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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of NICOLE ELISE and
KENT JAMES MURAOKA.

NICOLE ELISE MURAOKA,

Respondent,

v.

KENT JAMES MURAOKA,

Appellant.

G046696

(Super. Ct. No. 07D008907)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Clay M. Smith, Judge. Affirmed.

Law Offices of Michel & Rhyne, Michael L. Michel and Karen Rhyne for
Appellant.

Law Office of Ronald B. Funk and Ronald B. Funk for Respondent.

* * *

INTRODUCTION

Kent James Muraoka and Nicole Elise Muraoka separated in December 2010, after a 14-year marriage.¹ After a trial, the court ordered Kent to pay child support and spousal support to Nicole, and to pay a portion of Nicole's attorney fees. Kent appeals from the judgment. The trial court did not abuse its discretion and its findings were supported by substantial evidence. Therefore, we affirm.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Kent and Nicole were married in 1996, and have two minor children. Kent and Nicole separated in June 2007. Nicole filed a petition for dissolution in October 2007. A month later, following mediation, Kent and Nicole entered into a parenting agreement. The agreement was adopted by the trial court as its own order. The court also issued a minute order regarding Kent's payment of temporary child support, temporary spousal support, child support and spousal support arrears, and attorney fees. Shortly thereafter, Kent and Nicole reconciled.

Kent and Nicole separated a second time in December 2010, and Nicole filed an amended petition for dissolution in February 2011. In April 2011, the trial court filed a new order reissuing the orders entered in November 2007, regarding temporary child and spousal support, among other things.

Kent and Nicole stipulated to a permanent custody order and to the division of property and debts. The issues remaining for trial were child support and spousal support (including a determination of arrears), credits and reimbursements, and attorney fees and costs. Both Kent and Nicole filed income and expense declarations, and

¹ To avoid confusion, we will refer to Kent Muraoka and Nicole Muraoka by their first names; we intend no disrespect.

submitted DissoMaster reports to the court. Kent and Nicole waived a final declaration of disclosure.

During the marriage, Kent had attended medical school and completed his medical residency. At the time of separation, he was practicing as an anesthesiologist, with a base pay of \$23,350 per month. Throughout the marriage, Nicole had been employed as a teacher; at the time of separation, her salary averaged \$6,420 per month.

A trial was conducted in September 2011, and the court issued a statement of decision about a month later. Kent's motion to vacate the statement of decision or for reconsideration was denied on the ground that Kent "simply disagrees with the Court's ruling." Judgment was entered, and Kent timely appealed.

DISCUSSION

We review the trial court's order setting spousal support and child support for abuse of discretion. (*In re Marriage of Rosen* (2002) 105 Cal.App.4th 808, 825.) "We do not substitute our judgment for that of the trial court, but confine ourselves to determining whether any judge could have reasonably made the challenged order." (*In re Marriage of de Guigne* (2002) 97 Cal.App.4th 1353, 1360.) The amount of an award of attorney fees is also reviewed for abuse of discretion. (*In re Marriage of Rosen, supra*, at p. 829.)

I.

CHILD SUPPORT ORDER

Child support is determined by applying a statewide uniform guideline. (Fam. Code, § 4055.) (All further statutory references are to the Family Code.) The trial court used that guideline in determining Kent's child support payments. The court also made the following findings regarding child support, none of which Kent challenges: "A. [Kent]'s timeshare with the minor children is 17%. [¶] B. [Kent]'s income is treated as earnings from self-employment. His income as a physician is reported by Kaiser

Permanente on a K-1 and is reported by him to the Internal Revenue Service as ordinary business income on Schedule F of his federal tax filings. He pays self-employment tax pursuant to Schedule SE. [¶] C. [Kent]’s contributions to a Keough plan and to a Tax Shelter Retirement plan are deemed voluntary contributions. Such amounts are therefore available for support, if necessary. The Court has not deducted these payments from income because they are voluntary.”

The only specific challenge to the child support order is Kent’s claim in the introduction of his opening brief that the trial court “fail[ed] to calculate the child support correctly in that it used the incorrect tax status for the wife [(citing the court’s DissoMaster printouts)]. The error in the calculation is that the court did not change the tax settings [(citing the page in the judgment setting forth the child support orders)] to reflect that the wife is a school teacher and does not pay Social Security.” To meet the burden of affirmatively demonstrating error, an appellant must raise issues for review, and support each issue raised with argument, legal authority, and citations to the record. (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 367-368; *In re S.C.* (2006) 138 Cal.App.4th 396, 406.) If an appellant fails to raise an issue, or fails to adequately support an issue raised, the appellate court may deem the issue forfeited. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 964.) Kent fails to provide any argument, legal authority, or citations to the record, supporting his claim that the trial court erred by using an incorrect tax status for Nicole; therefore, we deem that argument to have been forfeited.

II.

SPOUSAL SUPPORT ORDER

In making a spousal support order, the trial court must consider the factors identified in section 4320. (*In re Marriage of Left* (2012) 208 Cal.App.4th 1137, 1150.)

The judgment fully details the trial court's findings on all section 4320 factors,² and the findings are supported by substantial evidence.

Kent argues the trial court improperly based the spousal support order on Kent's extraordinary working hours during the three years before the date of separation. In *In re Marriage of Simpson* (1992) 4 Cal.4th 225, 234-235, the California Supreme Court held, "earning capacity generally should not be based upon an extraordinary work regimen, but instead upon an objectively reasonable work regimen as it would exist at the time the determination of support is made." The court's spousal support award was based on Kent's income of in excess of \$23,000 per month, which is the amount Kent reported on his income and expense declaration as the amount he earned per month based on working 42 hours per week. This was also the amount of income reflected in Kent's paycheck stubs, and the amount he testified that he had earned.

Kent's contention that the court's judgment was based on a premise that Kent would continue working overtime is unsupported. The court's spousal support award was based on Kent's admitted monthly income. The court then ordered that, pursuant to *In re Marriage of Ostler & Smith* (1990) 223 Cal.App.3d 33, 37, Kent pay a portion of his bonuses, overtime commissions, or other earnings, as additional child support and spousal support. This order does not require Kent to work overtime; it merely mandates that if Kent does earn additional income by working overtime, Nicole and the minor children have a right to share in Kent's higher standard of living. (*In re Marriage of Ostler & Smith, supra*, at p. 54.) The court's award was based "upon an objectively reasonable work regimen as it would exist at the time the determination of support is made" (*In re Marriage of Simpson, supra*, 4 Cal.4th at pp. 234-235), and therefore does not constitute an abuse of discretion.

² The judgment does not address section 4320, subdivision (m). That subdivision addresses the factor of an abusive spouse's criminal conviction, which is not at issue in this case.

Kent also argues that the trial court improperly treated as liquid assets the \$13,000 that he had in the bank to pay self-employment taxes. While the court did reference \$13,000 in liquid assets, which is the amount Kent reported in his income and expense declaration as assets in cash and bank accounts, the court referenced Kent's liquid assets as "modest." The judgment states: "Neither party has significant liquid assets." Even if the trial court improperly considered the money set aside to pay self-employment taxes as liquid assets, those assets did not factor into the court's spousal support award.

Kent's main argument on appeal is that the trial court attributed to Kent and Nicole an incorrect marital standard of living. In determining an appropriate spousal support award, "courts must begin with the general premise that the decision to award spousal support and, if so, the amount and duration, must be based on the *standard of living established during the marriage*. [Citation.] [¶] Nonetheless, the marital standard of living is not the sole focal point in adjudicating spousal support; nor does it set any bottom-line benchmark or absolute ceiling on the support amount. Rather, in bringing the marital standard of living into the spousal support equation, the Legislature intended to establish a *reference point* against which the other statutory factors . . . may be weighed and applied." (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2012) ¶ 6:838, p. 6-302.14 (rev. #1, 2012).) "The Legislature intended 'marital standard of living' to be a general description of the station in life that the parties had achieved by the date of separation. [Citation.]" (*In re Marriage of Nelson* (2006) 139 Cal.App.4th 1546, 1560.)

Kent cites *In re Marriage of Weinstein* (1991) 4 Cal.App.4th 555, for the proposition that a support order does not need to provide for maintenance of a marital standard of living that is clearly beyond the parties' means. In that case, the court held, in relevant part: "[W]here parties live beyond their means during marriage, the appropriate measure of their postseparation needs is 'what would have been a reasonable standard of

living' if they had not been doing so. [Citation.]" (*Id.* at p. 569.) We conclude the trial court's judgment is completely consistent with the holding of *In re Marriage of Weinstein*. In this regard, the court made the following findings: "During the course of this long-term (about 14 years) marriage, the parties enjoyed an upper-middle class marital standard of living. They owned their home, dined out, enjoyed nice vacations, and drove expensive automobiles (BMW's). They vacationed occasionally in places like Las Vegas, Napa and Hawaii. Their adjusted gross income for the three years prior to the date of separation (2008-[2]010) was \$430,545, \$449,384, and \$456,774. Although after separation, [Kent] chose to reduce his income by working less overtime, the parties clearly enjoyed a marital standard of living based on a combined income of about \$450,000 per year." (Fn. omitted.)

Basing the marital standard of living on income rather than expenses is exactly the approach of which *In re Marriage of Weinstein* approved. The trial court's references to the parties' home, automobiles, and vacations provide support for, but do not supplant, the court's focus on the combined gross income of Kent and Nicole as the basis for its finding regarding the marital standard of living. And, we find no error in using the three years prior to separation as the basis for the marital standard of living determination. As with many marriages, Kent and Nicole's standard of living improved over time. To have used their income over the entire course of their marriage, where at least eight of the 14 years they were married were devoted to Kent's time in medical school and his medical residency, with little or no income, would have created a false picture of the marital standard of living at the time of separation. (See *In re Marriage of Nelson, supra*, 139 Cal.App.4th at p. 1560.)

Nothing in the spousal support order is inconsistent with the holding of *In re Marriage of Burlini* (1983) 143 Cal.App.3d 65, 69, cited by Kent: "The purpose of permanent spousal support is not to preserve the pre-separation status quo but to provide financial assistance, if appropriate, as determined by the financial circumstances of the

parties after their dissolution and the division of their community property.” The spousal support order in this case does not preserve for either Kent or Nicole the pre-separation standard of living, but it correctly reflects the court’s determination that financial assistance by Kent to Nicole is appropriate under the circumstances (all of which were detailed by the court in its factual findings). We find no abuse of discretion.

III.

ATTORNEY FEES

The purpose of an award of attorney fees under section 2030 is to ensure parity between spouses in their financial ability to retain counsel and have adequate representation. (*Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238, 251-252; see § 2032, subd. (b).) Section 2032, subdivision (a) provides, “[t]he court may make an award of attorney’s fees and costs under Section 2030 or 2031 where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties.” Subdivision (a)(1) of section 2030 permits the trial court to order one party to pay the other party’s attorney fees “if necessary based on the income and needs assessments” to “ensure that each party has access to legal representation, including access early in the proceedings, to preserve each party’s rights.” The court may order payment of “whatever amount is reasonably necessary for attorney’s fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.” (*Ibid.*) In determining whether the attorney fees and costs sought are just and reasonable, “the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party’s case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320.” (§ 2032, subd. (b).)

The judgment shows the trial court considered the section 4320 factors, considered Kent’s and Nicole’s respective needs and abilities to pay, and explained its

exercise of discretion in determining the award of attorney fees. The award was just and reasonable.

Kent argues Nicole failed to provide any “legitimate explanation” for the attorney fees she claimed. In almost the same breath, however, Kent concedes Nicole’s attorneys submitted documentation to the trial court, supporting the request for attorney fees. Kent’s real argument, then, is that the attorney fees claimed were unreasonable. Kent does not challenge any particular item in Nicole’s attorneys’ billing statements, or explain why the fees charged were unreasonable, other than to note the billings rose significantly during the three months before trial and to claim that Nicole’s attorneys were overcharging and overbilling.

The judgment reads, in relevant part: “The Court has reviewed the billing statements presented by [Nicole] and finds that the work was reasonably necessary and that the amount of the fees is fair and reasonable under the circumstances.” The court made further findings that Nicole did not have sufficient resources from her own income and her spousal support to reimburse her attorneys, and that Kent had the ability to pay his own counsel’s fees and to “contribute meaningfully” to Nicole’s counsel’s fees. The court specifically noted Kent had significant child support and spousal support obligations and he was required to pay his own attorneys. Ultimately, the court made the following findings regarding attorney fees: “Although the Court is mindful of these facts, it is apparent that [Kent] can assist [Nicole] with her fees and that under the entire circumstances, it would be equitable (indeed, essential) to reallocate the cost of this litigation primarily to him. . . . Specifically, [Kent] is ordered to contribute to [Nicole]’s fees in the amount of \$30,000. Such amount will be a meaningful contribution and will lessen the impact of the litigation on [Nicole]. By the same token, such amount can be borne by [Kent] without an undue hardship.”

Kent has failed to demonstrate an abuse of discretion in the attorney fees award.

DISPOSITION

The judgment is affirmed. Respondent to recover costs on appeal.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.