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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Marriage of MATTHEW FREDRIC and AMY ELIZABETH VON BROCK.	B342601
MATTHEW FREDRICK VON BROCK, Appellant, v. AMY ELIZABETH VON BROCK, Respondent.	(Los Angeles County Super. Ct. No. BD584067)

APPEAL from an order of the Superior Court of Los Angeles County, Armando Duron, Judge Pro Tempore. Affirmed.

Matthew Von Brock, in pro. per., for Appellant.

Amy Elizabeth Von Brock, in pro. per., for Respondent.

In February 2024, Matthew Von Brock (Matthew) filed a request for an order (RFO) reducing his child support payments to his former spouse Amy Von Brock (Amy).[1] He asserted that after getting laid off from his job as a senior visual effects supervisor in the entertainment industry, he diligently sought a new job paying a salary similar to what he used to earn, but could only secure an entry-level job with an annual salary of $60,000. Therefore, Matthew argued, he could not afford to pay Amy $2,666 per month in support based on an imputed annual income of $250,000, as previously ordered in December 2023.

Per Amy's request and over Matthew's objection, the trial court held an evidentiary hearing on his RFO under Family Code section 217.[2] At the hearing's conclusion, the trial court found Matthew not credible and, consequently, denied his request.

On appeal, Matthew argues reversal is required because the trial court: (1) erroneously imputed to him an annual income of $250,000 in December 2023; (2) violated his right to due process by declining to strike Amy's belatedly-filed amended responsive declaration and holding an evidentiary hearing on his RFO; (3) incorrectly found Ted Rae, Matthew's friend who testified at the hearing on his behalf, unqualified to render an expert opinion on the entertainment industry's labor market; and

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[1] "[W]e refer to the parties by their first names, as a convenience to the reader. We do not intend this informality to reflect a lack of respect." (*In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1513, fn. 2.)

[2] All further undesignated statutory references are to the Family Code.

(4) found Matthew not to be credible based on factual findings unsupported by evidence. We reject his contentions and affirm.

BACKGROUND

Matthew and Amy were married in April 2002 and divorced in December 2013. They have two children together. Prior to the events giving rise to this appeal, Matthew paid Amy $3,050 per month in child support per a stipulation filed in October 2019.

In October 2023, Matthew filed an RFO to modify his child support obligation. Matthew stated that after the sudden loss of his job in March 2023, he received a $75,000 severance package, which was depleted by July 2023. He also noted Amy had a new job with an annual income of $90,000. Further, Matthew explained that while he has "diligently applied for over 50 positions within [his] field of work in film and television and other industries[,]" his "efforts ha[d] not yet resulted in new employment . . . ." Based on these asserted changes in his and Amy's financial circumstances, Matthew sought "a temporary reduction" in child support, namely, an order directing him to pay "guideline support that considers [his] current unemployment situation."

The trial court ruled on Matthew's RFO at a hearing on December 4, 2023. Although the court acknowledged Matthew's loss of employment, it also noted he had $400,000 in a 401(k) retirement account from which he could draw to pay support and, consequently, imputed to him his prior annual income of $250,000. The court also observed Amy's income "has changed significantly" and, ultimately, reduced Matthew's child support payments to $2,666 per month.

Matthew did not appeal from the December 2023 order.

In February 2024, Matthew filed another RFO to modify the December 2023 child support order "based on [his] current financial circumstances." In his supporting declaration, Matthew stated that he withdrew funds from his 401(k) account to satisfy his support obligation, but will be "taxed at a very high rate due to [his] current spouse's income and the additional 10% penalty for early withdrawal." Matthew also related that in January 2024, he "secured a position as an editor at an entry-level salary of $60,000 annually while continuing to diligently explore opportunities that align with [his] professional expertise and offer a more substantial income." After paying child support, he stated, he was left with $2,334 per month in gross income, which was insufficient to support his needs. Accordingly, Matthew sought an order modifying the December 2023 support order "based upon the reduction in [his] income."

Matthew detailed his financial situation further in a reply declaration filed on April 17, 2024. He clarified that following the December 2023 hearing, he liquidated $50,000 from his 401(k) retirement account, "with $25,000 of it allocated to taxes and penalties." According to Matthew, these funds would be depleted by May 1, 2024 if he was required to continue paying child support based on an imputed annual income of $250,000.

With respect to his employment, Matthew stated that since securing an entry-level position in January 2024, he has continued to look for a higher-paying position to no avail. Attached to his reply declaration was a pay stub from his new employer, AX Sierra Holdings, LLC (AX Sierra Holdings), showing he received $5,000 in gross monthly income.

In an amended responsive declaration filed on April 18, 2024, Amy questioned the legitimacy of Matthew's new job.

She asserted that upon "[f]urther investigation[,]" she learned AX Sierra Holdings was created on December 28, 2023, and that the company had "only one (1) officer and no other employees . . . ." Amy also noted the address on Matthew's paystub was for a "private mailbox located within a UPS Store in Seattle, Washington" rather than a physical business location. Further, Amy observed, Matthew's pay stub listed "no hourly or salary rate." Consequently, Amy alleged AX Sierra Holdings "is a fraudulent company set up by . . . [Matthew] and his wife to secure a position to benefit them both, and to significantly reduce the child support amount paid." She therefore asked the trial court to keep the December 2023 support order in place.

At a scheduled hearing on April 24, 2024, Matthew objected to Amy's untimely amended declaration and requested that the court strike the filing. The court denied Matthew's request to strike the amended declaration, but granted Matthew's request for a continuance to review the pleading.

In June 2024, Amy filed a request for an evidentiary hearing under section 217. Over Matthew's objection, the trial court granted Amy's request and scheduled an evidentiary hearing in October 2024.

At the evidentiary hearing, Matthew and Amy both testified. Ted Rae, Matthew's friend, also testified.

After hearing from the witnesses and receiving documents into evidence, the trial court ruled on the RFO. The court first explained that it was "going to discount" Rae's testimony, as Rae was not qualified as an expert on the entertainment industry's labor market. It then found that Matthew "has not been truthful with the court" as to his employment with AX Sierra Holdings and found him not credible with respect to "any [of his] other

statements." Based on these findings, the court denied the February 2024 RFO.

Matthew timely appealed.

DISCUSSION

I. We Cannot Consider in This Appeal Matthew's Challenges to the December 2023 Child Support Order

Matthew first asserts reversal is required because the December 2023 child support order improperly imputed to him an annual income of $250,000. He contends that he presented uncontroverted evidence showing he lacked the opportunity to earn the wages imputed. He also argues the trial court erred by considering his 401(k) account in ascertaining his income for purposes of paying support.

We cannot consider in this appeal Matthew's challenges to the December 2023 support order. " 'If a judgment or order is appealable, an aggrieved party *must* file a *timely* appeal or forever *lose* the opportunity to obtain appellate review.' " (*Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 46, (*Norman*).) Consequently, " '[a] party who fails to take a timely appeal from a decision or order from which an appeal might previously have been taken cannot obtain review of it on appeal from a subsequent judgment or order. [Citations.]' " (*Dakota Payphone, LLC v. Alcaraz* (2011) 192 Cal.App.4th 493, 509 (*Dakota*).)

The December 2023 order modifying child support was final and appealable. (See *In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 554.) By failing to timely appeal that order, Matthew has forfeited his right to challenge it and cannot obtain review thereof in this appeal arising from the October 2024 order

denying his February 2024 RFO. (*Norman*, *supra*, 220 Cal.App.3d at p. 46; *Dakota*, *supra*, 192 Cal.App.4th at p. 509.)

II. Matthew Forfeited His Due Process Arguments

Next, Matthew argues that the trial court violated his right to due process by declining to strike Amy's amended responsive declaration, as it was belatedly filed and served on Matthew's counsel. He also contends the trial court ran afoul of his right to due process by holding an evidentiary hearing over his objection. As to the first alleged error, after the court denied Matthew's motion to strike the responsive declaration, Matthew requested and was granted a continuance to further review Amy's responsive declaration, thereby minimizing any prejudice to Matthew. As to the second alleged error, notwithstanding Matthew's objection, "absent a . . . finding of good cause . . . the court *shall* receive any live competent testimony that is relevant and within the scope of the hearing . . . ." (§ 217, subd. (a), italics added.) Thus, absent further support, which Matthew has not provided, we are not persuaded that Matthew's right to due process was violated based on these alleged errors.

Moreover, " '[i]t is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment. [Citations.]' [Citation.] . . . . 'The appellant must present an adequate argument including citations to supporting authorities and to relevant portions of the record. [Citations.]' " (*L.O. v. Kilrain* (2023) 96 Cal.App.5th 616, 619–620 (*L.O.*).)

" 'It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of [its]

correctness.' " (*L.O.*, *supra*, 96 Cal.App.5th at p. 620.) "Consequently, '[w]hen an appellant . . . asserts [a point] . . . but fails to support it with reasoned argument and citations to authority, we treat the point as [forfeited]. [Citation.]' " (*Ibid.*) This rule applies "both to parties represented by counsel and self-represented parties. [Citation.] 'A party proceeding in propria persona "is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys." [Citation.]' " (*Ibid.*)

Matthew's assertions of error above are unaccompanied by reasoned analysis clearly explaining how the trial court's rulings violated his due process rights and constitute reversible error. As " '[i]t is not our place to construct theories or arguments' " (*L.O., supra*, 96 Cal.App.5th at p. 620) or "develop . . . [Matthew's] arguments for" him, we treat his contentions as forfeited. (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830.)

III. The Trial Court Did Not Abuse its Discretion by Finding Ted Rae Unqualified to Testify as an Expert

At the October 2024 evidentiary hearing, Rae testified as follows. Rae has worked in the entertainment industry for 43 years and is a friend of Matthew's. He met Matthew in 2014 and has previously recommended him for employment in the industry. At the time of the hearing, Rae was unemployed, and the industry's unemployment level was the "worst . . . [he's] ever seen." He explained: "Well, I've been through several slowdowns over the past four decades but have never had one this bad. There's just nothing going on . . . at least in the state. There are jobs that are going on in Europe and so forth, but nothing in . . . the states or, for that matter, in particular Los Angeles."

As noted above, the trial court "discount[ed]" Rae's testimony, finding he was "not qualified to be an expert to tell [the court] about what's going on in the entertainment industry." Matthew contends this ruling constitutes reversible error because Rae was "a 43-year veteran of the entertainment industry" who "testified from personal experience, providing a firsthand account of employment conditions directly relevant to Matthew's case." Therefore, Matthew argues, Rae was qualified to testify as an expert under Evidence Code section 801, subdivision (a).

Whether a witness is qualified to testify as an expert is governed by Evidence Code section 720. Subdivision (a) of the statute states, in relevant part: "A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates." (Evid. Code, § 720, subd. (a).) "A witness' special knowledge, skill, experience, training, or education may be shown by any otherwise admissible evidence, including his own testimony." (*Id.*, subd. (b).)

" 'We are required to uphold the trial judge's ruling on the question of an expert's qualifications absent an abuse of discretion.' " (*People v. Williams* (1989) 48 Cal.3d 1112, 1136.)

We discern no abuse of discretion in the trial court's evidentiary ruling. As Matthew observes, Rae testified that he has worked in the entertainment industry for 43 years. But Rae did not describe the nature and extent of his work or experience in the industry, let alone explain how he has acquired "special knowledge, skill, experience, training, or education" that would qualify him as an expert on the entertainment industry's labor market. (Evid. Code, § 720, subd. (a).)

Nor did Rae demonstrate any special knowledge of Matthew's credentials, other than their "work[ ] together on a series for Netflix a couple of years ago." Thus, Rae did not demonstrate that he was qualified to opine on either Matthew's " ' "ability to work" ' " or his " ' "opportunity to work." ' " (*In re Marriage of McHugh* (2014) 231 Cal.App.4th 1238, 1246, italics omitted (*McHugh*) [earning capacity for purposes of imputing income is composed of " ' "ability to work" ' " and " ' "opportunity to work" ' "].)

Even assuming the trial court's ruling was incorrect, Matthew's argument fails because he has not explained how he was prejudiced by the asserted evidentiary error. " 'The burden is on the appellant in every case to show that the claimed error is prejudicial; i.e., that it has resulted in a miscarriage of justice.' " (*In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 337.) "[W]e cannot presume prejudice and will not reverse the judgment in the absence of an affirmative showing there was a miscarriage of justice." (*Century Surety Co. v. Polisso* (2006) 139 Cal.App.4th 922, 963.) Thus, " '[w]here any error is relied on for a reversal it is not sufficient for appellant to point to the error and rest there.' " (*In re Marriage of McLaughlin*, at p. 337.) Instead, " 'the appellant bears the duty of spelling out in his brief exactly how the error caused a "miscarriage of justice." ' " (*Ibid.*) As Matthew has made no effort to carry that burden here, and it is not our duty to "act as [his] counsel . . . by furnishing a legal argument as to how the trial court's ruling was prejudicial[,]" we reject his contention. (*Century Surety Co. v. Polisso*, at p. 963.)

IV. The Trial Court Had Rational Grounds for Rejecting Matthew's Evidence as a Non-Credible Representation of His Earning Capacity

For purposes of calculating child support using the statewide uniform guideline formula, section 4058 "grants the trial court discretion to impute income to a parent based on his or her 'earning capacity.' " (*McHugh*, *supra*, 231 Cal.App.4th at p. 1245.) "The Family Code does not define earning capacity, but its meaning has been established through case law. [Citation.] ' "Earning capacity is composed of . . . *the ability to work*, including such factors as age, occupation, skills, education, health, background, work experience and qualifications . . . and *an opportunity to work* . . . ." [Citation.]' " (*McHugh*, at p. 1246, fn. omitted.) " ' "When the ability to work or the opportunity to work is lacking, earning capacity is absent and application of the [imputed income] standard is inappropriate." ' " (*Ibid.*)

"[T]here can be no doubt that it is the moving party who bears the burden of showing sufficient facts to establish the change of circumstances that justifies modifying what a previous court order has already wrought." (*In re Marriage of Bardzik* (2008) 165 Cal.App.4th 1291, 1303.) "On an application to modify support by imputing income to a parent based on earning capacity, the burden of proof as to ability and opportunity to earn imputed income changes depending on which parent—the payor or the payee—is seeking to change the status quo." (*McHugh*, *supra*, 231 Cal.App.4th at p. 1246.) Where, as here, " 'the payor parent loses his or her job and seeks a reduction in court-ordered support based on the changed circumstances of lack of income, it will be the payor parent, as moving party, who bears the burden

of showing a *lack* of ability and opportunity to earn income.' " (*Id.* at pp. 1246–1247.)

In the present case, Matthew sought to carry his burden as the moving party by demonstrating he lacked the opportunity to earn the previously imputed annual income of $250,000. Specifically, he presented testimony and documentary evidence, including pay stubs and paperwork from the Employment Development Department (EDD), to show that despite his diligent, extensive efforts to obtain a higher-paying position, he was only able to secure an entry-level video editing job with AX Sierra Holdings, a company owned by his sister-in-law, which paid $60,000 per year.

Notwithstanding the admission of this documentary evidence, the trial court found Matthew not credible in his testimony, explaining: "[T]he court finds that the petitioner has not been truthful with the court. Petitioner's argument initially was that he didn't know who owned the company [that hired him] that was curiously named after his daughter. Now it turns out that it's owned by his sister-in-law, who has another job and who it appears opened up this company exclusively for the purpose of hiring the petitioner. [¶] Therefore, the court doesn't find the petitioner credible with respect to that issue because he first said he didn't know, and now it turns out it's his sister-in-law who owns the company. And, therefore, the court can infer from that that the petitioner was not credible with respect to any other statements and will infer that and makes a finding to that effect. And, therefore, the [RFO] . . . is denied."

In other words, having found Matthew not credible, the trial court concluded Matthew failed to carry his burden of proving changed circumstances justifying modification of the

December 2023 child support order imputing to him an annual income of $250,000. On appeal, Matthew challenges this ruling.

" 'In the case where the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment . . . . [¶] Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) "uncontradicted and unimpeached" and (2) "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding." [Citation.]' " (*Dreyer's Grand Ice Cream, Inc. v. County of Kern* (2013) 218 Cal.App.4th 828, 838 (*Dreyer's*).)

Matthew contends the trial court's failure-of-proof determination must be reversed because it hinges on a credibility finding that is unsupported by evidence. Specifically, he argues, the record lacks evidence showing AX Sierra Holdings was named after his daughter with his current wife or created solely for the purpose of hiring him. Thus, relying on *Swan v. Hatchett* (2023) 92 Cal.App.5th 1206 (*Swan*), Matthew asserts the court's credibility finding and the order denying his February 2024 RFO on which it was based must be reversed.

Swan is inapplicable here. In that case, the father filed a request to reduce his child support obligation based on changes to his income, the birth of a new child from another relationship, and his former spouse's increased income. (*Swan*, *supra*, 92 Cal.App.5th at pp. 1209, 1213.) Following a hearing, the trial

court denied his request, finding father's testimony and, consequently, all of his documentary evidence not credible. (*Id.* at p. 1213.) Based on these findings, the court concluded the father failed to show changed circumstances justifying modification of the parties' prior child support order. (*Ibid.*)

The Court of Appeal reversed the order denying the father's request to reduce child support. (*Swan*, *supra*, 92 Cal.App.5th at p. 1209.) In so doing, it observed that the trial court's credibility findings are ordinarily given conclusive deference. (*Id.* at p. 1215.) But on the facts before it, the appellate court found such deference was unwarranted, reasoning: "The problem here is that the trial court's order and statement of decision are inconsistent and significantly misstate the evidence in key respects relevant to its credibility determination." (*Id.* at p. 1216, fn. omitted.)

Specifically, the appellate court observed, despite rejecting the father's evidence of his income, the trial court stated twice in its statement of decision that he earned $2.38 million in gross income in 2018. (*Swan*, *supra*, 92 Cal.App.5th at pp. 1216–1217.) These statements, the appellate court noted, were "significantly off the mark" because the father's tax return reflected, and the parties generally agreed at trial, that his actual gross income was about $370,000 for that year. (*Id.* at p. 1217.) Accordingly, while the appellate court declined to disturb the trial court's credibility finding as to the father's testimony based on its observations of his demeanor and the content of his answers, it concluded: "Given the magnitude of the trial court's error on its statement of . . . [the father's] gross income—overstating it more than sixfold—we cannot say that substantial evidence supports the trial court's drastic step of entirely disregarding all of . . . [the father's]

evidence based only on the credibility issues that it highlighted in its order." (*Id.* at p. 1218.)

Thus, the appellate court in *Swan* reversed the trial court's rejection of the father's evidence based on the trial court's misrepresentation and inconsistent treatment of that evidence. (See *Swan*, *supra*, 92 Cal.App.5th at pp. 1216–1218.) Here, by contrast, the trial court committed no such errors with respect to Matthew's proffered documentary evidence. Rather, the trial court discredited Matthew's testimony upon finding Matthew "has not been truthful with the court" about his employment. Thus, *Swan* is distinguishable on its facts and does not assist Matthew in demonstrating reversible error.

In his reply, Matthew relies heavily on *In re Marriage of Pasco* (2019) 42 Cal.App.5th 585 (*Pasco*) to argue that unadmitted material, such as unsworn statements and arguments of counsel, cannot supply substantial evidence. Matthew's reliance on *Pasco* is also misplaced. In *Pasco*, the appellate court reversed a trial court ruling denying the husband's request to terminate spousal support, where the court "denied [husband's] request without taking *any* evidence." (*Pasco*, at p. 587.) "In sum, the trial court based its decision on [husband's] request for an order solely on the argument of counsel and [wife's] unsworn statements in response to the court's questions. The court did not consider any actual evidence. This was an abuse of the court's discretion." (*Id.* at pp. 592–593.) Here, the trial court conducted a full evidentiary hearing, heard testimony from multiple witnesses, and admitted evidence. Thus, *Pasco* does not assist Matthew.

Accordingly, we apply well-settled principles to address the trial court's rejection of Matthew's testimony. "[T]he credibility

of witnesses is generally a matter for the trier of fact to resolve." (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1204 (*Beck*).) "[S]o long as the trier of fact does not act arbitrarily and has a rational ground for doing so, it may reject the testimony of a witness even though the witness is uncontradicted." (*Ibid.*) "Consequently, the testimony of a witness which has been rejected by the trier of fact cannot be credited on appeal unless, in view of the whole record, it is clear, positive, and of such a nature that it cannot rationally be disbelieved." (*Ibid.*) And in general, "[w]e review the trial court's ruling, not the reasons stated for the ruling." (*Mireskandari v. Gallagher* (2020) 59 Cal.App.5th 346, 358.)

Here, the trial court had "rational ground[s]" for finding Matthew's testimony regarding his employment with AX Sierra Holdings was not a credible illustration of his earning capacity for purposes of paying child support. (*Beck*, *supra*, 44 Cal.App.4th at p. 1204.) Matthew testified he began working for AX Sierra Holdings on January 1, 2024. According to Matthew, he was hired by his sister-in-law, who works as a full-time analyst for Ernst and Young and created AX Sierra Holdings in December 2023—the same month in which he was ordered to pay support based on an imputed income of $250,000 per year. AX Sierra Holdings does not have a website.

Matthew testified that he is an "editor" of "corporate videos," including "internal sales pitch-type videos" and "on-boarding videos for new employees." When asked how many videos he has made since starting work at AX Sierra Holdings, Matthew stated that he "d[id] not have a count" but estimated producing eight or nine videos. He stated he could not name any

entities for whom he has produced a video, as he was under a non-disclosure agreement.

Matthew testified that his job is a full-time remote work position. So far as he was aware, AX Sierra Holdings did not have a physical office. Nor was Matthew aware of any other employees working for the company. He works exclusively and directly with his sister-in-law, who sends him work by contacting him through Teams. Matthew's sister-in-law also set his salary.

Based on the evidence set forth above, the trial court could reasonably infer Matthew's employment with AX Sierra Holdings was a sham designed to artificially set his annual income at $60,000 to justify a reduction in child support. The trial court therefore had "rational ground[s]" for finding Matthew's testimony not to be a credible representation of his earning capacity for purposes of modifying the child support he was ordered to pay in December 2023. (*Beck*, *supra*, 44 Cal.App.4th at p. 1204.)

Although Matthew also submitted pay stubs from AX Sierra Holdings and EDD records, this evidence alone does not compel a finding in Matthew's favor. Rather, these documents confirm that Matthew was receiving $5,000 per month in gross income from AX Sierra Holdings. Nevertheless, the trial court found that Matthew was not credible with respect to his testimony about this employment. In other words, the trial court did not dispute that Matthew received income from AX Sierra Holdings. Rather, the trial court did not credit Matthew's testimony that income from AX Sierra Holdings was a credible representation of Matthew's earning capacity, and therefore, not a basis on which to modify Matthew's support order.

For these reasons, we conclude the trial court did not act arbitrarily in rejecting Matthew's evidence and that Matthew has not demonstrated the evidence in the record " 'compels a finding in [his] favor . . . as a matter of law.' " (*Dreyer's*, *supra*, 218 Cal.App.4th at p. 838.)

DISPOSITION

The denial of Matthew's February 15, 2024 request for an order modifying his child support obligation is affirmed.
Amy shall recover her costs on appeal.

UZCATEGUI, J.*

We Concur:

WILEY, Acting P. J.

VIRAMONTES, J.

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* Judge of the Los Angeles County Superior Court, appointed by the Chief Justice pursuant to article VI, section 6 of the California Constitution.