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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of KEVIN F. and LINDA C.
HARRISON.

KEVIN F. HARRISON,

Respondent,

v.

LINDA C. HARRISON,

Appellant.

G049380

(Super. Ct. No. 08D000001)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Claudia Silbar, Judge. Affirmed.

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

Kevin F. Harrison, in pro. per., for Respondent.

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This is the second time this case has been before us, the first dealing with the date of the parties' separation. (*In re Marriage of Harrison* (Nov. 6, 2013, G046942) [nonpub. opn.].) In this case, pursuant to an order to show cause (OSC) brought by respondent Kevin F. Harrison (father), the court ordered appellant Linda C. Harrison (mother) to pay one-half of the \$8,000 per month cost of treatment for the parties' minor daughter (daughter) in a rehabilitation facility. Mother contends the court erred because it failed to consider the significant disparity between her income and father's and because it factored in the amount she had in savings. We disagree.

FACTS AND PROCEDURAL HISTORY

Judgment in this case was entered in March 2012. The court found mother earned \$2,000 per month, with income of \$2,500 net after tax and payment of child support, and father earned \$10,000 per month, with net after tax income of \$8,100. Based on father's physical custody of daughter, mother was ordered to pay approximately \$540 in child support. Father was ordered to pay spousal support of \$1,800 per month.

In September 2012, father brought an OSC requesting mother pay one-half the costs of daughter's rehabilitation treatment and for termination or reduction of spousal support. In his declaration father stated that in August 2012, the juvenile court ordered daughter to either spend four months in an inpatient substance abuse program in juvenile hall or be placed in an inpatient rehabilitation facility. He further declared mother "insisted" on the latter option and agreed to pay one-half the cost. The juvenile court approved the daughter's placement in an out-of-state facility that cost approximately \$8,000 per month.

Father stated he was unable to pay the entire cost of daughter's stay in the facility and his savings would be depleted with the next month's payment. Father also said that with paying for his daughter's care he no longer had the ability to pay spousal support. He asked the court to find mother had not made a reasonable attempt to become

self-sufficient in the past five years, as she had been ordered to do in the judgment. He also pointed out mother had never paid the required child support.

Mother opposed the OSC. In her declaration she stated she had obtained a scholarship for daughter at a local inpatient facility, which is less expensive than the facility in which daughter was currently placed. She also explained the money in her bank account was from the equalization payment in the community property division, and if she was forced to spend it she would have no share of the community property left.

As to the spousal support issue, she stated it was difficult for her to find work as a full-time nanny, her usual profession, due to the domestic violence restraining order against her.

At the hearing on the OSC in January 2013, father testified he had paid \$23,000 to date for daughter's rehabilitation facility. He has depleted his savings from \$40,000 to \$15,000. He testified the treatment has been excellent. He reiterated mother had not paid child support since it was ordered to begin in January 2012.

Mother testified that she paid most of her day-to-day expenses with her credit card. In 2012 this totaled over \$100,000. It included a minimum of \$28,000 in attorney fees, both to her counsel in this matter and to lawyers representing her in another matter. The parties stipulated that \$7,500 of the credit card payments were to daughter's facility.

Mother initially admitted she had agreed to pay one-half to the cost of the facility, then denied it, and then waffled as to whether she had agreed to do so. Mother again stated she had wanted daughter placed in a less expensive facility in California, to which she had obtained a scholarship. Father countered that the juvenile court would not order placement in an in-state facility.

The court found daughter's treatment in the facility was a medical expense and going forward for the next seven months (until daughter became an adult) each party was responsible to pay one-half the costs of her treatment. It found each had the ability

to pay, “even though difficult.” In making the ruling the court relied, in part, on prior orders where it found the parties were responsible to pay fifty percent of uncovered medical expenses.

It also relied on the parties’ income and expenses declarations and their respective incomes. Father earned \$13,000 per month; mother receives between \$5,400 and \$5,500 per month from salary (\$2,000), spousal support (\$1,800), and father’s retirement (\$1,600). Mother paid no rent since she was living with the family for whom she worked as a nanny.

Mother’s most recent income and expense declaration showed she had approximately \$60,000 in savings although she testified it was now about \$28,000. This was the cash she received for the equalization payment when the community property was divided. Father had less cash on hand; he had received two pieces of real property in the division.

Additionally, the court relied on the large amount mother had paid on her credit card during 2012. She spent almost \$40,000 in attorney fees that year, demonstrating she had the ability to pay for the facility. The court noted these payments could have been used for daughter’s rehabilitation. “[W]hen you pay thousands upon thousands of dollars to your attorneys and you pay credit cards of anywhere from 1,500 a month to 20 grand a month, you can and will participate in paying for the treatment of [daughter] in this facility she is in.”

The court stated it had the discretion as to how to apportion payment and that in this situation, where the child was “in desperate need of treatment,” it believed the parties should share the cost, “particularly when they share in those issues, problems, et cetera.” Thus, it could order the parties to pay equally. The court made clear that “[o]ther than a roof over your head, eating, and paying utilities, you are going to have to pay for [your daughter],” which is “what you should be doing.” “[Y]ou are both in a

position that you are going to have to benefit your daughter by paying for [her treatment].”

The court ruled the argument about other facilities and a potential scholarship was not relevant. The issue was that daughter needed help and she was “getting good help.”

The court had some problems with mother’s credibility and did not believe mother had mailed child support checks to father.

The court also ruled mother was responsible to pay \$21,307, one-half of the past due medical expenses. Payment was to be \$500 per month beginning once the expenses for the facility ceased.

The court denied father’s motion to reduce spousal support, finding no change in mother’s circumstances. Because it had relied on the current spousal support amount in determining mother’s ability to pay half the costs of daughter’s treatment. If it reduced her support, it likely would not have ordered her to pay one-half of the medical expenses. The court also reduced to zero mother’s child support payments from the day the child entered the rehabilitation facility.

DISCUSSION

Mother claims the court erred in dividing payment of the cost of her daughter’s treatment. She argues it should have looked to the disparity in income between father and her instead of looking at her ability to pay. We are not persuaded.

Under Family Code section 4062, subdivision (a)(2) (all further statutory references are to this code), “reasonable uninsured health care costs” are mandatory additional child support. Section 4061, subdivision (a) provides that if apportionment of the costs is necessary, the parents shall each pay 50 percent, “unless either parent requests a different apportionment pursuant to subdivision (b) and presents documentation which demonstrates that a different apportionment would be more appropriate.” If the court

believes apportionment should be other than half and half, section 4061, subdivision (b) provides a formula for determining how to divide the expenses.

In setting any child support, when applying the basic statutory guidelines, if the evidence shows applying the formula would be unjust or improper, the court has discretion to deviate from the guidelines, so long as the statutory principles under section 4053 are met. (*In re Marriage of de Guigne* (2002) 97 Cal.App.4th 1353, 1359.) Pursuant to section 4053, “A parent’s first and principal obligation is to support his or her minor children according to the parent’s circumstances and station in life.” (§ 4053, subd. (a).) Further, “[b]oth parents are mutually responsible for the support of their children” (§ 4053, subd. (b)) and “[e]ach parent should pay for the support of the children according to his or her ability” (§ 4053, subd. (d)).

Mother challenges the court’s consideration of funds she had in a bank account, arguing the statute “is clear that it is disparity in income” that is the determining factor in whether these expenses should be apportioned. She relies on *In re Marriage of Fini* (1994) 26 Cal.App.4th 1033, which states “if the parties’ income is not disparate, the trial court possesses discretion to determine whether to order these expenses shared equally or in proportion to the the parents’ net disposable income.” (*Id.* at p. 1035.)

“[S]ection 4061 specifies that any amounts ordered to be paid under section 4062 must either (1) be apportioned one-half to each parent; or (2) if either parent objects to such apportionment and the court finds it appropriate, be divided in proportion to the parents’ respective incomes adjusted as specified for child and spousal support payments. (§ 4061, subs. (a), (b), (c), (d).)” (*In re Marriage of de Guigne, supra*, 97 Cal.App.4th at pp. 1367-1368.) In ruling on the question of apportionment, the court has “the broadest possible discretion in order to achieve equity and fairness.” (*In re Marriage of Fini, supra*, 26 Cal.App.4th at p. 1044.)

Here the court did not find any reason to deviate from an equal sharing of the costs. Its lengthy ruling, which set out several factors it considered, demonstrates the

basis for the court's exercise of discretion. It determined each party had the ability to pay even though it would be difficult for both of them. The court made expressly clear that the parents' priority, after housing, food, and utilities, was daughter's medical care. It looked at the parties' respective incomes as well as their bank accounts. It also considered its previous orders that they share the cost of unreimbursed medical expenses equally. Further, there was evidence mother had agreed to pay half of the costs. In addition, the court highlighted all the money mother had paid on her credit card and for attorney fees. And mother had not paid her ordered child support.

Our job is to ensure sufficient evidence supports the court's ruling and that the court reasonably exercised its discretion. (*In re Marriage of de Guigne, supra*, 97 Cal.App.4th at p. 1360.) "We are not called upon to determine whether we would have made such an award, but whether any judge could reasonably have done so. Based on this record we cannot conclude the order exceeds the bounds of reason. [Citation.]" (*Id.* at p. 1366.)

DISPOSITION

The order is affirmed. Father is entitled to costs on appeal.

THOMPSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

FYBEL, J.