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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of ERIN K. FLEMING and MICHAEL ACKERMAN.	B259749 (Los Angeles County Super. Ct. No. BD500837)
ERIN K. FLEMING, Appellant, v. MICHAEL ACKERMAN, Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Marc D. Gross, Judge. Affirmed as modified.

Linda N. Wisotsky for Appellant Erin Fleming.

Michael B. Ackerman, in pro. per., for Appellant Michael B. Ackerman.

Both Erin Fleming and Michael Ackerman appeal from the judgment in their marital dissolution action. Fleming contends that the trial court erred when it awarded Ackerman a particular investment account as separate property; when it awarded the balance of a checking account to Ackerman; and when it reimbursed Ackerman the full amount of funds paid into escrow in conjunction with the purchase of a home. Ackerman challenges the orders requiring him to reimburse the community for his occupancy of the marital home after separation and to pay retroactive support, the court's retention of jurisdiction over spousal support until mid-2018, and the division of funds in a retirement account. We modify the reimbursement award but otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Fleming and Ackerman were married on January 22, 2001, and separated on April 15, 2008. They had one child, who was born in 2002. Fleming petitioned for dissolution of marriage on February 20, 2009. After trial, the court made orders concerning support, the disposition of the family home, and the division of property and proceeds from the sale of the community home.

DISCUSSION

I. Janney Montgomery Scott Investment Account

The trial court awarded the funds in an investment account opened in 2005 in Ackerman's name at Janney Montgomery Scott (account ending in -6036) to Ackerman as separate property. The court explained, "The Court credits Respondent's testimony that the funds in this account were transferred from his separate

property investment accounts, which he owned at the date of marriage. No contrary evidence was presented. The Court finds that the funds in this account are Respondent's separate property, and the account is awarded to Respondent."

"In a marital dissolution proceeding, a court's characterization of the parties' property—as community property or separate property—determines the division of the property between the spouses. [Citations.] Property that a spouse acquired before the marriage is that spouse's separate property. (Fam. Code, § 770, subd. (a)(1).) Property that a spouse acquired during the marriage is community property (*id*., § 760) unless it is (1) traceable to a separate property source [citations], (2) acquired by gift or bequest (Fam. Code, § 770, subd. (a)(2)), or (3) earned or accumulated while the spouses are living separate and apart (*id*., § 771, subd. (a))." (*In re Marriage of Valli* (2014) 58 Cal.4th 1396, 1399-1400.)

We review the court's finding that a particular item is separate or community property for substantial evidence. (*In re Marriage of Lafkas* (2015) 237 Cal.App.4th 921, 931-932.) "'Under the substantial evidence standard of review, "we must consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.] [¶] It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact. Our authority begins and ends with a determination as to whether, on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, in support of the judgment.'" [Citation.]" (*In re Estate of Kampen* (2011) 201 Cal.App.4th 971, 992.)

The court's finding was supported by substantial evidence. The character of property is generally determined by the time of acquisition. (*In re Marriage of Fabian* (1986) 41 Cal.3d 440, 445.) Ackerman testified that the Janney account was a successor account to an account he opened at Morgan Stanley Dean Witter in March 2000, before the parties were married. He testified that his broker had moved from Morgan Stanley Dean Witter to Prudential; Prudential was then acquired by Wachovia; and the broker left Wachovia for Janney. At each step, Ackerman testified, he followed his broker and transferred his account in full to the broker's new firm. Ackerman did not produce bank statements tracing the progression of these funds from institution to institution, although he did produce statements from 2001 (at Prudential) and 2008 (at Janney), both of which listed the financial advisor whom Ackerman testified he followed. The court accepted as true Ackerman's testimony that the funds in the Janney account were those he held in the pre-marriage Morgan Stanley account. "It is not our function as a reviewing court to reweigh the evidence, resolve conflicting evidence and inferences, or to judge the credibility of the witnesses." (*Grimshaw v. Ford Motor Co.* (1981) 119 Cal.App.3d 757, 806.)

Fleming, however, argues that we should consider the court's award of the account to Ackerman de novo because our review requires interpretation of Family Code[1] section 760, which provides that "[e]xcept as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property." Because the court applied the law to the

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[1] Unless otherwise indicated, all further statutory references are to the Family Code.

evidence and found that the funds in the Janney account were acquired prior to, not during, the marriage, further review is not required.

II. Joint Checking Account

Fleming next contends that the trial court erred when it awarded Ackerman the entire balance of the Washington Mutual checking account with an account number ending in -70, $36,856 as of the day of separation, rather than treating it as a community asset. Specifically, she argues that without an accounting of the community debts paid by Ackerman, and without documentary evidence that Ackerman assumed community debts at the time of separation, Ackerman did not meet his burden of proof, and the court should have divided the account balance as of the date of separation equally between them.

The trial court did not award any balance from this checking account to Ackerman in the judgment. Instead, the court concluded that the balance in this joint account at the time of separation had been expended by Ackerman to pay community obligations. Substantial evidence supported the trial court's finding. There was evidence before the court that the -70 account was a joint checking account and that its balance was $36,856 at the end of April 2008, shortly after the parties' separation. Ackerman's 2009 schedule of assets and debts listed community credit card debt in excess of $30,000.[2] Ackerman testified that in

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[2] Fleming testified that the community "may have" owed these creditors at the time of separation. She testified that she did not pay anything toward these community debts after the parties separated.

addition to the credit card debt, he used the -70 account to pay "taxes that were still due, the $5,000 in back taxes that I paid and the tax for 2008 year which had to be paid subsequently, or 2007 year which was paid after April 15, by the way." Ackerman testified that the community also owed HSBC Culligan several thousand dollars that had not been included on the schedule. He testified that after separation he exhausted the community funds in the account to pay community debts that had existed as of the date of separation, and he then deposited his separate funds in the account to pay the community's debts. Ackerman also testified that he did not pay personal non-community expenses from the account.

The court received into evidence account statements from January 2008 to January 2009. Ackerman identified some of the post-separation withdrawals as payments for credit cards in Fleming's name. Ackerman testified that Fleming wrote checks and made withdrawals from the account at least until June 2009; Fleming acknowledged that she had check-writing authority on this joint account and said "maybe" she wrote checks on the account after they separated. Ackerman testified that he was not aware of Fleming making any post-separation deposits into the account, although Fleming contends that the transaction records showed that she made net post-separation deposits of $3,766. Fleming testified that, after September 2008, all deposits to the account were made by Ackerman.

Fleming also disputes Ackerman's evidence, claiming without citations to the record that she testified that she assumed between $14,000 and $15,000 of the community debt and that the parties had agreed that a $10,000 American Express credit card bill paid from another account was also community

debt. She calculates that between these amounts and the community's back tax obligation the community had $28,000 in debt. Because she deposited $3,700 of her separate funds into the checking account, she claims to have "paid her share of the taxes and [Ackerman's] too." She argues that the court should not have believed Ackerman's testimony about the debts because he "had not one piece of documentary evidence at trial to carry his burden of proof of his claim." "[W]e must defer to the trial judge's assessment of the witnesses and resolve any factual conflict in support of the court's finding. [Citation.] Substantial evidence to sustain a finding may consist of testimony of a party or other single witness." (*In re Marriage of Kahan* (1985) 174 Cal.App.3d 63, 68.) Fleming has not established any error.

Fleming next argues that Ackerman should have been required to provide an accounting of the funds spent after separation pursuant to *In re Marriage of Margulis* (2011) 198 Cal.App.4th 1252. *Margulis* provides that when one spouse exclusively manages and controls community property after separation, he or she has the burden of proof to account for missing community assets to the other, nonmanaging spouse upon a prima facie showing that assets have disappeared while under his or her control. (*Id*. at p. 1257.) Fleming contends that she was the nonmanaging spouse with respect to this community account, and that because she made a prima facie showing as to the existence and value of the account in Ackerman's control after separation, Ackerman should have been required to provide an accounting. Fleming, however, does not support this assertion with citations to evidence in the record demonstrating that she was the nonmanaging spouse, nor does she provide any analysis of the evidence to support her contention. "We need not address

points in appellate briefs that are unsupported by adequate factual or legal analysis." (*Placer County Local Agency Formation Com. v. Nevada County Local Agency Formation Com.* (2006) 135 Cal.App.4th 793, 814.) Fleming, moreover, had check-writing authority over the account and she both deposited and withdrew money from the account after separation. Fleming, therefore, has not demonstrated that she was a nonmanaging spouse with respect to the account or that the court erred by declining to require Ackerman to account for the funds in the account after the parties' separation.[3]

III. Reimbursement of $17,737

Ackerman and Fleming purchased a home for $491,000 prior to their marriage. No closing statement for the home purchase was produced. The parties' primary loan amount, as stated in the deed of trust, was $392,800, and at the time of purchase, the parties took out an additional loan against the property (referred to by the parties as a second mortgage) in the amount of $49,100. In conjunction with the purchase of the home, Ackerman paid $66,837 into escrow. Fleming did not contribute money to the purchase of the home.

At trial Ackerman requested reimbursement of the $66,837 he contributed to escrow. Fleming agreed Ackerman should be reimbursed for the portion of that amount attributable to a down payment, $49,100, but she argued that the remaining $17,737

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[3] In his briefing on this issue Ackerman requests that Fleming be sanctioned for bringing a frivolous appeal. We decline to impose sanctions because her appeal does not meet the legal standard for a frivolous appeal. (See *In re Marriage of Flaherty* (1982) 31 Cal.3d 637.)

was not reimbursable under the statute. The court granted Ackerman's reimbursement claim and awarded him $66,837 "for his separate funds contributed to escrow to purchase the family home, pursuant to Family Code section 2640." Fleming argues on appeal that no substantial evidence supports the finding that the $17,737 was a reimbursable contribution to the acquisition of property. We review the reimbursement award for sufficiency of the evidence. (*In re Marriage of Cochran* (2001) 87 Cal.App.4th 1050, 1057-1058 (*Cochran*).)

Under section 2640, a spouse has a right to reimbursement at the time of dissolution for any separate property payments for contributions to the acquisition of community property, unless there has been a written waiver. (*Cochran*, *supra*, 87 Cal.App.4th at pp. 1056-1057.) "Contributions to the acquisition of property" are defined by section 2640, subdivision (a), as including down payments, payments for improvements, and payments that reduce the principal of a loan used to finance the purchase or improvement of the property. The statute specifically excludes from reimbursement "payments of interest on the loan or payments made for maintenance, insurance, or taxation of the property." (§ 2640, subd. (a).) The party seeking reimbursement has the burden of proof. (§ 2640, subd. (b); *In re Marriage of Cochran*, *supra*, 87 Cal.App.4th at pp. 1057-1058.)

Ackerman did not meet his burden of proving that the contested $17,737 constituted a contribution to the acquisition of property under section 2640, subdivision (a). He understood his check to represent the amount required to be paid into escrow to close on the house, but he testified repeatedly that he did not know what costs and expenses his check covered. When asked if the $66,837 was purely a down payment or whether it included

payments for other purposes, Ackerman testified, "I honestly don't know. They told me to pay this amount and I paid this amount. Where it went I have no earthly idea." He testified, "I have no idea how it was used." Ackerman described the check as "a cashier's check that I used to pay the down payment and whatever other costs that they charged me to purchase the house." He testified, "I know there was an escrow fee and a title fee, but other than that I have no recollection of whatever costs were included in that." Ackerman recalled that when he and Fleming bought the home they had been required to pay closing costs, but did not know if they were included in his check. He was unable to remember if they had been required at closing to pay the first mortgage payment or a year of insurance.

This evidence is legally inadequate to support a finding that $17,737 in separate property funds were contributions to the acquisition of property within the meaning of section 2640. In the absence of evidence that these funds constituted recoverable contributions under section 2640, subdivision (a), the trial court's award of this amount to Ackerman was not supported by substantial evidence. (See *In re Marriage of Braud* (1996) 45 Cal.App.4th 797, 824-825 (*Braud*); *Cochran*, at pp. 1059-1060.)

Ackerman contends, however, that because payment of the $66,837 was necessary to close escrow on the home, the payments necessarily constituted costs of acquisition as defined by section 2640, subdivision (a). Therefore, he argues, all he was required to do to establish his right to reimbursement was to demonstrate that the funds were from his separate property. This argument proves too much. Section 2640 does not provide that all separate property payments made in association with acquiring a property are reimbursable. "Although the forms of reimbursable

contributions listed in subdivision (a) of section 2640 are not exclusive, it does not follow that *any* type of expenditure which simply facilitates property acquisition is reimbursable under subdivision (b) of section 2640. A comparison of the list of items included in, and excluded from, the category of '[c]ontributions to the acquisition of the property' provides us interpretative guidance by defining the parameters of reimbursable separate property contributions. The common thread linking the *included* items, i.e., down payments, payments for improvements, and payments to reduce the principal of a loan used to purchase the property or make improvements to it, is that these types of payments either directly contribute to equity acquisition, or are expenses or costs of making improvements which may increase equity, assuming that the improvement actually results in an increase in property value. By contrast, payments of 'interest on the loan, or payments made for maintenance, insurance, or taxation,' which are *specifically excluded*, do not contribute to equity acquisition, despite the fact that they are expenses necessary to retain ownership or preserve and protect the owner's interest. Thus, not all expenses associated with acquisition or ownership of property are reimbursable, and the types of separate property payments that are reimbursable under this section are those which contribute to the acquisition of equity in the property either directly, or indirectly by paying the cost of improvements." (*In re Marriage of Nicholson and Sparks* (2002) 104 Cal.App.4th 289, 296.) Ackerman failed to meet his burden of proving that the separate property funds he expended were reimbursable contributions to the acquisition of community property. (See § 2640, subd. (b); *Cochran*, *supra*, 87 Cal.App.4th at pp. 1059-1060 [party seeking reimbursement under section

2640 has the burden of establishing the funds were used for a reimbursable purpose]; *Braud*, *supra*, 45 Cal.App.4th at pp. 824-825 [separate property funds not reimbursable where spouse failed to prove the amounts were spent on home improvements].)[4]

Because Ackerman's testimony at trial conclusively demonstrated that he lacks knowledge of and is unable to present evidence of the specific purposes for which the challenged $17,737 was expended, remanding the matter to the trial court for further consideration of the reimbursement award would be futile. The judgment is therefore modified to reduce the reimbursement award to Ackerman under section 2640 to $49,100.

IV. Reimbursement for Use of Community Home

Ackerman continued to reside in the couple's house after the parties separated in 2008. Under *In re Marriage of Watts* (1985) 171 Cal.App.3d 366, the trial court reimbursed the community for the reasonable rental value of Ackerman's exclusive use "of the parties' home after separation until he

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[4] Ackerman makes several further arguments in support of the award, including claims that Fleming failed to meet her burden of proving that the funds were not recoverable; that her arguments require the court to believe that the challenged funds were paid solely for taxes, interest, and insurance; that Fleming incorrectly states the law regarding recoverability of escrow fees; that she failed to rebut the presumption that the trial court's judgment was supported by the evidence; that she failed to present her arguments and the record properly; and that her arguments on appeal require the court to presume that the amount in dispute was a gift to the community. These arguments, on the record before this court, offer no basis for affirming the award.

vacates the premises, . . . less the carrying costs paid by [Ackerman], which shall include mortgage, taxes, and insurance, using the rental values presented by [Ackerman's] expert real estate appraiser." Ackerman challenges this award.

Ackerman contends this case presents four questions of first impression: (1) when a *Watts* claim must be asserted; (2) whether a *Watts* request is waived if not asserted in the initial petition; (3) whether, if a *Watts* claim is not waived when not stated in the initial petition, the community may be reimbursed for the reasonable value of the spouse's use of the community residence before the time the *Watts* request was made; and (4) whether is it equitable for a party seeking *Watts* reimbursement to profit from a delay he or she caused. Ackerman asserts the reimbursement of the community was a violation of due process, a situation akin to an *ex post facto* law, an action tantamount to an improper default judgment, and an inequitable result. He claims he was entitled to earlier notice, either in the initial petition or soon thereafter, that Fleming would request that the community be reimbursed the reasonable value of his use of the home after they separated, and contends that he suffered adverse impact due to his detrimental reliance on Fleming's failure to assert a timely *Watts* request.

Ackerman has not demonstrated that he raised these issues in the trial court. "'[T]o preserve an issue for appeal, a party ordinarily must raise the objection in the trial court.' [Citation.] 'The party also must cite to the record showing exactly where the objection was made.' [Citation.]" (*K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.* (2009) 171 Cal.App.4th 939, 948-949.) "'The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may

be corrected.' [Citation.]" (*Id*. at p. 949.) Ackerman admits that he did not assert his laches defense at trial[5] but claims that "the delay in raising the claim, the potential prejudice to [Ackerman], and [Fleming's] deprivation of [Ackerman's] opportunity to change his position in response to the *Watts* claim, because it was pleaded so late, were expressly stated on the record." This statement was not supported by any citations to the record. "Issues presented on appeal must actually be litigated in the trial court—not simply mentioned in passing. "'[W]e ignore arguments, authority, and facts not presented *and litigated* in the trial court.'" [Citation.]" (*Natkin v. California Unemployment Ins. Appeals Bd.* (2013) 219 Cal.App.4th 997, 1011.) Ackerman has forfeited these claims.

Ackerman also faults the trial court for failing to consider the circumstances articulated in *Watts*, *supra*, 171 Cal.App.3d 366, and claims the award was an abuse of discretion. He lists facts he claims the trial court disregarded and concludes, "No judge who actually weighed the equities involved could have made such a decision," but he does not identify any support in the record for his claim that the court did not consider those facts. We presume that the court followed the law, considered all relevant evidence, and evaluated the totality of the circumstances as required by *Watts*. "It is a fundamental rule of appellate review that a judgment is presumed correct and the appealing

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5 Ackerman claims he could not have argued laches at trial because he did not suffer actual prejudice until the court awarded reimbursement to the community. Ackerman provides no authority, nor are we aware of any, interpreting laches as precluding argument that an award would be inequitable before the award is made.

party must affirmatively show error." (*In re Marriage of Khera and Sameer* (2012) 206 Cal.App.4th 1467, 1484.) Ackerman has failed to demonstrate that the court abused its discretion when it reimbursed the community for the reasonable value of his use of the family home after separation.

V. Child and Spousal Support

Fleming requested temporary child and spousal support orders on June 14, 2012. In January 2013, the parties entered into a stipulation providing for spousal and child support. The stipulation acknowledged that Fleming requested that the support orders be made retroactive to the time she filed her request for support orders on June 14, 2012, and provided, "The Court retains jurisdiction to determine that issue at the time of trial."

The child and spousal support payments were subsequently suspended in April 2013 after Ackerman lost his job. In July 2013 Fleming requested an ex parte modification of the order suspending support to order Ackerman to pay $1000 for medical insurance and $2500 in child support. The parties reached a resolution to the health insurance issue in court, and the court denied the ex parte request. After trial, the court made the support order retroactive from the date of the original request for orders, June 14, 2012, to the commencement date of support payments under the stipulation, a period of approximately five months.

Ackerman argues that the court was without jurisdiction to make the support award retroactive, relying on section 3603 and *In re Marriage of Gruen* (2011) 191 Cal.App.4th 627. *Gruen*, in which the Court of Appeal held that the trial court lacked

jurisdiction to retroactively modify a prior order for temporary spousal support, is inapposite here because the parties stipulated that the court would order temporary support payments in an agreed-upon amount going forward, and that the court could determine at trial whether support should be ordered for the five months that had elapsed between Fleming's request for orders and the date of the stipulated order. Similarly, section 3603, which provides that a support order may be modified or terminated at any time except as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate the order, was not violated here because the trial court did not modify or terminate an order as to an amount that accrued before the date of the filing of a notice of motion or order to show cause to modify or terminate the order.

Contending that the court's order was barred by collateral estoppel, Ackerman argues that the court said in April 2013 that it was suspending support payments until further order of the court, and that the denial of Fleming's subsequent ex parte request for orders was a further court order, terminating the court's jurisdiction to make a retroactive support order. Therefore, he argues, the court's ultimate award of support for those five months was an improper retroactive award made without a pending request for orders. Ackerman's contention that the court could not make this support order because there was no pending request for orders is inconsistent with his 2013 stipulation that the issue of retroactive support for the five

months of 2012 would be left open for determination at trial. Ackerman has not established error.[6]

Ackerman then argues that even if the court had jurisdiction to make its award, the court could not order the retroactive support because there was no material change in circumstances to justify revision of the prior court order. As we have already observed, however, the court was not retroactively modifying the support it had ordered for that time frame, but was addressing for the first time the open issue of whether support should be awarded for that initial five-month period after the original request for orders was filed. Changed circumstances, which are considered in requests for modification of support orders, play no role in this determination.

Ackerman's remaining contentions about the support award concern the court's exercise of discretion in setting the amount of the award. Specifically, Ackerman argues that the court abused its discretion by "apparently assuming" that the support ordered for the five-month period would be in the same amount as the prospective support set forth in the January 2013 order; by "completely disregard[ing]" the evidence of contributions paid by Ackerman; and by ordering support for five months instead of two months because Fleming had delayed the hearing on her request for orders.

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[6] Ackerman also contends that the court acted inconsistently by imposing this retroactive support order but declining Fleming's request to retroactively modify the later order suspending support because of *In re Marriage of Freitas* (2012) 209 Cal.App.4th 1059, "when the circumstances were the same for both motions and orders." The record does not support his contention that the circumstances were identical.

"In assessing these contentions, we begin with the well-established rule that '[a] judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. [Citations.]' [Citation.] The deferential abuse of discretion standard governs our review. [Citations.] Generally, 'the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered. [Citations.]' [Citation.] To the extent that a trial court's exercise of discretion is based on the facts of the case, it will be upheld 'as long as its determination is within the range of the evidence presented. [Citation.]' [Citation.]" (*In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 197.)

Ackerman has not established an abuse of discretion. The court's judgment includes many pages devoted to the evaluation of the factors at issue in awarding support. Ackerman does not identify any support in the record for his claim that the award was based on an assumption, rather than a decision, that the support ordered for the five-month period should be in the same amount as the prospective support set forth in the January 2013 order. The court did not ignore Ackerman's contributions—it acknowledged them but concluded that they were "relatively small amounts compared to" his available income. Finally, Ackerman has not demonstrated that the support order inequitably rewarded Fleming for her purported delay in the hearing on her request for support. If anything, the claimed delay in the hearing permitted Ackerman to defer paying support for those months until the entry of the final judgment rather than being obligated to pay it during the pendency of the dissolution matter. As the amount ultimately set for the retroactive support

was the same as the amount set by the stipulated order in January 2013, Ackerman cannot establish any prejudice from the delay he claims.

VI. Extension of Jurisdiction over Spousal Support

The court awarded no spousal support in the judgment but retained jurisdiction over the issue of spousal support until June 2018. "It is within the broad discretion of the trial judge to fix the amount and duration of spousal support." (*In re Marriage of Baker* (1992) 3 Cal.App.4th 491, 496 (*Baker*).) In exercising that discretion, the trial court must evaluate the factors set out in section 4320.

Ackerman asserts that the court "obviously ignored the lengthy period" during which he had already been subjected to spousal support jurisdiction before the entry of judgment; that it either "erred in its evaluation of the duration of the marriage in relation to the duration of spousal support jurisdiction or failed to consider the duration of the marriage in relation to the duration of spousal support jurisdiction at all"; that the period of spousal support jurisdiction is "unprecedented" in that it was not based on an extenuating circumstance; and that reservation of jurisdiction was unnecessary because Fleming was in good health, had no disability, had a college degree, required no significant employment retraining, and had the ability to earn the stated marital standard of living. Ackerman asserts the court abused its discretion by imposing "a longer than typical duration of spousal support jurisdiction without an appropriate evaluation of Family Code section 4320 factors."

Ackerman has not established that the court abused its discretion. As we have previously noted, the court's judgment

comprehensively discusses the factors set forth in section 4320, demonstrating that the court understood its obligations in making a support award. Far from ignoring the length of the period during which Ackerman already had been subjected to spousal support jurisdiction before the entry of judgment, the court took into account Ackerman's failure to timely disclose his employment and increased employment income in its decision to "maintain[] jurisdiction over spousal support for four more years, despite the lengthy separation of the parties prior to trial."

Ackerman's "arguments on appeal, in effect, ask us to review the evidence anew, determine the weight to be given each factor listed in section [4320], subdivision (a), and use our own independent judgment in deciding whether jurisdiction should be terminated in this case. This we cannot do. We are neither authorized nor inclined to substitute our judgment for the judgment of the trial court. Where the issue on appeal is whether the trial court abused its discretion, the showing necessary for reversal is insufficient if it merely emphasizes facts which afford an opportunity for a different opinion. [The appealing party] must show 'that no judge would reasonably make the same order under the same circumstances.' [Citation.]" (*Baker*, *supra*, 3 Cal.App.4th. at p. 498.) Ackerman has not done so.

VII. SEP-IRA Division

The trial court found that the parties' Simplified Employee Pension-Individual Retirement Account ("SEP-IRA") was community property and divided it equally between Fleming and Ackerman. In support of this decision, the court found that Fleming contributed $9,000 from her separate property to the account in 2001, that her initial contribution exceeded

Ackerman's, and that the remaining contributions were made during the marriage with community funds. Ackerman argues that the equal division of the account constituted an abuse of discretion.

Ackerman first argues that the court's ruling was "clear error" because there was no evidence to support the finding that Fleming made any contribution to the SEP-IRA. Fleming, however, testified that in 2001 she gave Ackerman a check for $9,000 from the sale of a condominium she owned prior to the marriage. She gave Ackerman the funds because he told her that he had a tax debt for the year 2000 that he wanted to offset with an IRA contribution. Ackerman wished to deposit approximately $10,000 to offset the taxes, and he already had $1,000, so Fleming gave him $9,000. The court received into evidence a copy of Fleming's $9,000 check to Ackerman dated October 15, 2001. This evidence supports the court's finding regarding Fleming's separate property contribution to the SEP-IRA.

Ackerman, however, contends that the court's finding about Fleming's contribution was made without "attribution, explanation, or specific finding(s) and contrary to the evidence presented." He argues that the couple's tax returns for the tax year 2001 indicated that only $7,000 was contributed to the SEP-IRA for the year, proving that Fleming did not make the contribution to which she testified. As Ackerman notes, the last day to make SEP-IRA contributions for the tax year, if the taxpayer obtained an extension for filing taxes, is October 15. The trial court, therefore, reasonably concluded that Fleming's contribution on that date to offset taxes that Ackerman would otherwise pay was for the 2000 tax year, not the 2001 tax year, and therefore the amount reflected on the 2001 tax return does

not establish any error. Similarly, Ackerman fails to demonstrate error with his argument that Fleming failed to "present actual evidence" that her $9,000 check was in fact deposited in the account. Ackerman provides no authority to support the contention that the court could not credit Fleming's testimony as to her contribution to the account, nor are we aware of any.

Ackerman next contends that Fleming's, "and perhaps the trial court's, reliance on her expert, Mark Kohn, is misplaced because Kohn's testimony was unreliable." He then criticizes the expert witness's testimony. Ackerman, however, does not identify any error in the judgment that relates to his complaints about the expert witness. "[T]o challenge a judgment the appellant 'must raise claims of reversible error or other defect . . . .' [Citation.]" (*In re Phoenix H.* (2009) 47 Cal.4th 835, 845.)"

Finally, Ackerman argues that the court used a rate of appreciation that was "grossly disproportional to actual market growth during this period," an argument based on a series of representations concerning the major stock market indices. Ackerman has not identified any evidence in the record to support his statements about stock market growth during the marriage. A reviewing court may not give any consideration to alleged facts that are outside the record on appeal. (*CIT Group/Equipment Financing, Inc. v. Super DVD, Inc.* (2004) 115 Cal.App.4th 537, 539, fn. 1.) Ackerman has not demonstrated any abuse of discretion in the division of the SEP-IRA.

DISPOSITION

The judgment is modified to reduce the reimbursement award to Ackerman under Family Code section 2640 to $49,100 for his separate funds contributed to the acquisition of community property. In all other respects, the judgment is affirmed. The parties shall bear their own costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.