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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Marriage of Denise and John Blazevich. DENISE G. BLAZEVICH, Respondent, v. JOHN Z. BLAZEVICH, Appellant.	B283456 (Los Angeles County Super. Ct. No. BD434173)

APPEAL from a post-judgment order of the Superior Court of Los Angeles County, Bruce G. Iwasaki, Judge. Affirmed.

Royston Family Law, Mirka Royston; and Elkins Kalt Weintraub Reuben Gartside, Thomas Paine Dunlap for Respondent.

Cuneo & Hoover, J. Nicholas Cuneo, Janina A. Verano, for Appellant.

INTRODUCTION

This is an appeal from a post-judgment order denying the request of appellant John Z. Blazevich (John) for modification of his obligation to pay $30,000 per month in spousal support to respondent Denise G. Blazevich (Denise).[1] We affirm.

BACKGROUND

John and Denise were married for almost fifteen years. During their marriage, they enjoyed an "upper-class" standard of living. Their lifestyle was funded through John's income. At the time, John was CEO of Contessa Premium Foods Inc.

The parties separated on December 31, 2004. In late 2008, the parties settled their entire case through mediation. A stipulated judgment was entered on May 11, 2009.

Pursuant to the stipulated judgment, John was awarded the following property: the Hacienda de la Paz residence (Hacienda); 100 percent of the stock in Contessa; numerous bank accounts totaling $814,453; several brokerage accounts totaling $481,749; an IRA with a balance of $40,983; a 401(k) with a value of $259,274; a vehicle; and a motorcycle. At the time of entry of the stipulated judgment, John's average monthly income from Contessa was $304,788, and his personal expenses were $174,183 per month.

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[1] For ease of reference and clarity, we refer to the Blazevich parties by their first names.

Denise was awarded the residence located on Crownview Drive (Crownview) free of existing encumbrances[2]; a checking account with a balance of $48,725; a CD with a balance of $40,724; an IRA with a balance of $8,766; a leased vehicle; and a $100,000 equalizing payment from John.

Under the stipulated judgment, John agreed to pay Denise spousal support in the amount of $30,000 per month. The stipulated judgment further provided that this spousal support obligation could not be modified unless John's personal expenses were to fall below $75,000 per month.

The stipulated judgment also obligated John to pay the "direct educational expenses" of their child, Andreas, born in 1991. As for extracurricular expenses, John and Denise agreed to split them evenly. Between 2010 and 2015, John paid $656,130 for both Andreas's college tuition and "living expenses," which included over $50,000 for the purchase of a car.

Sometime after the divorce became final, Contessa filed for Chapter 11 bankruptcy. In 2011, John was forced to sell Contessa in the bankruptcy action. In 2011, John started a new business known as VIVA! Food Group (VIVA!). By early 2013, VIVA! was experiencing financial difficulties, leading John to lay off hundreds of people and pay a total of approximately $1 million in severance pay to employees.

Due to a reduction in his employment income, commencing in April 2011, John did not pay Denise the entirety of the

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[2] The stipulated judgment obligated John to pay the monthly mortgage on Crownview until it was paid in full. In the event it was not paid in full upon John's death, John's estate was obligated to pay it off. In 2010, John paid off the entire Crownview mortgage.

monthly amount of $30,000 in spousal support. From April 2011 through December 2014, John paid $20,000 per month for spousal support. From January 2015 through June 2016, pursuant to a mutual agreement with Denise, John paid $10,000 per month in spousal support.

In July 2015, John obtained a personal line of credit of at least $3 million, secured by the Hacienda residence. In connection with obtaining that line of credit the Hacienda residence was appraised at $38 million. Using the line of credit, John paid the $1.7 million remaining on his mortgage for the Hacienda, which reduced John's monthly expenses by $47,000. With the elimination of his mortgage payment, John's monthly expenses fell below $75,000, which rendered John eligible to request modification of the spousal support order.

On June 30, 2016, John filed a request for modification of spousal support, seeking to reduce his monthly payment obligation from $30,000 to $8,000. At the time of filing, John's expenses averaged $60,000 per month. He was over $800,000 in arrears on his spousal support obligation.

In John's declaration in support of reducing his spousal support obligation, he declared that his income was "ZERO" and that his "wealth is tied up in" his home (the Hacienda residence). John expressed that he planned to sell the home and "live the remainder of his life off the proceeds" from the sale. He stated his home was on the market for $53 million. John also said, however, that he valued the home at $18.3 million in his June

2016 income and expense declaration, based on the estimated fair market value by Zillow.com.[3]

Notably, in 2013, John had listed the Hacienda residence for sale for $53 million. By fall 2016, the Hacienda residence still had not sold; John reduced the sales price to $48 million. As of February 2017, there were no written offers to purchase the Hacienda residence, despite having been listed for sale for approximately four years since 2013.[4]

On April 25, 2017, the trial court issued its written ruling denying John's request for a modification of his spousal support obligation. In its ruling, the trial court noted inconsistencies with John's representations of his assets. For example, in his November 2016, declaration, John stated that other than having $50,000 in cash and $200,000 in stocks, "[t]he only other asset he [had] is the Hacienda residence." In his February 2017 income and expense declaration, however, John listed the value of *all* his real property at $15.3 million. But, in his June 2016 declaration, John stated that the Hacienda residence was appropriately listed for sale at $53 million. In his 2017 schedule of assets and debts, John represented that the gross fair market value of the Hacienda was $48 million, with an encumbrance of $2.3 million. Furthermore, in his January 2017 schedule of assets and debts, in addition to the assets referred to in his November 2016,

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[3] John's June 2016, November 2016, and February 2017 income and expense declarations all list the net fair market value of all his real property as "$15.3" million, not "$18.3" million.

[4] According to John, he took the property off the market from September 2015 to January 2016. John stated in his deposition, however, that he had received "verbal offers" to purchase but the Hacienda never sold because "they never really brought [John] an offer that [he] could accept."

declaration, John listed as assets "household furniture, furnishings, [and] appliances with a current gross fair market value of $500,000," and "jewelry, antiques, art, coin collections, etc." with a current gross fair market value of $20,000."

The trial court also noted inconsistencies between John's June 2016 income and expense declaration and his 2015 tax return. The 2016 income and expense declaration stated John's income was zero. By contrast, John's 2015 tax return listed several sources of income, including approximately: $113,000 in business income, $446,000 in capital gains, and $87,000 in IRA distributions."

Ultimately, the trial court agreed with John that he had met his threshold requirement of demonstrating a material change in circumstances in support of his request for modification of the spousal support order. Specifically, the trial court noted the collapse of John's business and the decrease of his income. The trial court also noted that John's monthly expenses had fallen below $75,000, in accordance with the requirement for any modification pursuant to the stipulated judgment.

The trial court then proceeded to evaluate the factors set forth in Family Code section 4320[5] to determine whether modification of the spousal support order was merited. The trial court first discussed the marital standard of living, concluding that the marital standard of living was "high." The trial court found that John "continues to enjoy" that high-level marital standard of living, noting that he continues to reside in the "luxurious Hacienda" and has traveled internationally.

The trial court also evaluated whether John had the ability to pay the $30,000 per month spousal support obligation,

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[5] All statutory citations are to the Family Code.

concluding: "[John] has significant assets and has the ability to pay spousal support. He could repay the nearly $1 million he owes [Denise] in spousal support arrearages from his line of credit. Given the value of the Hacienda, [John] could likely increase the line of credit to pay spousal support." The trial court also evaluated the assets and liabilities of both John and Denise, noting: "[John] has over $45 million in assets and relatively little debt. He denies he has significant liquid assets, but has a line of credit with over $1 million in credit available. He denies having income but in 2015 had significant capital gains income. [Denise] has liquid assets of over $900,000 and real estate valued at approximately $2.6 million."

Finally, in evaluating the balance of hardships to both parties, the trial court found: "Although [John] claims hardship from the collapse of his business and lack of income . . . , he has, in the Hacienda, a significant financial asset. [Denise] has liquid assets that may exceed [John]'s, but her overall assets are less than one-tenth of those of [John]. Even if [John]'s income were zero as he maintains, it would be contrary to the statutory mandate for this Court to disregard [John]'s extraordinary assets."

After evaluating each of the section 4320 factors, the trial court ultimately concluded that, "although there has been a change in circumstances after Judgment was entered, no modification of [John]'s duty to pay spousal support is appropriate." Accordingly, the trial court ordered that John's obligation to pay spousal support in the sum of $30,000 per month should continue. The trial court also ordered John to pay Denise $990,000 in spousal support arrearage.

DISCUSSION

I. Modification of Spousal Support

"The trial court has broad discretion to decide whether to modify a spousal support order based on a material change of circumstances. In exercising this discretion, the court considers the . . . criteria set forth in section 4320 . . . . [Citation.] These factors include the ability of the supporting party to pay; the needs of each party based on the standard of living established during the marriage; the obligations and assets of each party; and the balance of hardships to each party. [Citation.]" (*In re Marriage of Terry* (2000) 80 Cal.App.4th 921, 928.) "In balancing the applicable statutory factors, the trial court has discretion to determine the appropriate weight to accord to each." (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 304.) A spousal support award "will not be reversed on appeal absent an abuse of that discretion." (*Id.* at p. 283.) "In this regard, a trial court has broad discretion and an abuse thereof only occurs where it can be said that no judge reasonably could have made the same order." (*In re Marriage of Stephenson* (1995) 39 Cal.App.4th 71, 76.)

"When a finding of the trial court is attacked as being unsupported, our power begins and ends with a determination of whether there is any substantial evidence which will support the conclusions reached by the trial court." (*In re Marriage of Stephenson, supra,* 39 Cal.App.4th at p. 82 & fn. 5.) That is, "[i]n reviewing findings supporting a trial court's exercise of discretion in modifying spousal support, we accept as true all evidence supporting the trial judge's findings, resolve all conflicts in the evidence in favor of the prevailing party and indulge all

legitimate and reasonable inferences to uphold the judgment." (*In re Marriage of Rising* (1999) 76 Cal.App.4th 472, 474, fn. 2.)

II. Analysis

John contends the trial court abused its broad discretion in concluding that he has the ability to pay spousal support at the current amount of $30,000 per month. Specifically, John contends that, when weighing and considering the section 4320 factors, the trial court erred in evaluating: (1) the marital standard of living; (2) John's ability to pay; and (3) Denise's assets and other purportedly equitable factors. We hold that substantial evidence supported the trial court's findings and that the trial court did not abuse its discretion in concluding that the section 4320 factors did not weigh in favor of reducing John's spousal support obligation.

A. *The Marital Standard of Living*

Section 4320, subdivision (a) requires the trial court to consider "[t]he extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage." (§ 4320, subd. (a).) Section 4320, subdivision (d) also requires the trial court to consider "[t]he needs of each party based on the standard of living established during the marriage." (§ 4320, subd. (d).) Here, the trial court concluded that "[i]n this case, the marital standard of living was high, and it appears that [John] continues to enjoy that level." John contends the trial court's finding that he continues to enjoy a high standard of living was not supported by substantial evidence. We disagree.

John argues that his present standard of living is less than the standard of living during the marriage, relying on evidence in

the record indicating his monthly expenses at the time he entered into the stipulated judgment were higher than his monthly expenses in 2016. This argument misinterprets the trial court's findings. The trial court found that John continues to enjoy a high standard of living; it did not necessarily find that John continues to enjoy the exact standard of high living as he did during the marriage. Indeed, "the marital standard of living is intended by the Legislature to mean the general station in life enjoyed by the parties during their marriage. The Legislature did not intend it to be a precise mathematical calculation . . ." (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 475.) It is a "general description of the station in life . . . and this is satisfied by the everyday understanding of the term in its ordinary sense, i.e., upper, middle or lower income." (*Id.* at p. 491.)

John's argument also misinterprets how substantial evidence review operates on appeal. Despite John's evidence that his expenditures on a lavish lifestyle may be less than what they were previously, we find there was substantial evidence in the record to support the trial court's finding that John continued to live a high standard of living, which we must credit. (*In re Marriage of Rising, supra,* 76 Cal.App.4th at p. 474, fn. 2.) There was evidence that John had recently traveled with his fiancé on a multi-week European vacation, including visits to Croatia, London, and Italy. There was also evidence that John purchased a Jaguar automobile in September 2015 for $54,721, in addition to already owning a Porsche and Toyota Tundra. And, of course, it is undisputed John continued to live at the luxury Hacienda, a 51,000 square foot, palatial estate sitting on eight acres of land and consisting of nine bedrooms, 25 bathrooms, a game room, an entertainment room, a yoga room, a library, an office, a wine

cellar, a 15,000 square foot ballroom, an indoor swimming pool, an underground tennis court, and a 10,000 square foot spa. John also kept a staff consisting of a full-time housekeeper and two full-time grounds keepers.

We thus conclude the trial court's findings regarding the marital standard of living were supported by substantial evidence. The trial court therefore did not err by considering John's current "high" standard of living in connection with the high marital standard of living when deciding not to lower John's spousal support obligation.

B. *John's Ability to Pay*

Section 4320, subdivision (c) requires the trial court to consider "[t]he ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living." (§ 4320, subd. (c).) Here, the trial court found that John has the ability to pay spousal support because he has "significant assets." Indeed, the trial court concluded that John has over $45 million in assets and relatively little debt. The trial court specifically found that John has over $1 million available on the line of credit to pay spousal support and that, given the significant value of the Hacienda, John could additionally increase the line of credit to pay spousal support.

John challenges the trial court's determination that he has the ability to pay spousal support, contending specifically that there was no substantial evidence to support that conclusion and that the trial court's finding was based on speculation. John further contends the trial court erroneously relied solely on the

increase in John's home equity in deciding that John has the ability to pay. None of these claims have merit.

There was substantial evidence to support the trial court's finding regarding John's ability to pay. Although John reported no income on his June 2016 income and expense declaration, his 2015 tax return reflected significant sources of income, including $113,467 in self-employment income, $446,174 in capital gains, and $87,000 in IRA distributions. In addition to such sources of income, John has substantial assets. Among the assets listed in John's 2017 schedule of assets and debts are: (1) the Hacienda residence valued at $48 million, less a $2.3 million encumbrance; (2) household furniture, furnishings, and appliances valued at $500,000; (3) jewelry, antiques, art coin collections, etc. valued at $20,000; (4) two vehicles valued at $31,000; and (5) accounts at Wells Fargo valued at approximately $250,000.[6] Similarly, in his 2017 income and expenses declaration, John indicated he had $50,000 in cash and $200,000 in stocks, bonds, and other liquid assets.

Furthermore, despite John's contention that he has only $350,000 left on the line of credit secured by the Hacienda, the trial court concluded that John could use his line of credit to meet his spousal support obligations, including nearly $1 million in arrearages. The record contains substantial evidence to support that conclusion. During his deposition, John testified that he had secured a $3.5 million line of credit. In his January 2017

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[6] There was evidence before the trial court that John substantially understated the value of his household furnishings and other belongings. John had insured the contents of his home for $13 million and paid $40,000 per year in insurance premiums for such coverage.

schedule of assets and debts, John listed the encumbrance on the Hacienda as $2.3 million. From this, the trial court could have concluded there remained over $1 million available to draw from the line of credit. Accepting as true all evidence in support of the trial court's finding and resolving any conflicts in favor of that finding (*In re Marriage of Rising, supra,* 76 Cal.App.4th at p. 474, fn. 2.), we uphold the conclusion that John had the ability to pay spousal support from his line of credit.

We also uphold the trial court's conclusion that John could have increased the line of credit to meet his spousal support obligation. Contrary to John's contention that this finding was based on impermissible speculation, we find it was a reasonable inference for the trial court to make based on the substantial value of the Hacienda ($48 million according to John's schedule of assets), the relatively small (by comparison) line of credit ($3 to $3.5 million) encumbering the house, and the fact that John had, in fact, recently been able to secure a line of credit in the first place.[7]

Finally, we reject John's contention that the trial court erred by relying "solely on the increase in equity of John's primary residence as the evidentiary basis for its finding that John had the ability to pay spousal support." To begin with, as discussed above, substantial evidence of John's other income (self-employment, capital gains, and IRA distributions), savings, and assets other than the Hacienda supported the trial court's finding that John has the ability to pay spousal support.

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[7] At his deposition, John merely testified that he did not know if he could obtain a credit increase. That is not evidence John could not increase the line of credit. John's argument on appeal that he could not do so is mere speculation.

Furthermore, as a matter of law, the trial court was entitled—indeed required—to consider the substantial value of the Hacienda in determining John's ability to pay. (§ 4320, subd. (c) [courts must "tak[e] into account the supporting party's . . . assets"]; *In re Marriage of Cheriton, supra,* 92 Cal.App.4th at p. 305 ["[I]t is 'proper for the court to look at assets . . . , other than income, as a basis for the award of spousal support'"].)

We find unpersuasive John's reliance on cases regarding the calculation of child support to bolster his claim that the trial court erred by considering the substantial value of the Hacienda. Child support determinations are made pursuant to the income driven formula set forth in section 4055, whereas section 4320 explicitly directs courts to consider a supporting party's assets when determining spousal support obligations. (See § 4320, subd. (c).) But, even with respect to child support, courts in numerous cases (including one cited by John) have held that it is proper to consider assets such as real property. (See, e.g., *In re Marriage of Usher* (2016) 6 Cal.App.5th 347 [improper to reduce child support without considering multi-million dollar home and vacation home]; *In re Marriage of De Guigne* (2002) 97 Cal.App.4th 1353 [no abuse of discretion to set spousal and child support obligations above husband's monthly income in light of husband's multi-million dollar Hillsborough estate and other assets]; *In re Marriage of Destein* (2001) 91 Cal.App.4th 1385, 1390-1397 [no abuse of discretion to consider real estate investments that "do not produce income and would need to be liquidated to do so"].

We therefore reject John's request that we should create a "bright line rule" to preclude trial courts from relying solely on

the equity in a primary residence to determine a support obligor's ability to pay spousal support. John argues that such a rule would "provide consistency in cases where there are companion child support and spousal support orders" and would "provide trial court's with further guidance in issuing spousal support awards especially in light of the current growing economy where values of real property are on the rise." We believe instead that such an inflexible and absolute rule would hinder and interfere with a trial court's broad discretion to decide whether and/or how to set or modify an order for spousal support in light of the myriad of varied circumstances that may be present in any particular case. (See *In re Marriage of Riddle* (2005) 125 Cal.App.4th 1075, 1083 ["[I]t would be outside the proper province of an appellate court to prescribe a bright-line rule . . . ; after all, the whole point of discretion is a recognition that there are times when there shouldn't be a bright-line rule"].)

Accordingly, we find no error with respect to the trial court's conclusion that John has the ability to pay spousal support at the current level of $30,000 per month.[8]

C. *Denise's Assets and Other Equitable Factors*

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[8] The trial court did not explicitly refer to John's sale of the Hacienda as a basis for its finding that John had the ability to pay, but Denise adduced substantial evidence in support thereof. Relying on the appraisal value when John obtained the line of credit ($38 million) and John's asking price when listing it for sale ($48 million), Denise's forensic accountant determined that, if the Hacienda sold for $38-48 million, John would net between $25.5 million and $31.8 million after taxes and closing costs, which would yield annually $1-$1.2 million in interest income at a four percent rate of return.

John contends the trial court erred by not considering Denise's assets and her purported decreased need for spousal support, as well as other equitable factors. We disagree.

Section 4320, subdivision (e) requires the trial court to consider the "obligations and assets . . . of each party." (§ 4320, subd. (e).) Section 4320, subdivision (k) requires the trial court to consider the "balance of the hardships to each party." (§ 4320, subd. (k).) Here, the trial court explicitly considered such factors, noting that "[Denise] has liquid assets of over $900,000 and real estate valued at approximately $2.6 million." Indeed, elsewhere in its order denying modification of spousal support, the trial court acknowledged that "[Denise] has liquid assets that may exceed [John]'s." The trial court, however, recognized and considered countervailing factors, namely, that John has over $45 million in assets and relatively little debt. By contrast, the court observed, Denise's "overall assets are less than one-tenth of those of [John]," leading the court to conclude that "even if [John]'s income were zero as he maintains, it would be contrary to the statutory mandate for this Court to disregard [John]'s extraordinary assets." The trial court thus gave due consideration to Denise's assets and need for support, and we find the trial court acted well within its broad discretion to conclude that such factors did not merit a reduction of spousal support in light of all the section 4320 factors. (*In re Marriage of Cheriton, supra,* 92 Cal.App.4th at p. 304 [trial court has discretion to determine the "appropriate weight" for each section 4320 factor].)

John also claims the trial court erred by failing to consider other "equitable" factors, which, in his view, are relevant to his request to reduce his spousal support obligation. Specifically, John contends the trial court failed to consider: (1) that he paid

$656,136 for Andreas' college and living expenses; (2) that he paid in full the $500,000 mortgage on Denise's residence; and (3) that he was "prejudiced" by the terms of the judgment, which prevented him from seeking modification for years until he was able to reduce his expenses below $75,000 per month.

Section 4320, subdivision (n) provides for the trial court to consider "[a]ny other factors the court determines are just and equitable." (§ 4320, subd. (n).) Here, the trial court's order stated with respect to subdivision (n): "No other factors presented." We find no abuse of discretion in so concluding. As an initial matter, the statute provides for the consideration of factors *the court* determines to be just and equitable, not the supporting party. Thus, the trial court's statement does not reflect, as John contends, "the court's failure to acknowledge" the factors John considered to be just and equitable. Rather, the trial court found that no other factors were presented that *it* determined to be just and equitable.

Moreover, the record provided ample support for the trial court's conclusion. While it may be commendable for John to provide over $600,000 in financial support for Andreas's educational and living expenses, John was obligated to pay only Andreas's direct educational expenses pursuant to the stipulated judgment. It was well within the trial court's discretion not to consider as a just or equitable factor John's choice to pay additional living expenses (including a $50,000 car) for Andreas in favor of meeting court-ordered spousal support obligations for Denise. As for paying off the mortgage on Denise's house, John was already obligated to pay the entire mortgage pursuant to the stipulated judgment. In the reasonable exercise of its broad discretion, the trial court could have determined that meeting

this obligation early did not constitute a just and equitable factor in John's favor, given that Denise would have derived minimal if any benefit from the early satisfaction of a mortgage she was not obligated to pay and that, if anything, John may have benefitted by reducing one of his monthly expenditures going forward. Lastly, we find no abuse of discretion in deciding not to treat as a just and equitable factor the fact that John could not seek a spousal support reduction unless his monthly expenses fell below $75,000. As noted above, John continued to maintain a high standard of living and had income and substantial assets that provided him with the ability to pay the current spousal support obligation. It is difficult to see how John was prejudiced by having to wait until he brought his monthly expenses below $75,000 prior to seeking a spousal support modification when the trial court ultimately found he was not entitled to any reduction once John finally brought the request for modification.

DISPOSITION

For all of the foregoing reasons, the order denying the request for spousal support modification is affirmed. Denise is awarded her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIN, J.*

We concur:

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

BAKER, Acting P. J.

MOOR, J.