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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of ELENA KOUVABINA and JACOB VELTMAN.	
ELENA KOUVABINA, Appellant, v. JACOB VELTMAN, Respondent.	A171807, A172215 (San Mateo County Super. Ct. No. 17-FAM-01346)

Elena Kouvabina appeals from two child support orders, filed in May and November 2024 (May and November orders). In February 2025, we consolidated the appeals. After considering her arguments, we reverse and remand as to part of the November order and otherwise affirm.

BACKGROUND

In October 2023, Kouvabina moved the trial court to modify child support orders issued in January and July 2023 (January and July orders).[1]

[1] Kouvabina unsuccessfully appealed the January and July orders. (*In re Marriage of Kouvabina & Veltman* (Mar. 27, 2025, A167490, A168348, A168557, as mod. Apr. 28, 2025) [nonpub. opn.]) (*Kouvabina III*). Two other appeals arising out of this dissolution were decided against her, and we have declared her a vexatious litigant. (*Ibid.*; *In re Marriage of Kouvabina & Veltman* (Oct. 26, 2023, A165209) [nonpub. opn.]) (*Kouvabina I*); *In re*

She alleged that her former spouse Jacob Veltman received a $100,000 raise, and she requested a "modification of child support," "elimination of Osler-Smith child support,"[2] that "child care and medical expenses" and "gymnastics, piano, and Russian lessons" be divided "in net available income proportion," "above-guideline support," that Veltman "pay 100% of tuition or in net available income proport[ionate]," and her "work-related parking costs." In February 2024, Veltman responded. He did not deny his income changed but opposed some of her requests.

The trial court held a hearing in March 2024 and thereafter granted Kouvabina's "request to modify guideline support" because of Veltman's "increase in income." Because of his raise, it also granted some of her requests to modify child support add-ons to a "20/80 apportionment" — namely, "employment-related child care, reasonable uninsured health care, gymnastics expenses[,] and piano expenses." But it denied her requests for additional add-ons for piano lessons, parking expenses, financial hardship, international travel, tuition, and Russian lessons. It concluded that, for those requests, she had not shown a sufficient change in circumstances since the January and July orders and an order issued in October 2023. It also found that parking expenses and international travel were invalid add-ons

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Marriage of Kouvabina & Veltman (Jan. 31, 2024, A165033 [nonpub. opn.]) (*Kouvabina II*); *In re Marriage of Kouvabina & Veltman* (2025) 115 Cal.App.5th 293.) We incorporate by reference the factual and procedural background from those opinions and recite only the facts necessary to resolve the issues presented in these appeals. We deny as improper her request for judicial notice made in her opening brief. (Cal. Rules of Court, rule 8.252(a)(1) [request must be made in a separate motion].)

[2] Ostler/Smith refers to *In re Marriage of Ostler & Smith* (1990) 223 Cal.App.3d 33, 42, which concerned an additional award of spousal support expressed as a percentage of a discretionary bonus received by a party.

under Family Code section 4062 (all undesignated statutory references are to this code). Lastly, it denied her request for an evidentiary hearing because there were "no issue[s] of credibility" and it "ha[d] sufficient information." It issued the May order memorializing its conclusions.

In July 2024, Kouvabina asked the trial court to reconsider the May order under Code of Civil Procedure section 1008, subdivision (b). Specifically, she requested the "court reconsider the issue of tuition" due to changes to section 4061 becoming operative in September 2024. (Stats. 2023, ch. 213, § 9.) After a hearing in November, the court denied the motion.

DISCUSSION

Kouvabina advances several theories attacking the May and November orders. We set forth the law governing our review and then address each argument in turn.

"A child support order may be modified when there has been a material change of circumstances." (*In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1054.) " 'The ultimate determination of whether the individual facts of the case warrant modification of support is within the discretion of the trial court.' " (*Ibid.*) " ' " 'The burden is on the party complaining to establish an abuse of discretion,' " ' " and "an ' "order of the lower court is presumed correct." ' " (*Acosta v. Brown* (2013) 213 Cal.App.4th 234, 244; *Tanguilig v. Valdez* (2019) 36 Cal.App.5th 514, 520 (*Valdez*), italics omitted.) Unless " ' " 'a clear case of abuse is shown' " ' " and " ' " 'there has been a miscarriage of justice[,] a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power.' " ' " (*Brown*, at p. 244.) " ' " 'Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered.' " ' " (*Ibid.*) If "a trial court's decision is influenced by an erroneous understanding

of applicable law or reflects an unawareness of the full scope of its discretion," the court has not "properly exercised its discretion." (*F.T. v. L.J.* (2011) 194 Cal.App.4th 1, 15.)

I.

Kouvabina raises several challenges to the May order. We find none persuasive.

Kouvabina contends the trial court did not "recognize its jurisdiction to modify all aspects of child support . . . upon a presentation of a material change of circumstances," that it erred "in finding no new circumstances," and that it erroneously believed previous orders "bar[] any future relief." She misrepresents the record, thereby forfeiting the issue. (*L.O. v. Kilrain* (2023) 96 Cal.App.5th 616, 620–621; *Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 53.) She admits the court "recognized that Veltman's income increase was 'pretty significant' " and modified support because of it. It also granted her request to modify child support add-ons "regarding employment-related child care, reasonable uninsured health care, gymnastics expenses and piano expenses." The record amply demonstrates that — contrary to her claims — the court understood its jurisdiction, found a change in circumstances, and did not conclude that previous orders "bar[red] . . . future relief." No error appears.

Kouvabina next argues that the trial court erred in finding the change of circumstance was not sufficient to make some of her requested add-on modifications — namely, for piano lessons, parking expenses, financial hardships, international travel, Russian lessons, and reallocation of tuition. She fails to establish an abuse of discretion. (*Valdez*, *supra*, 36 Cal.App.5th at p. 520.) She cites *A.P. v. K.T.* (2023) 89 Cal.App.5th 988, but that case concerned expenses for a custody evaluator. (*Id.* at p. 990.) By contrast, the

items at issue here were either within the court's discretion to grant or deny, or the court had no discretion to order as an add-on. (Compare § 4062, subds. (a)(1) & (2) [mandatory add-ons are employment-related and uninsured healthcare costs] with subds. (b)(1) & (2) [educational costs and travel expenses for visitation are discretionary]; *In re Marriage of de Guigne* (2002) 97 Cal.App.4th 1353, 1367 [courts have no discretion to approve add-ons not authorized by statute].)

Kouvabina next argues the trial court abused its discretion by not ordering above-guideline child support "due to her mother's medical and care expenses" and "for international travel." We disagree. Her mother's expenses cannot be the basis for an above-guideline order. (*In re Marriage of Butler & Gill* (1997) 53 Cal.App.4th 462, 464 [supporting a parent was not hardship for purpose of child support].) And she fails to provide any authority suggesting the court abused its discretion by concluding the trips to Europe were not a need of the child. (*Valdez*, *supra*, 36 Cal.App.5th at p. 520.)

Kouvabina next argues the trial court erred by denying above-guideline child support because of the "inequities in access to housing" between her and Veltman. (Boldface & capitalization omitted.) But she does not provide any record citations to support the alleged housing disparity, much less evidence showing the court abused its discretion by not relying on such an alleged disparity. She thus forfeits the claim. (*Valdez*, *supra*, 36 Cal.App.5th at p. 520; *Audish v. Macias* (2024) 102 Cal.App.5th 740, 751 [we will not " ' "scour the record unguided" ' "].)

Relying on section 217, Kouvabina also argues that the court erred in denying her an evidentiary hearing. Not so. Section 217 "requires the court receive 'any live, competent testimony that is relevant and within the scope of

the hearing,' subject to a finding of good cause to refuse based on reasons stated in the record." (*In re Marriage of Cohen* (2023) 89 Cal.App.5th 574, 582.) "Reasons for refusing live testimony include whether material facts are in controversy and whether live testimony is necessary for the court to assess credibility." (*Ibid.*) The trial court is " 'required to state only those factors upon which the finding of good cause [was] based.' " (*Ibid.*) Even if Kouvabina requested to present live testimony, the court found good cause to deny the request. (*Ibid.*) The court determined there was sufficient evidence to rule on the motion, and it was not necessary to assess the parties' credibility. " 'Implicit in the court's words is a determination that the material facts were not in controversy.' " (*Ibid.*) "The court thus satisfied its obligations under . . . section 217." (*Ibid.*)

Finally, Kouvabina argues the trial court erred by not issuing a statement of decision. But contrary to her claims, the court *did* issue a statement of decision, albeit orally. (*Z.V. v. Cheryl W.* (2023) 97 Cal.App.5th 448, 453 [statement of decision may be made orally].)

II.

Kouvabina also challenges the November order. To begin, she contends the trial court should have reconsidered the May order's tuition split because of legislative amendments to section 4061. On this point, we agree.

For additional background, the Legislature amended section 4061, operative September 2024. (Stats. 2023, ch. 213, § 9.) The statute previously provided that child support add-ons "*shall be divided one-half to each parent*, unless either parent requests a different apportionment . . . and presents documentation which demonstrates that a different apportionment would be more appropriate." (Former § 4061, subd. (a), italics added.) The statute was amended to provide that add-ons "*shall be divided in proportion to the*

parents' net incomes . . . unless a party requests or the court finds on its own motion that expenses should be divided in a different manner." (§ 4061, subd. (a), italics added.)

In the January order, Judge Dabel — a different judge than the one who heard the proceedings at issue in these appeals — ordered the parties to split tuition costs equally. Despite many requests to modify that order, it remained in force when Kouvabina sought a modification due to Veltman's raise. In the May order, the trial court declined to modify the 50/50 tuition split.

In November 2024, the trial court heard Kouvabina's motion to reconsider whether tuition should be reallocated due to the change in section 4061. In making its decision, the court considered the arguments the parties made before the January order and Judge Dabel's decision. The court noted that each party previously "advocated that the other party should incur 100% of the tuition costs." Despite that, Judge Dabel "exercise[d his] discretion" to order an equal tuition split. Because of that, the court concluded the change in section 4061 could not have affected his decision and thus declined to reconsider the tuition split.

The trial court abused its discretion. (*F.T. v. L.J.*, *supra*, 194 Cal.App.4th at p. 15; *New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212 [ruling on a motion for reconsideration reviewed for abuse of discretion].) Its reasoning reflects a misunderstanding of how section 4061, subdivision (a) operates. (*F.T.*, at p. 15 [erroneous understanding of law precludes appropriate exercise of discretion].) It is correct that, in the January order, Judge Dabel rejected both parties' requests that the other party pay for most of the tuition, and he instead ordered an equal split. Doing so was consistent with former section 4061,

which required add-ons be split "one-half to each parent, unless either parent requests a different apportionment . . . and presents documentation which demonstrates that a different apportionment would be more appropriate." (Former § 4061, subd. (a).) In other words, Judge Dabel concluded the parties' requests were inappropriate, and it appears he defaulted to the equal split then contemplated by the Legislature. But under the amended section 4061, if the court rejects the parties' requests or does not arrive at a different split on its own motion, it must default to a split proportionate to the parties' incomes. (§ 4061, subd. (a).) Nothing in the January order suggests Judge Dabel issued a 50/50 split for reasons other than what was contemplated in the statute. Thus, had the amended statute been in place, he could very well have applied a tuition split proportionate to the parties' incomes. Thus, the court erred by concluding that Judge Dabel necessarily would have ordered an equal tuition split even under current section 4061.

Kouvabina next argues the trial court erred when it "vest[ed] Veltman with unilateral control over Kouvabina's Ostler-Smith Guideline Child Support" for various reasons. (Some capitalization omitted.) We disagree.

For additional background, in July 2024, Veltman asked the trial court to allow him to make tuition payments "on behalf of [Kouvabina]" if she missed making a payment and "deduct a corresponding amount from any future child support owed." In the November order, the court granted his request in part and ordered that, if Kouvabina "misses a school tuition payment going forward, [Veltman] is permitted to forward the payment himself. Any payments that [Veltman] forwards on [Kouvabina's] behalf shall be credited against bonus support owed pursuant to the Smith-Ostler true-up."

Kouvabina argues the trial court "erred as a matter of law by allowing Veltman to . . . withhold[] what constitutes guideline child support." (Italics omitted.) She mischaracterizes the court's order. The order does not allow Veltman to withhold "guideline child support"; instead, it allows him to make up her missed tuition payments using "bonus support owed pursuant to the Smith-Ostler true-up." Contrary to Kouvabina's claims, Ostler/Smith provides " 'an additional award, over and above guideline support, expressed as a fraction or percentage of any discretionary bonus actually received.' " (*In re Marriage of Minkin* (2017) 11 Cal.App.5th 939, 949.) More important, the order does not allow Veltman to withhold guideline support but instead ensures the child may continue attending her school by allowing Veltman to cover any payments missed by Kouvabina and to have those payments credited against any bonus support he would otherwise owe.

Kouvabina also argues "the order is unethical" and unconstitutional. She also appears to argue the trial court abused its discretion and was biased against her. But she does not provide reasoned legal argument or authority supporting these conclusory statements and thereby forfeits them. (*Valdez*, *supra*, 36 Cal.App.5th at p. 520.) We also will not consider arguments made for the first time in reply. (*People v. Silveria and Travis* (2020) 10 Cal.5th 195, 255.)

DISPOSITION

The trial court's order, issued May 28, 2024, is affirmed. The court's order, issued November 8, 2024, is reversed insofar as it denied Kouvabina's motion for reconsideration concerning tuition allocation. On remand, the court is ordered to reconsider her request in light of Family Code section 4061. The November order is otherwise affirmed. Neither party shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

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RODRÍGUEZ, J.

WE CONCUR:

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FUJISAKI, Acting P. J.

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PETROU, J.

A171807 & A172215; *In re Marriage of Kouvabina & Veltman*