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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

I.B., Plaintiff and Appellant, v. V.A., Defendant and Respondent.	B264738 (Los Angeles County Super. Ct. No. BF039710)

APPEAL from an order of the Superior Court for the County of Los Angeles. Armen Tamzarian, Judge. Affirmed.

Young, Spiegel & Lee, Lance S. Spiegel; and M. Bruce Roberts for Plaintiff and Appellant.

Honey Kessler Amado for Defendant and Respondent.

SUMMARY

The principal issue in this case is whether the trial court abused its discretion when it dramatically modified a father's support obligation for his three children from $23,000 monthly to $3,373 monthly. The reduced child support obligation resulted from a reduction in the father's income from $4.7 million in 2010 (during his successful career as a fashion designer) to about $200,000 in 2014 (from rental income). At the same time, while father was no longer able to generate income from the fashion industry, his stated expenses exceeded $70,000 per month, and he had more than $19 million in assets, mostly residential real estate ($6 million of which provided the rental income).

The trial court declined to deviate from guideline child support, rejecting the mother's contention that deviation was required based on Family Code section 4057, subdivision (b)(5), which permits deviation if application of the guideline formula "would be unjust or inappropriate due to special circumstances in the particular case."[1]

We find no abuse of discretion. While father spent lavishly and improvidently, there is substantial evidence that father was doing so on borrowed funds, and his only actual income was the rental income. Father was a profligate spender of the money of others whom he could not repay, even after he was diagnosed with terminal blood cancer, and he was heavily indebted, including to federal and state tax authorities.

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[1] Further statutory references are to the Family Code unless otherwise specified.

We also reject mother's claim that the trial court did not satisfy its duty to issue a statement of decision under section 3654.

Finding no error, we affirm the order of the court.

FACTS

Plaintiff I.B. (mother) and defendant C.A. (father) have three minor sons together. On March 13, 2012, a stipulated parentage judgment was entered. The judgment provides for joint legal and joint (50/50) physical custody of the children, and for child support from father in the monthly sum of $23,000, beginning May 1, 2011. (The parties had entered into a written settlement agreement to this effect on April 11, 2011.) The judgment also required father to pay, as additional child support, schooling costs, health insurance premiums and all uncovered health care expenses, and expenses for extra-curricular activities.

On October 1, 2014, father filed a request for an order modifying child support based on the child support guidelines. His declaration explained he was a fashion designer earning a very high income when he agreed in 2011 to the terms in the stipulated judgment. His gross income for 2009 was over $10.5 million, and for 2010 over $4.7 million. But the popularity of his apparel products plummeted, and the entities producing his sizable income "have all gone out of business after losing a lot of money," leaving father "with sizable debt, business lawsuits and leases that I am personally liable for." In 2013, father tried to launch another apparel line, "but it has only lost money and failed," and he lost "over a million dollars in trying to launch that apparel line." Father's 2012 tax return "reflects my income for that year at a loss of [-$1,430,179]," and he expected his 2013 tax return (then being completed) also to reflect a loss. For 2014, he

had "similar steep monthly net losses as I have had for the prior two years." Father stated he had "delinquent and unpaid tax debt" to the IRS ($1,042,952) and to the state ($308,647).

Father further declared that his "only positive income is rental income I receive from several investment properties" and he was "currently depleting my savings, borrowing and using credit to pay for my monthly expenses and to try and satisfy the current high child support order . . . ." Father's income and expense declaration showed income for the previous month of $16,383; assets (mostly of real estate and the children's college fund) of more than $19 million; and monthly estimated expenses of $47,784 (plus additional expenses for children's health insurance, child care, health care not covered by insurance, and education needs of $11,600 monthly). Father requested a downward modification of child support to the guideline level, "along with equal sharing of child support related expenses and add-ons such as schooling and medical care."

Mother opposed father's request, stating support should be commensurate with father's "ability to pay, station in life and standard of living," and that father should continue to pay the additional expenses described in the judgment. In her declaration, mother expressed her belief that father's true income and assets were "far greater than he acknowledges and will be complex to determine." For example, she pointed to father's home in Hancock Park, his ranch in Malibu, his apartment in Paris, his three rental properties in Los Angeles, his yacht, his sale of his business for $62 million shortly after their April 2011 settlement agreement, and his extensive travels in 2013.

As for her own financial circumstances, mother stated she has not worked since her first son was born, had no income other

than child support, her "current bank account balance is negative," and her rent was $6,250 per month. In April 2014, she purchased an apartment under construction in Brazil, depositing $15,000 of a total purchase price of $150,000. She and her fiancé have a one-year-old daughter. Her income and expense declaration showed estimated and actual expenses, and proposed needs, of $27,049 monthly, and stated that the amount of expenses paid by others varies. Mother requested discovery or, in the alternative, denial of father's request "based on his failure to provide complete and accurate information" and failure to demonstrate a material change in circumstances.

Father filed a reply declaration, stating that no assets were omitted from the $19 million total stated in his initial declaration. He stated his boat was liquidated to pay outstanding debts, and his only income was the rental income from the three rental properties in Los Angeles. When he sold his apparel line in 2011, he invested his net profit in real estate. He received only $14,925,000 from the $61.5 million sale price; the remaining proceeds "were paid out to the CEO, other partners, royalty payments, operating expenses and outstanding business debts." Father "used what was left over to pay the mortgages down on my real estate holdings."

Father further stated he had a 45 percent ownership in a new apparel company started in February 2014, which had so far produced only losses. He stated he traveled primarily to promote his prior apparel lines, and that "[mother] too travels around the world." He cancelled a planned trip to Europe in 2014 "due to my budget concerns," and no longer had a driver, full time maid, live in nanny and full time chef. Father included a list of his income and investment properties. These included the Malibu ranch, the

Paris apartment, and a property in Ibiza, with market values of approximately $2 million, $4.7 million and $1.6 million respectively (and for all of which there was no rental income). (The Paris apartment produced monthly expense of more than $20,000, an expense not listed in his expense declaration.)

Father acknowledged that the court had discretion "to also impute a reasonable rate of return to non-income producing investment assets such as imputed rental property income, for purposes of determining the guideline formula amount of child support." In that regard, father's proposed DissoMaster report dated November 6, 2014, included $15,870 of "other nontaxable income" for "under-utilized assets charged with a 3% tax free rate of return."

The initial pleadings just described were followed by various ex parte applications and opposition papers, including mother's December 1, 2014 request for an order shortening time for notice and hearing on a request to reopen discovery. The court set a hearing for December 15, 2014.

At the December 15, 2014 hearing, the court continued the hearing to March 3, 2015, to permit further discovery. The court ordered father to pay $3,281 per month, as a "temporary stop gap order," based on a "DissoMaster" report showing father's monthly income as $16,383, and reserved jurisdiction to modify child support as of October 1, 2014. In addition, the court ordered father to pay specified attorney and forensic accounting fees for mother, subject to reallocation; ordered the parties' forensic accountants to prepare a joint statement of points of agreement and points in dispute; and ordered the parties to file updated income and expense declarations by February 20, 2015.

Mother's accountants reviewed father's bank deposits and personal and business bank and credit card account statements for 2014, and concluded father's cash flow available for support (based on bank deposits from unidentifiable sources of almost $1.8 million) was $149,426 monthly. Mother's counsel described the deposits as "unexplained income," and contended that they should be treated as cash flow available for support. Based on the assumption that the bank deposits should be treated as income, mother's accountants calculated guideline support at $28,089 monthly. Mother's brief indicated that the lease on her rental home ends on April 15, 2015, "and she is unable to pay the rent of $6,250 per month at the reduced level of support," and "will potentially have to move into a smaller home," farther away from father's residence and the children's schools. Her income and expense declaration showed no income, monthly expenses of $22,299, and $2,350 as the amount of the expenses paid by others.

Father's accountant concluded mother's analysis of father's living expenses included more than $148,000 monthly which should have been excluded from living expenses for various reasons; and the sources of payment of his living expenses was rental income, distributions from the children's college funds and personal loans. In a supplemental declaration, father revealed he had been diagnosed with blood cancer in January 2015 and would be unable to work for some time. (Father died during the pendency of this appeal, and his brother succeeded him as respondent.) He again stated his only source of income was rental income from his investment properties and his "lifestyle has been fully supported by debt financing." (These were undocumented loans from friends and family.) His income and

expense declaration showed estimated monthly expenses of $36,948, and more than $4 million in debts.

The court engaged in extensive discussion with counsel and entertained considerable argument at the March 3 hearing, after which the parties agreed to present a joint statement from the accountants on matters of agreement and disagreement. Counsel also identified portions of father's deposition for examination by the court. A further hearing was set for April 27, 2015.

In the joint statement of the forensic accountants, the parties agreed on the sum of the deposits into father's accounts for 2014 ($1.79 million), but disputed their characterization and use for purposes of calculating cash flow available for child support. Similarly, they agreed on the total sum of father's disbursements, but not on their characterization and allocation for living expense analysis. Mother's accountants concluded father's monthly living expenses were $226,984. Father's accountants concluded his monthly expenses were $71,591, and monthly gross income available for support was $16,180.

Father submitted a declaration on April 20, 2015, stating that before his cancer diagnosis he "was already heading for a financial day of reckoning as a result of my accumulation of debt and lack of sufficient income to fund my prior spending," and that "I should not have been spending as much as I was, and am now paying the price." Father stated that his health crisis "is only going to exacerbate [his] financial problems"; that he "owe[d] several people significant sums of money that I received as loans and which I currently cannot repay"; and identified various spending categories that "will be reduced to minimal or zero" as a result of his health status.

After extensive argument at the April 27, 2015 hearing, the court took the matter under submission, and issued a written

ruling on May 1, 2015. The court found that father's gross monthly income had substantially decreased, and ordered father to pay, beginning January 1, 2015, "basic guideline child support in the amount of $3,373 per month," based on monthly income from father's rental properties of $17,000. The court rejected father's contention that it should impute minimum wage income to mother. The court acknowledged its discretion to modify child support retroactively to the date of father's modification request (Oct. 1, 2014), but declined to do so.

The court rejected mother's contention that the court should find a considerably higher gross income based on the deposits made into father's bank accounts in 2014 and his monthly expenditures, "which far exceed his claimed gross monthly income." The court acknowledged that "[i]n making a factual finding regarding [father's] actual gross income and weighing [father's] credibility, the court can certainly review and consider the deposits he made in his bank accounts and his monthly expenditures," but the court was "unpersuaded that [father's] gross income (as broadly defined by Family Code § 4058) is higher than his rental income." The court also acknowledged that "many of the transactions documented by [father's] bank statements are not fully explained by the facts in the record," but disagreed with mother's claim that father had failed to meet his burden of proof, expressly finding that father "has met his burden of showing the amount of his gross monthly income." The court also noted that father's ability to work "is hampered by his health problems," and declined to exercise its discretion to calculate gross income based on earning capacity in lieu of actual earnings.

The court rejected father's request to order mother to pay 50 percent of the additional expenses for schooling, health care and extra-curricular activities as not in the best interests of the children.

Mother filed a timely notice of appeal.

DISCUSSION

Mother asks us to reverse the trial court's order. She contends the court abused its discretion in finding there had been a change in circumstances warranting modification, and then abused its discretion in reducing support from $23,000 to less than $3,400 monthly. Mother also contends the court erred "in failing to issue the requested statement of decision" that sought "the factual and legal basis as to twenty-two controverted issues." We find no error.

1. The Background Legal Principles

The principles governing child support are summarized in *In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269 (*Cheriton*).

"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.) 'The guideline seeks to place the interests of children as the state's top priority.' (§ 4053, subd. (e).) In setting guideline support, the courts are required to adhere to certain principles, including these: '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.' (§ 4053, subd. (a).) 'Each parent should pay for the support of the children according to his or her ability.' (§ 4053, subd. (d).) 'Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard

of living of the custodial household to improve the lives of the children.' (§ 4053, subd. (f).)" (*Cheriton*, *supra,* 92 Cal.App.4th at p. 283, fn. omitted.)

Cheriton continues: "To implement these policies, courts are required to calculate child support in accordance with the mathematical formula set forth in the statute. [Citations.] . . . [A]dherence to the guidelines is mandatory, and the trial court may not depart from them except in the special circumstances enumerated in the statutes. [Citations.]" (*Cheriton, supra,* 92 Cal.App.4th at p. 284.) The guideline amount established by the formula is presumed to be correct. (§ 4057, subd. (a).) Special circumstances are those causing application of the formula to be "unjust or inappropriate" and "include, but are not limited to," those specified in the statute. (§ 4057, subd. (b)(5).)

The Supreme Court has stated that assets "play little part in the computation of child support. They may enter indirectly into the calculation in two ways: (1) In assessing earning capacity, a trial court may take into account the earnings from invested assets [citation]; and (2) a court may deem assets a 'special circumstance' (Fam. Code, § 4057, subd. (b)(5)) that may justify a departure from the guideline figure for support payments [citation]. But these are exceptional situations; the child support obligation is based primarily on actual earnings and earning capacity." (*Mejia v. Reed* (2003) 31 Cal.4th 657, 671.) "[W]here the supporting party has chosen to invest his or her funds in non-income-producing assets, the trial court has discretion to impute income to those assets based on an assumed reasonable rate of return." (*In re Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361, 1373 (*Pearlstein*).)

"To justify a modification of child support, it is usually necessary to show that there has been a material change of circumstances since the prior order." (*In re Marriage of Catalano* (1988) 204 Cal.App.3d 543, 548-549.) "A trial court's determination to grant or deny 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." (*Pearlstein, supra,* 137 Cal.App.4th at p. 1371.) However, " 'in reviewing child support orders we must also recognize that determination of a child support obligation is a highly regulated area of the law, and the only discretion a trial court possesses is the discretion provided by statute or rule. [Citations.]' [Citation.] In short, the trial court's discretion is not so broad that it 'may ignore or contravene the purposes of the law regarding . . . child support.' " (*Cheriton, supra*, 92 Cal.App.4th at p. 283.) But we "confine ourselves to determining whether any judge could have reasonably made the challenged order." (*In re Marriage of De Guigne* (2002) 97 Cal.App.4th 1353, 1360 (*De Guigne*).)

2. This Case

Mother offers several bases for reversal of the trial court's order.

a. Change of circumstances

Mother's first contention is that father did not establish the material change in circumstances necessary to justify a modification of the child support order.

Ignoring the evidence father no longer had a successful apparel business generating income, mother says father did not demonstrate "how his living expenses and bank deposits were being funded," and did not produce any supporting evidence of

the loans he claimed were the sources of those funds. Mother asserts father's deposition testimony (which indicated he knew very little about his loans) "was so equivocal and contradictory that it was inherently non-credible."[2] Mother concludes there was "no credible evidence . . . to support [father's] contention that his income had decreased and that his cash flow resulted from 'loans' and not income."

We necessarily reject mother's claim. The trial court concluded father's gross monthly income had substantially decreased, and that is plainly so. He unquestionably no longer had millions of dollars in employment income, as he did in 2011. And father's credibility was a question for the trial court. We agree with the trial court that father's deposition testimony reveals a remarkable indifference to his own finances, and not

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[2] As the trial court observed, father's deposition testimony on February 19, 2015, showed he knew very little about his income and the loans. ("He just doesn't know much.") Father said, "Yes, maybe," when asked if he owed any money at the present time, and did not know if he had borrowed any money in the last year (but later said he "received some loans, yes," in the last year or so). He did not know if he had any accounts in France, and testified that his bookkeeper "tak[es] care of that," and would have any records indicating the source of deposits. The bookkeeper kept "I believe, all the records." Father testified that "I believe I have loans from [H.G.], from [V.A.]," and "[m]aybe the college funds." Father asked, "[w]hat is security?" when he was asked if he gave any security for the loans. He answered, "Yes. Maybe," when asked if he owed those two people "more than a million." At the April 27 hearing, father's counsel referred to father's declarations, "where [father] does talk about the fact that he is borrowing. I can stipulate. He has – you know, and he testified under oath. He doesn't know, and that's the fact of the matter."

that father was lying to the court. The court explicitly recognized it could consider the bank deposits and monthly expenses in making a finding on father's gross income "and weighing [father's] credibility," but was "unpersuaded that [father's] gross income . . . is higher than his rental income." We see no basis for concluding father's sworn declarations and deposition testimony were "inherently incredible." Rather, we perceive that father was unable, or unwilling, to change his lavish and ruinous lifestyle.

Mother then contends that, even if there was a decrease in father's income, the trial court abused its discretion by ignoring father's ability to pay, "which was established by evidence" of his continued expenditures and bank deposits, and his continued ownership of four non-income producing residences (his Hancock Park home, the Malibu ranch, the Paris condominium, and the property in Spain). This is another version of mother's first argument. The trial court did not ignore, and indeed expressly recognized that father "continues to maintain a very high standard of living" with expenditures "far exceed[ing] his claimed income . . . ." Mother again fails to acknowledge the trial court's conclusion that those funds did not operate to increase father's gross income – in essence a credibility finding we are not at liberty to ignore. (One of father's declarations explained he was "currently depleting my savings, borrowing and using credit to pay for my monthly expenses . . . .")

b. The reduction from $23,000 to $3,373

Mother contends the trial court's reliance on father's rental income, without imputing income based on father's "assets, wealth, . . . and lifestyle" in setting child support, conflicts with this State's public policy "as expressed in both case law and

Family Code section 4053," and therefore constitutes an abuse of discretion.[3]

We disagree. The court's refusal, under the circumstances presented in this record, to depart from guideline child support presents no conflict with the public policy expressed in section 4053 or with relevant case law.

There is substantial evidence of father's extensive debts he was unable to repay, and that his profligate lifestyle in 2014 "has been fully supported by debt financing." Further, mother did not offer any evidence based on which the court might have imputed income on father's non-income producing real estate assets. Rather than offer evidence that the residences were marketable as rental properties and could produce income in excess of the expense of maintaining them, mother focused on efforts to impeach father's evidence of the income available for support. Mother did not present the trial court with *any* evidence concerning the imputation of income from father's non-income

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[3] Section 4053 requires courts to adhere to certain principles in implementing the statewide uniform guideline, including: "(a) 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. [¶] . . . [¶] (d) Each parent should pay for the support of the children according to his or her ability. [¶] . . . [¶] (f) Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children. [¶] (g) Child support orders in cases in which both parents have high levels of responsibility for the children should reflect the increased costs of raising the children in two homes and should minimize significant disparities in the children's living standards in the two homes. . . ."

producing assets. Indeed, the only evidence of an amount of income that might be imputed was offered by father. Father proposed in a DissoMaster report dated in November 2014 that the court include $15,870 of "other nontaxable income" for "under-utilized assets charged with a 3% tax free rate of return." But no party asked the trial court to consider father's proposal to calculate an amount of imputed income.

Mother relies heavily on cases with distinctly different facts than this case. The principal case finding an abuse of discretion in a trial court's refusal to consider assets in determining child support is *Cheriton.* There, the court found "the trial court's refusal to consider [the father's] substantial wealth [assets that included stock and options the trial court valued at $45 million] in setting child support effectively permits him to avoid his obligation to support his children according to his 'ability,' his 'circumstances and station in life,' and his 'standard of living.' " (*Cheriton, supra,* 92 Cal.App.4th at pp. 292, 280 & fn. 2, 289-290.)

The circumstances in *Cheriton* are quite distinct from the circumstances here. The financial status of the father in *Cheriton* was markedly different. The *Cheriton* father plainly had the "ability" to provide more support than the amount awarded ($2,292 per month for four children (92 Cal.App.4th at p. 282)), based on his ownership of stock and stock options the trial court specifically valued at $45 million (but refused to consider in setting support). In *Cheriton,* there was no evidence of any financial problems. Here, by contrast, the evidence supported a conclusion that father's "circumstances and station in life," his "actual income," and his "ability" to pay for the children's support – policies expressed in section 4053 – had changed substantially for the worse since his 2011 agreement to

pay $23,000 a month, and his "standard of living" was in steep decline. (See § 4053, subds. (a), (c), (d) & (f).)

County of Kern v. Castle (1999) 75 Cal.App.4th 1442 (*Castle*) is likewise easily distinguishable. There, the father's inheritance of a $1 million estate was not income, but "his newly found wealth may be considered pursuant to Family Code section 4058, subdivision (a)(3), and its 'corresponding reduction in living expenses.' "[4] (*Castle,* at p. 1445.) It was "an abuse of discretion . . . . to not factor anything other than the rental income into its support determination." (*Ibid.*) With one exception, "the [trial] court provided no explanation why [the father's] tremendously improved financial worth as a result of his inheritance would not be considered." (*Id.* at pp. 1457-1458.) *Castle* found it was "clear that [the child] will not share in [the father's] wealth," and "[a]bsent reasonable justification by the trial court, this result does not, on this record, appear to be in her best interests." (*Id.* at p. 1458.) *Castle* concluded the trial court did not follow the statutory mandate that a child is entitled to share in her parents' standard of living. (*Ibid.*, see § 4053, subd. (f).)

Obviously, this case, unlike *Castle*, does not involve "newly found wealth" or a "tremendously improved financial worth" – quite the opposite. In this case, the children appear to have shared fully in father's wealth, both when they lived with father and when they lived with mother, until the reversal of fortune

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[4] Section 4058, subdivision (a)(3) provides that annual gross income includes, "[i]n the discretion of the court, employee benefits or self-employment benefits, taking into consideration the benefit to the employee, any corresponding reduction in living expenses, and other relevant facts."

that precipitated father's request for modification of his child support obligation. The circumstances in *Castle* do not suggest, much less require, a conclusion the trial court here abused its discretion.

In re Marriage of Berger (2009) 170 Cal.App.4th 1070, is also wholly inapplicable. There the court found the father's agreement to defer his income from a startup business (accruing it on the company books instead), while continuing to live a wealthy lifestyle by using his other substantial assets for his own support, did not justify reducing his obligation to pay child support. (*Id.* at pp. 1073-1074.)

Finally, mother relies on *De Guigne* and other cases finding no abuse of discretion when the trial court considers the father's assets or otherwise imputes income to the father for purposes of calculating child support. *De Guigne* and like cases do not assist mother, because the issue here is whether the court abused its discretion by *not* imputing income from father's assets – an entirely different question than whether the court may impute income where the evidence demonstrates special circumstances that justify a departure from the guidelines. As the *De Guigne* court itself stated, it was "not called upon to determine whether we would have made such an award, but whether any judge could reasonably have done so."[5] (*De Guigne, supra,* 97 Cal.App.4th at p. 1366.)

De Guigne also illustrates an additional distinction. In *De Guigne,* there was "credible expert testimony" indicating

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[5] The trial court here acknowledged the *De Guigne* case, but correctly found that case did not require a trial court to reach the same conclusion.

father could sell 40 acres of the property "and investing the proceeds could yield sufficient income to shield the children from the full financial impact of the divorce . . . ." (*De Guigne, supra,* 97 Cal.App.4th at p. 1364.) Here, as we have pointed out, mother produced no evidence at all concerning potential income from the sale or rental of non-income producing assets.

None of the precedents mother cited presents a situation where a high-earning parent has a complete reversal of fortune. In all of them there was extensive evidence that the fathers in fact had the necessary resources to support a higher standard of living for their children.[6] In this case, by contrast, the trial court could reasonably conclude father was facing serious financial difficulties, despite the "very high standard of living" reflected in his 2013 and 2014 expenditures.

The court in this case required father to continue to pay additional support in the form of school expenses, health care expenses and extracurricular activities for the children. (One son attended private school at a cost of more than $3,000 per month.) And, the children shared in father's standard of living during his equal share of their physical custody. There was, of course, a "significant disparit[y] in the children's living standards in the

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[6] The same is true in the recent case of *In re Marriage of Usher* (2016) 6 Cal.App.5th 347. *Usher* found the trial court abused its discretion in reducing agreed child support based on a decline in the father's employment income. The court concluded that in light of the father's "overall wealth, the reduction in his employment income did not materially impair his ability to pay the agreed upon child support." (*Id.* at p. 350.) The trial court also "imputed an unreasonably low rate of return to [the father's] substantial assets, valued at over $67 million." (*Ibid.*)

two homes" that section 4053 states should be minimized. (§ 4053, subd. (g).) But as the trial court pointed out at one of the hearings, that disparity – between mother's three-bedroom rental apartment housing the children (and mother's fiancé and fourth child), and father's Hancock Park home – had always existed (and while mother may have to move to less expensive quarters, father's standard of living was changing as well).

Father's choices in the last years of his life do not strike us as laudable. But the old adage remains true, that you cannot squeeze blood from a turnip. There was no abuse of discretion.

c. The statement of decision issue

Mother requested a statement of decision under Code of Civil Procedure section 632, listing 22 controverted issues. At the March 3, 2015 hearing, the trial court told the parties it had tentatively concluded the parties were not entitled to a statement of decision under section 632. The court explained it had extensively researched the question whether parties are entitled to a section 632 statement of decision in relation to a post-judgment evidentiary hearing, as opposed to a trial.[7] The court also told counsel it had consulted with colleagues sitting in family law, and the court was not aware of any authority establishing the parties are entitled to a section 632 statement of decision except after a trial. The court gave the parties an opportunity to brief the issue whether the court was obligated to provide a statement of decision in conformance with section 632. Neither

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[7] Code of Civil Procedure section 632 states in part that "[t]he court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial."

mother nor any other party briefed the issue or said anything further on the subject (either in writing or at the final hearing on April 27, 2015).

At the March 3 hearing, the court also repeatedly advised the parties that, although Code of Civil Procedure section 632 did not apply, the court recognized the parties were entitled to a written statement explaining the reasons for the court's decision on father's request for a change in child support. The court stated it intended to explain the basis for its ruling in a written decision, even though section 632 did not apply.

On May 1, 2015, the court issued a 12-page "Ruling on Submitted Matter" with extensive findings of fact and legal analysis. Mother has not identified, either in the trial court or on appeal, even one principal controverted issue that the court's ruling failed to address. Nor has mother cited any authority on appeal establishing that Code of Civil Procedure section 632 applied here.

Instead, mother now relies on section 3654, which provides that, "[a]t the request of either party, an order modifying, terminating, or setting aside a support order shall include a statement of decision." Father contends mother forfeited reliance on section 3654 by not raising section 3654 in the trial court.

We need not address the forfeiture argument because the trial court repeatedly acknowledged the parties were entitled to a statement of decision – that is, an "explanation in writing" of "why I'm doing what I'm doing . . . ." The trial court did not recite section 3654, but its Ruling on Submitted Matter addressed and decided at length every principal controverted issue that had been tried and orally argued to the court (also at great length). Mother has not demonstrated the trial court failed to fulfill its

duty to provide a statement of decision in support of its ruling within the meaning of section 3654.

DISPOSITION

The order is affirmed. Defendant V.A. shall recover his costs on appeal.

GRIMES, J.

I CONCUR:

BIGELOW, P. J.

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RUBIN, J.—Dissenting

I respectfully dissent.

The trial court declined to impute any income to father's substantial non-income producing assets, with the result that father's claim of poverty enabled him to reduce his monthly child support payments for three children to an amount less than his monthly phone bill.

It is undisputed that, during the marriage, father had an extraordinarily high income, in the millions of dollars per year, from his apparel company. Father conceded that, once he sold his apparel business, he netted nearly $15 million.[1]

Father stated that, upon selling his interest, he "took [his] net profit and invested it in real estate," thinking "it would be a wise investment to have rental income" in the event he was unable to create another successful apparel business. Yet this representation was not exactly true. Father did not invest the entirety, or even the vast bulk of, his $15 million profit in rental properties. Instead, he used

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[1] It is curious that when father first requested a downward modification in child support, he omitted this fact, stating instead, "My prior business entities that previously produced the sizeable income in years past have all gone out of business after losing a lot of money." It was only after mother suggested, in response, that father sold the business for a reported $62 million that father agreed that he had received $14,925,000 from the sale.

over $7 million to pay off the loans on his home, and $2.7 million to pay of the loans on his ranch. He used only $3.7 million to pay off the loans on income-producing rental properties.

In short, when father left the business which was providing him with millions in annual salary, he profited to the tune of $15 million, and used nearly two-thirds of that amount to pay off mortgages on properties which did not generate one cent of income. After safely sheltering this $10 million, father's attempts to start a new business failed, and he sought a reduction in agreed-upon child support on the basis that his only income was rent provided by his income producing properties.

Father submitted to the court a chart of his properties. His three rental properties, which netted some $17,000 per month in rental income, had a combined fair market value of $6 million. He also had a $2 million unencumbered ranch; a $1.7 million unencumbered property in Ibiza; and a $4.7 million Paris apartment with a $1.5 million mortgage. In other words, father's non-income producing properties had a net value of nearly $7 million – without even considering the value of his residence, which, by all accounts, was significant.

To be fair, father recognized this disparity. When he moved to reduce child support, he acknowledged having upwards of $19 million in assets. In briefing to the trial court, he recognized that the court had discretion to impute a reasonable rate of return to his non-income producing

property. He suggested a 3 percent rate of return, which he calculated to be $15,870 per month – a figure which, when added to the $16,383 total he claimed for rental income, virtually doubled the monthly income he was willing to attribute to himself in calculating child support.

However, the trial court declined to attribute any income to father for his non-income producing properties, concluding instead that – despite father's admission of $19 million in assets and father's suggestion that $15,870 per month be imputed – father's only income for child support purposes was his actual rental income.

It is too late in the day to suggest that, when one spouse is not working but has overwhelming wealth, a trial court is nevertheless within its discretion to base its calculation of child support on the wealthy spouse's lack of income alone, without considering his or her wealth.

" ' "The guideline seeks to place the interests of children as the state's top priority." [Citation.] In setting guideline support, the courts are required to adhere to certain principles, including these: "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." [Citation.] "Each parent should pay for the support of the children according to his or her ability." [Citation.] "Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children." [Citation.]' [Citation.] 'As an

overarching concern, "[c]hild support orders must ensure that children actually receive fair, timely, and sufficient support reflecting the state's high standard of living and high costs of raising children compared to other states." [Citation.]' [Citation.]" (*In re Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361, 1371.)

The guideline bases support on a formula; the main variables in the formula are each spouse's income. (Fam. Code § 4055.) Family Code section 4058 defines income quite broadly. Subdivision (b) of that statute provides that the court may, in its discretion, "consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the child." It is this section which gives trial courts the authority to "include the parent's ability to earn income from non-income producing or underperforming assets." (*In re Marriage of Usher* (2016) 6 Cal.App.5th 347, 362 (*Usher*).)

Thus, in *In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 292, the Sixth District Court of Appeal concluded the trial court abused its discretion in declining to consider the father's substantial wealth in setting child support as the refusal "may have resulted in an order that is too low to be in the best interests of his children, based on an assessment of their reasonable needs. [Citation.] At the very least, the trial court should consider imputing reasonable income on [father]'s assets, pursuant to section 4058, subdivision (b), to the extent necessary to meet the children's reasonable needs."

While the current case was pending on appeal, Division Four of this appellate district issued its opinion in *Usher*, which confirms the necessity of considering wealth in this type of case. "Multiple courts have held that where the supporting parent has substantial wealth, a trial court abuses its discretion in failing to adequately consider his or her assets before assessing child support. [Citations.]" (*Usher, supra,* 6 Cal.App.5th at p. 360.)

On appeal, the majority would distinguish this authority on the basis that father here has suffered a "reversal of fortune," and was "facing serious financial difficulties." (Majority Opn., pp. 18, 20.) At least part of that is true, and is an interesting observation, but it is not the legal standard. None of these characterizations undermine the fact that father had millions of dollars in unencumbered non-income producing real estate. To be sure, father's "reversal of fortune" involved losing his multi-million-dollar annual income, but it was replaced by $15 million in net profits – some of which father invested, and all of which he could have. Indeed, at one point in the trial court's analysis, it referred to father as "an individual with great individual wealth" who conceded he had "in excess of $19 million of assets." Even subtracting father's claimed debt of $4 million leaves him with more wealth than most people ever dream of seeing. The majority's analysis ends by stating, "you cannot squeeze blood from a turnip." (Majority Opn., p. 20.) Father had nearly $7 million in real property (excluding his home) which was earning no money

– including a $2 million ranch; a $1.7 million property in Ibiza, and over $3 million equity in a Paris apartment. That's some turnip.

The majority also suggests the trial court did not err by not imputing income to these properties because "no party asked the trial court to consider father's proposal to calculate an amount of imputed income." (Majority Opn., p. 16.) This may be technically correct, but does not tell the whole story. Father's reply in support of his request for order specifically stated that he "concedes that . . . the court has discretion to . . . impute a reasonable rate of return to non-income producing investment assets such as imputed rental property income . . . ." Father then submitted a "proposed Dissomaster report on the issue of guidelines child support." That report included $15,870 as Father's "other nontaxable income" with a footnote explaining, "under-utilized assets charged with a 3 percent tax free rate of return." In other words, father "proposed" a 3 percent charge on his non-income producing assets in connection with his request for order. It seems to me that when a party proposes something, he is, in fact, asking the trial court to consider it. Mother, for her part, did not address the non-income producing assets in this precise manner, preferring instead to argue that father's substantial bank deposits and expensive lifestyle, when combined with his vague deposition testimony regarding the source of his funds, added up to the conclusion that he had substantially more income than he was letting on. That said, when mother requested a

statement of decision, she identified as controverted issues, "[w]hether consideration of [father]'s earning capacity in lieu of his income is consistent with the best interests of the children"; "[w]hether consideration of [father]'s earning capacity in lieu of his income is necessary pursuant to Family Code [section] 4058[, subdivision] (b) in order to shield the children as much as possible from a drastic reduction in their standard of living"; and "[w]hether the Court has considered [father]'s substantial wealth in setting child support according to [father]'s ability, circumstances and station in life, and his standard of living." The issue, I believe, was raised, and required consideration by the trial court.

Because I conclude the trial court abused its discretion by, at the very least, not imputing a reasonable rate of return to father's non-income producing properties, I would reverse. That does not mean, however, that this in the only way in which I believe the trial court's reduction in child support may have been mistaken. As discussed above, father replaced his multi-million-dollar income stream with a lump sum payment of $15 million, and then put nearly half that amount toward paying off loans on his house. "As a general rule, 'a supporting parent's home equity . . . may not be considered for the purpose of calculating child support . . . .' [Citation.] The rule may be overcome by 'a showing of special circumstances under section 4057, subdivision (b), that render guideline support unjust or inappropriate' (*ibid.*), such as a showing that the supporting spouse's

residence is a mansion located on substantial acreage. [Citation.]" (*Usher, supra,* 6 Cal.App.5th at p. 354, fn. 11.) Here, mother took the position that father's house is a "9,200 square foot, 7 bedroom, 7 bath, two story home in Hancock Park worth in excess of $9,000,000." After the court's temporary reduction in support, mother could no longer afford the rent on her three-bedroom apartment, in which the children lived 50 percent of the time, and which also housed herself, her fiancé, and her fourth child. The disparity here may mandate consideration of father's home equity, particularly when it appears to be very much against the children's best interest for them not to benefit from their father's substantial assets. (*County of Kern v. Castle* (1999) 75 Cal.App.4th 1442, 1456.)

A parent cannot "unilaterally, and voluntarily, arrange his business affairs in such a way as to effectively preclude his children from sharing in the benefits of his *current* standard of living."[2] (*In re Marriage of Berger* (2009)

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[2] I observe the hypocrisy in father's declaration, signed under penalty of perjury on November 1, 2014, stating that he was "dismayed, and in disbelief" that mother claimed she had not saved any of the child support she had received over the prior three years. Father explained, "As I am involved in an industry w[h]ere fads come and go it was in my opinion fairly obvious that this pot of gold was not going to last forever." Yet even father's own accountants calculated his monthly expenses in excess of $70,000, during the same time father was claiming his only source of income was the $16,000 available from his rental properties. Father's delayed acknowledgement, in April 2015, that he had been overspending his income is no justification for

170 Cal.App.4th 1070, 1082 [father who chose to defer salary while tapping his substantial assets for his own support cannot reduce child support by claiming no income].) Here, father claims that, after he lost his fashion designer income stream, he continued to live large through a combination of debt and invading equity in his assets – but his only income for child support purposes should be rental income. In other words, father sold his 82-foot yacht to pay his own "outstanding bills and debts," but somehow thinks it is acceptable for the court to consider only rental income when it comes to supporting his children. I disagree.

I would reverse and remand for a recalculation of child support, including a specific determination of the amount of income to impute to father based on his non-income producing assets. This may include consideration of his home equity, and his voluntary choice to continue his expensive lifestyle despite his reduction in income.

RUBIN, J.

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depriving his children of his standard of living when he had made the voluntary decision to live off loans and assets.