Filed 8/9/17 Marriage of Askari and Yaghmai CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of NINOOSH ASKARI and HOSSEIN YAGHMAI.	B269776
HOSSEIN YAGHMAI, Appellant, v. NINOOSH ASKARI, Respondent.	(Los Angeles County Super. Ct. No. BD613207)

APPEAL from an order of the Superior Court of Los Angeles County, Tamara E. Hall, Judge. Reversed with directions

Trope and Trope, Andrew Stein, Thomas Paine Dunlap; Skolnick Family Law and Jennifer L. Skolnick for Appellant.

Honey Kessler Amado and James Alex Karagianides for Respondent.

BACKGROUND

Hossein Yaghmai (Hossein) and Ninoosh Askari (Ninoosh) were married on August 20, 1999. Their union produced one child.

Hossein and Ninoosh established several businesses during their marriage. In 2002, they opened Allied Health Products, Inc., which sold and distributed pharmaceutical products. In 2008, they opened EVO 33, LLC, a graphic and web design business. In 2011, they opened Clear Innova, LLC, which sold dental and medical supplies. That same year, they opened Velplex (also known as Top Pro Deal, LLC), an online business that distributed dental and medical supplies.

Hossein and Ninoosh also opened eight business bank accounts. The accounts were with California Bank & Trust and Wells Fargo. Hossein and Ninoosh had equal access to the accounts, and usually kept hundreds of thousands of dollars in the accounts. The two also maintained several business credit cards, which Ninoosh used to pay for

household expenses or for expenses associated with their daughter.

In 2012, Hossein and Ninoosh purchased their family home in Mandeville Canyon in Los Angeles for $2.85 million. They made a down payment of $850,000 and financed the rest with a mortgage. The mortgage payments were approximately $9,500 a month.

On October 29, 2014, Hossein pleaded guilty to arson and felony eavesdropping charges. The charges arose from two separate incidents—one in which Hossein placed an unauthorized listening device in Ninoosh's car and another in which Hossein blew up Ninoosh's friend's car. On December 23, 2014, Ninoosh filed for divorce. On February 24, 2015, Ninoosh obtained a five-year restraining order that prohibited Hossein from coming within 100 yards of Ninoosh.

According to Ninoosh, after the restraining order was put in place, Hossein reduced the balances in the business bank accounts and quickly withdrew any deposits made to the accounts. As a result, there was not enough money in the accounts to pay the mortgage or family living expenses. The mortgage went unpaid and the outstanding balance as of June 2015 totaled approximately $30,000. Hossein also limited Ninoosh's use of the business credit cards by lowering their credit limits, which substantially limited Ninoosh's ability to pay for routine household expenses.

On July 10, 2015, Ninoosh filed a request for order (RFO-1) seeking relief from these actions. On August 13,

2015, the court granted nearly all the requested relief and issued the following orders: (1) Hossein was to immediately contact Wells Fargo and arrange to pay the outstanding mortgage and bring the payments current; (2) Hossein was to immediately bring up to date all payments associated with maintaining the house, including but not limited to, utilities, property tax, gardener, pool man, homeowner's insurance and ADT security services; (3) going forward, Hossein was to immediately pay family support to Ninoosh, which would also include $20,000 per month in child support; (4) going forward, Ninoosh was to pay all the payments associated with maintaining the house, including but not limited to utilities, property tax, gardener, pool man, homeowner's insurance, and ADT security services from the family support; (5) Hossein was to take steps to transfer to Ninoosh all accounts associated with maintaining the house, including but not limited to utilities, property tax, gardener, pool man, homeowner's insurance and ADT security services; (6) Hossein was to give Ninoosh access to all existing and all the new bank accounts, credit card accounts and any and all financial accounts he had opened for the businesses, although Ninoosh was not allowed to access those accounts and credit cards for personal use; and (7) Hossein was to provide Ninoosh with monthly profit and loss sheets including back up financial documents, including but not limited to bank statements, canceled checks and paid

invoices. Ninoosh's request for Hossein to restore and maintain the credit limits on her credit card was denied.[1]

Ninoosh filed a motion to dismiss the appeal arguing Hossein did not comply with the court's orders. He did not pay the family support ordered by the court, contact Wells Fargo about the mortgage, make arrangements to pay the outstanding mortgage, or bring up to date all payments associated with maintaining the house. Nor did he give Ninoosh access to the business accounts or provide her with monthly profit and loss sheets.

In response, Ninoosh filed a second request for order (RFO-2), requesting that Hossein restore her access to the business credit cards so that she could pay living expenses. Ninoosh also requested permission to sell the family residence. The court held a hearing addressing RFO-2 on November 5, 2015. During the hearing, the court repeatedly commented on Hossein's seemingly willful noncompliance with the court's previous order, finding that Hossein was "doing exactly the opposite" of what the court had ordered. "[T]he court makes an order and as soon as the court makes an order . . . [Hossein] flips his nose, and he does not follow the order of the court." In short, the court determined, Hossein had not followed any of the court's orders. As the court noted: "He followed one, the one that benefitted him,

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[1] The order was issued on August 13, 2015 and was reduced to a findings and order after hearing, filed on November 18, 2015.

but all of the other orders that benefitted [Ninoosh], he has not followed them."

In addition to reiterating that the previous order remained in full force and effect, the court issued the following additional orders: (1) Hossein was to immediately restore Ninoosh's ability to use the business credit cards; (2) the family home was to be sold and Ninoosh would have full discretion over the sale; and (3) once the house was sold, $150,000 was to be set aside to pay Ninoosh's attorney and accountants. Another $150,000 was to be set aside to assist with Ninoosh's relocation costs and living expenses.[2]

According to Ninoosh's motion to dismiss, Hossein has yet to comply with either set of orders despite his ability to do so. Thus, we should apply the disentitlement doctrine and dismiss the appeal or stay the appeal so that Hossein can comply with the court's previous orders. Hossein contends that he does not have the ability to comply with any of the court's financial orders.[3] He has no assets or income and the businesses are teetering on the edge of

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[2] This order was issued on November 5, 2015, and was reduced to a findings and order after hearing, filed on February 23, 2016.

[3] Hossein is appealing both sets of orders. The present appeal (B269776) is an appeal from the November 18, 2015, order while B271802 is an appeal from the February 23, 2016, order. Hossein has not yet filed an opening brief in B271802.

bankruptcy. Thus, he has not *willfully* disobeyed the court's orders, as is required by the disentitlement doctrine.[4]

DISCUSSION

I. The Disentitlement Doctrine

The disentitlement doctrine empowers a reviewing court to dismiss an appeal by a party who refuses to comply with trial court orders. (*Stoltenberg v. Ampton Investments, Inc.* (2013) 215 Cal.App.4th 1225, 1229 (*Stoltenberg*).) It is not designed to punish a party, but to vindicate the court's interest in inducing compliance with presumptively valid orders. (*In re Marriage of Hofer* (2012) 208 Cal.App.4th 454, 459 (*Hofer*).) The doctrine is not jurisdictional. Rather, it is a discretionary tool that may be used when the balance of the equitable concerns makes dismissal an appropriate sanction. (*Stoltenberg*, at p. 1230.)

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[4] In addition to filing an opposition to Ninoosh's motion to dismiss, Hossein also filed an opening brief addressing the merits of the case. Ninoosh did not respond to the opening brief. We do not consider this to be a concession and reach the merits of the appeal. (*In re Marriage of Riddle* (2005) 125 Cal.App.4th 1075, 1078, fn.1; *In re Bryce C.* (1995) 12 Cal.4th 226, 232–233 [failure to file brief not treated as consent to reversal].) We determine the appeal based on the record provided and Hossein's opening brief. (Cal. Rules of Court, rule 8.220(a)(2).) As appellant, Hossein retains the burden of demonstrating prejudicial error, even if Ninoosh does not file a brief. (*Ruttenberg v. Department of Motor Vehicles* (1987) 194 Cal.App.3d 1277, 1282.)

When the doctrine is imposed, the appellant is typically in contempt at the time of appeal, usually on directly related matters. (See, e.g., *Hofer*, *supra*, 208 Cal.App.4th at pp. 456–459; *Guardianship of Melissa W.* (2002) 96 Cal.App.4th 1293, 1296; *Kottemann v. Kottemann* (1957) 150 Cal.App.2d 483, 484–488 (*Kottemann*).) Under these circumstances, " 'it would be a flagrant abuse of the principles of equity and of the due administration of justice to consider the demands of a party who becomes a voluntary actor before a court and seeks its aid while he stands in contempt of its legal orders and processes.' " (*Stone v. Bach* (1978) 80 Cal.App.3d 442, 444 (*Stone*).)

Notably, however, no formal judgment of contempt is required before we apply the doctrine. Instead, an appellate court " 'may dismiss an appeal where there has been willful disobedience or obstructive tactics.' " (*Stoltenberg*, *supra*, 215 Cal.App.4th at p. 1230, italics omitted.) "The principle permitting this court to stay or dismiss an appeal does not require a formal judgment of civil contempt. It 'is based upon fundamental equity and is not to be frustrated by technicalities,' such as the absence of a formal citation and judgment of contempt." (*Hofer, supra,* 208 Cal.App.4th at p. 460, citing *Stone*, *supra*, 80 Cal.App.3d at p. 444.)

An appeal may be dismissed even if the noncompliant appellant believes that the trial court's judgment or order is invalid. "A trial court's judgment and orders, all of them, are presumptively valid and must be obeyed and enforced. [Citation.] They are not to be frustrated by litigants except

by legally provided methods." (*Stone, supra,* 80 Cal.App.3d at p. 448; see *Hofer*, *supra*, 208 Cal.App.4th at p. 459.) Thus, the merits of an appeal are irrelevant to an appellate court's determination whether to dismiss the appeal under the disentitlement doctrine. (*Ironridge Global IV, Ltd. v. ScripsAmerica, Inc.* (2015) 238 Cal.App.4th 259, 266 (*Ironridge*).)

The cases in which the disentitlement doctrine has been applied exhibit relatively straightforward examples of blatant disobedience. In *Gwartz v. Weilert* (2014) 231 Cal.App.4th 750, for example, judgment debtors appealing a large fraud verdict violated a lower court order forbidding them from transferring assets while the appeal was pending. The appellants did not deny that the transfers had taken place. (*Id.* at p. 752.) The court concluded that the relevant equitable principles favored dismissal of the appeal because the record showed "that defendants are seeking the benefits of an appeal while willfully disobeying the trial court's valid orders and thereby frustrating defendants' legitimate efforts to enforce the judgment." (*Id.* at p. 761.)

In *Ironridge*, *supra*, 238 Cal.App.4th 259, while appealing an order requiring the defendant to issue stock to the plaintiff and prohibiting the defendant from transferring stock to any third parties until it had completed the required transfer to plaintiff, the defendant transferred millions of shares to third parties and none to plaintiff. The court found dismissal of the appeal an appropriate remedy for the "flagrant disregard" of the trial court's order. (*Id.* at

pp. 261–262.) The defendant opposed the motion to dismiss the appeal by arguing the trial court's orders were invalid. (*Id.* at p. 266.) The court noted that " '[a] person may refuse to comply with a court order and raise as a defense to the imposition of sanctions that the order was beyond the jurisdiction of the court and therefore invalid' " (*id.* at p. 267, quoting *In re Marriage of Niklas* (1989) 211 Cal.App.3d 28, 35), but " 'may not assert as a defense that the order merely was erroneous.' " (*Ironridge*, at p. 267.) Because the order was neither void nor voidable, the defendant "had no cause to disobey the court's order, but did so, repeatedly." (*Ibid.*) Thus, application of the doctrine was warranted.

In *Stoltenberg*, *supra*, 215 Cal.App.4th 1225, the appellate court dismissed an appeal of the defendants (an individual and a corporation) from a judgment against them, for which they had not posted a bond to stay enforcement, under the disentitlement doctrine. (*Id.* at pp. 1227, 1234.) Dismissal was found to be warranted because a trial court had ordered the defendants "to respond to a postjudgment discovery designed to obtain information to aid in the enforcement of the judgment being appealed" and they had been "found to be in contempt of that order." (*Id.* at p. 1232.)

In *Blumberg v. Minthorne* (2015) 233 Cal.App.4th 1384, a trustee defendant used funds from her family trust to buy property, taking title in her personal capacity. The trial court found the defendant had mishandled the trust funds and ordered her to reconvey the property to the trust and prepare and file an accounting. The defendant defied

the orders by failing to file an accounting and conveying the property to her daughter rather than the trust. The defendant appealed the trial court orders and argued they were stayed pending the appeal. (*Id.* at pp. 1388–1389.) The appellate court found the defendant's flagrant violation of the trial court's orders "despicable" and dismissed the appeal. (*Id.* at p. 1391.) The court noted an appellate court has " 'inherent power' " to dismiss under the disentitlement doctrine when a party " 'refuses to comply with a lower court order.' " (*Id.* at p. 1390.) Finding the defendant had disobeyed two court orders, the court concluded such willful disobedience justified dismissal of the appeal. (*Id.* at p. 1392; see *Kottemann, supra,* 150 Cal.App.2d at p. 487.) In each case, the reviewing court did not have to examine reams of exhibits or make calls about credibility to decide whether to apply the doctrine. Moreover, all the cases share a crucial common denominator—the appellant in each willfully disobeyed court orders.

Here, Hossein maintains he is incapable of complying with the financial aspects of the trial court's orders and thus has not willfully disobeyed the court. During the hearing on RFO-2, Hossein's counsel told the court that Hossein was unable to make the previously-ordered $20,000 monthly support payments. The court countered that it had prohibited Ninoosh from using the businesses credit cards, per Hossein's request, in order to offset those monthly support payments. On the day of the hearing, Hossein also filed an income and expenses declaration stating that he

currently made only $6,000 a month.[5] Due to the late filing, however, the court refused to consider the declaration. The court also noted that, according to Hossein's schedule of assets and debts, Hossein had recently obtained a $500,000 line of credit from American Express and still had ten employees on the company payroll.

Later in the hearing, Hossein's counsel stated that Hossein did not have the funds to pay the mortgage on the family residence.[6] According to counsel, this representation was based on bank statements, profit and loss statements, and documents produced in discovery to Ninoosh and her

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[5] Ninoosh's forensic accountant previously concluded that, by the end of 2013, Hossein had an average monthly gross income of $27,835. In reaching this conclusion, the accounting firm relied on individual tax returns and corporate tax returns for each of the couple's business as well as payroll records and other tax documents. These are presumptively reliable documents. (*In re Marriage of Loh* (2001) 93 Cal.App.4th 325, 332.)

[6] During the hearing on RFO-1, Ninoosh's attorney contended that Hossein purposefully depleted the business accounts after Ninoosh filed for divorce. According to her forensic accountant, the business bank account balances had decreased substantially due to Hossein exhausting the funds on a monthly basis since the parties' separation. Ninoosh's attorney also noted that while the accounts were being depleted, Hossein bought a BMW, paid back a $57,000 loan to his sister, and took numerous vacations. Hossein's attorney maintained that any money withdrawn from the accounts went to legitimate business expenses.

attorney. The court first noted that Ninoosh said she never received those documents. The court also questioned why Hossein could not pay the mortgage but could afford it two months earlier, when the court had held its hearing on RFO-1. Hossein's counsel said that Hossein had not been paying the mortgage when the RFO-1 hearing took place and actually had not paid the mortgage for several months before then. In the end, to ward off foreclosure and prevent the waste of a community asset, the court granted Ninoosh the unilateral ability to sell the family residence.[7]

At the RFO-2 hearing, the court rejected Hossein's claim that he could not comply with the financial aspects of the court's orders. Furthermore, at the time that this appeal was initiated, Hossein had not tried to modify the court's orders to reflect any changed financial circumstances. Nor had he attempted to stay the enforcement of the court's orders. He had not sought a discretionary stay from the court pursuant to Code of Civil Procedure section 918. And he had not petitioned the Court of Appeal for a writ of superdeas under Code of Civil Procedure section 923 to suspend or modify the nonfinancial aspects of the trial court's orders. Furthermore, he had not posted a bond or

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[7] The house was put on the market two days after the hearing and listed at $3,900,000. The house sold on March 16, 2016, for $3,500,000. <https://www.trulia.com/homes/California/Los_Angeles/sold/4329913-1783-Mandeville-Canyon-Rd-Los-Angeles-CA-90049> (as of Aug. 7, 2017).

undertaking under Code of Civil Procedure section 917.1 to stay enforcement of the financial aspects of the court's orders. Hossein simply disregarded the court's orders and filed this appeal instead.

Hossein's flagrant refusal to abide by the trial court's orders is precisely the conduct the disentitlement doctrine is intended to address. The court in *Stoltenberg*, *supra*, 215 Cal.App.4th 1225, summed up the situation well: "Such willful disobedience and obstruction of presumptively valid orders can, and in this case does, provide a basis upon which to dismiss the appeal under the disentitlement doctrine." (*Id.* at p. 1232.) Thus, the equities compel application of the disentitlement doctrine and dismissal of the present appeal in this case. Hossein cannot avoid dismissal by arguing that his noncompliance was excused because the lower court's orders were invalid. Courts uniformly reject such arguments as "the worst kind of bootstrapping. A trial court's judgment and orders, all of them, are presumptively valid and must be obeyed and enforced. [Citation.] They are not to be frustrated by litigants except by legally provided methods." (*Stone*, *supra*, 80 Cal.App.3d at p. 448.)

As noted above, the doctrine "prevents a party from seeking assistance from the court while that party is in 'an attitude of contempt to legal orders and processes of the courts of this state.' " (*Hofer*, *supra*, 208 Cal.App.4th at p. 459.) The doctrine " 'applies only "when the balance of the equitable concerns make it a proper sanction." ' " (*Id.* at p. 459.) Here, as in *Hofer*, the trial court's orders contained

findings that the husband had persisted in willfully disobeying its orders. (See *id.* at p. 460.) In *Hofer*, the court found the husband's refusal to comply with the trial court's orders entitled it to dismiss his appeal, and it did so. (*Id.* at pp. 460, 461.)

Nevertheless, we decline to dismiss the appeal under the disentitlement doctrine. Despite Hossein's continuous and admitted failure to comply with the trial court's orders, the trial court's noncompliance with certain statutory requirements necessitates remanding the case despite Hossein's failure, even if willful.

II. The Trial Court's Support Order

The "determination of a child support obligation is a highly regulated area of the law," the "only discretion a trial court possesses is the discretion provided by statute or rule." (*In re Marriage of Butler & Gill* (1997) 53 Cal.App.4th 462, 465.) In determining child support, California courts must adhere to the statewide uniform child support guideline set forth in Family Code[8] section 4055. Indeed, "no trial judge making a child support order can escape making a formula calculation pursuant to section 4055."[9] (*In re Marriage of*

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

[9] Under section 4055 "the statewide uniform guideline for determining child support orders is as follows: CS = K[HN - (H percent)(TN)]. [¶] . . . The components of the formula are as follows: [¶] . . . CS = child support amount; [¶] . . . K = amount of both parents' income to be allocated for

Hall (2000) 81 Cal.App.4th 313, 316–317; *In re Marriage of Bodo* (2011) 198 Cal.App.4th 373, 385.)

"Guideline" is a term of art reflecting mandated requirements with the intent that application of the formula will yield a presumptively correct amount of child support. (*In re Marriage of Hubner* (2001) 94 Cal.App.4th 175, 183.) A court may not depart from the guideline except in the special circumstances set out in section 4057.[10] (*In re Marriage of Bodo*, *supra*, 198 Cal.App.4th at pp. 385–386.) Under section 4056, subdivision (a)(1)–(3), if the court's support order differs from the statewide uniform guideline

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child support; [¶] . . . HN = high earner's net monthly disposable income; [¶] . . . H percent = approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parent . . . ; [and] [¶] . . . TN = total net monthly disposable income of both parties." (§ 4055, subds. (a)–(b)(1)(E).)

[10] If the parties litigate, and the trial court exercises the discretion it is permitted, the "court must state on the record or in writing the guideline formula result and the reasons the court is making an order that differs from it." (*In re Marriage of Hall*, *supra*, 81 Cal.App.4th at p. 317.) "And, of course, if the court simply awards the guideline formula, it must make the calculation." (*Ibid.*) Thus, a court must always "calculate the amount of support required by strict adherence to the guideline" before it may exercise its discretion to determine that a deviation from the guideline is warranted. (*In re Marriage of Hubner,* supra, 94 Cal.App.4th at p. 184.)

formula amount, the court *must* state: "(1) The amount of support that would have been ordered under the guideline formula; [¶] (2) The reasons the amount ordered differs from the guideline formula amount; and [¶] (3) The reasons the amount ordered is consistent with the best interests of the children." (See § 4056, subd. (a) ["To comply with federal law, the court *shall* state, in writing or on the record, the following information"].)

With respect to spousal support, the court *must* consider the mandatory guidelines of section 4320. (See § 4320 ["In ordering spousal support under this part, the court *shall* consider all of the following circumstances"].) Once the court does so, the ultimate decision as to amount and duration of spousal support rests within its broad discretion and will not be reversed absent an abuse of that discretion. Child support orders are reviewed under the same standard. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 282–283.)

Here, Ninoosh's forensic accountant determined that Hossein's gross adjusted income available for support was $27,835 per month. This resulted in monthly guideline spousal support in the amount of $8,121 and monthly guideline child support in the amount of $2,872 for a combined monthly guideline support of $10,993. However, the trial court set the family support (including child support) amount at $20,000 per month.

Hossein portrays this as an inexplicable decision given that Ninoosh only sought $10,000 in monthly family support.

But he omits the fact that Ninoosh *also* wanted Hossein to continue making the mortgage payments and other payments associated with maintaining the family home. The court ultimately ordered that the mortgage payments, property taxes and homeowner's insurance be made from the $20,000 support payment. Given that the monthly mortgage was approximately $9,500, it appears that the court doubled the amount of family support sought by Ninoosh to ensure that Hossein would continue to bear the mortgage and home maintenance costs. Indeed, the court said as much during the November 5, 2015, hearing. As noted by Ninoosh, "[t]his number did not miraculously occur to the court out of thin air. It reflected exactly Ninoosh's request: family support of $10,000 and Hossein to pay the mortgage."

What *is* inexplicable, however, is how the trial court arrived at a $20,000 monthly support order given that the gross adjusted income available for support was $27,835 per month. During the August 13, 2015, hearing, Ninoosh's counsel claimed to have "done the calculation" and determined that, based on "the cost of goods sold in relation to the income," Hossein was operating at a 25 percent profit margin, generating monthly income of $41,348. This was based on the premise that "[a]ny decent business" runs a "20, 25 percent profit margin" and Hossein was "a great businessman." No evidence beyond counsel's argument was

submitted to support this claim and it has no demonstrated basis in fact or theory.[11]

We review the trial court's findings of fact in connection with the support order under the substantial evidence standard of review. (*In re Marriage of Rothrock* (2008) 159 Cal.App.4th 223, 229–230.) In reviewing the findings for substantial evidence, " 'we examine the evidence in the light most favorable to the prevailing party and give that party the benefit of every reasonable inference.' " (*Id.* at p. 230.) "We accept all evidence favorable to the prevailing party as true and discard contrary evidence." (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1151.) " 'We do not reweigh the evidence or reconsider credibility determinations.' " (*In re Marriage of Calcaterra & Badakhsh* (2005) 132 Cal.App.4th 28, 34.) Given that no evidence was submitted to support counsel's profit margin claim, however, this standard of review cannot possibly be satisfied.

Furthermore, a review reveals of the August 13, 2015, hearing transcript as well as the resulting order that the court did not make the explicit findings mandated by sections 4055, 4056, 4057 or 4320.[12] These statutes apply

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[11] Hossein's attorney countered that while the parties did have a monthly cash flow of around $27,000 in 2013, business had suffered over the past year due to monetary devaluation, the loss of exports, and the departure of valuable distributors and clients.

[12] Under section 4320, subdivision (j), when ordering spousal support, a court must consider the "immediate and

"to an award for the support of children, including those awards designated as 'family support,' that contain provisions for the support of children as well as for the support of the spouse." (§ 4074.) This manifest failure of the trial court to follow its statutory obligations cannot be ignored. This omission effectively deprived the trial court of legal basis to impose its support orders. Given the trial court's facial noncompliance with the relevant statutes, the judgment must be reversed and remanded for further proceedings in conformity with those statutes.[13] (*Rojas v. Mitchell* (1996) 50 Cal.App.4th 1445, 1450–1451; *In re Marriage of Gigliotti* (1995) 33 Cal.App.4th 518, 526 [reversible error to reduce support from guideline amount without following § 4056]; *In re Marriage of Whealon* (1997) 53 Cal.App.4th 132,144–145) [remanding because deviations from guideline amount "cannot be justified simply by making an estimate"].) It is not enough for us to simply assume that we know what the court meant and then give effect to that

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specific tax consequences to each party." Although each party told the court they did not want the $20,000 support award to encumber them with a tax liability, the court refused to consider this consequence, instead responding that it "can't resolve all issues at this moment."

[13] We note that neither a statement of reasons nor a DissoMaster report appears to have been generated by the trial court in this case, which could have facilitated judicial review. Although the record includes a DissoMaster report prepared by Ninoosh's forensic accountant, the court failed to prepare its own report.

unsupported order. To enforce disentitlement based on a facially deficient order would be unfair under any circumstances. Indeed, this facial deficiency is what distinguishes the case at bar from *Ironridge*, *supra*, 238 Cal.App.4th 259 and *Stoltenberg*, *supra*, 215 Cal.App.4th 1225; the trial court's failure to itself conduct appropriate calculations cannot be excused as a mere technicality.

These calculations must be done so that each parent views the order "as the result of a fair and reasonable process, not an arbitrary decision done in a corner." (*In re Marriage of Hall*, *supra*, 81 Cal.App.4th at p. 319.) Indeed, "[w]e pride ourselves on a system of justice, especially in family law cases." (*In re Marriage of Fini* (1994) 26 Cal.App.4th 1033, 1041.) "In a just system, parents being ordered to pay or receive child support deserve to know how the amount of the support was arrived at and that the process used is one that is fair and reasonable to both the payor and the payee. This would not only make it more likely that the order will be complied with, but it would eliminate the amount ordered for child support as a source of ongoing conflict between the parents, the fallout from which is clearly harmful to the child." (*Ibid.*)

After oral argument, we asked the parties to brief whether we could imply findings to affirm the trial court's order in the absence of the required statutory calculations. Ninoosh notes that Hossein did not object to the absence of the calculation and did not object to the determination of a

support order without use of the formula.[14] Rather, his only concern was that support be paid in a lump sum and that he not bear the tax consequences of paying spousal support. Hossein could have corrected the court's error in the trial court or moved to vacate the order, Ninoosh observes, but chose neither remedy. However, Ninoosh's attorneys candidly admit they could not find a case where implied findings were substituted for the mathematical calculation of guideline support. Nor could we. Thus, the trial court must conduct the required statutory calculations in the first instance.

That task is complicated by the fact that Hossein successfully moved to disqualify Judge Tamara Hall under Code of Civil Procedure section 170.6 after the court entered its support orders. Ninoosh contends that neither Judge Hall nor the current presiding judge can conduct the required statutory calculations. Pursuant to Code of Civil Procedure section 170.4, subdivision (a)(3), a disqualified judge, notwithstanding his or her disqualification, may "[h]ear and determine purely default matters." Given "the aura of occult wizardry surrounding the algebraic formula

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[14] Ninoosh argues that Hossein's failure to object means he has waived any claim of error based on the absence of a statutory support calculation. While a party can waive the right to challenge the computation of a child support award on appeal, see, e.g., *In re Marriage of Hinman* (1997) 55 Cal.App.4th 988, 1002, Ninoosh has not cited (nor did we find) a case in which a court's failure to conduct the required computation at all was deemed waivable.

set forth in section 4055" (*In re Marriage of Hall*, *supra*, 81 Cal.App.4th at p. 319), however, the required statutory calculation cannot be deemed a purely default matter. Thus, Judge Hall is precluded from conducting the calculations. However, the current presiding judge is not so limited. While he or she will need to rehear the matter, rather than simply sign a judgment in conformity with Judge Hall's findings (see *Armstrong v. Picquelle* (1984) 157 Cal.App.3d 122, 127–128), this is the most appropriate route available here.

DISPOSITION

The order is reversed. The trial court is directed to calculate the support order in accordance with the principles set forth in this opinion. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

I concur:

CHANEY, J.

I concur in the judgment only:

ROTHSCHILD, P. J.