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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION FOUR

In re Marriage of  
GUILLERMINA and DIEGO  
COVARRUBIAS.

B285322 C/W B287566

(Los Angeles County  
Super. Ct. No. BD574544)

GUILLERMINA  
COVARRUBIAS,

Respondent,

v.

DIEGO COVARRUBIAS,

Appellant.

APPEALS from a judgment and orders of the Superior Court of Los Angeles County, Tamara E. Hall and Mark H. Epstein, Judges. Affirmed.

Law Office of San Fernando and Armando M. Galvan for Appellant.

Law Offices of Paul F. Moore II, Paul F. Moore II and Christopher W. Moore for Respondent.

Diego Covarrubias (Diego) challenges awards of spousal support and attorneys' fees in a marital dissolution proceeding and the denial of his claim seeking reimbursement for waste. Regarding spousal support, Diego argues the trial court erroneously excluded a forensic accountant's report on the value of his businesses, relied instead on erroneous information that was not admitted in evidence in determining his business income, and failed to apply the factors under Family Code section 4320.<sup>1</sup> He argues the court erred by awarding a total of \$95,000 in attorneys' fees under sections 271, 1101, subdivision (g), 2030, and 2032 based on the same misinformation about his income and erroneously ordered the fees to be paid from his share of proceeds from the sale of community property. Diego also argues the court erred by denying his claim for waste based on the absence of evidence of the value of the losses.<sup>2</sup>

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<sup>1</sup> All undesignated statutory references are to the Family Code.

<sup>2</sup> We will not consider additional points appearing in the statement of facts of Diego's opening brief and not set forth in the argument section under a separate heading or subheading. The statement of facts is an inappropriate place for argument. Instead, each point of argument must appear under a separate heading or subheading summarizing the point. (Cal. Rules of Court, rule 8.204(a)(1)(B); *Provost v. Regents of University of*

We conclude Diego has shown no error and affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. The Marriage and Separation*

Diego and Guillermina Covarrubias were married for 24 years before they separated in November 2012. They had three children together. The children were no longer minors as of the date of judgment.

During the marriage, Diego owned a used car business known as Diego Auto Sales. He also owned a business breeding horses, Rancho El Comalteco, Inc. Guillermina raised their three children and did not work outside the home. The parties owned and resided at a ranch on Juniper Valley Road in Acton and also owned homes on Raven Street in Sylmar and in Mexico.

Guillermina and the children continued to reside at the ranch after separation. In January 2013, the trial court ordered Diego be allowed daily access to the property to care for and breed the horses.

Diego sold the ranch to Miguel Nunez in a short sale without Guillermina's knowledge. Nunez unsuccessfully attempted to evict Guillermina and the children from the property.

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*California* (2011) 201 Cal.App.4th 1289, 1294 [“we do not consider all of the loose and disparate arguments that are not clearly set out in a heading and supported by reasoned legal argument”].)

2. *The Partial Settlement Agreement*

The parties entered into a partial settlement agreement in October 2016, resolving all issues other than spousal support, attorneys' fees, and claims of waste and breach of fiduciary duty. The settlement agreement required the parties to divide the horses and provided for the sale of the Sylmar property with the sales proceeds to be deposited in the client trust account of Guillermina's attorney. Pursuant to the settlement, the parties divided 50 or 52 horses between them.

3. *The Trial and Statement of Decision*

A trial on the remaining issues took place in January 2017 before the Hon. Tamara E. Hall. On April 24, 2017, the trial court filed its detailed final statement of decision. The statement of decision set forth the court's analysis of the factors under section 4320 and concluded Guillermina was entitled to \$8,000 in monthly spousal support.

The court found Diego had violated his fiduciary duties to Guillermina in several respects and awarded \$50,000 in attorneys' fees as a sanction under section 271 and \$25,000 in fees as a sanction under section 1101, subdivision (g). The court also awarded Guillermina \$10,000 in fees under sections 2030 and 2032. The statement of decision stated all of these amounts were "payable in full from [Diego's] ½ portion of the proceeds from the sale of the Raven Street home on or before May 1, 2017."

The court found Guillermina had committed waste by failing to regularly feed and care for the horses in her possession, resulting in injuries and poor living conditions, including excessive accumulation of manure and poorly maintained corrals, but found no evidence she had caused the death of any horse.

The court found Diego’s testimony regarding the value of the horses was not credible, there was no evidence of the cost to repair the corrals and remove the manure, and “no relevant and competent evidence was presented with respect to cost and/or value upon which the court could make a finding for reimbursement.” The court therefore denied Diego’s claim for waste.

On September 25, 2017, Diego filed a notice of appeal from the statement of decision (No. B285322) followed by a Notice of Automatic Stay Pending Appeal, stating the enforcement of all rulings encompassed within the statement of decision was stayed pending the appeal.<sup>3</sup>

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<sup>3</sup> A statement of decision ordinarily is preliminary to a final judgment and therefore is not an appealable order or judgment. (*Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 901; *In re Marriage of Campi* (2013) 212 Cal.App.4th 1565, 1571.) If a statement of decision contains an appealable order, however, the order is appealable. (*Estate of Reed* (2017) 16 Cal.App.5th 1122, 1126.) An order awarding attorneys’ fees in a marital dissolution proceeding is appealable under the collateral order doctrine. (*In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368-369 [“When a court renders an interlocutory order collateral to the main issue, dispositive of the rights of the parties in relation to the collateral matter, and directing payment of money or performance of an act, direct appeal may be taken”]; *Apex LLC v. Korusfood.com* (2013) 222 Cal.App.4th 1010, 1015 [attorney fee order was directly appealable]; *In re Marriage of Burgard* (1999) 72 Cal.App.4th 74, 82 [same].) Accordingly, the orders awarding attorneys’ fees contained in the statement of decision were appealable orders from which Diego timely appealed.

#### 4. *The Judgment*

Counsel for the parties agreed on the form of a judgment, which was entered on October 16, 2017. The judgment encompasses the parties' prior partial settlement, including the property division and other matters, and sets forth Judge Hall's rulings from the statement of decision. It awards Guillermina \$8,000 in monthly spousal support and a total of \$95,000 in attorneys' fees under sections 271, 1101, subdivision (g), 2030, and 2032, with all fees "payable in full from [Diego's] ½ portion of the proceeds from the sale of the Raven Street home on or before May 1, 2017."<sup>4</sup> It states Guillermina caused waste to community assets, but the court found "no competent evidence was given with respect to the value of waste in which the court can base an amount of any reimbursement." (Due to Judge Hall's reassignment, the Hon. Mark H. Epstein signed the judgment.)

Diego timely filed a notice of appeal from the judgment (No. B285322). We consolidated the two appeals.

### DISCUSSION

#### 1. *Diego Has Shown No Error in the Spousal Support Award*

##### a. Governing Law and Standard of Review

A trial court must consider the factors set forth in section 4320 in ordering permanent spousal support. (§ 4320; *In re Marriage of Williamson* (2014) 226 Cal.App.4th 1303, 1316 (*Williamson*).) Those factors include the extent to which each party's earning capacity is sufficient to maintain the marital standard of living, the supporting spouse's ability to pay, the

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<sup>4</sup> The date specified for payment of attorneys' fees, May 1, 2017, had already passed as of date of the judgment.

parties' obligations and assets, the duration of the marriage, the balance of hardships, the goal that the supporting party become self-supporting, and other factors. (§ 4320.)

A trial court has broad discretion to balance these considerations, determine the appropriate weight to be given to each, and fix the amount and duration of spousal support. (*In re Marriage of Schleich* (2017) 8 Cal.App.5th 267, 288.) Our review is for abuse of discretion. (*Williamson, supra*, 226 Cal.App.4th at p. 1312.) “[W]e do not substitute our judgment for that of the trial court, and we will disturb the trial court’s decision only if no judge could have reasonably made the challenged decision. [Citation.]’ [Citation.]” (*Ibid.*)

““The abuse of discretion standard . . . measures whether, given the established evidence, the act of the lower tribunal falls within the permissible range of options set by the legal criteria.” [Citation.] The scope of the trial court’s discretion is limited by law governing the subject of the action taken. [Citation.] An action that transgresses the bounds of the applicable legal principles is deemed an abuse of discretion. In applying the abuse of discretion standard, we determine whether the trial court’s factual findings are supported by substantial evidence and independently review its legal conclusions. [Citation.]” (*In re Marriage of Drake* (2015) 241 Cal.App.4th 934, 939-940.)

We also review rulings on the admissibility of evidence for abuse of discretion. (*In re Marriage of Winternitz* (2015) 235 Cal.App.4th 644, 653.)

b. *The Trial Court’s Ruling*

The trial court set forth its findings on spousal support in the statement of decision. The court found the marital standard

of living was upper middle class. Diego operated two family businesses: auto sales and horse breeding. He purchased more than 50 horses during the marriage and traveled to Spain for some of the purchases. During the marriage, the parties owned the family residence on Juniper Valley Road in Acton, a home on Raven Street in Sylmar, and a home in Mexico. The family lived comfortably, had no trouble paying its bills, and had an active social life hosting lavish parties.

The statement of decision discussed in detail each of the factors under section 4320. The trial court concluded:

“This is a long-term marriage of 24 years and two months. Both parties married at the prime of their lives and remained married during the most productive years of their lives, their twenties, thirties, and mid-forties. The parties had a traditional marital arrangement. The Respondent/Husband provided for the family’s financial needs by working outside the home; the Petitioner/Wife provided for the family’s domestic needs by working within the home. Notwithstanding divorce, this arrangement enabled the Respondent to continue his established employment and earning capacity without skipping a beat.

“However, the Petitioner, faces the reality of entering the workforce to financially care for herself *for the first time* at 46 years old; an age where most are winding down and preparing for retirement. Moreover, after many years of no employment outside the home, the Petitioner’s entrance into the workforce at 46 years old will be extremely challenging because of her lack of education, work experience and command of the English language. As a mother of three and wife who has devoted her most productive years to raising a family and making a home,



she has earned the right to permanent spousal support to maintain the marital standard of living.

“Therefore, based upon the Family Code 4320 analysis and findings, the Respondent is ordered to pay the Petitioner, [monthly] permanent spousal support in the amount of \$8,000 . . . .” (Emphasis omitted.)

c. *Analysis*

Diego argues the trial court erroneously excluded a forensic accountant’s report on the value of his businesses.<sup>5</sup> He argues the report was the best evidence of his financial condition, but rather than admit the report, the court instead relied on a written summary of bank deposits made from 2014 through 2016 that was not admitted in evidence to determine his income for purposes of spousal support.

A report by a nontestifying expert is hearsay if offered for the truth of statements contained in the report. (Evid. Code, § 1200; *People v. Landau* (2016) 246 Cal.App.4th 850, 874; *Eddins v. Redstone* (2005) 134 Cal.App.4th 290, 317, fn. 24.) Diego does not argue and has not shown that an exception to the hearsay rule applies. We therefore conclude the trial court properly excluded the report.

The trial court allowed Guillermina’s counsel to present the summary of bank deposits, but did not admit the summary in evidence. The underlying bank statements were admitted in evidence as Exhibits 43, 44, and 45. Diego acknowledges the total amounts of bank deposits stated in the summary were accurate, but argues other amounts stated in the summary were inaccurate, including his total declared annual business

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<sup>5</sup> Diego fails to provide an accurate citation to the trial court’s ruling excluding the report.

expenses, declared annual ordinary business income, and true annual and monthly business income. Diego cites figures from his tax returns and argues the summary erroneously omitted certain business expenses. Diego also argues the court inappropriately included loan funds as income. He cites his own testimony that he owed \$23,300 in loans to various persons, but cites nothing in the record supporting his claim the trial court treated the loans as income.

In its statement of decision, the trial court compared Diego's total bank deposits shown on his bank statements with the profit and loss statements Diego had presented at trial. The court concluded the profit and loss statements understated Diego's gross income by \$53,957.81 in 2015 and \$61,378.58 in 2016. The court also found Diego's testimony on his income was not credible, he had underreported his income in his tax returns, and the tax returns were not credible. The court noted Diego's income and expense declarations reported expenses more than double his stated income with no explanation how he had managed to pay his expenses.

The trial court also determined Diego's ability to pay based on his prior payment of monthly expenses that he was no longer paying, including \$1,943.06 for the mortgage and taxes on the Sylmar property, which had been sold; \$2,000 to rent the ranch from Nunez; \$3,800 to \$4,200 to maintain the horses before they were divided between the parties, reducing such expenses by one-half; and temporary spousal support in the amount of \$700. The court noted Guillermina's testimony that Diego kept large amounts of cash in a drawer at home to use for household expenses, and their daughter's testimony that after a robbery at the business Diego told her to report to the police about \$25,000

in cash was stolen, but he later told his daughter about \$200,000 was taken. Based on all this evidence, the court concluded Diego's monthly income available to pay permanent spousal support was \$15,000.

We conclude the cited evidence constitutes substantial evidence supporting the court's findings on Diego's income. Diego has not shown the court's decision was beyond the bounds of reason and has shown no abuse of discretion.

Finally, the trial court's detailed statement of decision shows the court carefully considered the section 4320 factors. Diego has shown no abuse of discretion in the court's application of the statute.

## *2. The Court Properly Awarded \$95,000 in Attorneys' fees*

### *a. Governing Law and Standard of Review*

Section 271 authorizes an attorney fee award as a sanction for conduct that frustrates the settlement of litigation. The court must consider the parties' incomes, assets, and liabilities and may not impose a sanction that imposes an unreasonable financial burden on a party. (§271, subd. (a).) A fee award under section 271 is payable only from the sanctioned party's property or income, "except that the award may be against the sanctioned party's share of the community property." (§271, subd. (c).)

Section 1101, subdivision (g) authorizes an award of 50 percent of the value of any undisclosed asset or asset transferred in breach of a fiduciary duty, plus attorneys' fees and costs.

Sections 2030 and 2032 authorize an attorneys' fee award based on the parties' respective needs and ability to pay. The court may award fees under section 2030 if the award is just and

reasonable, considering not only the parties' financial resources but also other factors relevant to an equitable apportionment. (§2032, subds. (a), (b).) "The court may order payment of an award of attorney's fees and costs from any type of property, whether community or separate, principal or income." (§ *Id.*, subd. (c).)

We review a fee award under the Family Code for abuse of discretion. (*In re Marriage of Winternitz, supra*, 235 Cal.App.4th at p. 657 [fees under §§ 2030, 2032]; *In re Marriage of Fong* (2011) 193 Cal.App.4th 278, 291 [fees under § 271]; see also *In re Marriage of Ciprari* (2019) 32 Cal.App.5th 83, 112 [noting fee award may be mandatory under certain circumstances].)

b. *The Trial Court's Ruling*

The trial court found Diego violated his fiduciary duty under section 721, subdivision (b) by conspiring with Nunez to sell the ranch without Guillermina's knowledge and then lying about it repeatedly in his deposition and declarations filed in court.

The court found when the parties agreed in a mandatory settlement conference to jointly sell the Sylmar home, Diego failed to disclose he had already listed the property for sale and had already received purchase offers, and then failed to sign escrow instructions to deposit the sales proceeds in the trust account of Guillermina's counsel as ordered by the court.

The court also found Diego failed to file a final declaration of disclosure, failed to produce bank statements and other documents pursuant to a notice to appear, and then failed to timely comply with a court order to produce the same documents, and instead produced the bank statements in the middle of trial.

Finally, the court found there was a disparity between the parties in the availability of funds to pay counsel and Petitioner was able to pay for the representation of both parties.

The court therefore awarded \$50,000 in attorneys' fees as sanctions under section 271, \$25,000 in fees under section 1101, subdivision (g), and \$10,000 in fees under sections 2030 and 2032, all payable from Diego's portion of the proceeds from the sale of the Sylmar home.

c. *Analysis*

Diego does not challenge the bases for awarding attorneys' fees under sections 271, 1101, subdivision (g), 2030, and 2032. Instead, he argues the trial court erred by awarding a total of \$95,000 in fees based on the same purported miscalculations of his income the court relied on in awarding spousal support.<sup>6</sup> We conclude substantial evidence supports the court's findings on Diego's income, as discussed above. Diego has shown no abuse of discretion.

Diego argues the court, in the statement of decision, erroneously ordered the fees to be paid from his share of the proceeds from the sale of the Sylmar home. He contends the fee orders contradicted the prior order on the partial settlement agreement to equally divide the sales proceeds and do so

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<sup>6</sup> Diego argues for the first time in his reply brief there was no basis for an award of sanctions. We will not consider arguments raised for the first time in a reply brief unless a good reason is shown for failing to assert the argument in the opening brief. (*Alcazar v. Los Angeles Unified School Dist.* (2018) 29 Cal.App.5th 86, 100, fn. 5.) Diego offers no reason, so we consider the point forfeited.

promptly, and the court had no authority to contradict a prior order.

In fact, the partial settlement agreement stated, “Proceeds of sale to be deposited in the Petitioner’s client trust account until parties agree in writing to distribution of proceeds or order of court,” and stated the amount owed to the forensic accountant “shall be paid out of said trust funds, promptly.” Contrary to Diego’s argument, the agreement and order on the agreement did not state the sales proceeds would be divided equally or distributed promptly.

In any event, the trial court had the authority to order payment of attorneys’ fees from the division of community property. Section 271, subdivision (c) expressly provides, “An award of attorney’s fees and costs as a sanction pursuant to this section is payable only from the property or income of the party against whom the sanction is imposed, except that the award may be against the sanctioned party’s share of the community property.” Section 2032, subdivision (c) similarly states, “The court may order payment of an award of attorney’s fees and costs from any type of property, whether community or separate, principal or income.” Moreover, an order awarding fees payable from the community property division does not conflict with a prior order dividing the community property.

Diego argues the trial court erroneously enforced the statement of decision “as if it were a judgment.” He argues, “There was no basis for prejudgment enforcement of the statement of decision in this case and the trial court committed reversible [*sic*] error when it treated the statement of decision as if it were an enforceable judgment.” But the fee orders in the statement of decision were final and enforceable by their own

terms. Diego has shown no valid reason why the fee orders could not be enforced prior to the entry of judgment.

Diego also argues by enforcing the fee orders in the statement of decision the trial court disregarded the automatic stay resulting from his appeal from the statement of decision. The perfecting of an appeal stays the enforcement of the appealed judgment or order, except as provided by statute. (Code Civ. Proc., § 916, subd. (a).) Code of Civil Procedure section 917.1, subdivision (a)(1) establishes an exception for an appeal from a judgment or order for “[m]oney or the payment of money.” Such an appeal does not stay enforcement of the appealed judgment or order unless an undertaking is given. (*Ibid.*) Diego cites no authority for his argument the automatic stay applies, does not discuss whether an undertaking was required to effect a stay, and offers no reasoned argument to support his claim of reversible error. He therefore forfeits his claim of error, and we need not consider the matter further. (*Sviridov v. City of San Diego* (2017) 14 Cal.App.5th 514, 521.)

3. *The Court Properly Denied Diego’s Claim for Waste*

a. *Governing Law*

Spouses owe each other a fiduciary duty “of the highest good faith and fair dealing . . . and neither shall take any unfair advantage of the other.” (§ 721, subd. (b).) The fiduciary duty continues after separation until the division of community assets and liabilities. (§§ 1100, subd. (e); 2102, subd. (a).) The fiduciary duty includes the duties applicable to nonmarital business partners under Corporations Code sections 16403, 16404, and 16503. (§ 721, subd. (b).) A partner’s duty of care in conducting or winding up a business “is limited to refraining from engaging

in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.” (Corp. Code, § 16404, subd. (c).)

“A spouse has a claim against the other spouse for any breach of the fiduciary duty that results in impairment to the claimant spouse’s present undivided one-half interest in the community estate, including, but not limited to, a single transaction or a pattern or series of transactions, which transaction or transactions have caused or will cause a detrimental impact to the claimant spouse’s undivided one-half interest in the community estate.” (§ 1101, subd. (a).)

b. The Trial Court’s Ruling

Citing photographic evidence, the trial court found Guillermina did not feed the horses on a regular basis and allowed an accumulation of horse manure in the same area where the horses ate. The statement of decision stated, “Although there was no evidence that [Guillermina] caused the death of any of the horses . . . , which would amount to gross negligence, there was evidence of her reckless conduct and intentional conduct regarding the wellbeing of the horses, unattended injuries and ‘Skins and Bones’ conditions since date of separation in November 2012 through the time the parties divided the horses in October 2016.”

The court concluded, however, “[Diego’s] testimony regarding the value of the horses, without more, was not credible. For instance, he initially testified that Aljarafe was worth \$9,000.00 then he changed the amount to \$25,000.00. Moreover, no relevant and competent evidence was presented regarding the waste with respect to the cost to repair the corrals and remove the fecal matter. [¶] Therefore, the court finds that [Guillermina]



did cause waste to a community asset; yet, no relevant and competent evidence was presented with respect to cost and/or value upon which the court could make a finding for reimbursement.”

c. Standard of Review

We generally review the trial court’s factual findings under the substantial evidence test. (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462.) In cases where the decision is based on a party’s failure to satisfy its burden of proof, however, the question on appeal is not the sufficiency of the evidence to support a factual finding, but whether the evidence compels a finding in favor of the appellant as a matter of law. (*Petitpas v. Ford Motor Co.* (2017) 13 Cal.App.5th 261, 302; *Eriksson v. Nunnick* (2015) 233 Cal.App.4th 708, 732-733.) “Specifically, the question becomes whether the appellant's evidence was (1) “uncontradicted and unimpeached” and (2) “of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.” [Citations.]” (*In re R.V.* (2015) 61 Cal.4th 181, 218.)

“Where, as here, the judgment is against the party who has the burden of proof, it is almost impossible for him to prevail on appeal by arguing the evidence compels a judgment in his favor. That is because unless the trial court makes specific findings of fact in favor of the losing plaintiff, we presume the trial court found the plaintiff’s evidence lacks sufficient weight and credibility to carry the burden of proof. [Citations.] We have no power on appeal to judge the credibility of witnesses or to

reweigh the evidence.’ [Citation.]” (*Patricia A. Murray Dental Corp. v. Dentsply Internat., Inc.* (2018) 19 Cal.App.5th 258, 270.)

d. Analysis

Diego argues the trial court “ignored evidence of the value of the waste from the death of horses between 2012 and 2016 estimated by appellant to be \$90,000 to \$150,000.” He cites his own testimony on the total value of several deceased horses.

The trial court found Guillermina did not cause the death of any horse. Diego does not challenge that finding. Diego has not shown any relationship between the value of the deceased horses and the value of losses caused by Guillermina’s neglect and other misconduct toward the horses. We therefore conclude he has shown no error.

Diego also argues the trial court “ignored the obvious evidence in the bank records showing substantial actual damages from the waste committed.” He argues checks “corroborate the expenses and losses arising from the waste” totaling \$123,758. He cites hundreds of pages of bank statements and lists dozens of check numbers.

Diego cites no testimony or other evidence explaining the check payments and cites no evidence the payments were for losses caused by Guillermina’s failure to properly care for the horses. His perfunctory argument does not explain why the evidence compels a finding in his favor on the value of the losses. We conclude he has shown no error.

**DISPOSITION**

The judgment and orders awarding attorneys' fees are affirmed. Guillermina is entitled to costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

CURREY, J.

WE CONCUR:

MANELLA, P. J.

WILLHITE, J.