

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of LINDA and PAUL S.
DENTON.

LINDA DENTON,

Respondent,

v.

PAUL S. DENTON,

Appellant.

G044821

(Super. Ct. No. 08D005912)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James L. Waltz, Judge. Affirmed.

Law Offices of Jeffrey W. Doeringer and Jeffrey W. Doeringer for Appellant.

Law Offices of Brian G. Saylin and Brian G. Saylin for Respondent.

*

*

*

Paul and Linda Denton were married for more than 16 years. They subsequently separated and eventually divorced. The court declined to award Paul¹ the spousal support he sought. Paul claims this was error because the trial court only considered Linda's claims of domestic violence and failed to take into account the other relevant factors set forth in Family Code section 4320,² thereby misinterpreting the statute. He also claims the statement of decision was insufficient with regard to attorney fees. We find Paul's claims are without merit and affirm.

I

FACTS

Paul and Linda were married in 1991, and according to Linda, separated in December 2007, although they both continued to reside in the marital home. On June 30, 2008, Linda filed a petition for dissolution of the marriage, citing irreconcilable differences, and noted there were no minor children. Each party requested a temporary restraining order (TRO). Linda's petition, which sought to exclude Paul from the couple's home in Newport Beach, claimed there had been domestic violence. She stated the most recent incident was on June 18, when she averred that Paul "violently shoved me against the wall and screamed in my ear that he was going to throw me out of our house. He said that he would 'ruin' me I was terrified because respondent's rage has been escalating and there have been many incidents where he has been verbally and physically aggressive towards me." She described other incidents where she claimed verbal abuse, screaming in her ear, taunting, and threatening her.

¹ Because of their common surname, we refer to the parties by their first names for the ease of the reader. No disrespect is intended. (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 475-476, fn. 1.)

² Unless otherwise indicated, subsequent statutory references are to the Family Code.

Paul's response stated that Linda's accusations were "lies and misrepresentations" and that he had never threatened to hit her. He said Linda had recently resorted to violence, tearing a shirt and scratching his arms. He also stated that he had serious medical issues, including shingles and Reiter's syndrome, and that he had earned \$10,000 the previous year while Linda earned more than \$200,000. He said he had nowhere to go if the court granted Linda's request to exclude him from the home.

After a hearing, the court granted mutual TROs, ordering that both parties would continue to share the home under specific conditions. On July 24, Paul filed his response to Linda's divorce petition, requesting an order of spousal support. On August 5, Linda requested another TRO, again asking the court to order Paul to move out. She stated that on July 30, when she was at the top of the stairs, Paul ran up to her, "grabbed me by the shoulders and threw me against the wall." She stated she started to leave the house to protect herself, and Paul caught up to her in the doorway and "pushed me down onto the stairs." Paul left, and Linda called police. Linda claimed that in general, Paul's taunts and anger had escalated since the previous hearing.

On August 29, in lieu of a hearing, a stipulation and order providing Linda with exclusive use of the residence was entered. General stay-away and anti-harassment and domestic violence orders were also included, and the property was to be listed for sale. The parties also stipulated that should either party bring a request for a restraining order in the future, that party could not only allege any new events, but may also allege any past events, and those issues would be heard de novo by the court. Further, either party could introduce evidence of domestic violence as it related to spousal support. Another order was entered pursuant to stipulation in September. Spousal support and attorney fees were reserved until trial.

In March 2009, Paul filed an income and expense declaration, which reflected that he was an artist and painter, but had not worked since 2007. Although he

had two years of college and a contractor's license, he claimed his health and living situation prevented him from working as a painter. He was living with his mother, who paid some household expenses. He estimated his expenses at \$5,500 a month, and stated he was current on his bills, with approximately \$25,000 in credit card debt.

Linda also filed an income and expense declaration. She listed her gross income as "forensic accounting pending," and stated she was a self-employed consultant with a four-year degree and a certificate in human resources. She declared that her business had been drastically reduced by the poor economy over the last 12 months. Linda's estimated monthly expenses were \$7,165, and she was current on her bills.

In February 2010, Linda filed a trial brief, noting the marriage had lasted 16 and a half years, and there were no minor children. The remaining issues were the date of separation, property division, spousal support and attorney fees and costs. With respect to spousal support, Linda requested no support to either party. She contended she had been the victim of domestic violence and claimed Paul had the ability to work as a commercial painter and artist. She proposed a division of property and requested attorney fees.

Paul's trial brief asserted the two major issues were spousal support and valuation of Linda's business, noting the house had already been sold and personal property divided. With respect to spousal support, Paul argued he was unemployed and unable to work. He stated he had several medical issues preventing him from working, including "shingles, Ankylosing Spondylitis, Bladder Cancer (2nd occurrence), Reiter's Syndrome, and Spinal Stenosis." His health insurance and copayments exceeded \$700 per month. He stated he needed spousal support "to assist him in living expenses and to continue to live at the marital standard of living." Paul stated he had not held a contractor's license in several years, had no business, and had not worked as a commercial painter in more than two years. He also sought attorney fees and costs and

sanctions against Linda for filing what he claimed was a “bogus” domestic violence restraining order.

Trial began in February. We review the evidence with a focus on the issues raised on appeal, and not necessarily in the order presented at trial. Paul and Linda both testified at length.

Linda, who was 59 at the time of trial, testified that she had some health issues, including depression, anxiety and posttraumatic stress disorder. She took medication, including an antidepressant. Linda also had chronic neck problems exacerbated by a car accident. She estimated she worked 50 hours a week in 2009 and 30 to 40 hours a week at the time of trial.

Linda’s gross income had decreased compared to previous years due to a reduction in compensation from Chapman University, where she taught as an adjunct professor, as well as a drop in volume in her business. Prior to starting her own business, Linda had been employed as senior vice-president of human resources at an advertising agency. She earned \$175,000 a year, plus periodic bonuses, in that position. Two months after she went on leave for stress in 2006, she was put on a termination list and then left. She was living in a rented house for \$2,100 per month. She had not contributed to her IRA since separation. Approximately \$398,000 was in a brokerage account.

With respect to Paul’s activities, Linda stated she had observed Paul painting during the last five years of her marriage, both house painting and fine art painting. In 2008, he had purchased a Miter saw so he could install stairs for the hardwood floors in their home.

Linda testified in detail regarding a number of domestic violence incidents. The first was in June 2006, on their wedding anniversary. Paul had told her he planned something special. Linda came home from work at about 7:00 p.m., and found Paul on

the telephone. He did not acknowledge her, so sometime after 8:00 p.m. she changed clothes. After Paul hung up the phone, she said they were apparently not going to celebrate. Paul started yelling and swearing at her, stating he wanted a divorce and that she had ruined everything. Scared of his aggression, she went to pack a bag, and upon attempting to leave found his car blocking hers. Linda went to call the police, but stated Paul followed her and grabbed the phone from her hand and her car keys and said she wasn't going anywhere. He pushed her down on the bed and got on top of her, with his hand holding her chest down and his knee on her, continuing to scream and swear. Paul took the phone away and told her to stay in the room, and shut the door and left. The next morning she had a three-inch bruise on her arm, and when she showed it to him, he said she would never be able to prove he did it.

Linda described another incident about a month later in which Paul pushed her, and she eventually fell backwards, injuring her neck. After a visit to Paul's mother on another occasion in 2007, Linda stated Paul started screaming at her about how much he hated her and wanted a divorce. Linda felt she was in danger because he was "driving like a maniac." In August 2007, Linda said Paul started screaming and swearing at her at the Pageant of the Masters because she wanted to go home, and again he drove erratically. In the spring of 2008, he again screamed and swore at her in the home when she did not have time to help him with a computer.

Linda also testified about the incident with the soup mentioned in her TRO application. Linda was holding a bowl of hot soup she had heated after an argument, and Paul took hold of the bowl told her that if she did not let it go, it would end up all over her. She also described an incident on Memorial Day 2008. Linda said that Paul came to her home office, sat on the sofa, and said he wouldn't leave until she apologized. She told him she had not done anything wrong and had no intent of apologizing. Paul left at

one point, and Linda called her sister, Laurie Hernandez.³ Linda told Hernandez what was going on, and Paul came back in. Linda asked him to leave, but he grabbed the phone and disconnected it, stating again he would not leave until she apologized. Hernandez called back, and Paul again disconnected the phone. When Hernandez called for the third time, she was upset and wanted Linda to leave. When Linda relayed Hernandez's statement that she would call the police, Paul said he did not care.

In June 2008, there was an incident in which Paul screamed in her ear with such volume that it impacted her hearing for the rest of the day. Linda characterized Paul's behavior as increasingly bizarre, including an incident where he came out of the shower and started dancing nude and taunting her in front of the door of her home office while she was on the telephone. On another occasion in June 2008, he made a hand gesture of a gun to Linda's head. He said that someone should take a .45 and blow her brains out. On another day, he walked into Linda's office and knocked everything off her desk.

Linda also related an incident in which she asked Paul about the medications he was taking, asking if he had one doctor that was monitoring all of his medications. He started screaming at her, asking if she knew better than the doctors. He pulled out the drawer where his medications were kept and ran into Linda's bathroom with it, screaming, and stating he would just get rid of all the medications. As he yelled and walked toward the toilet, Linda, not wanting to see pill bottles in the toilet, grabbed his shirt and it ripped. Paul held it up as if it was evidence of how cruel Linda was to him.

³ Hernandez also testified about this incident, stating she was on the telephone with Linda and heard Paul yelling. He would not leave the room, then the phone was disconnected. When she called back, Paul was still yelling, and again the phone disconnected. When she called back again, Hernandez told Linda to tell Paul that Hernandez was going to call the police if Linda was hurt, and Paul laughed and said that he did not care, to go ahead and call the police. She did not call the police at Linda's request.

After the initial TRO was issued, Linda said Paul continued to taunt her. On July 30, in the incident that led to Linda's second request for a TRO, Paul said to Linda that morning that she did not know what "compassion" meant. She went to her office and started to work. At about noon, Paul stood in the doorway of the office while Linda was on the phone with a client and "started chanting." He first asked her if she was on the phone, and when she said she was, Paul said he needed her to send a fax. Linda said he would need to wait, but Paul stood in the doorway repeating, "I need to fax, I need to fax, I need to fax." Paul was audible from the other end of the line, and Linda terminated the call. She went to his bedroom doorway and said "you've got to stop doing this." Paul said it was Linda's fault and she deserved it because she had filed for divorce. He also felt Linda was violating the TRO by entering Paul's bedroom (Linda said she was standing in the hall) and went to call the police. Linda said to go ahead and call the police, and she would show them "where you keep your pot in the garage." Linda testified Paul grabbed her and eventually pushed her up the stairway as she was trying to get out the front door. Linda received bruises as a result of that incident, and saw a doctor. She also reported the incident to the police.

Another incident between the parties occurred on November 4, during a visit to the residence for Paul to remove his personal belongings. Linda claimed he refused to leave and began screaming obscenities at her in violation of the restraining order. Linda contacted police. During this visit, Paul removed items that Linda claimed were tools and supplies used for Paul's commercial painting business, while leaving behind clothing and personal items.

On cross-examination, Linda denied ever telling Paul that she would never pay him spousal support and that she would do whatever it took to ruin him financially and make his life miserable. She denied ever striking or threatening to strike Paul, and testified she did not remember any incident of swearing at Paul. To her knowledge, Paul

did not own a gun. She also admitted that she may have picked a verbal fight with Paul. The only occasions on which Linda called the police were as a result of the July 30 incident and in November when Paul returned to pick up belongings. No arrests were made.

Linda testified that her relationship with Paul had been very contentious during the last three years. At one point, Paul had been bedridden with shingles, and screamed at Linda that something was wrong, but because Paul screamed at her so frequently, she did not know he had shingles until the next day.

Paul also testified. He was 60 years old at the time of trial. During the last five years of his marriage, he made yardage markers for golf courses in his garage, and did a little commercial painting. He had stopped due to his illness, which prevented him from doing “just about everything.” He cannot lift things, including, at times, a paintbrush. He had never filed for disability benefits or applied for a handicap placard for his car. He was able to drive himself to court and walk from the garage to the courtroom unassisted. He was also able to drive to Cambria, a trip of four to five hours, that he made as often as he could.

When shown his income and expense declaration, which revealed he was earning \$600 for the yardage markers, Paul testified he received this amount on average per month. He stopped doing the yardage markers in August 2008, about the same time he left the house. The name for Paul’s business was Paul Denton Painting. He held a painting contractor’s license, which he deactivated in 2009 in order to avoid paying the insurance bond. He deactivated his license because he could no longer work. He was only marginally employed in 2005 and 2006 due to his health, and had not operated his painting business since 2006. In 2006 and 2007, he had earned a few thousand dollars. In 2009, he had earned nothing due to his health. When shown receipts, Paul admitted that he had purchased a variety of art and painting supplies during and after 2008.

With respect to Linda's claims of domestic violence, Paul denied such claims were true. When asked, he specifically denied each allegation, including shoving Linda against a wall, throwing her onto the stairs, or threatening her with a gun gesture or with hot soup. He denied taunting her, screaming, and such incidents as dancing nude. He also denied causing Linda's bruises. Paul testified that during the last two years of their marriage, Linda would yell and scream at him, and had been physical on many occasions. Linda had threatened to ruin him financially through the divorce.

Paul testified that to the best of his ability, he had complied with all court orders regarding contact with Linda. On July 30, 2008, when the incident took place that led to Paul moving out of the home, he stated Linda had been harassing him for most of the morning. She was upset and raising her voice, and would not stop when he asked her to. He left the home.

Paul testified about an incident in 2000 when he had a discussion with a man whose son had admitted to vandalizing his van. Linda was present, and she listened to the man, who accused Paul of trying to extort money from him because of damage to the van. Linda became very agitated and went after the man and pushed him.

With respect to the marital standard of living, Paul testified that their home had a nice view of the back bay, with greenbelts and plenty of open space. Their community had a number of swimming pools and other amenities. During their marriage, they had either lived in Corona Del Mar or Newport Beach. In the past five years, he and Linda had traveled to Hawaii, Carmel, and San Rafael.

Paul testified that he was currently spending over \$1,500 a month on medical needs, including his insurance premium. He wished to move to Cambria where he had signed a lease on an apartment for \$1,200 per month. He projected he would need \$5,000 per month to cover his expenses. Since he had left the marital home, his standard of living was not the same as it had been, and he described himself as basically homeless,

although he lived at his mother's home in San Marino. He was using the money he had received from the shared brokerage account and the sale of the home for legal costs and other expenses. He had approximately \$35,000 in credit card debt.

With respect to his health, Paul was planning on having surgery and believed he would need one more round of chemotherapy for bladder cancer. He had been treated by a number of doctors for his various medical conditions. Since 2008, he had suffered considerable pain.

Michael Bonneau, a vocational expert, testified on Linda's behalf.⁴ Bonneau testified that he had interviewed Paul and had learned that Paul had a contractor's license from 1987 until approximately six months before trial. He worked as a painting contractor from 1981 to 2005, performing some work in 2007. Paul had not applied for any disability benefits, and if he was medically able, he could work in the painting industry as a painter, paint salesperson, or estimator. If so employed, he could earn from \$3,064 to \$3,326 per month.

Forensic accountants testified for both parties. As relevant here, the parties reached a stipulation that Linda's gross controllable cashflow was \$8,040 per month.

Dr. Kevin Triggs testified for Linda. He conducted a medical exam on Paul prior to trial and also reviewed Paul's records from a number of treating physicians and imaging studies. Triggs also took his own X-rays. Paul complained to Dr. Triggs about pain around the right side of his hip towards the lower back radiating into the thigh and in the right shoulder down to his elbow. His worst problem was ankylosing spondylitis as

⁴ Bonneau's report, as well as a number of other documents, were admitted as exhibits at trial. While Paul cites to exhibits in his briefs, he did not arrange for them to be transmitted to this court for review on appeal, and we therefore do not consider them. (See Cal. Rules of Court, rule 8.224(a)(1), (3) [party must arrange for transmittal of exhibits to reviewing court]; see also *Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 291 ["Where exhibits are missing we will not presume they would undermine the judgment."].)

evidenced by back pain, although Paul also mentioned pain and numbness in the left hand. Paul told the doctor he is not currently employed or doing physical work.

Triggs did not find any evidence of residual shingles based on his physical exam. He also did not see any evidence of ankylosing spondylitis based on the X-rays taken at the time of the exam, other clinical findings, and Paul's laboratory records dating from the 1980's. Triggs's report acknowledged that Paul had undergone treatment for bladder cancer, but based on typical presentation and treatment, it should not contribute to any claimed disability. He testified similarly as to Paul's carpal tunnel syndrome, which dated to the late 1980's. Triggs opined that Paul's stated complaints about pain in the right side of the hip, low back, and right shoulder followed by back pain should not prevent him from working. Paul could have surgery on his rotator cuff, followed by a recovery period of six or more weeks. Triggs concluded that Paul's most serious problem was degenerative disk disease, but that he does not yet have the type of complaints warranting surgery. In sum, Triggs opined that Paul's problems were not serious, and gainful employment was possible.

Dr. Anthony Bohan, one of Paul's treating physicians and a rheumatologist, testified on his behalf. He testified that Paul had a number of problems, first and foremost the degenerative discogenic disease and arthritis in the neck, as well as Reiter's disease, a form of arthritis. He has also had bladder cancer, postherpetic neuralgia (shingles pain), high cholesterol, and carpal tunnel syndrome. His main current problems were his neck and the bladder cancer. Two of Paul's other doctors recommended orthopedic surgery, and Bohan agreed. Bohan characterized Paul's neck problems as degenerative and likely to worsen over time. In his opinion, Paul was suffering from chronic pain that prevented him from working as a commercial painter. He disagreed with Bonneau's testimony that Paul could do such work. He also felt a sedentary job was

contraindicated by the neck and back pain. Bohan believed that requiring Paul to work would result in increased pain and forced inactivity.

Bohan testified that Paul has never been diagnosed with ankylosing spondylitis and Paul was incorrect in believing he was. He felt that surgery would result in a 50 to 60 percent improvement for Paul, but it will not repair his arthritis, and he would still have bladder cancer and shingles pain. Even after surgery, he believed Paul would be disabled.

At the conclusion of testimony, the court heard argument. Counsel for both parties argued the relevant factors under section 4320, and the import of a domestic violence finding.

On June 7, 2010, the court filed a minute order and statement of decision. With respect to support, the court denied Paul's request for long term support, reserving jurisdiction under sections 4336 and 4337. The court then discussed the specific factors set forth in section 4320, including the marital standard of living, the parties' earning capacity and actual income, and each subdivision of section 4320. In sum, the court found the standard of living was middle class. With respect to Paul's health, the court found Triggs more credible on the issue of disability and determined Paul's average earning capacity was \$1,980 per month, while Linda's income was \$6,700.

The court found neither party was able to live at the marital standard (§ 4320, subd. (a)), and neither contributed to the other's education or training. (§ 4320, subd. (b).) Linda, after meeting her own expenses, did have some ability to pay support. (§ 4320, subd. (c).) Analyzing the needs of each party, the court found Paul's to be \$2,000 to \$2,300 per month, and Linda's to be \$4,800 to \$5,500 per month, both below the marital standard. (§ 4320, subd. (d).) The court reviewed the marital assets and obligations, (§ 4320, subd. (e)), and concluded both parties were similarly situated after the stipulated property divisions. Finding the marriage lasted 17 years (§ 4320, subd. (f)),

there were no issues as to working while caring for minor children. (§ 4320, subd. (g).) The court also reviewed the age and health of each party, listing Paul's musculoskeletal problems and shoulder pain, as well as his history of shingles, bladder cancer, and carpal tunnel syndrome. The court noted Paul had not applied for any disability benefits, and his prognosis, according to Triggs, if he should seek surgical relief. Linda's health issues were also noted.

The court also considered, at some length, the domestic violence issues. The court found that domestic violence had occurred within the meaning of sections 6203 and 6320, and that Linda was the victim while Paul was the perpetrator. Noting the polarized views offered, the court found Linda the more credible witness, while by his words, tone and manner, Paul was less credible. Linda also offered substantial and independent evidence that corroborated some of her testimony while refuting Paul's, including photographs and Linda's sister's testimony. The court made specific findings as to a number of incidents from 2006 to 2008.

The court then considered to what extent the domestic violence should influence the calculation of support, noting "it is not a mathematical calculation like the calculation of child support, but instead, a careful balancing and weighing of . . . [section] 4320 against the marital standard of living The amount of spousal support awarded is discretionary with the court; equitable considerations [are] predominant and the award must be fair and reasonable under all the circumstances." The court explained that after getting the "big picture" in focus, it observed a pattern of behavior that went beyond common couple aggression and episodic disturbances within the marital home. Paul engaged in a pattern of physical and emotional abuse targeting Linda that went well beyond provocative or aggressive conduct, and crossed over to abusive and assaultive conduct within the meaning of the Domestic Violence Prevention Act and caused Linda

injury. In the “calculation” of support, the court accorded the domestic violence finding “great weight.”

The court then considered the remaining factors in section 4320, including tax consequences (§ 4320, subd. (j)), and relative hardships (§ 4320, subd. (k)), concluding Paul was a financially needy spouse when his earning capacity was compared to the marital standard of living. The court also found that Linda was the victim, and Paul the perpetrator, of domestic violence, therefore “it would be entirely **inappropriate** to order Linda to pay even some modest amount of spousal support to Paul. [¶] Ordering Linda to pay Paul spousal support will re-victimize Linda each month and otherwise cause Linda severe emotional hardship. [¶] After balancing Paul’s need for financial support against the emotional harm to Linda, if made the payor, the balance of hardships tilts in favor of Linda.”

With respect to the goal of self-support (§ 4320, subd. (l)), the court “conducted a targeted inquiry into Paul’s ability and opportunity to work since [separation] and noted Paul’s age, health and age related medical issues [¶] Paul’s age and relative health do not allow him to earn enough money, now or in the future, to sustain the [marital standard of living] — he has no history of doing so.” The court also found, however, that since the separation, “Paul has had the ability to work. The court believes Paul has remained intentionally unemployed so not to contraindicate his professed (failed) disability pending the trial. Paul is reminded that spousal support is not an entitlement or pension and there is no automatic rule of support based solely on disparity of income.”

Analyzing other “just and equitable” factors under section 4320, subdivision (n),⁵ the court noted that Paul was to blame for the pattern of abuse he

⁵ The court noted that subdivision (m), relating to convictions for domestic violence or attempted murder, was inapplicable.

inflicted on Linda, causing her to suffer physical and psychological injuries. Under such circumstances, ordering Linda to pay support to Paul was inappropriate. When the court examined the “big picture” and balanced the hardships stated above, the just and equitable factors weigh heavily toward Linda and against Paul. The court also noted that each party had considerable assets after dividing up the marital property, and that Paul currently lived with his mother. He was not, as he called himself, “homeless.” The court found that Linda does not “have any duty to facilitate his planned move to the seaside town of Cambria and to fund his early retirement.”

With respect to attorney fees and costs, each party was ordered to bear their own. There is nothing in the record to suggest Paul objected to anything in the court’s statement of decision or requested any clarification. Judgment was entered in due course. Paul now appeals.

II

DISCUSSION

A. Spousal Support

Paul’s main argument is that the court abused its discretion by denying spousal support. He claims the court wrongfully focused its attention on the domestic violence factor (subdivision (i)) and did not properly consider the other factors. Although Paul’s brief divides the purported error into several different issues, there are really only two key questions here: Did the court properly correctly interpret section 4320, subdivision (i) and consider all of the factors in section 4320 when denying his request for support? The record amply demonstrates the court properly interpreted subdivision (i) and considered all factors relevant to support. Further, the court’s factual findings were supported by substantial evidence.

1. Statutory Framework and Standard of Review

“Spousal support is governed by statute. [Citation.] In ordering spousal support, the trial court *must* consider and weigh all of the circumstances enumerated in the statute, to the extent they are relevant to the case before it. [Citations.] The first of the enumerated circumstances, the marital standard of living, is relevant as a reference point against which the other statutory factors are to be weighed. [Citations.] The other statutory factors include: contributions to the supporting spouse’s education, training, or career; the supporting spouse’s ability to pay; the needs of each party, based on the marital standard of living; the obligations and assets of each party; the duration of the marriage; the opportunity for employment without undue interference with the children’s interest; the age and health of the parties; tax consequences; the balance of hardships to the parties; the goal that the supported party be self-supporting within a reasonable period of time; and any other factors deemed just and equitable by the court. [Citation.]” (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 302-304, fns. omitted (*Cheriton*).

In 2001 (after *Cheriton* was decided), the Legislature added another factor to the mix: “Documented evidence of any history of domestic violence, as defined in Section 6211, between the parties, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party.” (§ 4320, subd. (i).)⁶

“In making its spousal support order, the trial court possesses broad discretion so as to fairly exercise the weighing process contemplated by section 4320, with the goal of accomplishing substantial justice for the parties in the case before it.’

⁶ “In 2001, the Legislature passed Senate Bill No. 1221 (2001-2002 Reg. Sess.), which removed the domestic violence language from former subdivision (h) of section 4320 and placed it in a separate subdivision for consideration by the trial court.” (*In re Marriage of MacManus* (2010) 182 Cal.App.4th 330, 336 (*MacManus*).

[Citation.] In balancing the applicable statutory factors, the trial court has discretion to determine the appropriate weight to accord to each. [Citation.] But the ‘court may not be arbitrary; it must exercise its discretion along legal lines, taking into consideration the applicable circumstances of the parties set forth in [the statute], especially reasonable needs and their financial abilities.’ [Citation.] Furthermore, the court does not have discretion to ignore any relevant circumstance enumerated in the statute. To the contrary, the trial judge must both recognize and *apply* each applicable statutory factor in setting spousal support. [Citations.] Failure to do so is reversible error. [Citations.]” (*Cheriton, supra*, 92 Cal.App.4th at p. 304.)

2. *Statutory Interpretation*

At several points in his briefs, Paul contends that subdivision (i) requires “interpretation.” “In ascertaining the meaning of a statute, we look to the intent of the Legislature as expressed by the actual words of the statute. [Citation.] We examine the language first, as it is the language of the statute itself that has ‘successfully braved the legislative gauntlet.’ [Citation.]” (*Wasatch Property Management v. Degrade* (2005) 35 Cal.4th 1111, 1117-1118.)

As we noted above, subdivision (i) added a new factor to the long list the court must use when deciding whether to award spousal support. It states the court shall consider “[d]ocumented evidence of any history of domestic violence, as defined in Section 6211, between the parties, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party.” Section 6211 defines domestic violence, in pertinent part, as “abuse perpetrated against . . . [a] spouse or former spouse.”

We agree with Paul that this is not a case involving a criminal conviction for domestic violence, nor is subdivision (i) “a trump card.” Under the plain language of

the statute, it is one factor to be considered. We reject Paul’s argument that the court must give a certain weight to the domestic violence it determined occurred here because it did not involve “hospitalization, broken bones or even worse.” While specific statutes apply to severe cases of domestic violence (e.g., § 4320, subd. (m), § 4325),⁷ subdivision (i) must be considered by the court when there is “[d]ocumented evidence of any history of domestic violence, as defined in Section 6211, between the parties.” The trial court made specific findings regarding such abuse, as we shall discuss below.

Paul also argues that “nuance” in the language in subdivision (i) somehow bolsters his case. He claims the court should not have considered Linda’s emotional distress, because the subdivision applies to domestic violence “between the parties, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the *supported party by the supporting party*, and consideration of any history of violence against the *supporting party by the supported party*.” (§ 4320, subd. (i), italics added.) Thus, he argues, because Linda is the “supporting party” the trial court should not have considered any emotional distress, such as the emotional aspects of paying an abuser. Relying on the well-worn maxim “*expressio unius est exclusio alterius*,” he claims Linda’s emotional distress could not properly be considered. What he ignores, however, is the plain language of the subdivision which states the court’s consideration must be “including, but not limited to” consideration of domestic violence against the supported party. This language grants the trial court discretion to consider facts relevant to each specific case, including the (probably rare) case when an abuser seeks support from his victim.

3. Court’s Consideration of Section 4320 Factors

Paul argues the trial court did not consider and weigh all the factors in section 4320 “fairly,” but the record belies that contention. The statement of decision

⁷ We also reject Linda’s argument that section 4325 somehow applies to this case.

reflects the court's careful consideration of all the relevant factors in section 4320. Paul offers no support for the claim the court was somehow unfair in its detailed review and application of the relevant facts. We therefore reject Paul's arguments that subdivision (i) was improperly applied and over-emphasized by the trial court. The record reflects that all relevant factors were properly considered and accorded the weight the court deemed appropriate within the statutory framework, which is within the court's discretion to decide. (See *Cheriton, supra*, 92 Cal.App.4th at p. 304.) As such, we find no abuse of discretion.

Paul claims that Linda relied totally on the domestic violence claim as her defense to Paul's request for spousal support. During closing argument, Linda's counsel argued numerous factors relevant to spousal support under section 4320, including Paul's marketable skills (§ 4320, subd. (a)), his lack of contribution to Linda's education or career (§ 4320, subd. (b)), and Linda's ability to pay support (§ 4320, subd. (c)). Counsel also argued about the needs of each party based on the marital standard of living (§ 4320, subd. (d)), the obligations and assets of each party (§ 4320, subd. (e)), and counsel acknowledged the long duration of the marriage (§ 4320, subd. (f)). Counsel also asserted that Paul was able to work given the condition of his health. (§ 4320, subds. (g), (h).) Any argument that Linda relied on domestic violence as the sole factor regarding support is contradicted by the record. Moreover, and more importantly, it was not the only factor relied upon by the court, but one of many. The record demonstrates the court considered all of the factors enumerated in section 4320, including the balance of hardships to each party.

4. Substantial Evidence

Paul further argues the trial court's findings regarding domestic violence, specifically, the court's conclusion that Paul "grabbed Linda and pushed her down the stairs" were not supported by substantial evidence. He points to conflicts in the evidence

as to whether Linda was pushed “onto” or “down onto” the stairs as opposed to “down the stairs.”

“When findings of fact are challenged in a civil appeal, we are bound by the familiar principle that ‘the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,’ to support the findings below. [Citation.] We view the evidence most favorably to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor. [Citation.] Substantial evidence is evidence of ponderable legal significance, reasonable, credible and of solid value. [Citation.]” (*Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1100.)

We note that if Paul had any disputes with the specific language the court chose on this point, he should have addressed this with the trial court after receiving the statement of decision. In any case, this argument is without merit. Linda’s declaration testimony that Paul “pushed me down the stairs” was sufficient for the court to make this finding, if accorded credibility. The appellate court cannot reweigh the credibility of witnesses or resolve conflicts in the evidence. (*Rufo v. Simpson* (2001) 86 Cal.App.4th 573, 622.) Further, Linda’s statement was “of ponderable legal significance, reasonable, credible and of solid value. [Citation.]” (*Oregel v. American Isuzu Motors, Inc., supra*, 90 Cal.App.4th at p. 1100.) Moreover, this was not the only instance of domestic violence the court cited in the statement of decision (nine specific incidents are discussed), and taken as a whole, the court’s findings regarding domestic violence are amply supported by substantial evidence. We cannot conclude the trial court’s decision would have somehow been entirely different if the court had found that Paul pushed Linda “onto” or “down onto” the stairs instead of “down” the stairs.

Paul also points to the “onto the stairs/down onto/down the stairs” issue to claim the “quantification” of domestic abuse should factor into the court’s calculation.

But when “balancing the applicable statutory factors, the trial court has discretion to determine the appropriate weight to accord to each” as long as the discretion is exercised within the legal framework of the statute. (*Cheriton, supra*, 92 Cal.App.4th at p. 304.) As we discussed above, the court did so. This argument is without merit in any event, because the domestic violence findings as a whole were supported by substantial evidence.⁸

Paul further contends that “how the incident happened is an appropriate assessment to make,” encouraging us to consider whether Paul was “enticed or duped into a physical act” and pointing out “the ‘history’ here contains several smaller incidents and one ‘bigger’ incident. . . .” We disagree. Such determinations are factual in nature and are actually *not* appropriate assessments for an appellate court to undertake. During opening argument, Paul’s counsel stated: “[T]he Court’s going to have to determine i[f] the story that Mrs. Denton’s going to tell or the story that M[r.] Denton’s going to tell is the one that’s more credible.” The court did just that, finding Linda more credible than Paul on this issue. Paul’s argument here appears to be another attack on the substantial evidence supporting domestic violence findings, which we once again reject.⁹

⁸ To the extent Paul claims domestic violence was not sufficiently “documented” within the meaning of the statute, we disagree. The declaration in support of the TRO, photographs, and other evidence was sufficient to fulfill any documentation requirement.

⁹ Paul’s remaining claim borders on specious. He argues that because the statement of decision states the court’s ruling that no support would be awarded at the beginning of the section discussing support, the court must have *made its decision* before considering the statutory factors. This argument is nothing short of absurd and borders on bad faith. The fact that the court summarized its findings before explaining them has no more significance in a statement of decision than it does in this opinion, which does the same thing (see p. 2, *ante*). As counsel is perhaps aware, newfangled computer machines allow one to add a paragraph at the beginning of the document even if it was written last.

In sum, Paul has failed to demonstrate error. The court properly and thoroughly explained how it had examined each factor in section 4320, and it was within its discretion to accord appropriate weight to each factor. The court is entitled to “consider the “big picture” concerning the parties’ assets and income available for support in light of the marriage standard of living’ [citation], . . .” (*MacManus, supra*, 182 Cal.App.4th at p. 338). The record here reflects the court properly did so, and its findings were supported by substantial evidence.

B. Attorney Fees

Paul’s remaining claim is that the trial court’s attorney fee order was “incomplete” and did not “consider the statutory factors.”¹⁰ Paul ignores, however, the common rules on appeal: “A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. [Citations.]” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Tusher v. Gabrielsen* (1998) 68 Cal.App.4th 131, 140.) Put another way, we presume ““that the court performed its duties in a regular and correct manner absent a clear showing to the contrary.”^[b] [Citation.]” (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 494.) Paul has not offered the required “clear showing,” the court did not consider the proper factors, nor did he raise this issue below by objecting to the statement of decision. So, in presuming the findings and order to be correct, we presume the court did consider the relevant factors with regard to attorney fees and simply did not articulate its thoughts on each one. We find no error in the form of the court’s order.¹¹

¹⁰ Linda does not offer any argument on this point.

¹¹ Because we are affirming the court’s order regarding spousal support, we need not consider Paul’s argument that if the support order is reversed, the inadequacy of the fees should also be addressed. Needless to say, we also decline to award Paul his fees on appeal.

III
DISPOSITION

The judgment is affirmed. Linda is entitled to her costs on appeal. She may bring any motion regarding attorney fees on appeal before the trial court.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.