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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of TERI S. and
KENNETH J. FILADELFIA.

TERI S. FILADELFIA,

Respondent,

v.

KENNETH J. FILADELFIA,

Appellant.

G050184

(Super. Ct. No. 10D009890)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Ronald P. Kreber, Judge. Affirmed.

Blonska & Kaufman and Shannon R. Thomas for Appellant.

Law Offices of Arthur J. LaCilento and Arthur J. LaCilento for
Respondent.

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In this dissolution action, appellant Kenneth J. Filadelfia (Ken) appeals from a judgment ordering him to reimburse respondent Teri S. Filadelfia (Teri) approximately \$225,000 from the sale of her separate property condominium.¹ During the couple's marriage, Teri sold her condominium and Ken had the sale proceeds deposited into the couple's joint bank account. Ken then transferred roughly \$209,000 of the sale proceeds to his separate savings account and later used those funds to pay off the mortgage and line of credit on his separate property home and various other debts. Ken does not dispute the funds were Teri's separate property or that he used them for his own purposes. Instead, he contends no substantial evidence supports the trial court's judgment he must repay the entire \$225,000 because the court failed to offset that amount with certain reimbursement claims. We disagree and affirm the judgment.

The controlling substantial evidence standard of review required Ken to summarize all evidence that supported the trial court's judgment and explain why that evidence was insufficient. Ken, however, ignored all such evidence and thereby forfeited his challenge to the sufficiency of the evidence. Nonetheless, the evidence shows Teri claimed various reimbursements that would offset Ken's claimed reimbursements. We must presume the trial court considered all of these reimbursement claims and offset them against one another because Ken failed to request a statement of decision that would have explained the trial court's ruling. Without addressing the evidence on all the reimbursement claims, Ken cannot meet his burden to show the court erred in failing to award him certain credits.

Ken also contends the trial court failed to address other claimed reimbursements. The trial court, however, rejected this argument and stated its ruling addressed all of the reimbursement requests the parties presented. The absence of a

¹ For clarity, "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." (*In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1513, fn. 2.)

statement of decision again requires us to presume the trial court did as it said and Ken cites no evidence that would overcome that presumption.

Finally, Ken contends the trial court denied him due process by awarding Teri approximately \$43,000 in attorney fees because the court failed to conduct a “trial” on Teri’s fee request. Ken, however, failed to cite any authority that required the court to conduct a trial on Teri’s fee request. The record reveals the court provided Ken a full and fair opportunity to oppose the fee request and properly considered all evidence regarding the parties’ current financial circumstances and all other factors relevant to a need-based attorney fee request under Family Code section 2030.² Ken does not identify any evidence the court prevented him from presenting or any relevant factor the court failed to consider.

I

FACTS AND PROCEDURAL HISTORY

Teri and Ken married in July 2006, and they have no children. Teri is a dental hygienist and Ken is a self-employed computer consultant. After their wedding, the couple moved into Ken’s home, but Teri kept her separately owned condominium. Ken controlled the couple’s finances throughout the marriage, including several separate accounts to which Teri had no access.

In May 2007, Teri sold her condominium and received roughly \$225,000. Ken arranged to have those funds deposited into the couple’s joint checking account. A week later he transferred nearly \$199,000 from that checking account into one of his separate savings accounts, and a few weeks after that he transferred another \$10,000 from the joint checking account to one of his separate savings accounts. Ken left

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

approximately \$16,000 from the sale of Teri's condominium in the joint checking for the couple's use.

Ken testified he transferred most of the sale proceeds to his separate saving accounts because Teri agreed in a handwritten document to repay him for a variety of expenses he advanced both before and during their marriage, including a vacation they took to France, wedding costs, a loan to Teri's mother, and miscellaneous medical and other expenses. Ken also claimed Teri agreed to reimburse him for the reduction in her income that occurred when she reduced her work schedule to three days per week because of a high risk pregnancy that ended when Teri had a miscarriage.

With the funds from Teri's condominium, Ken paid off the mortgage and a home equity line of credit on his separate property home, and also a loan on his car and various debts. About a year after Teri sold her condominium, Ken transferred \$35,000 back to the couple's joint checking account and used about \$33,000 to pay off the loan on the BMW Teri drove. The couple purchased that vehicle shortly before their wedding, and the loan and title were in both of their names.

Teri claimed Ken physically abused her on several occasions during their marriage, and one of those altercations resulted in the couple separating in October 2010. That same month, Teri filed for divorce. They later stipulated Ken would pay Teri a lump sum to resolve her spousal support claim. Between July 2012 and January 2013, the couple conducted a nine-day trial on the remaining issues, including the existence and validity of the reimbursement agreement and each spouse's reimbursement claims based on various separate property and community expenses that were paid during and after the marriage. For example, Ken claimed he was entitled to reimbursement for the funds used to pay off the BMW Teri drove, funds Teri took from their joint bank account after separation, Ken's payment of Teri's postseparation credit card charges, and Ken's payment of community taxes. Teri claimed Ken must reimburse her for the sale proceeds from her condominium, separate property debts he paid off with community funds, loans

Ken made to his brother during their marriage, and mortgage payments and improvements Ken made on his separate property home with community earnings. These latter reimbursement requests were not part of the alleged reimbursement agreement.

In February 2013, the trial court announced its decision ordering Ken to reimburse Teri the full \$225,000 the couple received when Teri sold her condominium. The court found Teri was more credible than Ken, the condominium was Teri's separate property, and Ken failed to convince the court Teri agreed to repay Ken for the expenses he allegedly paid before or during the marriage. The court explained it "considered that it could possibly be a violation of fiduciary duty by [Ken] taking the funds and controlling the funds without showing any type of a written agreement that Ken could use these funds as he saw fit." The court also concluded it did not have sufficient evidence to do a "*Moore/Marsden* analysis" to determine whether Teri acquired an interest in Ken's separate property home based on his use of community property funds to make mortgage payments and improve the home.³ Regarding the household furnishings and the couple's retirement accounts, the court ordered Ken and Teri to meet and confer and it reserved jurisdiction to decide those issues if they could not reach an agreement. Finally, the court reserved jurisdiction to decide how and when Ken would pay Teri the \$225,000 and to decide whether to award Teri attorney fees.

In April 2013, the parties reported they had reached an agreement regarding the household furnishings and the retirement accounts. The court then set a final hearing to resolve any outstanding issues because the BMW Teri drove "[was still] an issue" and

³ *In re Marriage of Moore* (1980) 28 Cal.3d 366, and *In re Marriage of Marsden* (1982) 130 Cal.App.3d 426, are the seminal cases on how to calculate the community's interest based on payments made during marriage on a residence one spouse purchased before marriage. (*In re Marriage of Moore, supra*, 28 Cal.3d at pp. 369-370.)

the court wanted to hear from the parties' experts if there were any other issues to resolve.

In March 2014 the court conducted a hearing on unresolved issues after receiving an income and expense declaration from both parties and a brief and declaration from Teri to support her attorney fee request. Ken's new counsel sought to offer testimony by Ken's accounting expert regarding various expenses for which Ken claimed a right of reimbursement despite the court's earlier finding the couple had no reimbursement agreement. Teri objected to the testimony, arguing Ken's expert repeatedly had testified about the same expenses at trial and the court had concluded Ken was not entitled to reimbursement. Ken acknowledged the testimony his expert sought to provide had been presented at trial, but he argued the court had failed to rule on all of Ken's reimbursement claims.

After reviewing a transcript from the earlier trial, the court declined to hear further testimony from Ken's expert because the court concluded it had resolved all the reimbursement requests at trial. The court then awarded Teri the BMW she drove during their marriage and ordered Ken to sign over the title. The court also awarded Teri nearly \$43,000 in attorney fees, explaining it made the award under section 2030 as "a need-based award of attorney fees and costs to ensure that each party has access to legal representation during these dissolution proceedings."

The next day, the court entered a judgment dissolving the couple's marriage, dividing their household furnishings and retirement accounts according to their agreement, and ordering Ken to (1) pay Teri roughly \$225,000 to reimburse her for the sale proceeds from her separate property condominium; (2) sign the certificate of title to the BMW over to Teri; and (3) pay Teri nearly \$43,000 to cover her attorney fees. After the court entered judgment, Ken requested a statement of decision, but the court declined to provide one. The court also denied Ken's motion for a new trial and to vacate the

judgment. Ken does not challenge the trial court's decision to deny those motions or its refusal to provide a statement of decision. This appeal timely followed.

II

DISCUSSION

A. *Ken Failed to Establish a Lack of Substantial Evidence to Support the Judgment*

Ken contends “the court’s ruling that [he] must pay Teri the entire \$225,362.27 from her condominium sale proceeds was not supported by substantial evidence” because the court failed to offset two categories of reimbursements that Teri owed Ken regardless of whether they had a reimbursement agreement. Ken does not challenge the trial court’s ruling the condominium proceeds were Teri’s separate property or that he failed to establish a reimbursement agreement.

1. Governing Standard of Review

The trial court has broad discretion in resolving reimbursement claims and we review its decision under the abuse of discretion standard. (See, e.g., *In re Marriage of Reilley* (1987) 196 Cal.App.3d 1119, 1124-1125.) To the extent the trial court’s exercise of that discretion is based on factual determinations, we must uphold the court’s decision if supported by substantial evidence. (*In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 670.)

“The gist of the “substantial evidence” rule is: [¶] “When a trial court’s factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination” [Citations.] [¶] ‘So long as there is “substantial evidence,” the appellate court *must affirm* . . . even if the reviewing justices personally would have ruled differently had they presided over the proceedings

below, and even if other substantial evidence would have supported a different result. Stated another way, when there is substantial evidence in support of the trial court's decision, the reviewing court has *no power to substitute its deductions.*” (*Rupf v. Yan* (2000) 85 Cal.App.4th 411, 429-430, fn. 5.)

“In applying this standard of review, we “view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor. . . .” [Citation.]’ [Citation.] “Substantial evidence” is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value.’ [Citation.] We do not reweigh evidence or reassess the credibility of witnesses.” (*Pope v. Babick* (2014) 229 Cal.App.4th 1238, 1245-1246 (*Pope*).)

Under the substantial evidence standard, “We do not review the evidence to see if there is substantial evidence to support the losing party’s version of events, but only to see if substantial evidence exists to support the verdict in favor of the prevailing party. Thus, we *only* look at the evidence offered in [the respondent’s] favor and determine if it was sufficient.” (*Pope, supra*, 229 Cal.App.4th at p. 1245.)

“An appellant challenging the sufficiency of the evidence to support the judgment must cite the evidence in the record supporting the judgment and explain why such evidence is insufficient as a matter of law. [Citations.] An appellant who fails to cite and discuss the evidence supporting the judgment cannot demonstrate that such evidence is insufficient. The fact that there was substantial evidence in the record to support a contrary finding does not compel the conclusion that there was no substantial evidence to support the judgment. An appellant . . . who cites and discusses only evidence in her favor fails to demonstrate any error and waives the contention that the evidence is insufficient to support the judgment.” (*Rayii v. Gatica* (2013) 218 Cal.App.4th 1402, 1408 (*Rayii*); see *Pope, supra*, 229 Cal.App.4th at p. 1246; *In re S.C.* (2006) 138 Cal.App.4th 396, 414-415.)

When, as here, the trial court conducts a bench trial on a question of fact, the court must prepare a statement of decision upon a party's timely request. (Code Civ. Proc., § 632; *Acquired II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 970 (*Acquired II*.) The statement must explain "the factual and legal basis for [the court's] decision as to each of the principal controverted issues at trial. . . ." (*Ibid.*) No statement of decision is required if the parties fail to timely and properly request one. (*Acquired II*, at p. 970.)

"A party's failure to request a statement of decision when one is available has two consequences. First, the party waives any objection to the trial court's failure to make all findings necessary to support its decision. Second, the appellate court applies the doctrine of implied findings and presumes the trial court made all necessary findings supported by substantial evidence. [Citations.] This doctrine 'is a natural and logical corollary to three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error.'" (*Acquired II, supra*, 213 Cal.App.4th at p. 970.)

2. Ken Failed to Address Evidence Supporting the Trial Court's Judgment

a. *Reimbursements Teri Allegedly Conceded*

Ken contends the trial court erred in failing to offset (1) approximately \$16,000 from the condominium sale proceeds that remained in the couple's joint checking account after Ken transferred most of the proceeds to his separate savings account; (2) the approximately \$33,000 used to pay off the loan on the BMW Teri drove; and (3) \$8,000 Teri withdrew from the couple's joint checking account after they separated. According to Ken, he is entitled to an offset for these items as a matter of law because both Teri and her counsel repeatedly conceded at trial that the court should offset

these items against the \$225,000 condominium sale proceeds. Ken's argument does not persuade us the court erred.

As explained above, a party challenging the sufficiency of the evidence to support a trial court's judgment forfeits that challenge unless the party summarizes all evidence in the record that supports the judgment and explains why it is not sufficient as a matter of law. (*Rayii, supra*, 218 Cal.App.4th at p. 1408; *Pope, supra*, 229 Cal.App.4th at p. 1246; *In re S.C., supra*, 138 Cal.App.4th at p. 414.) Here, Ken accurately summarized Teri's testimony and her counsel's acknowledgment the court should credit Ken for each of these three items, but Ken fails to address evidence regarding other expenses and transactions that would eclipse Ken's offsets.

In reviewing the trial court's judgment, we must imply all findings necessary to uphold the judgment that are supported by substantial evidence because Ken failed to timely and properly request a statement of decision. (*Acquired II, supra*, 213 Cal.App.4th at p. 970.) One such implied finding is that the court awarded Ken an offset for these three items, but those offsets were in turn offset by other items for which the court found Ken must reimburse Teri. Substantial evidence supports that implied finding.

For example, Teri's accounting expert testified the \$209,000 Ken transferred from the joint checking account to his separate savings account would "easily" earn \$16,000 to \$20,000 in interest over a four-year period and that interest was never transferred back to the couple's joint account. The evidence also showed Ken maintained separate bank accounts to which Teri had no access and that Ken did not deposit all of his community property earnings into the couple's joint bank account during their marriage. Similarly, the evidence showed Teri deposited all of her earnings into the couple's joint account, which Ken used to pay the mortgage and make improvements on his separate home. Finally, the evidence showed Ken made numerous

loans to his brother during the marriage that were not repaid, and Ken had approximately \$48,000 in credit card debt at the time of marriage that was paid off during the marriage.

Ken fails to address any of these reimbursement claims Teri raised during the trial. These claims would offset Ken's three reimbursement claims. Without summarizing all of the evidence the parties offered on the reimbursements and charges they sought, or a statement of decision identifying the spouse to whom the trial court charged each item, Ken cannot meet his burden to show the trial court failed to credit him with these three items.⁴

b. *Reimbursements the Trial Court Allegedly Failed to Address*

Ken also contends the trial court erred in failing to rule on his claim for an offset after using his separate property to pay Teri's expenses. Ken asserts he paid approximately \$3,400 to cover Teri's charges on various joint credit cards after the couple separated. He also asserts he paid postseparation community income taxes. The record does not support this contention.

At the hearing in March 2014, Ken asked the trial court to rule on various reimbursement requests he claimed the trial court failed to address at trial. The court, however, refused to make any further rulings regarding reimbursements, explaining it addressed all of Ken's reimbursement requests at trial.

Again, based on Ken's failure to timely and properly request a statement of decision, we must presume the trial court resolved all of the reimbursement requests raised by the parties. (*Acquired II, supra*, 213 Cal.App.4th at p. 970.) Ken does not point

⁴ Teri also contends Ken forfeited his challenge to the sufficiency of the evidence because he failed to designate the complete trial record. Specifically, she points out that he did not designate the transcript from the trial proceedings conducted on December 27, 2012, and the exhibits the parties presented at trial. Teri, however, corrected this deficiency in the record by augmenting it to include these materials.

to any evidence in the record or authority to overcome that presumption or otherwise to show the trial court erred in denying the reimbursement requests.

B. *The Court's Attorney Fee Award Did Not Deny Ken Due Process*

Ken contends the trial court denied him due process by awarding Teri attorney fees under section 2030 without conducting a “trial” on Teri’s fee request. According to Ken, the trial court reserved the attorney fee issue for trial at a later date after the parties completed their trial on other issues in January 2013, but the court later awarded Teri attorney fees without conducting the promised trial or taking testimony on the attorney fee issue. Neither the law nor the facts supports Ken’s contention.

Section 2030 authorizes a trial court to make a “need-based” attorney fee award in a dissolution action. (*In re Marriage of Braud* (1996) 45 Cal.App.4th 797, 827.) “[T]he purpose of [a fee award under that] section is *not* the redistribution of money from the greater income party to the lesser income party.” (*Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238, 251.) Rather, “[t]he purpose of [the] fee award is to ensure that the parties have adequate resources to litigate the family law controversy and to effectuate the public policy favoring ‘parity between spouses in their ability to obtain legal representation.’” (*Braud*, at p. 827.)

When an attorney fee request is made, section 2030 requires the court to “make findings on whether an award of attorney’s fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties.” (§ 2030, subd. (a)(2).) If the court’s findings demonstrate a disparity in both access and ability to pay, the court must award attorney fees and costs to the requesting party. (*Ibid.*) The making and amount of the award must be “just and reasonable under the relative circumstances of the respective parties.” (§ 2032, subd. (a).) “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.” (§ 2032, subd. (b).) Section 4320 establishes the factors courts must consider when making a spousal support award, including earning capacity, ability to pay, needs based on marital standard of living, each spouse's assets and liabilities, the length of the marriage, evidence of domestic violence, the age and health of the parties, and the balancing of the hardships. (§ 4320.)

“In summary, the proper legal standard for determining an attorney fee award requires the trial court to determine how to apportion the cost of the proceedings equitably between the parties under their relative circumstances. [Citation.] In making this determination, the trial court has broad discretion in ruling on a motion for fees and costs; we will not reverse absent a showing that no judge could reasonably have made the order, considering all of the evidence viewed most favorably in support of the order. [Citation.] However, ‘although the trial court has considerable discretion in fashioning a need-based fee award [citation], the record must reflect that the trial court actually exercised that discretion, and considered the statutory factors in exercising that discretion.’” (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 975.)

Here, the court conducted a bench trial on the parties' reimbursement and property disputes between July 2012 and January 2013. At the end of trial, the court explained it reserved jurisdiction to decide attorney fee requests at a later time and it would need declarations and briefs from the parties to resolve any fee request. Contrary to Ken's contention, the court did not reserve the attorney fee issue for a later “trial.” Rather, the court simply reserved jurisdiction to decide the issue after it ruled on the reimbursement and property claims, thereby making it clear that ruling did not terminate its jurisdiction to decide a request for attorney fees.

Ken failed to cite any authority that required the court to conduct a trial on Teri's attorney fee request. Pursuant to the Legislature's direction, the Judicial Council "adopt[ed] a statewide rule of court to implement . . . section [2030] and develop[ed] a form for the information that shall be submitted to the court to obtain an award of attorney's fees under . . . section [2030]." (§ 2030, subd. (e).) Neither the Rule of Court nor Judicial Council Form requires a trial on a party's attorney fee request. Rather, each permits the requesting party to submit all necessary information to the court through declarations. (Cal. Rule of Court, rule 5.427; Judicial Council Forms, form FL-319.)

Ken does not point to any specific evidence or opposition he was prevented from presenting on Teri's fee request or any specific factor the court failed to consider. After inviting Ken to present opposition, the court granted Teri's attorney fee request at the conclusion of the March 2014 hearing. Before making its decision, the court received a brief and declaration from Teri's counsel explaining the legal basis for the fee request and describing the fees she sought. The court also received income and expense declarations from both Teri and Ken describing their current financial situations. Moreover, during the trial on the property and reimbursement disputes, the court heard testimony on each party's earnings history during the marriage; their then current income, assets, and liabilities; the marital standard of living; the length of the marriage; Teri's allegations of domestic violence, and the parties' health and age.

In awarding Teri her attorney fees, the court explained it was making the award under section 2030 "to ensure each party has access to legal representation during these dissolution proceedings." The court found the award was just and reasonable under Teri's and Ken's relative circumstances, and that Teri had a clear need for the award while Ken had the ability to pay. Substantial evidence in the record supports those conclusions. For example, the evidence shows Teri was living with friends and borrowing money from her family when the court heard the fee request. She had been unemployed and on disability since shortly after the couple separated and her disability

benefits had expired. Ken, however, continued to be self-employed, had paid off his home, car, and other debts, and had several hundred thousand dollars in the bank.

Accordingly, the trial court did not abuse its discretion in awarding Teri attorney fees nor did it deny Ken due process.⁵

III

DISPOSITION

The judgment is affirmed. Teri shall recover her costs on appeal.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.

⁵ In her brief, Teri requests that we award her appellate attorney fees either under section 2030 or as a sanction for improper litigation conduct. We deny her request as procedurally improper. Teri does not request a specific amount nor does she provide any evidence about the fees she incurred. Moreover, need-based attorney fees under section 2030 must be based on the parties' current circumstances, and we have no evidence on that score. (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2015) ¶ 14:161, p. 14-56.) To the extent Teri requests fees as a sanction, she was required to make a separate motion, but she failed to do so. (*Kajima Engineering and Construction, Inc. v. Pacific Bell* (2002) 103 Cal.App.4th 1397, 1402.) Our denial of Teri's request is without prejudice to her making a proper request in the trial court. We express no opinion on whether the trial court should award any further fees.