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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of LUCINDA and JACK
GOUIN.

2d Civil No. B255431
(Super. Ct. No. FL100028)
(San Luis Obispo County)

LUCINDA GOUIN,

Respondent,

v.

JACK GOUIN, JR.,

Appellant.

Jack Gouin, Jr., appearing in pro. per., appeals the judgment awarding his former wife, Lucinda Gouin, \$20,475 in temporary spousal support arrearages.¹ He contends the judgment is not supported by substantial evidence. Jack has provided neither a reporter's transcript of the trial nor a settled statement. On the record before us, there is no error and we affirm.

FACTS AND PROCEDURAL BACKGROUND

Jack and Lucinda were married in February 2009. They separated 10 months later after a domestic violence incident in which Jack inflicted severe physical

¹To avoid confusion, we refer to the parties by their first names. No disrespect is intended.

injuries on Lucinda. Jack pled guilty to misdemeanor domestic battery and was ordered to "stay away" from her. Lucinda petitioned to dissolve the marriage.

In February 2010, the trial court ordered Jack to pay Lucinda temporary spousal support of \$650 per month and to use his best efforts to reinstate her on his health insurance plan. It reserved jurisdiction over the issue of spousal support solely "as to the medical bills that may become due as a result of respondent's termination of coverage for petitioner." Jack did not appeal the order. He reinstated Lucinda's insurance but did not pay any spousal support. He claimed her mother had agreed Lucinda would not seek to collect spousal support if the insurance was reinstated. Although Jack stopped working in May 2011, he did not request a modification of temporary spousal support or an advancement of the trial date.

The court held a two-hour trial in October 2012. Jack personally appeared and, in the absence of any objection, the court permitted Lucinda to appear telephonically. Each party had the opportunity to testify and to cross-examine the other. They answered questions posed by the court, and had the opportunity to present evidence and argument regarding the issues. The court dissolved the marriage and ruled the parties had no community or separate property assets or obligations to divide. The relevant remaining issues involved spousal support.

In its proposed statement of decision, the trial court found that both parties are currently disabled. It noted Lucinda receives Social Security disability income of \$900 per month; Jack receives \$1,636 per month. The court determined Lucinda did not agree to waive temporary spousal support, and that, absent her consent, it lacked authority to retroactively modify the support award. The court ordered Jack to pay 31 months of back support payments totaling \$20,475.

After balancing the factors in Family Code section 4320,² the trial court rejected Lucinda's request for permanent spousal support. It determined the impact of the domestic violence on Lucinda's ability to work was offset by the short-term marriage,

² All statutory references are to the Family Code.

Jack's current disability and his liability for \$20,475 in temporary spousal support arrearages. The court terminated support effective October 10, 2012.

Jack objected to the proposed statement of decision. The trial court addressed his objections in its final statement, but did not change its rulings. Jack appeals the portion of the judgment requiring payment of the temporary spousal support arrearages.

DISCUSSION

Jack contends the trial court abused its discretion by issuing a spousal support order that contravenes "the [s]ubstantial [w]eight of the [e]vidence." As Lucinda points out, Jack forfeited this argument by electing to proceed without a reporter's transcript of the trial or a settled statement. (See *Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082.) In an appeal based on the clerk's transcript, or "judgment roll," we conclusively presume evidence was presented that is sufficient to support the court's findings. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) Our review is limited to determining whether any error "appears on the face of the record." (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521; *Estate of Fain* (1999) 75 Cal.App.4th 973, 992 ["Where no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary matters*. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error"].)

The face of the record does not disclose error. Jack claims his due process rights were violated when the trial court allowed Lucinda to appear at trial by telephone. But the record shows he was in the courtroom during trial, heard Lucinda's testimony and was allowed to cross-examine her. Moreover, he did not object to the procedure until after the court issued its proposed statement of decision. Jack cannot complain of a purported error he invited by failing to object. (See *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 403.)

Jack further contends the trial court failed to consider the section 4320 factors when it ordered him to pay the temporary spousal support arrearages.³ He argues the amount is excessive, given the short-term nature of the marriage, his disability and the parties' low-income lifestyle. Jack confuses the requirements for ordering or modifying temporary spousal support with those for ordering permanent spousal support. Section 4320 applies only to permanent support orders. (See § 3600; *In re Marriage of Murray* (2002) 101 Cal.App.4th 581, 594 (*Murray*) [noting differences between temporary and permanent spousal support]; *In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 166 ["Awards of temporary spousal support do not serve the same purposes, nor are they governed by the same procedures, as awards for permanent spousal support"].) The record reflects the trial court appropriately considered the section 4320 factors when it addressed, and ultimately denied, Lucinda's request for permanent spousal support.

Jack's appeal is not from a judgment awarding spousal support in the first instance, but rather from a judgment denying retroactive modification of an existing temporary spousal support order. In reaching its decision, the trial court recognized that, absent the parties' agreement, it lacked authority to retroactively modify the temporary spousal support order as to any amounts that accrued *before* a request for modification was filed. (§ 3603 [temporary support order "may be modified or terminated at any time except as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate"]; *In re Marriage of Williamson* (2014) 226 Cal.App.4th 1303, 1317-1318; *Murray, supra*, 101 Cal.App.4th at p. 595 [date of request to modify temporary spousal support order "establishes the outermost limit of retroactivity"].) Jack did not request modification of the temporary support order until trial; therefore, retroactive modification of the accrued temporary support obligation was

³Section 4320 requires the trial court, in ordering permanent spousal support, to consider a number of factors, including the marital standard of living, the needs of each party, the supporting party's ability to pay, the duration of the marriage, the age and health of the parties and the balance of hardships. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 283.)

precluded. (See *Murray*, at p. 595; *In re Marriage of Gruen* (2011) 191 Cal.App.4th 627, 637-638.) The trial court properly found him liable for the arrearages.

DISPOSITION

The judgment is affirmed. Respondent shall recover her costs on appeal.

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GILBERT, P. J.

We concur:

YEGAN, J.

CHANEY, J.*

*(Justice of the Court of Appeal, Second Appellate District, Div. 1, assigned by the Chief Justice pursuant to art. VI, § 6 of the Calif. Const.)

Gayle L. Peron, Judge
Superior Court County of San Luis Obispo

Jack Goulin, Jr., in pro. per., for Appellant.

Barbakow & Ribet, Claudia Ribet for Respondent.