

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of SHAHDAD  
and ASAL AZMOON.

B277654

(Los Angeles County  
Super. Ct. No. BD632962)

---

SHAHDAD AZMOON,

Appellant,

v.

ASAL AZMOON,

Respondent.

---

APPEAL from an order of the Superior Court of  
Los Angeles County, Michael E. Whitaker, Judge. Affirmed.

Taub & Taub and Richard F. Taub, for Appellant.

Law Offices of Katherine R. Cohan and Katherine R.  
Cohan, for Respondent.

---

Shahdad Azmoon appeals from the family law court's order awarding pendente lite attorney fees to his wife, Asal Azmoon, in their contested marriage dissolution proceeding. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Shahdad and Asal<sup>1</sup> were married on July 7, 2013 and separated on December 28, 2015. They are the parents of a daughter born in July 2014. Shahdad filed a petition for dissolution on January 21, 2016.

On June 10, 2016 Asal filed a request for attorney fees accompanied by her declaration, a form income and expense declaration and other form attachments. The request was also accompanied by a declaration from Asal's attorney, Katherine Cohan, which attached three months of itemized invoices for legal work on the case, as well as excerpts from Shahdad and Asal's 2014 joint tax returns and the 2014 tax return for an S corporation owned by Shahdad.<sup>2</sup>

---

<sup>1</sup> As is customary in family law matters, we refer to the parties by their first names for convenience and clarity.

<sup>2</sup> There are several irregularities in Asal's request for attorney fees. Although the request was filed on June 10, 2016, the first page was signed some time in March 2016 (the date is illegible), and the final page was signed by Asal on March 14, 2016. Asal's supporting declaration and a form attachment to the request were both signed on March 29, 2016. The income and expense declaration has the word "amended" handwritten above the title, was signed by Asal on April 7, 2016 and bears a "conformed copy" stamp from the trial court dated April 13, 2016. Certain sections of the documents contain typewritten material that has been crossed out and/or changed by hand. There is no indication on the documents when, or by whom, these alterations were made. The date of Cohan's declaration was originally

The documents contained discrepancies concerning the amount of fees requested. The request for order sought \$75,000 for incurred and unpaid attorney fees plus an additional \$30,000 for projected fees. The “request for attorney’s fees and costs attachment,” dated the same day as the request, sought \$100,000 in fees and stated that amount included \$91,300 in fees already incurred and \$50,000 in estimated future fees.<sup>3</sup> The income and expense declaration, dated three weeks after the request, listed unpaid attorney fees as \$48,995. Cohan’s declaration, dated more than a month after the request, stated she was owed \$91,300.

Asal’s declaration established she was 28 years old and had a college degree. She had been accepted to pharmacy school, but Shahdad had prevented her from matriculating. From 2013 until their separation in 2016, Asal had worked more than 70 hours per week as the administrative director for Shahdad’s medical practice. The income and expense declaration listed Asal’s average monthly income for the preceding 12 months as \$1,842. Asal stated she was the primary caregiver for the couple’s young daughter, having been awarded 82 percent custody by the family court. Asal claimed there was no current job market for her

---

May 25, 2016, but that date was crossed out by hand and changed to June 7, 2016. There is some indication in the record Asal had filed previous requests for fees, which were denied without prejudice because they were incomplete. It is possible the need to file the request for attorney fees multiple times is the reason for the alterations and inconsistencies in the documents.

<sup>3</sup> The attachment initially requested approximately \$50,000 in fees already incurred and \$50,000 in estimated future fees. Those amounts were crossed out, and the higher amounts written in by hand. There is no indication in the record when the amendment was made.

skills, but she intended to go back to school. Her monthly expenses were more than \$9,000, not including credit card debt and attorney fees. She had borrowed money from her parents to pay more than \$15,000 in attorney fees.

Asal's declaration stated Shahdad maintained control over all family assets, including the family home, which was worth more than \$1 million. Shahdad is a cardiologist and owns his own practice. Asal claimed Shahdad earned more than \$1 million per year from his medical practice, income properties and a jewelry business run by his mother. The couple's 2014 tax return shows \$31,044 in income from wages and \$229,762 in income from partnerships or S corporations. The tax return also lists an income property owned by the couple that earned \$18,288 in rent in 2014 but incurred more than \$20,000 in loan interest payments and property taxes. The tax return for the S corporation stated Shahdad devoted 80 percent of his time to his practice, owned 100 percent of its stock and received compensation of \$29,914 in 2014.

Cohan's declaration established Asal had paid her a retainer of \$10,800. Cohan charged \$300 per hour and had already worked more than 300 hours on the case. Cohan explained Shahdad had lied to the court to gain initial custody of the couple's daughter, which resulted in a five-day custody trial. Shahdad had repeatedly failed to follow court orders and, despite Cohan's repeated attempts at informal reconciliation, Shahdad refused to stipulate to or settle any aspects of the case. Cohan predicted the case would ultimately go to trial.

Shahdad failed to file an opposition to the request for order.

The trial court began the hearing on July 14, 2016 by reading its tentative ruling granting the request for fees and

awarding \$75,000 payable to Cohan for fees already incurred. The court stated, “The court finds that the award of attorney’s fees and costs is appropriate. The court finds that there’s a disparity between the parties in access to funds to retain and maintain counsel. The court also finds that [Shahdad] is able to pay for the legal representation of both parties . . . . Payment sources are his income, his community property share and interest in the family home, as well as undisclosed liquid assets, including any bank deposits, that he may have access to. The court finds that the making of the award of attorney’s fees and costs [is] just and reasonable under the relative circumstances of the respective parties.”

Shahdad’s counsel addressed the court after the announcement of the tentative ruling. He argued the request for fees was procedurally defective and Cohan’s declaration did not provide sufficient information to allow the court to make the necessary findings. Specifically, he objected to the “block billing” contained in Cohan’s invoices and pointed out inconsistencies and inaccuracies in the request, such as its statement no prior orders of support had been made in the case. Shahdad’s counsel requested a continuance so that Shahdad could complete his income and expense declaration, stating, “[T]he Court had given [Shahdad] to the end of this month to provide proof of service of the preliminary declarations of disclosure. We’re on track to do that. . . . My client informs me—though I’m not the accountant and I am not preparing the I&E; I’m waiting for it to come to our office—that he’s having difficulty paying the current ordered support and keeping his practice going, and that he lost a revenue stream, insurance contract that represented, he said, 70 percent of his income of last year. So far he hasn’t been

successful in replacing that contract.” Shahdad’s counsel did not offer any evidence in support of his argument.

The court responded by stating, “I am allowing you to make a statement on the record, but I’m not considering anything you said, because your client didn’t file an opposition. There’s no due process to [Asal] in terms of what you’re now claiming to be a basis for opposing [her] request. I allowed you to make a record to the extent that you wanted to make one, but I’m not considering any of your arguments for purposes of my ruling on the request for orders.” The court denied the request for continuance and adopted its tentative ruling awarding Asal \$75,000 in attorney fees already incurred payable at the rate of \$5,000 per month.

## DISCUSSION

### 1. *Governing Law and Standard of Review*

Family Code section 2030<sup>4</sup> authorizes a need-based award of attorney fees and costs to “ensure that each party has access to legal representation . . . to preserve each party’s rights” in a proceeding for dissolution of marriage. (§ 2030, subd. (a)(1).) In determining whether to order one party to pay another party’s fees and costs and, if ordered, what amount must be paid, the court “shall make findings on whether an award of attorney’s fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties.” (§ 2030, subd. (a)(2).) “The court may make an award of attorney’s fees and costs under Section 2030 . . . where the

---

<sup>4</sup> Statutory references are to this code unless otherwise stated.

making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties.” (§ 2032, subd. (a); see *In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 865.) In determining what is just and reasonable under the relative circumstances, “the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party’s case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320. . . . Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances.”<sup>5</sup> (§ 2032, subd. (b).)

The family law court’s award of attorney fees in a dissolution proceeding is reviewed for abuse of discretion. (*In re Marriage of Sullivan* (1984) 37 Cal.3d 762, 768; *Mooney v. Superior Court* (2016) 245 Cal.App.4th 523, 536.) The order “will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make

---

<sup>5</sup> The factors identified in section 4320, circumstances to be considered in ordering spousal support, include the duration of the marriage, the earning capacity of each party, “the needs of each party based on the standard of living established during the marriage,” “[t]he marketable skills of the supported party,” “the possible need for retraining or education to acquire other, more marketable skills,” “[t]he extent to which the supported party’s present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties,” “[t]he age and health of the parties” and “[a]ny other factors the court determines are just and equitable.”

the order made.” (*In re Marriage of Smith* (2015) 242 Cal.App.4th 529, 532; accord *In re Marriage of Keech*, *supra*, 75 Cal.App.4th at p. 866.)

2. *The Family Law Court Did Not Abuse Its Discretion in Denying Shahdad’s Request for a Continuance*

“Continuances are granted only on an affirmative showing of good cause requiring a continuance.” (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 823; accord, *In re Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1169.) “In ruling on a motion or application for continuance, the court must consider all the facts and circumstances that are relevant to the determination.” (Cal. Rules of Court, rule 3.1332(d).) In evaluating the court’s ruling, relevant factors include the reasons presented to the trial court for the request, whether a continuance was necessary to allow the parties to present relevant evidence and whether the refusal of a continuance had the practical effect of denying a fair hearing. (See *Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389, 1395; *In re Marriage of Hoffmeister*, at p. 1169.) As appellant, Shahdad has the burden of showing an abuse of discretion and prejudice resulting from the denial of his request. (*In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 337.)

Shahdad has not shown it was an abuse of discretion to deny a continuance to permit him additional time to complete his income and expense declaration. Shahdad had one month between the filing of Asal’s request and the hearing to complete his declaration or request additional time in which to do so. He made no effort to request a continuance until after it was clear the court was going to award attorney fees to Asal. Further, Shahdad made no showing of good cause, either in the family law



court or on appeal, to support a continuance. In fact, he has given no explanation whatsoever for his failure to timely respond to Asal's request for fees.

On appeal Shahdad argues the family law court violated his "due process rights by undermining its own order and refusing Shahdad the time he had relied upon from the trial court's prior order to serve and file those financial documents after the hearing . . . ." While the court may have previously given Shahdad a later deadline to file his disclosures, an order for which there is no record on appeal, it would not have obviated Shahdad's obligation to respond to a pending or later-filed request for attorney fees. Even without filing his own financial disclosures, Shahdad could have attempted to rebut Asal's evidence and contentions. Instead, Shahdad did nothing until after learning the court intended to rule against him. Accordingly, on the record before us, we cannot say the family law court abused its discretion in denying the continuance request.<sup>6</sup> (See *In re Marriage of Falcone & Fyke*, *supra*, 164 Cal.App.4th at p. 823 [no abuse of discretion in denying wife's request for continuance made at hearing when wife knew of alleged need for more time for more than one month and gave

---

<sup>6</sup> To the extent Shahdad argues in his reply brief the family law court erred by refusing to consider his counsel's argument at the hearing, the argument is forfeited because not raised in his opening brief. (*Kelly v. CB&I Constructors, Inc.* (2009) 179 Cal.App.4th 442, 452 ["point not raised in opening brief will not be considered"]; *Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 894-895, fn. 10 [arguments raised by appellant for first time in reply brief generally not considered absent good reason for failing to present them earlier].)

no reason for delay of request]; *In re Elijah V.* (2005) 127 Cal.App.4th 576, 585 [no abuse of discretion in denial of continuance when party gave no reason for request of additional time].)

3. *The Family Law Court Did Not Abuse Its Discretion in Granting Asal's Request for Attorney Fees*

Shahdad contends the family law court failed to consider the criteria enumerated in sections 2030 and 2032, as well as the factors in section 4320, before it found Shahdad had the ability to pay for legal representation of himself and Asal. Shahdad argues the court's use of "mechanical" statutory language in pronouncing its findings demonstrates it did not conduct any substantive analysis. As to the evidence relied upon, Shahdad argues the tax returns presented were outdated and did not establish a current ability to pay Asal's attorney fees. He also argues the court's reliance on Shahdad's interest in the family home as a source of payment was error because there was no evidence of what, if any, equity Shahdad had in the home. Finally, Shahdad argues the declarations and attachments provided by Asal contained "grossly insufficient and glaringly absent information" that was "sketchy" and "not credible."

"While no particular language is required in an order awarding attorney fees under sections 2030 and 2032, the record (including, but not limited to, the order itself), must reflect an actual exercise of discretion and a consideration of the statutory factors in the exercise of that discretion." (*Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238, 254.) Although the family law court did not expressly explain its rationale with respect to each statutory factor, the doctrine of implied findings requires us to presume the court made all factual findings necessary to support

the order for which there is substantial evidence while indulging all reasonable inferences to uphold the court's order. (See *In re Marriage of Condon* (1998) 62 Cal.App.4th 533, 549-550, fn. 11; see also *In re Marriage of McHugh* (2014) 231 Cal.App.4th 1238, 1248.)

The record demonstrates the family law court considered the requisite factors in determining there was a disparity of income between the parties and Shahdad had the ability to pay both parties' attorney fees. Substantial evidence supports those conclusions. Asal's declaration established she had been unemployed for six months and had an average monthly income of \$1,842. Her monthly expenses were \$9,095, and she had borrowed money from her parents to pay legal fees. While Asal's request and supporting documents contain conflicting information regarding Shahdad's income, the most conservative evidence in the tax returns and declaration establish he earned at least \$200,000 per year and was in control of the family assets, including a house worth more than \$1 million. In addition, the family law court had previously found Shahdad earned a gross monthly income of \$20,417.<sup>7</sup> On this record we cannot say no

---

<sup>7</sup> In a separate appeal filed by Shahdad (case no. B283853) and thereafter dismissed by him, the civil case information statement included an order containing findings made at a May 5, 2016 hearing. Although the hearing took place in 2016, the order was not signed until May 22, 2017 because, as Shahdad's counsel explained in a declaration submitted with the appeal, Asal's counsel had failed to prepare a proposed order immediately following the hearing. Shahdad's counsel belatedly filed the proposed order in 2017, and it was signed by the court on May 22, 2017. We take judicial notice of the May 22, 2017 order. (Evid. Code, §§ 452, subd. (d), 459.)

reasonable judge would have granted Asal's request for attorney fees.

Shahdad's arguments on appeal regarding the weight and credibility of Asal's evidence are misplaced. Shahdad bore the burden of responding in a proper and timely manner to the request for attorney fees. In the absence of any evidence rebutting Asal's versions of the facts, the family law court was justified in relying on the evidence Asal presented.<sup>8</sup> (See *Kevin Q. v. Lauren W.* (2011) 195 Cal.App.4th 633, 644 [rejecting position "that a court bears a sua sponte duty to uncover any omissions, inconsistencies, or falsehoods in the parties' income and expense declarations"]; *Alicia R. v. Timothy M.* (1994) 29 Cal.App.4th 1232, 1239 [finding no abuse of discretion in awarding attorney fees to wife when husband failed to file income and expense declaration and did not present evidence rebutting wife's declaration].) Further, the majority of evidentiary issues Shahdad raises on appeal were not raised in the family law court; thus, Asal had no opportunity to amend, correct or explain her declaration, nor did the court have the opportunity to consider Shahdad's allegations. (See *Kevin Q.*, at p. 645 [declining to consider allegations of inaccuracies in income and expense

---

The May 22, 2017 order stated that, as of May 2016, the court found Shahdad earned a gross monthly income of \$20,417 and awarded child support and spousal support to Asal in the amount of \$6,169 per month.

<sup>8</sup> Shahdad's counsel's argument in the family law court regarding a recent reduction in Shahdad's income was simply that—argument. There was no evidence presented to support that claim, and Shahdad's counsel explicitly stated the contention was not based on his own personal knowledge.

declaration when not raised in family law court]; see also *In re Marriage of Olson* (1993) 14 Cal.App.4th 1, 15 [“[a]s a general rule, issues not properly raised at trial will not be considered on appeal”].)

4. *The Family Law Court Did Not Abuse Its Discretion in Setting the Amount of Attorney Fees Awarded*

In awarding attorney fees under section 2032, the family law court is not required to rely on any particular type of evidence and may even rest an award on its own observations in determining the reasonable value of counsel’s services. (See *In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 167 [in addition to declarations and billing statements, family law court’s attorney fee award supported by size of the record and unnecessary complexity of case]; *In re Marriage of McQuoid* (1991) 9 Cal.App.4th 1353, 1361 [“[d]irect evidence of the reasonable value of an attorney’s services need not be introduced ‘because such evidence is necessarily before the trial court which hears the case’”].)

Asal’s attorney submitted a declaration stating her billing rate was \$300 per hour, and she provided invoices showing the tasks performed and number of hours worked for the months leading up to the request. The declaration further explained there had been a five-day trial regarding custody of the couple’s daughter and asserted Shahdad had refused to stipulate to any issue or engage in any settlement discussions. Asal’s attorney stated Shahdad’s behavior had forced her to seek court intervention on multiple issues.

On appeal Shahdad argues a fee award of \$75,000 is excessive given the case had been pending only six months at the time of the hearing. He also alleges the court failed to consider

whether the amount of time billed and tasks performed were reasonably necessary to the case. Again, Shahdad had the opportunity to raise these arguments in the family law court but failed to do so. The family law court was in the best position to determine the complexity of the case, the nature of the proceedings thus far and the demeanor and tactics of each party. As such, the family law court was “in the best position to assess the value of the professional services rendered” before it. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321.) This is particularly true, when, as here, appellant has provided an especially limited record on appeal. Shahdad has not shown the court abused its discretion in awarding Asal \$75,000 in fees.

### **DISPOSITION**

The order of the family law court is affirmed. Asal is to recover her costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

FEUER, J.