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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Marriage of LESLIE  
MARGUERITE KNUDSEN and  
SCOTT DOUGLAS KNUDSEN.

LESLIE MARGUERITE KNUDSEN,

Appellant,

v.

SCOTT DOUGLAS KNUDSEN,

Respondent.

B254247

(Los Angeles County  
Super. Ct. No. PD055123)

APPEAL from an order of the Superior Court of Los Angeles County.

Lloyd Loomis, Judge. Reversed and remanded with directions.

The Reape – Rickett Law Firm and Donald S. Sherwyn for Appellant.

Jones & Ayotte and Gregory A. Jones for Respondent.

Appellant Leslie Marguerite Knudsen challenges the trial court's order directing her to pay spousal support of \$3,200 per month to her ex-husband, respondent Scott Douglas Knudsen. She contends on appeal that the trial court incorrectly analyzed the factors on which the support order was based, including the marital standard of living, Scott's reasonable needs and earning capacity, her ability to pay spousal support, and the balance of hardships between the parties.<sup>1</sup> We conclude the court erred in including income Scott began earning in a job he acquired some five weeks before the couple's separation to support a finding of higher marital income than the couple ever attained. Accordingly, we reverse and remand for a determination of appropriate spousal support based on an accurate view of the marital standard of living.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Appellant Leslie Marguerite Knudsen and respondent Scott Douglas Knudsen were married more than 27 years, from August 1985 until November 2012, when they separated and Leslie initiated dissolution proceedings. At the time, the couple had two adult children, one of whom had just begun attending college out of state. The other had graduated from college, lived at home, and was planning to attend medical school.

The couple reached agreement on the division of marital assets, but were unable to resolve the issue of spousal support.<sup>2</sup> In November 2013, the court

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<sup>1</sup> Because they share a surname, the parties will be referred to by their first names.

<sup>2</sup> The couple's home, with a value of \$500,000 and equity of \$113,000, was given to Leslie in exchange for a \$46,500 equalizing payment. Leslie made an additional payment of approximately \$50,000 to Scott to equalize the value of their respective 401k retirement accounts (her account held approximately \$360,000, Scott's accounts held \$270,000).

conducted a trial on the issue. At the time of trial, Leslie was 50; Scott was 55. Scott was earning \$4,333 per month from his job as a project manager for a contractor, a job he had secured on September 28, 2012, approximately five weeks before the separation.<sup>3</sup> In addition, Scott's father paid him \$550 per month for keeping an eye on property kept in a storage facility, giving him a total income of \$4,883 per month or \$58,596 per year. Leslie was employed as a senior manager for a major corporation, earning \$14,402 per month at the time of separation (\$172,824 per year), which had increased to \$179,969 per year or nearly \$15,000 per month by the time of trial.

Leslie had submitted an income and expense declaration on March 29, 2013, five months after the separation, showing the older daughter living at home and monthly expenses of \$7,911. This included approximately \$2,500 for mortgage, property insurance and taxes, \$500 for groceries and household supplies, \$661 for automobile expenses (including insurance, gas and repairs), nearly \$600 for utilities and telephone, \$150 for eating out, \$545 for "[e]ntertainment, gifts, and vacation," and \$1,129 toward the younger daughter's college expenses.<sup>4</sup> Leslie's updated income and expense declaration, submitted shortly before trial in September 2013, showed monthly expenses of \$10,038. The primary reason for the difference was that it included \$1,460 contributed to a 401k retirement account. In addition, other items had been increased by relatively small amounts: groceries and household supplies to \$581, eating out to \$241, utilities and telephone to \$700, and automobile expenses to \$812. The amount Leslie paid toward the younger

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<sup>3</sup> Prior to that employment, Scott had been self-employed for 11 years as "Mr. Fence, Inc." a company that had closed for lack of business in 2011.

<sup>4</sup> Leslie's expenses also included \$700 per month toward paying off two credit cards, with balances of approximately \$9,500. As neither party suggest otherwise, we presume this was her separate debt.

daughter's college expenses had also increased, to approximately \$1,400 per month.

In May 2013, Scott submitted an income and expense declaration showing expenses of \$4,375 per month, including \$1,700 for rent, \$600 for groceries and household supplies, \$630 for automobile expenses, \$525 for utilities and telephone, \$200 for eating out, and \$200 for "[e]ntertainment, gifts and vacation." In October 2013, Scott submitted an updated income and expense declaration showing \$6,599 in estimated monthly expenses. The difference was primarily due to estimated rent increasing from \$1,700 to \$3,000. Other expenses that he increased on the updated declaration were his health care costs, increasing from \$100 per month to \$350, and automobile expenses, increasing from \$630 to \$700. He also added \$179 per month for the cost of a health club. Just before trial, Scott adjusted certain expenses downward -- primarily anticipated health care costs -- and estimated his reasonable monthly expenses to be \$6,094.

At trial, the court accepted into evidence the couple's 2011 and 2012 income tax returns. In 2011, the couple had adjusted gross income of \$135,412, including a \$15,000 loss from Scott's business. The 2011 returns indicated the couple paid a portion of the older child's college expenses.<sup>5</sup> Both children were listed as dependents. The couple's effective federal tax rate for 2011 was approximately 8.6 percent of their adjusted gross income. Their effective state tax rate was approximately 3.2 percent of their adjusted gross income.

The couple filed a joint return for 2012 despite the November separation. The 2012 returns showed adjusted gross income of \$169,461, including \$12,200 Scott had earned in salary from September through December, but not including 401k contributions of \$17,000. The younger child was listed as a dependent, and

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<sup>5</sup> The amount was unclear, but the couple took the maximum deduction of \$4,000.

the couple took a deduction for payment of a portion of her college expenses. The couple's effective federal tax rate was approximately 12 percent of their adjusted gross income. Their effective state tax rate was approximately 4.5 percent of their adjusted gross income.

At trial, Leslie testified that the figures on her income and expense declarations were based on actual family expenditures, which she tracked, and represented a close approximation of standard family expenditures in 2011 and 2012. She described the marital standard of living as "middle class."

Scott testified his expenses were rough estimates only. After the separation, he moved in with his father, who owned his Ventura home free and clear and did not charge Scott rent or ask for a contribution for utilities. Scott continued to live in his father's home at the time of trial, but testified he intended to move into his own place. In the meantime, Scott had been able to save a high percentage of his salary, and had accumulated between \$15,000 and \$20,000 in additional savings by the time of trial. Scott did not keep track of his actual expenditures, and he admitted the amounts on his income and expense declarations consisted primarily of estimated future expenses, and had been put together "pretty much on the fly" with the assistance of his attorney. Scott's only expenses since the separation were for food, entertainment, clothing and his automobile. Although Scott was provided a company car by his employer, he was permitted to use it only for work-related travel and for commuting to and from work. Otherwise, he used his personal car, which was 13 years old and fully paid for. He testified that his \$700 automobile expense estimate would be the cost of insurance, maintenance and gas for driving in the evenings and on weekends, but offered no evidence of his actual automobile-related expenses. Scott described the couple's marital standard of living as "middle class."

In closing argument, Leslie's counsel argued that Scott had not established a need for spousal support, as his actual living expenses were low -- half of what he claimed on his income and expense reports, as he was not paying rent or utilities -- and his current income was more than sufficient to cover them. Counsel further argued that \$700 per month should be added to Scott's income as the value of the company car he had been provided. Counsel pointed out that although Leslie earned more, her expenses going forward would be much higher than Scott's, as a significant portion of her income would be used to pay the children's college and anticipated graduate school expenses -- an expense toward which Scott would not be contributing.

Scott's counsel contended that the marital standard of living was set forth in Leslie's income and expense declarations, which were based on real data compiled during the last two years of the marriage. He argued that Scott's current income was in line with his prior employment and skills, that it would not on its own pay for the expenses that the couple shared, and that it was not unreasonable for the court to order Leslie to pay Scott an amount that would allow him to pay approximately the same living expenses.

After taking the matter under submission, the court ordered Leslie to pay \$3,200 per month in permanent spousal support to Scott, to continue until Scott remarried or died, or until further order of the court. The court's written decision and order stated that "the purpose of spousal support after a long term marriage is to provide for reasonable support in the context of the marital standard of living at or near the end of the marriage," and that the determination as to what amount, if any, to award is based on the amount "the receiver spouse needs to maintain the marital standard of living as well [as] the ability of the payor's . . . to pay and still maintain a marital standard of living." The criteria on which the court purportedly relied were: (1) each party's earning capacity; (2) Leslie's ability to pay spousal

support; (3) Scott's need based on the marital standard of living; (4) the duration of the marriage; and (5) Scott's "limited ability to find a higher paying job." The court specifically found that the parties "enjoyed an upper middle class lifestyle with a household income of over \$200,000 a year during their marriage" and that the "estimated expenses claimed by [Scott] are not unreasonable." The court observed that Leslie earned nearly \$15,000 per month, approximately three times the \$4,883 earned by Scott. In considering Leslie's ability to pay, the court rejected her request that it take into account the amount she paid toward the children's higher education because "both daughters are adults." The court rejected Leslie's contention that the value of the company car should be added to Scott's income, and accepted as reasonable the amount Scott claimed for automobile expenses. The court also rejected the contention that Scott needed no support due to his living circumstances and low expenditures since the separation: "[I]t is not equitable to consider the current circumstances whereby [Scott] sleeps on a couch in his father's home as an adequate standard of living." Leslie appealed.

## **DISCUSSION**

### *A. General Principles Governing the Determination of Spousal Support and the Standard of Review*

"Spousal support is governed by the statutory scheme set forth in [Family Code] sections 4300 through 4360. Section 4330 authorizes the trial court to order a party to pay spousal support in an amount, and for a period of time, that the court determines is just and reasonable, based on the standard of living established during the marriage, taking into consideration the circumstances set forth in section

4320” to the extent they are relevant.<sup>6</sup> (*In re Marriage of Nelson* (2006) 139 Cal.App.4th 1546, 1559; see *In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 302.) Here, the relevant section 4320 factors include: (1) the earning capacity of each party; (2) the marketable skills of the supported party; (3) the supporting party’s ability to pay; (4) the needs of each party; (5) each party’s obligations and assets; and (6) the duration of the marriage.<sup>7</sup> Section 4320 also requires the trial court to consider the balance of hardships to each party and includes a catchall provision, allowing the court to consider “[a]ny other factors [it] determines are just and equitable.” (§ 4330, subds. (k) & (n).)

“The purposes of spousal support inevitably vary from case to case, depending upon the parties and the facts and circumstances of the case. The facts and the equities in one case may call for no spousal support, or for very short-term support for the purpose of financially assisting one spouse in the transition to single status or until the proceeds from an ordered property division or sale can be received. [Citation.] At the other end of the spectrum are cases where the purpose of spousal support is to provide financial assistance to the supported spouse until the death of one of the spouses because . . . the supported spouse is not able to generate income from employment or assets, or, in any event, an amount of income sufficient to provide for his or her own reasonable living expenses.” (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 480-481.)

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<sup>6</sup> Undesignated statutory references are to the Family Code.

<sup>7</sup> The parties agreed that section 4320 factors such as impairment of the lower income spouse’s earning ability due to devoting time to domestic duties, contribution of the lower earning spouse to the attainment of education, training, etc. of the higher earning spouse, and the presence of age or health issues were not applicable to the couple.



“‘In making its spousal support order, the trial court possesses broad discretion so as to fairly exercise the weighing process contemplated by section 4320, with the goal of accomplishing substantial justice for the parties in the case before it.’ [Citation.] In balancing the applicable statutory factors, the trial court has discretion to determine the appropriate weight to accord to each. [Citation.]” (*In re Marriage of Cheriton*, *supra*, 92 Cal.App.4th at p. 304, quoting *In re Marriage of Kerr* (1999) 77 Cal.App.4th 87, 93.) “But the ‘court may not be arbitrary; it must exercise its discretion along legal lines, taking into consideration the applicable circumstances of the parties set forth in [the statute], especially reasonable needs and their financial abilities.’” (*In re Marriage of Cheriton*, *supra*, at p. 304, quoting *In re Marriage of Prietsch & Calhoun* (1987) 190 Cal.App.3d 645, 655.) Further, the court must recognize and apply each relevant statutory factor in setting spousal support. (*In re Marriage of Cheriton*, *supra*, at p. 304.) “Failure to do so is reversible error.” (*Ibid.*)

Appellate review of the trial court’s determination of the amount to award for spousal support based on its weighing of the section 4320 factors is under the deferential abuse of discretion standard. (*In re Marriage of Rosen* (2002) 105 Cal.App.4th 808, 825; *In re Marriage of Blazer* (2009) 176 Cal.App.4th 1438, 1443.) The reviewing court will also examine the challenged order for legal and factual support. (*In re Marriage of Blazer*, *supra*, 176 Cal.App.4th at p. 1443.) The trial court’s factual findings -- express or implied -- “must be supported by substantial evidence.” (*In re Marriage of Rosen*, *supra*, 105 Cal.App.4th at p. 826.)

### B. Marital Standard of Living

The statutory scheme requires the court to make “specific factual findings with respect to the standard of living during the marriage,” regardless of whether

findings are requested. (*In re Marriage of Rosen, supra*, 105 Cal.App.4th at p. 825.) The marital standard of living is defined as the parties’ “‘reasonable needs commensurate with [their] general station in life,’ achieved by the date of separation.” (*In re Marriage of Kerr, supra*, 77 Cal.App.4th at p. 94, quoting *In re Marriage of Smith, supra*, 225 Cal.App.3d at p. 491.) Where the couple has a history of “significant marital savings, designed to ensure financial security and comfortable provision for their . . . retirement,” the court should consider their practice of saving for the future as an element in their marital standard of living. (*In re the Marriage of Drapeau* (2001) 93 Cal.App.4th 1086, 1097.)

The marital standard of living is the “reference point against which the other statutory factors are to be weighed.” (*In re Marriage of Cheriton, supra*, 92 Cal.App.4th at p. 303.) “[I]f the supporting spouse has the ability to pay, support should be ordered at a level sufficient to allow the supported spouse to maintain the [marital standard of living].” (*In re Marriage of Drapeau, supra*, 93 Cal.App.4th at p. 1097, quoting *In re Marriage of Weinstein* (1991) 4 Cal.App.4th 555, 565.) However, the court may “‘fix spousal support at an amount greater than, equal to or less than what the supported spouse may require to maintain the marital standard of living, in order to achieve a just and reasonable result under the facts and circumstances of the case.’” (*In re Marriage of Williamson* (2014) 226 Cal.App.4th 1303, 1316, quoting *In re Marriage of Smith, supra*, 225 Cal.App.3d at p. 475.)

Here, substantial evidence does not support the trial court’s finding with respect to the couple’s marital income and marital standard of living. The court found that they “enjoyed an upper middle class lifestyle with a household income of over \$200,00 a year during their marriage.” The parties each asserted they enjoyed a middle class lifestyle. The only evidence in the record concerning the couple’s annual income -- tax returns for 2011 and 2012 -- indicated that the

couple earned far less than \$200,000 per year during the relevant period. The returns indicated Leslie earned \$144,106 in 2011 and \$162,562 in 2012. Scott's business lost money in 2011, and it was not active in 2012. The family was living on Leslie's salary, a fact confirmed by her declarations of income and expenses, which she and Scott agreed were indicative of the family's actual expenditures for 2011 and 2012. The \$8,000 to \$10,000 per month total expenses calculated by Leslie reflected a lifestyle commensurate with her post-tax monthly income.<sup>8</sup> There was no evidence of lavish vacations or expensive cars and no indication the family ate out more than a few times per month or treated themselves to expensive clothing or other consumer goods. The couple's home was valued at \$500,000, a moderate amount by Southern California standards. Other than the mortgage -- \$1,774 per month, or \$2,500 if insurance and property taxes were included -- the couple's primary expenditures were on retirement saving and their children's education.

The court's conclusion concerning the couple's marital income could only have been based on the couple's combined post-separation income, which at the time of trial exceeded \$200,000. But Scott obtained his job approximately five weeks before the parties' separation. Because the salary from Scott's newly secured job had not substantially contributed to the marital standard of living, it should not have been included in the court's calculation of marital income and marital standard of living. By including Scott's income in this calculation, the court artificially inflated it.<sup>9</sup> As the court miscalculated the parties' marital

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<sup>8</sup> The 2012 tax return indicated the couple paid \$22,000 in federal taxes and \$7,800 in state taxes, plus more than \$7,000 toward Social Security and Medicare.

<sup>9</sup> Scott's income was appropriately used to determine the extent to which he was capable of earning enough on his own to maintain the standard of living established during the marriage. (See § 4320, subd. (a) [in ordering spousal support, court shall  
(*Fn. continued on next page.*)

standard of living -- the “reference point” against which all the section 4320 statutory factors are to be weighed -- the award must be reversed for reconsideration of the statutory factors in light of the couple’s actual marital standard of living.

### *C. Scott’s Reasonable Needs and Earning Capacity*

Leslie contends the court failed to properly take into account Scott’s minimal expenses or include the value of housing provided by his father, a company car and his separate property.

#### *1. Scott’s Living Expenses*

The evidence established that Scott had incurred only modest living expenses following the separation, having moved into his father’s home, where he lived rent-free.<sup>10</sup> Leslie contended this family support should be taken into account in calculating Scott’s income and expenses. Unless it is part of a compensation package for employment in the family business, support offered an adult child by a parent is a gift. (*In re Marriage of Schulze* (1997) 60 Cal.App.4th 519, 531-532.)

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consider “[t]he extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account . . . [t]he marketable skills of the supported party, the job market for those skills . . . .”; *In re Marriage of Mosley* (2008) 165 Cal.App.4th 1375, 1388 [in determining spousal support, court is to consider supported spouse’s marketable skills and ability to engage in gainful employment]; *In re Marriage of Meegan* (1992) 11 Cal.App.4th 156, 161 [spousal support to be determined according to needs of both parties and respective abilities to meet those needs].)

<sup>10</sup> The court’s statement that Scott was “sleep[ing] on a couch” in his father’s house was not supported by the record. There was no evidence to suggest he was not living comfortably in his father’s home.

“[G]ifts, whether inter vivos [citation] or testamentary [citation], are not within the scope of the statutory definition of income.” (*In re Marriage of Scheppers* (2001) 86 Cal.App.4th 646, 649.) A trial court may, however, “exercise its discretion to consider third party gifts to a supported spouse in determining a spousal support award.” (*In re Marriage of Shaughnessy* (2006) 139 Cal.App.4th 1225, 1243.) Although not required to “mechanically decrease a supported spouse’s award by the amount of any gifts received,” the trial court has “broad discretion to consider evidence of monetary gifts as one factor, together with evidence pertaining to all of the other section 4320 factors, in determining the appropriate spousal support award.” (*In re Marriage of Shaughnessy, supra*, 139 Cal.App.4th at pp. 1243-1244.)

Here, Scott testified at trial that he intended to move into his own residence, and the trial court apparently credited that testimony. We discern no abuse of discretion in this initial determination. (See *In re Marriage of McQuoid* (1991) 9 Cal.App.4th 1353, 1360 [trial court properly included reasonable rent and child care costs in determining wife’s monthly expenses for purposes of calculating spousal support, although she lived with her mother, who provided subsidized rent and free child care].) On remand, however, if evidence establishes that Scott continues to incur no housing expenses, the court should reassess his needs.

## 2. *Scott’s Company Car*

Leslie contends that the value of the company car should have been attributed as income to Scott. A car provided by an employer is a benefit related to compensation and may be included in calculating a spouse’s actual income. (*In re Marriage of Schulze, supra*, 60 Cal.App.4th at p. 528; see § 4058 [“annual gross income” of payor spouse includes “[i]n the discretion of the court, employee benefits or self-employment benefits, taking into consideration the benefit to the

employee, any corresponding reduction in living expenses, and other relevant facts”].) Here, the evidence indicated that Scott was permitted to use the company car for company-related travel and for getting to and from work only; he kept a separate car for personal travel in the evenings and on weekends. Scott testified that his car was older and required substantial upkeep, although he was unable to document the \$700 per month he estimated it cost. Under the deferential standard applicable, we cannot say the court abused its discretion in excluding the company car from Scott’s income.

### 3. *Scott’s Earning Capacity*

Section 4320, subdivision (a) requires the court to take into account the extent to which the earning capacity of each party is sufficient to maintain the marital standard of living. “[E]arning capacity” is not confined to the parties’ actual earnings, but is defined to include “the income the spouse is reasonably capable of earning based upon the spouse’s age, health, education, marketable skills, employment history, and the availability of employment opportunities.” (*In re Marriage of Simpson* (1992) 4 Cal.4th 225, 234.) Here, the court found that Scott had only a “limited ability to find a higher paying job.” Leslie contends the finding was not supported by substantial evidence.

Although there was little evidence in the record on this point, we cannot say it was completely unsupported. In view of the evidence of Scott’s age, and his past employment for eleven years as a fencing contractor with decreasing income, the court could reasonably conclude that Scott was in the most lucrative position available for someone with his skills and experience.

#### *4. Scott's Separate Property Interests*

Section 4320, subdivision (e) directs the court to consider the assets of the spouse to whom support will be paid, including “separate property.” The evidence established that Scott acquired through inheritance a partial interest in properties located in Forestville, California, near the Russian River. He did not include a value for these properties on his separate property declaration and at trial, testified he could not ascribe a value to them. Leslie contends the trial court should have considered these as valuable assets worth many hundreds of thousands of dollars. In the absence of any evidence as to their value or of Scott’s percentage interest, the court had no basis to do so.

#### *D. Leslie's Ability to Pay*

Leslie contends that “[s]imple math” establishes she will be unable to meet her needs after she pays the court-ordered spousal support to Scott. She contends her income -- approximately \$15,000 per month at the time of trial -- will be reduced by a “38% combined federal and state tax rate,” leaving her \$9,300 per month. Once the \$3,200 awarded to Scott is subtracted, she will have only \$6,100, significantly less than the \$8,000 to \$10,000 in monthly expenses she incurred in 2011 and 2012, leaving her “underwater.” Her analysis is not supported by the evidence. The couple’s combined state and federal tax rate was less than 20 percent in 2011 and 2012. Moreover, spousal support payments are deductible and not included in the payor’s taxable income. (See 26 U.S.C. § 215(a).)

#### *E. Children's Education Expenses*

Leslie contends the court erred in failing to include her anticipated expenses in paying for the higher education of the couple’s daughters, and by failing to consider the impact of these expenditures on her ability to pay or the balance of

hardships between the parties. The support obligation for a child ceases when the child completes the twelfth grade or attains the age of 19 years (§ 3901, subd. (a)), and a trial court may not award support for an adult child under the guise of spousal support. (*In re Marriage of Lynn* (2002) 101 Cal.App.4th 120, 133; *In re Marriage of Serna* (2000) 85 Cal.App.4th 482, 487; *In re Marriage of McElwee* (1988) 197 Cal.App.3d 902, 910-911.) Trial courts may, however, consider the fact that the supporting spouse is paying for the college education of adult children when determining his or her ability to pay spousal support to the other spouse. (*In re Marriage of Epstein* (1979) 24 Cal.3d 76, 90 [in affirming modest spousal support order, court noted that husband's income was inadequate to sustain two separate households at the standard of living previously enjoyed and provide for daughter's college education]; *In re Marriage of Kelley* (1976) 64 Cal.App.3d 82, 95 [reduction in spousal support justified by husband's anticipated additional expenses flowing from enrollment of daughter in college]; see *In re Marriage of Paul* (1985) 173 Cal.App.3d 913, 919 ["In practice, courts have expressly considered the fact that the supporting spouse is paying for the college education of an adult child when determining that spouse's ability to pay spousal support to the supported spouse."].) Here, the court chose not to exercise its discretion in that manner, and we cannot say it was an abuse of discretion.

Although the court may exercise its discretion to disregard college expenses in determining the level of spousal support the higher earning spouse can afford to pay, it should ensure it is not unduly influenced by the supporting spouse's high level of monthly expenditures when compared to those of the spouse who is not supporting adult children. Here, Scott initially calculated his monthly expenses -- a very rough estimate because he was incurring few of the expenses included in his income and expense declaration -- to be \$4,375, which he raised, with minimal explanation, to \$6,094 by the time of trial. Scott's counsel essentially argued that



Scott should be entitled to payment of spousal support sufficient to allow him to expend amounts similar to Leslie with respect to housing and all other costs of living. The trial court found the expenses claimed on his declaration to be “not unreasonable.” But in almost every category, Scott estimated his future expenses to be as much as or more than Leslie’s, although she was living with one adult child and paying the college expenses of another, and she had based her declaration of income and expenses on data accumulated during a period when her salary was supporting four individuals.<sup>11</sup> The amount an adult living on his own needs to maintain a specified standard of living cannot reasonably be the same as the amount needed by an adult supporting herself and two adult children or a family of four. On remand, in calculating the needs of each party based on the marital standard of living and the extent to which Scott’s earning capacity is sufficient to maintain the marital standard of living, the court should focus on Scott’s actual monthly expenses and determine their reasonability in view of his status as a single person supporting only himself. (See *In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 209 [“[E]quality of postseparation income is not an element of section 4320 in setting spousal support”; “‘[i]t is the [supported spouse’s] needs which must be examined, not [the supporting spouse’s postseparation] standard of living.’”].)

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<sup>11</sup> We note, in particular, that Scott estimated \$3,000 per month as a reasonable amount for rent, although the family paid only \$1,775 for the mortgage on a 5,500 square foot home. He also claimed his reasonable expenses for groceries, eating out and utilities should be the same as had been spent by Leslie for herself and the children or the entire family of four.

## **DISPOSITION**

The matter is reversed and remanded for further proceedings in conformity with the views expressed in this opinion. Leslie is awarded her costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

MANELLA, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.