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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of CAROLYN and  
HENRY McCULLOUGH.

B257938

(Los Angeles County  
Super. Ct. No. TD032884)

CAROLYN McCULLOUGH,

Respondent,

v.

HENRY McCULLOUGH,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Stephen M. Lowry, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed and remanded with directions.

Gordon | Gordon | Lawyers and Errol J. Gordon for  
Appellant.

The Graves Law Firm and Demetria L. Graves for  
Respondent.

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Henry McCullough (Henry)<sup>1</sup> appeals from an order following trial awarding him spousal support in the amount of \$500 per month for 60 months and retaining jurisdiction to make further orders, including after the expiration of the 60 months. Although the trial court considered the factors identified in Family Code section 4320 as required in setting support, there is no reasonable basis in the evidence for the amount and duration of support that the court ordered in light of the disparity in the parties' post-separation income and lifestyles.<sup>2</sup> The parties were married for over 16 years. At the time of trial, Henry had been ruled permanently disabled and had a disability income of \$950 per month. Carolyn was a nurse with a monthly income of \$7,833, over eight times that amount. Their children were adults. In light of Henry's obvious need, Carolyn's ability to pay, and the marital lifestyle, we conclude that it was an abuse of discretion for the trial court to order only \$500 per month in support for five years. Accordingly, we reverse and remand for the trial court to reconsider the award of spousal support.

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<sup>1</sup> For clarity we refer to the parties using their first names. No disrespect is intended.

<sup>2</sup> Subsequent undesignated statutory references are to the Family Code.

## **BACKGROUND**

Henry and Carolyn McCullough were married in March 1993 and separated in September 2009. They have two children who were both adults at the time the trial court issued the challenged spousal support order. At the time of the order Henry was 47 and Carolyn was 42.

### **1. *The Parties' Marriage***

When the parties married Carolyn was a “markets coordinator” making about \$10.50 per hour. In around 1995, she went back to school at Long Beach City College, where she earned a degree in nursing. Henry was working at the time and paid for her school and for day care for the children. After earning her degree in 1998, Carolyn worked as a nurse. At the time the parties separated she was making \$94,335 in annual gross income.

After leaving high school in 1985, Henry worked at McDonnell Douglas and then FedEx. Henry left FedEx in 2001 or 2002 after he developed back problems and the couple’s younger son became ill. Their son had a severe kidney disease that required dialysis beginning in the summer of 2003 and ultimately led to a kidney transplant in March 2004. Both parents helped to administer the dialysis. Carolyn donated a kidney for the transplant.

Henry earned no income after he left FedEx. All of his jobs had involved physical labor, which he testified he was unable to do after developing back problems. His back problems include degenerative disc disease and spinal stenosis. He also has problems with bone density (osteoporosis).

At the time of trial Henry had been ruled permanently disabled by the Social Security Administration (SSA) and was

receiving a monthly disability payment of \$950. He had also received \$18,763 in back benefits from the SSA.<sup>3</sup>

Henry was active in the children's education. He researched choices for schools and coached sports teams.

After Henry and Carolyn married, Henry sold a house that he owned in Carson and the couple bought a house in Moreno Valley. They kept that house until 2006 when they sold it, receiving proceeds of over \$190,000 after paying off the mortgage. After the Moreno Valley residence, they lived in rental houses in Carson, for which they paid about \$2,300 and \$2,550 in monthly rent. They "borrowed" against the proceeds from the Moreno Valley residence to pay rent. By 2007 the money from the sale of the Moreno Valley house was gone.<sup>4</sup> In 2008, Carolyn moved to an apartment in Lakewood, when there was a period of separation.

Henry and Carolyn experienced some financial difficulties during the marriage. Carolyn testified that, in addition to using the proceeds of the home in Moreno Valley, she resorted to cash advances to make ends meet. She also claimed that Henry was "misusing" money during the marriage, and that he would take her credit card and be gone for days while spending money. They

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<sup>3</sup> Henry claimed that some of that amount was deducted to pay the State of California for general relief that he had previously received, but he did not provide any documentation of the amount that was deducted. He estimated that he actually received between \$10,000 and \$15,000.

<sup>4</sup> During trial on the issue of division of assets Henry disputed whether that money was actually gone. The trial court resolved that issue against Henry and he has not appealed from that ruling.

had various cars impounded. When they moved to one of the rentals in Carson they had to pay advance rent of about \$25,000 because of bad credit. They lost furniture when they did not pay the storage bill, and at the time of trial Carolyn's pay was being garnished in the amount of \$200 per month to pay a judgment with a current balance of about \$2,600 for a loan for the furniture. However, during the marriage the family was able to take vacations to places such as San Francisco, San Diego, and Las Vegas.

## **2. *Trial Court Proceedings***

Carolyn filed her petition to dissolve the marriage on September 14, 2009. After a hearing on December 23, 2009, the trial court made various interim orders, including an order for temporary spousal support for Henry in the amount of \$200 per month.

At trial on March 20, 2012, all issues were resolved except for the reserved issue of spousal support. The trial court granted a judgment of dissolution and ordered an equalization payment of \$5,000 in Henry's favor on the value of a community owned 2005 Buick Rendezvous, to be satisfied through payments by Carolyn of \$250 per month. The parties reached a stipulation on the division of Carolyn's retirement account. There were no other community assets to be divided.

Trial on the issue of spousal support occurred on May 2, 2013, and August 18, 2013. At the May 2, 2013 session the trial court ordered interim spousal support payments of \$300 per month pending a final, retroactive award.

The court requested posttrial briefs. In her brief, Carolyn suggested an award of spousal support in the amount of \$800 per month. Final argument took place on February 24, 2014.

### **3. *The Trial Court's Findings***

On May 27, 2014, the trial court issued its final ruling on spousal support in the form of a minute order and “Findings and Order After Hearing” (Findings). In its Findings, the trial court first noted the duration of the marriage (16 years, 5 months, 21 days), and then identified the parties’ current incomes (\$7,833 per month for Carolyn; \$950 per month in disability payments for Henry). The court also noted that Henry had received past due SSA benefits, which the court assumed to be approximately \$23,000.

The court then summarized its findings with respect to each of the factors that govern the exercise of discretion in awarding spousal support under section 4320. The court found as follows.

#### **a. *Section 4320 factors***

##### **i. Henry’s marketable skills (§ 4320, subd. (a)(1).)**

The court concluded that this factor was not applicable given Henry’s status as permanently disabled.

##### **ii. The extent to which Henry’s present or future earning capacity was impaired by periods of unemployment during the marriage to permit Henry to devote time to domestic duties (§ 4320, subd. (a)(2).)**

The court found that this factor was not applicable because Henry’s unemployment from 2002 to 2009 was “a voluntary one” and because Henry “devoted minimal time (at best) to performing any domestic duties.”

**iii. The extent to which Henry contributed to Carolyn's attainment of an education, training, a career position, or a license (§ 4320, subd. (b).)**

The court characterized Henry's contribution to Carolyn's education as "minimal," finding that Henry "paid for child care costs during some of the time" that Carolyn was obtaining her nursing degree from Long Beach City College.

**iv. Carolyn's ability to pay spousal support, taking into account her earning capacity, earned and unearned income, assets, and standard of living (§ 4320, subd. (c).)**

The court found that Carolyn has a "modest amount of excess income" and noted that Carolyn is "helping out the parties' two adult children who live with her."

**v. The needs of each party based on the standard of living established during the marriage (§ 4320, subd. (d).)**

The court found that the parties' marital standard of living was "moderate/lower middle class" and noted that they lived "beyond their means at all times." The court did not discuss Henry's need with respect to this factor.

**vi. The obligations and assets, including the separate property, of each party (§ 4320, subd. (e).)**

The court noted that Carolyn had continuing community property obligations that she was continuing to pay monthly, apparently referring to her \$200 monthly payment on the judgment resulting from the parties' furniture purchase.

**vii. The duration of the marriage (§ 4320, subd. (f).)**

The court found that the marriage was long term.

**viii. Henry's ability to engage in gainful employment without unduly interfering with the interests of dependent children (§ 4320, subd. (g).)**

The court found that this factor was not applicable, as Henry was deemed permanently disabled and had no dependent children in his custody.

**ix. The age and health of the parties (§ 4320, subd. (h).)**

The court found that Carolyn was 42 with “average” health, and that Henry was 47 with “poor to fair” health.

**x. Documented evidence of any domestic violence (§ 4320, subd. (i).)**

The court found this factor inapplicable.

**xi. Immediate and specific tax consequences to each party (§ 4320, subd. (j).)**

The court characterized this factor as “unknown.”

**xii. The balance of hardships to each party (§ 4320, subd. (k).)**

The court concluded that the balance of hardships “tips slightly” in Henry’s favor.

**xiii. The goal that Henry shall be self-supporting within a reasonable period of time (§ 4320, subd. (l).)**

The court did not make any factual findings with respect to this factor. Rather, the court simply ordered that, if “the SSA notifies [Henry] that his ‘permanent disability’ designation has



been revoked or modified, [Henry] must notify both [Carolyn] and the Court in writing of that fact within ten (10) days of receiving the SSA's notice." The court also retained jurisdiction to "modify this spousal support order as necessary."

**xiv. The criminal conviction of an abusive spouse (§ 4320, subd. (m).)**

The court found that this factor was not applicable.

**xv. Any other factors the court determines are just and equitable (§ 4320, subd. (n).)**

Under this factor, the court noted that Carolyn, not Henry, donated a kidney to their son. The court also found that Henry was "officially, gainfully employed for no more than four years in the period 2/1993 to 9/2009."

**b. *The spousal support award***

The court ordered Carolyn to pay Henry support in the amount of \$500 per month, to continue for 60 months "or until he should no longer be deemed to be 'permanently disabled' by the SSA."

The court also awarded \$1,050 in "back-due temporary spousal support" for the period January 1, 2013, through April 30, 2013, to be paid at the rate of \$50 per month. Finally, the court ordered Carolyn to pay \$1,500 for Henry's attorney fees in addition to any attorney fees still due and owing.

**DISCUSSION**

**1. *Standard of Review***

In ruling on spousal support, a trial court is required to consider the statutory factors for determining support. (See §§ 4320, 4330.) If it does so, the trial court's ultimate decision on the amount and terms of spousal support rests within its "broad discretion." The trial court's decision will not be disturbed on

appeal unless an abuse of discretion is shown as a matter of law. (*In re Marriage of Huntington* (1992) 10 Cal.App.4th 1513, 1521.) This means that, “ “considering all the relevant circumstances, the court has ‘exceeded the bounds of reason’ or it can ‘fairly be said’ that no judge would reasonably make the same order under the same circumstances.” ’ ” (*Ibid.*, quoting *In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 479–480 (*Marriage of Smith*).)

Despite the wide discretion given to trial courts to weigh the section 4320 factors, 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* (2001) 92 Cal.App.4th 269, 304 (*Cheriton*), quoting *In re Marriage of Prietsch & Calhoun* (1987) 190 Cal.App.3d 645, 655 (*Marriage of Prietsch*).) The court must both “recognize and *apply* each applicable statutory factor,” and the failure to do so is reversible error. (*Cheriton*, at p. 304.)

To the extent a trial court’s exercise of discretion is based on the facts of the case, it will be upheld as long as its determination is within the range of the evidence presented. (*In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 197.) “Conversely, a court abuses its discretion if its findings are wholly unsupported, since a consideration of the evidence ‘is essential to a proper exercise of judicial discretion.’ ” (*Ibid.*, quoting *Johns v. City of Los Angeles* (1978) 78 Cal.App.3d 983, 998.)

## **2. *Form of the Trial Court’s Findings***

Where an appealing party did not request a statement of decision in the trial court, an appellate court presumes that the trial court made all factual findings necessary to support the

judgment for which there is substantial evidence. (*In re Marriage of McHugh* (2014) 231 Cal.App.4th 1238, 1248.) Henry did not request a statement of decision below. Henry argues that it was not necessary for him to do so here because the trial court was required to make specific factual findings and actually did so in its Findings.

The argument is flawed for several reasons. First, absent a request, the trial court was only required to make specific factual findings concerning the “standard of living during the marriage.” (§ 4332.) Second, a summary in the form of “Findings and Order After Hearing,” such as the trial court issued here, is not necessarily the same thing as a statement of decision. (*In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1497 [trial court’s six-page “‘Findings and Order After Hearing’” was not a formal statement of decision].) Third, even if the trial court’s Findings are considered to be a statement of decision, any ambiguity must still be resolved in favor of the trial court’s decision, as Henry failed to object or request clarification below. (See Code Civ. Proc., § 634; *Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1132 (*Marriage of Arceneaux*).)

Finally, the general rule is that an express or implied waiver of a statement of decision “unequivocally” invokes the doctrine of implied findings. (*A.G. v. C.S.* (2016) 246 Cal.App.4th 1269, 1281–1282, citing *Hogoboom & King*, Cal. Practice Guide: Family Law (The Rutter Group 2014) ¶ 15:103, pp. 15-23 to 15-24 (rev. # 1, 2012) and Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2014) ¶ 8:24, pp. 8-13 to 8-14.)

Nevertheless, the absence of a formal statement of decision is not of great moment here. The trial court did explain its

treatment of each section 4320 factor in its Findings, albeit in summary form. Where the trial court made specific findings, there is no need to make any inference about the court's reasoning. The trial court's findings were sufficiently detailed to permit us to conclude that, in some respects, the findings are inconsistent with the evidence. More fundamentally, the findings show that the court abused its discretion in light of the undisputed evidence concerning Carolyn's income and Henry's need.

**3. *The Trial Court Abused Its Discretion in Applying the Section 4320 Factors Based Upon the Evidence***

**a. *Several of the trial court's findings are not supported by the evidence***

Some of the trial court's findings concerning the section 4320 factors are inconsistent with the undisputed evidence. First, the court's finding that Henry's unemployment from 2002 to 2009 was "voluntary" and that he devoted minimal time to domestic duties is contradicted by Henry's unrebutted testimony concerning the reasons why he did not work and his activities with the children. Henry testified that he left his employment at FedEx because of his back problems and his son's illness, and that he could not work because of his disability. He also testified that he was actively involved in the children's schooling, dealing with teachers, school selection, and coaching sports teams. Although Carolyn argued that Henry was able to work and that he was unreliable in dealing with the children, she did not introduce contrary evidence concerning his disability or his involvement with the children's school. She also admitted that Henry regularly handled administering dialysis to their son while she was working.

Second, the trial court characterized Henry's contribution to Carolyn's professional degree as "minimal," noting only that Henry "paid for child care costs during some of the time" that Carolyn was pursuing her degree. However, Carolyn testified that Henry also paid her school costs.

Third, the trial court concluded that Carolyn had only a "modest amount of excess income" available to pay support. This conclusion cannot fairly be drawn from the evidence. The court observed that Carolyn had a monthly income of \$7,833 from her employment as a nurse. The only nondiscretionary expenses that the trial court mentioned in its Findings were \$101 per month in union dues, \$125 per month in required retirement payments, and \$262 per month in health insurance premiums. Although Carolyn also had a monthly equalization payment of \$250 to Henry for the Buick Rendezvous and responsibility for attorney fees, her income was clearly able to support more than the \$500 per month in spousal support that the court ordered.

**b. *The trial court improperly considered facts that were irrelevant to the support calculation***

The record suggests that the trial court was influenced in its findings concerning Carolyn's ability to pay spousal support by the fact that she was continuing to provide financial assistance to the parties' children. In discussing Carolyn's income available for spousal support, the court noted that Carolyn is "helping out the parties' two adult children who live with her."

The trial court should not have weighed this expense in its analysis of the evidence concerning Carolyn's available income. As Henry points out, Carolyn had no legal responsibility to help support their adult children financially. (See *In re Marriage of*

*Serna* (2000) 85 Cal.App.4th 482, 489–493 (*Serna*) [trial court should not have considered supported spouse’s financial assistance to adult children in setting support]; accord, *In re Marriage of Lynn* (2002) 101 Cal.App.4th 120, 133.)<sup>5</sup>

The trial court similarly erred in considering, under the category of “other factors,” the fact that Carolyn, not Henry, donated a kidney to their son. Consideration of this factor was inappropriate for several reasons. First, the record does not reflect why Carolyn rather than Henry donated a kidney, and thus there is no evidentiary basis to draw any conclusion about the parties’ respective conduct. Second, the trial court’s reference to the fact that “Petitioner (not Respondent)” made this sacrifice suggests that the court made some moral comparison between Carolyn and Henry. While a trial court may properly consider egregious conduct such as domestic abuse in determining eligibility for spousal support (§ 4320, subd. (i); *In re Marriage of Schu* (2016) 6 Cal.App.5th 470, 473–475), in the ordinary case it is financial considerations, not a comparative moral judgment,

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<sup>5</sup> Some older cases held that it is appropriate in setting support to consider the needs of an ex-spouse who has shouldered a “morally commendable” burden to help an adult child, such as paying for college or providing assistance to a troubled child. (See, e.g., *In re Marriage of Paul* (1985) 173 Cal.App.3d 913, 919; *In re Marriage of Siegel* (1972) 26 Cal.App.3d 88, 93.) However, the “emerging view” is that it is an abuse of discretion to consider financial assistance to adult children in setting support, as to do so contravenes the Legislature’s determination that support for an able-bodied child ends no later than age 19. (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2016) ¶ 6:911.3, pp. 6-466 to 6-467, ¶¶ 6:708 to 6:709, p. 6-380; § 3901, subd. (a); see also *Serna*, *supra*, 85 Cal.App.4th at p. 491.)

that should be the basis for the support decision. (See § 2335 [“Except as otherwise provided by statute . . . evidence of specific acts of misconduct is improper and inadmissible” in a dissolution proceeding].)

**c.     *The trial court failed to give adequate consideration to Henry’s need***

Section 4320, subdivision (d) requires the court to consider “[t]he needs of each party based on the standard of living established during the marriage.” (Italics added.) In addition, the first factor identified in section 4320 requires the court to consider “[t]he extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage.” (§ 4320, subd. (a).) This first factor is “relevant as a reference point against which the other statutory factors are to be weighed.” (See *Cheriton, supra*, 92 Cal.App.4th at p. 303.)

In its discussion of the factor identified under section 4320, subdivision (d), the trial court found only that the parties’ marital standard of living was a “moderate/lower middle class one,” and that they “lived beyond their means at all times,” particularly in the period 1995 to 2009. This finding was not objectionable as far as it went.<sup>6</sup> However, the court did not discuss Henry’s *need* in

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<sup>6</sup> Henry argues that the trial court did not use any “method to determine the parties’ marital standard of living,” and that the court’s characterization of the parties’ standard of living was not supported by the evidence. However, the trial court was not required to articulate any particular methodology for characterizing the family’s lifestyle based upon the evidence. The marital standard of living is “a general description, not intended to specifically spell out or narrowly define a mathematical standard.” (*Marriage of Smith, supra*, 225 Cal.App.3d at p. 491.) The trial court’s general description is consistent with the record,

relation to this finding. Indeed, the court did not discuss Henry's need at all in its Findings, other than to note his disability and to find that the balance of the hardships tips "slightly" in Henry's favor.

In light of the trial court's recognition of Henry's disability and its correct identification of his monthly income, we cannot say that the court completely failed to consider Henry's need.<sup>7</sup> However, the court's Findings reflect that it did not take adequate account of Henry's need in light of the marital standard of living, as section 4320, subdivision (d) requires.

Plainly, Henry's need was acute in light of the parties' living circumstances during the marriage. While they had financial difficulties, during their marriage the parties always had housing and basic necessities. They were able to take vacations. Henry's disability income of \$950 per month was barely sufficient to provide for a shared living arrangement, leaving only \$350 per month to supply all his other needs. The trial court's Findings provide no explanation of how the court reconciled Henry's post-dissolution needs with the lifestyle that the family enjoyed during the marriage, and we do not see any

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which includes evidence that the family had to draw on savings at times to pay for their housing and incurred bills that they did not pay.

<sup>7</sup> However, the trial court apparently overestimated the amount that Henry received for past due SSA benefits. The court's Findings stated that Henry failed to provide records "showing precisely how much in past due benefits he received from the SSA." In the absence of such records, the court "assume[d]" that the amount was approximately \$23,000. However, it appears from the record that Henry did provide documentation from the SSA showing that he was owed \$18,763.



basis in the record for any conclusion other than that Henry suffered a dramatic reduction in lifestyle as a result of the dissolution.

**d.     *The amount of the trial court's support award was unreasonably low in light of the income disparity between the parties***

While each of the errors discussed above in the trial court's consideration of the specific section 4320 factors might not be sufficient alone to require reversal, they do warrant reversal and remand when considered in light of the amount of support that the court ordered. The trial court's award of \$500 per month is outside the "bounds of reason" in light of the length of the marriage, Henry's need, and Carolyn's income. Indeed, the amount is even less than Carolyn suggested. That the trial court's decision might have been influenced by inaccurate and/or improper consideration of the evidence further supports the need for remand.

Other courts have found an abuse of discretion where a trial court's support award was unreasonably low in light of large differences between the parties' incomes and their respective potential for future earnings. For example, in *In re Marriage of Beust* (1994) 23 Cal.App.4th 24, the appellate court held that the trial court had abused its discretion in denying the wife's request to continue spousal support of \$2,500 following a long-term marriage. The wife's "net monthly income" was about \$1,500 while the husband enjoyed a net monthly income of about \$9,000. The court concluded that "[i]t is inequitable after a long marriage to supply [one spouse] with a continued standard of living much higher than the [other's]." (*Id.* at p. 30; see also *In re Marriage of Ramer* (1986) 187 Cal.App.3d 263, 273 [when a trial court's order

“ ‘affords one of the spouses a significantly higher standard of living than the other and affords the other a significantly lower standard of living than was accustomed during the marriage, an abuse of discretion is indicated’ ”], superseded by statute on other grounds as stated in *In re Marriage of Romero* (2002) 99 Cal.App.4th 1436, 1440 & fn. 3; *In re Marriage of Andreen* (1978) 76 Cal.App.3d 667, 671–672 [\$500 per month award in spousal support was an abuse of discretion following a 27-year marriage where husband’s take-home pay was in excess of \$2,000 per month, the parties enjoyed an upper middle class lifestyle during the marriage, and the wife’s economic prospects were “shaky”].)

Based upon the undisputed evidence of Henry’s need, Carolyn’s ability to pay, and the parties’ lifestyle during marriage, we conclude that the trial court abused its discretion in awarding only \$500 per month in spousal support.

**e.     *The trial court’s limitation on the duration of support was unreasonable in light of Henry’s status as permanently disabled***

The trial court ordered spousal support to continue for 60 months, while retaining jurisdiction to modify the award “as necessary.” The termination date was erroneous in light of the undisputed evidence of Henry’s disability.

An order setting a date for reduction or termination of spousal support must be supported by the evidence, not merely by speculation concerning future prospects. (*Marriage of Prietsch, supra*, 190 Cal.App.3d at p. 659 [a trial court considering modification of spousal support “cannot engage in speculation as to what might possibly be, but is not reasonably certain to occur”].)

Here, the trial court did not explain its rationale for setting the termination date. However, it discussed that date in the context of addressing the “goal that the Supported Party shall be self-supporting, within a reasonable period of time.” (§ 4320, subd. (l).) Other comments by the trial court suggest that the court believed Henry should try to find some employment despite his back problems. For example, after a discussion at the March 20, 2012 trial about the nature of Henry’s injuries and the need for further information from the SSA, the trial court told Henry that “what is also something that you’ve got to keep in mind is that one of the things you have a duty to do even though you may be in pain, even though you may be disabled as you are, you got to try to find something else to do.”

There is no basis in the record as it currently stands for a conclusion that Henry will be able to support himself at any point in the future. Carolyn did not introduce any evidence at trial controverting Henry’s status as permanently disabled or showing that he is, or will be, able to work.<sup>8</sup> The trial court therefore erred in setting a date for termination of spousal support in expectation that Henry would be able to support himself.

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<sup>8</sup> Carolyn did request a medical examination of Henry in a posttrial filing on October 28, 2013. The record on appeal does not show the disposition of that request.

### **DISPOSITION**

The trial court's order setting spousal support is reversed. The case is remanded for a new determination of spousal support by the trial court in light of this opinion. Henry is entitled to recover his costs on appeal.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.