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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of MICHAEL L. E.  
and XIA XU E.

B279554

(Los Angeles County  
Super. Ct. No. MD030951)

MICHAEL L. E.,

Respondent,

v.

XIA XU E.,

Appellant.

APPEAL from an order of the Superior Court of Los  
Angeles County, Robert J. Palazzolo, Commissioner. Affirmed.

Xia Xu E., in pro. per., for Appellant.

No appearance for Respondent.

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In this marital dissolution action, Xia Xu E. appeals a judgment on reserved issues, arguing the trial court misjudged the evidence and prohibited her from presenting more evidence. We disagree with each contention, and therefore affirm.

### **BACKGROUND**

Xia Xu and Michael E. were married in 1995, separated in 2005, and divorced in 2011. They had three children, of whom one is still a minor. The dissolution was highly acrimonious and contentious, with the parties appearing in several courts dozens of times over the years, including in dependency proceedings, and seeking mutual restraining orders, at least two of which—long term Domestic Violence Restraining Orders—were entered against Xia Xu.

Trial on reserved issues was held over eight days in 2015 and involved extensive documentary evidence and testimony. In a thorough statement of decision, the court found that Xia Xu's evidence was sometimes either not credible or nonresponsive to the issues it purportedly addressed. For example, Xia Xu testified she could not find work, but the court found she had made no significant efforts to do so. And the court disbelieved her testimony that her knees hurt and she was unable to stand, stating her "testimony in this case lacks credibility." To the extent Xia Xu's evidence was credible but incomplete, for example as to a daughter's orthodontia expenses, or as to the value of certain household furnishings, the court retained jurisdiction to receive further evidence.

Upon considering the 17 factors set forth in Family Code section 4320, the trial court found that Xia Xu received \$1,175 per month as part of Michael's pension, and though unemployed had an earning capacity of \$850 per month, equivalent to part

time work at minimum wages. The court found Michael was able to pay child support and half of the children's medical expenses, and ordered that he pay \$2,506 per month in child support but no further spousal support. The parties stipulated to child custody orders.

The trial court also made orders allocating the couple's community property, including household furnishings, a 2015 tax refund, mortgage payments, and Michael's pension and retirement account and accrued vacation and sick time, and ordered that Michael make a \$606.17 equalization payment. The court found that Xia Xu had kept, hidden, and sold various items of community property, but ordered that all property such as household furniture and furnishings be retained by the party currently in possession of it.

The trial court ordered that Michael pay Xia Xu \$20,000 in attorney fees, but also that Xia Xu pay an offsetting \$20,000 in fees and costs to Michael as sanctions pursuant to Family Code section 271 for her misconduct during the litigation, including "acts of alienation and manipulation" and her drafting a letter making "horrible false allegations" against Michael and coercing their daughter to sign it by threatening to kill herself if the daughter did not sign.

Xia Xu timely appealed from the judgment.

## **DISCUSSION**

### **I. Standard of Review**

"In a marital dissolution proceeding, a court determines the division of property between the spouses by first characterizing the parties' property as community property or separate property. [Citation.] Family Code section 760 provides that all property acquired by the spouses during the marriage is

community property '[e]xcept as otherwise provided by statute.' ” (*In re Marriage of Davis* (2015) 61 Cal.4th 846, 849.) “We review the trial court’s factual findings regarding the existence and character of the parties’ property under the substantial evidence standard.” (*In re Marriage of Ettefagh* (2007) 150 Cal.App.4th 1578, 1584.) “If the pertinent inquiry requires application of experience with human affairs, the question is predominantly factual and its determination is reviewed under the substantial-evidence test.” (*Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888.)

A family law court orders child support pursuant to guidelines set forth in Family Code section 4050, et seq., and may order as additional child support “reasonable uninsured health care costs.” (Fam. Code, § 4062, subd. (a).)

In ordering spousal support, the court considers the several factors set forth in Family Code section 4320, which include such factors as the duration of the marriage, the needs and ability to pay of each party, and the balance of hardships. (Fam. Code, § 4320.) Child and spousal support awards are reviewed for an abuse of discretion. (*In re Marriage of Chandler* (1997) 60 Cal.App.4th 124, 128 [child support]; *In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 282 [spousal support].)

A family law court may also award attorney fees under Family Code section 2030, and may order sanctions under Family Code section 271. Both orders are reviewed for abuse of discretion. (*In re Marriage of Sullivan* (1984) 37 Cal.3d 762, 768; [attorney fee order]; *In re Marriage of Battenburg* (1994) 28 Cal.App.4th 1338, 1343 [sanctions order].) “Discretion is abused when its exercise is arbitrary, whimsical, or capricious.” (*In re Marriage of Battenburg*, at p. 1343.)

## **II. Substantial Evidence Supports the Judgment**

Xia Xu contends the trial court was “prejudiced, discriminative, unfair, unmerited, unjustifiable, unreasonable, bigoted and unscrupulous,” and erred in allocating community property, awarding child and spousal support and attorney fees, and ordering sanctions against her, because it mistakenly credited Michael’s evidence and discredited hers. For example, she argues the court erred when it: discredited her representations about several issues, such as her diligently seeking work and suffering abuse at Michael’s hands; credited Michael’s representations about such matters as being disabled and the nature of his finances; disbelieved that her daughter wrote the derogatory letter concerning Michael; and believed the testimony of witnesses who had been bribed. She also argues the court erred in concluding most of the litigation was unnecessary and occasioned largely by her own misconduct, and thus erred in discounting her attorney fee request by 75 percent and imposing sanctions.

In essence, Xia Xu revisits her allegations made over the years in diverse proceedings on such matters as dependency jurisdiction, small claims, and civil restraining orders, and complains that no one has believed her, either because she is “Asian” or because Michael is a retired sheriff’s deputy. She seeks from us all the orders that the trial court—and perhaps other courts; it is not entirely clear—should have made, including an order that Michael pay half of a daughter’s orthodontic bill and an order garnishing his retirement account.

Xia Xu misunderstands the nature of an appeal and the limited power of an appellate court. A trial judge serving as a finder of fact reviews documents, inquires into their origin and

authenticity, and weighs their probity and import. The judge examines witnesses, observes their demeanor, and evaluates their percipience, biases and, ultimately, credibility. The endeavor requires fine study and a painstaking marshalling of evidence. Because the trial court is best suited at the ground level to marshal this evidence and adjudge its credibility, the court is vested with the sound discretion to make findings of fact based on the evidence and issue orders supported by those findings. (See *Smith v. Smith* (1969) 1 Cal.App.3d 952, 958, superceded on another ground as stated in *Santa Barbara County Fire Fighters v. County of Santa Barbara* (1981) 121 Cal.App.3d 521, 523.)

An appellate court is one step removed from this process. We have no facilities for calling witnesses or determining the provenance of documents, and therefore no occasion or ability to evaluate the credibility of either. We thus may not disturb the factual findings of a trial court absent a clear showing that the court in some manner abused its discretion. (*Smith v. Smith, supra*, 1 Cal.App.3d at p. 958.) This necessarily means we may not presume the trial court abused its discretion; such abuse must be affirmatively established by the party challenging the trial court's actions. (*Ibid.*) Absent a clear abuse of discretion, we have no power to revise the lower court's judgment even if we would have made different findings and orders had the matter been submitted to us in the first instance, which it never is. (*Ibid.*)

Here, Xia Xu represented to the trial court that Michael had abused her and the children, hid assets, and falsified his income statement. She represented she was unemployable and unable to work, and had been victimized over the years by

Michael, by police, by her own lawyers, and by several courts in dissolution, dependency and small claims proceedings. The trial court admitted all of her testimony and documentary evidence, heard testimony from several witnesses, and considered her arguments. The court weighed the evidence, determined its credibility and import, and made detailed findings of fact. That “discretion was the trial judge’s, not ours; and we can only interfere if we find that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that he did.” (*Newbauer v. Newbauer* (1949) 95 Cal.App.2d 36, 40.) When more than one inference can reasonably be deduced from the facts, we may not substitute our deductions for those of the trial court. It is of no consequence that the trial court might have reached a contrary conclusion had it believed other evidence or drawn different inferences. Under the applicable standard of review, we cannot reweigh the evidence on appeal. (See *People v. Brown* (1984) 150 Cal.App.3d 968, 970.)

Because Xia Xu identifies no deficit in Michael’s evidence other than its lack of credibility, which lies exclusively in the purlieu of the trial court, she fails to affirmatively establish an abuse of discretion. We cannot say no judge could reasonably have made the orders here, and therefore have no cause to disturb the judgment.

### **III. Due Process**

Xia Xu contends the trial court at several junctures denied her due process, for example when it permitted Michael before trial to file a brief he had used seven years earlier; when it proceeded with trial even though she had not received Michael’s trial brief or witness or exhibit lists; and when it discredited her

evidence on account of her being Asian. To the extent Xia Xu's objections are founded on a claim of discrimination, she forfeited them by failing to raise them below, which would have afforded the trial court an opportunity to address any error. (See *People v. Heard* (2003) 31 Cal.4th 946, 972, fn. 12.) In any event we discern no impropriety. A trial court enjoys broad discretion in managing its processes, which include receiving briefs and scheduling hearings. Nothing in the record suggests Michael's evidence or briefing were out of date or that trial commenced before Xia Xu was prepared. Xia Xu was thus afforded due process.

Xia Xu represents for the first time on appeal that she recently discovered new evidence concerning community debts, and incurred new medical bills for the children. As discussed above, these matters can be raised only in the trial court.<sup>1</sup>

#### **DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.

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<sup>1</sup> In this vein, after the hearing Xia Xu requested leave to lodge additional evidence. We granted the request, but as discussed above, evaluation of such evidence is the exclusive province of the trial court.