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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of NINA and ANDREW
WOOD.

NINA WOOD,

Respondent,

v.

ANDREW WOOD,

Appellant.

G047509

(Super. Ct. No. 10D010268)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jonathan H. Cannon, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed in part, reversed in part, and remanded.

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

Shuff Law Firm, Tamara Shuff Mortensen and Joseph A. Shuff III for
Respondent.

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The court entered a judgment on reserved issues in the marital dissolution proceedings of Andrew and Nina Wood.¹ Andrew challenges the judgment on numerous grounds. We reject Andrew’s assertion that he should be entitled to a wholesale reversal of the judgment due to either a defective statement of decision or a generally unfair proceeding. We also reject his assertion that the ruling on the custodial timeshare with respect to his daughter should be reversed for the many reasons he offers. In addition, we reject his arguments with respect to the insufficiency of the evidence as to the cash on hand, the child care expenses, the timeshare calculation, and the *Watts* charge.

At the same time, we conclude that the court erred in failing to consider some of the factors it should have, including the effect of Nina’s bonus income and cohabitation, and in failing to make findings on attorney fees and Nina’s 401(k) retirement plan. Accordingly, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I

FACTS

Andrew and Nina were married in 1999 and separated in 2010. They had one child, Elle, born in 2005. Nina filed a petition for dissolution of marriage in 2010. A judgment as to status was entered in November 2011.

A trial on reserved issues was held at JAMS in May 2012. A judgment on reserved issues was entered on September 4, 2012. The court found that Andrew and Nina enjoyed what it described as “a lower upper class lifestyle,” including “a million dollar plus home, two vacation homes, multiple cars, motorcycles, off road cars, boats, waverunners, and lots of cash kept in various places.” It also found that Andrew had an

¹ “Hereafter, we refer to the parties by their first names, as a convenience to the reader. We do not intend this informality to reflect a lack of respect. [Citation.]” (*In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1513, fn. 2.)

income of \$11,265 per month and that Nina had an income of \$7,331 per month, plus a \$500 monthly car allowance.

The court ordered joint legal custody of the child, with Nina to have primary physical custody. It established a custody and visitation schedule. It ordered Andrew to pay \$1,468 per month in child support. In addition, the court ordered Andrew to pay Nina \$1,000 per month in spousal support for five years, “at which time spousal support [would] be reduced to a jurisdictional level”

The court confirmed to Nina as her separate property the proceeds of a property in Huntington Beach, a Rolex watch, a diamond ring, a tennis bracelet, and \$64,868 of a 401(k) retirement account. The court confirmed to Andrew as his separate property a business savings account in the name of Quality Builders, Inc., a business checking account in the name of Quality Builders, Inc., and a third bank account.

The court awarded to Nina as her share of the community property a one-half interest in the proceeds of a property in Lake Havasu, a property in Ehrenberg Arizona with equity of \$118,665, a Toyota Sequoia automobile, a Yamaha Wakeboard boat, a Harley Davidson motorcycle, two Wells Fargo bank accounts, \$117,324 of the 401(k) retirement account, and credit card debt in the amount of \$2,591.

The court awarded to Andrew as his share of the community property a one-half interest in the proceeds of the Lake Havasu property, a net *Watts* charge of \$15,620 with respect to the Ehrenberg property, a Toyota Tundra automobile, a Ford F-150 automobile, a flatbed trailer, two off-road quads and one dirt bike, a Trex off-road vehicle, two Yamaha Waverunners, one Harley Davidson motorcycle, a Sandsamatic, \$129,630 in cash, and a business known as QB Builders, Inc. valued at \$183,000 and including four bank accounts.

In addition, the court ordered that the Ehrenberg property be sold and the proceeds divided equally

The court valued the property awarded to Nina at \$314,073 and the property awarded to Andrew at \$447,250, such that Andrew was required to pay Nina \$66,588.50 as an equalization payment, due by August 15, 2012. It also ordered Andrew to pay Nina \$40,000 in attorney fees.

Andrew filed a notice of appeal from the judgment on reserved issues.

II

DISCUSSION

A. Statement of Decision:

After a two-day trial before a retired judge, a five-page statement of decision was issued. On July 6, 2012, Andrew filed 13 pages of what he entitled “objections” to the statement of decision.

He proffered 11 numbered “objections,” 10 of which contained requests that the court make particular findings. Altogether, Andrew requested that the court make more than 100 specific findings, presumably to his liking. What he styled as “objections,” were to a large extent merely requests for a change in ruling or for findings favorable to himself. For example, his fifth “objection” read: “Respondent respectfully requests that the Court Find that Petitioner is in a better position to contribute to her own attorney’s fees and costs based on the following [eight proffered] Findings”

Nina filed a response in which she asserted, inter alia, that Andrew’s purported objections were not really either objections or requests to correct errors, but were in reality either further arguments or expressions of disagreement with the court’s determinations. On July 13, 2012, a senior case manager at JAMS notified counsel that the retired judge had reviewed the objections and the response and that the objections were overruled.

Andrew contends that the court committed reversible error in issuing a blanket rejection of his objections and in failing to issue any further statement of decision in response to his objections. However, none of the cases he cites supports the

proposition that a court commits reversible error per se if it fails to issue a further statement of decision upon receipt of objections. (See, e.g., *Miramar Hotel Corp. v. Frank B. Hall & Co.* (1985) 163 Cal.App.3d 1126.)

“In rendering a statement of decision under Code of Civil Procedure section 632, a trial court is required only to state ultimate rather than evidentiary facts; only when it fails to make findings on a material issue which would fairly disclose the trial court’s determination would reversible error result. [Citations.] Even then, if the judgment is otherwise supported, the omission to make such findings is harmless error unless the evidence is sufficient to sustain a finding in the complaining party’s favor which would have the effect of countervailing or destroying other findings. [Citation.] A failure to find on an immaterial issue is not error. [Citations.] The trial court need not discuss each question listed in a party’s request; all that is required is an explanation of the factual and legal basis of the court’s decision regarding the principal controverted issues at trial as are listed in the request. [Citation]” (*In re Marriage of Balcof, supra*, 141 Cal.App.4th at p. 1531.)

On appeal, Andrew, for the most part, fails to specify the principal controverted issues with respect to which the court purportedly failed to explain the factual and legal basis of its decision. It is not our obligation to go line by line through his 13-pages of “objections” and compare them to the court’s statement of decision to see whether there is any basis for a claim of error. (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368; *ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1270.)

Under his topic heading challenging the statement of decision, the only “unaddressed” issue Andrew specifically mentions is one with respect to custody. The totality of his discussion reads: “ANDREW also specifically requested a Statement of Reasons as to the custody issues ([Fam. Code,] § 3082) and received nothing of the kind. See 3AA 695. This is prejudicial error in and of itself. See Custody argument, *infra*.”

Following Andrew's suggestion, we will address this contention in our discussion of the timeshare issues, to which we turn now.

B. Timeshare Order:

(1) Background—

(a) reports and orders

Pursuant to the stipulation of the parties, Dr. Miriam Galindo prepared a 34-page confidential child custody evaluation report dated April 21, 2011. In that report, Dr. Galindo concluded that both parents had coparenting and credibility issues. She recommended joint legal custody to Nina and Andrew with primary physical custody to Nina and secondary physical custody to Andrew. The court adopted that recommendation in its order of May 11, 2011. Andrew was to have physical custody Tuesdays and Thursdays after school and every other weekend.

Nina's primary status was conditioned on her completing certain requirements, including participating in a 10-week parenting class and a four-week coparenting class. The court stated that consideration of any increase in Andrew's custodial time would be contingent on completion of certain requirements, including participating in a 10-week parenting class and a four-week coparenting class. The order further stated that it was recommended that each parent read a book regarding boundaries with children. In addition, the order said that each parent, during his or her custodial period, should refrain from consuming alcohol and should supervise Elle at all times, unless she was in the care of either the nanny or a licensed care facility.

Dr. Galindo prepared an updated report dated August 19, 2011, in order to address how the parenting was going after Andrew had moved out of the family home. Among other things, she observed that Nina had completed a 10-week parenting class but that Andrew had not. In addition, Dr. Galindo noted that Nina had completed the recommended reading. Also, Dr. Galindo stated that the order had made clear neither

parent should consume alcohol during his or her custodial time and that there was evidence Andrew nonetheless had failed to comply on at least one occasion. Dr. Galindo recommended that joint legal custody remain with both parents and that Nina continue to have primary physical custody. She further recommended that Andrew's timeshare be decreased by one midweek visit and that any increases in his timeshare be conditioned on his completion of six recommendations made in the April 21, 2011 report (repeated in the May 11, 2011 order), which would include, inter alia, the completion of a 10-week parenting class and the reading of the recommended book. The court adopted Dr. Galindo's recommendations pending trial.

(b) Dr. Galindo's testimony

Andrew called Dr. Galindo to testify at trial on May 11, 2012, and paid her appearance fee. Dr. Galindo acknowledged that she had not interacted with the family since August 2011.

Dr. Galindo reiterated that Nina had completed the 10-week parenting class and the recommended reading. Dr. Galindo had discussed the class and the book with Nina and felt that Nina had learned from the materials. In addition, Dr. Galindo indicated that Nina either had completed the recommended four-week coparenting class or had been in the midst of taking it when Dr. Galindo interviewed her in July 2011.

With respect to Andrew's education, Dr. Galindo testified that she felt he needed to take the courses she had recommended whether the court was considering increasing his timeshare or not. She said she had explained directly to Andrew that she was unable to recommend an increased timeshare because "there were some weak negligences in his parenting that needed to be addressed" Dr. Galindo testified, for example, that she did not feel Andrew supervised the child closely enough for her age and energy level, that he needed to be careful about exposing the child to new significant others, and that she saw some issues with Andrew's son Zackary. She stated for example that Andrew had shared court documents such as declarations with Zackary when he

should not have and that she did not want Andrew to make the same type of boundary mistakes with Elle.

Dr. Galindo was asked to explain why she had recommended that Andrew's timeshare with Elle be reduced. She testified that there were several reasons. She wondered why Nina had completed certain of the recommended educational activities but Andrew had not. Dr. Galindo said one of the goals was to have the parents acknowledge both their weaknesses and their strengths, but that Andrew's response to her indicated that he did not believe he had any parenting weaknesses. She also said that his credibility had been reduced somewhat from her perspective.

Dr. Galindo was also concerned because of what Elle had said: "She became fearful and shared with me that she wasn't seeing dad as much as dad was indicating to me, and I found that concerning because my conclusion was that she loved both mom and dad a lot, and her description of what was going on at dad's house indicated to me that she was spending most of her time in front of the TV. She seemed to be going through some kind of—something was making her feel very anxious, so those are the major considerations that I had in making the final recommendation." Indeed, Dr. Galindo stated that Elle told her she was sad that she spent time in front of the TV at Andrew's house.

In short, at trial, Dr. Galindo continued to recommend joint legal custody to the parents, primary physical custody to Nina, and the timeshare as outlined in her August 19, 2011 report. However, she acknowledged that she had no updated facts since August 2011.

(2) *Analysis*—

Andrew says the court erred in adopting Dr. Galindo's recommended timeshare, for numerous reasons. First, he says he was denied frequent and continuing contact with Elle despite the fact that Family Code section 3020, subdivision (b) provides

“that it is the public policy of this state to assure that children have frequent and continuing contact with both parents” We disagree with Andrew’s characterization of the court’s order. The court ordered that Andrew have physical custody of Elle on alternating weekends, Wednesdays after school, one full week during summer vacation, and on specified holidays. Thus, the court’s order entitled Andrew to frequent and continuing contact.

Second, Andrew says that by the time of the May 2012 trial, Dr. Galindo’s April and August 2011 reports were stale. He contends that the trial court erred in relying on what was then stale information in making its decision. However, Andrew was the one who called Dr. Galindo to testify. He does not argue that he was precluded from calling other witnesses who may have had more current information. He does not contend that he asked the court to delay issuing a ruling on the timeshare until more current information could be obtained and presented. Moreover, Andrew was the one who had requested that Dr. Galindo prepare an updated report in August 2011, and he gives no indication that he was precluded from asking her to conduct more interviews and prepare another updated report closer in time to trial. What he does is seek to challenge a ruling that turned out not to be to his liking, based on the apparently retroactive assertion that the trial court ought not have ruled because the evidence presented to it was insufficiently current. We are not convinced that the evidence was so out of date that it was improper for the court to make a ruling based upon it.

Third, Andrew claims Dr. Galindo, in her updated report, recommended a reduction in his timeshare to punish him because he had been unhappy with her first report. Indeed, Dr. Galindo acknowledged at trial that she was aware Andrew was unhappy with her first report. However, she explained at length why she had made the recommendation she did in the updated report—that Andrew had not pursued any of the recommended educational activities, that he did not even recognize that he had any parenting issues to be addressed, that she was concerned about his lack of supervision of

Elle, that Elle was sad about the amount of time she was left watching TV and appeared to be fearful or anxious, that Andrew exhibited issues in maintaining appropriate boundaries with his children, that he needed to demonstrate more care in exposing Elle to his new significant others, and that there was evidence he had been drinking during a custodial visit. Dr. Galindo also explained that Nina, in contrast, had completed certain of the recommended educational activities and had appeared to learn from them. The evidence does not support Andrew's contention that Dr. Galindo behaved punitively towards him.

Andrew also argues that the court, in adopting Dr. Galindo's recommendation for a reduced timeshare, improperly rubber-stamped the same. Again, we disagree. There was substantial evidence in the form of Dr. Galindo's testimony to support the court's decision to adopt the recommendations in her report.

Continuing on, Andrew, citing Code of Civil Procedure section 170, states that "[i]t is the duty of the judge to judge" and to consider *all* of the evidence. He contends that the court abdicated his responsibilities with respect to each of these duties. We disagree.

Andrew testified at trial on May 15, 2012, four days after Dr. Galindo had testified. Andrew stated that he had read the recommended book by the end of the preceding summer, had completed a 10-week parenting class, by the end of December 2011, and also had completed a four-week coparenting class. He now says "[t]he court heard this evidence of compliance but did nothing except blanketly approve the 730 update and say nothing on the subject whatsoever."

However, we cannot conclude that the court failed to consider Andrew's evidence just because the court reduced his timeshare by one evening per week. True, Dr. Galindo, on the one hand, testified that as of the date she prepared her August 19, 2011 updated report, Andrew had not completed the recommended educational pursuits. Andrew, on the other hand, testified that he had completed those three educational

pursuits after Dr. Galindo prepared her reports. However, Dr. Galindo's recommendations were not based exclusively on Andrew's failure to complete educational opportunities. The court had other evidence upon which it could base its decision, such as Dr. Galindo's concern about Andrew's lack of supervision of Elle, Elle's being sad about the amount of time she was left watching TV at his house, Elle's apparent fearfulness or anxiousness, Andrew's need to exercise more caution in exposing Elle to his significant others, and the evidence that Andrew had been drinking during a custodial visit.

Andrew segues back to his assertion that the court failed in its obligation to respond to his objections to the statement of decision. He had sought a 50/50 timeshare, but did not get it. He contends that the court's failure to provide "any intelligent, cogent, judicial response" to his objections was improper. Andrew cites the page of the record containing the following objection: "Respondent requests a Statement of Reasons regarding the legal and factual basis for the Court's denial of his request for joint custody pursuant to Family Code Section 3082."

First off, we note that the court *did* award joint legal custody of Elle to Nina and Andrew. We gather that what Andrew really meant was to ask for a statement of reasons why the court did not grant his request for a 50/50 timeshare with respect to physical custody.

Family Code section 3082 provides: "When a request for joint custody is granted or denied, the court, upon the request of any party, shall state in its decision the reasons for granting or denying the request. A statement that joint physical custody is, or is not, in the best interest of the child is not sufficient to satisfy the requirements of this section."

The court, in its statement of decision, first stated that it had previously adopted Dr. Galindo's updated August 19, 2011 report. It then stated that it was making the modified custody order "[b]ased upon the testimony and evidence rendered in [the]

proceeding” The court stated that except as otherwise provided in its order, it did “in all other respects adopt[] the recommendations and findings of Dr. Galindo.” So, the statement of decision made clear that the court had considered testimony and other evidence and that its timeshare ruling was based on the recommendations and findings of Dr. Galindo. Andrew’s cited legal authorities (see, e.g., Fam. Code, § 3082; *In re Marriage of Adams & Jack A.* (2012) 209 Cal.App.4th 1543; *In re Marriage of Seagondollar* (2006) 139 Cal.App.4th 1116; *In re Marriage of McGinnis* (1992) 7 Cal.App.4th 473, disapproved on another ground in *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 28, fn. 10) do not persuade us that this explanation was insufficient or that the court had an obligation to cull out the particular portions of Dr. Galindo’s reports or testimony upon which it relied.

On a final point, Andrew claims the court erred in failing to consider the “traumatic and substantial effect” that the change in timeshare would have upon Elle and her half brother Zackary, who lived with Andrew.

Dr. Galindo interviewed both Elle, born in 2005, and Zackary, a teenager. At trial, Dr. Galindo was asked whether she had considered the bond between Elle and Zackary in preparing her evaluation and, if so, what factors she had considered regarding their bond. She replied that she had considered their bond, and that the factors she considered included their respective ages, developmental stages, and involvement with peers, their interaction, and Zackary’s obligations and responsibilities. Dr. Galindo described the relationship between the two as “reasonably appropriate.” She said that Elle looked up to Zackary with admiration and that he was kind and nurturing towards her. Dr. Galindo stated that she believed it was important for Elle and Zackary to continue to develop a sibling bond in a way that was “developmentally appropriate for both of them” given the dramatic difference in their ages. She also said Zackary was at a stage where he was “pulling away from his family” and that he needed to “spend more time with teenage boys.” Dr. Galindo further stated that Elle was “at a completely

different developmental stage” In short, Dr. Galindo made clear that she had considered the sibling bond in making her recommendations with respect to the timeshare.

This notwithstanding, Andrew argues that Dr. Galindo neither analyzed the sibling bond nor considered “the adverse effect” a change in timeshare would have on that bond. Furthermore, he maintains that there is no evidence that the court considered the sibling bond in changing the timeshare.

Unlike the situation in either *In re Marriage of Heath* (2004) 122 Cal.App.4th 444, at pages 448 and 450, or *In re Marriage of Williams* (2001) 88 Cal.App.4th 808, at page 813, the record was not devoid of evidence of the sibling relationship and the two siblings were not completely separated by the trial court’s custody order. Although the timeshare was modified, Elle would still have significant time at Andrew’s home, so she was not being completely torn away from Zackary. Furthermore, Dr. Galindo testified that she had considered the sibling relationship in accordance with *In re Marriage of Williams*. None of Andrew’s cited authorities stands for the proposition that a timeshare order must be reversed if the trial court fails to specifically recite that it considered the evidence regarding the sibling bond in making its order.

C. Spousal Support:

(1) Introduction—

“Spousal support is governed by statute. (See [Family Code,] §§ 4300-4600.)^[2] 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,

² All subsequent statutory references are to the Family Code except as otherwise expressly stated herein.

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.)

“‘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.’ [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.]” (*In re Marriage of Cheriton, supra*, 92 Cal.App.4th at p. 304.)

(2) *Findings*—

As the parties agree, the court in the matter before us addressed the first factor set forth in section 4320—the marital standard of living (§ 4320, subd. (a)). In both the statement of decision and the judgment, the court found “that the parties lived a

lower upper class lifestyle, with a million dollar plus home, two vacation homes, multiple cars, motorcycles, off road cars, boats, waverunners, and lots of cash kept in various places.”

Andrew claims the court addressed only this one section 4320 factor, so its ruling was deficient as a matter of law. We disagree with this characterization of the statement of decision.

The statement of decision reflects that the court considered other section 4320 factors as well. The court addressed the marketable skills of Nina and her ability to engage in gainful employment without adversely affecting the interests of the child (§ 4320, subs. (a)(1), (g)) to the extent that it mentioned, in the statement of decision, that she had a salary of \$7,331 per month plus “other taxable income of \$500.00 per month for her auto allowance” In addition, the court addressed the ability of Andrew to pay spousal support, given his earning capacity, assets, and standard of living (§ 4320, subd. (c)), to the extent that it mentioned, in the statement of decision, his earnings, which it estimated at \$11,265 per month, and itemized, in the judgment, the assets being awarded to him. Furthermore, the court considered the obligations and assets of the parties (§ 320, subd. (e)) to the extent it itemized the property being awarded to them and mentioned that Nina had “health insurance costs of \$693.00 and Child Care expenses of \$866.00 per month.” Also, the court found that the parties had been married for more than 11 years when they separated, showing that it considered another section 4320 factor—the duration of the marriage. (§ 4320, subd. (f).)

Nina claims that all of the other section 4320 factors were in fact covered extensively at trial. As she correctly observes, for example, there was testimony to the effect that she helped Andrew obtain a contractor’s license, that she was 41 and Andrew was 43 and they were each in good health, and that there had been no domestic violence. (§ 4320, subs. (b), (h), & (i).)

Whether the court actually considered that evidence and weighed every one of those factors as it was required to do, is another matter. Andrew maintains that section 4320, per its very terms, mandates the consideration of each of the factors. True enough, but the statute does not actually require that the court make specific findings with respect to each one of the individual factors or to specifically note the fact that it has indeed taken each one of them into consideration. Rather, the court is required to “consider and weigh all of the circumstances enumerated in the statute, *to the extent they are relevant to the case before it.* [Citations.]” (*In re Marriage of Cheriton, supra*, 92 Cal.App.4th at pp. 302-303, fn. omitted, italics added.) There is no suggestion, for example, that either party has a criminal conviction the court should have noted in consideration of section 4320, subdivision (m).

Andrew nonetheless maintains that he “filed Objections and pointed out the deficiency of the spousal support decision. (3 AA 699.) See also, § 4332 [‘. . . at the request of either party, the court shall make appropriate factual determinations with respect to other circumstances.’]. This was not done despite [his] requests and is reversible error. [Citation.]” So, in making this tributary argument, Andrew indicates that the court was required, under section 4332, to make required findings as he requested and that the court abrogated its duty to do so.

Section 4332 provides: “In a proceeding for dissolution of marriage . . . , the court shall make specific factual findings with respect to the standard of living during the marriage, and, *at the request of either party*, the court *shall* make appropriate factual determinations with respect to other circumstances.” (Italics added.)

However, in making the above-quoted argument, Andrew does not specify the factual determinations he requested which the court failed to make. We observe that Andrew cites a page out of his objections to the statement of decision, wherein he objects to the award of spousal support, “requests that the Court *adopt the following Findings:*” (italics added) and then provides a listing of desired findings. This is not the same as

requesting that the court make its *own* findings. To the extent that Andrew may indeed have requested that the court make its *own* findings on certain points, he has failed, for the most part, to identify those particular points, and has instead left it up to this court to find them and address them on his behalf. This we will not do. (*Niko v. Foreman, supra*, 144 Cal.App.4th at p. 368.)

Finally, where Andrew complains that his objections were “summarily overruled,” we have already addressed that argument at the outset of our opinion and will not reiterate that discussion here.

(3) *Cohabitation and bonus income*—

Under other topic headings, Andrew does identify two factors the court did not address, as to which he requested findings. One is cohabitation and the other is bonus income.

(a) *Cohabitation*

In his objections to the statement of decision, Andrew objected to the spousal support order because Nina allegedly was cohabiting with her boyfriend who was paying \$1,800 per month in expenses. Andrew stated that Nina’s cohabitation with her boyfriend gave rise to a presumption, under section 4323, of a reduced need for spousal support and that Nina had not rebutted that presumption. The court made no findings on the matter.

Nina argues that the court considered the cohabitation issue, inasmuch as evidence was presented that her boyfriend and his daughter lived with her and that he contributed \$1,800 per month to the household expenses. Nina further retorts that \$1,800 is less than the amount she and Andrew paid for the nanny each month, that cohabiting with her boyfriend did not reduce her need for support given the marital standard of living, that her financial situation was strained after the separation, and that she was forced to use all the proceeds from the sale of the Lake Havasu property and to take out a

loan against her 401(k) in order to pay the mortgage on the family residence until it was sold.

Nina may well be correct that the court considered all these issues and weighed them as and to the extent appropriate in reaching its decision. However, the problem is that the court failed to respond to Andrew's request that it make written findings on her receipt of monies from her cohabitant.

Andrew cites *In re Marriage of Geraci* (2006) 144 Cal.App.5th 1278, in which the appellate court observed that the record provided little insight into how the trial court had weighed the statutory factors. (*Id.* at p. 1297.) The *Geraci* court also stated: "The court's judgment also does not take into consideration the evidence [the wife] had been cohabitating since the parties separated in 2000, despite [the husband's] requests for findings on the issue. Section 4323 states 'there is a [rebuttable] presumption, affecting the burden of proof, of decreased need for spousal support if the supported party is cohabitating with a person of the opposite sex. . . .' 'Cohabitation may reduce the need for spousal support because "sharing a household gives rise to economies of scale. [Citation.] Also, more importantly, the cohabitant's income may be available to the obligee spouse." [Citation.]'" (*In re Marriage of Geraci, supra*, 144 Cal.App.5th at p. 1298, fns. omitted.) The court reversed the spousal support award and remanded the matter to the trial court with directions to reconsider the matter and to make factual findings required under section 4320 and as the parties requested. (*In re Marriage of Geraci, supra*, 144 Cal.App.5th at p. 1299.)

We, too, reverse and remand the spousal support award for the consideration of the cohabitation issue and for the making of findings on the point.

(b) *Bonus income*

Andrew also objected to the spousal support order on the ground that Nina had an incentive bonus of \$6,718 available to her and that it should have been considered in the calculation of not only spousal support, but also child support, and attorney fees.

However, the court did not make any findings with respect to Nina's available bonus income.

Nina testified that in 2011 she won trips for selling a certain number of cars. For example, she won a golf trip. Her employer provided her with a form 1099 with respect to the value of the trips. Oddly, neither Nina nor Andrew briefs whether the value of a golf trip, while reportable as taxable income, should be included as income for the purposes of awarding spousal or child support, or for that matter, whether a one-time bonus should be taken into consideration at all. (See, e.g., *In re Marriage of Mosley* (2008) 165 Cal.App.4th 1375.) Of course, since the trial court did not make findings on the bonus income, we do not know whether the court deliberately excluded the income from the calculations, and if so, its reasoning. The court shall consider the issue of Nina's bonus income on remand and make findings on whether it is appropriate to include such income in determining spousal or child support obligations—or not.³

(c) Issues on remand

The court's failure to consider the issues of Nina's cohabitation and bonus income and to make findings thereon is reversible error. We remand the matter for the court to consider those two issues and make appropriate findings. We do so without prejudice to the trial court's ultimate determination that, weighing all appropriate factors, Nina is still entitled to an award of spousal support in an amount equal to at least \$1,000 per month.

³ As an aside, we noted that Nina, in her reply brief, says there were other errors in the income calculation and her auto allowance was counted twice. She says that Andrew could actually wind up paying more support if all the appropriate corrections to the calculations are made. However, Nina did not file an appeal to challenge any calculation errors that were to her disadvantage and we will not consider such errors on this appeal.

D. Attorney Fees:

(1) Introduction—

Section 2030 permits the court to award attorney fees in marital dissolution proceedings. With respect to the determination of a fee award, section 2032 provides: “(a) The court may make an award of attorney’s fees and costs under Section 2030 . . . where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties. [¶] (b) In determining what is just and reasonable under the relative circumstances, *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*. The fact that the party requesting an award of attorney’s fees and costs has resources from which the party could pay the party’s own attorney’s fees and costs is not itself a bar to an order that the other party pay part or all of the fees and costs requested. . . .” (§ 2032, subds. (a), (b); italics added.)

“A motion for attorney fees and costs in a dissolution action is addressed to the sound discretion of the trial court, and in the absence of a clear showing of abuse, its determination will not be disturbed on appeal. [Citations.] The discretion invoked is that of the trial court, not the reviewing court, and the trial court’s order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made. [Citations.]’ [Citation.]” (*In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 866.)

However, while the court has wide latitude in ruling upon a request for attorney fees, “its decision must reflect an exercise of discretion and a consideration of the appropriate factors. [Citations.]’ [Citation.] The trial court’s discretion in this area is thus limited by the statutes which enable the exercise of that discretion.” (*In re Marriage of Keech, supra*, 75 Cal.App.4th at p. 866.) In making an award under section

2032, “the court *shall* take into consideration . . . to the extent relevant, the circumstances of the respective parties described in Section 4320” (*In re Marriage of Keech, supra*, 75 Cal.App.4th at p. 867.)

In making a fee award, the court ought not follow “a truncated process where the trial court simply (a) ascertains which party has the higher nominal income relative to the other, and then (b) massages the fee request of the lesser-income party into some manageable amount that feels like it will pass an abuse of discretion test.” (*Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238, 254.) “While no particular language is required in an order awarding attorney fees under sections 2030 and 2032, the record (including, but not limited to, the order itself), must reflect an actual exercise of discretion and a consideration of the statutory factors in the exercise of that discretion. [Citations.]” (*Ibid.*) “In reviewing an attorney fee order, the record must reflect that the trial court considered the factors set forth in sections 2030 and 2032. [Citation.]” (*In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1056; accord, *In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 975.)

(2) *Court award*—

The statement of decision said: “Based upon all of the evidence and the Declarations of the Parties and their Attorneys, the court finds that [Andrew] should pay a contributive share of [Nina’s] fees and costs in the amount of \$40,000.” In his objections to the statement of decision, Andrew expressly and simply requested that the court state the factual and legal basis upon which it made its order. In the judgment, the court simply reiterated the order that Andrew pay Nina \$40,000 in attorney fees, and added that the sum would bear interest from August 1, 2012. It offered no explanation as to the basis of the order.

(3) *Analysis*—

Andrew contends the court abused its discretion in making the award, because there is no evidence in the record to show that it actually considered the factors enumerated in sections 2030 and 2032, including the relevant factors set forth in section 4320. Nina responds that the statement of decision says the award was based on “all of the evidence and the Declarations of the Parties and their Attorneys.” She also says the court had before it evidence on all of the section 4320 factors, and on the parties’ income, as well as their need and ability to pay.

However, as we have already observed, the record does not show whether the court, in affixing the spousal support award, considered all of the factors it should have, including the effect of the contributions of Nina’s cohabitant and the availability of any bonus income for Nina. The record likewise does not show what factors the court considered in affixing the award of attorney fees. The record must show that the court actually considered the statutory factors. (*In re Marriage of Falcone & Fyke, supra*, 203 Cal.App.4th at p. 975; *In re Marriage of Cryer, supra*, 198 Cal.App.4th at p. 1056.) Since it does not, and Andrew expressly requested findings on the point, the trial court on remand must reconsider the award of attorney fees and articulate the factors it considered in making its award. We do not mean to preclude the court from ordering, on remand, that Andrew pay Nina an award of \$40,000, or such other amount as it may determine to be appropriate, based on all the proper factors, duly explained.

Upon request, the trial court, in the first instance, may also consider whether or not to award attorney fees to either party with respect to this appeal. (§ 2030, subd. (c); *In re Marriage of Schofield* (1998) 62 Cal.App.4th 131, 140-141.)

E. Watts Charge:

“Where one spouse has the exclusive use of a community asset during the period between separation and trial, that spouse may be required to compensate the

community for the reasonable value of that use.’ [Citation.] The right to such compensation is commonly known as a ‘*Watts* charge.’ [Citation.] Where the *Watts* rule applies, the court is ‘obligated either to order reimbursement to the community or to offer an explanation for not doing so.’ [Citation.] But ‘where the asset is not owned outright by the community but is being financed,’ the spouse in possession ‘may satisfy the duty to compensate the community for use of the asset by making the monthly finance payments from his or her separate property.’ [Citation.] Such offsets are commonly called ‘*Epstein* credits.’ [Citation.] [¶] The trial court determines what is due the community ‘after taking into account all the circumstances’ relevant to the exclusive possession by one spouse. [Citation.]” (*In re Marriage of Falcone & Fyke, supra*, 203 Cal.App.4th at pp. 978-979.)

In the matter before us, the judgment states: “The Court finds the Ehrenberg property has a fair rental value of \$2,500.00 per month and that [Andrew] was in exclusive control and possession of the property for 19 months and thus owes a *Watts* charge of \$47,500. The Court further finds that [Andrew] made all of the mortgage payments, property taxes, homeowners and property insurance payments for a total of \$31,880 and is entitled to *Epstein* Credits in this amount. The net *Watts* Charge to [Andrew] for the Ehrenberg property is \$15,620.00[.]” (Italics added.)

Andrew contends there is no substantial evidence to support the finding that he was in exclusive possession and control of the Ehrenberg property, which both parties represent to be a vacation home, for 19 months. We disagree.

Nina, on the one hand, testified at trial that she had not been to the Ehrenberg property since August 2010. Andrew, on the other hand, testified that he had visited the property about once a month during that time period, but that he had not gone every month. All in all, he thought he had visited the property about 10 times in the preceding 19 months. He conceded that Nina had not been out to the property since the separation. At trial, Andrew was asked, “Have you told Mrs. Wood that she can go out to

the Ehrenberg?” Andrew replied: “Never one time.”

The foregoing constitutes substantial evidence to support the court’s finding that Andrew was in exclusive possession and control of the property for 19 months. Consequently, the trial court did not err in imposing a *Watts* charge of \$47,500, calculated as \$2,500 per month for 19 months, and in applying an *Epstein* credit thereto. Although Andrew remarks that he believes the rental value of the property is far less than \$2,500 per month, and says that he previously challenged the rental value, he also says he will not continue to do so on appeal. That being the case, we do not concern ourselves with the rental value.

F. Cash Finding:

The judgment allocated to Andrew \$129,630 in cash. The statement of decision explained that Andrew had said there was \$33,000 in cash in the safe, whereas Nina had testified that she counted \$129,630 in the safe shortly before Andrew removed the safe from the house. The statement of decision further explained that the court, taking all the evidence into consideration, found Nina more credible than Andrew on this issue, so that he should be charged with the amount of \$129,630.

Andrew insists that there is no “‘evidence that is reasonable, credible and of solid value[]’ (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633)” to support the finding that there was \$129,630 in the safe. We disagree. Nina testified in detail to an incident, fairly shortly before the parties separated, in which she opened the safe, counted \$129,630 in cash, and wrote that figure down. However, Andrew claims this evidence is not credible because Nina also testified to other figures.

True, Nina signed a declaration dated November 8, 2010 in which she stated that Andrew kept “extremely large amounts of cash and uncashed checks” in the family safe. She said that “several years” previously she had opened the safe and “found over \$115,000 in cash and thousands more in uncashed checks.” The declaration was

prepared by Attorney Robert Day and attached to an order to show cause filed with the court. Nina testified that she terminated Attorney Day almost immediately thereafter because some of the information in the document was incorrect, such as the amount of the cash.

Nina acknowledged at trial that she also signed a January 5, 2011 schedule of assets and debts in which she listed cash of “\$100,000 plus” previously located in the family safe. The foregoing notwithstanding, Nina was steadfast in her assertion that she found over \$100,000 in cash and she testified clearly at trial that the amount of money she counted was \$129,630 and that she wrote the figure down. Just because she also variously described the figure as “\$115,000 in cash and thousands more in uncashed checks” or “\$100,000 plus” does not demonstrate that her testimony was not of credible and of solid value. It is up to the trial court to determine the credibility of the witnesses. We do not reweigh the evidence on appeal. (*In re Marriage of Balcof, supra*, 141 Cal.App.4th at p. 1531.)

G. Miscellaneous Errors:

(1) Introduction—

Andrew claims the court made a number of other miscellaneous errors, to which he objected at the time. We look at his assertions of error one by one.

(2) Child care expense—

Nina testified that she had child care expenses of \$866 per month. She said the money was paid to a 15-year-old who babysat Elle after school. The 15-year-old would sit with Elle for an hour and a half a day, or more.

In its statement of decision, the court noted Nina’s child care expenses of \$866 per month. Andrew objected to a finding that Nina paid that much money in child support. He said it was an excessive amount of money to pay a 15-year-old and that Nina

had offered no proof that she was paying that much. He concluded by arguing that the figure should not be included in the child support calculation.

In the judgment, the court included \$866 per month in child care costs in the calculation of guideline child support. Andrew claims this was error. None of Andrew's legal authorities convince us that it was improper for the court either to find Nina had \$866 per month in child care expenses or to include that figure in the child support calculations. (See Evid. Code, §§ 412-413; Fam. Code, §§ 4061-4062; *In re Marriage of Prentis-Margulis & Margulis* (2011) 198 Cal.App.4th 1252.)

(3) *Timeshare calculation*—

In its statement of decision, the court said: “For purposes of this Order the court presumes the custodial time to be 80/20.” Andrew claims that, in *presuming*, the court was guessing and it abdicated its duty to *calculate* the timeshare. We observe that the court did not repeat the offensive word “presumes” in the judgment. Rather, the court based its calculation upon Nina’s “percentage of time with the minor child of 80%” and Andrew’s “percentage of time with the minor child of 20%.” These percentages have all the earmarks of findings.

Nina presents a lengthy set of calculations to show that 80/20 is the correct expression of the timeshare based on the schedule the court ordered. Andrew does not claim that she is wrong. He has not demonstrated error.

(4) *Nina's 401(k)*—

Andrew argues that the value of Nina’s 401(k) account as shown on a December 3, 2010 statement was \$182,192, but that the court valued it as only a \$117,324 community asset. He says there was no explanation of why the court discounted the value of that account by such a huge sum.

The answer to that one is easy, as Nina points out. The court apportioned the \$182,192 account into community property and separate property shares. It determined that the community property share was \$117,324 and that Nina's separate property share was \$64,868. The two figures add up to \$182,192. The court did not apply a mysterious discount.

Andrew also expresses concern about Nina's having borrowed from her 401(k) account on two occasions. Nina testified that she had taken out a \$50,000 loan against the 401(k) when she and Andrew were still married. However, she could not remember the year of the loan. In her reply brief, she says that the first \$50,000 loan was used to purchase "the Arizona property, which is community."

The parties later separated, in September 2010. The court, as noted above, used a December 3, 2010 account statement to show the value of the account.

Nina took out another \$50,000 loan against the 401(k) account in the fall of 2011. Nina said she took out the loan because she was stuck paying the \$4,445 monthly mortgage payments on the family residence by herself until the residence was sold. She said without the funds, she "couldn't even survive."

With respect to the \$50,000 loan taken out while the parties were married, Andrew claims this means the retirement account is "light" by \$50,000. However, there is no evidence to show that the \$50,000 was used for anything other than community purposes. For that matter, there is no evidence to show whether the loan was repaid. The second \$50,000 loan, we observe, was taken out after the date of the statement used to value the account, so that loan would not have affected the valuation of the account as of the time of separation. Also, the judgment allocates both the \$64,868 separate property share and the \$117,324 community property share of the retirement account to Nina (offset by other community property assets allocated to Andrew). If the \$50,000 loan taken out after separation has not been repaid, it is only Nina's award of property via the judgment that will be diminished by that amount.

Andrew claims Nina breached her fiduciary duty to him in taking out the two loans and says he was entitled to sanctions. However, the court made no finding that Nina breached her fiduciary duty to him and made no award of sanctions, and Andrew has not convinced us that the court erred in this regard.

At the same time, Andrew made objections to the statement of decision regarding the court's determinations with respect to the retirement account. He specifically requested, inter alia, that the court state its factual and legal basis for valuing the account and that it make findings concerning the two \$50,000 loans. Although the basis of the court's valuation of the community property share of the account at \$117,324 really should be self-evident, nonetheless, Andrew was entitled to findings on the basis for valuing the account and with respect to the significance of the two \$50,000 loans against the account. (§ 4332.) On remand, the court shall state its factual and legal basis for valuing the retirement account as it did and shall explain its determinations concerning the two \$50,000 loans.

H. Cumulative Error:

Andrew says that the court made a multitude of errors and did not follow numerous statutory directives, and that he did not receive a fair trial. He reiterates that he made many objections to the statement of decision and made many proposals for findings to be included in the statement of decision and that the court ignored him. In conclusion, he asserts that there were "so many errors, piled and crowded upon and amongst each other, that the matter should perhaps be reversed in its entirety and retried." We disagree. Nothing Andrew has shown to us demonstrates that he did not receive a fair trial.

III
DISPOSITION

The judgment is affirmed in part, reversed in part and remanded for further proceedings in accordance with the views expressed herein. In the interests of justice, each party shall bear his or her own costs on appeal.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.