Filed 7/10/18 Marriage of Hogan CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of ARACELI G. and BRENT M. HOGAN.	B277475 (Los Angeles County Super. Ct. No. BD423978)
BRENT M. HOGAN, Appellant, v. ARACELI G. HOGAN, Respondent.	

APPEAL from an order of the Superior Court of Los Angeles County, Kathleen O. Diesman, Judge. Affirmed in part and reversed in part.

Law Offices of Dorie A. Rogers, Dorie A. Rogers and Lisa R. McCall for Appellant.

Law Office of Leslie Ellen Shear, Julia C. Shear Kushner, Leslie Ellen Shear; Law Office of C. Brian Martin and C. Brian Martin for Respondent.

Araceli G. and Brent M. Hogan[1] dissolved their marriage in 2007. In 2014, Araceli sought an order modifying Brent's child support obligations. In 2016, the family court granted Araceli's request, modifying Brent's child support obligations, ordering him to reimburse Araceli for half the amount of certain medical and dental expenses she incurred for their eldest son, and directing him to pay certain of Araceli's attorney fees.

On appeal, Brent contends that the family court abused its discretion in three ways. First, the family court purportedly erred by basing its modification of his child support obligations "on income that was neither regular nor guaranteed." Second, the family court allegedly abused its discretion by "ordering Brent to pay Araceli's attorney's fees based on no evidence [that] he had the ability to pay." Third, the family court purportedly erred by ordering Brent to pay medical and dental expenses that were not included in Araceli's request for an order, "but raised for the first time in a reply brief."

We are not persuaded by Brent's first two arguments, but find some merit in the third. Accordingly, we reverse the family court's order with regard to the medical and dental expenses. In all other respects, however, we affirm the order.

---

[1] We refer to the Hogans by their first names for the sake of clarity, intending no disrespect. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

BACKGROUND

Brent and Araceli married in 2000 and over the course of the next four years had three children: Brent (Brent, Jr.); Xavier; and Namath. They separated in 2006 and dissolved their marriage in 2007. Under the terms of the stipulated judgment for dissolution, Brent was obligated to pay $2,157 per month to Araceli for child support.

I. Araceli's request for an order

A. ARACELI'S REQUEST

In August 2014, Araceli, a flight attendant, filed a postjudgment request for an order (RFO). Among other things, Araceli sought a guideline modification of Brent's child support obligations due to the fact that for the last year she had "custody of Brent Jr. 100% of the time." Araceli also sought a reopening of discovery, $10,000 in attorney fees and costs, and $10,000 in forensic accounting fees and costs.

B. BRENT'S RESPONSE

In September 2014, Brent filed his response to the RFO. With the exception of guideline support, Brent did not consent to any of Araceli's requests. Brent supported his response with an income and expense declaration, which indicated that, as the sole owner of The Hogan Group, Inc., a commercial real estate and property management company, he earned on average each month $9,639 in self-employment income and $1,799 in rental property income (a total of $11,438 per month or approximately $137,256 annually). In addition, Brent stated that his cash savings totaled $8,200, he held no assets (stock, bonds, etc.) that he could sell easily, and that his real estate holdings were valued at $822,000. Brent estimated that his monthly expenses totaled $21,477.

II. Araceli's request for a court-appointed accountant

In May 2015, in response to Brent's September 2014 income and expense declaration, and pursuant to Evidence Code section 730, Araceli filed a supplement to her RFO seeking the appointment of a forensic accounting expert to ascertain Brent's "true" income available for child support.

A. THE BASIS FOR ARACELI'S REQUEST

In principal part, Araceli based her request for the appointment of an expert accountant on the differences between what Brent told the court about his assets and what he told lenders. For example, in July 2014—just two months before he filed his September 2014 income and expense declaration—Brent applied for a loan. Bank records that Araceli had received through discovery showed that on his loan application Brent stated that his annual gross income from management fees, rental properties commissions, and syndication fees was $516,383—more than three and half times what he reported on his September 2014 income and expense declaration. In addition, he advised the bank that he owned $2.5 million in stocks and bonds; in contrast, he had told the court that he owned no such convertible assets. Although he told the court that his real estate holdings were valued at $0.8 million he told the bank that his real estate holdings exceeded $5.3 million. Brent represented to the bank in July 2014 that he had $160,000 in cash, but told the court two months later that he had only $8,200 in cash. Utilizing other bank records, Araceli discovered that on the same day that Brent signed his September 2014 income and expense declaration, Brent's private bank account showed a positive balance of more than $176,000. In a loan application made after he filed his September 2014 income and expense declaration,

Brent stated that his gross income for the first nine months of 2014 was $362,717.29 (more than $40,300 per month), and that his net income was $221,245.87 (more than $24,500 per month).

B. BRENT'S RESPONSE

In June 2015, Brent filed his response to Araceli's request for the appointment of a forensic accountant. Brent argued that Araceli was on a " 'witchhunt' " regarding his income and that her request was based on a knowingly distorted portrayal of his business. According to Brent, his "business model" operated as follows: "I obtain a loan to purchase a building. I then transfer the majority of the ownership interest to investors. In order to qualify for the loans I must have a certain amount of liquid funds. I obtain these funds either from the investors who temporarily provide them to me or I borrow the money to qualify for the loan, and then repay the loan." In other words, Araceli, who was "completely familiar" with how his business operated, presented only "half of this financial picture; she shows only the assets. She does not show the loans and she does not explain that the funds [in his accounts] are returned to the investors." Brent argued further that a "loan is not income" and that "loan applications cannot be used to determine [his] income."

At the same time that he filed his response, Brent also filed an updated income and expense declaration, which showed that Brent's finances had deteriorated over the course of the intervening nine months. His income had declined sharply: monthly income from self-employment had dropped to a negative $6,209—a $15,000 swing from his September 2014 declaration; his monthly income from rental properties had dropped by almost $800 to $1,020. At the same time, his monthly expenses had

risen to $23,871. In other words, Brent averred that he was deficit spending at the rate of approximately $30,000 per month.

On July 20, 2015, the family court denied Araceli's request for a court-appointed forensic accountant, but awarded her $10,000 in forensic accountant fees payable to her attorney, because Brent's "income seemingly swings widely and may be a bit convoluted." The family court directed Araceli to have her accountant produce his or her report by October 1, 2015.

III. Expert estimates of Brent's income

In a reported dated September 30, 2015, Araceli's expert accountant, Robert O. Watts (Watts) explained that Brent "has acquired a "substantial estate and operates under a complex business structure." In his report Watts noted that Brent or his company owns or operates 22 commercial properties. Based on his review of 19 business bank accounts, Watts found that in 2014, "there were over 100 deposits into [Brent's] personal checking account totaling $908,345, an average of $75,695 monthly." However, Watts was unable to identify the source of deposits totaling $577,743. Watts concluded that it would take a "substantial amount of work to unwind [Brent's various sources of income and determine his current income available for the purposes of child support."

At a hearing on October 7, 2015, the family court elected to continue the hearing so that Araceli could reinstate her attorney and have Watts prepare a supplemental report providing an estimate of Brent's average monthly income available for child support.

A. WATT'S ESTIMATE OF BRENT'S MONTHLY INCOME

On December 23, 2015, Araceli filed and served Watts's supplemental report. Based on his review of Brent's personal

income tax returns, corporate tax returns, LLC tax returns, and Schedule K-1s, Watts concluded that Brent's monthly gross cash flow available for child support was $22,207. Watts reached this conclusion by averaging cash flow from Brent's real estate investments over three years, 2012 to 2014. As part of his analysis, Watts included proceeds from the sale of two properties in 2014.

At the same time, Araceli also filed and served a declaration requesting that the court order Brent to (a) pay $50,000 for legal fees the she incurred in the past and will likely incur in the future and (b) pay half of the costs of certain previously incurred but unreimbursed educational, medical and dental expenses for Brent, Jr., which totaled $24,722.96.

B. RICHARD GOVENAR'S ESTIMATE OF BRENT'S MONTHLY INCOME

In response to Watts's supplemental report, Brent submitted the declaration of his expert accountant, Richard Govenar (Govenar). Using a different methodology than Watts (financial data from only 2014 and 2015 and excluding the sale of the two properties from 2014), Govenar estimated Brent's average monthly income for purposes of child support determinations to be $3,812. Govenar's estimate of Brent's monthly income was not only less than Watts's ($22,207)), but it was less than what Govenar estimated to be Araceli's average monthly income ($6,851). As a result, using the guidelines in the DissoMaster,[2] Govenar determined that Brent's monthly child

---

[2] The DissoMaster is a privately developed computer program used to calculate guideline child support under the algebraic formula required by Family Code section 4055. (*In re Marriage of Schulze* (1997) 60 Cal.App.4th 519, 523, fn. 2.)

support obligation should be $448 or 20 percent of the amount due under the terms of the parties' stipulated dissolution agreement ($2,157).

At the same time, that he submitted Govenar's declaration, Brent challenged Araceli's reimbursement request on procedural grounds (e.g., Araceli had not included any such request in her RFO) and on substantive grounds (e.g., the parties' dissolution agreement limited reimbursement to uninsured medical, dental or other health expenses claimed within 30 days).[3]

IV. The hearing

On February 10, 2016, the family court heard testimony from Watts's associate, Ashley Landry (Landry) and from Govenar.

Landry testified that while Brent's income from property sales was "variable," it was appropriate to include the income from the sale of two properties in 2014 and average it over the three-year period, 2012 to 2014, because it was Brent's "custom and practice" to buy and sell properties. Landry further testified that she had reviewed five years of Brent's tax returns and saw "multiple properties showing up and coming off his tax returns."

When presented with Brent's loan application showing a net income of more than $24,000 through the first nine months of 2014, Govenar testified that that document was "dramatically different" than Brent's 2014 income tax returns. Govenar testified further that if he had been shown the loan application

---

[3] In December 2015, Brent also filed an updated income and expense declaration. Although there were some minor differences between Brent's June 2015 and December 2015 declarations, the bottom-line result was the same: Brent was purportedly running a monthly deficit of approximately $30,000.

while preparing his estimate of Brent's income, he would have been "disturbed" by the difference between what the document stated and his own findings. Govenar admitted that he had no explanation for the discrepancy.

On March 29, 2016, the trial court heard oral argument from the parties' counsel. A prominent theme in the remarks by Araceli's counsel was Brent's purported lack of credibility. In particular, Araceli's counsel drew the court's attention to the discrepancy between the income reported in his income and expense declarations and the income that his bank records and loan applications showed. In response to these arguments, Brent's attorney effectively admitted that his client was in the habit and practice of "fudging" about his finances due to a purported professional necessity to do so: "[Brent's] in a business of borrowing money from banks, raising money . . . . [T]hat's how he derives his income. [¶] You know, you can't deny that maybe on the loan application he fudged, but there's certain realities in the economy that that's what needs to be done in order to raise his money in his profession."

V. The ruling

On May 31, 2016, after additional oral argument, including Brent's continuing objection to Araceli's reimbursement request, the family court took the matter under submission.

On July 8, 2016, the family court issued its ruling. On the issue of child support, the court ruled in favor of Araceli, because it found the analysis by Watts and Landry to be "sound and credible." In contrast, the court found Brent's income and expense declarations to be "inconsistent, incomplete, and unreliable." The court further found Govenar's analysis did "not carry the same weight" as that by Watts and Landry because he

relied on Brent's suspect income and expense declarations; the court gave "no weight" to Govenar's analysis of 2015 because it was "based solely on information provided by [Brent] without supporting documents." Accordingly, the court ordered Brent to pay $5,155 per month in child support retroactive to the filing of the RFO. With regard to the arrearages from September 1, 2014 through July 31, 2016, the court ordered Brent to pay $5,000 per month until the balance had been paid in full.

With regard to Araceli's claim for unreimbursed expenses, the family court denied her request with respect to expenses for tutoring and extracurricular activities, but granted her request with respect to medical, dental, and health-related expenses. In addition, due to "a disparity in income between the parties," the family court ordered Brent to pay $20,000 in attorney fees and costs to Araceli's counsel ($5,000 per month), but denied her request for fees reportedly incurred for the preparation of the RFO due to a lack of supporting documentation.

On August 1, 2016, Brent moved to vacate the family court's order. Among other things, Brent argued that the court drew an improper inference from Brent's nonappearance at the hearing on the RFO. Specifically, Brent took exception to the following statement that the court made after noting that Brent's income and expense declarations were inconsistent, incomplete, and unreliable: "Unanswered allegations and his conspicuous absence at the hearings on this matter further support the Court's conclusion that [Brent] is not being honest about his finances."

On September 14, 2016, the family court denied the motion to vacate. In addressing Brent's argument about improper inferences from his absence, the court stated that its credibility

determination was not based on Brent's absence, but on "his failure to explain certain things." The court went on to explain further that its credibility determinations were based on the parties' declarations, the declarations and testimony offered by their experts, and on bank records and loan documents.

DISCUSSION

I. Modification of child support

A. STANDARD OF REVIEW

" 'The standard of review for an order modifying a child support order is well established. "[A] determination regarding a request for modification of a child support order will be affirmed unless the trial court abused its discretion, and it will be reversed only if prejudicial error is found from examining the record below." [Citations.] Thus, "[t]he ultimate determination of whether the individual facts of the case warrant modification of support is within the discretion of the trial court. [Citation.] The reviewing court will resolve any conflicts in the evidence in favor of the trial court's determination." ' " (*In re Marriage of Bodo* (2011) 198 Cal.App.4th 373, 384.)

"In conducting our review for an abuse of discretion, we determine 'whether the court's factual determinations are supported by substantial evidence and whether the court acted reasonably in exercising its discretion.' [Citation.] We do not substitute our own judgment for that of the trial court, but determine only if any judge reasonably could have made such an order." (*In re Marriage of Bodo*, *supra*, 198 Cal.App.4th at p. 384.) Under this deferential standard, "substantial" evidence " 'implies that such evidence must be of ponderable legal significance. . . . [T]he word cannot be deemed synonymous with "any" evidence. It must be reasonable . . . , credible, and of solid

value.' " (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.) " 'The testimony of a witness, even the party himself, may be sufficient' " to constitute substantial evidence. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614*; Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 201; Evid. Code, § 411.) However, a substantial evidence review is not properly a challenge to the weight and credibility of the testimony presented, and this court may not reweigh evidence or reappraise the credibility of witnesses. (*Eidsmore v. RBB, Inc.* (1994) 25 Cal.App.4th 189, 195.) Moreover, a "trier of fact may accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke, Davis & Co.* (1973) 9 Cal.3d 51, 67–68.)

In short, our job under the substantial evidence standard, is not to ignore or supplant the conclusions reached by the trier of fact. Rather, we are to determine merely if the trier's findings were supported by substantial evidence. Even if the trier's findings are against the weight of evidence, they will be upheld if supported by evidence that is of ponderable legal significance and reasonable in nature. (*Jonkey v. Carignan Construction Co.* (2006) 139 Cal.App.4th 20, 24.) " 'Even in cases where the evidence is undisputed or uncontradicted, if two or more different inferences can reasonably be drawn from the evidence *this court is without power to substitute its own inferences or deductions for those of the trier of fact*.' " (*Ibid.,* italics added.)

B. GUIDING PRINCIPLES REGARDING CHILD SUPPORT

"California has a strong public policy in favor of adequate child support. [Citations.] That policy is expressed in statutes embodying the statewide uniform child support guideline. (See

Fam. Code, §§ 4050–4076.)" (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 283.) "The guideline seeks to place the interests of children as the state's top priority." (Fam. Code, § 4053, subd. (e).[4]) In setting guideline support, courts are required to adhere to the principles set forth in section 4053, which include: (1) "A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life"; (2) "[b]oth parents are mutually responsible for the support of their children"; and (3) "[e]ach parent should pay for the support of the children according to his or her ability." (§ 4053, subds. (a), (b), (d).)

The Legislature dealt with the problem of calculating fluctuating income for support orders by enacting sections 4060[5] and 4064,[6] which give the family court the discretion to adjust a party's income. "While both statutes are framed in discretionary terms, it is . . . well established that the discretion must be a reasonable one, ' "exercised along legal lines, taking into consideration the circumstances of the parties, their necessities

---

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

[5] "The monthly net disposable income shall be computed by dividing the annual net disposable income by 12. If the monthly net disposable income figure does not accurately reflect the actual or prospective earnings of the parties at the time the determination of support is made, the court may adjust the amount appropriately."

[6] "The court may adjust the child support order as appropriate to accommodate seasonal or fluctuating income of either parent."

and the financial ability of the [supporting spouse]." ' " (*In re Marriage of Riddle* (2005) 125 Cal.App.4th 1075, 1081.)

C. NO ABUSE OF DISCRETION

Brent argues that the trial court abused its discretion, "because it ordered [him] to pay monthly child support from income he was not receiving on a regular basis"—namely, the sale of property. In support of his argument, Brent relies heavily on *In re Marriage of Mosley* (2008) 165 Cal.App.4th 1375 (*Mosley*). Brent's reliance is misplaced.

In *Mosley*, *supra*, 165 Cal.App.4th 1375, the husband, a real estate attorney, lost his job paying $447,150 per year and accepted another that paid a base salary of $205,000, with the possibility of a year-end bonus of up to 150 percent of his base salary dependent on both his performance and the success of the housing industry. (*Id*. at pp. 1381–1382.) In his first year in the new position, the husband was awarded his bonus. (*Ibid*.) After receiving his bonus, the husband moved for a modification of his spousal and child support obligations on the ground that due to his reduced take-home pay of $10,000 to $11,000 per month, he had less than $1,000 per month to live on after making monthly support payments of $10,047. (*Id*. at p. 1381.) The family court denied his motion; the Court of Appeal, however, reversed. In reaching its decision, the Court of Appeal noted that while the husband may "be eligible for a whopping bonus of up to 150 percent of [his base pay], no one disagrees that he may get zero. The bonus is completely discretionary. And, [the husband] works for a homebuilder. And, the residential housing industry is in the dumps, due to the subprime mortgage crisis and the sluggish economy." (*Id*. at p. 1385.) The court held "it exceeded the bounds of reason to require [the husband] to pay nearly 100

percent of his take-home pay in support payments, on the assumption, based on only a one-year history with the homebuilder, that he would continue to receive a six-figure bonus each subsequent year. It placed him in a position of having to borrow for his living expenses, and thus resulted in a miscarriage of justice." (*Id*. at pp. 1386–1387.) The court added that "[i]t would be an abuse of discretion for the court to leave [the husband] near penniless while he awaits the potential of a bonus each year, especially in light of the current plight of homebuilders." (*Id*. at p. 1387.)

Here, in contrast, to *Mosley*, *supra*, 165 Cal.App.4th 1375, Brent's modified child support obligation of $5,155 per month did not come close to exhausting his gross monthly income of $22,207 (as determined by Watts and Landry). Moreover, unlike the limited bonus history at issue in *Mosley*, there was uncontroverted testimony by Landry that, based on her review of five-years worth of Brent's various tax returns which showed "multiple" properties coming on and off his list of real estate holdings, he was in the custom and practice of both buying and selling real estate. In addition, neither Brent nor Govenar directly disputed Landry's testimony on this issue and neither one offered testimony that Brent would not be selling any properties in the future due to the state of the real estate market or for any other reason. As a result, the family court reasonably concluded that the inclusion of the 2014 sales by Watts and Landry in their analysis was proper.

Brent also argues that the family court's assessment of his credibility was improperly based on his nonattendance at the hearing on the RFO. We are not persuaded by his argument. As the family court made clear, its credibility finding against Brent

was based on a host of factors, including Brent's declarations (both his income and expense declarations and his declarations submitted in opposition to the RFO) and "[l]ots" of bank documents, including loan applications made contemporaneously with his September 2014 income and expense declaration. As the family court explained at the hearing on the motion to vacate, its credibility finding against Brent was based not on his nonappearance at the RFO hearing, but on "his failure to explain" or account for certain issues that arose as a result of the parties' written submissions. Such an assessment by the court was proper. Under the Evidence Code, "[i]n determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him." (Evid. Code, § 413.)

In short, the family court's decision to modify Brent's child support obligations did not exceed the bounds of reason. The decision was based on substantial evidence—namely, the credible expert analysis and testimony of Watts and Landry. Accordingly, we hold that the family court did not abuse its discretion.

II. Attorney fees

A. STANDARD OF REVIEW

Attorney fee awards in marital dissolution cases are reviewed for an abuse of discretion. (*In re Marriage of Cheriton*, *supra*, 92 Cal.App.4th at p. 283.) "In making this determination, the trial 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." (*In re Marriage of Falcone and Fyke* (2012) 203 Cal.App.4th 964, 975.)

B. GUIDING PRINCIPLES REGARDING FEE AWARDS

Although the family court has " 'considerable latitude in fashioning or denying an attorney fees award,' " its " 'decision must reflect an exercise of discretion and a consideration of the appropriate factors as set forth in code sections 2030 and 2032.' " (*In re Marriage of Sharples* (2014) 223 Cal.App.4th 160, 164–165.)

When a request for attorney fees and costs is made, section 2030 requires the court to "make findings on whether an award of attorney's fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties. If the findings demonstrate disparity in access and ability to pay, the court *shall* make an order awarding attorney's fees and costs." (§ 2030, subd. (a)(2), italics added.) Section 2032 requires that the amount of the award be "just and reasonable under the relative circumstances of the respective parties."[7] (§ 2032, subd. (a).)

"In assessing one party's relative need and the other party's ability to pay, the family court may consider all evidence concerning the parties' current incomes, assets, and abilities, including investment and income-producing properties. Further, in determining whether to award attorney fees to one party, the

---

[7] Brent argues that section 2032 requires the family court to make express references to the factors listed in section 4320. Brent misreads the statute. Section 2032 does not require express reference to the section 4320 factors. Instead, it merely requires that the family court "tak[e] into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320." (§ 2032, subd. (b).)

family court may consider the other party's trial tactics." (*In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1313–1314.)

C. NO ABUSE OF DISCRETION

Brent argues that the family court erred because purportedly there was "no evidence [he] had the ability to pay $20,000 toward Araceli's attorney's fees and costs." Brent's argument is without merit.

Substantial evidence was presented that Brent had the ability to an pay additional $5,000 per month for four months, because his average monthly income as determined by Watts and Landry was $22,207. Moreover, Brent's average monthly income was significantly higher than Araceli's ($6,320 without child support). In addition, there was evidence that Brent had access to considerable financial resources. For example, at the same time that he was representing to the court that he had only $8,200 in his bank account, he actually had more than $176,000 in his personal account. Based on the evidence, the family court reasonably concluded that Brent's "claims that he is unable to pay his own expenses and has been deficit spending [were] not credible."

In sum, the family court did not abuse its discretion in awarding Araceli her attorney fees, because it reasonably found both a "disparity in income between the parties" and a "disparity with respect to access to funds."

III. Reimbursement

A. GUIDING PRINCIPLES

The general rule of motion practice in the trial courts is that new evidence or factual issues are not permitted to be raised in reply papers. (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537–1538.) "This rule is based on the same solid logic applied in

the appellate courts, specifically, that '[p]oints raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument.' " (*Id.* at p. 1538.) However, it is well recognized that a court has the discretion to allow new factual issues on reply in "exceptional" cases (*id.* at pp. 1537, 1538) if "good cause is shown for the failure to present them before." (*Balboa Ins. Co. v. Aguirre* (1983) 149 Cal.App.3d 1002, 1010; see, e.g., *Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1308 [in preliminary injunction proceeding, court acted within its discretion accepting new evidence with reply papers].)

B. ABUSE OF DISCRETION

Here, the trial court abused its discretion in allowing Araceli to raise the reimbursement for the first time in her RFO reply papers. First, the trial court labored under a false impression that Brent had acceded to the propriety of Araceli raising the request in her reply papers. Brent objected immediately and repeatedly to the request on both procedural and substantive grounds. Second, Araceli did not show that she had good cause for not introducing her claims at the time she filed the RFO. Araceli filed her RFO in August 2014, but did not raise the unreimbursed expenses until December 2015—more than 15 months later and less than two months before the RFO hearing began. Moreover, a number of the expenses, such as Brent's nasal and sinus endoscopy and dental work, were incurred before Araceli filed her RFO. In addition, under the terms of the parties' stipulated dissolution judgment, a party seeking "reimbursement for any medical expense advanced by them on behalf of the minor children" must submit a receipt to

the other party "within 30 days of the date the charge accrues supported by appropriate documentation." In her reply papers, Araceli did not state (or provide evidence) that any of her requests for reimbursement were presented to Brent in accordance with the terms of the dissolution judgment.

In short, because Araceli failed to show good cause for her dilatoriness with regard to the reimbursement issue, and because Brent objected promptly and repeatedly to the issue's inclusion in the RFO determination, we hold that the trial court abused its discretion in allowing the reimbursement issue to go forward as part of the RFO.

DISPOSITION

We reverse the family court's order with respect to the medical, dental, and health reimbursements. In all other respects the order is affirmed. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.