

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 SIX

In re Marriage of KIELLE
LINDSEY and JONATHAN
HORTON.

2d Civil No. B335432
(Super. Ct. No. 22FL01003)
(Santa Barbara County)

KIELLE LINDSEY,

Respondent,

v.

JONATHAN HORTON,

Appellant.

Jonathan Horton (husband) appeals from a judgment dissolving the parties' marriage, dividing their property, and awarding spousal support and attorney fees. The judgment was entered following a 17-day court trial.

Husband contends the trial court abused its discretion in denying his request to continue the trial. The denial allegedly

“deprived [husband] of a fair opportunity to present his case effectively.” (Capitalization and bold omitted.) Husband also argues that “the [attorney] fees awards were too late and too little.” (Capitalization and bold omitted.) We affirm.

*Factual and Procedural Background through Denial
Of Husband’s 12/30/2022 Request for a Continuance*

Husband and Kielle Lindsay (wife) married in 2009 and separated in 2022. They have two minor children.

On July 6, 2022, the trial court set the trial for March 1, 2023. The court minutes show that two attorneys were present on behalf of husband: Michelle R. Penna and Miles Goldrick. In August husband gave notice that Miles Goldrick was no longer counsel of record and that J’Aimée L. Oxton had been retained as co-counsel. On December 5, 2022, Penna was substituted out of the case and replaced by Oxton. On the same date, husband retained Eric Gans as co-counsel. Thus, after the matter was set for trial, two attorneys represented husband at all times.

On December 30, 2022, husband requested that the trial court continue the mandatory settlement conference, discovery cut-off, and trial. Husband alleged that the request was “in large part due to [wife’s] disclosure **just 2 months ago** (in October) that her contention at trial will be that real and personal property, including all bank, investment and other related financial accounts, accumulated over the course of the parties’ more than 13-year marriage, is her sole and separate property.” (Underlining omitted.)

The trial court denied the request. It reasoned: “This case has been already exhaustively litigated; the trial dates were set in July and no objections were raised . . . until this last minute application. [¶] The Court has not ignored the fact that the

issues related to separate property was [sic] raised early; . . . in fact [wife's] Petition for Separation [filed in 5/22] alerts counsel of separate property issues when she pointed out 'the true nature and extent of the separate property assets and debts to be confirmed to each party is unknown; she would provide this information when it is ascertained;' [Husband's] Petition for Dissolution [filed in 9/2022] asks 'that certain assets be confirmed as his separate[] property'" (Third and fifth pairs of brackets in original.)

HUSBAND'S CONTENTIONS

The Trial Court Did Not Abuse Its Discretion in Denying Husband's 12/30/2022 Request for a Continuance

"Although continuances of trials are disfavored, each request for a continuance must be considered on its own merits. The court may grant a continuance only on an affirmative showing of good cause requiring the continuance." (Cal. Rules of Court, rule 3.1332(c)).¹

"Trial courts generally have broad discretion in deciding whether to grant a request for a continuance." (*Freeman v. Sullivant* (2011) 192 Cal.App.4th 523, 527.) "A reviewing court will reverse an order denying a continuance only upon a showing of an abuse of discretion." (*In re Gerald J.* (1991) 1 Cal.App.4th 1180, 1187.) ""[A]n abuse of discretion is shown . . . where, considering all the relevant circumstances, the court has 'exceeded the bounds of reason' or it can 'fairly be said' that no judge would reasonably make the same order under the same circumstances."" (*Herriott v. Herriott* (2019) 33 Cal.App.5th 212, 223.) "It is the appellant's burden on appeal to show the trial

¹ All references to rules are to the California Rules of Court.

court abused its discretion.” (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 957.)

Husband claims that on January 3, 2023, the trial court abused its discretion in denying husband’s December 30, 2022 request for a continuance “**arising from his attorney’s illness.**” Husband asserts, “Attorney Penna’s December [5,] 2022 withdrawal from [husband’s] case due to cancer left [husband] . . . in the lurch Trial was less than months away And discovery was incomplete”

But husband’s December 30, 2022 request for a continuance did not mention Penna’s illness or withdrawal from the case. We do not know what occurred at the January 3, 2023 hearing on the request because the record does not contain a reporter’s transcript of the hearing.² The trial court’s order denying the request gave a detailed summary of husband’s argument in support of his request. The summary does not mention Penna’s illness or withdrawal from the case. Accordingly, husband has not carried his burden of showing an abuse of discretion based on Penna’s withdrawal because of illness.

Rule 3.1332(d) sets forth 11 “facts and circumstances” that “the court must consider” if “relevant to the determination” of whether a motion for a continuance should be granted. Husband contends the trial court abused its discretion in failing to expressly consider 10 of these factors. But we cannot assume the

² Volume 4 of the reporter’s transcript ends with proceedings conducted on August 19, 2022. Volume 5 of the reporter’s transcript begins with proceedings conducted on January 4, 2023, the day after the trial court denied husband’s request for a continuance.

trial court failed to consider relevant factors merely because it did not mention them in its ruling. “We presume the trial court considered the appropriate factors, and [appellant] has pointed to no authority requiring the trial court to make explicit findings [on the factors] in ruling on a motion [for a continuance].” *Roman v. Liberty University, Inc.* (2008) 162 Cal.App.4th 670, 684; see also *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [“it is settled that: ‘A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown”].)

Finally, husband argues that the trial court abused its discretion because the denial of a continuance “deprived [him] of a fair opportunity to present his case effectively.” (Bold and capitalization omitted.) “[D]iscretion is abused . . . where the lack of a continuance results in the denial of a fair hearing.” (*Rankin v. Curtis* (1986) 183 Cal.App.3d 939, 947.) “[T]he appellant is presumed to have had a fair trial, and every intendment and presumption not contradicted by or inconsistent with the record must be indulged in favor of the judgment of the superior court . . .” (*Pacific Nat. Co. v. Southwest Finance Co. of Cal.* (1935) 4 Cal.App.2d 326, 329.)

Husband has not shown that the denial of his request for a continuance resulted in the denial of a fair hearing. The trial court ruled against husband because it credited wife’s witnesses and did not credit his own witnesses. Husband notes that the “court seemed determine[d] to reject every shred of evidence presented not only by [him], but by each of his witnesses . . .” Husband asserts that “the court’s findings were scathing” as to him. The court stated: “[T]he vast amount of [husband’s]

testimony was dismaying; discouraging; disingenuous; in general, not creditable.” “There was nothing in his testimony that the Court found credible related [to] his claim opposing the property division proposed by [wife]. On the contrary, it was clear he is trying to take advantage of the largeness and wealth of [wife’s parents] and [wife] to claim an interest in her separate property.”

Husband claims “[t]he court’s rush to trial did not allow sufficient time” to prepare his witnesses. Husband’s factual analysis in support of this contention is limited to his expert witness, Rachelle Barnier. Husband asserts: “Ms. Barnier testified that lack of timely information deprived her of the means to prepare an adequate analysis; she was forced to ‘scramble’ through the data. [Record citation.] . . . The effect of the rush was to expose Ms. Barnier to cross-examination that would undermine her opinion in the court’s eyes” Husband is referring to Barnier’s testimony that, five days before her deposition on February 22, 2023, and 12 days before the scheduled trial date of March 1, 2023, she received two gigabytes of data from wife’s forensic accountant, Tracy Katz. Because of the late delivery of the data, Barnier claimed she was unable to include the data in her report.

In its statement of decision the trial court said: “[Barnier] appeared to be an able and competent CPA; the Court liked her; but her Courtroom demeanor and testimony was [*sic*] not persuasive on any of the tracing issues before the Bench. This Court will not accept and rely upon her testimony and exhibits as to the tracing and division of property. Tracy Katz’s testimony was far more convincing and persuasive.”

Husband has failed to establish that he was denied a fair hearing because of the late delivery of the two gigabytes of data.

He has not shown the content of the data; nor has he explained why the earlier delivery of the data to Barnier would have resulted in a decision more favorable to him. (See *In re Marriage of Tara & Robert D.* (2024) 99 Cal.App.5th 871, 888 [“all of Robert’s grounds for claiming prejudice [from the erroneous denial of a continuance] suffer from the same deficiency. He fails to explain how any of the circumstances he notes had a substantive effect on the outcome of the case”].) Despite the late delivery of the two gigabytes, Barnier testified that she had “enough financial information in order to offer [the trial] Court an opinion concerning the community and separate property characters of the assets at issue.”³

Attorney Fees

Wife’s assets far exceeded husband’s. Husband contends the attorney fees that wife was ordered to pay him “were too late and too little.” (Bold and Capitalization omitted.) Husband claims he “was forced into the financial trial with counsel who

³ For the reasons discussed above, even if the trial court had abused its discretion in denying husband’s request for a continuance, he would not be entitled to a reversal because he has failed to establish prejudice. (See *In re Marriage of Tara & Robert D.*, *supra*, 99 Cal.App.5th at p. 888 [although Robert showed that trial court had abused its discretion in denying a continuance, he was not entitled to a reversal because he had “failed to establish prejudice and reversible error under *Watson*”].) Under *People v. Watson* (1956) 46 Cal.2d 818, a trial court’s error is reversible only if it resulted in a miscarriage of justice. “[A] ‘miscarriage of justice’ should be declared only when the court, ‘after an examination of the entire cause, including the evidence,’ is of the ‘opinion’ that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.” (*Id.* at p. 836.)

were already owed large sums and were facing a complicated trial” “[He] was entitled to be represented by attorneys who [were] free from the worry that with each day of trial they were falling deeper into a financial pit.”

Husband notes that wife was ordered to pay him attorney fees totaling \$650,000 – \$350,000 pendente lite and \$300,000 after the trial had been completed. The trial court said, “There is a vast disparity in earnings, earning ability and assets. The Court must level the playing field and provide [husband] with access to the courtroom. The Court will not reallocate the \$350,000[] previously awarded” Husband complains: “Notwithstanding the disparity in the parties’ resources, the ultimate attorney fees award [to husband] was \$650,000, whereas by the end of the proceedings, [wife] had paid her lawyers \$2,221,223.^[4] [Record citation.] The playing field still was not level.”

Husband has not referred us to any evidence in the record showing that his award of attorney fees was inadequate or that the delay in awarding pendente lite attorney fees prejudiced him. Thus, husband has not carried his burden of overcoming the presumption that the award of attorney fees was correct. (See *Mac v. Minassian* (2022) 76 Cal.App.5th 510, 521 [appellants “can overcome this presumption only by supporting their contention with argument and citations to authority and the record that demonstrate error”].) Nor has husband demonstrated reversible error. (See *Farnum v. Iris Biotechnologies Inc.* (2022) 86 Cal.App.5th 602, 608 [“[I]n order to prevail, the appellant has

⁴ This amount includes \$222,716 for wife’s forensic accountant and \$126,881 for a custody evaluation.

the burden to not only overcome [the] presumption [of correctness] but also demonstrate reversible error”).)

Disposition

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

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

BALTODANO, J.

CODY, J.

Thomas Anderle, Judge

Superior Court County of Santa Barbara

Law Offices of J'Aimée L. Oxton and J'Aimée L. Oxton;
Ferguson Case Orr Paterson and Wendy C. Lascher, for
Appellant.

Susan E. Wiesner; Garrett C. Dailey; Price, Postel & Parma
and Paul A. Roberts, for Respondent.