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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re the Marriage of JAMES E.  
PENPRASE and SATURNINA BENITEZ  
DE PENPRASE,

H039780

(Monterey County  
Super. Ct. No. DR39014)

JAMES E. PENPRASE,

Appellant,

v.

SATURNINA BENITEZ DE PENPRASE,

Respondent.

**I. INTRODUCTION**

In this marital dissolution action, appellant James E. Penprase (James) challenges the trial court's order denying his motion for modification or termination of the spousal support he agreed to pay respondent Saturnina Benitez de Penprase (Saturnina) in the parties' marital settlement agreement.<sup>1</sup> James argues that the trial court erred in finding that he had failed to make the showing of a material change of circumstances that is required for modification of an order of permanent spousal support. For the reasons

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<sup>1</sup> For purposes of clarity and not of disrespect, we will refer to the parties by their first names. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

stated below, we conclude that the trial court did not abuse its discretion in denying James's motion. We will therefore affirm the order.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

### ***A. The Marital Settlement Agreement and Judgment***

James and Saturnina were married in 1982 and separated in 2001. They entered into a marital settlement agreement dated June 21, 2002. James filed a petition for dissolution of marriage on June 25, 2002. At that time, the parties' two sons were minors.

The marital settlement agreement provided, among other terms, that James would be solely responsible for the community debts; James would receive the family residence as his separate property and assume the home loan obligations; Saturnina would receive as her separate property two of James's retirement accounts; James would receive his deferred compensation retirement account as his separate property; Saturnina would receive as her separate property James's community interest in her business, Foreign Accents Imports; the business of Foreign Accents Imports would be closed; and the parties would share responsibility for all debts and obligations arising from the business of Foreign Accents Imports.

Regarding family support, the marital settlement agreement provided that "[n]either party will pay child support to the other." The provision for spousal support for Saturnina states: "Husband will pay to Wife for spousal support, the sum of \$2,667.00 per month, payable on the first (1st) day of each and every month beginning July 1, 2002, and continuing until either party's death, the remarriage of Wife, further agreement of the parties, or modification or termination by further court order, whichever occurs first." The marital settlement agreement did not provide for the contingent termination of spousal support on a specific date pursuant to the decision in *In re Marriage of Richmond* (1980) 105 Cal.App.3d 352, 354.)

A *Gavron*<sup>2</sup> warning was included in the marital settlement agreement, as follows: “It is the goal of the State of California that each Party shall make reasonable good faith efforts to become self-supporting as provided for in section 4320 of the Family Code. The failure to make such reasonable good faith efforts may be one of the factors considered by the court as a basis for modifying or terminating support.”

A judgment of dissolution was entered on September 3, 2002. The judgment provides that “[t]he parties are hereby ordered to carry out the terms and conditions of the Marital Settlement Agreement signed by the parties on June 21, 2002, which is attached hereto and incorporated herein by this reference.”

***B. The Motion for Modification or Termination of Spousal Support***

On February 7, 2013, James filed a request for order modifying or terminating the spousal support order that was included in the September 3, 2002 judgment of dissolution.

In his supporting declaration, James asserted that Saturnina had been working as a sales associate at Macy’s since 2006 and she had refused a management position because she preferred working as a sales associate. James also asserted that he had been paying spousal support for more than 10 years following the parties’ 20-year marriage. He stated that “[b]ased on the above and the length of time I have been paying spousal support, and this court’s admonition to [Saturnina] to make reasonable good faith efforts to become self-supporting, I am requesting that spousal support be set to zero and this

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<sup>2</sup> The court in *In re Marriage of Gavron* (1988) 203 Cal.App.3d 705 (*Gavron*) stated: “ ‘[T]he Legislature intended that all supported spouses who were able to do so should seek employment. It also appears the Legislature expected that courts would issue orders encouraging these spouses to seek employment and to work toward becoming self-supporting.’ [Citations.]” (*Id.* at p. 711.)

court's jurisdiction over spousal support be terminated at this time. Alternatively, I am requesting a modification of support to zero.”

James submitted an income and expense declaration dated February 7, 2013, in which he stated he is 57 years old, has a B.S. in accounting, and is employed as vice-president of finance for Monterey Credit Union. His monthly salary is \$14,453 and his monthly expenses total \$10,502.

James also submitted a memorandum of points and authorities in support of his motion for modification or termination of spousal support. He argued that he was entitled to termination of spousal support due to a material change of circumstances. According to James, the material change of circumstances included: (1) Saturnina was earning a salary working full time as a sales associate at Macy's; (2) he has paid spousal support for over 10 years; (3) Saturnina has failed to make reasonable efforts to become self-supporting because she failed to seek higher paying positions or accept the higher paying positions that had been offered to her; (3) the marital standard of living should no longer be used in setting spousal support because the parties lived above their means during the marriage and because a significant amount of time has passed since their separation; and (4) alternatively, Saturnina has the earning capacity sufficient to maintain the marital standard of living now that she no longer has minor children to support.

In her responsive declaration to the order to show cause, Saturnina opposed James's motion for a termination or modification of spousal support. She argued that James had not demonstrated a showing of material changed circumstances or provided any evidence to support modification or termination of spousal support. According to Saturnina, she made an effort to become self-supporting by investing the funds she received from the marital dissolution in her business, and she should not be penalized because her business was unsuccessful. As to her employment with Macy's, Saturnina stated that although she had been offered a position with “executive duties,” she returned to a position as a sales associate because “the pay structure was different, so I wound up

making less money.” Saturnina further argued that James had not met his burden to prove that she had the earning capacity to become self-supporting, noting that, as stated in her income and expense declaration, she earns only \$1,865 per month.

Saturnina’s income and expenses declaration, dated April 16, 2013, also indicates that Saturnina is 51 years old, is employed by Macy’s as a Ralph Lauren specialist working 30-35 hours per week, and has not completed high school or the equivalent. Saturnina’s total monthly expenses are \$3,595.

In reply, James asserted that his calculation of Saturnina’s income from earnings and spousal support and her expenses shows that she has \$576 in “excess spendable income” per month. James admitted that Saturnina was “unemployed during a good portion of our marriage,” but he argued that she has failed to “participate in any education or training to enhance [her skills in retail management], even though she has had 10 years to do so. [Saturnina] has, instead, chose[n] to sit back, work part time, and simply collect spousal support without making an effort to become self-supporting through her own contribution.”

### ***C. Trial Court Order***

During the hearing on James’s motion for termination or modification of spousal support, the trial court noted that the court had not received his filed reply and asked James’s attorney to “briefly summarize” the reply.

In response, James’s attorney stated: “The main points I believe that we have laid out in the Reply Declaration is that after reviewing [Saturnina’s] Responsive Declaration, it was clear from her declaration that over the past eight years, despite the fact that she had been given a Gavron warning, that was included in the Marital Settlement Agreement, incorporated into the Judgment . . . she hasn’t taken any steps to become self-supporting. [¶] She hasn’t sought further education. She hasn’t inquired about other higher paying jobs or how she could acquire those jobs. [¶] And he’s been paying

support for almost the past 11 years to [Saturnina].” When questioned by the trial court, James’s attorney agreed that Saturnina was working full time.

The trial court then made several findings during the hearing, as follows: “[M]y question is, what is the change of circumstance? I understand that [Saturnina] did invest some of her community property that she received in her own business and that that business wasn’t successful. [¶] And then following that, she has become employed full time. And it seems like she’s doing the type of work that she’s always done. That type of work doesn’t really put her back to the standard of living that they had during the marriage. [¶] And it appears that the parties’ income discrepancy is fairly large. And this is a long-term marriage. [¶] So I’m having a hard time understanding what the change of circumstance is that would result in the court . . . terminating spousal support at this time. [¶] The actual amount that is being paid is perhaps subject to change, . . . if [Saturnina] is earning income. But it appears that that is minimal at this point.” In conclusion, the trial court stated: “[I] am going to deny the motion. I don’t see that there is a change of circumstances that would warrant the court changing the spousal support award at this time.”

The findings and order after hearing entered on May 6, 2013, denied James’s motion for termination or modification of spousal support. The order states: “The court finds that [James] has not alleged a change in circumstances warranting a modification of spousal support and therefore denies [his] request for modification.” James filed a timely notice of appeal from the order.

### **III. DISCUSSION**

On appeal, James contends that the trial court abused its discretion in denying his motion for termination or modification of spousal support. We will begin our evaluation of James’s contention with an overview of the rules governing the modification of spousal support and the applicable standard of review.

### ***A. Modification of Spousal Support***

Family Code section 3651, subdivision (a)<sup>3</sup> provides, with exceptions not relevant here, that “a support order may be modified or terminated at any time as the court determines to be necessary.” It is well established that “ ‘[m]odification of spousal support, even if the prior amount is established by agreement, requires a material change of circumstances since the last order. [Citations.]’ [Citation.]” (*In re Marriage of Khera and Sameer* (2012) 206 Cal.App.4th 1467, 1475 (*Khera*).

Therefore, “ ‘[a] motion for modification of spousal support may only be granted if there has been a material change of circumstances since the last order. [Citation.] Otherwise, dissolution cases would have no finality and unhappy former spouses could bring repeated actions for modification with no burden of showing a justification to change the order. Litigants “ ‘are entitled to attempt, with some degree of certainty, to reorder their finances and life style [sic] in reliance upon the finality of the decree.’ ” [Citation.] Absent a change of circumstances, a motion for modification is nothing more than an impermissible collateral attack on a prior final order. [Citation.]’ [Citation.]” (*Khera, supra*, 206 Cal.App.4th at p. 1479.)

A material change of circumstances “ means a reduction or increase in the supporting spouse’s ability to pay and/or an increase or decrease in the supported spouse’s needs. It includes all factors affecting need and ability to pay.” (*In re Marriage of West* (2007) 152 Cal.App.4th 240, 246.) “The moving party has the burden of showing a material change of circumstances since the last order was made. [Citation.]” (*In re Marriage of Tydlaska* (2003) 114 Cal.App.4th 572, 575 (*Tydlaska*).

### ***B. Standard of Review***

“ ‘A judgment or order of the lower court is *presumed correct*. All intendments

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<sup>3</sup> All statutory references hereafter are to the Family Code unless otherwise indicated.

and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principal of appellate practice but an ingredient of the constitutional doctrine of reversible error.’ [Citations.]” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

A trial court has broad discretion in deciding whether to modify a spousal support order. (*Tydlaska, supra*, 114 Cal.App.4th at p. 575.) “Whether a modification of a spousal support order is warranted depends upon the facts and circumstances of each case, and its propriety rests in the sound discretion of the trial court the exercise of which this court will not disturb unless as a matter of law an abuse of discretion is shown.” (*In re Marriage of Hoffmeister* (1987) 191 Cal.App.3d 351, 357–358.) “ ‘A trial court abuses its discretion when its decision exceeds the bounds of reason by being arbitrary, capricious or patently absurd. [Citation.] In determining whether there has been such an abuse, we cannot reweigh evidence or pass upon witness credibility. The trial court is the sole arbiter of such conflicts. Our role is to interpret the facts and to make all reasonable inferences in support of the order issued. [Citation.]’ [Citations.]” (*People ex rel. Harris v. Black Hawk Tobacco, Inc.* (2011) 197 Cal.App.4th 1561, 1567 (*Black Hawk*).

The burden is on the appellant to establish an abuse of discretion. (*In re Marriage of Rothrock* (2008) 159 Cal.App.4th 223, 230.) It is “an abuse of discretion for the trial court to base its order of modification on evidence which failed to establish that a substantial change of circumstances had occurred subsequent to the entry of the decree of dissolution.” (*In re Marriage of Mulhern* (1973) 29 Cal.App.3d 988, 992.)

In reviewing the trial court’s order denying James’s motion for termination or modification of spousal support, we are also mindful that the parties agreed to spousal support of \$2,667.00 per month in their marital settlement agreement. “ ‘[A] marital settlement agreement is a contract between the parties. [Citations.] Where the agreement permits modifications, those modifications require a showing of a change in circumstances. [Citations.] Moreover, in determining what constitutes a change in

circumstances the trial court is bound to give effect to the intent and reasonable expectations of the parties as expressed in the agreement,' and, thus, 'the trial court's discretion to modify the spousal support order is constrained by the terms of the marital settlement agreement.' [Citations.]" (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 398 (*Dietz*)). "The court may not simply reevaluate the spousal support award." (*In re Marriage of Aninger* (1990) 220 Cal.App.3d 230, 238.)

### **C. Analysis**

James contends that the trial court abused its discretion in denying his motion because substantial evidence does not support the court's finding that there has not been a material change of circumstances warranting modification of the spousal support order. Specifically, James argues that the trial court erred because (1) Saturnina failed to take reasonable steps to become self-supporting during the 10 years that have passed since the parties' marriage was dissolved; (2) Saturnina has a reduced need for support since she has earned income and no minor children to support; (3) Saturnina made the "unwise decision" to stay at a job where she earns \$13 per hour instead of finding higher paid work; and (4) the trial court failed to consider all of the section 4320 factors.<sup>4</sup>

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<sup>4</sup> Section 4320 provides: "In ordering spousal support under this part, the court shall consider all of the following circumstances: [¶] (a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following: [¶] (1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment. [¶] (2) The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties. [¶] (b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party. [¶] (c) The ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living. [¶] (d) The needs of each party based on the standard of living established during the marriage. [¶] (e) The obligations and assets, including the separate property, of each party. [¶] (f) The

## 1. Earning Capacity

James's primary argument on appeal is that spousal support should be terminated or modified because Saturnina has failed to comply with the *Gavron* warning in the parties' marital settlement agreement, which states: "It is the goal of the State of California that each Party shall make reasonable good faith efforts to become self-supporting as provided for in section 4320 of the Family Code. The failure to make such reasonable good faith efforts may be one of the factors considered by the court as a basis for modifying or terminating support."

We understand James to contend that Saturnina has not made reasonable good faith efforts to become self-supporting in the past 10 years by graduating from high school or its equivalent and obtaining a job that pays wages commensurate with her earning capacity, which is greater than her earnings as a sales associate at Macy's.

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duration of the marriage. [¶] (g) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party. [¶] (h) The age and health of the parties. [¶] (i) Documented evidence, including a plea of nolo contendere, of any history of domestic violence, as defined in Section 6211, between the parties or perpetrated by either party against either party's child, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party. [¶] (j) The immediate and specific tax consequences to each party. [¶] (k) The balance of the hardships to each party. [¶] (l) *The 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 Section 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, Section 4336, and the circumstances of the parties.* [¶] (m) The criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award in accordance with Section 4324.5 or 4325. [¶] (n) Any other factors the court determines are just and equitable." (Italics added.)

Having reviewed the record, we determine that James did not meet his burden to prove that Saturnina has not made reasonable good faith efforts to become self-supporting.

To begin with, we recognize that “[a]lthough the passage of time may be related to a change in circumstances, it is not alone a sufficient basis for modification. [Citation.]” (*Gavron, supra*, 203 Cal.App.3d at p. 710.) Therefore, the fact that 10 years had passed since the dissolution of the parties’ marriage was not, by itself, a material change of circumstances warranting modification or termination of spousal support. In addition, the parties’ marital settlement agreement did not provide for a reduction in spousal support after the passage of any length of time. (See, e.g., *In re Marriage of Jones* (1990) 222 Cal.App.3d 505, 509 [marital settlement agreement provided for specific support payments for identified time periods].)

Next, we consider the evidence regarding Saturnina’s earning capacity. “[F]or purposes of determining support, ‘earning capacity’ represents the income the spouse is reasonably capable of earning based upon the spouse’s age, health, education, marketable skills, employment history, and the availability of employment opportunities.” (*In re Marriage of Simpson* (1992) 4 Cal.4th 225, 234.)

Here, James asserted in his motion for modification or termination of spousal support that Saturnina had declined a management position with Macy’s and also had declined to seek higher paying employment. James presented no evidence of the wages that Saturnina could have earned in a management position at Macy’s. Saturnina stated that she did not continue in a management position with Macy’s because she actually earned less in that position, and James did not provide any evidence to the contrary. Moreover, James also did not provide any evidence showing that specific higher paying opportunities were available to Saturnina given her education, marketable skills, and employment history. As to Saturnina’s education, James failed to provide any evidence to show that a high school diploma or its equivalent would have allowed Saturnina to seek and obtain specific higher paying employment.

In short, James’s showing regarding Saturnina’s earning capacity was no more than speculation. “ ‘[S]peculation or conjecture alone is not substantial evidence.’ [Citation.]” (*In re Marriage of Burwell* (2013) 221 Cal.App.4th 1, 25, fn. 21.) Accordingly, on this record there is no substantial evidence that Saturnina has failed to make a reasonable good faith effort to become self-supporting by obtaining employment commensurate with her earning capacity. The trial court therefore did not abuse its discretion in denying modification or termination of spousal support on that ground.

The decision that James relies on for a contrary conclusion, *In re Marriage of Shaughnessy* (2006) 139 Cal.App. 4th 1225 (*Shaughnessy*), is distinguishable. In *Shaughnessy*, the trial court issued a spousal support order that specified that the wife “needs to be retrained and obtain computer skills,” based on the court’s findings that she did not possess marketable skills and had been employed as a florist during the marriage. (*Id.* at p. 1232.) The trial court granted the husband’s motion for a downward modification of spousal support because the evidence showed a change of circumstances justifying modification. Specifically, the court found that the wife “had done little, if anything, to obtain retraining to increase her income, and that she had not otherwise been diligent in attempting to become self-supporting.” (*Id.* at p. 1240.)

In contrast, in the present case the parties’ marital settlement agreement did not require Saturnina to be retrained or obtain additional skills. She was obligated by the *Gavron* warning in the marital settlement agreement to make a reasonable good faith effort to become self-supporting. However, as we have discussed, James did not meet his burden as the moving party to provide evidence from which the trial court could find that a change of circumstances existed due to Saturnina’s failure to comply with the *Gavron* warning. He did not, for example, provide the trial court with a vocational expert’s evaluation of Sabrina’s earning capacity. (See, e.g., *In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 212 [vocational examination report].)

## 2. Reduced Need

James argues that another change of circumstances justifying modification or termination of spousal support is Saturnina's reduced need for support. According to James, Saturnina's earnings of \$2,130 (as calculated by James) from her job at Macy's constitutes a change of circumstance from the circumstances that existed at the time of the parties' marital settlement agreement, when Saturnina was operating an unprofitable business. Another change of circumstance asserted by James is their sons' adulthood, since Saturnina no longer has the financial burden of supporting them as she did at the time of the marital settlement agreement. As a result, James contends, Saturnina's earnings, combined with her spousal support, provide her with \$576 in excess of her monthly expenses.

We are not persuaded by James's arguments, for two reasons. First, the parties' marital settlement agreement did not provide for a reduction in spousal support upon the termination of the parties' child support obligations.

Second, “ ‘a showing of changed circumstances does not necessarily mandate a modification of spousal support.’ [Citation.]” (*Khera, supra*, 206 Cal.App.4th at p. 1484.) As we have discussed, the change of circumstances must be material. (See *id.* at p. 1479.) In this case, the record reflects that the trial court implicitly found that Saturnina's low wages from her job as a sales associate at Macy's did not constitute a material change of circumstances. The trial court expressly found that Saturnina had received community property that she invested in her business, the business was unsuccessful, and Saturnina then became employed full-time “doing the type of work that she's always done. That type of work doesn't really put her back to the standard of living that they had during the marriage.” The court also expressly found that Saturnina's earned income was “minimal at this point.”

Moreover, James did not provide any evidence to show that Saturnina's earnings of \$1,865 per month (as stated on her income and expenses declaration) from her job at

Macy's were sufficient to meet Saturnina's needs, even assuming a reduction in her standard of living from the marital standard of living. James does not dispute that Saturnina's monthly expenses of \$3,595, as stated on her income and expense declaration, significantly exceed her monthly earned income. The trial court could therefore reasonably determine at the time of the hearing that Saturnina's earnings did not constitute a material change of circumstance warranting a modification or termination of spousal support because Saturnina's need for support had not been reduced. We emphasize that under our standard of review, we " 'must accept as true all evidence tending to establish the correctness of the trial judge's findings, resolving all conflicts in the evidence in favor of the prevailing party and indulging in all legitimate and reasonable inferences to uphold the judgment.' [Citation.]" (*In re Marriage of Bower* (2002) 96 Cal.App.4th 893, 899.)

James relies on the decision in *In re Marriage of McCann* (1996) 41 Cal.App.4th 978 (*McCann*), but his reliance on that decision is misplaced. The marital settlement agreement in *McCann* provided that "the parties agreed to an overall support level which would permit wife and children to continue living in the same home. Since they equally divided the agreed-upon figure between child and spousal support, the original spousal support award far exceeded the amount wife would have been entitled to receive based on the parties' income during marriage. Wife's request for an increase in child support based on the [newly enacted] Statewide Uniform Guidelines upset this calculation." (*Id.* at p. 984.) The *McCann* court therefore found that the trial court had not erred in reducing spousal support because the husband's child support obligation had increased. (*Id.* at pp. 984-985.) The decision in *McCann* is therefore distinguishable from the present case, in which the parties agreed in their marital settlement agreement that "[n]either party will pay child support to the other."

### 3. Section 4320 Factors

Finally, James contends that the trial court failed to consider the applicable section 4320 factors that he addressed in his reply brief, since in ruling on his motion for modification or termination of spousal support “the trial court admitted it had not reviewed the reply brief.” It has been held that “ ‘[a] trial court considering whether to modify a spousal support order considers the same criteria set forth in Family Code section 4320 as it considered in making the initial order.’ [Citation.]” (*Dietz, supra*, 176 Cal.App.4th p. 396.)

In the present case, the record shows the trial court acknowledged during the hearing on James’s motion for modification or termination of spousal support that the court had not received his filed reply, and asked James’s attorney to “briefly summarize” the reply. In response, James’s attorney stated: “The main points I believe that we have laid out in the Reply Declaration is that after reviewing [Saturnina’s] Responsive Declaration, it was clear from her declaration that over the past eight years, despite the fact that she had been given a Gavron warning, that was included in the Marital Settlement Agreement, incorporated into the Judgment . . . she hasn’t taken any steps to become self-supporting. [¶] She hasn’t sought further education. She hasn’t inquired about other higher paying jobs or how she could acquire those jobs. [¶] And he’s been paying support for almost the past 11 years to [Saturnina].”

Having listened to this summary of James’s reply brief, the trial court made its ruling denying James’s motion on the grounds that James had not proven a material change of circumstances that warranted modification or termination of child support. As in *Khera*, we determine that “the appellate record does not establish that the superior court failed to consider all relevant evidence of the section 4320 circumstances that was presented or abused its discretion in denying appellant’s motion.” (*Khera, supra*, 206 Cal.App.4th at p. 1484.)

For these reasons, we will affirm the trial court's order denying James's motion for modification or termination of spousal support. However, we note that our ruling is based upon the record before us in this appeal and that the *Gavron* warning in the parties' marital settlement agreement is still in effect.

#### **IV. DISPOSITION**

The order of May 6, 2013, is affirmed.

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BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

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MIHARA, J.

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GROVER, J.

*Penprase v. Penprase*  
**H039780**