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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of JUXIA QIN and
THOMAS BURTON.

JUXIA QIN,

Respondent,

v.

THOMAS BURTON,

Appellant.

G050946

(Super. Ct. No. 12D009260)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Robert D. Monarch, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Law Offices of Shun C. Chen and Shun C. Chen for Appellant.

Law Office of Milo F. DeArmey, Matthew S. DeArmey and Milo F. DeArmey for Respondent.

The trial court ordered Thomas Burton to pay temporary spousal support and attorney fees. On appeal, Burton asserts this order must be reversed because the marriage was invalid and the trial court must first make a finding Juxia Qin was a putative spouse before awarding support. He also maintains the amount of the temporary support award (\$800 per month) and attorney fee award (\$15,000) were “without basis and excessive.” (Capitalization omitted.)

In 2014, we considered the parties’ cross-appeals filed after a trial court denied Qin’s application for a domestic violence restraining order and spousal support. (*In re Marriage of J.Q. & T.B.* (2014) 223 Cal.App.4th 687 (*Marriage of J.Q.*.) Qin’s appeal asserted the trial court erroneously believed it lacked jurisdiction to award temporary spousal support without first deciding whether domestic violence had occurred. She also challenged the court’s denial of her applications for a temporary restraining order and a domestic violence restraining order. Burton’s appeal asserted that if the trial court’s orders were reversed, the appellate court must decide if the trial court erred in denying his request to present evidence of fraud and also address, in the first instance, whether he acted in self-defense. We concluded the trial court erred in ruling it did not have jurisdiction to award spousal support until after it ruled on the domestic violence allegation. However, we also concluded the trial court did not abuse its discretion in concluding Qin failed to establish by a preponderance of the evidence Burton abused her. Because of our holding, we declined Burton’s request to address the merits of his cross-appeal. The case was remanded for further proceedings on the issue of whether Qin was entitled to spousal support pending the determination of her domestic violence restraining order. Meanwhile, Qin filed a marital dissolution action and it was consolidated with Burton’s annulment action. Qin filed a motion seeking temporary spousal support and attorney fees.

Therefore, the trial court had before it two different requests for spousal support, (1) Qin's request for support while the domestic violence petitions were litigated, and (2) her request for temporary support and attorney fees while the annulment/dissolution action is being litigated. The trial court determined it was a putative marriage. It did not award temporary spousal support retroactively, but rather awarded eight months of temporary spousal support moving forward. It also awarded attorney fees. Finding no error, we affirm the trial court's order.

FACTS

We incorporate by reference the underlying facts outlined in detail in our prior opinion *Marriage of J.Q.* Qin and Burton met online in September 2009. Qin lived in Wuhan, China, and Burton lived in Orange County; they corresponded via e-mail. Burton visited Qin in China four times, and they often discussed their shared Christian faith and marriage. They communicated through interpreters and a translation device. On November 2, 2010, Qin and Burton were married in China in a state ceremony followed by a religious banquet. They initiated the visa application process to allow Qin to relocate to the United States. After they were married, Qin and Burton discussed their prior relationships further. Burton told Qin that his ex-wife had reported him to the police three times. In an e-mail in August 2011, Burton explained to Qin that he would divorce her for the following two reasons: infidelity; and doing something to separate him from his children, which included calling the police on him. After the visa was approved, Qin moved to the United States on January 10, 2012.

Less than two months later, on March 5, 2012, Qin sought and obtained an emergency protective order against Burton. In her application for a domestic violence restraining order, Qin alleged Burton abused her on March 4, 2012. She asserted the abusive behavior began almost immediately upon her arrival in the United States. The police arrested Burton on March 5, 2012.

A complaint charged Burton with two misdemeanors: corporal injury on a spouse (Pen. Code, § 273.5, subd. (a)), and disturbing the peace (Pen. Code, § 415, subd. (1)) (hereafter criminal case). The trial court in that case issued a criminal protective order.

On March 7, 2012, Qin filed the following ex parte requests: (1) DV-110 application for a temporary restraining order; and (2) DV-100 application for domestic violence restraining order (hereafter the DV applications). Over Qin's objections, the court granted Burton's multiple requests to continue the hearing based on his representation his criminal case was being continued. Over a four month period of continuances, the trial court postponed ruling on Qin's oral and written requests for temporary spousal support.

Finally, in late July 2012, the court scheduled a hearing on the limited issue of spousal support after once again granting another continuance on the DV applications. Qin's counsel's requested the matter be adjudicated as expeditiously as possible because of the dire need for spousal support. However, at the hearing the court concluded it did not have jurisdiction to order spousal support without first deciding domestic violence occurred. (Citing Fam. Code, § 6200 et seq.)¹ Relying on section 6324, the court determined it had authority to order the payment of debts and suggested the parties independently agree on an appropriate amount. When the parties could not agree on an amount, the trial court ordered Burton to make two payments of \$800.

On September 4, 2012, Burton's criminal case was dismissed after he pleaded guilty to disturbing the peace. The criminal court granted Burton a deferred entry of judgment.

¹ All further statutory references are to the Family Code, unless otherwise indicated.

On the same day as the hearing on the DV applications, Burton filed a petition to nullify the marriage (Super. Ct. Orange County, 2012, No. 12D009260, hereafter Annulment Case). During the hearing, the court considered the testimony of both parties as well as several pastors and church parishioners who saw Qin's battered face the evening of March 4, 2012. After considering argument from counsel, the court made its ruling on the record, stating there was domestic violence, but the violence was "situational" and denied Qin's DV applications.

When Qin's counsel requested a ruling on the issue of spousal support there was a brief discussion concerning the court's concern the marriage was a "sham." After Qin's counsel offered to produce the marriage certificate, the court accepted the fact the parties were married and ruled that because it concluded Burton had not committed domestic violence, it could not award spousal support. The court dismissed the DV applications and consolidated that case with Burton's Annulment Case to preserve any retroactivity of spousal support. The parties each appealed these orders.

While the appeal was pending, Burton dismissed the Annulment Case on October 25, 2012. On January 23, 2013, Qin filed a petition for dissolution of marriage. (Super. Ct. Orange County, 2013, No. 13D000698, hereafter the Divorce Action.) On March 25, 2013, Burton re-filed a request to nullify the marriage. (Super. Ct. Orange County, 2013, No. 13D000698, hereafter Second Annulment Action.)

On August 22, 2013, as part of her Divorce Action, Qin filed a request for spousal support (\$2,000 per month) and attorney fees (\$3,500). The matter was assigned to Judge Nathan Scott.

On September 27, 2013, Burton filed a response to the spousal support and attorney fee request. In his memorandum of points and authorities, Burton asserted Qin entered the marriage with the fraudulent intent to "lure" him into a domestic violence episode and then obtain permanent residence immigrant status. He argued Qin was not entitled to spousal support or attorney fees for the following reasons: (1) This was a

nullity proceeding and Qin was a non-putative spouse; (2) The issue of spousal support was preempted by Qin's pending appeal; (3) Spousal support would be aid to a fugitive; (4) The parties' prenuptial agreement prohibited a spousal support award; (5) 37-year-old Qin can be self-supporting and the marriage lasted only two months; (6) Burton was legally obligated to support his children from a prior marriage and he exhausted his savings defending himself in the domestic violence matter and the related criminal proceedings.

Burton attached a copy of the prenuptial agreement. It specified that in the event of separation Qin would receive a lump sum payment of \$2,000 for each year of marriage. Burton provided proof Qin was represented by independent counsel when she entered the agreement.

In November 2013 Qin filed a memorandum of points and authorities to support her request for spousal support. She alleged she supported herself in China by working in a bridal shop. After her marriage to Burton and immigration to the United States, Burton abused her, and they separated. She had stayed with acquaintances, domestic violence shelters, and other emergency short term housing. Qin stated her need for financial assistance was dire because she had been unable to find work due to her limited English skills and lack of transportation. She recently applied for public assistance and received general relief and food stamps. Qin maintained Burton owed her spousal support pursuant to sections 6341, 3500 et seq., 4300 et seq., and the federal immigration laws.

After our opinion in *Marriage of J.Q.*, *supra*, 223 Cal.App.4th 687, became final, Burton filed a motion seeking to amend his response to Qin's petition to dissolve the marriage. Burton explained he was focused on proving the marriage was a fraud for immigration status, but after further discussions with his attorney, he wanted to add "resistance to intimacy" as grounds for annulment. He alleged that when Qin arrived in America she resisted sexual intimacy. He stated, "I believed that in time and working

together, we would have alleviated any difficulties so we could have a normal marital relationship. As time went on, [Qin] refused to have sex or intimacy. I gradually realized it must be due to some physical limitation. I also believe [Qin] might be trying to hide the fact that she cannot become pregnant due to a previous abortion.”

On April 14, 2014, Judge Glenn R. Salter held a hearing after he recognized it was necessary to vacate Burton’s dismissal of the Annulment Action. The court noted Qin’s DV applications were consolidated with Burton’s initial Annulment Case (Super. Ct. Orange County, 2012, No. 12D009260). Both parties appealed from an order made in that case but before the opinion was filed Burton dismissed the action. Judge Salter noted the appellate opinion directed the trial court to “conduct a noticed hearing to determine whether a spousal support award is proper, and consider all relevant issues before making an award.” Consequently, Judge Salter vacated dismissal of the first Annulment Case and set a hearing on Qin’s request for spousal support “[i]n compliance with the [c]ourt of [a]ppeal’s directions.”

Three days later, on April 17, 2014, Judge Scott issued a minute order stating he was assigned to hear the support motion filed in Qin’s Divorce Action but he recognized there was an Annulment Case concurrently pending in Judge Salter’s courtroom. Noting Judge Salter had not been disqualified, Judge Scott stated he would confer with Judge Salter on how to best proceed.

After speaking with Judge Salter, and after reviewing the appellate opinion, Judge Scott issued a minute order that ordered consolidation of all the cases and designated the initial Annulment Case (Super. Ct. Orange County, 2012, No. 12D009260), the lead case. This meant all the documents filed in the Divorce Action and Second Annulment Action (Super. Ct. Orange County, 2013, No. 13D000698), were renumbered with the lead case number. Judge Scott stated all future documents must have the lead case number and will be assigned to Judge Salter for all purposes.

Qin immediately filed a declaration in support of a motion to disqualify Judge Salter. The motion was granted and the matter was assigned to Judge David L. Belz, who later disqualified himself and the matter was assigned to Judge Theodore R. Howard. At the end of April 2014 the supervising judge vacated the assignment to Judge Howard and reassigned the case to Judge Scott.

A few weeks before the scheduled May 2014 hearing, Burton filed a supplemental brief on the issue of whether fraud supported an annulment. Thereafter, Qin filed her opposition to Burton's request to amend his petition to include physical incapacity as grounds for annulment. She argued Burton failed to allege sufficient facts to warrant an amendment. She pointed out physical incapacity was defined as the inability to have sexual relations and Burton never asserted this fact. Citing to the summary of facts in the appellate opinion regarding her DV applications, Qin argued the parties frequently had sexual relations.

On May 13, 2014, Judge Scott granted Burton's motion to amend. Pursuant to the request of Qin's counsel, the trial judge deemed her Divorce Action the response to Burton's Annulment Case. His minute order added, "Issue[s] before the court are [a]ttorney fees and temporary spousal support and determination if [Qin] is a putative spouse." Judge Scott noted the court also needed to "set a hearing on spousal support in connection with the temporary restraining order request made by [Qin] filed back on [March 7, 2012] even though it has been heard, denied, and affirmed on appeal. It had been over two years since Qin and Burton separated, and she had still not had a hearing on temporary spousal support.

With the consent of counsel, Judge Scott decided it best to address the putative spouse issue before proceeding on the other matters. When Judge Scott indicated he would not be able to hear the matter until the end of November, counsel requested the matter be sent out to an open court to hold the evidentiary hearing on the

putative spouse issue. Judge Scott set a hearing for July 22, 2014, in an open court and noted a Mandarin interpreter would be needed.

A few days before the scheduled hearing, Burton filed a request to order Qin “to attend a medical examination by Robert J. Semo, M.D., . . . within 60 days of the order granting [the] motion.” Burton explained, “the area of examination is [Qin’s] reproductive organ. The scope of the examination is to determine whether there is an inability for normal copulation, and if not, whether it is curable, and whether [Qin] can have children.

On July 22, 2014, the supervising judge transferred the matter from Judge Scott to Judge Robert D. Monarch for a two-day hearing. Qin’s counsel filed a declaration in support of her request for attorney fees and costs (a total of \$20,000). He submitted billing statements to support the requested amount. Burton filed an updated income and expense declaration. Judge Monarch continued the hearing to the following day.

At the hearing, Judge Monarch initially conferred with counsel in chambers. When the parties returned to open court, Burton presented a declaration to disqualify the trial judge. He also requested a continuance. Qin’s counsel objected. Judge Monarch considered oral argument and then denied the disqualification motion.

Next, Judge Monarch considered Burton’s request to produce documents. Burton requested copies of Qin’s immigration documents, such as her I-751 petition, her current visa, and all letters sent by the Department of Homeland Security, Citizenship and Immigration Services. Judge Monarch took the matter under submission.

Finally, Judge Monarch heard Qin’s testimony with the assistance of a certified Mandarin interpreter. He then continued the hearing to the following month.

When the parties returned in August 2014, the court's minute order reflects the following events transpired. First, the court considered Burton's new expert witness list and Qin's counsel written objection. Qin argued the designation of John N. Sampson, an expert in immigration fraud, was both untimely and inadequate. Judge Monarch agreed it was late for an expert witness list disclosure. He stated the issue to be decided was a pendente lite request for spousal support and attorney fees. Judge Monarch noted the marriage was intact and was subject to either nullity or dissolution.

Second, Judge Monarch considered argument on the issue of whether Qin was a putative spouse and concluded there was a putative marriage. Burton's counsel asked the trial judge to address whether there was a voidable marriage, and the judge refused, explaining the ultimate issue of nullity was not before him. The trial judge and Burton's counsel discussed at great length whether Qin could be deemed a putative spouse without first holding a full evidentiary hearing on the validity of the marriage. Judge Monarch indicated Burton's counsel misunderstood the nature and scope of the pendente lite proceedings.

Finally, Judge Monarch determined there was sufficient information to make pendente lite orders for spousal support and attorney fees. It determined the length of the marriage was 16 months. It awarded \$800 per month for a limited period of eight months (beginning September 1, 2014), after which the court's jurisdiction over spousal support would terminate.

After a brief recess, Judge Monarch considered Qin's request for attorney fees. Qin's counsel stated he was concerned about escalating expert costs. Judge Monarch stated the \$25,000 attorney fee request was "reasonable, but excessive." After questioning Burton and his counsel about the amount Burton was paying his counsel, the trial judge ordered Burton to pay Qin's counsel \$15,000 (at a rate of \$500 per month until it was paid in full.)

On August 20, 2014, Burton filed an objection to a portion of the proposed final order. First, he asserted the court should delete the sentence, “The [c]ourt finds that the parties are putative spouses.” He argued the court did not make this finding and indicated it would make this determination at trial. Second, Burton asserted the order failed to include the court’s ruling there shall be no interest if attorney fees are paid in a timely manner.

On August 25, 2014, Judge Scott denied Burton’s motion for a physical examination. “The examination is irrelevant and unnecessary. [Burton] offered no evidence [Qin] was physically incapable of entering into the marriage state ‘at the time of marriage.’ [Citation.] Nor has [Burton] shown [Qin’s] alleged physical state is relevant to the domestic violence action. No sanctions are imposed as to this motion only.”

On September 4, 2014, Judge Monarch filed a final order on the spousal support and attorney fee matters decided at the August 7 hearing. The order stated the following: (1) “The [c]ourt finds this is a ‘putative’ marriage[;]” (2) Qin is awarded spousal support in the amount of \$800 per month commencing September 1, 2014, and terminating April 30, 2015, after which the court will no longer have jurisdiction; (3) Qin’s counsel is awarded \$15,000 in attorney fees, payable in the amount of \$500 per month until paid in full. Burton appealed from this order.

II

The general rule is that a valid marriage must exist as the basis for awarding temporary spousal support. When, as in this case, one of the parties denies the existence of a valid marriage, temporary support may be awarded but the spouse requesting support has the additional burden of making a prima facie showing of the existence of the marriage. On appeal, Burton argues the court’s pendente lite spousal support determination made during the pendency of his nullity action required the same level of proof that would be required for the ultimate determination of whether the marriage should be annulled. As we will explain, Burton’s theory would render

meaningless the statute authorizing temporary support while waiting for resolution of the nullity action. He misconstrues the applicable law.

A. General Rules Regarding Pendente Lite Spousal Support

We begin our discussion with an overview of the California law pertaining to pendente lite spousal support. Temporary support is available in both dissolution and nullity actions, but slightly different rules apply for each. Section 3600 applies to dissolution actions and provides, ““Pending a marriage dissolution . . . the court . . . may order either spouse to pay “any amount that is necessary” for the other spouse’s support, consistent with the requirements of sections 4320, subdivisions (i) and (m), and 4325. (§ 3600.)’ [Citation.]” (*In re Marriage of Freitas* (2012) 209 Cal.App.4th 1059, 1067, fn. omitted.)

Section 2254 covers nullity actions and provides, “The court may, during the pendency of a proceeding for nullity of marriage or upon judgment of nullity of marriage, order a party to pay for the support of the other party in the same manner as if the marriage had not been void or voidable if the party for whose benefit the order is made is found to be a putative spouse.” Simply stated, a putative spouse is someone who has a good faith belief in the validity of the marriage. (*Ceja v. Rudolph & Sletten, Inc.* (2013) 56 Cal.4th 1113, 1128 (*Ceja*).

In both dissolution and nullity actions, the trial court is not restricted by any set of statutory guidelines in awarding pendente lite support. (*In re Marriage of Wittgrove* (2004) 120 Cal.App.4th 1317, 1327 (*Wittgrove*)). “Generally, temporary spousal support may be ordered in ‘any amount’ based on the party’s need and the other party’s ability to pay. [Citation.] ‘Whereas permanent spousal support “provide[s] financial assistance, if appropriate, as determined by the financial circumstances of the parties after their dissolution and the division of their community property,” temporary spousal support “is utilized to maintain the living conditions and standards of the parties

in as close to the status quo position as possible pending trial and the division of their assets and obligations.” [Citations.]’ [Citation.]” (*Ibid.*)

Consequently, “in exercising its broad discretion, the court may properly consider the ‘big picture’ concerning the parties assets and income available for support in light of the marriage standard of living. [Citation.] Subject only to the general ‘need’ and ‘the ability to pay,’ the amount of a temporary spousal support award lies within the court’s sound discretion, which will only be reversed on appeal on a showing of clear abuse of discretion. [Citation.] ‘Ability to pay encompasses far more than the income of the spouse from whom temporary support is sought; investments and other assets may be used for . . . temporary spousal support [Citations.]’ [Citation.] Trial courts may properly look to the parties’ accustomed marital lifestyle as the main basis for a temporary support order. [Citations.]” (*Wittgrove, supra*, 120 Cal.App.4th at p. 1327.)

A temporary order is intended to allow the supported spouse and children to live in their “accustomed manner” pending the ultimate disposition of the action. (*In re Marriage of Askmo* (2000) 85 Cal.App.4th 1032, 1038.) “The order is based on need and is not an adjudication of any of the issues in the litigation. [Citations.]” (*Ibid.*)

Pendente lite spousal support orders can be made retroactively. Section 4801, subdivision (a), provides, “Any order for spousal support may be made retroactive to the date of filing of the notice of motion or order to show cause therefor, or to any subsequent date.” (See *In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 165-166.) However, once the order is made, “[i]t is well established that even on a showing of changed circumstances a ‘court may not *retroactively* modify a prior order for temporary spousal support.’ [Citations.] Section 3603 provides: ‘An order made pursuant to this chapter may be modified or terminated at any time except as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate.’ [Citations.] Section 3603 ‘makes no provision for “suspending” a spousal support order, or for modifying it retroactively beyond the date the underlying request for

modification was filed.’ [Citation.]” (*In re Marriage of Gruen* (2011) 191 Cal.App.4th 627, 638.)

Finally, our standard of review is well settled. We review temporary spousal support orders under the abuse of discretion standard. (*In re Marriage of Winter* (1992) 7 Cal.App.4th 1926, 1932 (*Winter*)). “‘We cannot substitute our judgment for that of the trial court, but only determine if any judge reasonably could have made such an order. [Citation.] Our review of factual findings is limited to a determination of whether there is any substantial evidence to support the trial court’s conclusions. [Citation.]’ [Citation.]” (*Wittgrove, supra*, 120 Cal.App.4th at p. 1327.) Based on this well settled authority, we reject Burton’s contention we are required to apply a de novo standard of review.

B. Putative Spouse Doctrine

As noted earlier, a court may award pendente lite spousal support during the pendency of a nullity action “if the party for whose benefit the order is made is found to be a putative spouse.” (§ 2254.) Section 2251 is one of several statutes codifying California’s judicially developed putative spouse doctrine. (See *Ceja, supra*, 56 Cal.4th at pp. 1120-1121 & fn. 5.) It states, “[i]f a determination is made that a marriage is void or voidable and the court finds that either party or both parties believed in good faith that the marriage was valid, the court shall: [¶] . . . [d]eclare the party or parties . . . to have the status of a putative spouse.” (§ 2251, subd. (a)(1).) Courts apply the putative spouse doctrine in a variety of actions and proceedings including dissolution actions (*In re Marriage of Tejada* (2009) 179 Cal.App.4th 973, 978-979 (*Tejada*)), probate proceedings (*Estate of Leslie* (1984) 37 Cal.3d 186, 191), and wrongful death (*Ceja, supra*, 56 Cal.4th at p. 1115).

Parties to an “invalid” marriage generally do not have the rights or obligations given to spouses under the Family Code. “[T]he fundamental purpose of the putative spouse doctrine was to protect the expectations of innocent parties and to

achieve results that are equitable, fair, and just. [Citations.]” (*Ceja, supra*, 56 Cal.4th at p. 1122.) Thus, when a marriage is invalid due to some legal infirmity, “an innocent party nevertheless may be entitled to relief under the long recognized protections of the putative marriage doctrine.” (*In re Marriage of Vryonis* (1988) 202 Cal.App.3d 712, 717, overruled on other grounds in *Ceja, supra*, 56 Cal.4th at p. 1126.)

There is ample case law discussing the putative spouse determination *after* deciding the marriage is void or voidable. Our Supreme Court recently analyzed whether a subjective or objective standard should be applied to determine the good faith belief necessary for putative spouse status. (*Ceja, supra*, 56 Cal.4th at pp. 1119-1121.) After reviewing precodification case law, the court concluded “[t]he good faith inquiry is a subjective one that focuses on the actual state of mind of the alleged putative spouse.” (*Id.* at p. 1128.) The court overruled a line of cases holding good faith should be tested by an objective standard examining “whether the facts surrounding the marriage would cause a hypothetical reasonable person to believe in its validity.” (*Id.* at p. 1126.)

The Supreme Court held, “The good faith inquiry is a subjective one that focuses on the actual state of mind of the alleged putative spouse. While there is no requirement that the claimed belief be objectively reasonable, good faith is a relative quality and depends on all the relevant circumstances, including objective circumstances. In determining good faith, the trial court must consider the totality of the circumstances, including the efforts made to create a valid marriage, the alleged putative spouse’s personal background and experience, and all the circumstances surrounding the marriage. Although the claimed belief need not pass a reasonable person test, the reasonableness or unreasonableness of one’s belief in the face of objective circumstances pointing to a marriage’s invalidity is a factor properly considered as part of the totality of the circumstances in determining whether the belief was genuinely and honestly held.” (*Ceja, supra*, 56 Cal.4th at p. 1128.)

We will uphold a trial court's finding of putative spouse status if supported by substantial evidence. (*Ceja, supra*, 56 Cal.4th at p. 1119.) In determining if substantial evidence exists to sustain a trial court's factual finding, "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, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.)

Putative spouse or putative marriage status (when both parties were ignorant of the impediments to a valid marriage) gives rise to rights that ordinarily attach only between lawfully married persons statutory, including property, support, and attorney fees and costs rights. For example, property that would have been community or quasi-community property had the marriage been valid is deemed "quasi-marital" property and, in a proceeding to terminate the invalid marriage, "shall" be divided between the parties as if it were community property. (§ 2251, subd. (a)(2); *Tejeda, supra*, 179 Cal.App.4th at p. 983.)

The gravamen of Burton's complaints below and on appeal is that the trial did not hold an adequate evidentiary hearing and failed to consider relevant evidence outlined in the *Ceja* case, before deciding Qin was a putative spouse. For example, he contends the hearing was scheduled to last two days and the court "aborted" the hearing after one day and failed to consider any of the factors discussed by the Supreme Court in *Ceja*. He asserts the court should have allowed expert testimony about examples of how other spouses seeking immigration benefits engage in marital fraud. He argues the court erroneously equated evidence proving the existence of a marriage to be adequate to deem Qin a putative spouse.

In his reply brief, Burton clarifies his theory that during *the pendency* of his nullity action, Qin had the burden of proving with substantial evidence she was a putative spouse if she wanted pendente lite support. Burton suggests the case is unusual because typically a trial court “will determine whether the marriage is void or voidable first” and then requests for spousal support and attorney fees “will follow.” He complains, “In this case, Qin did not even bother to request a trial setting. Rather Qin sought spousal support and attorney fees immediately. The true reason for the procedural maneuver is [her counsel] took the case ostensibly pro bono, but he wanted Burton to pay his attorney[] fees. Therefore, [counsel] is not interested in adjudicating the main issue of the case Rather, [counsel] wants attorney[] fees first and fast.” (Fn. omitted.)

Burton has confused the burden of proof required for permanent versus temporary support. Requesting pendente lite spousal support and fees during the pendency of a nullity action is neither an unusual procedural maneuver nor an unfair tactical decision dreamed up by Qin’s counsel. Rather, the right to temporary support is specifically authorized by statute.

Section 2254 states the court may order support “during the pendency of a proceeding for nullity of marriage *or* upon judgment of nullity of marriage.” (Italics added.) For the statute to have any meaningful effect, the burden of proof must be different for the spouse seeking temporary support before the judgment versus permanent support after the marriage is annulled. If the same degree of certainty was required for both circumstances, a spouse would have to wait for a full-blown evidentiary hearing on the ultimate issue of the marriage’s validity, after which point the court would be in a position to order permanent support if it was proven he or she was a putative spouse. This interpretation “would violate the ‘cardinal rule of statutory construction’ to give effect to all words and provisions of a statute and leave no part superfluous or inoperative.” (*Leavitt v. County of Madera* (2004) 123 Cal.App.4th 1502, 1519.)

Avnet v. Bank of America (1965) 232 Cal.App.2d 191 (*Avnet*), is instructive. In that case husband's principal defense to wife's application for temporary support was the invalidity of wife's divorce from her first husband, rendering the second marriage void. The court rejected husband's contention he did not have a fair hearing on the order to show cause because he was not given a full chance to establish the invalidity of plaintiff's divorce. The court explained that in a hearing for temporary support the issues are ordinarily not to be determined "with finality." (*Id.* at p. 198.) It reasoned, "[T]he fact of marriage on an application for temporary support need not be as conclusively established as is necessary for the purpose of permanent alimony. It is at the trial of the case on the merits that the issue as to the validity of the marriage is to be ultimately determined." (*Ibid.*) For purposes of pendente lite support, "the marriage is proved by a preponderance of the evidence' [citation], or as said in *Dietrich*[v. *Dietrich*, (1953) 41 Cal.2d 497, 504,] if the wife 'makes a reasonable plain case of its [the marriage's] existence.'" (*Avnet, supra*, 232 Cal.App.2d at pp. 196-197.)

In this case, we conclude the marriage was proved by a preponderance of the evidence. Qin offered testimony about how she met Burton, when she fell in love with him, and how they were married in China two years before she immigrated legally to the United States. Her testimony was essentially identical to the story she told in the context of her DV applications. Qin and Burton met online after she posted information about herself, including that she was a Christian. When she met Burton, she learned he was Christian like her, and she thought they could be friends or later marry. Qin explained she would only consider marrying someone who was Christian. She stated they exchanged many e-mails and "at that time he was very passionate and he wrote many letters to me showing me his children, his life, his work and lots of things about [his Christianity]." She recalled they wrote to each other in English and Chinese, having friends help them translate. When asked if she was aware he was an American citizen, she replied, "I was not very much interested in that area. The thing I was most interested

in was that we had the same belief in God.” Qin told Burton she was divorced, and he shared with her that he also was divorced. Qin noted this was one reason she and Burton felt they had a lot in common.

Qin stated Burton came to China one year after they met online. He spent two weeks visiting her and “the other week he went meet [*sic*] other women.” Qin asked friends from her church to interview him. He brought her many bibles written in both Chinese and English. He gave bibles to her friends and met her family. Burton returned to China six months later and on this visit he visited Qin’s church and met with her priest. During this second visit they decided to get married. Qin explained, “Because we felt friendly towards each other . . . I felt he could be a very good husband to me and he felt I could be a very good wife to him. And we loved each other.” They agreed that after they got married they would return to China to live and preach. Burton’s counsel had an opportunity to cross-examine Qin on all her statements.

It was undisputed that while together in China, Qin and Burton executed a prenuptial agreement in September 2010. One or two months later (the parties dispute the exact date) Qin and Burton were married in China and they planned to wed again in California. Burton explained they went to a local notary office, where they could register as husband and wife. Qin represented the marriage also took place before family and friends. They later held a celebratory banquet.

After getting married, Burton visited Qin in China several more times, and they used an online interpreter to assist in video chats. The couple initiated a visa application process, and approximately two years later, Qin legally immigrated to the United States. Burton sponsored Qin’s visa application and signed an affidavit of support as required by federal law to prevent her from becoming a public charge. As outlined in detail in Qin’s DV applications, the marriage was consummated in the United States when the parties lived together for several months in the same house and they had sexual intercourse.

Based on all of the above, we conclude there was sufficient evidence from which the court could conclude Qin believed the marriage was valid. This was not a hurried marriage. The parties had a lengthy long-distance courtship. Qin testified she married for love, and she believed Burton, a fellow Christian, loved her. Qin denied having any other motivation for marrying Burton. And from the beginning, Burton was well aware that Qin would need immigration assistance before she could join him and his children in the United States. Qin did not keep her relationship with Burton a secret, but rather introduced him to her family, friends, and pastor. There is no evidence she or anyone she knew pressured Burton to help her obtain a visa. Qin stated they made plans to return to China someday, suggesting that living in America was not her primary goal in marrying Burton. Although the marriage did not last long in the United States, e-mails between the parties show Qin initially did not want a divorce but wanted marriage counseling to address their problems. Burton wrote the marriage would be fine if only she would stop nagging, complaining, and provoking his anger. He wished she would be more obedient and quiet. It could reasonably be inferred from this evidence that the marriage deteriorated after the couple learned that following a long-distance relationship they did not enjoy living together and did not meet each other's expectations sexually. We conclude the trial court did not abuse its discretion in deciding there was prima facie evidence of a valid marriage justifying spousal support while waiting for the trial.

We reject Burton's contention the court should have allowed an immigration fraud expert to testify at the pendente lite hearing. First, Burton did not mention the expert on the first day of the hearing (on July 23). On the second day of the hearing (August 7), Burton filed a witness list and indicated John Sampson was an expert prepared to testify about the patterns and tactics often used by spouses defrauding their partners to attain immigration benefits. Judge Monarch stated it was late for an expert disclosure. The trial judge added he did not need assistance understanding the applicable immigration laws. He asked if Sampson was involved with the parties, and Burton's

counsel replied, “No.” Judge Monarch asked if there was any purpose to the testimony other than proving the ultimate fact of annulment. He reminded Burton it was a pendente lite proceeding, not a full blown trial on nullification. Burton’s counsel insisted there needed to be a full evidentiary hearing on the marriage’s validity before temporary support could be awarded. Judge Monarch did not rule on Burton’s request but impliedly denied it by awarding support without first considering Sampson’s testimony. We find no error.

As explained above, for purposes of temporary support, the fact of a valid marriage need not be established with the same degree of certainty required for permanent support. The putative spouse need only make “a reasonable case” for the existence of the marriage. Moreover, whether Qin was a putative spouse depended on her subjective good faith belief about the marriage, i.e., her actual state of mind. There was no requirement her belief be reasonable and the court must consider the totality of circumstances, including Qin’s personal background and experience. Sampson, who did not personally know Qin, could certainly offer testimony using an objective “reasonable person” standard. But that is not the test. Examples of what happened in other fraudulent marriages could be relevant at the annulment trial, but the court correctly determined it did not need expert assistance at this stage of the proceedings.

C. No Retroactive Support Award During the DV Applications

In making its ruling, Judge Monarch decided it would not award pendente lite spousal support retroactively to cover the time Qin’s DV applications were being litigated. On appeal, Burton argues this was error and his argument in this regard is confusing. We note Burton does not suggest the court should have awarded support for this time period *in addition* to the eight months awarded during the Annulment Case proceedings. Instead, he contends the trial court erred by “disobeying this court’s order” to consider a retroactive award and “[t]he trial court’s disobedience of [the appellate court opinion] has [a] devastating effect.” He explains, “This is an extremely short

marriage. Assuming Qin were able to prove she were a putative spouse, the duration of the spousal support awarded during the pendency of the DV [applications] [c]ase will preempt any additional award of spousal support in the Annulment Case.” Burton adds the court’s refusal to consider the matter caused him “unjust[]prejudice” but he does not explain exactly how he was harmed. Instead, he notes there would be no grounds to award attorney fees in the DV applications matter. It appears Burton is under the misguided notion that if spousal support had been awarded retroactively for the DV applications matter, the trial court would have been prohibited from awarding support and attorney fees relating to the Annulment Case. He is wrong for several reasons.

First, there is no support in the record for Burton’s assertion the trial judge *refused to consider* the issue or intentionally disobeyed the holding in our prior opinion. The record shows Judge Monarch considered the issue and concluded there was no need for retroactive support because the matter was either moot or unnecessary to decide due to the fact the case had evolved into a much more convoluted matter. He stated, “The appellate [court] has guided us with respect to the domestic violence circumstances where fees and support would be available . . . to carry the day to maintain stability during the course of the domestic violence proceedings. [¶] I think that’s somewhat mooted under the circumstances which are now before the court.”

When Burton’s counsel later asked Judge Monarch if he was awarding support under the DV applications, he replied, “Let me see if I can clarify it or restate it. The court of appeal determined that it would be appropriate to request temporary support and fees in connection with a domestic violence action. They’re not presuming to say how much it should be or what it would take to provide appropriate support during the period of time that the domestic violence proceeding was pending. [¶] I think this case is past that aspect and it’s into the area of consideration as to how much support and what contribution towards fees should be made with respect to a pendente lite support regarding a putative marriage.” Judge Monarch added that it could break down the award

“into two considerations” but decided against it. He stated the award would be limited to the pendente lite proceedings in the Annulment Case. Burton’s counsel objected again and the court replied, “That’s the court’s equitable disposition, yes. This is like the usual pendente lite request.”

At the hearing, Burton continued to object to the court’s ruling, stating, “We believe that the duration of [the] domestic violence case would preempt [Qin] from seeking any additional support in the Annulment Case. The reason is because for such a short marriage I don’t know how long the court can award spousal support.” Burton added attorney fees were not recoverable in the DV applications matter and there was no reason to look at the Annulment Case. The court repeated the case had a “convoluted history,” the separate actions were all joined together, and the only issue before the court was whether pendente lite support was appropriate and for how much.

The above statements demonstrate the court did not ignore our prior opinion giving it authority to order pendente lite support retroactively to the day Qin first requested financial assistance (in March/April 2012). Judge Monarch determined ordering support retroactively would result in too much spousal support in light of the very short duration of the marriage (16 months). It calculated Qin should receive \$800 support for a total of eight months (\$6,400). We fail to see why it would make any difference to Burton whether the court ordered him to pay this fixed sum of money retroactively or prospectively.

Contrary to Burton’s belief, a temporary spousal support awarded retroactively would not have precluded Qin from seeking pendente lite attorney fees in the Annulment Case. Pursuant to section 2030, subdivision (a)(1), the court may award “whatever amount is reasonably necessary for attorney fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.” “The purpose of a section 2030 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.’ [Citations.]” (*In re Marriage of Braud* (1996) 45 Cal.App.4th 797, 827.) We found no authority, and Burton cites to none, holding a need based fee award is dependent on the spouse receiving pendente lite spousal support at the same time.

To the contrary, it is settled pendente lite fees and costs awards are made without prejudice to either party’s right to a future award in the same action or thereafter. (§ 2030, subd. (c).) “No single fees and costs order is an “all or nothing” proposition. Need-based awards may be *augmented* or *modified* as necessary during the entire pendency of the case, consistent with the parties’ “relative circumstances” [citations].’ [Citations.]” (*In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1056.)

D. Challenge to Amount of Support and Fees Awarded

“[A]n award of temporary spousal support is within the sole discretion of the trial court,’ and will not be reversed unless it amounts to an abuse of discretion. [Citation.]” (*Winter, supra*, 7 Cal.App.4th at p. 1932.) Similarly, we review an attorney fees award made under sections 2030 and 2032 for an abuse of discretion. (*In re Marriage of Sorge* (2012) 202 Cal.App.4th 626, 662-663.) We will not reverse a fee award “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.” (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 975.) “The abuse of discretion standard is not a unified standard; the deference it calls for varies according to the aspect of a trial court’s ruling under review. The trial court’s findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.’ [Citation.]” (*In re Marriage of Walker* (2012) 203 Cal.App.4th 137, 146.)

i. Temporary Spousal Support

In his appeal, Burton maintains, “It is difficult to argue that [Qin] is entitled to any spousal support at all.” He raises the following arguments with respect to the

amount of the spousal support award: (1) Because the marriage was short and there was no community effort to build a higher living wage, Qin could not seek support simply based on the other spouse's higher living wage. (Citing *In re Marriage of Huntington* (1992) 10 Cal.App.4th 1513, 1520-1521 (*Huntington*) [case concerning permanent spousal support]); (2) the court failed to consider Burton's ability to pay and Qin's needs; (3) the court failed to consider the issue of standard of living and Qin's ability to earn a living; (4) the marriage lasted two months, not 16 months; and (5) Burton has been financially ruined by Qin. He makes one argument attacking the legal basis for an award, i.e., the court failed to honor a prenuptial agreement limiting Qin's right to support.

In making his arguments, Burton cites to case authority and legal principles applicable to awards of permanent support. As explained in more detail earlier in this opinion, temporary support is different from permanent support, and a trial court is not restricted by any set of statutory guidelines in awarding pendente lite support. (*Wittgrove, supra*, 120 Cal.App.4th at p. 1327.) “[I]n exercising its broad discretion, the court may properly consider the ‘big picture’ concerning the parties assets and income available for support in light of the marriage standard of living. [Citation.] Subject only to the general ‘need’ and ‘the ability to pay,’ the amount of a temporary spousal support award lies within the court’s sound discretion, which will only be reversed on appeal on a showing of clear abuse of discretion. [Citation.]” (*Ibid.*)

We have reviewed the record closely and conclude the trial court examined both parties' income and expense declarations. It questioned counsel about some of the items listed. Burton's income and expense declaration showed he made a gross salary exceeding \$8,000 per month working as a drafting designer. He possessed over \$3,000 in cash and \$25,000 in other assets. He listed several obligations for child support, health insurance, credit cards, and other debts. Qin's income and expense declaration stated she found a job as a home care service provider and earned \$400 per month. She paid \$400 for rent and had other expenses. She relied on assistance from friends at her church. The

court also considered Burton's testimony he was financially ruined by the litigation and legal bills. The record shows the court properly considered the big picture concerning the parties' needs and ability to pay.

The record also supports the conclusion Burton's counsel suggested and approved of the amount of spousal support. After the court invited counsel to comment on what they believed would be a reasonable amount of spousal support, Burton's counsel reminded the court that Qin was awarded two payments of \$800 during the DV applications matter. Burton's counsel told the court, "So I believe that amount probably is reasonable considering [Burton's] ability to make a living [and] health condition and [for] her age and her skill." The court asked Burton's counsel, "Your suggestion would be the award should be [\$]800 a month?" He replied, "As [*sic*] award that is what was reasonable." The court then granted Burton's request and ordered \$800 temporary spousal support payable for a defined term of eight months. Based on this record, it cannot be said the court abused its discretion in setting the amount of support at \$800 per month.

Burton also contends the court erred in computing the duration of the marriage. He maintains the marriage lasted two months, not 16. Alternatively, he maintains Qin received two \$800 payments during the DV applications matter and therefore the support award should be reduced by two months. He is wrong. Not surprisingly Burton cannot provide any legal authority to support his theory the duration of a marriage is measured by the time the parties lived together. The case he cites merely holds the duration of the marriage is but *one of many* factors a court should consider when determining the amount of permanent spousal support. (*Huntington, supra*, 10 Cal.App.4th at p. 1522 ["we cannot agree that the court unduly emphasized this factor"].) In *In re Marriage of Hebring* (1989) 207 Cal.App.3d 1260, 1264, the court determined a period of premarital cohabitation could not be added to the calculation of the marriage's duration for purposes of calculating spousal support. In making this

ruling, the court noted, “The duration of the marriage [for purposes of a section 4801, subdivision (a), spousal support determination] is limited to the period between the date of marriage and date of separation.” (*Id.*, fn. 3.) Burton declared they married in early November 2010 and separated in early March 2012. This fully supports the trial court’s calculation the duration of the marriage was 16 months.

We find no merit in Burton’s alternative theory that support must be limited to one-half the length of the marriage and, therefore, the award must be reduced by two months because Qin received \$1,600 during the DV applications matter. First, the court refused to award any spousal support during the DV applications matter. This is the subject of the prior appeal. That court awarded two payments of \$800 for debts incurred. Those payments cannot now be deemed temporary support. Second, the rule of thumb regarding the duration of support is found in section 4320, subdivision (i), and provides as follows: “[In ordering spousal support, the court shall consider several circumstances, including t]he goal that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration as described in [s]ection 4336, a ‘reasonable period of time’ for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court’s discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section, [s]ection 4336, and the circumstances of the parties.” Contrary to Burtons’ contention, there is no bright line rule and the court can order support for a greater length of time than one-half the marriage. Moreover, this rule concerns an award of permanent support not temporary support. As discussed earlier, the trial court has broad discretion in calculating pendente lite spousal support.

This leaves us with only Burton’s arguments relating to the theory there was no legal basis for a support award. He asserted the trial court was aware there was a prenuptial agreement limiting Qin’s right to receive support. Burton contends the court lacked authority to award support “in contravention with [the] parties’ intent in the

prenuptial agreement.” He provides no legal support or case authority to support this theory. He offers no legal analysis of the contract provision at issue and does not explain why it should be enforced before termination of the marriage or what happens if the marriage is later nullified. He fails to offer legal support for his theory a contract provision purportedly limiting permanent support also serves to limit the court’s statutory authority to award pendente lite support.

We conclude Burton has waived this issue by failing to support the argument with reasoned legal argument or case authority. (*Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007 [argument forfeited where parties “fail[ed] to make a coherent argument or cite any authority to support their contention”]; *Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448 [parties “required to include argument and citation to authority in their briefs, and the absence of these necessary elements” permits appellate court to treat contentions waived”].)

ii. Pendente Lite Attorney Fee Award

Burton challenges the amount of the attorney fee award on the following grounds: (1) Burton cannot afford to pay Qin’s attorney fees; (2) Qin’s counsel should not receive fees for work relating to the DV proceedings; and (3) Qin’s counsel was unskilled. He also challenges the legal basis for the award, arguing it is inequitable because Qin did not have to pay attorney fees in the DV proceedings but Burton had to pay to defend himself. He adds Qin is a non-putative spouse and the court did not make findings mandated by section 2030, subdivision (a)(2), and (3).

We have already addressed and rejected the claim Qin is a non-putative spouse. We conclude the record does not support Burton’s claim Qin’s counsel was paid for work relating to the DV applications. The request for attorney fees shows Qin retained her attorney in 2013, and his billing statements reflect work performed in only the Divorce and Annulment Case. The DV proceedings took place in 2012.

Nevertheless, Burton believes the award included fees incurred during the

DV proceedings because during argument the court asked *Burton's counsel* how much he was paid for the “entire proceeding, all actions that have been consolidated?” The statement must be read in context. The court began by asking Burton’s counsel how much he had been paid for the case. He replied \$20,000. The court next asked, “What are your fees and costs to date for the entire proceedings, all actions that have been consolidated?” Counsel replied, “I think the DV case is different because [Qin’s current counsel was] not representing her.” The court explained it was asking Burton’s counsel for help in determining a reasonable fee and “I would surmise that you have charged only a reasonable fee.” Burton’s counsel agreed and stated he only charged \$1,000 for working on the DV applications, including the appeal. The court replied, “I want to know what your fees and costs are with respect to all these pending proceedings today.” Burton’s counsel replied, “Total about [\$]18,000.” The court thanked counsel and awarded Qin’s counsel \$15,000.

Based on the above exchange, we find no indication the award included fees related to the DV applications. The court clarified it only wanted to know how much Burton’s counsel charged for the “pending proceedings today,” which would include the consolidated Divorce/Annulment Actions. It would not include the DV applications that had been dismissed. Burton’s counsel subtracted from the total amount charged (\$20,000), the fees incurred for the DV applications (approximately \$1,000), and calculated a reasonable fee for litigating the *current matter* was approximately \$18,000. The trial court agreed and awarded Qin’s counsel a few thousand dollars less (\$15,000). Thus, there is no support in the record for Burton’s claim Qin received fees related to the DV applications matter. There is also no support for his assertion the fees were unreasonably high given his counsel received \$3,000 more and that amount was deemed reasonable given the complexity of the litigation.

As for Burton’s belief he should not be required to pay the high fees of an unskilled attorney, the record shows Qin’s counsel adequately represented her interests

and obtained some favorable results. For example, he successfully made a prima face case there was a valid marriage upon which to base pendente lite spousal support. Moreover, in his declaration supporting the request for attorney fees, Qin's counsel stated he had 38 years experience litigating "complex financial family law matters and [had] conducted over 3,000 family law cases, including over 500 trials." There was no reason for the court to further question Qin's counsel's skill level in family law matters.

Burton faults the court for not asking if Qin's counsel was experienced in handling an immigration fraud case. Burton relies on *Huntington, supra*, 10 Cal.App.4th 1513, to support his theory the trial court must consider an attorney's specific skills and ability to try the issues at hand. He asserts immigration fraud is "the crux" of his annulment action and there was no evidence Qin's counsel had any experience to litigate this issue. He has misread the case. In the *Huntington* case, the court determined a request for over \$48,000 was unreasonable given the length of the marriage and circumstances of the parties. (*Id.* at p. 1522.)

The appellate court in the *Huntington* case affirmed the trial court's ruling, stating, "When the trial court is informed of the extent and nature of the services rendered, it may rely on its own experience and knowledge in determining their reasonable value." [Citations.] "The exercise of sound discretion by the trial court in the matter of attorney's fees includes also judicial evaluation of whether counsel's skill and effort were wisely devoted to the expeditious disposition of the case." (*In re Marriage of Lopez* [(1974) 38 Cal.App.3d 93, 113, disapproved of on another ground in *In re Marriage of Morrison* (1978) 20 Cal.3d 437, 453].) *In re Marriage of Lopez* upheld an award of \$5,000 rather than the \$15,345.32 requested by the wife's attorney, based on the trial court's opinion that the wife "could have been well and properly represented" with a fee of \$5,000. [Citation.] [¶] Section 4370 allows for awards of fees 'reasonably necessary' to maintain or defend an action. Here, the trial court made clear that it believed appellant's litigation of the case had been unreasonable. In view of the short

duration of the marriage, absence of any issues regarding property, and complete rejection by the trial court of appellant's claimed disability, we cannot find this conclusion an abuse of discretion." (*Huntington, supra*, 10 Cal.App.4th at p. 1524, fn. omitted.)

There is no evidence Qin's attorney's litigation of the case had been unreasonable or there were unnecessary expenses. The trial court determined Burton's counsel's litigation of the case for \$18,000 had been reasonable based on the complexity of the case, and the court awarded Qin's counsel a comparable amount of fees. Moreover, this is a family law case, and immigration fraud is but one of three alleged grounds for an annulment. Qin's counsel's declaration, made under penalty of perjury, indicated counsel had extensive skill and experience in complex family law matters and this was all the trial court needed to conclude his skills and efforts would be devoted to expeditious disposition of the case.

It appears Burton has forgotten that the purpose of pendente lite attorney fees is to insure parity, i.e., "a fair hearing with two sides equally represented." (*Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238, 251.) "The idea is that both sides should have the opportunity to retain counsel, not just (as is usually the case) only the party with greater financial strength. [Citation.]" (*Ibid.*) For this reason we reject Burton's contention it is inequitable to make him pay Qin's attorney fees when she did not have to pay attorney fees in the DV matter but had to pay to defend himself. Burton should be relieved Qin found pro bono assistance in the DV application matter so there was no concern about parity in those proceedings.

III

We conclude the trial court did not abuse its discretion in awarding Qin temporary spousal support and attorney fees after determining by a preponderance of the evidence she was a putative spouse. Burton, earning over \$8,000 a month, had other assets and had the ability to pay, and Qin adequately demonstrated a dire need for

financial assistance. We affirm the order awarding support and attorney fees.
Respondent shall recover her costs on appeal.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

THOMPSON, J.