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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re the Marriage of ARTHUR and POLINA TSATRYAN.	B265467 (Los Angeles County Super. Ct. No. BD512645)
ARTHUR TSATRYAN, Appellant, v. POLINA TSATRYAN, Respondent.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark A. Juhas, Judge. Affirmed.

Arthur Tsatryan, in pro. per., for Appellant.

Linda T. Barney for Respondent.

INTRODUCTION

This is the fifth appeal by Arthur Tsatryan in this dissolution action.[1] Arthur appeals from the judgment of dissolution dated May 21, 2015, and challenges the court's rulings regarding community property, child and spousal support, and attorney's fees. Arthur's challenges are without merit, and we affirm.[2]

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[1] For convenience and clarity, and intending no disrespect, we refer to Arthur and Polina Tsatryan by their first names. (See *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 817, fn. 1; *In re Marriage of Lucio* (2008) 161 Cal.App.4th 1068, 1072, fn. 1.)

[2] In the first appeal, Arthur challenged an order denying his request to change child custody and his motion to relieve the court-appointed counsel for the parties' son, Alexander. We affirmed the trial court's order denying the motion to relieve counsel and dismissed the appeal from the trial court's order denying the request to change custody. (*In re Marriage of Tsatryan* (Sep. 15, 2014, B247448) [nonpub. opn.].) In the second and third appeals, Arthur challenged an order granting Polina's requests for accounting fees and for attorney's fees and costs and an order granting attorney's fees to Alexander's court-appointed counsel. We affirmed both orders. (*In re Marriage of Tsatryan* (June 17, 2015, B251033, B256458) [nonpub. opn.].) In his fourth appeal, we affirmed trial court's order granting Polina sole legal and physical custody of Alexander. (*In re Marriage of Tsatryan* (Nov. 19, 2016, B262680) [nonpub. opn.].)

FACTUAL AND PROCEDURAL BACKGROUND

A. *Background*

Arthur and Polina were married on August 5, 1987. Arthur and Polina separated on August 3, 2009, and Arthur filed a petition for dissolution of marriage on September 23, 2009. The parties have three sons. The youngest, Alexander, was born in 2001 and was a minor at the time Arthur filed for dissolution of the marriage.[3]

B. *The Trial*

Following the February 11, 2015 ruling on the child custody and visitation issues, which we addressed in the fourth appeal, the case proceeded to trial on the division of the parties' property and other reserved issues, such as child and spousal support, and attorney's fees. The trial took place on April 2 and 3, 2015. Arthur, Polina's former attorney John Michael Kelly, and an attorney from Kelly's office, Steven Shore, testified at the trial.

C. *Judgment of Dissolution*

On May 21, 2015, the trial court issued its ruling and entered the judgment of dissolution. The court made the following findings and orders:

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[3] The factual and procedural background is limited to the relevant issues raised in this appeal.

1. *Child Support*

The trial court ordered Arthur to pay Polina $507 per month for child support until Alexander either completes 12th grade or turns 19.

2. *Spousal Support*

Polina did not request spousal support, and the trial court terminated jurisdiction over spousal support payable to her.

Arthur requested spousal support from Polina. The court set the amount at zero and terminated jurisdiction over spousal support payable to him.

3. *Community Property*

The court found the Santa Clarita property to be community property and rejected Arthur's arguments to the contrary.

4. *Attorney's Fees*

Both parties sought attorney's fees. The court denied Arthur's request and awarded Polina $100,000 in attorney's fees.

DISCUSSION

As we have in our prior opinions, we begin by stating "'the most fundamental rule of appellate law . . . that the judgment [or order] challenged on appeal is presumed correct, and it is the appellant's burden to affirmatively demonstrate error.' [Citation.]" (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383; accord, *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) "'To demonstrate error, appellant must present

meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.]' [Citation.] 'Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review.' [Citation.] 'Hence, conclusory claims of error will fail.' [Citation.]" (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1457; accord, *Rojas v. Platinum Auto Group, Inc.* (2013) 212 Cal.App.4th 997, 1000, fn. 3.)

We also acknowledge again that a party who is representing himself has a more limited understanding of the rules on appeal than an experienced appellate attorney. Whenever possible, we do not strictly apply technical rules of procedure in a manner that deprives a party of a hearing. However, we cautioned, "mere self-representation is not a ground for exceptionally lenient treatment." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984.)

Arthur's 82-page opening brief is a scattershot of 78 pages of facts followed by four pages of argument that never congeal into a properly presented claim of error. The reply brief is 62 pages of similarly unfocused points in response to Polina's arguments. Arthur does not present a single claim of error that is supported by well-reasoned argument, citations to the record or relevant legal authority. Simply claiming error is insufficient. (*Okorie v. Los Angeles Unified School Dist.* (2017) 14 Cal.App.5th 574, 599-600 [the appellant has the burden to present legal authority for arguments made]; *In re S.C.* (2006) 138 Cal.App.4th 396, 410 [a claim of error "is no legal analysis at all," "[i]t is simply a conclusion, unsupported by any explanation" of asserted error].) On this basis alone, Arthur's arguments fail. (*Landry v.*

Berryessa Union School Dist. (1995) 39 Cal.App.4th 691, 699-700 ["When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary"].)

Despite these fundamental failings, we will address Arthur's four main contentions. Arthur argues the trial court erred by (1) finding the Santa Clarita property was community property; (2) ordering Arthur to pay child support; (3) denying Arthur's request for spousal support; and (4) granting Polina's request for attorney's fees and denying his request for fees. We shall address each argument in turn.

A. *The Santa Clarita Property*

1. *Standard of Review*

"A trial court's findings regarding a property's separate or community character is [*sic*] binding and conclusive on review when supported by substantial evidence [citations], even though evidence conflicts or supports contrary inferences. [Citations.] However, substantial evidence is not synonymous with 'any' evidence. [Citation.] It must have ponderable legal significance and "'must be reasonable in nature, credible, and of solid value; it must actually be 'substantial' proof of the essentials which the law requires in a particular case." [Citation.]' [Citation.]" (*In re Marriage of Grinius* (1985) 166 Cal.App.3d 1179, 1185; see also *In re Marriage of Walker* (2012) 203 Cal.App.4th 137, 152.)

In applying the substantial evidence standard, "'we must consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the judgment. [Citations.] [¶] It is not our task to weigh conflicts and disputes

in the evidence; that is the province of the trier of fact.'" (*Regalado v. Callaghan* (2016) 3 Cal.App.5th 582, 595-596.) We defer to the trial court's determination of credibility and do not reweigh the evidence. (*Schneer v. Llaurado* (2015) 242 Cal.App.4th 1276, 1285-1286.) Even if the appellant demonstrates that inferences favorable to him are reasonable, we have no power to reject the contrary inferences drawn by the trial court, if they are reasonable as well. (*Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1658; see also *Regalado*, *supra*, at p. 596.)

Where the appellant contends there is no substantial evidence to support the judgment, "[w]e must presume that the evidence supports the court's factual findings unless the appellant affirmatively demonstrates to the contrary. [Citation.]" (*Bell v. H.F. Cox, Inc.* (2012) 209 Cal.App.4th 62, 80.) The appellant must set forth all the material evidence, both "'favorable and unfavorable, and show how and why it is insufficient. [Citation.]' [Citation.]" (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738, italics omitted.) The appellant must also "faithfully recite the facts supporting the" judgment (*Brockey v. Moore* (2003) 107 Cal.App.4th 86, 96), supporting each factual reference with an appropriate citation to the record (Cal. Rules of Court, rule 8.204(a)(1)(C); *Salehi v. Surfside III Condominium Owners' Assn.* (2011) 200 Cal.App.4th 1146, 1161-1162). Failure to accurately set forth the evidence in the record forfeits on appeal the challenge to the sufficiency of the evidence. (*Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 52; *Brockey*, *supra*, at p. 96.)

2. *Substantial Evidence Supports the Trial Court's Finding the Santa Clarita Property Was Community Property*

Arthur argues the property was his separate property because title was held in his name and, alternatively, because Polina gifted him the property by signing an Interspousal Transfer Deed.[4] Neither argument has merit.

a. *The Santa Clarita Property Was Purchased With Community Property Assets*

While the parties did "not dispute that the deed (recorded in December 2003) to the Santa Clarita [p]roperty was taken in the name of 'Arthur Tsatryan, a married man, as his sole and separate property,'" the court found "[t]he law is very clear, [that] any property that is purchased during marriage is presumptively community property." Because "[t]here [was] no evidence as to where the money for the down payment or any of the monthly payments for the property came from," the court found "the Santa Clarita property was purchased with community property, and based upon the evidence before the [c]ourt, that presumption will control." The court's application of the presumption was corroborated by "a review of the loan application [which] demonstrate[d] that [Arthur] used as both collateral and income assets and income that is all presumptively community property" to purchase the property. The court found Arthur failed to show the Santa Clarita property "was anything other than community property." Arthur fails to make any showing on appeal that the court's application of the presumption was error.

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[4] Arthur refers to this as the Valencia property.

Arthur points to Evidence Code section 662 to support his separate property argument, but Arthur failed to raise this argument before the trial court. Nonetheless, the trial court spotted the issue, addressed it, and rejected it.[5] The court stated, "[Arthur] did not raise an Evidence Code [section] 662 title presumption argument and one does not lie here in any event. There is no evidence as to where the money for the down payment or any of the monthly payments for the property came from. Presumptively, the funds came from community property sources." (Italics omitted.) The court went on to state, "There is no indication that there is a Family Code [section] 2640 reimbursement. There is no indication that there are any other sums of money in the property, other than the community

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[5] Evidence Code section 662 states: "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof." However, "Evidence code section 662's common law presumption does not nullify the community property statutes. All property acquired during marriage is presumed to be community property. Evidence that certain property is in the name of one spouse might, depending on the circumstances, be relevant to help overcome the presumption if and only if it demonstrates that one of the statutory exemptions to the presumption applies. But that evidence does not itself reverse the presumption. Future courts resolving disputes over how to characterize property acquired during the marriage in an action between the spouses should apply the community property statutes found in the Family Code and not [Evidence Code] section 662." (*In re Marriage of Valli* (2014) 58 Cal.4th 1396, 1413-1414, italics omitted.) Accordingly, the trial court did not err by rejecting the potential Evidence Code issue in favor of the statutory presumption.

property." (Italics omitted.) Accordingly, substantial evidence supports the trial court's conclusion, and Arthur has failed to carry his burden to demonstrate otherwise.

b. *Polina Did Not Gift the Property to Arthur*

The trial court further found "[t]here is also no dispute that in late December [2003], [Polina] executed an Interspousal Transfer Deed to [Arthur] in order for [Arthur] to take title as 'a married man' because such a transfer is required for real property transactions between spouses." Arthur contends Polina executed the transfer deed knowingly and because she wanted to gift the property to Arthur. The court rejected Arthur's arguments.

Spouses "may, through a transfer or an agreement, transmute—that is, change—the character of property from community to separate or from separate to community. (Fam. Code, § 850.) A transmutation of property, however, 'is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.' (*Id.*, § 852, subd. (a).) To satisfy the requirement of an 'express declaration,' a writing signed by the adversely affected spouse must expressly state that the character or ownership of the property at issue is being changed. [Citation.]" (*In re Marriage of Valli* (2014) 58 Cal.4th 1396, 1400.)

As the trial court pointed out, spouses are in a fiduciary relationship which "imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other." (Fam. Code, § 721, subd. (b); *In re Marriage of Burkle* (2006) 139 Cal.App.4th 712, 729.) Thus,

"'whenever [spouses] enter into an agreement in which one party gains an advantage, the advantaged party bears the burden of demonstrating that the agreement was not obtained through undue influence . . . .' [Citations.]" (*Burkle*, *supra*, at p. 729.) The presumption of undue influence in an interspousal transaction arises where "one spouse has obtained an advantage over the other in the transaction. [Citations.] The presumption of undue influence is regularly applied in marital transactions in which one spouse has deeded property to the other . . . . In such cases, it is evident one spouse has obtained an advantage—the deeded property—from the other." (*Id.* at p. 730; accord, *In re Marriage of Fossum* (2011) 192 Cal.App.4th 336, 344.)

"'"When a presumption of undue influence applies to a transaction, the spouse who was advantaged by the transaction must establish that the disadvantaged spouse's action 'was freely and voluntarily made, with full knowledge of all the facts, and with a complete understanding of the effect of' the transaction." [Citation.]' [Citation.] The advantaged spouse must show, by a preponderance of evidence, that his or her advantage was not gained in violation of the fiduciary relationship. [Citation.] '"The question 'whether the spouse gaining an advantage has overcome the presumption of undue influence is a question for the trier of fact, whose decision will not be reversed on appeal if supported by substantial evidence.'" [Citation.]' [Citation.]" (*In re Marriage of Fossum*, *supra*, 192 Cal.App.4th at p. 344.)

Given their fiduciary relationship, Arthur had the burden to demonstrate Polina "knowingly transferred all right, title, and interest in the Santa Clarita [p]roperty to [Arthur]." The trial court found Arthur failed to carry his burden and concluded Arthur "gained an unfair advantage over [Polina]."

"'[W]here the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. . . . [¶] Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) "uncontradicted and unimpeached" and (2) "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding." [Citation.]' [Citation.]" (*Dreyer's Grand Ice Cream, Inc. v. County of Kern* (2013) 218 Cal.App.4th 828, 838; quoting, *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.)

"Where, as here, the judgment is against the party who has the burden of proof, it is almost impossible for him to prevail on appeal by arguing the evidence compels a judgment in his favor. That is because unless the trial court makes specific findings of fact in favor of the losing plaintiff, we presume the trial court found the plaintiff's evidence lacks sufficient weight and credibility to carry the burden of proof. [Citations.] We have no power on appeal to judge the credibility of witnesses or to reweigh the evidence." (*Bookout v. State of California ex rel. Dept. of Transportation* (2010) 186 Cal.App.4th 1478, 1486.)

The evidence does not compel a finding in Arthur's favor as a matter of law. Indeed, as the trial court found, Arthur failed to present any evidence that when Polina signed the deed she understood the nature of the document she was signing or its legal significance. The court pointed out that Arthur "provided

little more than the fact that [Polina] signed the deed. There is no evidence that [Polina] understood what she was giving up, or that [Arthur] or a notary public, an attorney, anyone from KB homes, or anyone else, explained to [Polina] what she was giving up or what her community property rights were when she signed the transfer deed."

Arthur's presentation of various recorded conversations and emails failed to demonstrate that Polina intended to "gift" her interest in the Santa Clarita property to Arthur at the time she signed the Interspousal Transfer Deed. The court found it "apparent that these conversations are no more than a fight between spouses as their marriage is devolving," and, in particular, as for the emails, the court found that because they were taken out of context, they did "not make much sense."

While Arthur argues his evidence should have prevailed at trial, that is not the test on appeal. As we have previously stated, "'It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact.'" (*Regalado v. Callaghan*, *supra*, 3 Cal.App.5th at p. 595.) Therefore, we defer to the trial court's determination of credibility and cannot not reweigh the evidence. (*Schneer v. Llaurado*, *supra*, 242 Cal.App.4th at pp. 1285-1286.) Arthur fails to present evidence that compels a finding in his favor as a matter of law.

B. *Child and Spousal Support*

1. *Standard of Review*

Child and spousal support orders are reviewed for abuse of discretion. (*Y.R. v. A.F.* (2017) 9 Cal.App.5th 974, 982 [child support]; *In re Marriage of Schleich* (2017) 8 Cal.App.5th 267, 276 [spousal support].) Under the abuse of discretion standard,

we do not substitute our judgment for that of the trial court but determine only if any judge reasonably could have made such an order. (*In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1046-1047; *In re Marriage of Schlafly* (2007) 149 Cal.App.4th 747, 753.) The question before us is "'whether the court's factual determinations are supported by substantial evidence and whether the court acted reasonably in exercising its discretion.'" (*In re Marriage of Berger* (2009) 170 Cal.App.4th 1070, 1079; accord, *In re Marriage of McHugh* (2014) 231 Cal.App.4th 1238, 1247.)

2. *The Trial Court Did Not Abuse Its Discretion by Ordering Arthur To Pay Child Support*

The trial court ordered Arthur to pay $507 per month in child support to Polina. Arthur argues Polina hid her "real" income and fabricated her expense declarations. He also challenges the award of child support retroactive to January 15, 2015, claiming Alexander lived with him from October 2014 to May 1, 2015.

The court's calculation is supported by reference to the dependency exemptions, the parties respective financial circumstances, wage assignment, and medical insurance and unreimbursed medical expenses. Arthur does not challenge these calculations. Instead, Arthur makes vague references to missing evidence such as Polina's financial statements and income tax returns, or "deposition" papers, or to her "life insurance." Unsupported allegations of missing evidence fail to demonstrate the court erred in its calculations based upon the evidence presented to the court at the time of trial. (*Multani v. Witkin & Neal*, *supra*, 215 Cal.App.4th at p. 1457.)

With respect to Arthur's contention the court erred by ordering him to pay retroactive child support because Alexander lived with him for a part of the time, Polina responds appropriately that "Arthur withheld Alex from his mother during that time in violation of a court order." Arthur does not dispute he violated the court order by keeping Alexander and fails to cite any authority suggesting the court abused its discretion by awarding Polina child support during the time period she had legal custody, but he kept Alexander in violation of the custody order. The support order followed the custody order. Arthur's failure to adhere to the custody order did not relieve Arthur of his obligations to pay support. (See, e.g., *In re Marriage of Wilson & Bodine* (2012) 207 Cal.App.4th 768, 773 ["court noted support arrearages may be forgiven during the time the child is in the sole custody of the obligor parent (e.g., *In re Marriage of Trainotti* (1989) 212 Cal.App.3d 1072 . . .), but in this case there was no change in sole custody from Mother to Father"]; *In re Marriage of Popenhager* (1979) 99 Cal.App.3d 514, 523 [no equitable relief from child support arrearages; "he who seeks equity may not take advantage of his wrong (Civ. Code, § 3517)"].) The court did not abuse its discretion by requiring Arthur to live up to the terms of the prior custody order. Arthur cites no authority to the contrary.

3. *The Trial Court Did Not Abuse Its Discretion by Denying Arthur's Request For Spousal Support*

"'Spousal support is governed by statute. [Citation.] In ordering spousal support, the trial court *must* consider and weigh all of the circumstances enumerated in [Family Code section 4320], to the extent they are relevant to the case before it.

[Citations.] The first of the enumerated circumstances, the marital standard of living, is relevant as a reference point against which the other statutory factors are to be weighed. [Citations.] The other statutory factors include: contributions to the supporting spouse's education, training, or career; the supporting spouse's ability to pay; the needs of each party, based on the marital standard of living; the obligations and assets of each party; the duration of the marriage; the opportunity for employment without undue interference with the children's interests; the age and health of the parties; tax consequences; the balance of hardships to the parties; the goal that the supported party be self-supporting within a reasonable period of time; and any other factors deemed just and equitable by the court. [Citation.]' [Citation.] The trial court has broad discretion in balancing the applicable statutory factors and determining the appropriate weight to accord to each, but it may not be arbitrary and must both recognize and apply each applicable factor. [Citation.] Once it does, 'the ultimate decision as to amount and duration of spousal support rests with its broad discretion and will not be reversed on appeal absent an abuse of that discretion. [Citation.]' [Citation.] "'Because trial courts have such broad discretion, appellate courts must act with cautious judicial restraint in reviewing these orders." [Citation.]' [Citation.]" (*In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 207.)

a. *The Trial Court's Family Code Section 4320 Findings*

Addressing the Family Code section 4320 factors, the trial court found Arthur had the burden to establish the marital standard of living and failed to meet his burden.

With respect to the parties' employment and earning ability, the court found Polina was employed full time and earned roughly $75,000 annually. Arthur had his own business and a paralegal license, but, for unknown reasons, was not operating his business or working as a paralegal. In response to Arthur's contention that his parental responsibilities precluded him from working, the court noted that "[t]here are many parents who maintain full-time employment and have children that are much younger than 14," and there was nothing "special about Alex that would require [Arthur] to stay at home and not continue the business he was earning a living from." Alexander was "doing very well in school and there is no reason [why Arthur] cannot be working full-time."

With respect to Arthur's health, the court found Arthur was in good health and not depressed. The court did not find Arthur's medical or psychological evidence concerning his depression "reliable."

With respect to Arthur's efforts to find work, the court noted Arthur had been given a *Gavron*[6] warning "quite some time ago," and Arthur "testified very little regarding his job search efforts." "There are no job logs or other evidence that [Arthur] is doing much to seek employment and as such he has not complied with the '*Gavron*' warning at this point in time."

With respect to Arthur's income and debts, the court was "fairly convinced that [Arthur's] monthly income is greater than

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6 *In re Marriage of Gavron* (1988) 203 Cal.App.3d 705, 711 provides that the court in a dissolution proceeding may order a spouse "'to seek employment and to work toward becoming self-supporting.' [Citations.]"

$4,500 and does not believe that he has $650,000 in outstanding notes," as he claimed.

b. *Arthur's Challenges to the Court's Family Code Section 4320 Findings and Conclusions Lack Merit*

At the outset, Arthur argues the court failed to adequately consider the Family Code section 4320 factors. The foregoing discussion of the court's Family Code section 4320 findings and conclusions demonstrates otherwise.

Next, Arthur attacks the court's findings related to several of the individual categories, such as the marital standard of living, imputed income and earning ability, and monthly income. With respect to the marital standard of living, Arthur argues that because the trial court "understated the marital standard of living, unelectable [*sic*], the court's award of spousal support is understated." As the court noted, however, Arthur failed to establish the marital standard of living, and Arthur fails to controvert the court's conclusion by reference to any evidence in the record.

Arthur contends the trial court abused its discretion when it determined he had the capacity to earn an income and imputed income to him. In particular, Arthur claims the trial court failed to consider his age and medical condition. To the contrary, as the court's ruling reflects, the court considered: Arthur's age, health, lack of medical or psychological issues, prior business ownership and his unexplained discontinuation of that business, his paralegal certificate, and the fact he was previously given a *Gavron* warning.

Arthur challenges the trial court's finding that he did not comply with the *Gavron* warning. Arthur cites *In re Marriage of Cohn* (1998) 65 Cal.App.4th 923, in support of his contention that he made satisfactory efforts to find work. In *Cohn*, the court noted that earning capacity includes "'"the willingness to work exemplified through good faith efforts, due diligence and meaningful attempts to secure employment; and . . . an opportunity to work which means an employer who is willing to hire. [Citation.]"' [Citation.]" (*Id*. at p. 928.) The husband in *Cohn* presented evidence that after his employer went bankrupt and he was hospitalized, he conducted "an exhaustive job search," but was unable to find another employer to hire him as an attorney. He tried unsuccessfully to earn money in other fields and then opened a solo practice, which was not particularly successful. (*Id*. at p. 929.) The court observed that "a spouse who is otherwise shown to have the ability and willingness to achieve a higher income level could, at least in theory, negate the 'opportunity' element (and thereby prevent the imputation of income) by establishing that no one was willing to hire him or her despite reasonable efforts to find work. [Citation.]" (*Ibid*., fn. omitted.) "The evidence showed that no employer was willing to hire [the husband] in the legal field despite the fact that he diligently sought such employment." (*Id*. at p. 930, fn. omitted.) The court ultimately found the trial court's imputation of earning capacity to the husband was not supported by the evidence and remanded the case for a new evidentiary hearing on the issue. (*Id*. at p. 931.)

Two further observations by the court in *Cohn* are relevant here. First, "in the case of professionals or tradespeople who are self-employable, the 'employer willing to hire' definition is

obviously too narrow, as it encompasses only salaried employees. As this case illustrates, a licensed attorney with marketable skills who cannot find outside employment may still 'hang up the shingle' and try to sustain a living through court appointments, referrals, contract work, etc." (*In re Marriage of Cohn*, *supra*, 65 Cal.App.4th at p. 930.) Second, "a party cannot circumvent the 'willingness' element by deliberately refusing to find employment consistent with his or her earning ability. Thus, where the other two elements, ability and opportunity, are present, earning capacity may properly be imputed even where the party lacks willingness to find more lucrative work. [Citation.]" (*Id.* at p. 929, fn. 3.)

Arthur claims he presented evidence of his unsuccessful job search, but the evidence to which he refers was not presented at trial. It was presented at previous hearings on different issues. His testimony at trial referred to printouts from monster.com and craigslist.org, which "shows I was doing that daily. And for all the time, it was in 2013, February to November is the last one, there was just go [*sic*] opening in San Diego and Temecula. That was too far away for me to go."

Unlike the husband in *Cohn*, Arthur did not present evidence of "an exhaustive job search" and the inability to find an employer to hire him. (*In re Marriage of Cohn*, *supra*, 65 Cal.App.4th at p. 929.) He presented evidence that he looked for a job on two websites two years earlier. Thus, he did not present evidence "that no employer was willing to hire [him] . . . despite the fact that he diligently sought such employment." (*Id.* at p. 930, fn. omitted.)

Arthur similarly failed to present evidence of his attempts to earn money in fields in which he was qualified—the flooring

industry or as a paralegal. Again, unlike the husband in *Cohn*, he presented no evidence that he tried unsuccessfully to sustain a living through use of his skills. (*In re Marriage of Cohn*, *supra*, 65 Cal.App.4th at p. 930.)

In light of Arthur's refusal to engage in a meaningful attempt to find employment or make a living, the trial court did not abuse its discretion by imputing earning capacity to him. (*In re Marriage of Cohn*, *supra*, 65 Cal.App.4th at p. 929, fn. 3; see also *In re Marriage of Berger*, *supra*, 70 Cal.App.4th at pp. 1082-1083 [when a parent voluntarily chooses not to maximize his income, the court retains discretion to impute income for purposes of child support].)

Finally, Arthur challenges the trial court's statement that it was "'fairly convinced that [Arthur's] monthly income is great[er] than $4,500 and does not believe that he has $650,000 in outstanding notes.'" Arthur refers to evidence he presented regarding his income and debts to demonstrate the court's erroneous conclusion, but in large part it is evidence presented at previous hearings, not at trial. He cites his testimony that his income was only $800 per month but makes no mention of the cross-examination regarding his ability to pay the expenses for the Santa Clarita property, which he claimed to have paid, from that amount. He thus fails to substantiate his claim the trial court's finding was erroneous. (See *Schmidlin v. City of Palo Alto*, *supra*, 157 Cal.App.4th at p. 738 [the appellant must cite both favorable and unfavorable evidence and show how and why it is insufficient to support the judgment]; *Brockey v. Moore*, *supra*, 107 Cal.App.4th at pp. 96-97 [the appellant must "faithfully recite the facts supporting the" judgment as well as those in his favor].)

Moreover, the trial court did not find Arthur to be a particularly credible witness, noting that it did not find Arthur or Polina "to be particularly reliable in their testimony. There is significant acrimony and significant hidden agendas on both sides." The trial court was not required to believe Arthur's testimony or statements in his income and expense declarations (see *Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445, 449 ["'trier of fact is not required to believe even uncontradicted testimony'"]; *Xum Speegle, Inc. v. Fields* (1963) 216 Cal.App.2d 546, 556-557 ["trial judge is not required to blindly believe a witness nor to find in accord with his testimony merely because such testimony is uncontradicted or unimpeached by the party against whom he testified"]), and we defer to the trial court's findings as to credibility (*In re Marriage of Nurie* (2009) 176 Cal.App.4th 478, 492 ["With respect to purely factual findings, we will defer to the trial court's assessment of the parties' credibility, even though the determination was made on declarations rather than live testimony"]; *In re Marriage of Scherr* (1986) 177 Cal.App.3d 314, 320 ["we . . . defer to the trial court's assessment of the witnesses and resolve any factual conflict in support of the court's findings"]).

Arthur's actual complaint echoes one made in prior appeals that "[t]he trial court simply did not give the evidence the weight *Arthur* believed it deserved." (*In re Marriage of Tsatryan*, *supra*, B262630 [p. 12].)And as we previously stated, "This is not a basis for reversal, as determining the weight to be given to the evidence and the credibility of the witnesses is the exclusive province of the trier of fact. (*Izell v. Union Carbide Corp.* (2014) 231 Cal.App.4th 962, 974; *In re Marriage of Ackerman*[, *supra*,] 146 Cal.App.4th [at p.] 204.)" (*Ibid.*)

In sum, the trial court's findings with respect to spousal support are supported by substantial evidence. The trial court did not abuse its discretion "in balancing the applicable statutory factors and determining the appropriate weight to accord to each." (*In re Marriage of Ackerman, supra*, 146 Cal.App.4th at p. 207.) The trial court did not abuse its discretion in refusing to award Arthur spousal support. (*In re Marriage of McHugh*, *supra*, 231 Cal.App.4th at p. 1247 [question on appeal is """whether the court's factual determinations are supported by substantial evidence and whether the court acted reasonably in exercising its discretion"""]; *In re Marriage of Berger*, *supra*, 170 Cal.App.4th at p. 1079 [same].)

C. *Attorney's Fees*

1. *Standard of Review*

"Under [Family Code] sections 2030 and 2032, a family court may award attorney fees and costs 'between the parties based on their relative circumstances in order to ensure parity of legal representation in the action.' [Citation.] The parties' circumstances include assets, debts and earning ability of both parties, ability to pay, duration of the marriage, and the age and health of the parties. [Citation.] In addition to assessing need and ability to pay, the family court may consider the other party's trial tactics. [Citation.] The family court has broad discretion in ruling on a motion for fees and costs; we will not reverse absent a showing that no judge could reasonably have made the order, considering all of the evidence viewed most favorably in support of the order. [Citation.]" (*In re Marriage of Winternitz* (2015) 235 Cal.App.4th 644, 657.)

2. *The Trial Court Did Not Abuse Its Discretion by Ordering Arthur To Pay Attorney's Fees*

The court ordered Arthur to pay Polina's attorney's fees in the amount of $100,000. Arthur contends the court erred in reaching this conclusion because Polina was responsible for the escalation in fees, and Arthur accuses her and her attorneys of "fabricating" the amount of legal fees incurred.

The trial court found "the amount of money expended on professional fees by both sides in this matter is per se unreasonable as it well exceeds the value of the marital estate." In addition, "both Parties managed to conduct themselves in this litigation in a way that ran up the fees for the other side. . . . In making the fee award . . . , the [c]ourt did balance the actions of both [p]arties in their litigation conduct. On balance, however, the [c]ourt finds that [Arthur's] litigation strategy was more inappropriately aggressive than [Polina's]."

The court took Polina's conduct into consideration in awarding the fees and exercised its discretion accordingly. Arthur fails to explain how the court abused its discretion, especially in light of the fact the court awarded Polina only a fraction of the attorney's fees she requested.

Arthur also alleges a "substantial conspiracy" between Polina and her attorneys and claims Steven Shore, one of Polina's attorneys who testified at trial, perjured himself in order to obtain the fee award. These allegations lack foundation, any citation to the record and any legal analysis. As such they fail to present a cognizable claim of error. (*Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 820, fn. 33 [references to issues or errors without analysis or authority need not be considered]; *Mammoth Lakes Land Acquisition, LLC v.*

Town of Mammoth Lakes (2010) 191 Cal.App.4th 435, 457, fn. 4 [same].)[7]

Finally, Arthur attempts to revive an old claim that Polina's former attorney, Michael Kelly, was not entitled to receive attorney's fees because his legal corporation had been dissolved. We previously rejected this claim (see *In re Marriage of Tsatryan*, *supra*, B251033/B256458 [pp. 16-17]), and it cannot be revived here (*Ayyad v. Sprint Spectrum, L.P.* (2012) 210 Cal.App.4th 851, 861 [once issues have been resolved on appeal,

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[7] Arthur also accuses the trial court of being biased against him and improperly favoring Polina in its rulings. As we have previously stated, "'the mere fact a judicial officer rules against a party does not show bias.' (*In re Marriage of Tharp*[(2010)] 188 Cal.App.4th [1295,] 1328.) [¶] Moreover, the means by which to challenge a judge for bias are a peremptory challenge under Code of Civil Procedure section 170.6 or an objection under Code of Civil Procedure section 170.3, subdivision (c)(1). Peremptory challenges to a judge are waived when a litigant allows the proceedings to go forward without objection. (*Frisk v. Superior Court* (2011) 200 Cal.App.4th 402, 409-410.)" (*In re Marriage of Tsatryan*, *supra*, B251033/B256458 [p. 20].) In the absence of any citation to the record showing that Arthur raised a proper challenge or objection below, we again reject his claim of judicial bias. (*Multani v. Witkin & Neal*, *supra*, 215 Cal.App.4th at p. 1457; *Rojas v. Platinum Auto Group, Inc.*, *supra*, 212 Cal.App.4th at p. 1000, fn. 3.) Additionally, to the extent Arthur is complaining of rulings at previous hearings, they are not cognizable on this appeal. (See *In re A.K.* (2017) 12 Cal.App.5th 492, 501 [party forfeited issue that could have been raised on appeal from previous orders]; *Chico Feminist Women's Health Center v. Scully* (1989) 208 Cal.App.3d 230, 252-253 [party may not raise issues which could have been raised in an appeal from previous judgment].)

they are "conclusively determined" and cannot be relitigated]; *Puritan Leasing Co. v. Superior Court* (1977) 76 Cal.App.3d 140, 148-149 [issues resolved on appeal become law of the case and cannot be relitigated].[8]

In sum, Arthur has not identified any evidence nor presented any persuasive legal argument demonstrating an abuse of discretion by the court in its award of attorney's fees to Polina. (*In re Marriage of Winternitz*, *supra*, 235 Cal.App.4th at p. 657.)

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[8] Arthur requests that we take judicial notice of an affidavit signed by the custodian of records from the superior court indicating that the court file could not be located on February 25, 2016. Arthur has not demonstrated the relevance of the custodian's declaration to any issue requiring resolution in this appeal, and, consequently, we deny his request. (*Appel v. Superior Court* (2013) 214 Cal.App.4th 329, 342, fn. 6 [judicial notice not taken where "[n]one of the materials are relevant or necessary to our analysis"]; *San Diego City Firefighters, Local 145 v. Board of Administration etc.* (2012) 206 Cal.App.4th 594, 600, fn 3 [rejecting request for judicial notice "as the document at issue is not necessary to our resolution of this appeal"].)

DISPOSITION

The judgment is affirmed. Polina is awarded her costs on appeal.

BENSINGER, J.*

We concur:

PERLUSS, P. J.

SEGAL, 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.