Filed 8/6/12 Marriage of Lynn CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of LAURA and TIMOTHY MATHEW PETER LYNN.	B225946 (Los Angeles County Super. Ct. No. PD016769)
LAURA JUDITH LYNN, Appellant, v. TIMOTHY MATHEW PETER LYNN, Respondent.	

APPEAL from orders of the Superior Court of Los Angeles County. Elizabeth R. Feffer, Judge. Affirmed.

Laura Judith Lynn, in pro. per., for Petitioner and Appellant.

No appearance for Respondent.

INTRODUCTION

This is an appeal from post-judgment orders regarding child support. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

As set forth in one of the prior appeals in this case, Laura Lynn and Timothy Lynn began divorce proceedings in the 1990s, and on March 21, 1997, a judgment was approved and entered concerning custody, visitation, and support for their two children. On November 20, 1998, their marriage was dissolved.[1] (*In re Marriage of Lynn* (B221555, Apr. 20, 2011 [nonpub.opn.] review den. Jul. 13, 2011, S193512).) Further court proceedings relating to custody and child support took place in 1997, 2001, 2007, 2008 and 2009. (*Ibid.*)

As relevant to this appeal, in our April 2011 decision, we noted that the trial court conducted extensive proceedings and issued a series of rulings on November 19, 2009. One of the matters the trial court addressed at that time was "Timothy's order to show cause concerning child support that had been filed in March 2009 and granted in October 2009, with the determination of the amount of child support to be paid reserved until November 19, 2009. *The court found that Laura had failed to comply with the court's order to file a complete, updated declaration of her income and expenses, and it found that she had willfully failed to disclose her trust income to the court. The court determined Laura's monthly estimated expenses but reserved the issue of imputing that amount to Laura as income or of imputing trust income to her*." (*In re Marriage of Lynn, supra,* B22155 at pp. 3-4, italics added.) In addition, the trial court had denied Laura's motion for reconsideration of "all prior orders dating back to October 29, 1999; and for custody of, and child support for, the one child who was still a minor." (*Ibid.*)

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[1] As the parties share the same last name, we continue to refer to them by first names for clarity.

According to the record in this appeal, on February 23, 2010, the parties appeared for the further hearing on Timothy's order to show cause regarding child support. The trial court noted no stay in the case during the pendency of the appeal of the November 19, 2009 orders, and Timothy and Laura were sworn to testify. As argued in his motion, Timothy said, he requested imputed income at $6,000 a month for their son based on Laura's trust income which he said she continued to "hide" despite the court's prior orders.

The trial court noted the income and expense declaration Laura had filed on October 5, 2009, was "unsigned and incomplete." The trial court asked Laura if she was currently receiving trust income. She acknowledged that she was. Reading from Laura's further documentation filed December 26, 2009, the trial court observed Laura had indicated she was self-employed and listed "zero all the way down for income" on every line including investment income and trust income. Citing a provision in the parties' judgment (at page 6, paragraph 7), Laura said her trust income was not available for purposes of child support.[2] Therefore, Laura said, "the court is not allowed to ask about my trust income for child support." Regardless of her interpretation of the judgment, the trial court responded, "but also you just don't disclose it. It's one thing if you disclose it, and you say here is why [the court] shouldn't include it. But you didn't disclose what the trust income is. We just don't know what it is. There has been a failure to disclose on your part."

Laura said she would amend her income and expense declaration to show her trust income. The trial court emphasized: "[T]here needs to be full disclosure of the trust income[. T]hat wasn't done in November with the October income and expense

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[2] According to the record, the November 1998 judgment of dissolution was entered pursuant to the parties' stipulation and included a provision confirming as Laura's separate property her "Family Living Trust." In addition, the attachments to the judgment included the following recital: "Any *future deferred interest* that [Laura] receives from this Family Living Trust is not income available for calculating child support." (Italics added.)

declaration[;] it's not done now with this new income and expense declaration." The court ordered the parties to file supplemental briefing and ordered Laura to file a "new income and expense declaration disclosing everything," with Laura to specifically address whether she was receiving income from the trust or was there "just future deferred interest," as well as substantiation of Laura's position the court should not count any trust income. The trial court continued the OSC to April 20, 2010.

The April 20, 2010 Hearing.

On April 20, the trial court noted "paragraph 7(a)[,] subsection 2 of the judgment provides, 'Any future deferred interest [Laura] receives from this Family Living Trust is not income available for calculating child support,'" but ruled the provision "is unenforceable and void for public policy . . . . [A]ny and all income from the Family Living Trust mentioned in the judgment is income available for support." After citing and addressing relevant statutes and case law and hearing Laura's further argument, the court concluded, "The law is very clear. You cannot contract away the rights of your child to receive child support. It doesn't affect equitable distribution or community property distribution or any of the property that the two of you distributed or support between the two of you. This pertains only to . . . child support. So you have to disclose your trust income and support will be calculated based on that and that's the order of the court."

On her March 12, 2010 income and expense declaration, Laura reported that she received $3,919 per month in trust income and typed in that she had "0" in real and personal property (other than $1867 in a bank account). At the hearing, however, she wrote on the court's copy that she had a $500,000 trust asset and said she had some personal assets she had not disclosed, including a car and a truck.[3] Timothy argued "her own K-1 . . . clearly states she gained . . . and reinvested $400,000" in the last year. The

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[3] After the court's further inquiry, Laura ultimately acknowledged a $500,000 share of a trust property called Silver Stand Plaza, a commercial shopping center in San Diego, California.

court again commented, "It's clear there is trust income that wasn't disclosed before." The trial court asked Laura if she was "paying mortgage on any property right now, not on any commercial property." She acknowledged that she was--"as part of the trust." Noting the parties had mutually agreed to sign IRS Form 4506 and exchange their tax returns, the trial court continued the hearing "one more time to give both of you a chance to exchange tax returns." "Each side is to provide the other with a full, complete updated I & E that complies with Local Rule 14.9 since that was noted." The hearing was continued to July 13, 2010. "Parties are to execute [the necessary forms] and *have the tax returns exchanged by June 18*. That should give everyone time for the next hearing, as soon as possible, but *at the latest by June 18. And full, complete[] income and expense declarations that comply with Local Rule 14.9 are due from each side by June 30, 2010*." (Italics added.) The trial court confirmed the parties had the new dates, and the parties waived further notice. At that time, Laura raised the issue of her order to show cause regarding custody. The court noted that it was past the noon hour and the court would have to recess but would address Laura's matter on July 13 as well.

The July 13, 2010 Hearing.

At the continued July 13 hearing, Timothy told the trial court Laura had signed the necessary form for him to receive her personal tax forms but she would not sign the necessary forms and he had not received the tax returns on the other property. The trial court observed the court had not received an income and expense declaration from Laura either although she had been ordered to file one by June 30. "Yes," she said. "Today I filed a supplemental declaration . . . ." She said she had been "tardy" because she hadn't written down the dates so she ordered copies of the transcript on April 20. The court noted, as stated in the minute order, the parties had been given more than two months—until June 30." "Right," Laura said.

The trial court noted Laura had purported to file an eight-page substantive declaration with numerous attachments that day. The document was untimely under Code of Civil Procedure section 1005 and the court would not consider it. Asked

whether she had now disclosed all income in her income and expense declaration, she said, "Yes, I have." The court noted Laura had not checked the real property box and identified only $5,000 in personal property. "You own a shopping center, right?" She said she owned "a partnership in the LLC," and the LLC owned the shopping center. She said she had about a 3 percent interest in the property but "[i]t's coming slowly over." She said she had calculated her interest to be about $400,000, based on what her parents had told her "when they did the change from the trust to the LLC" on January 1, 2009. She said her parents had taken "advantage of a one[-]time tax benefit where you can *give money* that is in a trust to your children while you are still alive" without paying taxes. (Italics added.) She believed the property was worth about $4 million.

Laura said her sister managed the property; Laura was a "silent partner." "[S]he does disburse distributions whatever she wants to or thin[k]s we can afford." Laura acknowledged she was "living off the trust income" and had businesses. The "main business" was a real estate brokerage, but she was reinvesting the profits, and then her older son was having problems and she "lost everything" because of the market. She said she had "loss carryovers for the next ten years." "I'm just living off the trust income and trying to build my businesses."[4]

The trial court reiterated that Laura's income and expense declaration, filed on the day of the July 13, 2010 hearing, was untimely in violation of the court's April 20, 2010 order.

In his income and expense declaration, Timothy said he estimated Laura's monthly income to be $39,851, based on information he had subpoenaed showing the

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[4] At this point, Laura said she was very anxious because she had seen "disturbing" emails between court and judicial council attorneys and was taking Xanax. She said FBI agents had come to her house to discuss "these court issues I've been complaining about" and said she was "surprised the court ha[d] not recused [it]self." She said court counsel was handling her civil action against Commissioner Friedenthal. The trial court (Hon. Elizabeth R. Feffer) said "we're just talking about the child support issue." Laura responded, "I did not file a second motion for disqualification . . . on [the court] today because I wanted to give you an opportunity to come clean." The court said there was no request for anything in that regard and returned to the issue of child support.

income from her percentage in the Silver Strand property, her income from the three businesses and her financing of her expenses she claims from the three businesses. He noted she continued to refer to the trust, but her tax form identified the Silver Strand property as an LLC and she had never disclosed other assets of the trust. Timothy said he had checked with the County Assessor and confirmed that the Family Trust had five other properties; when he was married to Laura, he said, Laura's mother had hired him to service those buildings because he is a licensed contractor.

Timothy argued that Laura had identified her income as "negative $2335" based on her self-employment but said she had closed down her businesses to go to law school and was able to afford that because "she makes a large amount of money." According to her tax returns, he said, her percentage of monthly income from the LLC was $33,956.

Laura then said all she knew about was the LLC Silver Strand Plaza. "They [her parents] owned 50 percent. *They gave their 50 percent to my sister and I*. And that's why the property is worth [$]4 million. But it was $2 million for them and *$2 million for us* when they converted it to the LLC." (Italics added.) As monthly income, she said she received $700 for real estate, $200 every other week for buying and selling used books and $30 a month as a writer covering the courts. The trial court noted Laura was claiming losses of about $3800 for three separate businesses but had not filed a profit and loss statement with her income and expense declaration in violation of Local Rule 14.9. Laura added that she also had $60,000 in debt that was not reflected in her income and expense declaration.

The court indicated it could have ruled on child support on April 20, but instead had given Laura another opportunity, providing her with an additional two months to submit supporting documentation on the issue. The obligation was on Laura to file her income and expense declaration in compliance with Local Rule 14.9 as ordered, but she had failed to do so. The trial court noted Timothy had filed his order to show cause regarding child support on March 26, 2009. "[T]his matter has gone along for almost a year and a half due to [Laura's] repeated failure to submit required documents required

by the California Rules of Court, [Rule] 5.128, Local Rule 14.9 and repeated orders of the court, including most recently on April 20, 2010."

"So the court repeats that [Timothy's] OSC re child support was already granted on October 5, 2009, the amount to be determined due to [Laura's] lack of disclosure to the court and to [Timothy. He] was forced to file yet additional requests for child support. . . . [R]etroactivity was reserved to March 26, 2009."

In addition to granting Timothy's OSC, the court "ma[de] the following orders: The court finds that there has been an unusual amount of delay in this case. [Timothy] has been entitled to receive child support from [Laura] for a considerable amount of time. [¶] The court finds that [Laura], including through today's hearing, has willfully and repeatedly failed to provide . . . to the court and [Timothy the] information required by law. This is further evidenced by an incomplete and untimely income and expense declaration filed on today's date. [¶] The court finds that [Laura's] delay tactics and willful nondisclosure do constitute litigation conduct that does frustrate the goals to facilitate settlement and early resolution of family law cases under Family Code section 271. [As the parties are self-represented, attorney fees are not being incurred, but t]he court notes that [Laura's] conduct does give rise to section 271 sanctions. But the court cannot order [them] because there are no attorney fees being actually incurred."

On its own motion, the court noticed and set an OSC re sanctions against Laura for hearing on September 21, 2010, on three separate bases.[5]

The court found that Laura (whose timeshare with her son was "zero") "does have substantial trust income that was not fully disclosed; and [based on an, sic] untimely

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[5] The court gave Laura notice of an OSC re sanctions pursuant to: (1) Code of Civil Procedure section 177.5 for failure to comply with the court's April 20, 2010 court order by filing an income and expense declaration compliant with local rule 14.9 by June 30, 2010, subjecting her to sanctions in the amount of $1500; (2) Code of Civil Procedure section 575.2 for violation of local rule 14.9 because the income and expense declaration filed by Laura on the July 13, 2010 date did not comply with local rule 14.9, subjecting her to sanctions in the amount of $1500; and (3) California Rules of Court 2.30 for violation of California Rules of Court 5.128, with an additional $1500 in sanctions.

income and expense declaration filed on today's date, that [Laura] has a substantial percentage ownership interest in the trust or LLC. [Laura] has not been forthright with that information. And that trust or LLC has at least one commercial property. The court notes that [Laura] failed to disclose the commercial property under 11(c) assets [on the income and expense declaration (Form FL-150)], as well as any other assets owned. The court is not satisfied with [Laura's] explanation that she did not know [about the property]. Certainly [she] has an obligation to conduct a diligent inquiry in determining what exactly her real estate and other commercial holdings are, especially when we are dealing with child support of a minor child.

"The State of California has a very strong policy about supporting a child. The court notes [Laura] has been able to evade her statutory support obligations by referring to the judgment, paragraph 7(a)(2), which contains the void and unenforceable provision that [Laura's] income from the family living trust is not income available for support. . . .

"Trust income is income available for support as set forth in Family Code section 4058. . . ." (All further statutory references are to the Family Code.) The court found Timothy had "borne the substantial cost of raising this child [then 16]" while Laura had successfully evaded her responsibility by relying on the void and enforceable provision in the judgment entered 12 years before. Despite the court's April 20 order to file a complete income and expense declaration, she had failed to do so, and she has failed to provide any basis for the losses she claimed. "There was a complete lack of substantiation, [in] direct violation of the court's order on April 20, 2010." The court did credit Laura's claimed loss in connection with her self-employment income. Based on the tax returns Laura provided Timothy, the trial court found, Laura had identified monthly income in the amount of $33,956. On that basis, the trial court ordered Laura to pay Timothy "guideline support" in the amount of $4437 per month, retroactive to March 26, 2009, with an additional $500 per month payable toward arrears. The trial court directed Timothy, as the moving party, to prepare the order after hearing.

Laura said she had filed supplemental papers that same day identifying "exigent circumstances" supporting her motion for change of custody. Indicating that due process required timely filing and an opportunity for Timothy to respond, the trial court told Laura her motion for change of custody would be heard on September 21, 2010.

The October 27, 2010 Hearing.

On September 3, 2010, Laura filed a motion for reconsideration of the trial court's "findings and order after hearing signed August 9, 2010," which reflected the trial court's orders of July 13, 2010.[6] As "facts in support" of her motion for reconsideration, Laura said, "Only the DissoMaster based on the wild claims of [Timothy] made it into the file," but the court should look instead to the DissoMaster Laura prepared on the basis of her tax returns. The trial court denied the motion, noting the court had followed Family Code section 4058 and there had been no confusion.

Laura filed a notice of appeal from the order entered on April 20, 2010; she also filed a notice of appeal from orders entered on July 13, 2010 and October 27, 2010.[7]

DISCUSSION

September 1997 Proceedings

First, Laura asserts, "This court should acknowledge in writing the invalidity of all orders of September 2, 1997 and subsequent." The contention has already been addressed in two prior appeals. As we noted the first time (*In re Marriage of Lynn* (Apr. 20, 2011, B221555) [nonpub.opn.] review den. Jul 13, 2011, S193512), Laura had failed to explain how the issue was encompassed within her prior notice of appeal, and in any

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6 Laura referenced the file-stamped, conformed copy of the "Findings and Order After Hearing" attached as an exhibit to her motion for reconsideration. Although the first page of the form indicates that it is "Page 1 of 5" and recites "Signature appears on last page of attachment," there is no page 5 included in the record. However, based on the incomplete recitation of the three grounds on which the trial court had noticed the order to show cause re sanctions and the trial court's acknowledgement of the order "signed August 9, 2010," it appears a page 5 was submitted to (and signed by) the court.

7 These two appeals were consolidated pursuant to Laura's motion.

event, she "ha[d] not demonstrated a legal basis for her assertion that more than 13 years of court proceedings should be overturned due to an alleged lack of notice of an ex parte hearing in 1997." She raised and we rejected the same issue in a subsequent appeal. (*In re Marriage of Lynn* (Jan. 24, 2012, B230298) [nonpub.opn.].) The argument is meritless.

Alleged Alteration of the Court File

Similarly, Laura says, "The entire case should be declared a mistrial[,] as the electronic record was altered and the paper record was made inaccessible to the petitioner for more than a decade." Again, she made a substantially similar argument in her first appeal, and again, she has failed to explain how these assertions relate to the orders from which she has appealed. It is Laura's burden to affirmatively demonstrate error, and in order to do so, "[she] must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error." (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) "Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review." (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2002) 100 Cal.App.4th 1066, 1078). Laura has failed to demonstrate prejudicial error in this regard.

Alleged Denial of Hearing on Child Custody

Third, Laura says, "The Court refused to entertain [her] motions on custody and refused to allow for an evidentiary hearing in regards to the issue of custody." She says she "beg[ged]" the trial court for a hearing but was ignored on April 20, 2010, then again on July 13, 2010, and again on September 20, 2010. According to Laura, contrary to Supreme Court authority, the trial court treated child support as more important that child custody and allowed years to go by while Timothy and his family denied and continue to deny Laura contact with her son. Laura has misrepresented and mischaracterized the record.

According to her own citations to the reporter's transcript, on April 20, the trial court *continued* the hearing on Laura's motion for custody to July 13. As set forth in the April 20 minute order, Laura had filed an "ex parte . . . motion for child custody" but that matter was continued from March 12 to April 20—to be heard with four other matters on calendar that day. (Laura sought sole legal and physical custody of her then 15-year-old-son because she said she was being denied visitation.) At the conclusion of the hearing on April 20, after hearing argument on other matters including Timothy's previously filed OSC re: modification of child support which had gone "past the noon hour," the trial court indicated Timothy's as well as Laura's matters would be heard on July 13.

On July 13—the day of the continued hearing, Laura told the court she had filed supplemental papers that same day, identifying "exigent circumstances." The trial court noted the new set of documents was "approximately one[-]inch thick" and was "just not timely."

"Since you have a new set of documents filed today [and] you are the moving party, due process requires that Mr. Lynn be given an opportunity to respond to the pack of documents. So we'll have this matter heard. The court specially sets the custody OSC for September 21 at 1:30. . . . And, ma'am, you need to have a mediation appointment made. You want to do that the same day? September 21, you can do that."

Laura then told the court she would be filing "another supplement to the motion with information [she said she had] gathered." The court reiterated that, if she did so, any additional papers had to be filed no later than 16 court days before the hearing with proper service on Timothy. "[T]he court is not going to consider same day filing."

Laura said, "So you're ruling that there is no exigent circumstance--" The trial court responded, "[N]o, ma'am, the court has not made any substantive ruling. Now you are putting words in the court's mouth." Again, the court explained, "[Y]ou filed a packet of documents the same day. That's not permissible. So I'll consider it for September 21. . . . If you have anything to

supplement just get it in 16 court days beforehand [and] make sure you serve respondent in a timely fashion."

Although she says she was "ignored again" on September 21, Laura did not identify the court's September 21, 2010 order in either of her notices of appeal (and the subsequent order of October 27, 2010 related only to child support, not child custody) so it is beyond the scope of this appeal. Moreover, in her opening brief, she cites only to the case summary listing "proceedings held" and indicating that Laura was ordered to pay sanctions pursuant to the court's OSC noticed on July 13. There is no order, no reporter's transcript and nothing else in the record to substantiate Laura's claims in this regard; the case summary does not suffice. She has not offered any factual or legal analysis here; she merely asserts "'that the court erred and follows the statement with a reference to the transcript, leaving us to follow up the reference and'" construct an argument to support her contention of error. (*Givens v. Southern Pac. Co.* (1961) 194 Cal.App.2d 39, 47.) "We need not address points in appellate briefs that are unsupported by adequate factual or legal analysis." (*Placer County Local Agency Formation Com. v. Nevada County Local Agency Formation Com.* (2006) 135 Cal.App.4th 793, 814.)

Timothy's Alleged Noncompliance and Alleged Court Bias

Laura says Timothy was not required to comply with court and local rules in connection with the parties' exchange of tax records while she did comply but was sanctioned for lack of disclosure. First, Laura mischaracterizes the record. It appears Laura had filed a motion to compel signature on IRS Form 4506 which was one of the matters on calendar for April 20, 2010. Laura said, "that way neither one of has the opportunity to falsify our documents." According to the reporter's transcript of that date, Timothy told the court he had brought his tax returns to court as required, but he would also sign the form if she would sign one as well. The matter was then resolved by stipulation. Meanwhile, Laura ignores the extensive record of her ongoing and repeated failures to disclose her own financial information. We reject Laura's unsubstantiated assertion she has demonstrated the trial court's bias "as grounds to vacate [the trial

court's] orders." (*Givens v. Southern Pac. Co., supra,* 194 Cal.App.2d at p. 47; *Placer County Local Agency Formation Com. v. Nevada County Local Agency Formation Com., supra,* 135 Cal.App.4th at p. 814.)

Evidentiary Objections

Citing a few lines of Timothy's testimony in which he said he had confirmed with the tax assessor's office that the trust owned five other properties and had worked on those properties as a licensed contractor during the parties' marriage, Laura says the trial court allowed Timothy to present hearsay testimony in support of unsubstantiated claims and says the court "neglected to disregard" Timothy's unsworn declaration and points and authorities as she requested.[8] Both Laura and Timothy provided extensive sworn testimony at the hearings at issue in this appeal, including Laura's own testimony acknowledging substantial income she had repeatedly failed to disclose. Beyond passing assertions, Laura has failed to explain how the trial court abused its discretion or how she was prejudiced as a result. (*Givens v. Southern Pac. Co., supra,* 194 Cal.App.2d at p. 47; *Placer County Local Agency Formation Com. v. Nevada County Local Agency Formation Com., supra,* 135 Cal.App.4th at p. 814.)

She also says Timothy presented evidence "that appears to be discovered in violation of Federal Law," in particular, opening and retaining mail addressed to her. Again, she has failed to demonstrate error or prejudice. (*Givens v. Southern Pac. Co., supra,* 194 Cal.App.2d at p. 47; *Placer County Local Agency Formation Com. v. Nevada County Local Agency Formation Com., supra,* 135 Cal.App.4th at p. 814.)

Child Support

In addressing an appeal, we begin with the presumption that the trial court's ruling is correct. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Fleishman v. Superior Court* (2002) 102 Cal.App.4th 350, 357.) "It is well settled, of course, that a

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[8] At the hearing, Laura said she did not remember Timothy working at the properties, not that the trust did not include these multiple properties.

party challenging a judgment has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Robbins v. Los Angeles Unified School Dist*. (1992) 3 Cal.App.4th 313, 318.)

By statute, the trial court is granted broad discretion in applying the principles expressed in the statewide uniform guidelines for child support. In applying these principles, the court's main concern must be the child's best interests. (*In re Marriage of Wittgrove* (2004) 120 Cal.App.4th 1317, 1326.) On review of a child support order, we do not substitute our judgment for that of the trial court but determine only if any judge reasonably could have made such an order. (*In re Marriage of Schlafly* (2007) 149 Cal.App.4th 747, 753.) We determine "only 'whether the court's factual determinations are supported by substantial evidence and whether the court acted reasonably in exercising its discretion.'" (*In re Marriage of Berger* (2009) 170 Cal.App.4th 1070, 1079.)

"To meet the substantial evidence standard, the court's factual determination must be based on 'evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value.' (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) "The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) Laura has failed to meet this burden.

In implementing "statewide uniform guideline" child support, the Legislature specified "courts shall adhere" to principles including the following: "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[;]" "Both parents are mutually responsible for the support of their children[;]" "The guideline takes into account each parents actual income and level of responsibility for the children[;]" and "Each parent should pay for the support of the children according to his or her ability." (Fam. Code, § 4053, subds. (a)-(d) [all further undesignated statutory references are to the Family Code].) "The

guideline seeks to place the interests of children as the state's top priority." (§ 4053, subd. (e).)

As set forth in section 4058, "(a) The annual gross income of each parent means *income from whatever source derived, except as specified in subdivision (c) and includes, but is not limited to*, the following: [¶] (1) Income such as commissions, salaries, royalties, wages, bonuses, *rents*, dividends, pensions, interest, *trust income*, annuities, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, social security benefits, and spousal support actually received from a person not a party to the proceeding to establish a child support order under this article. [¶] (2) Income from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business. [¶] (3) In 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. (b) 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 children. (c) Annual gross income does *not* include any income derived from *child support payments actually received*, and income derived from any *public assistance* program, eligibility for which is based on a determination of need. Child support received by a party for children from another relationship shall not be included as part of that party's gross or net income." (Italics added.)

Laura says the trial court improperly used the value of an asset converted from one form of ownership to another as yearly income and says her tax returns show she has no income.

"The judicially recognized sources of income cover a wide gamut. (See, e.g., *County of Placer v. Andrade* (1997) 55 Cal. App. 4th 1393, 1397 [64 Cal. Rptr. 2d 739] [predictable overtime and bonuses must be included in prospective income under § 4060]; *In re Marriage of Ostler & Smith*[(1990)] 223 Cal. App. 3d [33,] 52 [future bonuses are properly considered income]; *Stewart v. Gomez*[(1996)] 47 Cal. App. 4th

[1748,] 1754-1755 [reasonable value of rent-free housing is income]; *In re Marriage of Schulze*[(1997)] 60 Cal.App.4th [519,] 529-530 [company car and parent-employers' rent subsidy constitute income]; *County of Contra Costa v. Lemon*[(1988)] 205 Cal. App. 3d [683,] 689 [in welfare case, lottery winnings are considered income]; see also *County of Kern v. Castle*[(1999)] 75 Cal. App. 4th [1442,] 1453 [trial court may treat inheritance as income in its discretion]; cf. *In re Marriage of Schulze*[(1997)] 60 Cal. App. 4th [519,] 529 [gifts are not income (dicta)]; *In re Marriage of Rocha* (1998) 68 Cal. App. 4th 514, 517 [80 Cal. Rptr. 2d 376] [student loan is not income because it must be repaid].)" (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 285-286; and see Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2010) ¶ 6:201, p. 6-86; *id.* at ¶ 6:201.3, p. 6-88, original italics [discussing cases and "current trend," defining income as "gain or recurrent benefit that is *derived from labor, business or property . . . or from any other investment of capital*"].)

Federal tax law is not conclusive on the determination of income for calculation of child support. (*In re Marriage of Alter* (2009) 171 Cal.App.4th 718, 735.) "In fact, section 4058 specifically includes some types of income, such as workers' compensation payments, that are excluded from taxable income under the Internal Revenue Code. (26 U.S.C. § 104(a)(1); *In re Marriage of* Scheppers[(2001)] 86 Cal.App.4th [646,] 649–650.) And the Internal Revenue Code's express exclusion of gifts and inheritances (26 U.S.C. § 102) is not found in section 4058. These disparities flow from the differing purposes of the two legal schemes. The Internal Revenue Code does not so much define the term 'income' as identify that which, consistent with prevailing federal tax policy, might be taxed. (See White, *Realization, Recognition, Reconciliation, Rationality and the Structure of the Federal Income Tax System* (1990) 88 Mich. L.Rev. 2034, 2040.) In contrast, California's child support statutes are designed to ensure that parents take 'equal responsibility to support their child in the manner suitable to the child's circumstances.' (§ 3900.) Section 4053, which lists the principles to be followed by the court in setting the child support award, states that the guideline takes into account the parents' '*actual*

income,' not their *taxable* income. A parent may have income that is not taxable but that would be available for support of the child. For example, components of a personal injury award paid on account of physical injury might be considered as income for child support even though such funds are expressly excluded from gross income under the Internal Revenue Code. (26 U.S.C. § 104(a)(2); *In re Marriage of Heiner* (2006) 136 Cal.App.4th 1514, 1524 [39 Cal. Rptr. 3d 730].) Therefore, while the tax model will be helpful in many cases, it is not controlling." (*Id.* at p. 735, original italics; and see § 4053, subds. (d)-(e) ["Each parent should pay for the support of the children according to his or her ability"; "The guideline seeks to place the interests of children as the state's top priority"].)

In *In re Marriage of Alter,* the court observed *In re Marriage of Schulze, supra,* 60 Cal.App.4th 519, involved "recurring benefits that the payor spouse received from his parents," but was "not called upon to consider the really 'tough case,' namely 'that of the scion of a wealthy family whose parents are not his or her employers and who still manages to live quite well even on a low annual gross income as defined by section 4058 because of bona fide nontaxable *gifts* from his or her parents.' (*Schulze, supra,* at p. 530, fn. 10.) That is the case before us." (*In re Marriage of Alter, supra,* 171 Cal.App.4th at p. 733, original italics.)

Here, the trial court gave Laura opportunity after opportunity to substantiate her financial condition. Yet, even as of the July 13, 2010 hearing, she had failed to do so. As of the February 2010 hearing, the court was looking at imputing income to Laura on the basis of considerable expenses she was evidently able to pay in connection with her businesses with trust income. At the April 2010 hearing, Timothy raised the issue of tax forms indicating she had gained and reinvested about $400,000 the preceding year. Laura herself testified to paying a mortgage on property--other than any commercial property—"as part of the trust." The trial court found at that time it was "clear there is trust income that wasn't disclosed before." As of the July hearing, Laura herself had acknowledged that she was still "living off trust income" *and* further testified her parents

had transferred property worth $2 million to Laura and her sister (in an LLC) the year before while she continued to maintain she had "negative" income with losses for the next ten years for tax purposes.

In this case, similar to the facts in *In re Marriage of Alter, supra,* 171 Cal.App.4th at page 737, the record establishes Laura was living off of a substantial amount of trust income which meant the money was available for the support of the children. On this record, the trial court could reasonably have considered these funds to be income, and we find no abuse of discretion. (*Ibid.*) "'Generally, where a trial court has discretionary power to decide an issue, an appellate court is not authorized to substitute its judgment of the proper decision for that of the trial judge. The trial court's exercise of discretion will not be disturbed on appeal in the absence of a clear showing of abuse, resulting in injury sufficiently grave as to amount to a manifest miscarriage of justice. [Citations.] "'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. . . .'" [Citations.]' (*In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 682 [76 Cal. Rptr. 2d 691].)" (*In re Marriage of Mosley* (2008) 165 Cal.App.4th 1375, 1386.)

Citing *In re Marriage of Mosley, supra,* 165 Cal.App.4th 1375, Laura says a "one[-]time bonus, even though it may be repeated, but was not guaranteed to be paid did not count as income for calculating child support." Notably, however, while the *Mosley* court rejected reliance on the basis of speculative assumptions, the court specifically stated, "any bonus *actually received must* be counted as part of [the appellant's] annual gross income for the purposes of spousal and child support obligations." (*Id.* at p. 1387, italics added.) Laura also cites *In re Marriage of Loh* (2001) 93 Cal.App.4th 325 and says the court's order is actually an improper discovery sanction. In that case, the court rejected the attempt to use photos of the father standing in front of expensive cars and a house belonging to his new girlfriend in support of an income amount "plucked from thin air" as a substitute for current tax returns. (*Id.* at p. 327; and see *id.* at p. 331 ["Had Pamela formally obtained an 'issue sanction' order regarding Victor's income, today's result might be different. However, in the face of the Legislature's having provided a clear method of relief for Victor's failure to turn over current income tax returns, and

Pamela's not having availed herself of it, we cannot justify the order before us as a de facto discovery sanction"].)

In this case, however, hearing after hearing, Laura refused to produce her financial information in defiance of court orders, and the order ultimately entered was based on the limited tax information Laura did belatedly provide. She herself cites to a 2009 K-1 schedule reflecting her "Member's Share of Income, Deductions, Credits, etc." According to the document, for the Silver Strand Plaza LLC, *her* capital account at the end of the year (2009) contained $515,631. She *started* the year with a $98,466 balance, *contributed* capital during the year in the amount of $403,156, reported Schedule K "Additions" in the amount of $47,278, and made and received withdrawals and distributions in the amount of $33,269. In her own declaration filed on March 29, 2010 (*after* she said the Silver Strand property had been moved to an LLC), she represented that her "stated assets" were attributable almost entirely to property held in 'trust,'" and she also testified she currently was living off of trust income. According to Laura's own testimony, her parents had recently given her (and her sister) property worth $2 million. The income calculation in this case was based on evidence of Laura's financial circumstances as of the hearing date; if those circumstances changed, she could seek to modify the calculation. (See *In re Marriage of Alter*, *supra*, 171 Cal.App.4th at p. 736 [if the payments should stop earlier than anticipated, the parent obligated to provide support on the basis of those payments may seek modification of the support order].)

Not only is trust income expressly indentified as income to be considered for child support purposes under section 4058, but regular gifts of cash may also be treated as income for child support purposes, and "the inclusion thereof as income for presumptively correct child support 'must be left to the *discretion* of the trial court.'" (Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, ¶ 6.209.8, p. 6-98.5, citing *In re Marriage of Alter, supra,* 171 Cal.App.4th at p. 737 ["The periodic and regular nature of the payments means that the money is available to [appellant] for the support of his children"].) Section 4058's definition of income is "broad enough to encompass gifts

that bear a reasonable relationship to the traditional concept of income as a recurrent, monetary benefit. It is irrelevant that there is no obligation on the part of the donor to continue making the gifts or that the flow of cash does not appear on the income tax return." (*In re Marriage of Alter, supra,* 171 Cal.App.4th at p. 736.)

Laura says the court erred in declaring the trust clause of the judgment void, but she ignores the law. To the extent the parties' agreement purports to restrict the court's jurisdiction over child support, such agreement is void as against public policy. (*In re Marriage of Alter, supra,* 171 Cal.App.4th at pp. 728-729, citing *Armstrong v. Armstrong* (1976) 15 Cal.3d 942, 947 ["Our Supreme Court explained over 30 years ago: 'When a child support agreement is incorporated in a child support order, the obligation created is deemed court-imposed rather than contractual, and the order is subsequently modifiable despite the agreement's language to the contrary'"].) Further, the parties' own language actually excluded only "future deferred interest," not all trust income, and Laura acknowledged she was living off of such income. Moreover, as she herself acknowledged, in addition to trust income, Laura testified she and her sister had received property worth $2 million (in an LLC) and did not dispute she had received the sum Timothy had used to determine the amount he requested as child support the preceding year, in addition to other income she had failed to disclose. Sitting as the trier of fact, the trial court could credit Laura's acknowledgement of considerable income the preceding year available for her son's support while rejecting her claim such income would not continue, and any imprecision in the numbers is attributable to her own misrepresentations of her own financial condition. (*In re Marriage of Calcaterra & Badakhsh* (2005) 132 Cal.App.4th 28, 36 [parent's statement of income on loan application showed parent earned more than stated on tax return]; *In re Marriage of Alter, supra,* 171 Cal.App.4th at p. 738.)

Laura also says the trial court gave more weight to Timothy's "rude, mean-spirited, ridiculous arguments" than to her "rational arguments," apparently agreed with Timothy she was "unworthy" and says she begs this court to define "unworthiness." She

also asserts Timothy lied on his tax returns when he reported his older son lived with him in 2008 and 2009, and this court "should not give a wink to the tax evasion." The trial court sits as a trier of fact on a motion to modify child support, and according to the record, Laura's own testimony and failures to disclose information as required and ordered undermined her credibility. (*In re Marriage of Calcaterra & Badakhsh, supra,* 132 Cal.App.4th at p. 36.) She has failed to demonstrate that the trial court based its decision on "worthiness" rather than the evidence in the record.

DISPOSITION

The orders are affirmed. Laura is to bear her own costs of appeal.

WOODS, J.

We concur:

PERLUSS, P. J. **ZELON, J.**