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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

In re the Marriage of VICTOR WEBBER  
and LINDA CHEN.

H040299  
(Santa Clara County  
Super. Ct. No. 1-01-FL102682)

VICTOR WEBBER,

Appellant,

v.

LINDA CHEN,

Respondent;

SANTA CLARA COUNTY  
DEPARTMENT OF CHILD SUPPORT  
SERVICES,

Respondent.

**I. INTRODUCTION**

Appellant Victor Webber challenges the trial court’s August 13, 2013 order denying his request for modification of child support. The court determined that Webber had “failed in his burden of proof to provide sufficient credible evidence to warrant a modification of child support.” Webber contends the court’s order was an abuse of discretion and that substantial evidence does not support the court’s finding.

For reasons that we will explain, we will affirm the order.

## II. FACTUAL AND PROCEDURAL BACKGROUND

The limited record on appeal reflects that Webber and respondent Linda (Lin Lin) Chen<sup>1</sup> have a minor child who was born in 2000. Webber petitioned for dissolution of marriage in 2001. According to Webber, a judgment of dissolution was entered thereafter.

In December 2012, after a contested hearing in August and September of that year, the trial court ordered Webber to pay child support in the amount of \$1,274 per month beginning in July 2012. The court determined, among other things, that Webber's income included wages or salary of \$13,750 per month and \$2,250 in other income. The court also determined that Webber was \$6,246 in arrears in payments for child support and ordered him to pay \$200 per month beginning January 1, 2013.

### ***A. Webber's January 2013 Request for Modification of Child Support and His First Income and Expense Declaration***

On January 22, 2013, Webber, who was represented by counsel at the time, filed a request for modification of child support and "suspension" of his payment on arrears. He requested that support be based on the child support guideline. In a supporting declaration, Webber stated that his job position had been eliminated at Hewlett-Packard (HP), and that the bank had begun foreclosure "measures" against his home. Webber also expressed disagreement with the court's December 2012 order, including the court's determination that \$2,250 in rental income should be attributed to him rather than to his business, "REAL TIME INC." Webber claimed that the rental income was paid to the corporation, not to him, and that "this amount is consumed by miscellaneous corporate expenses such as errors and omissions insurance, business insurance, wages (when and if paid and payable), and other business-related expenses." He further stated that he

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<sup>1</sup> Chen has not filed a respondent's brief.

received “little or no net income from this rent.” Attached to Webber’s declaration was a letter from HP stating that his employment would end on January 25, 2013.

Webber also filed an income and expense declaration on January 22, 2013.<sup>2</sup> In the declaration, he indicated that his job ended in January 2013. Webber further indicated that he had no income in the last month, and that his average monthly income was \$100 in salary or wages and \$6,500 in commissions or bonuses. Regarding assets, Webber indicated that he had property valued at “\$-50K.” No other income or assets were listed. Webber claimed that his average monthly expenses were \$9,858, including \$3,919 for a mortgage, and that he had thousands of dollars of debt.

### ***B. Responsive Declarations***

Chen, a self-represented party, filed a responsive declaration in February 2013, contending that the December 10, 2012 order regarding child support should not be modified. She stated that her child custody timeshare was 53 percent and Webber’s was 47 percent. Chen argued that Webber’s modification request was filed shortly after the court had increased his child support obligation from \$233 per month plus childcare costs, and that Webber had not made any payment under the new order. Chen further argued: “[Webber’s] lack of credibility regarding his income has been a long standing issue in this case and therefore necessitated the two day trial to ascertain his true stream of income. I believe that [Webber] will simply turn around and work as an independent contractor and funnel these earnings through his own business, Real Time, Inc. as he has done in the past.” Chen also disputed Webber’s foreclosure claim and argued that he had not previously provided proof of the purported foreclosure at prior hearings.

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<sup>2</sup> The record on appeal does not contain a copy of Webber’s January 22, 2013 income and expense declaration. On our own motion, we augment the record on appeal to include his four-page declaration. (Cal. Rules of Court, rule 8.155(a)(1)(A).)

Respondent Santa Clara County Department of Child Support Services (Department)<sup>3</sup> also opposed Webber's modification request. Among other arguments, the Department contended that the amount of child support had recently been determined "after a lengthy trial" in the latter part of 2012, and that Webber had not established that he was unable to pay the ordered child support of \$1,274 per month. According to the Department, when the court made that child support order, the court had determined that Webber's adjusted gross income was \$13,750 per month based on his employment with HP and that he had rental income of \$2,250 per month. The Department requested that if the court modified child support based on Webber's unemployment, Webber should be ordered to make certain efforts to find a job and he should apply for unemployment benefits.

Webber filed, as a self-represented party, a declaration in reply. He contended that the rental income was "not directly accessible" to him and that it was "appropriately deposited into the corporate account" of his business. He argued that it was "absurd" to suggest that he had quit a job paying \$13,750 per month due to a \$1,200 per month child support order.

***C. Webber's Second Income and Expense Declaration Filed May 2013***

On May 28, 2013, Webber filed a second income and expense declaration. According to the declaration, Webber received an average monthly salary or wage of \$1,000, and he received \$1,448.70 in unemployment compensation in the last month. Regarding assets, Webber continued to indicate that he had property valued at "\$-50K." No other income or assets were listed. Webber claimed that his average monthly expenses were \$9,858, including \$3,919 for a mortgage, and that he had thousands of dollars of debt.

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<sup>3</sup> The Department indicates in its respondent's brief that it has been providing child support services to Chen pursuant to Family Code section 17400.

***D. The Hearing Before the Commissioner***

On June 7, 2013, an evidentiary hearing was held before a commissioner over the objections of Webber and Chen, who both appeared as self-represented parties. The Department also appeared at the hearing. At the conclusion of the hearing, the commissioner found that there was insufficient evidence to warrant modification of child support. The commissioner recommended that Webber's request be denied. Webber filed a written objection to the recommended order and requested a de novo hearing. (Fam. Code, § 4251, subd. (c).)<sup>4</sup>

***E. Webber's Third Income and Expense Declaration Filed June 2013***

On June 19, 2013, Webber filed a third income and expense declaration. According to the declaration, Webber was paid \$1,019 per week by Real Time, Inc. as a consultant, he had received about \$1,019 in salary or wages in the prior month, and his average monthly salary or wage was \$1,000. He also received \$500 in the prior month for unemployment compensation, and his average monthly payment for unemployment compensation was \$400. He again listed his assets as being limited to property valued at approximately "\$ . . . -50K." No other income or assets were listed. Webber claimed that his average monthly expenses were \$9,358, including \$3,919 for a mortgage, and that he continued to have thousands of dollars of debt.

***F. The De Novo Hearing Before the Superior Court Judge***

A de novo hearing was held on June 24, 2013. Appearing at the hearing were Webber and Chen as self-represented litigants. The Department also appeared at the hearing. Webber contended that he was laid off from, and no longer received income from, the job that he had held when child support was previously calculated. He stated that he had "acquired some new employment" and indicated that it was reflected in his

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<sup>4</sup> All further statutory references are to the Family Code unless otherwise indicated.

most recent income and expense declaration. He also claimed that he was receiving unemployment compensation.

Webber requested that his child support obligation be modified due to his loss of income. He requested that guideline child support be calculated for three periods of time: (a) from January 24, 2013 to March 17, 2013, reflecting the time period when he first became unemployed and until he began receiving unemployment benefits, based on his January 22, 2013 income and expense declaration; (b) from March 17, 2013 to June 15, 2013, during which time he was receiving \$1,448 per month in unemployment benefits, based on his income and expense declaration filed on May 28, 2013;<sup>5</sup> and (c) from June 15, 2013 onward, based on his income and expense declaration filed on June 19, 2013. Webber argued that “any deviation” from “guideline support” required the imputation of income, and that there was no evidence to support the imputation of income to him.

Webber and Chen were sworn in before testifying. The evidence reflected the following.

### **1. Webber’s former employment**

Webber worked at HP from December 2011 until he was laid off in early 2013. The Department did not dispute that Webber was terminated from HP due to a reduction in force.

### **2. Whether Webber was employed by a third party**

After the trial court learned that Webber might have employment that “ha[d]n’t been identified,” including a temporary or permanent badge for Applied Materials, the court questioned Webber as follows.

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<sup>5</sup> At the hearing, Webber referred to an income and expense declaration filed on “4-28.” The record on appeal does not reflect that he filed a declaration on April 28. The record on appeal does reflect that he filed an income and expense declaration on May 28, 2013. We presume that he was referring to this declaration.

“THE COURT: . . . Why don’t you just tell us what you have to do, if anything, with Applied Materials in Santa Clara?

“[WEBBER]: I have gone there in the past. I believe they are involved in some of the work I might be doing now. It’s a cascaded corporate hierarchy of agencies.

“THE COURT: But do you have a badge for Applied Material?

“[WEBBER]: No . . . .

“THE COURT: . . . [W]hen was the last time you went there, if at all, for any reason?

“[WEBBER]: . . . [T]he building that they’re talking about, which is a building that houses many other companies also, many different companies go in there. I’ve gone into there a couple of times in the past couple of weeks.”

### **3. Webber’s current self-employment**

At the June 24, 2013 de novo hearing, Webber indicated that he “started working again as of last week” for his own business, and that he was “looking to increase” the amount he was making. Webber submitted a pay stub from his business for the pay period June 15 to 21, 2013, which indicated that he was earning \$1,019 per week. Webber also indicated that the pay stub was the only one that he had received from his employment with his business “[s]o far.”

The trial court asked Webber how he determined that he was going to pay himself \$1,019 per week from his business. Webber responded: “I’m involved in that decision and . . . it is an amount that reflects some income coming in and reflects an appropriate payment to represent what . . . the company can afford to pay me at this moment in time. . . .” When asked about the source of his company’s income, Webber stated, “That’s from . . . some people paying money for contracts.” The court then asked, “What contracts with which companies?” Webber stated, “I don’t have that information on me right now. It’s not applied terms [sic] if that’s what you’re talking about.”

The court subsequently asked Webber whether going forward he anticipated that his company would be paying him at least \$1,019 per week. Webber responded affirmatively. Webber also acknowledged that he had “an S Corp so any funds left over at the end of the year flow into [him] . . . .”

#### **4. Webber’s payment of expenses**

After Webber had indicated that he was making only \$1,000 or \$1,900 per week, the trial court questioned Webber about his income relative to his expenses as follows.

“THE COURT: . . . [H]ow are you making ends meet with the total expenses you’ve listed on your income and expense declaration?”

“[WEBBER]: I am mainly putting off some of the mortgage and through some savings that I had.

“THE COURT: All right. Well, your income and expense declaration doesn’t identify any savings or other assets.

“[WEBBER]: Well, right now I -- when I filed that I didn’t -- didn’t really have any.”

#### **5. Webber’s unemployment benefits**

The Department argued that the amount of unemployment benefits listed on Webber’s income and expense declaration was the net amount after deductions for child support. The Department acknowledged that Webber had received unemployment benefits from March 17 to June 15, 2013, in the amount of \$450 per week, for a total of \$1,950 per month prior to deductions.

#### **6. Webber’s severance package from HP**

The Department indicated its belief that Webber had received a severance package from HP upon being laid off. Webber initially stated that he received “about \$16,000” for “several weeks” of severance and for accrued vacation on approximately March 20. Webber also indicated that the only income he received for the January 24 to March timeframe was as part of the severance package. Upon questioning by the Department

about a pay stub for the severance pay, Webber indicated that he received a net amount of \$16,500.85 for severance and accrued vacation.

Chen subpoenaed employment records from HP, and those records were introduced into evidence. HP's payroll records reflect that Webber earned a gross amount of \$42,673.60 in January 2013, and \$4,331.66 in February 2013. Of those amounts, he earned on and after January 30, 2013, a gross amount of \$28,762.52, or \$17,450.23 after taxes.

Regarding Webber's gross earnings of \$42,673.60 from HP in January 2013, Webber and the trial court had the following exchange:

"[WEBBER]: Oh, well, I had worked for one -- you know, I -- I had almost a month's worth of employment there. And I believe some of those checks I -- well, whatever, those are the checks. That would be -- well, maybe that's actually about right. You subtract off the actual payment and you subtract off the amount of -- the amount of deductions and I end up with \$16,000.

"THE COURT: Okay. Well, . . . you were earning approximately 13,000 per month at the time, right?

"[WEBBER]: Yes.

"THE COURT: Okay. So, clearly the 42,000 gross year-to-date is something over and above what your regular monthly income was at that time.

"[WEBBER]: Yes. And I believe that's the severance."

### **7. Webber's rental income**

The Department argued that the court had previously found in 2012 that Webber received rental income in the amount of \$2,500 per month through his company, Real Time Incorporated. The Department requested that the rental income also be considered with respect to Webber's income. Webber responded that the income "goes into the [company's] coffers."

Near the conclusion of the hearing, the trial court heard argument from Webber, the Department, and Chen. Webber offered to provide the court with job applications that he had submitted for work. He contended that the applications showed that he was trying to find work. He also reiterated that there was no basis to impute income to him.

The trial court believed that the job applications were not relevant to its consideration of Webber's request for modification of child support. The court stated that it was considering a "change in circumstances with respect to income that would [a]ffect guideline and any arguments for imputation of income or earning capacity." The court indicated that the job search information would become relevant only if child support was modified based on his unemployment, or employment with less income than before, and the Department's request for a "seek work order."

In its argument, the Department referred to "a very lengthy two day trial" that was previously held and where "a lot of these issues that Mr. Webber raises were discussed." The Department argued that one of the problems in the case was determining Webber's actual income "because of the way he chooses to run his business affairs . . . as was brought out in the two day trial. It's very difficult to figure out how much [Webber] earns and from whom." The Department argued that Webber put revenue, including rental income of \$2,500, into his business Real Time, Inc., and that there needed to be "further exploration" of his actual earnings, including a 2012 tax return and a profit and loss statement for the first six months of 2013. The Department contended that Webber's pay record from Real Time, Inc. was not credible, as he was able to determine his own salary. Webber did not provide "backup documentation" and "could not even tell the Court who he worked for." The Department requested that if the court determined that Webber's income was less than what he earned at HP, then a "seek work order" be issued and a reviewing hearing set. The Department asked the court to deny the request to modify child support, on the ground that Webber did not meet his burden of showing a change of circumstances. The Department contended, "I'm not persuaded that his mere

termination of employment from [HP] says really much of anything about his earning capacity or about his true earnings currently because of the way he runs his business affairs.”

Webber responded, “I would like some rebutting on that.” The court proceeded to allow argument from Chen, whereupon the matter was submitted.

### ***G. The Order***

On August 13, 2013, the trial court denied by written order Webber’s request for modification of child support and other relief. The court stated that, after reviewing the matter de novo, it agreed with the original findings and recommendations of the commissioner. The court found that Webber “failed in his burden of proof to provide sufficient credible evidence to warrant a modification of child support.”

## **III. DISCUSSION**

### ***A. The Standard of Review***

Generally, a child support order may be modified at any time the court deems it necessary. (*In re Marriage of Williams* (2007) 150 Cal.App.4th 1221, 1234.) A party seeking modification of a child support order must “ ‘introduce admissible evidence of changed circumstances.’ ” (*Ibid.*) “The party seeking the modification bears the burden of showing that circumstances have changed such that modification is warranted. [Citation.]” (*In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1054.)

“ ‘[A] determination regarding a request for modification of a child support order will be affirmed unless the trial court abused its discretion, and it will be reversed only if prejudicial error is found from examining the record below.’ [Citations.] Thus, ‘[t]he ultimate determination of whether the individual facts of the case warrant modification of support is within the discretion of the trial court. [Citation.] The reviewing court will resolve any conflicts in the evidence in favor of the trial court’s determination. [Citation.]’ [Citation.]” (*In re Marriage of Williams, supra*, 150 Cal.App.4th at pp. 1233-1234.) “The reviewing court has no power to pass on the

credibility of witnesses, resolve conflicts in the evidence or determine the weight of the evidence. [Citation.]” (*In re E.M.* (2014) 228 Cal.App.4th 828, 839; accord *In re Marriage of Greenberg* (2011) 194 Cal.App.4th 1095, 1099.) “We do not substitute our judgment for that of the trial court, but confine ourselves to determining whether any judge could have reasonably made the challenged order. [Citation.]” (*In re Marriage of De Guigne* (2002) 97 Cal.App.4th 1353, 1360.)

“[H]owever, . . . the trial court has ‘a duty to exercise an informed and considered discretion with respect to the [parent’s child] support obligation . . . .’ [Citation.] Furthermore, ‘in reviewing child support orders we must also recognize that determination of a child support obligation is a highly regulated area of the law, and the only discretion a trial court possesses is the discretion provided by statute or rule. [Citations.]’ [Citation.] In short, the trial court’s discretion is not so broad that it ‘may ignore or contravene the purposes of the law regarding . . . child support. [Citations.]’ [Citation.]” (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 282-283.)

### **B. Child Support**

“Trial courts must calculate child support in accordance with the mathematical formula contained in Family Code section 4055. [Citation.] This mandatory formula ‘takes into account both parents’ “net monthly disposable income” (§ 4055, subds. (a), (b)), which is determined based upon the parents’ “annual gross income” (§ 4058).’ ” (*In re Marriage of Williamson* (2014) 226 Cal.App.4th 1303, 1312, fn. omitted.)

Under subdivision (a) of section 4058, “annual gross income” is defined as “income from whatever source derived.” This subdivision “ ‘lists more than a dozen possible income sources to be considered as part of annual gross income.’ [Citation.]” (*In re Marriage of Williamson, supra*, 226 Cal.App.4th at p. 1312.) The list “includes, but is not limited to” salaries, wages, rents, and unemployment insurance benefits, as well as “[i]ncome from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business.” (§ 4058,

subd. (a)(1), (2).) The court has the discretion to include employee benefits. (*Id.*, subd. (a)(3).)

Under subdivision (b) of section 4058, the court has the discretion to consider a parent's "earning capacity" in lieu of income, consistent with the best interests of the child. (§ 4058, subd. (b); see *In re Marriage of Cohn* (1998) 65 Cal.App.4th 923, 927 [court may impute income to a parent based on that parent's earning capacity]). "Earning capacity . . . requires that the parent have both the ability and the opportunity to work." (*El Dorado County Dept. of Child Support Services v. Nutt* (2008) 167 Cal.App.4th 990, 993; accord *State of Oregon v. Vargas* (1999) 70 Cal.App.4th 1123, 1125-1126.)

"In determining a parent's income for purposes of calculating guideline child support, a trial court may choose to follow the guidance of subdivision (a) of section 4058, by utilizing the factors identified in subdivision (a)(1) through (3) to determine a parent's actual income, *or* the court may, in its discretion, impute to that parent an income different from his or her actual income—i.e., an income amount that corresponds with that parent's earning capacity. Thus, a trial court may ultimately calculate the guideline child support amount by using, as the income factor in its support calculation, either (1) the parent's actual income, as calculated under section 4058, subdivision (a) *or* (2) the parent's imputed income, as authorized by section 4058, subdivision (b), if the court determines that imputing income to the parent would be more appropriate and would better serve the child's best interests." (*In re Marriage of Sorge* (2012) 202 Cal.App.4th 626, 642-643, fn. omitted.)

### **C. Analysis**

In this case, the trial court determined that Webber had "failed in his burden of proof to provide sufficient credible evidence to warrant a modification of child support." Webber contends the trial court abused its discretion in making this order for several reasons. We address each argument in turn.

First, Webber argues that there was undisputed evidence that he was laid off from his employment at HP, where he was paid \$13,750 per month, and that there was “no evidence that he earned . . . that much from his consulting, rental, and other income.” According to Webber, the court’s “finding that there was no change of circumstances” was therefore erroneous.

We are not persuaded by Webber’s argument. Webber had the burden of showing that circumstances had changed such that modification of child support was warranted. (*In re Marriage of Cryer, supra*, 198 Cal.App.4th at p. 1054; *In re Marriage of Williams, supra*, 150 Cal.App.4th at p. 1234.) Although it was undisputed that Webber’s employment with HP was terminated in 2013, there was also evidence that he received a significant amount of income from HP for a period of time in 2013, and that he also received income from other sources. The income and expense declarations that Webber filed in support of his modification request did not list all his income. His testimony at the de novo hearing also did not fully disclose all the possible sources and amount of his income.

For example, Webber filed income and expense declarations in January, May, and June 2013 in support of his request to modify child support. None of those declarations fully disclosed the amounts he received from HP in 2013 notwithstanding his apparent layoff in January 2013. At the June 24, 2013 hearing, Webber indicated that he received “about \$16,000” for severance and accrued vacation. However, employment records subpoenaed by Chen from HP reflected that he earned on and after January 30, 2013, a gross amount of \$28,762.52, or \$17,450.23 after taxes.

Webber also did not list any rental income on his income and expense declarations. Although he stated at the de novo hearing that the income went into his company’s “coffers,” no evidence was introduced regarding the amount of the income in 2013, or establishing that such income in 2013 could properly be attributed to his company rather than to him.

Regarding employment after HP, the trial court asked Webber about Applied Materials. Webber vaguely responded, “I have gone there in the past. *I believe they are involved in some of the work I might be doing now.* It’s a cascaded corporate hierarchy of agencies.” (Italics added.) Webber never presented any evidence clarifying his “work” involving Applied Materials.

The trial court later asked Webber about the \$1,019 he received in weekly income from his company and how he determined that amount. Webber responded vaguely, “I’m involved in that decision and . . . it is an amount that reflects some income coming in and reflects an appropriate payment to represent what . . . the company can afford to pay me at this moment in time. . . .” When asked about the source of his company’s income, Webber stated, “That’s from . . . some people paying money for contracts.” The court then asked, “What contracts with which companies?” Webber stated, “I don’t have that information on me right now.” Webber ultimately acknowledged that he would be receiving at least \$1,019 per week from his company, and that any funds “left over at the end of the year flow into [him].” In view of Webber’s vague responses and the lack of evidence concerning his company, such as a profit and loss statement, it would be impossible for the trial court to assess whether the amount Webber was paying himself from his own company reflected his true income from the company.

At the same time, Webber consistently claimed on his income and expense declarations in January, May, and June 2013 that he had more than \$9,000 in monthly expenses, including a monthly mortgage of \$3,919. When asked by the trial court how he made “ends meet,” Webber stated, “I am mainly putting off some of the mortgage and through some savings that I had.” When the court observed that Webber’s income and expense declaration did not identify any savings or other assets, Webber backed away from his prior statement and stated, “Well, right now I -- when I filed that I didn’t -- didn’t really have any.”

In sum, although it was undisputed that Webber's employment with HP ended in early 2013, the record clearly reflects that Webber received a large sum of money from HP that year, and that he received income from other sources besides HP. The record also reflects a lack of candor by Webber on his income and expense declarations and in his statements at the de novo hearing regarding the sources, amount, and calculation of his income beyond his regular wages from HP. In view of the absence of evidence regarding the entire amount of Webber's income, we determine that the trial court did not abuse its discretion in finding that Webber had "failed in his burden of proof to provide sufficient credible evidence to warrant a modification of child support."

Second, we understand Webber to argue that there was no substantial evidence to support an implied finding regarding his earning capacity or to otherwise support the imputation of income to him, and that the trial court erred by refusing to consider his job applications.

At the de novo hearing, none of the parties argued that income could or should be imputed to Webber based on his earning capacity. Webber sought to establish that he had been laid off from HP, and that because he no longer had that income the amount of child support should be modified. He further argued that there was "no evidentiary support for any imputing of income" and that "there [was] no basis to impute income." The Department and Chen argued that Webber had income beyond that disclosed on his income and expense declarations. The Department further argued that it was "very difficult to figure out how much father earns and from whom," and that there needed to be "some further exploration of father's actual earnings . . . ." Near the conclusion of its argument to the court, the Department stated, "I'm not persuaded that his mere termination of employment from Hewlett Packard says really much of anything about his earning capacity or about his true earnings currently because of the way he runs his business affairs."

Given that none of the parties, including Webber, argued for the imputation of income to Webber based on earning capacity, and in view of the trial court's order finding that Webber had "failed in his burden of proof," we do not believe that the court imputed income to him. Consequently, Webber's argument that there was no substantial evidence to support a finding regarding his earning capacity, or regarding the imputation of income, does not provide a basis for reversal of the court's order. Further, because we do not believe that the court imputed income to Webber based on earning capacity, the court's failure to receive into evidence his job applications or to otherwise consider them with respect to the issue of earning capacity could not have prejudiced Webber.

Third, Webber argues that his child support arrearages "would not have provided a basis for denying [his] motion to modify support, because non-compliance with previous orders falling short of contempt is no defense to a child support modification." As there is no indication that the court took into consideration Webber's child support arrearages in denying his request for modification of child support, we do not consider this contention further.

Lastly, we understand Webber to contend that the trial court erred by "refus[ing his] request to rebut [the Department's] statement regarding the 'way he runs his business affairs.'" We are not persuaded by Webber's argument.

Webber was a self-represented party at the de novo hearing. The record reflects that the trial court was conscientious about giving, and in fact gave Webber, the opportunity to present evidence and argument at the hearing with respect to the issues that the court believed was relevant to the modification request. For example, near the beginning of the hearing, the court stated to Webber, "[W]hy don't you proceed, sir, with what evidence you want me to consider about this modification [of] support that's being requested." Later during the hearing, the court asked Webber whether he had any other exhibits or evidence that he wanted to offer. Webber continued to present his case in response to the court's comments.

Near the end of the hearing, the trial court stated: “Well, we’ve run out of time this morning. Let me just ask everyone how much more time they think we need or if everyone thinks that based on the papers submitted and the comments that have been made today you can, with maybe some brief summary in the next few minutes, submit the matter to the Court for a decision. [¶] Mr. Webber, what’s your preference?” Webber did not request additional time to present further evidence and instead proceeded to make his argument in support of his modification request.

The trial court then heard argument from the Department regarding Webber’s modification request. Near the conclusion of its argument the Department stated, “I’m not persuaded that his mere termination of employment from Hewlett Packard says really much of anything about his earning capacity or about his true earnings currently because of the way he runs his business affairs. And that’s all I have to say.” Webber subsequently stated, “I would like some rebutting on that,” without specifying which aspect of the Department’s argument he wanted to rebut or whether he sought to rebut the argument with further evidence or solely argument.

Without specifically responding to Webber’s statement concerning rebuttal, the court proceeded to allow Chen the opportunity to present her argument. After Chen concluded her argument, the court stated to Webber, “[T]here’s no more time for further rebuttal. I think I fully understand everyone’s evidence and arguments. The matter is submitted for the Court’s decision.”

The record thus reflects that Webber was given a fair opportunity to present his case with evidence and argument that the court believed was relevant to his modification request. Although Webber now contends on appeal that he was refused the opportunity to rebut the Department’s statement regarding the “way he runs his business affairs,” the record reflects that he had already been given the opportunity to present evidence concerning the operation of his business, including on his income and expense declarations, and in response to the court’s questions about his business. He also did not

request additional time to present further evidence before the parties presented their final arguments to the court. Under the circumstances, we are not persuaded that Webber was denied a fair opportunity to present evidence or argument concerning the operation of his business.

In sum, after careful review of the record, we determine that the trial court acted reasonably in denying Webber's request to modify child support on the ground that he "failed in his burden of proof to provide sufficient credible evidence to warrant a modification of child support," and that on appeal Webber has not shown an abuse of discretion by the trial court. (See *In re Marriage of De Guigne*, supra, 97 Cal.App.4th at p. 1360.)

#### **IV. DISPOSITION**

The August 13, 2013 order denying appellant Victor Webber's request for modification of child support 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.