipulated that (1) their oldest daughter had suffered a traumatic event that affected custody and visitation and (2) the parties denied the other's allegations.

C. The Trial Court's Findings

In its April 30, 2014, written findings, the trial court addressed Mother's request for attorney fees and costs. The court restated these findings in the judgment filed in July 2014. The trial court found: "1. Fees incurred to the date of the hearing by [Mother] are \$69,423.21. ¶ ... ¶ 3. [Mother] estimates additional attorney fees of \$10,000."

These findings are not supported by substantial evidence and are contradicted by the record before this court. (See *In re Marriage of Walker* (2012) 203 Cal.App.4th 137, 146 [under abuse of discretion standard, findings of fact are reviewed for substantial evidence].)

D. Errors in Findings

1. *Fees Incurred by Date of Hearing*

In analyzing the trial court's finding that Mother incurred \$69,423.21 in fees to the date of the hearing, we first identify the date of the hearing. The reporter's transcript shows the hearing was held on August 12, 13, 14 and 20, 2013. Next, we identify the date by which Mother had incurred fees in the amount of \$69,423.21. The papers submitted by Mother show, and Father has conceded, that she had incurred fees in the amount of \$69,423.21 by *September 26, 2012*, nearly a year before the hearing in August 2013. (See pt. II.A, *ante*.)

Therefore, the finding Mother had incurred \$69,423.21 in fees by the August 2013 hearing is not accurate. A finding consistent with the evidence presented is that Mother incurred attorney fees and costs in the amount of \$69,423.21 by September 26, 2012.

2. *Amount of Additional Request*

An analysis of the trial court's finding that Mother estimated additional attorney fees of \$10,000 involves a review of the papers filed by Mother setting forth the details of her request for fees as it existed when the trial court filed its written ruling on April 30, 2014.

The last document in the appellate record that Mother filed before the trial court's April 30, 2014, ruling was her January 21, 2014, proposals to the statement of decision. This document states that Mother had incurred \$85,043 in attorney fees at the time of trial, estimated an additional \$32,500, and acknowledged Father's prior payments totaling \$37,500. Based on these figures, Mother "was requesting an award of \$80,000 in additional fees."

The contents of Mother's proposals to the statement of decision demonstrate that the trial court erred when it found that Mother "estimates additional attorney fees of \$10,000." At the time the court filed its written ruling on April 30, 2014, Mother's was requesting an additional award of \$80,000, which included an estimate that \$32,500 in fees would have been incurred after the start of the August 2013 hearing. The trial court may have taken the \$10,000 figure from the September 2012 request for fees, which was out of date by the time the court made its findings.

We conclude the erroneous findings about incurred and estimated fees were prejudicial to Mother's request for attorney fees and, therefore, require reversal of the order relating to attorney fees.

E. Remedy and Remand

The next question is whether this court should (1) determine the amount of the fee award and modify the judgment or (2) remand for further proceedings so the trial court can determine that amount.

Mother argues we should determine the amount and instruct the trial court to award her the \$80,000 in additional fees. Mother asserts that the amount requested is reasonable because it would bring the total attorney fees awarded through the posttrial submission of proposed findings to \$117,500, which is less than the \$130,000 in attorney fees Father estimated he had incurred when he testified during the first day of the August 2013 hearing. Mother points to earlier findings that she does not have the financial ability to litigate this matter and Father has the ability to assist with her attorney fees. She also relies on the trial court's most recent findings as to their respective incomes to demonstrate a huge disparity in incomes and Father's ability to pay her fees. (See § 2030, subd. (a)(2).)

We decline Mother's request to determine her reasonable attorney fees and direct the trial court to award that amount. The determination of reasonable attorney fees is committed to the discretion of the trial court. Even though (1) the court's discretion is limited by the principles set forth in statutes, such as sections 2030 and 2032, and established by case law and (2) the relevant findings regarding income and ability to pay have been made, we conclude discretionary aspects of the award and questions of fact remain and should be decided in the first instance by the trial court.

As to questions of fact, the record is not complete as to the amounts billed, the amounts paid by Mother, and the allocation of the \$37,500 previously paid by Father. Part of this incompleteness is due to the fact that at the time of the posttrial submissions, the amount of fees requested still was based on estimates of what would be incurred during the trial and in the posttrial proceedings. These questions of fact can be addressed without separate procedures because, pursuant to subdivision (c) of section 2030, the trial

court shall augment the original award of attorney fees and costs as reasonably necessary for the prosecution of this appeal. Thus, the court must address attorney fees again in any event.

Therefore, we will remand the determination of attorney fees to the trial court for further consideration. We note it would not be an abuse of discretion for the trial court to direct counsel for Mother to file a declaration in support of Mother's attorney fees request that sets forth the amounts and dates of the bills sent to Mother, the amounts and dates of the payments received from her, and how the \$37,500 paid by Father was applied. Such a declaration would address the accounting issues raised by Father on appeal.

As a final point regarding attorney fees, we note that Father's respondent's brief suggests that the amount of child support paid to Mother in this proceeding and the guardianship proceeding can be weighed by the trial court in exercising its discretion as to the attorney fees award. This suggestion is contrary to law. It would constitute an abuse of discretion to consider the child support payments as a source of income for paying attorney fees. Those payments are labeled "child support" and not "child support and attorney fees" for a reason. The statutory scheme intends child support payments to be used as support for the minors and not to pay for litigation, which is why the Judicial Council has given attorney fees a separate box on Judicial Council Form FL-300 (rev. July 1, 2012), Request for Order, and a separate form, Judicial Council Form FL-319 (New Jan. 1, 2012), for requesting fees.

DISPOSITION

The judgment is modified as to the ordered child support such that the monthly support ordered for the daughter born in 2002 shall be \$4,695 and the monthly support for the daughter born in 2008 shall be \$7,825, while the aggregate of support awarded for these two children shall remain unchanged at \$12,520 per month.

The judgment and related order addressing Mother's attorney fees is vacated. The attorney fees matter is remanded to the trial court for further proceedings consistent with part II of this opinion. In all other respects, the judgment is affirmed.

Mother shall recover her costs on appeal.

FRANSON, J.

WE CONCUR:

HILL, P.J.

SMITH, J.