Filed 6/30/16 Marriage of Pacheco 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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 the Marriage of<br>DEBORAH LIGHT-PACHECO and ANTHONY PACHECO. | B262895<br>(Los Angeles County Super. Ct. No. BD451468) |
| DEBORAH LIGHT-PACHECO,<br>Appellant,<br>v.<br>ANTHONY PACHECO,<br>Respondent. | |

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

Law Office of Robert L. Schibel, Robert L. Schibel; Lipton and Margolin, and Hugh A. Lipton for Appellant.

Honey Kessler Amado and James Karagianides for Respondent.

---

Appellant Deborah Light-Pacheco challenges the trial court's order modifying the spousal support she receives from her ex-husband, respondent Anthony Pacheco. When the couple divorced in 2009, the court entered a stipulated judgment requiring Anthony to pay Deborah $3,000 to $7,500 per month in spousal support, depending on Anthony's income. In 2014, Anthony filed a request for an order modifying the spousal support, contending that Deborah had not upheld her obligation under the stipulated judgment to make reasonable efforts to become self-supporting. When the couple separated, Deborah had declined to resume her previous career as a paralegal. Instead, she worked part time as a yoga instructor, earning less than $8,000 per year in 2012 and 2013. The trial court granted Anthony's request, ordering that the spousal support to Deborah be reduced over the course of one year and a half to $3,000 per month, regardless of Anthony's income.

## FACTS AND PROCEEDINGS BELOW

Anthony and Deborah were married in 1990 and separated in 2006, when Deborah filed a petition for dissolution of marriage. In 2009, the trial court entered a stipulated judgment of dissolution (the judgment). The judgment required Anthony to pay Deborah spousal support until the death of either party, Deborah's remarriage, or a further order of the court. The amount of spousal support varied from a minimum of $3,000 to a maximum of $7,500 per month, depending on Anthony's income. The section of the judgment pertaining to spousal support also contained the following provision: "It is the goal of this state that each party shall make reasonable good faith efforts to become self-supporting as provided for in Section 4320 of the Family Code. The failure to make reasonable good faith efforts may be one of the factors considered by the [c]ourt as a basis for modifying or terminating support."

Deborah had worked as a paralegal for several years before and during the marriage, but she reduced her work schedule in 1993 and stopped working outside the home in 1998 in order to take care of the couple's children. After the parties separated in 2006, Deborah decided not to seek work as a paralegal. Instead, she obtained certification as a personal trainer and yoga instructor. She began working as a yoga instructor in 2009, but her work hours were limited, and she earned less than $8,000

per year in 2012 and 2013. At the time of the 2014 hearing in this case, the couple's elder son was away at college, while their younger son was 17 years old and lived with Deborah. The younger son had special needs, but he was able to attend school and do his homework on his own.

According to Anthony's vocational expert, yoga instructors in California earn at least $17 per hour, and full-time instructors earn $37,000 or more on average. Alternatively, the vocational expert stated that Deborah could work as a paralegal and earn $44,000 to $64,000 in her first year.

In 2014, Anthony filed a request for order asking that the trial court terminate or reduce his spousal support obligations. He alleged that Deborah had failed to make reasonable, diligent efforts to become self-supporting, and that she no longer needed support due to her own substantial separate assets.

The trial court found that a material change of circumstances had occurred, and accordingly, in January 2015, ordered a modification of the spousal support award. The court ordered that Anthony continue to pay Deborah the base amount of $3,000 in spousal support without a termination date. Effective July 1, 2015, the court reduced the percentage of his income Anthony was required to pay above $3,000 per month, and effective June 1, 2016, the court entirely eliminated Anthony's requirement to pay additional support above the base $3,000 per month.

## DISCUSSION

Deborah contends that the trial court abused its discretion when it concluded that a material change of circumstances had occurred, justifying the modification of spousal support. She also contends that the trial court abused its discretion in its application of the statutory factors regarding a modification of spousal support. (See Fam. Code, § 4320.)[1] We disagree.

We review a trial court's modification of a spousal support order for abuse of discretion. (*In re Marriage of Berland* (1989) 215 Cal.App.3d 1257, 1261.) We review

[1] Unless otherwise specified, subsequent statutory references are to the Family Code.

the trial court's factual findings for substantial evidence. (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.)

"A motion for modification of spousal support may only be granted if there has been a material change of circumstances since the last order." (*In re Marriage of Biderman* (1992) 5 Cal.App.4th 409, 412.) Deborah contends that the trial court abused its discretion in finding a material change of circumstances. She points out that her career change from paralegal to yoga instructor predated the dissolution of her marriage. In Deborah's view, her refusal to seek work as a paralegal is not a change in circumstances, but rather a continuation of the circumstances that already existed at the time of the judgment.

Deborah's argument misinterprets the trial court's decision. The trial court did not find that Deborah's refusal to work as a paralegal in itself constituted a change in circumstances. Instead, the court found that her refusal to seek well-paying work for which she was qualified, after several years failing to make an adequate income as a yoga instructor, represented a failure to make diligent and reasonable efforts to become self-supporting. One of the basic principles guiding a court's order of spousal support is "[t]he goal that the supported party shall be self-supporting within a reasonable period of time." (§ 4320, subd. (l).) Where, as here, the order of spousal support requires the supported party to work diligently to become self-supporting, a failure to do so may itself constitute changed circumstances supporting a modification of the spousal support award. (*In re Marriage of Shaughnessy* (2006) 139 Cal.App.4th 1225, 1238 (*Shaughnessy*); *In re Marriage of Gavron* (1988) 203 Cal.App.3d 705, 712.)

A supported party may not circumvent this requirement by seeking work only in a field where she cannot find adequate work, ignoring more lucrative fields in which she is qualified. Thus, in *In re Marriage of Schaffer* (1999) 69 Cal.App.4th 801 (*Schaffer*), the court held that the trial court had acted within its discretion in denying an extension of spousal support to a woman who was unwilling to seek work in fields where she was likely to find employment. (*Id.* at pp. 810-812.) For 15 years, she had sought work only in the field of social work, finding employment briefly only twice, while ignoring other

possibilities of employment. (*Id.* at pp. 810-811.) Similarly, in *Shaughnessy*, *supra*, 139 Cal.App.4th at pp. 1239-1240, the court affirmed the trial court's order modifying spousal support to a woman who persisted in a low-paying occupation while refusing to obtain training for a new profession. The woman earned less than $10,000 per year in her business as a florist, yet she had made no more than vague plans to obtain training for an internet-based business. (*Id.* at p. 1239.) The court in *Schaffer* noted that "a supported spouse cannot make unwise decisions which have the effect of preventing him or her from becoming self-supporting and expect the supporting spouse to pick up the tab." (*Schaffer*, *supra*, 69 Cal.App.4th at p. 812.)[2]

Deborah also argues that the trial court erred by concluding that Deborah's failure to earn an income close to the $37,000 to $40,000 per year average for a yoga instructor was evidence that she had not made reasonable efforts to become self-supporting. She notes that reasonable efforts will not always produce more income. But the trial court considered much more evidence than a mere comparison between Deborah's earnings and those of an average yoga instructor. The court also took into account her failure to seek work at fitness clubs other than the one where she currently worked,[3] and the inability of her own expert witness to estimate how much Deborah could be earning as a yoga instructor. Substantial evidence supported the trial court's conclusion that Deborah failed to make diligent efforts to become self-supporting. (See *In re S.A.*, *supra*, 182 Cal.App.4th at p. 1140 [" 'Substantial evidence is evidence that is "reasonable,

---

[2] In her reply brief, Deborah attempts to distinguish *Schaffer* and *Shaughnessy* by pointing out that they both involved support orders that expired after a certain amount of time unless later modified. We are not persuaded. Deborah provides no support in case law for her proposition that where, as here, a support obligation continues indefinitely, the supported party has a reduced obligation to make reasonable efforts to become self-supporting. Furthermore, the trial court did not terminate spousal support to Deborah, but rather ordered it reduced gradually over a period of two years. By doing so, the court provided Deborah with additional time to adjust her expectations and begin taking more diligent action to improve her financial condition.

[3] Despite her low income, her calendar for the years 2012-2014 showed only three job interviews, and she had not signed up for training to improve her credentials as a yoga teacher.

credible, and of solid value"; such that a reasonable trier of fact could make such findings. [Citation.] [¶] It is axiomatic that an appellate court defers to the trier of fact on such determinations, and has no power to judge the effect or value of, or to weigh the evidence.' "].) Moreover, the court's finding that Deborah had not taken reasonable steps to become self-supporting was based only in part on its finding that she had not done all she could to earn money as a yoga instructor. As explained above, if Deborah was unable to make enough money to support herself as a yoga instructor in spite of trying diligently to do so, she had an obligation to seek work in a field for which she was qualified and could earn more money.

Next, Deborah contends that the trial court erred by measuring her actual income against the imputed income of $2,000 per month listed in the judgment. She argues that when she and Anthony agreed to the terms of the judgment, they did not intend for her imputed income to be used as evidence of her earning capacity. This argument has no merit. A party's imputed income is closely aligned with that party's earning capacity. (See, e.g., *In re Marriage of Cohn* (1998) 65 Cal.App.4th 923, 927 ["In computing child support obligations under the statewide uniform guidelines, the trial court has discretion to impute income to either parent based on that parent's 'earning capacity.' "].) The relevant portion of the judgment provides as follows: "The spousal . . . support order[] . . . [was] negotiated between the parties based on the following facts: [¶] . . . Earnings from employment of $2,000 per month by Petitioner (imputed) and $20,800 per month by Respondent." Deborah contends that in the context of their agreement, the parties did not intend to equate imputed income with earning capacity, but she provides no alternative explanation of what they intended "imputed" income to represent. In the absence of an alternative explanation, we return to the obvious one—that, at the time of the judgment, Deborah might expect to earn around $2,000 per month. Furthermore, the trial court used Deborah's imputed income only as a starting point for considering her earning capacity. The court's conclusion that "[w]ith [Deborah's] education, experience and training, the [c]ourt would expect that her income certainly would have exceeded the

imputed amount" is well supported by expert statements regarding Deborah's earning capacity.

Deborah argues that the trial court erred by finding a material change in circumstances on the ground that her assets had increased, when there was no evidence of the extent of the increase. This misconstrues the trial court's reasoning. The court found a material change in Deborah's circumstances on the basis of her lack of diligence in attempting to become self-supporting, not on the growth of her assets. The court considered her assets solely for the purposes of determining the extent of modification of spousal support, pursuant to the factors in section 4320.

Finally, Deborah argues that the trial court erred in its application of the section 4320 factors when determining the extent of modification of the spousal support order. "In exercising discretion whether to modify a spousal support order, 'the court considers the same criteria set forth in section 4320 as it considered when making the initial order.' " (*In re Marriage of Bower* (2002) 96 Cal.App.4th 893, 899.) Section 4320 lists 14 separate factors for the trial court to consider, including each party's earning capacity, skills, and needs, and the ability of the supporting party to pay. In its notice of ruling, the trial court reviewed each of these factors, and determined that the spousal support award to Deborah should be reduced over time to $3,000 per month.

Deborah takes issue with several aspects of the trial court's analysis of the section 4320 factors. She argues that the trial court placed too much emphasis on Deborah's $350-per-month budget for personal items, but not on Anthony's spending. Similarly, she argues that the court took into account an indeterminate increase in Deborah's assets, but did not consider Anthony's assets. In essence, Deborah asks us to re-weigh the section 4320 factors. That is not our function. (*In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 197 [" '[T]he appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered.' "].) The trial court's notice of ruling demonstrates that it examined each of the section 4320 factors carefully on the basis of the facts of this case. In ordering a modification of the support order to Deborah, it acted within its discretion.

## DISPOSITION

The trial court's order modifying spousal support is affirmed. Respondent is awarded his costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.