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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Marriage of ANDREA ANNIE ELIZABETH GARAI and TERRY DAVID KREKORIAN	B269098
ANDREA ANNIE ELIZABETH GARAI, Appellant, v. TERRY DAVID KREKORIAN, Respondent.	(Los Angeles County Super. Ct. No. BD547608)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark A. Juhas, Judge. Reversed and remanded.

Jaffe and Clemens, William S. Ryden, Alysia S. Evans and Nancy Braden-Parker, for Appellant.

Mansouri Law Offices, Pedram Mansouri and Michelle Rolfs for Respondent.

This appeal pertains to the dissolution of the marriage between Andrea Annie Elizabeth Garai (Andie) and Terry David Krekorian, M.D. (Terry). Andie contends, inter alia, that we must reverse the trial court's finding that certain quarterly distributions from Terry's company are his separate property because the trial court misallocated the burden of proof. Also, she contends the trial court erred when it awarded her $15,000 a month in spousal support because the amount should have been at least $35,000 a month. Finally, she contends the trial court erred when it made the permanent spousal support award retroactive in lieu of ruling on her request for temporary spousal support.

We conclude that the trial court erroneously shifted the burden to Andie to prove the character of the quarterly payments to Terry, and it failed to properly apply Family Code section 4320[1] when awarding permanent spousal support. We reverse and remand for new determinations on those issues. The trial court did not err when making the permanent spousal support award retroactive, and when it declined to rule on Andie's request for temporary spousal support. However, if Andie needs temporary spousal support pending determination of her permanent spousal support, the trial court is directed to rule on her request for temporary spousal support forthwith.

FACTS

Andie and Terry were married on December 31, 1995, and had two children. Terry moved out of the family home on February 19, 2010, when Andie and he decided to separate. He got an apartment. Andie and the children moved into the apartment with Terry on November 5, 2010.

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

On July 6, 2011, Andie filed a petition for dissolution of marriage. Terry filed a response and a corresponding request for dissolution of marriage. They each stated that July 6, 2011, was the date of separation.

On March 20, 2013, Andie filed a request for order (RFO) regarding temporary child and spousal support. She filed an income and expense declaration stating monthly expenses of $31,203.

Several weeks later, the parties stipulated in writing that Terry would pay $7,327 a month in child support and $6,193 a month in spousal support pending litigation. Per the stipulation, Terry's obligation retroactively commenced on August 1, 2012. The parties agreed the stipulation was without prejudice to (1) either party's claims regarding the proper amount of child and spousal support and (2) either party's claims with regard to the date of retroactivity, if any, of support. The trial court entered the stipulation as an order. Subsequently, on June 18, 2013, the trial court ordered "guideline" temporary spousal support in the amount of $30,791 a month and temporary child support in the amount of $10,133 a month.

The trial court set the RFO for an evidentiary hearing on August 7, 2013. After it was continued several times, it was finally reset to be heard at the time of trial.

Trial commenced on October 31, 2014. The primary issues were the valuation and division of a business known as Psychological Care & Healing Center (PCH); the characterization of quarterly payments by PCH to Terry between July 6, 2011, and December 31, 2013; and spousal support.

Valuation and Division of PCH

The evidence established that PCH was a Subchapter S corporation, and that it was formed by Terry and Dr. Jeffrey Ball (Jeff). Each contributed $100,000, with Jeff obtaining 65 percent of the stock and Terry obtaining 35

percent of the stock. They contemplated that they would split income according to the percentages of the PCH stock they owned. PCH opened for business on January 18, 2010.

There was no dispute that Terry's PCH stock was a community asset.

The parties entered into a settlement in which they agreed that the valuation of their PCH interest was $2,300,000,[2] that Andie's half interest was $1,150,000, and that Terry would pay Andie for her interest in three equal payments to be made on February 1 of 2015, 2016 and 2017.[3] The trial court entered a corresponding order.

Quarterly Payments by PCH to Terry

Andie argued that she was entitled to 50 percent of the quarterly payments from PCH to Terry from the date of separation to December 31, 2013, on the theory they represented profits of a community property asset. Terry argued that the quarterly payments were not passive profits received by the community. Rather, he argued, they represented separate property income that had flowed from his postseparation labor and efforts at PCH.

In its statement of decision, the trial court ruled that the quarterly payments were Terry's separate property because they represented his earnings rather than dividend income. The trial court made this decision "in part" because the evidence was insufficient for it to do an accounting of the division between profit and income. According to the trial court, it could not

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[2] According to the parties, the valuation date was December 31, 2013.

[3] We note that the settlement provided that "[Andie] is still permitted to . . . request an in-kind division of the PCH stock at trial. If that request is granted by the [trial court], then [Terry's] obligation [to make the three payments] will become null and void." On appeal, both parties take the position that the settlement, and the corresponding order, resolved valuation and division of PCH. Also, both parties accept that Terry bought out Andie's interest in PCH.

properly and fully account for the various payments without information regarding the tax treatment of PCH, Terry's reasonable compensation, and "many other factors."

Spousal Support

Andie filed an updated income and expense declaration dated November 26, 2014. It showed that the monthly expenses for her and the children were $42,039[4] for the 23-month period ending October 31, 2014. Andie requested between $35,000 and $40,000 a month in permanent spousal support. Terry thought she should receive only $10,000 a month.

In its statement of decision, the trial court awarded Andie $15,000 per month starting August 1, 2012, and continuing thereafter until death of either party, remarriage of Andie or further order.

RFO Regarding Temporary Spousal Support

The trial court did not rule on the RFO. Andie later objected and sought a ruling. The trial court stated, "I ruled on retroactive. I ruled on all that." Andie's counsel argued that temporary spousal support has a different standard than permanent spousal support, so they cannot be conflated. He argued that the trial court was required to issue a ruling. In response, the trial court stated, "I am going to stand by my ruling and my statement of decision."

Judgment of dissolution was entered on October 28, 2015. The trial court reserved jurisdiction over all other issues.

This timely appeal followed.

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[4] Andie's previously filed income and expense declaration, which she signed on December 12, 2013, identified her monthly expenses as $47,963. She testified that the figures were based solely on estimates.

DISCUSSION

I. Characterization of PCH Quarterly Payments.

Andie contends the trial court misallocated the burden of proof regarding the character of the PCH quarterly payments, and that she was prejudiced.

Allocation of the burden of proof by statute is a question of law. (*Villa v. McFerren* (1995) 35 Cal.App.4th 733, 740 [interpreting the allocation of the burden of proof under the 1992 amendments to the summary judgment statute as a question of law].) When there is substantial evidence in the record that would support a finding for either a plaintiff or defendant on an issue, a misallocation of the burden of proof on that issue is prejudicial. (*Nizam-Aldine v. City of Oakland* (1996) 47 Cal.App.4th 364, 380 ["When . . . substantial evidence in the record would support either finding, an erroneous burden of proof instruction is prejudicial"]; *Buzgheia v. Leasco Sierra Grove* (1997) 60 Cal.App.4th 374, 398 [finding that an erroneous jury instruction was prejudicial in a case where the evidence presented a close question with "substantial evidence on both sides"]; *Thomas v. Lusk* (1994) 27 Cal.App.4th 1709, 1720 [reversing due to an incorrect instruction that altered the burden of proof in a case where the evidence of causation was inconclusive].)

Except as provided by statute, all property acquired by a married person during the marriage is community property. (§ 760.) The burden is on the spouse asserting the separate character of property to overcome the presumption. "Whether or not the presumption is overcome is a question of

fact for the trial court. [Citations.]" (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 612 (*Mix*).)[5]

The question here is whether Terry established the exception to section 760 set forth in section 771, subdivision (a), which provides that the earnings and accumulations of a spouse after the date of separation "are the separate property of the spouse." He had to demonstrate that the quarterly payments were the fruit of his labor and services without the aid of capital. (*In re Marriage of Aufmuth* (1979) 89 Cal.App.3d 446, 464.) If the quarterly payments were a return on the $100,000 investment, then they were community property. (*In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, 851 [return on an investment "takes on the character of the asset from which it flows. Thus, rents, issues and profits are community property if derived from community assets, and separate property if derived from separate assets"].)

A. Relevant Evidence.

Terry and Jeff operated PCH jointly. They never had a written agreement regarding profits. Jeff was given 65 percent of the company because he was a psychologist, because he had previously run a treatment center and therefore had experience in the field, and because initially he was putting twice as much time into PCH as Terry. Quarterly distributions "adhered roughly to a 65/35 split." Terry described the 65/35 split as "a rough framework for how we would divide the proceeds."

When PCH opened its doors, Terry was still working full time as an anesthesiologist. He worked at PCH when he could, and did things like set

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[5] While Andie argues that Terry had the burden to overcome the presumption in section 760, Terry argues that Andie had the burden of proving that the distributions were not earnings from his labor or services. Neither party cited any supporting case law. We opt to follow *Mix*.

up a Web site, send e-mails and make phone calls. Jeff could not run PCH without Terry's help. Terry received $10,000 a month from PCH as wages. In November 2012, that amount increased to $25,000. He received distributions every quarter except for the third quarter of 2011. According to Jeff, he withheld that particular distribution because Terry was distracted by the divorce and "wasn't present for a lot of that quarter."

Since the beginning of the company, Terry was involved in all of the business decisions. They did not always split money 65/35. For example, Terry testified Jeff's wife worked "sort of as his assistant. So he wanted her to get a salary. So if you add up the salaries, they don't always go 65/35." Terry explained that he asked for an increase in his monthly payment because of his alimony and child support obligations, and because he wanted "more of a steady income." He also explained that he and Jeff "were always chang[ing] things."

On his income and expense declaration, Terry declared that he received $25,000 per month from PCH, which was identified as his employer. For investment income, he declared that he made an average of $116,629 per month from "50% of earning[s] from [DISC] and PCH Treatment."[6]

B. Trial Court's Commentary and Ruling.

At one of the hearings, the trial court stated, "I disagree, in some respects, that PCH is an investment. He went into business with another person, and that's his business. That's his work. That's what he does. It's not like they bought [General Motors] stock or something like that."

On March 4, 2015, the trial court issued a tentative ruling and stated: "The [trial court] issues this tentative decision on the submitted issues

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[6] Below, Terry's attorney said DISC is a surgery center, and that Terry and Andie owned a 3.3 percent interest.

pursuant to California Rule of Court [rule] 3.1590 and Code of Civil Procedure [section] 632. . . . This tentative decision will be the statement of decision unless within 10 days either party specifies controverted issues or makes proposals not covered in the tentative decision, as provided in [California Rules of Court rule] 3.1590(c)."

Continuing on, the tentative ruling stated: "Clearly, PCH is a community property business. Pursuant to the Family Code, profits from a community property business retain their community property character. Any income a party receives post separation is presumed to be separate property. [¶] The evidence supports that respondent had an oral partnership agreement with his business partner, [Jeff], that [Jeff] would receive 65% of the income and [Terry] would receive 35% of the income. The [trial] court reviewed exhibit 92 which all parties agree is an accurate reflection of the various payments that PCH made to the principals. There is no written partnership agreement, no salary schedule and no real indication of the employment 'worth' of either [Jeff] or [Terry] to this business."

The evidence showed that in 2010 there was a 69/31 split between Jeff and Terry with respect to the monthly payments they received from PCH, and a 65/35 split in quarterly distributions. From 2011 to 2014, the monthly splits were 64/36, 57/43, 11/89 and 27/73, and the split in quarterly distributions was 70.48/29.52, 65.63/34.38, 65/35 and 66.33/33.67. From 2010 to 2014, Terry's total income was $350,500, $835,000, $1,305,000, $1,845,600 and $196,500.[7]

The trial court noted that the "partners kept pretty close to the 65/35 split on the quarterly distributions, but varied widely on the monthly payments. It is not at all clear from the evidence as to why this is true.

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[7] $196,500 is for six months. There is no explanation in the record why the figure is so low.

However, [Terry] did testify that the immediate financial needs of the partners may drive some of the payment timing decisions at PCH. Further, [Terry] did not treat any income from PCH as dividend income, but rather ordinary income. This is instructive in the argument that the distribution income was a community property division. [¶] The [trial court] finds that the PCH monies [Terry] received were his separate property and not a community property division. This decision is made at least in part because it would be impossible to do an accounting of the division between profit and income and there is insufficient evidence before the court to do a full accounting of the monies received. [Terry] is correct, in order to properly and fully account for the various payments, the court would have to have far more information such as the tax treatment from PCH, the reasonable compensation for [Terry], and many other factors."

Elsewhere in the statement of decision, the trial court stated: "Just before the trial started, the parties agreed to settle the issues concerning PCH; [Terry] will receive PCH and [Andie] will receive a substantial equalization payment." Though Andie argued that PCH "was an investment for the parties," the trial court disagreed. It believed "that [Terry] simply went into business with a partner. The [trial court] does not believe that PCH was in the nature of a 'business investment' that demonstrated a pattern of business investments during the marriage. While there certainly is an investment component in any such decision, there is a similar investment component in any partnership."

C. Analysis.

The trial court's finding in favor of Terry was based in part on the insufficiency of the evidence regarding the character of the quarterly payments. As a result, in effect if not word, the trial court erroneously

shifted the burden of proof to Andie. Thus, the issue is whether Andie was prejudiced.

In our view, prejudice is easily established. Terry received the quarterly payments during the marriage, and there is a strong inference that those payments were based on PCH profits via increased accounts receivable. Thus, there is substantial evidence that the payments were community property. While other facts and inferences suggest that the payments were separate property, it does not matter for purposes of this appeal. The characterization of the quarterly payments must be redetermined with Terry rather than Andie bearing the burden of proof.

All other arguments raised by Andie regarding the characterization of the quarterly payments are moot.

II. Permanent Spousal Support.

Andie argues that the trial court erred when it awarded $15,000 per month in permanent spousal support. She maintains that spousal support should have been at least $35,000 per month. In particular, we are asked to determine whether the evidence supports the trial court's award, and whether the trial court made an appropriate finding under section 4320, subdivision (d).

Trial courts have "discretion in marital dissolutions to deny spousal support altogether or to limit such support in an amount and duration that reflects the ability of both parties in contemporary unions to provide for their own needs." (*In re Marriage of Pendleton & Fireman* (2000) 24 Cal.4th 39, 52.) Thus, an award of spousal support is reviewed under the abuse of discretion standard. (*In re Marriage of Campi* (2013) 212 Cal.App.4th 1565, 1567)

A. Relevant Proceedings and Evidence.

The parties' joint tax returns showed marital income as follows:

2006: $278,871

2007: $460,469

2008: $480,351

2009: $496,081

2010: $907,891

The 2010 income included $315,000 in capital gains from the sale of a house owned by Andie and Terry. Deducting that amount left $585,000, which included $376,090 in PCH income.

Andie's updated income and expense declaration dated November 26, 2014, which represented $42,039 in monthly expenses, included a $8,239 mortgage. In her declaration she stated that in July 2014, she obtained a "cash-out mortgage" on her separate property residence.

At the time of trial, Andie was not employed.

Lorna Riff (Riff), Andie's expert, offered exhibit 83, a summary of living expenses for Andie and the children that covered the two years ending approximately December 31, 2011. Per the summary, their monthly expenses were $30,641. Andie and Terry were living apart for 14 of those months.

Terry's expert submitted exhibit 703, which stated that the annual income for 2007, 2008, 2009 and 2010 respectively was $434,986, $453,425, $458,386 and $668,172. The average was $503,742. As a result, the monthly average available income for living expenses was $41,979.

B. Statement of Decision.

The statement of decision stated, inter alia: Andie bears the burden of proof regarding permanent spousal support. In determining spousal support,

the trial court is bound by the factors in section 4320. "Importantly, while the community had a very comfortable life style during marriage, [Terry's] income significantly increased following the date of separation. The [trial court] cannot take this increase into consideration for any factor other than ability to pay support; this fact does not affect the marital lifestyle in any way."

"In the years prior to separation, the family routinely made in the neighborhood of $500,000 per year. During marriage[,] the parties lived in a large home in Beverly Hills, took frequent family vacations and generally lived a lifestyle that comes with the income they enjoyed. While [Terry] has a much higher income now than the family enjoyed during [the] marriage, it is true that his income was increasing at the end of the marriage. Both parties provided exhibits quantifying the marital lifestyle. The [trial court] read and considered Andie's exhibit 83. The [trial court] believes that those figures are inflated and not reliable. The [trial court] reviewed exhibit 703 from [Terry]. This chart more accurately reflects the parties' marital income."

"Taking all things into consideration, the [trial court] finds that this was an 'upper class' marital life style."

The trial court considered the factors in section 4320, subdivisions (a)(1) and (a)(2), which are: "[t]he marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment," and "[t]he extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties."

The trial court's consideration of these factors doubled as its consideration of section 4320, subdivision (l), which sets forth the goal "that the supported party shall be self-supporting within a reasonable period of time."

According to the trial court, Andie has a law degree but did not pass the bar and never practiced law. "Undoubtedly it would take some time for her to pass the bar and find suitable employment." The trial court declined to impute any income to Andie but noted that she had a duty to become self-sufficient pursuant to *In re Marriage of Gavron* (1988) 203 Cal.App.3d 705 (*Gavron*). It gave her a *Gavron* warning and said it may impute income to her in the future.

During the course of the marriage, Andie stayed home with the children. This adversely impacted her current earning capacity.

Section 4320, subdivision (b) requires consideration of the extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party. The trial court found that Andie did not contribute to Terry's education, etc. Though Andie claimed she supported Terry socially, the trial court did not think that this support warranted much consideration of section 4320, subdivision (b) as a factor.

Turning to section 4320, subdivision (c), which requires an examination of the supporting party's ability to pay spousal support, the trial court opined that "[g]iven [Terry's] current income and the apparent success of PCH, he has no difficulty in paying a reasonable spousal support award in addition to the child support he is obligated to pay. According to the DissoMaster attached to the January 16, 2015 minute order, [Terry] has a monthly income

of approximately $150,000 and will pay just under $13,000 per month in child support."

With respect to section 4320, subdivision (d), the issue was the needs of each party based on the standard of living established during the marriage. The trial court stated: "There are no unusual needs based on the standard of living. The [trial court] put no special emphasis on this factor."

As contemplated by section 4320, subdivision (e), the trial court examined the parties' obligations and assets, including their separate property. It stated: "Following the equalization payments, both parties will have homes; both homes are encumbered. [Andie] maintained the home she inherited from her parents. While the home was initially free and clear, [Andie] encumbered her home in significant part to pay attorney's fees. Post separation, [Terry] purchased a home which he rents out. [He] testified that the decision to rent the property, as opposed to live in it, was financially driven. [¶] [Andie] inherited a significant amount of money, much of which has gone to pay for fees in this matter. [¶] [Terry] will continue to be employed at slightly under $2 million per year while [Andie] remains unemployed. Significantly, [Terry] owes substantial equalization payments to buy out [Andie's] interest in PCH. These payments stretch out over the next few years. [¶] It appears that after the equalization payments are made, [Andie] will have more cash on hand and [Terry] will continue to have a significant recurring income from his business."

Under section 4320, subdivision (f), which requires consideration of a marriage's duration, the trial court noted that this was a 15-year marriage, which was a marriage of long duration under the Family Code.

Based on section 4320, subdivision (g), the trial court was required to consider whether the parties could engage in gainful employment without

interfering with the interests of dependent children in their custody. It concluded that the parties had two children, ages 14 years old and 16 years old, and that they would not affect either parents' ability to be gainfully employed.

The age and health of the parties must be considered pursuant to section 4320, subdivision (h). The trial court noted that though Andie claimed to have back problems and migraines, she actively assisted in the divorce action and was unable to quantify any physical limitations. "The [trial court] is not currently imputing income to [Andie], nor is the [trial court] immediately requiring her to seek employment. [Terry's] health is not at all an issue in this matter. In light of these facts, this factor does not bear much significance in this case."

Section 4320, subdivision (i), which requires a trial court to consider the impact of domestic violence in the family, was a nonfactor.

The focus of section 4320, subdivision (j) is on the tax consequences of dissolution to each party. The trial court determined that the parties had normal tax concerns regarding spousal support.

The trial court expressly did not consider any hardships to the parties pursuant to section 4320, subdivision (k).

After setting forth the foregoing thoughts, the trial court stated: "A family income of $500,000 per year is $41,000 per month; [Andie] argues that this income number is too low. The [trial court] is comfortable that it may be slightly, but not radically too low. There are two children that must be financially accounted for; those costs would be deducted from the adult's life style. There is not a significant savings component in this case[.] [S]eemingly[,] the parties spent a great deal on their lifestyle and remodeling their primary residence."

"Based on the family income during marriage and the amount available after fixed expenses to support them, the [trial court] awards spousal support to [Andie], from [Terry], . . . [in] the amount of $15,000 per month starting on August 1, 2012 payable one half on the first of each month and one half on the 15th of each month until death of either party, remarriage of [Andie] or further order[.]"

The trial court recognized that from August 1, 2012, to June 30, 2013, Terry paid Andie support of $6,193 per month. Then, starting July 1, 2013, Terry was paying $30,791 in temporary spousal support. The trial court stated, "In light of the fact that the marital lifestyle was lower than [Terry's] current lifestyle, he overpaid spousal support from July 1, 2013[,] to the present. However, focusing on the income [set forth in the evidence], he underpaid spousal support between August 2012 and June 2013. The [trial court] is not reaching back farther than August 1, 2012[,] because it is not able to do so in light of the evidence before it. Clearly, [Terry] will receive credit for any sums paid to [Andie] to date."

"This support award, when combined with the child support award above, may render an overage or an arrearage, [and] the parties are to meet and confer and reach an agreement [on equalization]. Any equalization for this support amount shall be done as part of the total equalization in this matter."

C. Analysis.

When ordering spousal support, a trial court must consider and weigh all of the section 4320 factors "to the extent they are relevant to the case[.]" (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 302 (*Cheriton*).) A trial court "does not have discretion to ignore any relevant circumstance enumerated in the statute. To the contrary, the trial judge must both

recognize and *apply* each applicable statutory factor in setting spousal support. [Citations.] Failure to do so is reversible error. [Citations.]" (*Id.* at p. 304.)

"The . . . marital standard of living[] is relevant as a reference point against which the other statutory factors are to be weighed. [Citations.]" (*Cheriton*, *supra*, 92 Cal.App.4th at p. 303.)

In re Marriage of Smith (1990) 225 Cal.App.3d 469, 491 (*Smith*), explained that the Legislature apparently "intended 'marital standard of living' to be a general description of the station in life the parties had achieved by the date of separation and this is satisfied by the everyday understanding of the term in its ordinary sense, i.e., upper, middle or lower income." However, *Smith* also stated that "[f]indings should be 'specific' enough to be helpful in subsequent appellate or modification proceedings; the more specific the better." (*Ibid.*)

Citing *In re Marriage of Geraci* (2006) 144 Cal.App.4th 1278, 1296 (*Geraci*), Andie argues, inter alia, that the spousal support award should be reversed because it is not clear how the trial court reached its decision.

In *Geraci*, the challenged order stated that the "'[section] 4320 . . . favor[s] [wife] and the [trial] court orders permanent spousal support in a long term moderately high life style marriage where the parties regularly lived beyond their means to [wife] at the rate of thirty five hundred dollars per month ($3,500.00) beginning on January 1, 2005. . . . The evidence demonstrated that although [wife] is struggling now, she did out-earn [husband] at times during the marriage. Due to the length of the marriage, the court declines to set a termination date at this time.'" (*Geraci*, *supra*, 144 Cal.App.4th at p. 1296.) The trial court listed subdivisions (a)(1), (c), (d), (e), (f), (g), (j) and (k) of section 4320 but made no findings. (*Geraci*, at p. 1297.)

The *Geraci* court noted that other than the trial court's general assertion that the subdivisions listed in section 4320 favored an award to the wife, "the record provides no insight into how the court weighed the statutory factors and thus how it exercised its discretion." (*Geraci*, at p. 1297.) The court reversed and remanded for a new determination. (*Id.* at p. 1299.)

Here, the trial court recognized section 4320, subdivision (d) as a factor but then failed to apply it in any demonstrable or reviewable way.

Pursuant to section 4332, the trial court was required to "make specific factual findings with respect to the standard of living during the marriage[.]" While the trial court found that Andie and Terry had an upper class marital life style, it made no specific findings regarding Andie's needs other than its comment that there were no unusual needs. We are left to speculate as to the meaning of this finding. If there were no unusual needs, this dictates there were ordinary needs. But those needs were not identified. While the Legislature did not contemplate "a precise mathematical calculation" regarding the marital standard of living (*Smith*, *supra*, 225 Cal.App.3d at p. 475), a trial court still must make findings, and it still must issue an award that makes appellate review possible.

In addition, even though a review of the statement of decision reveals a long list of findings about various section 4320 factors, it provides no insight into how the trial court arrived at the $15,000 a month figure. Did the trial court determine Andie's needs based on the standard of living established during the marriage and then reduce the award because she has a law degree, inherited a house and would get equalization payments? Did the trial court determine that $15,000 met her needs during the marriage and decide not to reduce the award because she was unemployed? The fact that Andie had not worked during the entire marriage suggests that she could not

maintain the marital standard of living without contributions from her separate property and/or spousal support. In the absence of a ruling that wrestles with these issues, it is unclear why the trial court thought $15,000 a month was sufficient. Essentially, all the trial court did was "recognize" the factors and provide a list of its observations, some of which were detailed, some of which were scant. But providing a list of factors is not application of them. In our view, the trial court's observations are like a handful of pearls. Without a string that connects them, there is no necklace.

The bottom line is that the statement of decision requires us to guess the basis for the award. Consequently, under *Geraci*, the permanent spousal support award must be reversed and remanded for further proceedings.

All other issues regarding permanent spousal support are moot. We express no opinion regarding Andie's claim that she was entitled to $35,000 a month. On remand, the trial court is required to exercise its discretion by recognizing and weighing all section 4320 subdivisions to the degree they are implicated in this case. It is free to issue the same award, or a greater or lesser award, as long as it exercises its discretion within the bounds of the law.

III. Retroactivity of Permanent Spousal Support.

Andie argues that the trial court erred by making the permanent spousal support order retroactive because it was for an amount well below her needs, and it obligated Andie to pay Terry for overages.[8] This argument is unavailing because Andie cited no law stating that a trial court lacks the discretion to make a permanent spousal support award retroactive. Nor did she cite any law regarding the relevant considerations for a retroactive

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[8] Andie did not provide a calculation showing whether there will be overages or arrearages. We assume for this opinion there will be overages.

spousal support award and then demonstrate that the trial court failed to recognize and apply those considerations.

Our independent research reveals that retroactivity of spousal support awards is permissible under the Family Code. Section 4333 provides: "An order for spousal support in a proceeding for dissolution of marriage or for legal separation of the parties may be made retroactive to the date of filing the notice of motion or order to show cause, or to any subsequent date."

Regarding Andie's obligation to repay overages (or receive less in equalization payments, etc.), we note that section 3653, subdivision (d) provides: "If an order decreasing or terminating a support order is entered retroactively pursuant to this section, the support obligor may be entitled to, and the support obligee may be ordered to repay, according to the terms specified in the order, any amounts previously paid by the support obligor pursuant to the prior order that are in excess of the amounts due pursuant to the retroactive order. The court may order that the repayment by the support obligee shall be made over any period of time and in any manner, including, but not limited to, by an offset against future support payments or wage assignment, as the court deems just and reasonable. In determining whether to order a repayment, and in establishing the terms of repayment, the court shall consider all of the following factors: [¶] (1) The amount to be repaid. [¶] (2) The duration of the support order prior to modification or termination. [¶] (3) The financial impact on the support obligee of any particular method of repayment such as an offset against future support payments or wage assignment. [¶] (4) Any other facts or circumstances that the court deems relevant." While this statute was enacted for the modification or termination of support orders, it is indicative of how retroactivity operates with respect to overages.

In her reply brief, Andie admits that the trial court had the discretion to make the permanent spousal support award retroactive. She frames her argument thusly: "[T]he practical effect of making the permanent support order retroactive to the pendente lite period, combined with the numerous continuances of Andie's RFO, was to create a period of retroactivity of such lengths as to create circumstances that caused the order to be entirely contrary to the public policies underlying the law governing pendente lite support orders." We cannot accede to this position.

"[T]here are no explicit statutory standards governing temporary support. [Citation.]" (*Cheriton*, *supra*, 92 Cal.App.4th at p. 312.) An award of temporary spousal support is within the sole discretion of the trial court and will not be reversed unless it amounts to an abuse of discretion. (*In re Marriage of Winter* (1992) 7 Cal.App.4th 1926, 1932.) It is designed to "'maintain the living conditions and standards of the parties in as close to the status quo position as possible pending trial and the division of their assets and obligations.' [Citations.]" (*Ibid*.)

On June 18, 2013, the trial court ordered "guideline" temporary spousal support in the amount of $30,791 a month as well as temporary child support in the amount of $10,133. In other words, Andie received approximately $41,000 a month in temporary support, which was only slightly less than both the $42,039 in expenses she claimed in her November 26, 2014, income and expense declaration and the $41,979 the trial court found to be the monthly average available income for living expenses while Andie and Terry were married. Thus, even though the evidentiary hearing was continued and there was no final ruling on the RFO, Andie received temporary support to maintain the status quo pending trial and division of the parties' assets. The policy underlying temporary spousal support, therefore, was adequately

served. And even if the trial court had granted the RFO and set temporary spousal support at the same level, nothing would have prevented the trial court from making the permanent spousal support award retroactive. Accordingly, granting the RFO would not have shortened the period of retroactivity. And if the trial court had ruled on the RFO and had increased Andie's temporary spousal support, that would have resulted in larger overages that Andie would be obligated to pay back.

Based on the foregoing, Andie was not prejudiced by the trial court's decision not to rule on the RFO.

It appears that Andie's real argument is that at the time of judgment she was entitled as a matter of law to keep the entirety of her temporary support payments. But she has not cited any law to support this conclusion. Simply put, Andie failed to demonstrate that the trial court erred when it made the permanent spousal support award retroactive to August 1, 2012.

IV. The RFO.

Andie contends that the trial court should have ruled on the RFO at the time of trial. But at the time of trial, she had already received guideline temporary spousal support. Also, a final ruling on temporary spousal support became moot once the trial court issued a permanent spousal support award.

It is suggested by Andie that *In re Marriage of Johnson* (1983) 143 Cal.App.3d 57 (*Johnson*) establishes that the trial court erred. In that case, the trial court awarded the wife $100 per month in temporary spousal support. Subsequently, it failed to hear the wife's repeated requests for upward modification of temporary spousal support to $1,000 a month based upon a clear change in the husband's financial circumstances. When the reviewing court reversed an interlocutory judgment of dissolution in part and remanded for a new determination as to whether the community had an

interest in certain property and income, the court deemed it "appropriate for the trial judge upon retrial to redetermine what spousal support order should be made." (*Id*. at p. 62.) Also, the court stated: "[T]he conduct of the trial court in failing to hear and act upon [wife's] repeated requests for an upward modification based upon a clear change of [husband's] financial circumstances was not only error, but grievous error. To this day, the court still has never issued a formal order acting on these motions, but we deem them to have been erroneously denied. On remand the court is directed to conduct forthwith a hearing of [the] motions for upward modification of temporary spousal support." (*Id*. at p. 64)

Johnson does not dictate a finding of "grievous error" here. (*Johnson*, *supra*, 143 Cal.App.3d at p. 64.) In *Johnson*, the reason for the wife's request for upward modification of temporary spousal support to $1,000 was that the husband had failed to disclose significant income. (*Id*. at p. 63.) For the first year of permanent spousal support, the trial court awarded the wife $1,000 per month. (*Ibid*.) From the subtext, we glean that $100 a month was not enough to preserve the status quo pending trial. Pragmatically speaking, with respect to temporary spousal support, there were arrearages. In this case, Andie was receiving $30,791 a month in guideline temporary spousal support as well as $10,133 in temporary child support. On appeal, she has not argued that approximately $41,000 plus in temporary support was inadequate, or that (like in *Johnson*) it was only a 10th of what she was requesting. In fact, it was only slightly less than the represented monthly expenses. And here, if anything, there were temporary spousal support overages rather than arrearages.

Nonetheless, because we are remanding this case for a new determination regarding permanent spousal support, we deem it appropriate

to also remand on the RFO. To the degree Andie needs but is not receiving spousal support pending a final determination of permanent spousal support, the trial court shall rule on the RFO forthwith.

DISPOSITION

The judgment is reversed and remanded for new determinations regarding the characterization of the quarterly payments to Terry from PCH as well as the permanent spousal support award. Also, to the degree Andie needs but is not receiving spousal support pending a final determination of permanent spousal support, the trial court shall rule on the RFO forthwith.

Andie shall recover her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.*
GOODMAN

* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.