Filed 9/26/18 Marriage of Hausdorfer CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re the Marriage of MARIA and GLENN HAUSDORFER MARIA ELENA HAUSDORFER, Appellant, v. GLENN S. HAUSDORFER, Respondent.	B286018 (Los Angeles County Super. Ct. No. BD624189)

APPEAL from a judgment and order of the Superior Court of Los Angeles County. Colin P. Leis, Judge. Affirmed.

Kearney/Baker and Gary W. Kearney for Appellant.

Corbett, Steelman & Specter and Susan J. Ormsby for Respondent.

Maria Elena Hausdorfer (appellant) appeals from a judgment entered September 1, 2017, following a court trial in this marital dissolution action. Appellant contends that the trial court abused its discretion in setting her permanent spousal support and calculating her equalizing payment. We find no abuse of the trial court's discretion, therefore we affirm the judgment.

BACKGROUND

The marriage

Appellant married Glenn S. Hausdorfer (respondent) on August 19, 1984. Two months after the parties married, appellant became pregnant with their first child. By the parties' mutual agreement, appellant remained out of the paid workforce during their 30-year marriage in order to raise their two sons and attend to the family's domestic needs. Appellant was a homemaker while respondent worked to support the family. Appellant did not pursue any career training or education, and thus does not have any marketable skills. Both of the parties' children are now adults.

The parties separated on July 10, 2015, and appellant filed a petition for dissolution of marriage on July 17, 2015.

Marital standard of living and present earning capacities

The trial court found that the parties lived paycheck to paycheck and spent the community's entire income. They accumulated no assets except an IRA.

Respondent is a medical pathologist. Since 1986, respondent has hired out his professional services to Citrus Pathology Medical Group (Citrus) through his professional medical corporation. Before the parties separated, respondent's corporation received gross monthly income of $20,000 from Citrus. At that time, respondent's corporation also received gross

monthly income for respondent's services as a medical director for two laboratories of $1,500 per lab.

Post-separation, respondent's corporation received $18,000 gross income from Citrus, and a monthly payment of $1,500 for his services as a medical director of a single laboratory.

Appellant has limited skills. Given her age and physical infirmities, the trial court determined that while she remains employable, she cannot earn more than California's minimum wage of $10.50 per hour, which is $1,820 per month.

The parties' debts and assets

The parties' only significant asset is the community IRA. The IRA's value on the date of separation was $556,837, making each party's share $278,418.50. Its value at the time of trial was $298,840. Appellant received pretrial distributions of $125,924, reducing her remaining portion to $152,494. In making this calculation, the trial court did not make additional reductions for respondent's post-separation payments of appellant's health and insurance expenses, which the court found constituted spousal support.

The parties carried joint credit card debt of $36,974. In addition, respondent paid $19,073 towards community expenses post-separation. All community debt was assigned to respondent.

The parties agreed to support their sons' college educations by assuming the financial responsibility of paying their student loans. Although only respondent co-signed those loans, the court found that he did so with appellant's knowledge. Respondent was paying a total of four loans on behalf of the parties' two sons. The loans were not in default. Because only a default would trigger the community's financial obligation as co-signer, the court reserved jurisdiction over assignment of the debt.

Personal property

There was testimony at trial that appellant removed $20,000 in personal property from the family home without respondent's permission in October 2015. The court assigned as appellant's separate property those items in her possession, and assigned to respondent those items in his possession.

Appellant testified that she owned valuable gold jewelry in July 2015 which she had inherited from her mother, grandmother, and great-grandmother. According to appellant, when she returned to the family home in October 2015, this valuable jewelry was missing. Respondent denied taking the jewelry. It was noted that a moving company hired by appellant had access to the jewelry when the company's six employees packed and moved her belongings to her father's home in Florida. The trial court found that appellant had failed to prove that respondent took the gold jewelry, thus made no orders concerning it.

The parties' age and health

At the time of final judgment in this case, appellant was about to turn 59 years old. Her health was not good. She suffered from poorly controlled diabetes that caused neuropathic pain, had three strokes, a possible thyroid condition, and back problems.

Respondent is older than appellant.[1] He also experienced health challenges. In May 2015 he suffered a perforated gastric ulcer that required surgery, and in September 2015 he underwent a hip replacement.

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[1] Respondent does not provide a citation to the record indicating his age, but asserts in his brief that at the time of trial, he was 61 years old.

The parties' needs

Appellant lived in the Los Angeles area from 1973 to the time of separation. Following the separation she moved to Florida to live less expensively with her father. Without significant spousal support, appellant has no realistic chance of ever being able to support herself above a minimum wage lifestyle. Such a lifestyle would be in stark contrast to the parties' upper-middle class lifestyle during their marriage. Until appellant begins to receive Social Security in approximately two years, appellant will have no income other than spousal support and whatever she might manage to earn if she finds work in an unskilled or semi-skilled job.

Respondent's rent is $3,300 per month, under a six-year lease in effect from June 2012 to May 2018. The trial court found his other reasonable expenses to be $6,758 per month.

Respondent's ability to pay

At the time the final judgment was issued, respondent's corporation received $19,500 gross per month. Respondent's corporation pays $7,500 in corporate business expenses including, but not limited to, medical malpractice insurance premiums, taxes, education, and accountancy fees. The court found that $2,500 of those expenses were reimbursements of respondent's personal expenses and were added back as income to respondent. Accordingly, respondent's gross income is $14,500.

Support award

Based on the factors discussed above, the court ordered spousal support payable by respondent to appellant in the amount of $2,000 per month.[2]

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[2] The trial court initially set spousal support at $5,540 per month. This was based on the court's initial misimpression that respondent's corporation was earning "net $20,000" per month from Citrus, and that respondent's post-separation earnings fell

Equalizing payment

The court further ordered that appellant shall receive upon entry of judgment $152,494, which shall be transferred to a separate IRA in her name. Respondent was further ordered to pay appellant $27,091 in attorney's fees, payable at $450 per month until paid in full.

Judgment and appeal

Final judgment was entered on September 1, 2017. On October 30, 2017, appellant filed her notice of appeal from the judgment, except that portion of the judgment awarding her attorney fees.

DISCUSSION

I. Standard of review and relevant legal principles

An order of permanent spousal support is reviewed for abuse of discretion. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 283.) In awarding spousal support, the court must consider the mandatory guidelines set forth in Family Code section 4320 (section 4320). Pursuant to section 4320, the court must consider, among other things: the extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, including the

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to "net" earnings of "$18,000 per month" from Citrus. However, respondent filed a request for statement of decision, asking the court to set forth its legal and factual basis for, among other things, the gross and adjusted monthly income to respondent's corporation, the current gross income to respondent, and respondent's current income available for spousal support. In its final order, the court corrected this error, clarifying that respondent's corporation received "gross monthly income of $20,000" during the marriage, which later fell to "gross monthly payments of $18,000 from Citrus." Following the clarification of respondent's corporation's actual income, the trial court set the spousal support at the lower number of $2,000 per month.

marketable skills of the supported party and the extent to which the supported party's earning capacity is impaired by periods of unemployment to attend to domestic duties; the ability of the supporting party to pay spousal support; the needs of each party, based on the standard of living established during the marriage; the obligations and assets of the parties; the duration of the marriage; the ability of the supported party to engage in gainful employment; and the age and health of the parties. Once the court balances the factors set forth in section 4320, the court's decision as to the amount and duration of spousal support rests within the broad discretion of the court and will not be reversed on appeal absent an abuse of that discretion. (*Cheriton, supra*, at p. 283.)

The trial court's division of retirement benefits is also reviewed for abuse of discretion. (*In re Marriage of Sonne* (2010) 185 Cal.App.4th 1564, 1568.)[3] In order to show an abuse of discretion, the appealing party must demonstrate that no judge would reasonably make the same order under the same circumstances. (*In re Marriage of Baker* (1992) 3 Cal.App.4th 491, 496.)

II. Spousal support

The trial court set spousal support at $2,000 per month. Appellant argues that this was an abuse of the trial court's discretion. Appellant argues that the trial court erred in evaluating appellant's marketable skills and in leaving appellant with a significantly lower standard of living than respondent.

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[3] We reject appellant's suggestion that the division of the IRA should be reviewed de novo. *Community for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32 is inapplicable.

A. Capacity to earn minimum wage

Appellant argues that the trial court erred in determining that appellant was capable of earning minimum wage at the California rate of $1,820 per month. Appellant argues that she was, at the time of trial, a 58-year-old woman in poor health with no recent work experience and limited English skills. She contends there was no evidence at trial that she had the ability to earn income, thus the trial court erred in imputing such income to her.

At trial, the court considered evidence that appellant had health problems including diabetes, stroke, high cholesterol, high blood pressure, neuropathy and irritable bowel syndrome. However, there was also evidence that appellant had no particular physical restrictions and was able to engage in normal activity. After the separation, appellant made two trips back and forth to Florida, and needed no special accommodations for the trips. Appellant had a degree in nursing at one time but lost it because she did not keep it up. Appellant suggested that she had been asked to be a chef and to pass a course, but she did not sign up for the course. She also contacted respondent's office to inquire if they could "set [her] up with a job at the hospitals to be a housekeeper or something like that." This effort was unsuccessful. She inquired into two other housekeeping jobs, but was unable to secure employment.

Thus, the evidence suggests that while appellant's efforts so far were unsuccessful, she was pursuing possible employment opportunities in areas where she could potentially secure employment. Her physical condition did not prevent her from traveling and applying for housekeeping jobs. Under the circumstances, the trial court's determination that appellant was

employable at minimum wage was not beyond the bounds of reason.[4]

Appellant cites *In re Marriage of Cohn* (1998) 65 Cal.App.4th 923 (*Cohn*) as support for her position. However, the reasoning in *Cohn* does not undermine the trial court's decision in this case. In *Cohn*, the former husband was an unemployed attorney. The trial court imputed to him income of $40,000 for the first year and stepped up such imputed income to $80,000 thereafter. While the evidence showed that the husband had the ability and willingness to work, there was no evidence that he had the opportunity to work. (*Id.* at p. 929.) He had undertaken a thorough and diligent job search for many years, but had been unsuccessful in obtaining a salaried position. Frustrated by such efforts, his present plan was to open a practice as a sole practitioner in Sacramento. The *Cohn* court held:

> "Instead of basing his earning capacity on a salaried position which the evidence showed [husband] was unable to secure, the court's focus

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[4] We reject appellant's assertion that her purportedly "limited" English skills would prevent her from obtaining minimum wage employment. There was no such evidence presented to the trial court. While appellant used an interpreter at trial, respondent argued convincingly that appellant is bilingual, which is a highly desirable skill in such positions. Respondent asserted that appellant "has lived in the United States for roughly 45 years. The parties spoke English during their marriage and to their children and [appellant] did not require a translator at the multiple hearings, trial setting conferences or settlement conference." Further, the court "observed that [appellant] was admonished several times to allow [the interpreter] to translate before [appellant] responded." Under the circumstances, we find the evidence before the court supported the court's implied finding that appellant's language skills would not impede her ability to find employment.

> should have been what [husband] could reasonably expect to earn as a sole practitioner in Sacramento, his stated goal at the time of trial and reasonable one given his recent history in pursuing employment."

(*Cohn, supra*, 65 Cal.App.4th at pp. 930-931.)

The court further found the projection that the husband's income would double to $80,000 within a year "impossible to fathom." (*Cohn, supra*, 65 Cal.App.4th at pp. 930-931.) Having found that an entry-level position would pay $40,000, it was inconceivable that such a salary would rise by 100 percent after only one year. (*Ibid.*) While the court was sympathetic to the notion that the husband's support obligations be drawn from his earning capacity, such capacity could not be "drawn from thin air." (*Ibid.*)

The present matter is distinguishable in several respects. First, the question in *Cohn* was not whether to impute income to the husband at all -- it was the amount of such income that was in dispute. The *Cohn* court did not take issue with the trial court's decision to impute income to a former spouse based on that individual's earning capacity. Here, the trial court has imputed to appellant only the most basic income to be obtained from minimum wage. There has been no suggestion that appellant could ever expect to earn anything more.[5]

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[5] Appellant emphasizes her physical limitations, asserting that she is physically unable to be "a hotel maid, dish washer, retail clerk, security guard, field worker, child care provider, or fast food server." Appellant provides no citations to the trial court record where she presented evidence of physical limitations preventing her from carrying out these jobs. Because the trial court did not consider appellant's present position that she could not perform any of these tasks, we reject the argument.

Further, unlike the husband in *Cohn*, appellant has not provided evidence of an exhaustive job search showing that she has no opportunity to work. The husband in *Cohn* provided testimony of a thorough two-year job search, including submitting resumes to "most of the firms in the Sacramento area" as well as "numerous public agencies." In addition, he had pursued work outside of his job training, working for a private lender and attempting to work selling living trusts. (*Cohn, supra*, 65 Cal.App.4th at p. 926.) Thus, the husband rebutted the suggestion that he had the opportunity to work. Appellant, in contrast, has provided evidence of very few attempts to find work. On this record, the trial court did not abuse its discretion in concluding that appellant will be able to find work opportunities at minimum wage.

Finally, appellant argues that the trial court erred in imputing California minimum wage, when appellant presently lives in Florida. Appellant brought this to the trial court's attention when she filed her objections on February 2, 2018. The trial court responded, indicating that it had imputed California minimum wage based on appellant's stated desire to return to California. The court's reasoning was sound and did not constitute an abuse of discretion.

B. Standard of living

Appellant argues that the trial court's order leaves her at a significantly lower standard of living than respondent. Her spousal support of $2,000 per month, plus an imputed income of $1,820 per month, leaves her with a total of $3,820 gross income per month. Appellant argues that this is a significantly different income level than respondent, whose gross income after spousal support is $12,500 per month. Appellant cites *In re Marriage of Andreen* (1978) 76 Cal.App.3d 667 (*Andreen*), as support for her argument that the trial court abused its discretion in leaving the

parties in such disparate positions. In making this argument, appellant does not address the parties' significant debts and obligations.

In considering appellant's argument, we keep in mind that the trial court was required to balance numerous factors in reaching a conclusion as to the appropriate amount of spousal support. The record reveals that the trial court carefully did so. The court was required to consider the obligations of each party, including debts. (§ 4320, subd. (e).) Such debts were significant in this case. The parties had credit card debt of $36,974, plus $19,073 owed to respondent for community obligations paid after separation. Respondent was paying one of his son Eric's loans, and all three of his son Stephen's loans. Respondent's payments were preventing the four loans from going into default and thus becoming obligations of the community. None of these obligations was assigned to appellant. Thus, although her monthly income was lower than respondent's, she was entirely free of any of the community's debt.

The court found that respondent's present gross monthly earnings were lower than during the marriage.[6] Specifically,

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[6] While the marital standard of living is "'relevant as a reference point against which the other statutory factors are to be weighed'" (*In re Marriage of Williamson* (2014) 226 Cal.App.4th 1303, 1316), it is "'not "an absolute measure of reasonable need."'" (*Ibid.*) Where the court considers the relevant statutory factors and finds that an amount less than required to maintain the marital standard of living is "'just and reasonable,'" it may fix spousal support at a lower standard of living. (*Ibid.*) Thus, to the extent that respondent's income dropped, and the parties incurred debt, their standard of living may be below its previous level going forward. In fact, the trial court noted that "[w]ithout significant spousal support, [appellant] has no realistic chance of ever being able to support herself above a minimum wage-level

during the marriage, respondent's corporation earned $20,000 per month from Citrus and $3,000 per month from two laboratories. Post-separation, respondent's corporation received $18,000 from Citrus and $1,500 from a single laboratory, for a total of $19,500 per month. After deducting corporate business expenses, the court set respondent's gross monthly income at $14,500.

The court concluded that respondent's reasonable monthly expenses amounted to $10,058 per month. Thus, after taking into account respondent's reasonable expenses, respondent's remaining gross monthly income amounted to $4,442 per month.

Appellant does not dispute the trial court's calculation of respondent's reasonable expenses. The trial court granted appellant $2,000 of the remaining $4,442 each month, which is 45 percent of respondent's gross income after expenses.[7]

Andreen is distinguishable, as in that case there was no discussion of community debt or the assignment of such debt. The husband's take home pay was expected to be in excess of $2,000 per month, with a payment of only $500 per month to the wife. (*Andreen, supra*, 76 Cal.App.3d at pp. 670-671.) Under the circumstances, husband would be living a comfortable lifestyle while wife could find herself "barely above the poverty level." (*Id.* at p. 672.) Here, in contrast, appellant has failed to show such a disparity in living conditions. Appellant's burden to show an

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lifestyle, a stark contrast to the parties' upper middle-class lifestyle on a physician's income during their marriage."

[7] Respondent filed a request for statement of decision as to his income, expenses and available income for spousal support. Appellant did not file such a request. As both parties note, the trial court did not make any findings as to appellant's reasonable monthly expenses.

abuse of discretion in this case would have to include a discussion of all of the factors the trial court considered, including the community's debts and obligations to their sons. In the absence of a reasoned discussion of all the relevant factors, we decline to find an abuse of discretion under the circumstances of this case.[8]

III. Division of IRA

Appellant contends that the trial court's calculation of the division of the IRA was erroneous. Appellant fails to provide a citation to the record showing that she brought this error to the trial court's attention. Therefore, it is forfeited on appeal. (*In re Marriage of Hinman* (1997) 55 Cal.App.4th 988, 1002 [failure to raise arguments regarding calculation of child support at the trial court level waives right to challenge such calculation on appeal].)

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[8] As respondent points out, appellant failed to give the trial court the opportunity to respond to her arguments, as she did not request a statement of decision or object to the proposed statement of decision as to the spousal support or division of the IRA. Thus, we must imply all findings necessary to support the judgment. (Code Civ. Proc., §632; *In re Marriage of Condon* (1998) 62 Cal.App.4th 533, 549-550, fn. 11 ["Under the doctrine of 'implied findings,' when parties waive a statement of decision expressly or by not requesting one in a timely manner, appellate courts reviewing the appealed judgment must presume the trial court made all factual findings necessary to support the judgment for which there is substantial evidence"].) Because we do not have a statement of decision setting forth the trial court's precise reasoning, we assume that the trial court determined that, considering all the factors set forth in section 4320, including the debts and obligations charged to respondent, the parties' standards of living would be fairly evenly matched. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1134 ["a party claiming deficiencies" in a tentative decision "must bring such defects to the trial court's attention to avoid implied findings on appeal favorable to the judgment"].)

Further, our review of the record does not suggest error. The judgment provides that the value of the IRA on the date of separation was $556,837. Thus, each party's share was $278,418.50. However, appellant received pretrial distributions of $125,924, thus reducing her remaining portion to $152,494. Respondent was ordered to provide appellant that amount upon entry of judgment, as a separate IRA in her name.

Appellant appears to contest the trial court's conclusion that she received $125,924 in pretrial distributions. She points to an order dated September 2, 2015, in which the court ordered respondent to pay to appellant the sum of $9,100 per month, $2,100 of which would be paid by respondent and $7,000 of which would be appellant's share of the IRA account. Appellant states that the trial court ignored this pretrial order and instead charged appellant the entire $9,100 out of the IRA account. Appellant cites a trial exhibit showing IRA distributions to appellant as support for her position. This trial exhibit shows varying distributions adding up to $125,924.10.

No IRA distribution listed on the trial exhibit provides for a distribution of $9,100, as appellant asserts was ordered. Instead, among the many distributions, there are five distributions for $9,360.02. Appellant does not explain this discrepancy. Respondent explains it, asserting that the five monthly payments of $9,360.02 netted appellant the $7,000 per month that was to be withdrawn from the IRA.[9] Respondent further asserts, without citation to the record, that the $2,100 in spousal support was

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[9] The trial court's September 2015 order specifies that appellant "shall be charged with the gross withdrawal from the IRA to net $7,000." Respondent testified that he did withhold tax on the withdrawals, although it turned out that he "under-withheld," so an additional tax burden was ultimately due.

withdrawn from respondent's disability payments that he was receiving at the time.

Given appellant's failure to raise this below, and the present state of the record on appeal, we decline to find an abuse of the trial court's discretion. While neither appellant nor respondent has provided adequate citations to the record explaining the list of IRA distributions, it was appellant's burden to affirmatively show error. Respondent's explanation for the calculations is just as plausible as appellant's, and given that appellant failed to object, or seek a statement of decision, on this issue, we may properly presume the judgment to be correct. (*In re Marriage of Arceneaux, supra*, 51 Cal.3d at pp. 1133-1134.)

DISPOSITION

The judgment is affirmed. Each side to bear their own costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT