Filed 6/20/18 Marriage of Sokol & Avidor CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Marriage of REBECCA SOKOL and GILAD AVIDOR.	B280783 (Los Angeles County Super. Ct. No. BD602184)
REBECCA SOKOL, Respondent, v. GILAD AVIDOR, Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Michael J. Convey, Judge. Affirmed.

Gilad Avidor, in pro per., for Appellant.

Law Offices of Honey Kessler Amado and Honey Kessler Amado for Respondent.

After a bench trial, the family court dissolved the marriage of respondent Rebecca Sokol (Rebecca)[1] and appellant Gilad Avidor (Gilad) and made child and spousal support determinations. We consider whether the court abused its discretion when it declined to treat certain funds Rebecca received from her parents as recurring income and when it ordered Gilad to pay sanctions for noncooperative conduct.

I. BACKGROUND

Gilad and Rebecca married in 1998 and had three children. Gilad worked as a general contractor. Rebecca did not work outside of the home apart from occasionally assisting her parents with their property management business. Rebecca's parents made substantial financial contributions for the benefit of Gilad and Rebecca during their marriage, including paying the mortgage, property taxes, and insurance for their house; giving Gilad money for his business in Israel; paying some of the children's private school tuition fees; and paying for living expenses that Rebecca charged to credit cards her parents obtained for her.

After Rebecca filed a petition for divorce in May 2014, her parents began giving her additional money—which eventually totaled more than $800,000—to pay Rebecca's legal fees and living expenses for her and the children. In 2015, after Rebecca received some of those funds, she began signing promissory notes that her divorce attorneys prepared. Rebecca's parents also

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[1] We follow the custom in family law proceedings of referring to the parties by their first names. (*Anna M. v. Jeffrey E.* (2017) 7 Cal.App.5th 439, 443, fn. 1 (*Anna M.*).)

prepaid a car lease for her and gave her a recurring gift of $1,066 per month.

In February 2016, the parties proceeded to trial in the dissolution action. Rebecca testified she intended to repay the funds her parents loaned her from money she expected to earn once she obtained a license to sell real estate. Rebecca's father testified he fully expected Rebecca to pay back those funds. A forensic accountant retained by Rebecca testified, based on cash flow analyses she prepared from historical financial records, that Gilad had an average monthly cash flow ranging from $12,301 to $19,402 (depending on the time period reviewed and the source of information). The accountant determined Rebecca had an average monthly cash flow of $6,665, which was comprised of the mortgage, insurance, and property tax payments Rebecca's parents made for the family home and the $1,066 monthly gift they provided her. The accountant did not, in other words, treat the promissory note funds Rebecca received from her parents as monthly income.

Based on her accountant's analyses, Rebecca proposed Gilad pay monthly child support of $3,302 and monthly spousal support of $3,000. Gilad argued Rebecca should pay *him* $4,635 per month in child support because her parents had been giving her $34,000 per month since he and Rebecca separated and that amount should be considered in determining child support. Gilad further asserted the court should not award spousal support to either party.

The family court granted a judgment of dissolution, divided the parties' assets and liabilities, and made orders regarding custody and support. The court ordered Gilad to pay $1,385 per month in child support. In calculating the child support award,

the court found Gilad had a monthly income of $14,846 (using an analysis prepared by Rebecca's accountant for the 23-month period ending November 30, 2015).[2] The award was also figured based on the court's decision to impute $6,665 in monthly income to Rebecca (i.e., the payments Rebecca's parents made for the family home plus the $1,066 monthly cash gift).[3]

In determining an award of spousal support, the court considered the factors enumerated in Family Code section 4320,[4] including the parties' respective earning capacities and ability to pay support, the parties' respective needs based on the marital

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[2] Gilad disputed certain assumptions and calculations made by the accountant, but he did not provide, prior to trial, documents that refuted the accountant's analyses.

[3] The court stated it was "not realistic to expect [Rebecca] will ever have the means to repay her father" and the "over $800,000 [that her father provided] through a series of promissory notes" were "gifts that are properly characterized as 'income,' under the holding in the case *In re Marriage of Alter* (2009) 17[1] Cal.App.4th 718 [(*Alter*)]; Family Code section 4058." Nevertheless, the court did not treat those funds as Rebecca's recurring monthly income for purposes of determining child support.

Gilad objected to this analysis when it appeared in the court's tentative statement of decision. Gilad argued the court's rationale meant Rebecca's income should be imputed at $25,000 per month because the $800,000 provided pursuant to promissory notes should be included. The family court overruled the objection. The court stated it had "heard the argument and weighed the argument," it did "not need to hear anything more" on the issue, and it would not change its ruling.

[4] All statutory references are to the Family Code.

standard of living, the parties' respective financial obligations and assets, and the balance of hardships. The court took into account the $800,000 Rebecca received from her parents when it considered the parties' relative obligations and assets, and it concluded that factor weighed against a spousal support order. On balance, however, after considering all of the factors under the statute, the court determined that an order of $1,000 in monthly spousal support was "just and reasonable."

Lastly, the family court heard argument regarding attorney fees and sanctions eight months after the dissolution trial. The parties waived their right to an evidentiary hearing and presented argument based on declarations and memoranda of points and authorities. Those documents are not included in the record on appeal.

Considering the circumstances of each party, the court found no disparity of access to resources that would warrant either party being ordered to pay the other's attorney fees under sections 2030 and 2032. The court did conclude, however, that Gilad should pay a portion of Rebecca's attorney fees as a sanction under section 271.[5] Specifically, the court ordered Gilad

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[5] Section 271, subdivision (a) provides: "Notwithstanding any other provision of this code, the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to

to pay $14,522.50 to one of Rebecca's former attorneys because Gilad had (1) refused in bad faith to stipulate the former attorney could seek, at the conclusion of the case, to recover attorney fees for work done prior to his discharge, and (2) unreasonably necessitated resort to the court in order to resolve an issue with Gilad's daughter's schooling. The court additionally ordered Gilad to pay $100,000 in attorney fees to Rebecca's then-current attorney based on five instances of sanctionable conduct, including failing to cooperate regarding the needs of the children, not participating in co-parenting counseling as ordered by the court, not complying with discovery obligations, and making unreasonable, exorbitant demands during settlement negotiations.

II. DISCUSSION

Gilad contends the family court's child and spousal support orders are unreasonably high because the court failed to properly characterize as recurring income the $800,000 (total) Rebecca's parents gave her. Gilad further contends the court erred in imposing sanctions against him because the sanctions were awarded for the sole benefit of Rebecca's counsel and imposed an unreasonable financial burden on him.

Gilad's contentions lack merit. The family court's treatment of the funds Rebecca received from her parents did not

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this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award."

exceed the bounds of its discretion, and Gilad does not provide a sufficient record to establish the court erred in imposing sanctions.

A. Standard of Review

We review orders determining child and spousal support for abuse of discretion. (*In re Marriage of Williamson* (2014) 226 Cal.App.4th 1303, 1312 (*Williamson*).) That standard obligates us to "consider de novo any questions of law raised on appeal" and to "uphold any findings of fact supported by substantial evidence." (*In re Marriage of Smith* (2015) 242 Cal.App.4th 529, 532.) We apply the same standard to our review of sanctions imposed under section 271. (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 995 (*Falcone*).)

B. The Court Did Not Err in Its Consideration of Funds Rebecca Received from Her Parents

The family court calculates a presumptively correct award of child support by applying a uniform guideline, which takes into account each parent's income and other considerations. (§§ 4055, 4057, subd. (a).) In determining income for child support purposes, the court is not bound by whether the funds would be considered income for tax purposes under the Internal Revenue Code. (*Alter*, *supra*, 171 Cal.App.4th at pp. 734-735.) Here, the trial court's decision not to treat certain funds Rebecca received from her parents as income for purposes of determining child support is not an abuse of discretion.

While a court may treat cash gifts as income for child support purposes where "the gifts bear a reasonable relationship to the traditional meaning of income as a recurrent monetary

benefit," courts also have discretion not to characterize cash gifts in that manner.[6] (*Alter*, *supra*, 171 Cal.App.4th at p. 737; see also *Anna M.*, *supra*, 7 Cal.App.5th at p. 452 ["legal authorities . . . indicate regular, recurrent gifts to a parent may be characterized as income to that parent for purposes of calculating guideline child support, but they do not indicate gifts *must* be so characterized in every case"].) Here, the trial court reasonably determined the $800,000 Rebecca received from her parents should not be included as income when calculating child support.

In *Alter*, the Court of Appeal held cash gifts can be treated as income for child support purposes where those gifts are "recurring" in nature and, as a result, "form a part of the parent's regular cash flow . . . ." (*Alter*, *supra*, 171 Cal.App.4th at p. 734.) The Court of Appeal concluded the family court did not abuse its discretion when it characterized as income $6,000 that the father regularly received from his mother every month. (*Id.* at pp. 730, 737.) Courts have distinguished *Alter*—and concluded it was not improper to exclude recurring cash gifts from a parent's income—where the amounts given were not so regular. (See, e.g., *Anna M.*, *supra*, 7 Cal.App.5th at pp. 453-454 [no abuse of discretion in excluding recurrent cash gifts from income calculation for child support purposes where the funds would not qualify as income for tax purposes and the amount of cash given varied from month to month]; *Williamson*, *supra*, 226 Cal.App.4th at p. 1314 [cash gifts from parents not treated as income for child support purposes

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[6] Even though Rebecca and her father described the $800,000 he gave her as a loan, we credit the trial court's finding that the funds are more properly considered a gift.

where funds "were made upon request, depending upon the family's needs," and could therefore be characterized as "irregular and outside 'the traditional concept of income as a recurrent, monetary benefit'"].)

Here, the $800,000 Rebecca's parents gave her is more akin to the irregular gifts received in *Anna M.* and *Williamson* than the predictable $6,000 per month received in *Alter*. The record shows Rebecca's parents gave her that money not as a regular payment in predictable amounts but rather as she needed it, for specific purposes. (See *Anna M.*, *supra*, 7 Cal.App.5th at p. 454 [cash gifts properly not considered income when provided "on an as-needed basis to pay particular expenses"].) Furthermore, Rebecca's parents began providing the funds only after she and Gilad separated, and the bulk of the money went to paying Rebecca's divorce attorneys. The family court reasonably inferred those payments may not continue once the court proceedings came to a conclusion.[7] (See *Williamson*, *supra*, 226 Cal.App.4th at p. 1315 [inappropriate to treat gifts as income once the gifts "cease[ ], without any reasonable indication they will resume"]; *In re Marriage of Scheppers* (2001) 86 Cal.App.4th 646, 650 ["impractical" to consider lump-sum life insurance proceeds as income since proceeds, once received, would not reoccur the following year].)

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[7] No orders of child or spousal support were in effect prior to trial, and the other funds Rebecca received from her parents were used to pay living expenses. Thus, this is not a situation like *Alter* where a grandparent provided "monthly gifts to a parent, in the same amount, not tied to a specific expense, and continuing for years." (*Anna M.*, *supra*, 7 Cal.App.5th at p. 455.)

The trial court's child support determination also accords due consideration to state family law policy. In calculating child support, the court was bound to follow certain principles, including: (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"; (3) "[e]ach parent should pay for the support of the children according to his or her ability"; and (4) the interests of children are "the state's top priority." (§ 4053, subds. (a)-(b), (d)-(e).) The record demonstrates the family court considered these principles when it determined how much income it should impute to Rebecca for purposes of calculating child support.[8] The court's resulting order was not beyond the bounds of the court's discretion in light of these statutory policies.

As to spousal support, and contrary to Gilad's contention, the family court did consider the funds Rebecca received from her parents when it calculated its award. Section 4320 specifies the factors the court must consider when determining permanent spousal support.[9] In evaluating one such factor—"[t]he

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[8] The court stated a child support order should reflect the policy that the child's parents "have an equal responsibility to support their child in the manner suitable to the child's circumstances," it could order either parent to pay child support in order to effectuate that purpose, and it must consider the children's best interests when deciding to impute income to Rebecca. Rebecca argued it was "not in the children's best interest for [Gilad] to . . . get a free ride" regarding support.

[9] The factors to be considered are each party's earning capacity relative to the marital standard of living, whether one

obligations and assets, including the separate property, of each party" (§ 4320, subd. (e))—the family court considered the $800,000 Rebecca received from her parents and concluded that factor weighed against an order of spousal support. The court also referred to the financial contributions of Rebecca's parents when it evaluated the relative hardships to each party (§ 4320, subd. (k)). The court found, however, that this relative hardships factor favored neither party because it was unclear whether Rebecca's parents would continue to provide financial support in the future. Because the family court expressly considered and applied all the statutory factors required by section 4320 and because the court's determinations are supported by the record, there was no abuse of discretion. (*In re Marriage of Blazer* (2009) 176 Cal.App.4th 1438, 1442-1443; *In re Marriage of Nelson* (2006) 139 Cal.App.4th 1546, 1559.)

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party contributed to the other's attainment of career or educational achievements, each party's ability to pay support, each party's needs based on the marital standard of living, each party's obligations and assets, the length of the marriage, each party's ability to work without impairing the interests of children in that party's custody, each party's age and health, any history of domestic violence, the tax consequences of a support order, the balance of hardships, the objective that a supported party be self-sustaining within a reasonable time period, whether an abusive spouse has been criminally convicted, and any other factors the court considers to be "just and equitable." (§ 4320.)

C. The Record Does Not Establish the Sanctions Awards Are Erroneous

The purpose of section 271 is "'"to promote settlement and to encourage cooperation which will reduce the cost of litigation."'" (*Sagonowsky v. Kekoa* (2016) 6 Cal.App.5th 1142, 1152, citations omitted.) The family court has "broad discretion" to award sanctions under section 271, subject to the statutory requirements that it "take into consideration all evidence concerning the parties' income, assets and liabilities" and not order a sanction that imposes an "unreasonable financial burden" on the sanctioned party. (§ 271, subd. (a); *Falcone*, *supra*, 203 Cal.App.4th at p. 995.)

Gilad contends the sanctions imposed violated section 271 in two respects. First, he asserts that by ordering him to pay Rebecca's attorneys directly, the court violated the statute's prohibition against ordering payment to an attorney who has "request[ed] the sanctions for the sole benefit of the attorney." (*Webb v. Webb* (2017) 12 Cal.App.5th 876, 883 [plain language of statute "contemplates that only a party may move for an award of sanctions"] (*Webb*).)

As already noted, the parties' declarations and requests for fees are not part of the appellate record. Gilad fails to establish on the record before us that Rebecca's attorneys requested sanctions for their sole benefit. To the contrary, what is in the record indicates Rebecca continued to owe attorney fees to her lawyers, and we can infer Gilad's payment of sanctions would be credited to Rebecca's attorney fee obligations. (Compare *In re Marriage of Tushinsky* (1988) 203 Cal.App.3d 136, 142 ["right to" attorney fees and costs awarded in dissolution proceeding "belongs to the spouse to whom they were awarded, not to the

attorney, even if the award is made directly payable to the attorney"].) Gilad's reliance on *Webb* is inapposite because the attorneys seeking fees-as-sanctions in that case were not doing so on behalf of their client. (*Webb*, *supra*, 12 Cal.App.5th at pp. 879, 881, 885 [attorneys sought sanctions for conduct that occurred after their representation was terminated].)

We also cannot credit Gilad's contention that the family court disregarded section 271's requirement that sanctions not impose an "unreasonable financial burden" on the sanctioned party. The court recognized it had a statutory obligation to make "a limited inquiry into the financial impact a sanction award might have on a party." Rebecca contended Gilad had sufficient assets and he disputed that notion, arguing he still owed substantial debt. Although the court did not make specific findings regarding the financial impact of sanctions on Gilad, its decision implies it found those sanctions would not impose an unreasonable financial burden. The court's order "'is presumed correct'" and "'[a]ll intendments and presumptions are indulged to support it on matters as to which the record is silent . . . .'" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564, italics and citation omitted.) Gilad filed a declaration of income and expenses with the court for its consideration of the sanctions issue, but he did not include that document in the appellate record. Under the circumstances, we must presume Gilad's declaration supports the court's implied finding that sanctions would not impose an unreasonable financial burden.

DISPOSITION

The orders are affirmed. Respondent shall recover any costs she may have incurred on appeal.

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BAKER, Acting P.J.

We concur:

MOOR, J.

KIN, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.