Filed 3/21/18 Marriage of Tavakoli CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Marriage of ANGEL and SHAHROCK TAVAKOLI.	B279835
ANGEL KASHFIAN TAVAKOLI, Plaintiff and Appellant, v. SHAHROCK TAVAKOLI, Defendant and Respondent.	(Los Angeles County Super. Ct. No. BD406154)

APPEAL from an order of the Superior Court of Los Angeles County, Shelley Kaufman, Judge. Affirmed as modified.

Angel Kashfian Tavakoli, in pro. per., for Plaintiff and Appellant.

Law Offices of Majd & Associates, Farbood Majd and Regidor S. Tatel for Defendant and Respondent.

I. INTRODUCTION

Angel Kashfian Tavakoli (Mother) and Shahrock Tavakoli (Father) are the parents of three sons—only one of whom is still a minor. The children initially lived with Mother after the divorce but later resided with Father. Mother argues the trial court erred by reducing the sum Father owed in child support arrears. Mother also challenges the trial court's order requiring her to pay child support for her youngest son. We find the trial court did not abuse its discretion when it calculated child support arrears but conclude that it made a calculation error in totaling the arrearages. We therefore affirm the child support arrearage order, as modified. We also conclude the trial court did not abuse its discretion when it ordered Mother to pay child support based on imputed income.

II. FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father were married in 1985 and separated in December 2002. They had three sons during their marriage. When their marriage was dissolved in 2005, all three children were minors. On December 21, 2005, the trial court entered a judgment ordering Father to pay monthly child support of $150 per child beginning in May 2004 and continuing "until each child reaches age of majority."

All three children initially lived with Mother. In September 2005, the oldest son moved in with Father. The middle son lived with Mother until he finished high school at the age of 19. The youngest son—the only remaining minor child—moved in with Father in August 2015 when he was 15 years old.

Mother and Father built a 9,000 square foot home in Encino in 2004. The real property was first deeded to both parties. Later, Mother received the house as part of the divorce settlement. The title report and deed reflected Mother was the sole owner: "Angel Kashfian, who acquired the property as a married woman as her sole and separate property."

Beginning in 2005, Mother's brothers began paying the $12,040 monthly mortgage for the home. Beginning on an unknown date, the brothers also paid the property taxes and utilities for the property. They paid all expenses, "from A to Z," as it related to the property. Father presented evidence that an internet site valued the house at more than $3.8 million, and the outstanding mortgage was $1.3 million.

In 2014, Father worked for Auto Damage Appraisal for about 30 hours a week and earned $16,000 in wages for that year. He also worked for Auto Damage Appraisal in 2015. He received $40 for each car he appraised. Beginning in February 2016, he worked for Cochran Auto Body for 25 hours per week and earned $1,400 per month. Father testified he did not work full-time because he took care of the youngest son.

Mother was employed by her brothers full-time for half of 2014. She was laid off in July 2014 and began collecting unemployment benefits five months later. Her 2015 federal tax return showed she received unemployment benefits of $11,700 and had no earnings. After her unemployment benefits ended, she supported herself by withdrawing money from a savings account she had set up as a college fund for her youngest son. Her brothers continued to pay all expenses related to the home.

On July 14, 2016, Father filed a request for orders seeking modification of child support, *Jackson* credits, and attorney's fees

and costs. Among other things, Father requested that child support be recalculated based on income he claimed should be imputed to Mother.

On September 28, 2016, Mother filed a request for an order to determine arrearages, contending that Father owed Mother $140,000 in child and spousal support.

On November 8, 2016, the trial court held a hearing on both parties' requests. First, it ruled on Mother's request for an order determining the child support arrears owed by Father since May 2004. The trial court ordered child support reduced to the sum of $300 per month from September 2005 onward because the oldest son moved in with Father at that time. The trial court found the following child support arrears for 2004-2015: 2004, $1,175; 2005, $4,500; 2006, zero; 2007-2011, $3,600 (each year); 2012, $2,700; 2013-2014, $1,800 (each year); and 2015, $1,200. The trial court calculated the total child support arrears owed by Father to be $27,575 before interest.

Next, the trial court considered Father's request for child support payments and the imputation of income to Mother based on the mortgage and other payments that Mother's brothers were making on her behalf. The trial court focused its inquiry on the mortgage payments. Mother contended that the mortgage payments were loans, rather than gifts, and testified that the loan was reflected in a $450,000 lien against the property that the brothers had placed in 2014. Mother further claimed the deed listed Mother and her brothers as co-owners of the property.

The trial court, after hearing testimony and reviewing exhibits, concluded that the brothers' monthly payments were not loans. The brothers had placed a lien on the property in 2003, prior to the parties' separation and after Father had borrowed

money from the brothers to finish construction of the house. Moreover, the amount of the lien did not correspond to the mortgage payments. The court concluded that Mother was the sole owner of the property, "I don't see anything that shows this house is in anyone's name but yours." The court also found that Mother could, if she wished, sell the home.

The court therefore imputed $12,049[1] as monthly income: "[T]he court is including for the petitioner taxable income of $12,049 based on [*In re Marriage of Alter* (2009) 171 Cal.App.4th 718 (*Alter*)] and the evidence that I have in terms of expenses that are being paid, at least for the mortgage on her behalf. [¶] . . . [¶] The reason the court is using this income is that these are funds that are being used to pay for you as if you are earning them." After calculating income, the court determined that Mother was required to pay child support for the youngest child, commencing August 1, 2016, in the amount of $1,976 per month. The court also concluded that this amount could be deducted by the Father from the arrearage owed by him.

Finally, the court considered Father's request for attorney's fees and stated: "[I]t is unclear to this court that [Mother] is capable of being employed. She's not employed. [¶] . . . [¶] [Mother] is not earning any money. Although her expenses are being paid, there's no clear evidence of why that's happening and why such large expenses would be paid on her behalf. There's no real evidence that she has money accessible to her. She's living off savings. She's ordered to pay child support

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[1] Appellant does not contest that this (rather than $12,040) is the amount of the two mortgages.

based on income attributed through the case of *Alter*." The court declined to award attorney's fees to Father.

III. DISCUSSION

A. *Standard of Review*

An award of child support is reviewed for an abuse of discretion. (*Anna M. v. Jeffrey E.* (2017) 7 Cal.App.5th 439, 445-446 (*Anna M.*); *In re Marriage of Williamson* (2014) 226 Cal.App.4th 1303, 1312 (*Williamson*).) Likewise, a grant or denial of a request for modification of child support is reviewed for an abuse of discretion. (*In re Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361, 1371 (*Pearlstein*); *In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 555.) "[W]e determine "'whether the court's factual determinations are supported by substantial evidence and whether the court acted reasonably in exercising its discretion." [Citation.] We do not substitute our own judgment for that of the trial court, but determine only if any judge reasonably could have made such an order.' [Citation.]" (*Alter*, *supra*, 171 Cal.App.4th at pp. 730-731.)

"In reviewing a child support order, 'we are mindful that "determination of a child support obligation is a highly regulated area of the law, and the only discretion a trial court possesses is the discretion provided by statute or rule." [Citation.]' [Citation.] '[T]he trial court's discretion is not so broad that it "may ignore or contravene the purposes of the law regarding . . . child support. [Citations.]" [Citation.]' [Citation.]" (*Williamson, supra*, 226 Cal.App.4th at p. 1312.) "Moreover, to the extent that the trial court's decisions reflect an interpretation of the statutory

definition of income for child support purposes, this is a question of law that we review de novo." (*Pearlstein, supra*, 137 Cal.App.4th at pp. 1371-1372; accord, *Alter, supra*, 171 Cal.App.4th at p. 731.)

B. The Reduction in Child Support Arrears Was Not an Abuse of Discretion But Arrearage Sum Was Incorrectly Calculated

Mother argues the trial court abused its discretion by crediting Father with child support payments that were not supported by documentary evidence. But she fails to include in the appellate record the documents submitted by Father of the child support payments he testified he made from 2004 until 2015. A judgment or order is presumed to be correct and Mother has a duty to provide the reviewing court with an adequate record to demonstrate error. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.) Because Mother fails to present an adequate record for review, we affirm the trial court's child support arrearage determination for each year, from 2004-2015.

The court also reduced arrearages for the period of time that the children did not live with Mother, pursuant to *Jackson v. Jackson* (1975) 51 Cal.App.3d 363, 367-368. To the extent Mother challenges the court's finding that the oldest son began to live with Father in September 2005, we find no error. Mother testified that the oldest son left her home and moved in with Father in July 2007. Father testified that the oldest son moved in with him in September 2005. He submitted a February 27, 2007 e-mail, which indicated that 18 months earlier, Mother had sent the oldest son to live with Father after the child fought with

her. Accordingly, substantial evidence supports the trial court's conclusion that the oldest son last lived with Mother in September 2005.

Although we affirm the trial court's child support arrearage findings for each year from 2004-2015, we conclude the sum was incorrectly calculated. The trial court found the sum of the child support arrears was $27,575 before interest. Based on our calculation, the total child support arrears was $31,175 before interest. We therefore modify the child support arrearage order to correct the amount owed by Father to Mother.

C. The Trial Court Did Not Abuse Its Discretion When It Imputed Income to Mother Based on Mortgage Payments From Her Brothers

"Statutory guidelines regulate the determination of child support in California. (See Fam. Code, §§ 4050-4203.)"[2] (*In re Marriage of Schlafly* (2007) 149 Cal.App.4th 747, 753 (*Schlafly*).) Child support is calculated using the mathematical formula set forth in section 4055. (*Anna M., supra*, 7 Cal.App.5th at p. 446; *Williamson, supra*, 226 Cal.App.4th at p. 1312.) "This mandatory formula 'takes into account both parents' "net monthly disposable income" (§ 4055, subds. (a), (b)), which is determined based upon the parents' "annual gross income" (§ 4058). Section 4058, subdivision (a), defines "annual gross income" as "income from whatever source derived," and lists more than a dozen possible income sources to be considered as part of annual gross income.' [Citation.]" (*Williamson, supra*, 226 Cal.App.4th at p. 1312.)

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[2] Further statutory references are to the Family Code.

In *Alter*, the Sixth Appellate District concluded gifts may be considered as income for purposes of section 4058. (*Alter*, *supra*, 171 Cal.App.4th at pp. 736-737.) Although section 4058 does not mention gifts, the *Alter* court noted the list of income sources in section 4058, subdivision (a) is nonexclusive. (*Id.* at p. 732.) The appellate court recognized gifts are not included as income under federal tax law but explained section 4058 specifically included some types of income, such as workers' compensation payments, that are excluded from taxable income under the Internal Revenue Code. (*Id.* at p. 735.) The *Alter* court reasoned section 4058's definition of "annual gross income" as "income from whatever source derived" was broad enough to encompass recurrent monetary gifts. (*Id.* at p. 736.) The court added: "It is irrelevant that there is no legal obligation on the part of the donor to continue making the gifts or that the flow of cash does not appear on the income tax return." (*Ibid.*) In affirming the trial court's imputation of income, the court held, "nothing in the law prohibits considering gifts to be income for purposes of child support so long as the gifts bear a reasonable relationship to the traditional meaning of income as a recurrent monetary benefit." (*Id.* at pp. 736-737.)

Not all gifts are to be considered income. (*Anna M., supra*, 7 Cal.App.5th at p. 450.) "[W]hile regular gifts of cash may fairly represent income, that might not always be so. Therefore, the question of whether gifts should be considered income for purposes of the child support calculation is one that must be left to the discretion of the trial court." (*Alter, supra*, 171 Cal.App.4th at p. 737.)

The *Alter* court concluded the trial court did not abuse its discretion in finding that regular monthly cash payments of

$6,000 that the father received from his mother was income for child support calculations. (*Id.* at p. 737.) Although the father used $3,000 of the $6,000 he received from his mother to pay the rent charged by her, it was not an abuse of discretion to include that as income because it represented part of his monthly cash flow. (*Ibid.*) The court explained: "If [father] had only the benefit of rent-free living, valuing the benefit and including it as part of the income calculation could give an inaccurate picture of his cash flow situation and, in that situation, it would have been inappropriate to characterize the value of the benefit as income. . . . But here, [his] mother did not simply give him the benefit of living in the home; she gave him the money to pay for it. Thus, the benefit was easily valued and represented part of [his] monthly cash flow." (*Ibid.*) The court concluded that evidence that gifts are recurring, in predictable amounts, by a dependable party (family members), weighs in favor of imputing gifts as income. (*Alter, supra*, 171 Cal.App.4th at pp. 735-736.)

Similarly, here, Mother's brothers provided Mother a monthly recurrent gift in the predictable amount of $12,040. The gifts were from dependable parties (family members), who had been making the payments for over 10 years. These factors support the trial court's conclusion that the payments were recurrent monetary benefits that should be imputed as income.

Mother cites *In re Marriage of Loh* (2001) 93 Cal.App.4th 325, 332, to argue that the trial court erred by imputing income based upon what she characterizes as "reasonable monthly rent" or "mortgage housing value." "[I]ndirect, noncash benefits, such as rent-free housing, payments to others for services provided to [a parent], and use of [another person's] possessions, such as his cars" are not included as a parent's income for child support

calculations. (*Anna M.*, *supra*, 7 Cal.App.5th at p. 453; *Schlafly, supra*, 149 Cal.App.4th at pp. 759-760 [imputation of monthly income of $3,000 based on purported rental value of mortgage-free housing was abuse of discretion]; *In re Marriage of Loh, supra*, 93 Cal.App.4th at pp. 335-336 [free housing benefit cannot be included as income but can be used as a basis to deviate from the guideline amount].) While a court cannot impute income based upon the value of living in a home, that is not what the trial court did here. Mother did not need permission to live rent free in her own home. Mother's brothers "did not simply give [Mother] the benefit of living in the home; [they] gave [her] money to pay for it. Thus, the benefit was easily valued and represented part of [her] monthly cash flow." (*Alter*, *supra*, 171 Cal.App.4th at p. 737.)[3]

Mother also argues that because her brothers made the mortgage payments directly to Mother's lenders, those payments were not otherwise available to her and should not have been imputed as income. Non-cash gifts that are not otherwise available to the recipient for other purposes should not be imputed as income. (*Anna M., supra*, 7 Cal.App.5th at p. 453.) The trial court here found that the funds were "being used to pay for you as if you are earning them." It also found that Mother could, if she wished, sell the house, that is, withdraw the proceeds of the mortgage payments. It was undisputed that there was significant equity in the home. The trial court therefore implicitly found that the mortgage payments were

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[3] Although Mother's brothers also paid for all of Mother's additional housing expenses, which is more akin to free rent, the trial court specifically excluded these amounts from its income calculation.

otherwise available to Mother. In reaching this conclusion, the trial court had reviewed Mother's bank records (which were not included as part of the record on appeal), Mother's demeanor, a title report, and a deed. On this record, we conclude the trial court's ruling was supported by substantial evidence.

Mother cites to the trial court's comments denying Father's request for attorney's fees, as support for her argument that the trial court abused its discretion in imputing income. Child support and attorney's fees serve different purposes. In awarding child support, courts must be mindful of the following principles, among others: "(1) the interests of the child are the state's top priority, (2) a parent's principal obligation is to support his or her children . . . (5) children should share in both parents' standard of living[.]" (*Anna M., supra*, 7 Cal.App.5th at p. 446.) Attorney's fees, however, are available "to ensure that each party has access to legal representation to preserve each party's rights," including when "there is a disparity in access to funds to retain counsel[.]" (Fam. Code, § 3557.) Accordingly, the trial court's conclusion that Mother lacked funds to pay attorney's fees is not contrary to its implicit conclusion that Mother could pay child support. Indeed, in determining whether a litigant has the ability to pay attorney's fees, the court must consider the money available to such litigant after support payments are deducted from income. (*See In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 868 [finding that trial court erred in awarding attorney's fees to wife where "[t]he court's express findings of husband's monthly gross income left little room for payment of attorney fees and costs after payment of the monthly support obligation"].) The trial court did not abuse its discretion when it ordered Mother to pay child support based on imputed income.

IV. DISPOSITION

The child support arrearage order is modified to state that Shahrock Tavakoli is ordered to pay Angel Kashfian Tavakoli $31,175 plus applicable interest for the child support arrears. As so modified, the child support arrearage order is affirmed. The order requiring Angel Kashfian Tavakoli to pay child support to Shahrock Tavakoli is affirmed. Each party to bear its own costs.

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KIM, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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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.