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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of CAMELLIA and MARK
S.

CAMELLIA S.,

Respondent,

v.

MARK S.,

Appellant.

G047517

(Super. Ct. No. 10D004711)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Michael McCartin, Judge. Affirmed.

Law Office of Peter J. Porter and Peter J. Porter for Appellant.

Honey Kessler Amado and Kristin Smith for Respondent.

* * *

Mark S., former husband of Camellia S., appeals the court's spousal and child support awards and its determination that each party should bear his or her own attorney fees and costs.¹ The court ordered Camellia to pay Mark spousal support, and both parties to pay child support, with Mark's child support obligation used as an offset to a portion of the spousal support payable by Camellia. We affirm. Moreover, because Mark and his counsel unreasonably violated appellate court rules and because the appeal is frivolous, we grant Camellia's motion for sanctions and remand the matter to the trial court to award Camellia her reasonable attorney fees incurred in opposing the appeal and in seeking sanctions.

FACTS

In March 2012, Mark filed an order to show cause (Mark's OSC) seeking to modify the existing stipulated spousal and child support order, which had been filed on December 7, 2011, and also requesting attorney fees. Mark requested \$10,000 per month in spousal support from Camellia; the December 2011 order had ordered Camellia to make monthly payments to Mark of \$750 plus 15 percent of her monthly earnings over \$19,460. For their three minor children, Mark requested guideline child support; the December 2011 order had ordered Camellia to pay Mark 4 percent of her monthly earnings over \$19,460. Mark requested \$3,500 for attorney fees. He provided the following facts in support of his request: "At the time the current orders for spousal support and child support were entered, I was employed by IMS Company. However, I have now been laid off Accordingly, I am now unemployed. Given the long history of me being a stay at home parent during my marriage to the petitioner, thereby removing

¹ In this opinion we refer to the parties by their first names for convenience and to avoid confusion. We mean no disrespect.

me from the work force, the prospects of me [securing] new employment soon, are not good.”

Mark’s May 2012 income and expense declaration showed he was 54, had completed two years of college, and worked in mechanical design drafting. He estimated Camellia’s gross monthly income is \$31,350. Mark stated his own average monthly income is \$1,950. In addition, he receives military disability of \$541 per month. He has cash and deposit accounts of \$410,000, as well as real and personal property valued at \$625,000. His estimated average monthly expenses are \$7,016. The children spend 17 percent of their time with him and 83 percent of their time with Camellia. His unemployment insurance would expire in March 2013.

In response to Mark’s OSC, Camellia declared that an April 2012 judgment on reserved issues (to which the parties had stipulated on Dec. 7, 2011) had confirmed the settlement agreement she and Mark had reached during the dissolution trial “to resolve all financial issues” Camellia and Mark had separated over two years earlier. Camellia had custody of their three children 83 percent of the time. Camellia is a commercial real estate attorney and an equity partner at a moderately large law firm of more than 100 lawyers. She receives regular semimonthly draws against her estimated allocation of income for the year, as determined by the firm’s executive committee. At the time that Camellia and Mark entered into the stipulation for judgment (Dec. 7, 2011), Camellia was receiving the gross sum of \$19,460 per month. Commencing March 2012, her regular semimonthly draws had been reduced to the gross sum of \$18,040 per month. Her income had decreased every year since 2008. From these semimonthly draws, \$1,608 per month was deducted for health, dental and vision insurance, and an additional \$1,725 per month was deducted for life insurance, disability insurance, and her 401(k) plan. Camellia also receives special draws at certain times of the year based on a preliminary allocation percentage, provided that there is cash available. She received

special draws for 2012 income in March 2012 in the sum of \$15,484, and in June 2012 in the sum of \$12,490.

Camellia also reported in her declaration that a vocational counselor had concluded Mark has the ability to earn \$62,400 annually and should be able to obtain employment within six to eight months. Camellia pays most of the expenses for the children, including their activities, weekly allowances, cell phones, school expenses, and the son's educational testing and therapy. According to Camellia, even when Mark was employed, he spent most of his money on himself, including purchasing and renovating his classic automobiles. Mark has \$410,000 in his bank accounts — almost twice as much as Camellia does. Camellia is in the process of adding another bedroom to her home so that their daughter and youngest son will not have to share a room.

With regard to attorney fees, Camellia averred that Mark's conduct during the litigation had significantly increased the cost of litigation. In December 2011, Camellia's counsel had filed a declaration and request for attorney fees as sanctions. In January 2012, Mark had moved to set aside the stipulated judgment pursuant to Code of Civil Procedure section 473, alleging he had stipulated to less child and spousal support than he was entitled to. The court had denied Mark's motion and ordered him to pay attorney fees as sanctions for filing it.

At the hearing on Mark's OSC, the court found that a change of circumstances had occurred because both parties' incomes had declined. The court ordered Mark to pay child support of \$621 per month to Camellia, payable in the form of a deduction from the monthly spousal support owed by Camellia to Mark. In addition, the court ordered Camellia to pay Mark, as child support, 4 percent of her employment compensation over her base income of \$18,040 per month. The court made express findings on the Family Code section 4320 factors,² then awarded Mark monthly spousal

² All statutory references are to the Family Code unless otherwise stated.

support from Camellia of \$2,121, less Mark's child support obligation of \$621, for net spousal support of \$1,500 per month. In addition, as further spousal support, Camellia was to pay Mark 15 percent of her income over \$18,040 per month. The court ordered Camellia's spousal support to Mark to continue until either party's death, Mark's remarriage, or further court order. Finally, the court ordered each party to bear his or her own attorney fees and costs.

DISCUSSION

I. *Mark's Factual Misrepresentation of the Court's Finding of Camellia's Income*

In Mark's opening brief, he asserts that the *court* "found that [Camellia] continued to earn \$30,000 a month." He supports this assertion with a record reference to his *trial counsel's closing statement* at the hearing. (His trial counsel is now his counsel on appeal.) In Camellia's respondent's brief, she notes this discrepancy. In Mark's reply brief, he acknowledges that the statement was actually made by his counsel, but asserts "it was a recitation of the court's actual findings" and that the court "made repeated references to [Camellia's] income of \$30,000 per month." In support, he quotes the court's statement that "30 would be way out of the ballpark, . . . 18 is way out of the ballpark," a statement that obviously does not support his interpretation. We will ignore Mark's false assertion that the court found Camellia's monthly income to be \$30,000. (*Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, 139 [counsel's statements and arguments are not evidence]; *Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1379 [appellate court may disregard factual contention not supported by proper record reference].) It is true, as Mark notes in his reply brief, that Camellia testified her gross income in 2011 was \$362,241, which averages slightly more than \$30,000 per month, but that does not excuse Mark's reckless assertion that the *court made a finding* that Camellia continued to earn \$30,000 a month. A finding the court *did* make,

however, was that Camellia's "base and additional draws or bonuses have gone down substantially over the years since 2007, 2008 which is why the Court feels it necessary to keep a Smith/Ostler."³

II. *Standard of Review*

We review the court's orders on spousal support, child support, and attorney fees for abuse of discretion. (*In re Marriage of Kerr* (1999) 77 Cal.App.4th 87, 93 [amount and duration of spousal support rests within trial court's broad discretion]; *In re Marriage of Bower* (2002) 96 Cal.App.4th 893, 898 [modification of spousal support award]; *In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 282 (*Cheriton*) ["child support awards are reviewed for abuse of discretion"]; *In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 866 [motion for attorney fees and costs in dissolution action is addressed to trial court's discretion].) "An abuse of discretion occurs "where, considering all the relevant circumstances, the court has exceeded the bounds of reason or it can fairly be said that no judge would reasonably make the same order under the same circumstances."" (*In re Marriage of Bower*, at pp. 898-899.) Moreover, Mark bears the burden to affirmatively show error. (*Id.* at p. 898.)

III. *The Court's Spousal Support Order was Not an Abuse of Discretion*

A. The Court's Finding on the Marital Standard of Living was Not an Abuse of Discretion

In ordering spousal support, the court must consider all the circumstances listed in section 4320, including the "extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage."

³

(See *In re Marriage of Ostler & Smith* (1990) 223 Cal.App.3d 33, 37 (*Ostler & Smith*) [order for additional support, based on percentage of future bonuses, was within court's discretion].)

(*Id.*, subd. (a).) The court found the parties’ marital standard of living was upper middle class. Mark argues the evidence showed the parties’ marital standard of living was “far above upper middle class.” In support, he falsely attributes to the *court* yet another statement made at the hearing by his *counsel* — this one concerning the parties’ assets.⁴ In truth, the characterization of the parties’ marital standard of living as “upper middle class” was the same characterization Mark made in a memorandum of points and authorities filed in support of his OSC. There, Mark argued, “In short, the parties enjoyed an upper middle class affluent life style.” Furthermore, although Mark’s opening brief alleges many facts in support of his argument that the marital lifestyle was upper class, he provides record references for only a few of them. (*Grant-Burton v. Covenant Care, Inc.*, *supra*, 99 Cal.App.4th at p. 1379 [appellate court may disregard factual contention not supported by proper record reference]; Cal. Rules of Court, rule 8.204(a)(1)(C) [record references required].) The only so-called factual assertions which Mark purports to support with record references are that the family residence was a six-bedroom home in Irvine (actually this was Mark’s counsel’s response to the court’s question); the parties owned three rental properties; Camellia’s earnings had ranged from \$589,000 in 2006 to \$362,000 in 2011 (actually, the figures for 2006 through 2009 are supported only by reference to Mark’s counsel’s memorandum of points and authorities in the trial court; the 2010 figure references Mark’s counsel’s statement responding to the court’s question; the 2011 figure is the only one supported by “evidence” as that word is usually understood); and they owned 38 vehicles during the marriage (a statement volunteered by Mark’s counsel).

⁴ Husband’s opening brief states: “As the Court stated, ‘ . . . in addition to all of the real estate they owned they had several hundred thousand dollars in the bank or in some type of investment account, in addition to the Petitioner’s retirement accounts, which were substantial’ [Citation].” In fact, this statement was made by husband’s counsel in response to the court’s invitation, “Mr. Porter, do you want to put your spin on that?”

Mark fails to show the court abused its discretion by finding the parties' marital standard of living was upper middle class. They drove a Honda Odyssey and a Honda CRV. The 38 vehicles cited by Mark related to his hobby of restoring cars. The parties took "normal" vacations up the California coast, as well as once to Utah and possibly once to Hawaii, but nothing "above the norm." They had substantial savings. The court found they had an upper middle class marital standard of living because they did not take the trips or have the cars one would expect, but they did have substantial bank accounts. At the hearing on Mark's OSC, his counsel stated he *agreed* with the court's characterization that Camellia had the ability to pay spousal support and that the parties had an upper middle class standard of living and still had current needs consistent with that standard.

B. The Court Properly Considered the Other Section 4320 Factors

Mark argues at length in his opening brief the self-evident statutory requirement that a court must consider the section 4320 factors when ordering spousal support, thereby implying the court failed to consider or to fully consider them. In fact, the court's discussion of the parties' marital standard of living and the other section 4320 factors covers over 15 pages of the reporter's transcript. After thoroughly discussing and considering every factor in the statute, the court asked the attorneys whether there were any other factors to consider, but neither counsel suggested one. Later, after the court conducted another lengthy analysis of the application of the section 4320 factors in this case, Mark's counsel inquired, "Am I correct in my belief that we went through all of the 4320 factors, the court went through all of the 4320 factors?" The court stated, "Yeah. I tried to just highlight so that you guys could correct me with testimony or figure out which ones we were more interested in than others, depending upon what we discuss." The court continued, "But if you want to hit them again or some more, that's fine." Mark's counsel replied, "We don't need repetition." Indeed, in his closing statement at

trial, Mark's counsel stated, "Clearly the court went through those [section 4320] factors and determined that the parties had an upper middle class standard of living"

Mark spends another 14 pages of his opening brief reweighing the evidence underlying the court's section 4320 findings. And, in a pattern that recurs three times in this section of his brief, he continues to misattribute to the *court* quoted statements which were actually made by his *counsel* at the hearing. For example, he states, "The *Court* found that, 'Staying at home for those approximately three years and taking care of the house and the children, he afforded [Camellia] the opportunity to work full time and advance her position with the law firm that she was employed by during that period of time.'" (Italics added.) In fact, Mark's counsel made this statement after the court asked, "So, the extent to which the supported party contributed to education, training, career position or license of the supporting party, Mr. Porter, do you have any information?"

Manifestly, the court understood its obligation to consider the section 4320 factors, and it did so.

C. The Spousal Support Award was a Reasonable Exercise of Discretion

Mark's contention that the court erred by finding the marital standard of living was upper middle class is meritless and his assertion the court failed to consider the section 4320 factors is false. The court's spousal support modification was a reasonable exercise of discretion. The court nearly tripled the base award from \$750 to \$2,121 per month (even though Camellia's income had decreased), plus 15 percent of Camellia's fluctuating special draws. (*Ostler & Smith, supra*, 223 Cal.App.3d at p. 37.) Further, the 15 percent is calculated on the bonus income in excess of her base monthly draw of \$18,040 per month instead of \$19,460 per month which, assuming the special draws exceed \$1,420 per month, results in an additional increase over the previously agreed spousal support by \$213 per month.

The nub of Mark's argument is that the court abused its discretion by treating Camellia's semimonthly draws as the stable, unfluctuating portion of her income, at least for the current year, and awarding a percentage of her fluctuating quarterly draws as additional spousal support. As Mark would have it, the court should have considered \$30,000 to be Camellia's fixed gross monthly income for purposes of determining spousal support. In this connection, Mark's reply brief makes several misleading statements without any attribution to the record. For example, Mark's reply brief states: "[T]he record is clear that the quarterly payments to [Camellia] were not bonuses but, rather were quarterly draws of predetermined annual salary." The actual evidence is to the contrary. Camellia testified that the special quarterly draws "are provided as the firm receives receivables and determines that it . . . has sufficient receivables to pay special draws." And Camellia's declaration in opposition to the Mark's OSC states that the special draws are "based on a preliminary allocation percentage, providing that there is cash available." The notion that Camellia's law firm, organized as a partnership, "predetermines" the annual salary of Camellia as an equity partner (she is not an employee) is flatly contrary to the evidence in this case. There is *no* evidence that Camellia, as an equity partner, is paid a flat salary. The most that is "predetermined" is Camellia's *share* of the firm's income to be distributed during the year. The actual income of the firm, and thus an equity partner's share of the income, is determined upon a tabulation of the receipts and expenses at the conclusion of the year.

Mark's reply brief continues these misstatements, stating: "Petitioner's annual income is determined during the first quarter of each year. The semi-monthly draws are a percentage of [Camellia's] annual income." No. The regular draws are based on "a percentage of the *firm's budgeted income*." (Italics added.)

If Mark's estimate is correct, and Camellia's income after payment of the special draws turns out to be an average of \$30,000 per month, Camellia will have paid Mark under this order a total of \$3,915 per month in spousal support (annual support of

\$46,980). At the time of the hearing on Mark's OSC, Camellia and the children resided in a three-bedroom home, while Mark lived in a four-bedroom house with the children staying there every other weekend with one midweek afternoon visit. Mark had more than \$400,000 in liquid assets compared to more than \$250,000 for Camellia. “[T]he fact that a more liberal award might have been supported is not a proper test.” (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 494.) Instead, applying the proper test, we cannot say “the court has exceeded the bounds of reason,” nor can we fairly say “that no judge would reasonably make the same order under the same circumstances.” (*In re Marriage of Bower, supra*, 96 Cal.App.4th at p. 899.) Accordingly, there was no abuse of discretion.

IV. *The Child Support Award was a Reasonable Exercise of Discretion*

To challenge the court's modified child support order, Mark argues the court abused its discretion by excluding Camellia's special draws from her income for purposes of the child support guideline formula and instead awarding him, as child support, a percentage of her compensation above her base semimonthly draws.

Absent special circumstances (§ 4052), child support orders are determined using the uniform guideline formula set forth in section 4055. The formula's components include the high earner's net monthly disposable income and both parties' total net monthly disposable income. (§ 4055, subd. (b)(1)(C), (E).) A parent's net monthly disposable income, as applicable here, is his or her annual gross income (§ 4058), less state and federal taxes and health insurance premiums. (§ 4059, subds. (a), d).) Annual gross income includes salaries and bonuses. (§ 4058, subd. (a)(1).) “If the monthly net disposable income figure does not accurately reflect the actual or prospective earnings of the parties at the time the determination of support is made, the court may adjust the amount appropriately.” (§ 4060.) Also, the court may adjust the child support order to accommodate a parent's fluctuating income. (§ 4064.)

In *In re Marriage of Mosley* (2008) 165 Cal.App.4th 1375, the trial court ruled that the husband's new job, which "paid a fraction of his former income as a base salary" with the *potential* of a discretionary year-end bonus, did not constitute a change in circumstances to warrant modifying his child and spousal support obligations. (*Id.* at pp. 1379, 1387.) We held that the trial court abused its discretion by so ruling, and remanded the matter to the trial court with instructions that the court, in determining the husband's spousal and child support obligations, should base its award on the husband's "base salary, exclusive of a speculative bonus." (*Id.* at p. 1387.) *Mosley* instructed the trial court to "include in its order a method for requiring [the husband] to pay support obligations based on any bonus income that he may in fact receive." (*Ibid.*) *Mosley* stated: "The trial court in [*Ostler & Smith*], *supra*, 223 Cal.App.3d 33, got it right when it stated: "No future bonus is guaranteed. It would therefore not be appropriate to base a support order on Husband's bonus income and then require him to file motions to modify at such times as the bonus is reduced. It would be more fair to all parties to base the support order on Husband's income from salary . . . , and to allocate a portion of the future bonus income to the children and to Wife by way of a percentage interest so that future litigation will not be necessary as the bonus income changes.'" (*Ibid.*)

Mark relies on *In re Marriage of Hall* (2000) 81 Cal.App.4th 313 (*Hall*), where we reversed the trial court's order requiring the husband to pay the wife "\$836 a month plus 8 percent 'of all earnings over and above the sum of \$10,300 per month,'" based on his "substantial bonus" and dividend and interest income." (*Id.* at p. 315.) *Hall* concluded the order "differs from the formula guideline on its face." (*Id.* at p. 318.) *Hall* continued: "Now, of course, a court *can* differ from the guideline formula. Section 4057, subdivision (b) expressly permits the court to make an order where application of the guideline formula is 'unjust or inappropriate in the particular case.' But if the court is going to do that, it must comply with the requirement in section 4056 that any deviation from the formula amount be justified either in writing or on the record. Information

required includes what the guideline formula is, the reasons for differing from the guideline, and the reason the amount is “consistent with the best interests of the children.”” (*Ibid.*) In a footnote, *Hall* stated, “Which is not to say, of course, that the family court cannot make an order which accounts for the ‘seasonal or fluctuating income of either parent.’ It can. [Citation.] But such an order cannot be called the ‘guideline’ amount pursuant to section 4055.” (*Id.* at p. 318, fn. 3.)

The failure to make findings pursuant to section 4056, however, does not necessarily require reversal.⁵ *Hall* was a judgment roll appeal. (*Hall, supra*, 81 Cal.App.4th at p. 316.) The child support order in *Hall* was unsupported by *any* “statement of reasons, not even a DissoMaster printout.” (*Id.* at p. 318.) Here, the order attaches a DissoMaster printout, clearly showing that the basis of the non-fluctuating portion of the order, computed using the section 4055 child support formula, was, *inter alia*, the presumption that Camellia’s regular draws would continue during 2012 at the rate of \$18,040 per month, that Mark’s taxable income would continue at \$1,950 per month, and his nontaxable income would continue at \$541 per month. These figures were supported by the evidence. After plugging in the other financial information

⁵ Section 4056 provides: “(a) To comply with federal law, the court shall state, in writing or on the record, the following information whenever the court is ordering an amount for support that differs from the statewide uniform guideline formula amount under this article: [¶] (1) The amount of support that would have been ordered under the guideline formula. [¶] (2) The reasons the amount of support ordered differs from the guideline formula amount. [¶] (3) The reasons the amount of support ordered is consistent with the best interests of the children. [¶] (b) At the request of any party, the court shall state in writing or on the record the following information used in determining the guideline amount under this article: [¶] (1) The net monthly disposable income of each parent. [¶] (2) The actual federal income tax filing status of each parent (for example, single, married, married filing separately, or head of household and number of exemptions). [¶] (3) Deductions from gross income for each parent. [¶] (4) The approximate percentage of time pursuant to paragraph (1) of subdivision (b) of Section 4055 that each parent has primary physical responsibility for the children compared to the other parent.”

supported by the evidence, such as health insurance premiums, tax deductions, and child care expenses, the DissoMaster report showed Camellia owing Mark a base child support amount of \$104 per month. The DissoMaster report also showed an equal sharing of the add-on for child care expenses as required under sections 4061 and 4062, subdivision (a), at \$725 per month for each parent. The net result is a monthly support obligation payable by Mark to Camellia of \$621 per month (\$725 - \$104).

The court then applied the *Ostler & Smith* method of awarding a percentage of future unpredictable additional compensation. By doing so, the court reconciled the objective that additional income “be used to calculate child support” (*Cheriton, supra*, 92 Cal.App.4th at p. 286) with the problems that “inhere in calculating support” when the timing or amount of prospective additional income is discretionary, unpredictable, or fluctuating (*id.* at p. 287). “[T]he Legislature specifically provided the means for overcoming that particular obstacle. Trial courts are permitted to adjust the award where the guideline ‘monthly net disposable income figure does not accurately reflect the actual or prospective earnings of the parties.’ [Citation]. In addition, trial courts have discretion to “adjust the child support order as appropriate to accommodate seasonal or fluctuating income.” (*Ibid.*) As explained in *County of Placer v. Andrade* (1997) 55 Cal.App.4th 1393, the “question is whether the bonuses and overtime are likely to reoccur.” (*Id.* at p. 1397.) “The assumption underlying these calculations is that past income is a good measure of the future income from which the parent must pay support. However, the law recognizes that is not always the case. Thus, the court is given discretion to adjust . . . ‘the monthly net disposable income figure [if it] does not accurately reflect the . . . prospective earnings of the parties at the time the determination of support is made’” (*Id.* at p. 1396.)

Finally, Mark challenges the court’s continuation of the December 2011 order’s choice of 4 percent as the portion of Camellia’s special draws allocated to child support. He asserts the court “by its own admission, . . . had no idea as to the basis for

said percentage.” But Mark’s record reference for the statement is once again to his counsel’s own words. Contrary to Mark’s assertion, the court recognized that “everyone [went to] so much time and effort and trouble to do that,” obviously referring to the parties’ negotiations leading up to the specification of 4 percent in the stipulated judgment on reserved issues. At one point during the hearing on Mark’s OSC, Camellia’s counsel stated her belief that the 4 percent was “based on the bonus table in the [D]isso[M]aster,” and the court concurred. Later, the court told Mark’s counsel: “If you want to run your own child support orders, but I think I’m bound to do the *Smith/Ostler* on it, but I think those percentages are accurate.”

Mark has not been prejudiced by the court’s choice of 4 percent. We advised the parties we proposed to take judicial notice of the following fact which is not reasonably subject to dispute and is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy (Evid. Code, § 452, subd. (h)):

“Assuming (1) Camellia [S.]’s total annual income for 2012, including her regular monthly draws and her special draws for tax year 2012, averaged \$30,000 per month, and (2) ignoring for ease of comparison the effect of Family Code section 4061 add-ons: [¶] The total amount she would have paid for child support pursuant to the trial court’s September 7, 2012 order would *exceed* the amount she would have paid if the hypothetical \$30,000 per month average gross self employment income had been used to calculate guideline child support under Family Code section 4055.”

Using the child support calculator available on the Web site of the California Department of Child Support Services,⁶ and calculating guideline support in the manner Mark suggests, i.e., using \$30,000 per month as Camellia’s gross self employment income, results in Camellia owing Mark \$503 per month, before add-ons.⁷

⁶ <https://www.cse.ca.gov/ChildSupport/cse/guidelineCalculator>.

⁷ In response to the court’s proposal for judicial notice, Camellia attaches a

Under the court's order challenged by Mark, and assuming Camellia's bonus income amounts to \$11,960 per month (the difference between \$30,000 and \$18,040), 4 percent of the special draws would amount to \$478 per month. Adding the \$104 per month based on the section 4055 calculation on the fixed income of \$18,040, Camellia's child support obligation would be \$582 per month. Thus, using Mark's proposed calculation, he would receive \$79 per month *less* than the court awarded. Accordingly, any error in failing to follow Mark's methodology, or in failing to make findings under section 4056, is harmless. "The court's failure to make findings is . . . harmless when, under the facts of the case, the finding would necessarily have been adverse to the appellant." (*Rojas v. Mitchell* (1996) 50 Cal.App.4th 1445, 1450.) Mark's proposed methodology "would necessarily have been adverse" to him. (*Ibid.*) Accordingly, he has suffered no prejudice.

In re Marriage of Mosley, supra, 165 Cal.App.4th 1375 and sections 4060 and 4064 support the child support order here. Camellia's special draws were subject to her law firm's possession of available cash per quarter and fluctuated in amount. The court's child support order was not an abuse of discretion, and, in any case, any error was harmless.

V. *The Court Properly Exercised Its Discretion to Deny Mark an Attorney Fees Award*

Mark contends the court abused its discretion by denying his request for attorney fees. He asserts the "court made no findings," "failed to consider any factors, including those" set forth in sections 2030 and 2032, and summarily denied his request for attorney fees and costs.

DissoMaster report for the court's hypothetical that shows Camellia owing Mark \$502 per month before add-ons. Mark's DissoMaster report for the hypothetical shows Camellia owing Mark \$496 per month. These small differences from the court's calculation do not affect the ultimate conclusion that Mark was not prejudiced by the court not using his methodology in calculating the child support award.

Section 2030 authorizes need-based attorney fee awards in marital dissolution cases. Under section 2030, when a party requests attorney fees, the court must find (1) whether an award of attorney fees and costs is appropriate, (2) whether there is a disparity in access to funds to retain counsel, and (3) whether one party is able to pay for legal representation of both parties. (§ 2030, subd. (a)(2).) “If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney’s fees and costs.” (*Ibid.*)

Section 2032 prescribes additional requirements for section 2030 awards. Section 2032 permits a court to make an award of attorney 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.” (§ 2032, subd. (a).) The court must consider whether each party has sufficient financial resources to present the party’s case adequately, *taking into consideration, if relevant, the section 4320 factors.* (*Id.*, subd. (b).)

Once again, Mark has misrepresented the record. As discussed above, the court conducted a thorough evaluation of the section 4320 factors and stated, “I’m going through [the section] 4320 factors because we have to do that to make a spousal support award and attorney fee award.” The court ultimately ruled: “The court is going to order each party to pay their own attorney fees and court costs. Mister has already paid his, missus owes hers.”

On appeal, Mark bears the burden of proving the court abused its discretion by declining to award him attorney fees. (*In re Marriage of Lopez* (1974) 38 Cal.App.3d 93, 114, disapproved on a different point in *In re Marriage of Morrison* (1978) 20 Cal.3d 437, 453.) He has failed to carry that burden. The trial court did not abuse its discretion. Mark’s liquid assets were almost twice as high as Camellia’s. In addition, the court found Mark had paid his attorneys, while Camellia still owed fees to her counsel.

VI. *Camellia's Motion for Appellate Sanctions is Granted*

In a written motion filed with this court, Camellia moves for sanctions for a frivolous appeal and for Mark's violation of appellate court rules. She argues he "mis-characterizes the record, ignores dispositive law against him, argues error where the trial court adopted his suggestions, and re-argues the evidence." She asks us (1) to award her the reasonable attorney fees she incurred to respond to the appeal and to prepare her motion for sanctions, and (2) to award fees to the state to compensate this court for its expense in processing, reviewing, and deciding a frivolous appeal. In a written response, Mark opposes Camellia's motion. At oral argument, each party's counsel addressed the issue of sanctions. Following oral argument, we advised Mark's counsel that we were considering whether to award sanctions against him on the same grounds alleged in Camellia's motion. Mark's counsel has responded to that notice, and we have considered his additional argument.

We have thus afforded Mark and his counsel the procedural due process mandated by *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 654 (*Flaherty*.) Having done so, we conclude the record supports Camellia's contentions that Mark and his counsel, Peter J. Porter, violated appellate court rules and brought a frivolous appeal.

A. *Violation of Appellate Court Rules*

An appellate court may impose monetary sanctions on a party or an attorney for an unreasonable infraction of appellate court rules. (Cal. Rules of Court, rule 8.276(a)(2).) One such rule requires an appellant to "support all statements of fact in his briefs with citations to the record." (*Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 29 (*Pierotti*); Cal. Rules of Court, rule 8.204(a)(1)(C).) This rule requires an appellant to provide *accurate* record references. Mark and Porter flagrantly violated this requirement. For example, Mark's briefs falsely attributed to the *trial court* some statements (or alleged "findings) that were actually voiced by *Porter* below. At oral argument, Porter

assured us his transgressions were inadvertent. But his precise references in Mark’s briefs to pages and lines of the reporter’s transcript cast doubt on his assertion. In Mark’s reply brief, he acknowledged his opening brief’s inaccuracies and tried to explain them away by further mischaracterizing the record, thereby “compound[ing]” his unreasonable rule violations. (*Alicia T. v. County of Los Angeles* (1990) 222 Cal.App.3d 869, 885.) “[S]ubstantial additional time [is] required to craft an opinion when the court rules are ignored” and when the court cannot rely on counsel’s integrity to fairly and honestly cite to the record. (*Id.* at p. 885.) Such conduct must be discouraged; by wasting this court’s time and resources, Mark and Porter have harmed the appellate system, the state taxpayers, and other appellate parties who are waiting in line. (*In re Marriage of Gong and Kwong* (2008) 163 Cal.App.4th 510, 520.)

B. *Frivolous Appeal*

“In addition to warranting sanctions for procedural reasons, [Mark’s] appeal is also sanctionable because it lacks substance and was taken for an improper purpose.” (*Pierotti, supra*, 81 Cal.App.4th at p. 31; *Maple Properties v. Harris* (1984) 158 Cal.App.3d 997, 1010.) We may impose monetary sanctions on a party or an attorney for bringing a frivolous appeal. (Code Civ. Proc., § 907; Cal. Rules of Court, rule 8.276(a)(4).) We may impose sanctions for a partially frivolous appeal “if the frivolous claims are a *significant* and *material* part of the appeal.” (*Maple Properties*, at p. 1010; see also *People ex rel. Dept. of Transportation v. Outdoor Media Group* (1993) 13 Cal.App.4th 1067, 1081 [court justified in imposing sanctions even if appeal raises one valid appealable issue].)

“[A]n appeal should be held to be frivolous only when it is prosecuted for an improper motive — to harass the respondent or delay the effect of an adverse judgment — or when it indisputably has no merit — when any reasonable attorney would agree that the appeal is totally and completely without merit.” (*Flaherty, supra*, 31

Cal.3d at p. 650.) The first test stated above is subjective, while the second standard is objective. (*Id.* at p. 649.) “The two standards are often used together, with one providing evidence of the other. Thus, the total lack of merit of an appeal is viewed as evidence that [the] appellant must have intended it only for delay.” (*Ibid.*)

Mark’s appeal is objectively frivolous. Over 30 pages of his opening and reply briefs contain a dissertation on section 4320 factors and a false indictment of the trial court for allegedly failing to address those factors, as well as Mark’s assertion the court abused its discretion by finding the couple’s marital standard of living was upper middle class, even though Mark *advocated* that finding below. (*Portola Hills Community Assn. v. James* (1992) 4 Cal.App.4th 289, 294 [plaintiff’s contention the trial court unreasonably based judgment on ““mistaken belief”” was “egregious,” because such belief was based on stipulated facts], disapproved on another point in *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 385.) Porter and Mark have wasted scarce judicial time and resources with these frivolous arguments.

Furthermore, although the trial court expressly relied on *Ostler & Smith*, *supra*, 223 Cal.App.3d 33 in fashioning its award, and although Camellia extensively discussed the case in her respondent’s brief, Mark’s briefs failed to discuss *Ostler & Smith*’s relevance to the base salary and special draw components of Camellia’s income. Based on his refusal to address pertinent legal authority, and his misrepresentation of the record, we conclude Mark “subjectively prosecuted the appeal for an improper purpose.” (*Pierotti, supra*, 81 Cal.App.4th at p. 32.)

Finally, Mark's argument challenging the child support award was indisputably without merit. As demonstrated above, had the court calculated the child support award in the fashion argued by Mark on appeal, and had the court used Camellia's base income figure in the amount Mark alleged, and if Camellia's income for 2012 had in fact been as much or more than the amount Mark alleged it would be, Mark would have received slightly less in child support than he would have received under the court's *Ostler & Smith* award. In effect, Mark argued against himself. A reasonable litigant and a reasonable attorney would not have done so.

C. Sanctions Award

Consequently, Camellia is entitled to her reasonable attorney fees (*Pierotti, supra*, 81 Cal.App.4th at pp. 33-34 [attorney fees on appeal may be considered in determining appropriate amount of sanctions]), payable as sanctions by Mark and his counsel, Peter J. Porter. "Sanctions against counsel are particularly appropriate here because we are also punishing a violation of the procedural rules on appeal, for which counsel, not their client, must accept primary responsibility. [¶] However, [Mark] is not blameless. He initiated the appeal" (*Id.* at p. 37.) This is not the first time sanctions have been imposed on Mark in this case; the trial court sanctioned Mark for moving to set aside the stipulated judgment and making arguments that the court described as "strain[ing] credibility beyond belief." We decline, however, to assess any sanctions payable to the court.

DISPOSITION

The court's postjudgment order is affirmed. Camellia is awarded costs on appeal.

In addition, Camellia is awarded sanctions. The matter is remanded to the trial court to award to Camellia her reasonable attorney fees incurred in responding to Mark's appeal and in seeking sanctions. Porter and the clerk of this court are each ordered to forward a copy of this opinion to the State Bar upon the issuance of the remittitur. (Bus. & Prof. Code, §§ 6086.7, subd. (c), 6068, subd. (o)(3); Cal. Code Jud. Ethics, canon 3(D)(2).)

IKOLA, J.

WE CONCUR:

MOORE, ACTING P. J.

ARONSON, J.