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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of PAULO
ZHUO HENG GU and
MENGJIAO GAO.

B290406

B292480

(Los Angeles County
Super. Ct. No. BD657341)

PAULO ZHUO HENG GU,

Appellant,

v.

MENGJIAO GAO,

Respondent.

APPEAL from orders of the Superior Court of Los Angeles
County, Shelley Kaufman, Judge. Affirmed.

Nonprofit Legal Services and Adam Dolce for Appellant.

No appearance for Respondent.

In connection with proceedings for dissolution of the marriage between Paulo Zhuo Heng Gu and Mengjiao Gao, the family court ordered Gu to pay Gao temporary child and spousal support and to contribute towards Gao's attorneys' fees. The family court also denied Gu's request for reconsideration of the support orders. Gu contends that substantial evidence did not support the family court's rulings and that the orders for temporary support and denial of reconsideration were an abuse of discretion. We affirm both orders.

FACTUAL AND PROCEDURAL BACKGROUND

Gu and Gao met in Hong Kong and began living together in June 2015. The couple has "always lived an extremely extravagant and affluent lifestyle" financed entirely by Gu. Gu came to the United States in 2016 seeking political asylum after he received threats following his publication of news stories that were critical of mainland China. Gu and Gao moved to California in April 2016. Their twin daughters were born in May 2016, and on December 8, 2016, the couple married.

On April 17, 2017, Gu petitioned the family court to dissolve the marriage. That same day, Gu was arrested on suspicion of domestic violence, and an emergency protective order was entered prohibiting Gu from any further contact with Gao. Gu was released the following morning, but was re-arrested on April 29, 2017, for a technical violation of the protective order. When notified of the arrest, Immigration and Customs Enforcement took Gu into custody and held him at the Adelanto Detention Center for six months apparently because the arrest violated certain contingencies related to Gu's immigration status. Gu needed to defend against the criminal and immigration cases in addition to the dissolution action.

On October 10, 2017, Gao filed a request for order (RFO) seeking guideline-level child support, spousal support in the amount of \$16,117 per month, and attorney fees of \$35,000.

Evidence Gao submitted in support of the RFO showed that Gu owned numerous businesses and was extraordinarily wealthy. Gu had purchased Sing Pao Media Enterprises Limited, a Hong Kong publishing company, for approximately \$136 million. Between May 23 and September 11, 2017, Gu sold approximately \$4.1 million worth of his stock in Ding He Mining Holdings Ltd., and thereafter still owned 320,518,000 shares worth an estimated \$1,354,435. Copies of bank statements showed that from April 21, 2016 to April 5, 2017, Gu deposited a total of \$754,762.32 into the couple's joint checking account.

At the December 21, 2017 hearing on the RFO, Gao requested guideline-level child support and approximately \$16,000 in spousal support using \$62,000 as Gu's monthly available income. Gao argued that the request was justified, at a minimum, by Gu's significant deposits into the parties' joint bank account over roughly a one-year time period, as well as the \$4.1 million stock sale. In addition, when the court asked if the bank deposits "ended in April 2017," Gao's counsel responded, "I don't know that it ended. . . ." Gao also requested attorney's fees of at least \$35,000, noting that Gu had inexplicably been able to hire multiple attorneys to represent him in the dissolution case as well as in both a criminal and an immigration case.

Gu asserted that he had no income at all. He stressed that the couple's lavish lifestyle was over, and had represented to his counsel that the deposits into the couple's joint bank account were actually loans from distinct companies which, based on Gu's counsel's review of the loan documentation, only lasted until the

month the dissolution petition was filed. In addition, Gu asserted that he “didn’t personally benefit” from the stock sale.¹

When the court asked Gu how he would support himself if the loans stopped, Gu responded vaguely, in pertinent part, that he had used all of his money from Hong Kong to open up five companies in the United States, but admitted that he was still running the companies. Gao testified that when she arrived in the United States she was not receiving any income from business ventures in China.

In ruling on the RFO, the family court ordered Gu to pay Gao a total of \$21,356 per month in temporary support, composed of guideline-level child support of \$13,356 (half for each child) as calculated with the Dissomaster, and spousal support of \$8,000.

In calculating the support amounts, the court considered that Gu had monthly non-taxable income of \$62,897 available for support, and Gao had no income at all. Based on Gao’s evidence, which had not been credibly rebutted, the court found that Gu had complete and total access to money (i.e., earnings from businesses, sale of stock) up until he petitioned for dissolution and continued to be able to generate income through businesses deals thereafter, while Gao had full-time responsibility for the couple’s small children and no ability to earn income. The court explained: “The evidence presented shows that there was a regular flow of money coming in over a year’s time period . . . [and] there is no indication as to that those kind of funds and

¹ Gu “offered to . . . testify under seal to address” the stock sale, but gave no reason why he should be allowed to do so. The court rejected the offer, stressing “People come into this court all the time and talk about their finances. We would be sealing every courtroom.”

income would not continue.” The court also found no evidence to support Gu’s claim that the income came from loans.

The court also ordered Gu to pay \$48,000 of Gao’s attorney’s fees, noting that the fees could be paid out of the \$166,000 of personal property disclosed on Gu’s income and expense declaration, or from other sources including “sale of stock that [Gu had] not denied owning.” In support of the order, the court expressly “considered the factors [discussed with respect to spousal support], the time spent by the attorneys, the necessity for the time spent, and the ability of each party to contribute to their own fees.”

Gu appealed the family court’s support orders. Gu also appealed the family court’s denial of Gu’s subsequent motion for reconsideration of the support orders. The two appeals were subsequently consolidated.

DISCUSSION²

A. Temporary Support Orders

Gu contends the family court’s temporary support orders — specifically the finding that Gu had available non-taxable monthly income of \$62,897 — were erroneously based on factual findings which lacked substantial evidence, and were an abuse of discretion. We disagree.

1. Pertinent Law

Courts have broad discretion to award temporary child and/or spousal support in marriage dissolution actions. (Fam.

² Since Gao has not filed a respondent’s brief, we “decide the appeal on the record, the opening brief, and any oral argument by the appellant.” (Cal. Rules of Court, rule 8.220(a)(2); see *County of San Diego Dept. of Child Support Services v. C.P.* (2019) 34 Cal.App.5th 1, 7, fn. 7.)

Code, § 3600.)³ In general, courts must calculate the amount of child support to be ordered under statutory guidelines. (§§ 4052, 4055; *In re Marriage of Macilwaine* (2018) 26 Cal.App.5th 514, 528.) Each parent’s income is a “crucial component for determining the amount of child support.” (*In re Marriage of Destein* (2001) 91 Cal.App.4th 1385, 1391; §§ 4055, 4059.) Parental income may include wages from employment as well as business profits and investment income. (*Macilwaine*, at p. 529.) A guideline-level child support amount is “presumptively correct[.]” (*In re Marriage of Wittgrove* (2004) 120 Cal.App.4th 1317, 1326 (*Wittgrove*); § 4057, subd. (a).)

Courts may award any amount for temporary spousal support “based on the party’s need and the other party’s ability to pay.” (*Wittgrove, supra*, 120 Cal.App.4th at p. 1327.) Unlike a permanent award, temporary spousal support is simply intended “to maintain the living conditions and standards of the parties in as close to the status quo position as possible pending trial[.]” (*Ibid.*) When determining temporary spousal support, courts may consider “the parties’ accustomed marital lifestyle” as well as the statutory factors in section 4320 used for permanent spousal support. (*Wittgrove*, at p. 1327.)

Courts may order one party to pay the other’s attorney fees and costs where there is a disparity in access and ability to pay, and the amount of the award is “just and reasonable under the relative circumstances of the respective parties.” (*In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1313; §§ 2030-2032.) “In assessing one party’s relative need and the other party’s ability to pay, the family court may consider all evidence concerning the

³ Unless stated otherwise, all statutory references are to the Family Code.

parties' current incomes, assets, and abilities, including investment and income-producing properties.” (*Tharp*, at pp. 1313-1314.)

We review temporary support orders for abuse of discretion, and any related factual findings for substantial evidence. (*Wittgrove, supra*, 120 Cal.App.4th at p. 1327.) “We cannot substitute our judgment for that of the trial court, but only determine if any judge reasonably could have made such an order. [Citation.] Our review of factual findings is limited to a determination of whether there is any substantial evidence to support the trial court’s conclusions.” (*In re Marriage of Chandler* (1997) 60 Cal.App.4th 124, 128.) An appellant bears the burden of demonstrating abuse of discretion. (*Chalmers v. Hirschkop* (2013) 213 Cal.App.4th 289, 299.)

2. Analysis

Gu has not demonstrated that the family court’s award of temporary support and attorney’s fees was an abuse of discretion.

There is sufficient evidence to support finding that Gu had access to a continual flow of approximately \$62,897 of non-taxable income per month. At a minimum Gao’s declaration and copies of monthly bank statements filed with Gao’s RFO showed that over a period of about 12 months (i.e., April 21, 2016 to April 5, 2017) Gu had deposited into the couple’s joint account a total of \$754,762.32, on average of \$62,896.86 per month. The family court reasonably found no evidence to support Gu’s contention that such funds came from loans of limited duration and thus the flow of income would not continue. Gu cites no legal authority which supports his current contention that the family court should have found that Gu had much less income available for support by considering only bank statements from the five-month

period of November 3, 2016 to April 5, 2017, which showed total deposits of \$3,865.61, for a monthly average of only \$773.12. (See generally *In re Marriage of Riddle* (2005) 125 Cal.App.4th 1075, 1083 [“It is a manifest abuse of discretion to take so small a sliver of time to figure income [for support orders] that the determination essentially becomes arbitrary”].)

Thus, we cannot say that no judge reasonably could have concluded that Gu failed to rebut the presumption that the guideline amount of temporary child support was correctly calculated based on the higher income amount. (*Wittgrove, supra*, 120 Cal.App.4th at p. 1327.) Hence Gu has not shown that the family court’s support awards were an abuse of discretion.

We also cannot say that the family court abused its discretion in finding that Gu had the ability to pay \$8,000 per month in temporary spousal support given Gu’s \$62,896.86 monthly income and access to significant other assets.

Nor can we find the court abused its discretion in ordering Gu to contribute \$48,000 towards Gao’s attorney fees. The evidence supported finding a significant disparity in each of the parties’ ability to pay such fees and that the amount of the award was reasonable under the circumstances to assure Gao access to legal representation. Specifically, unlike Gao who had few assets and who cared for the couple’s minor children full time, Gu had access to sufficient assets from which such contribution could be made (i.e., personal property disclosed on Gu’s income and expense declaration and Gu’s stock).

B. Reconsideration Motion

Gu requested the family court to reconsider its temporary support orders pursuant to Code of Civil Procedure section 1008, subdivision (a) based on new or different facts, or alternatively,

either to vacate the orders pursuant to Code of Civil Procedure section 473, subdivision (b) due to excusable neglect, or modify the support awards pursuant to Family Code section 3603 based on changed circumstances. The court denied Gu's request in an oral ruling at a May 4, 2018 hearing.

Gu contends the family court's oral ruling was an abuse of discretion, but has not provided a reporter's transcript from the pertinent hearing.⁴ (See *Southern California Gas Co. v. Flannery* (2016) 5 Cal.App.5th 476, 483 [appellant must provide pertinent reporter's transcript when raising any issue that requires consideration of oral proceedings in superior court]; Cal. Rules of Court, rule 8.120(b).) Gu has only provided a minute order documenting that during the May 4, 2018 hearing, the family court denied Gu's reconsideration request based simply on no material change of circumstances.

Without a record of what transpired at the May 4, 2018 hearing, we are unable to determine whether the family court's denial of Gu's reconsideration request was an abuse of discretion. (*Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259 ["The absence of a record concerning what actually occurred at the [pertinent] hearing precludes a determination that the court abused its discretion"].) Accordingly, we presume that the family court's ruling was correct. (*Rhule v. WaveFront Technology, Inc.* (2017) 8 Cal.App.5th 1223, 1229; see generally *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

⁴ Gu says that although he designated the reporter's transcript from the relevant hearing, the court reporter mistakenly prepared a transcript for a different hearing, and Gu made no effort to correct the error.

DISPOSITION

The family court's orders are affirmed. Respondent is awarded costs on appeal.

NOT TO BE PUBLISHED

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.