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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Marriage of RANDALL DOUTHIT
and PATRICE JONES.

B254719

(Los Angeles County
Super. Ct. No. BD469787)

RANDALL DOUTHIT,

Respondent,

v.

PATRICE JONES,

Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert E. Willett, Judge. Affirmed in part, reversed in part, and remanded.

Meyers Nave, Harry W.R. Chamberlain II, Jenny L. Riggs, Mary Tsai; Law Offices of Marjorie G. Fuller, Marjorie G. Fuller; Buchalter Nemer, Harry W.R. Chamberlain II and Robert M. Dato for Appellant.

Trope & DeCarolis, Michael L. Trope, Andrew Stein for Respondent.

INTRODUCTION

After a 12-and-half-year marriage, Randy Douthit (Randy) filed a petition for dissolution of his marriage to Patrice Jones (Patrice).¹ On appeal, Patrice contends that the trial court erred in reducing and ultimately terminating her spousal support payments; in characterizing as separate property Randy's earnings under a post-separation contract; in not permitting her to buy out Randy's community interest in their house in Malibu; in failing to award her reimbursement from community assets for her payment of property taxes on the Malibu house; in undervaluing Randy's business, Douthit Productions (DP); in failing to enter qualified domestic relations orders with respect to Randy's pensions, 401(k)'s, and other retirement accounts; in failing to remedy adequately Randy's breaches of his fiduciary duty; and in its award to her of attorney and expert witness fees.² We hold that the trial court erred in its valuation of DP. We otherwise affirm the judgment.

BACKGROUND³

Randy and Patrice were married on January 28, 1995. They separated 12 and a half years later on July 24, 2007. They did not have any children together. Before the marriage, Randy had a long and successful career in television production for many hit shows. Since 1996, he had been the executive producer of the Judge Judy Show. In 2002, he also became a director of that program. DP loaned Randy's services to Big

¹ Following the parties' practice in their respective briefs, we refer to the parties by their first names.

² Patrice has filed a motion for judicial notice of post-judgment matters—e.g., the current status of the sale of two houses the trial court ordered sold. Randy has filed a motion to strike portions of Patrice's reply brief that he contends are not supported by the law or the facts of this case or that address post-judgment matters. We deny both motions.

³ We provide a brief factual background here for context. We set forth the facts with respect to each claim on appeal in greater detail in our discussion of those claims.

Ticket, Inc., a CBS production company, that produced for television the Judge Judy Show. DP's contract with Big Ticket, Inc. expired in 2013.

Patrice was 21 years old when she met Randy. At the time, she was employed as a freelance model. Randy and Patrice moved in together almost immediately, and, by mutual agreement, Patrice stopped working. They lived together until they married. Randy was earning after taxes more than \$1.9 million per year, and they lived an upscale lifestyle. The parties owned houses on Broad Beach Road in Malibu (Malibu house) and Sierra Mar Drive in Los Angeles (Sierra Mar house). They agreed that the houses were community property.

DISCUSSION

I. Spousal Support

Patrice contends that the trial court failed to consider properly the marital standard of living and Family Code⁴ section 4320⁵ factors in awarding permanent spousal support

⁴ All statutory citations are to the Family Code.

⁵ Section 4320 provides:

“In ordering spousal support under this part, the court shall consider all of the following circumstances:

“(a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following:

“(1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.

“(2) The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties.

“(b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party.

“(c) The ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living.

that was substantially less than the temporary spousal support she received and in ordering her permanent spousal support terminated after five years and seven months. The trial court acted within its discretion in its support orders.

A. *Background*

At the outset of the case, Patrice requested and the trial court granted temporary spousal support of \$66,301 a month. Patrice's temporary spousal support began on November 26, 2007, and terminated on November 30, 2012. The trial court awarded permanent support of \$65,000 for the months of December 2012 and January 2013, and \$34,458 for the period from February 1, 2013, through June 30, 2018, at which time

“(d) The needs of each party based on the standard of living established during the marriage.

“(e) The obligations and assets, including the separate property, of each party.

“(f) The duration of the marriage.

“(g) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party.

“(h) The age and health of the parties.

“(i) Documented evidence of any history of domestic violence, as defined in Section 6211, between the parties or perpetrated by either party against either party's child, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party.

“(j) The immediate and specific tax consequences to each party.

“(k) The balance of the hardships to each party.

“(l) The goal that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration as described in Section 4336, a ‘reasonable period of time’ for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court’s discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section, Section 4336, and the circumstances of the parties.

“(m) The criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award in accordance with Section 4324.5 or 4325.

“(n) Any other factors the court determines are just and equitable.”

permanent spousal support would cease. The total temporary and permanent spousal support awarded exceeded \$6.3 million.

In its statement of decision, the trial court considered the marital standard of living and each of the applicable section 4320 factors. The trial court found that the marital standard of living was upper middle class to affluent. The parties had expensive automobiles, jewelry, furniture, and art; they had two homes; and when they traveled, they enjoyed expensive trips. The trial court also found, “As with other evidence offered to demonstrate the marital standard of living, [Patrice] exaggerated the frequency of such trips.”

Patrice was in charge of the parties’ finances. During the marriage, Randy was concerned that Patrice was spending beyond their means and asked her several times to reduce her spending, without any apparent impact on her. Randy was concerned about becoming bankrupt and the parties’ lack of savings. His financial concerns stemmed from the fact that his income depended on the continued success of the Judge Judy Show, the show’s star’s willingness to continue on the show, and his own contract renewals.

The trial court found that Randy and Patrice lived beyond their means, and had to borrow to pay such obligations as mandatory retirement plan contributions and taxes. At the date of separation, Randy and Patrice had over \$475,000 in debt, exclusive of real estate debt. Additionally, they owed over \$300,000 in back income taxes and \$179,000 for jewelry.⁶ Randy’s defined benefit pension was underfunded due to missed payments. Other than the defined benefit program, the parties had no savings or financial investments. The combined debt on the Malibu and Sierra Mar houses exceeded the houses’ combined stipulated market value.

The parties stipulated that Patrice’s monthly pre-tax earning capacity was \$3,542. They further stipulated that Randy’s monthly after-tax income during marriage was

⁶ Randy testified that Patrice told him that the jewelry was on loan and could be returned. Randy asked her to return the jewelry. After separation, Randy learned that Patrice had not returned the jewelry, and paid \$179,000 to settle litigation concerning the jewelry.

\$132,000, exclusive of residual and profit sharing income. The trial court found that from all sources of income, Randy had \$159,105 a month available for support.

The trial court found that Patrice had a 10th grade education, had not graduated from high school, and did not have a graduate equivalency degree. She stopped working when she and Randy started living together and did not work during the marriage. Her vocational training was in music and entertainment. She took singing and piano lessons. According to Patrice, Randy supported her musical training. Patrice's "career concept" was that she would provide musical support for productions on which Randy worked, including the Judge Judy Show. The trial court found that testimony about Patrice's "career concept" was "very vague" and that it did not appear that the concept ever came to fruition.

During the period from the parties' date of separation to trial, Patrice incurred about \$1 million of expenses in connection with her music career against \$70,973 in gross receipts.⁷ Virtually all of the money used for Patrice's career expenses came from support Randy paid. Patrice acknowledged her obligation to become self-supporting, but defined career success in terms of the size of her audiences and not the income her performances might generate. The trial court found that "no evidence [had been] offered about a specific plan, program, method, schedule, measurable attainments or other detail about how her career would, should or could further develop. And, there was no evidence offered about needed training or education to develop other, more marketable skills. Indeed, [Patrice] eschewed any interest in other careers, and emphasized devotion to her musical endeavors."

The trial court concluded that Randy's earning capacity was sufficient to maintain the marital standard of living, but that Patrice's earning capacity was not. The trial court ruled that given the length of the marriage and disparity in earning capacity, Randy

⁷ The corporate tax returns for Patrice's "loan out" corporation, The Lady Jones LLP, reported \$16,000 of gross receipts for 2008, no gross receipts for 2009, and gross receipts of \$54,973 for 2010. According to Patrice, the tax return for 2011 had not been prepared at the time of trial. The trial court found not credible Patrice's testimony that she had gross receipts of \$50,000 in 2011.

should continue to pay support to allow Patrice to “adjust to becoming self-supporting. The court concludes that [Patrice] has not taken advantage of her opportunities to become more self-reliant since separation and that she had taken no serious steps toward becoming self-supporting.” In addition to the sums she expended on her music career, Patrice chose to live in the Malibu house, incurring about \$30,000 to \$33,500 in monthly expenses even though she stipulated that the house’s fair monthly rental value was \$12,500, and making about \$130,000 in improvements to the house. Patrice’s decisions to expend such sums, the trial court found, did not suggest a serious attempt to become self-supporting within a reasonable period

Patrice claimed monthly expenses of \$111,574 and income of \$66,301 (i.e., her temporary spousal support). The trial court found that Patrice’s claimed expenses did not evince an outlook that contemplated self-sufficiency. When cross-examined about her expenses, Patrice had difficulty explaining them and became confused about what was included in various expense categories. The trial court concluded that Patrice’s expenses were purposely exaggerated to demonstrate a need for support and that she had no intention of becoming self-supporting within a reasonable time. It stated, “That [Patrice] is willing to spend \$45,000 more per month than her income (or claim a ‘need’ to do so) supports the court’s conclusion that she has not within the last 5 years made any serious attempt to become self-sufficient and the evidence does not support any basis to conclude she has a present intention to do so in a ‘reasonable period of time.’”

Having considered all of the factors under section 4320, the trial court concluded that “it would not be fair or equitable to require [Randy] to pay more for the poor choices [Patrice] has made by squandering so much money on her musical endeavors and by over-spending, for example on housing. The court also exercises its discretion to set spousal support so that [Patrice] may continue to enjoy a high standard of living, but also to motivate her to become self-supporting.” The trial court awarded Patrice permanent spousal support of \$65,000 per month for the months of December 2012, and January 2013. Beginning on February 1, 2013, Randy was ordered to pay Patrice permanent

spousal support of \$34,458 per month. Those payments were to continue until June 30, 2018, at which time permanent spousal support would cease.

The trial court explained that it was terminating spousal support in 2018 because Patrice “will have enjoyed over 10 years of substantial spousal support payments, received a proportionate amount of assets from the marriage and so will have been provided a period nearly as long as the marriage within which to assess her educational, vocational and employment needs and opportunities and to take all necessary steps to becoming self-sufficient.” It stated that it was disinclined to award higher support or support for a longer period of time because Patrice had done little to prepare herself for self-sufficiency and had “given all appearance of intending to rely permanently on support from [Randy].” Higher support, or support for a longer period, the trial court reasoned, “would tend to enable [Patrice] to continue to her detriment her dependency on [Randy] for support and would only delay her becoming self-supporting.”

B. Application of Relevant Principles

“An award of spousal support is a determination to be made by the trial court in each case before it, based upon the facts and equities of that case, after weighing each of the circumstances and applicable statutory guidelines. [Citation.] In making its spousal support order, the trial court possesses broad discretion so as to fairly exercise the weighing process contemplated by section 4320, with the goal of accomplishing substantial justice for the parties in the case before it. ‘The issue of spousal support, including its purpose, is one which is truly personal to the parties.’ [Citation.] In awarding spousal support, the court must consider the mandatory guidelines of section 4320. [Fn. omitted.] Once the court does so, the ultimate decision as to amount and duration of spousal support rests within its broad discretion and will not be reversed on appeal absent an abuse of that discretion. [Citation.] ‘Because trial courts have such broad discretion, appellate courts must act with cautious judicial restraint in reviewing these orders.’ [Citation.]” (*In re Marriage of Kerr* (1999) 77 Cal.App.4th 87, 93.)

Patrice contends that the marital standard of living is the most important finding that a trial court makes in determining permanent spousal support because all of the factors in determining spousal support are weighed against it. The trial court's permanent spousal award was "contrary to the public policy and purpose on which Section 4320 is based," Patrice argues, because it failed to provide her with sufficient income to meet her needs as measured by the accustomed marital standard of living, as reflected in the temporary monthly spousal support award of \$66,301. She contends that the trial court's substantial "step-down" in spousal support (about half of her temporary spousal support) and ultimate termination of spousal support was not supported by evidence that she would be able to support herself at the marital standard of living.

Patrice appears to argue that if she and Randy spent a certain monthly amount during their marriage, then that amount established the marital standard of living and her "need," even if that lifestyle was beyond their financial means. She is mistaken. The marital standard of living is a general description of the parties' reasonable needs commensurate with their "general station in life"—i.e., upper, middle, or lower, income—and is "not intended to specifically spell out or narrowly define a mathematical standard." (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 491.) When the parties lived beyond their means during the marriage, the "just and equitable" factor in section 4320, subdivision (n) "counterbalances the actual marital standard in the weighing process. In other words, because the actual marital standard was beyond the parties' means, it has reduced significance as a point of reference in determining [the spouse's] reasonable needs and support. Stated simply, [the spouse] cannot reasonably demand support at the actual marital standard of living if that standard had itself been unreasonably high under the circumstances." (*Id.* at pp. 485-486; see also *In re Marriage of Shaughnessy* (2006) 139 Cal.App.4th 1225, 1247 ["although the marital standard of living is an important factor in determining spousal support, it is not the only factor, and its importance in determining whether it is 'just and reasonable' (§ 4330) to award spousal support will vary based on the court's evaluation of the section 4320 factors"].) In such a circumstance, the actual marital standard of living is replaced with what would

have been a reasonable standard. (*In re Marriage of Smith, supra*, 225 Cal.App.3d at p. 486.)

The trial court found the Randy and Patrice lived beyond their means. Thus, it was not required to fashion a permanent spousal support award that allowed Patrice to spend consistent with marital spending. (*In re Marriage of Smith, supra*, 225 Cal.App.3d at p. 486.) Patrice claimed her monthly expenses were \$111,574, which is a high percentage of their after tax income. As an example, the trial court was not required to award Patrice an amount that would cover the \$30,000 to \$33,500 in monthly expenses for the Malibu house when the fair monthly rental value of the house was \$12,500.⁸ Accordingly, the trial court acted within its broad discretion in awarding Patrice permanent spousal support in an amount substantially less than she received as temporary spousal support. (*In re Marriage of Kerr, supra*, 77 Cal.App.4th at p. 93.)

The trial court also did not err in setting a termination date for Randy's permanent spousal support. Randy and Patrice were married for 12 years and six months. Patrice was awarded temporary and permanent spousal support for a period lasting two years shorter than the marriage—10 years and seven months. Under the awards, Patrice will have received a total of over \$6.3 million at a monthly average of just under \$50,000. The trial court properly determined that such substantial spousal support for such a lengthy period was sufficient to allow Patrice to become self-supporting. Randy should not be obligated to provide Patrice lifetime support when, as the trial court found, Patrice made no "serious attempt to become self-sufficient" during the period she received temporary support, and appeared to have no intention to do so in a reasonable time—e.g., spending \$1 million on a music career that generated \$70,973 in gross receipts and paying \$30,000 to \$33,500 in monthly expenses to live in a house the fair monthly rental value of which was \$12,500. (*In re Marriage of Schaffer* (1999) 69 Cal.App.4th 801, 812 ["a supported spouse cannot make unwise decisions which have the effect of preventing

⁸ The trial court found that Patrice and Randy could obtain housing consistent with the marital standard of living for \$11,000, the average fair monthly rental values of the Malibu (\$12,500) and Sierra Mar (\$9,500) houses.

him or her from becoming self-supporting and expect the supporting spouse to pick up the tab”].) Accordingly, the trial court acted within its broad discretion in setting the duration of permanent spousal support at five years and seven months. (*In re Marriage of Kerr, supra*, 77 Cal.App.4th at p. 93.)

II. Randy’s \$1.5 Million Development Contract With Her Honor, Inc.

Patrice contends that the trial court erred when it characterized \$1.5 million Randy received under a post-separation contract with Her Honor, Inc. as his separate property and, alternatively, when it failed to consider Randy’s compensation under the contract when awarding spousal support. The trial court did not err.

A. Background

In 2010, after separating from Patrice, Randy formed RD LLC which loaned his personal services to Her Honor, Inc., Judge Judith Scheindlin’s [Judge Judy] company, to develop a new show for Scheindlin (development contract). Randy did not keep time records for his work under the development contract, but testified that he had come up with ideas, researched other shows, shot a demonstration tape, contacted other production entities with a view toward partnering with them on projects related to the development of a new show, prepared schedules, and hired crews. The development contract had a one-year term and was renewable at Her Honor, Inc.’s option for two additional one-year terms. The compensation under the development contract was \$500,000 per year. Randy received \$500,000 payments in April 2010, 2011, and 2012. Randy continued to work on the development of a new show for Scheindlin, but there was no evidence that he expected further compensation for his efforts.

Randy contended that the payments under the Her Honor, Inc. development contract were post-separation earnings for post-separation services and thus constituted his separate property. The trial court agreed. It further ruled that Randy’s compensation under the development contract should not be considered in determining Patrice’s support award because compensation under the development contract had terminated by the time

of the trial and so was not income, and because such income was not evidence of Patrice's marital lifestyle or needs. The trial court finally ruled that "[t]o the extent the court has discretion to consider it under FC4320, the court exercises its discretion not to do so because the court concludes on the facts of this case that it would not be just and equitable so to do."

B. Application of Relevant Principles

"[A]ll postseparation earnings are separate property under California law" (*In re Marriage of Gréaux and Mermin* (2014) 223 Cal.App.4th 1242, 1253; § 771, subd. (a) ["earnings and accumulations of a spouse . . . while living separate and apart from the other spouse, are the separate property of the spouse"].) "Appellate review of a trial court's finding that a particular item is separate or community property is limited to a determination of whether any substantial evidence supports the finding. [Citations.]" (*In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, 849.)

Patrice argues that Randy's compensation under the development contract had a community property component because it was, at least in part, compensation for Randy's successful relationship with the Judge Judy television show, which relationship included the 12 and a half years Randy and Patrice were married before separating. Patrice contends that proof for her contention that the development contract was compensation for Randy's prior work on the Judge Judy Show is the lack of any details for Randy's obligations under the development contract, Randy's lack of documentation for the work he claimed to have performed, and the small amount of work he claimed to have done. Patrice contends that the trial court should have allocated two-thirds of Randy's compensation under the development contract to Randy and one third to her, consistent with the allocation of Randy's profit participation in the Judge Judy Show. At a minimum, she argues, the trial court should have considered Randy's compensation under the development contract in determining spousal support and attorney fees.

Substantial evidence supports the trial court's finding that Randy's compensation under the development contract was his separate property. Randy and Patrice separated

on July 24, 2007. Randy did not form RD LLC, the company that lent his services to Her Honor, Inc., until 2010, well over two years after the date of separation. Because Randy's work under the development contract was not performed until after the date of separation, Randy's earnings under that development contract constituted post-separation separate property earnings. (§ 771, subd. (a); *In re Marriage of Gréaux and Mermin*, *supra*, 223 Cal.App.4th at p. 1253.)

Patrice's argument that Randy's compensation under the development contract actually was compensation for his work on the Judge Judy Show is unavailing. Even if the development contract failed to state Randy's obligations in specific detail, Randy lacked documentation for the work he claimed to have performed, and the amount of work Randy claimed to have done was small does not lead to the conclusion that Randy's compensation under the development contract was compensation for his work on the Judge Judy Show. Had Big Ticket Productions, which contracted with DP for Randy to produce and direct the Judge Judy Show, wanted to increase Randy's compensation for his work on the Judge Judy Show, it could have done so directly and without the alleged subterfuge of the development contract.

Patrice contends that in determining the proper characterization of Randy's compensation under the development contract, "[m]ore consideration should be given to California community property principles applicable to artistic or intellectual works that are derived, even in part, from a spouse's endeavors during marriage." She contends that *In re Marriage of Worth* (1987) 195 Cal.App.3d 768 is instructive. Her reliance is misplaced.

In *In re Marriage of Worth*, *supra*, 195 Cal.App.3d 768, the husband wrote and published two trivia books. (*Id.* at p. 771.) In their divorce decree, the husband and the wife agreed to divide equally the royalties from those books. (*Ibid.*) When the husband later filed a copyright infringement action in federal court against the producers of the "Trivial Pursuit" board game claiming that the producers had plagiarized certain questions used in the board game from the husband's books, the wife sought an order from the superior court declaring her entitlement to one-half of any proceeds obtained

from the husband's lawsuit based upon the terms of their interlocutory decree. (*Ibid.*) The trial court granted the wife's request and ordered the husband restrained from disbursing the proceeds of any verdict or settlement of his lawsuit until he accounted for the wife's share. (*Ibid.*)

On appeal, the husband argued that a copyright belonged only to the author. (*In re Marriage of Worth, supra*, 195 Cal.App.3d at p. 773.) The court of appeal disagreed, holding that all property acquired during marriage, including any artistic work created during the marriage, was community property. (*Ibid.*) Because the husband conceived, wrote, and published the trivia books during the marriage, the court reasoned that the books constituted community property. (*Id.* at p. 773.) It further reasoned that if the books were community property, then the copyrights for those books also were community property. (*Id.* at p. 774.) In this case, Randy did not perform his duties under the development contract during the marriage. There is no indication that his work on the Judge Judy television show should be attributed in part to the development contract or that the work on the development contract could be attributed to work on the Judge Judy show. Accordingly, *In re Marriage of Worth* provides no support to Patrice for her argument that any part of Randy's compensation under the development contract was community property.

Regarding the trial court's ruling that "[t]o the extent the court has discretion to consider it under FC4320, the court exercises its discretion not to do so because the court concludes on the facts of this case that it would not be just and equitable so to do," Patrice argues that "the trial court did not have *discretion* to ignore the mandatory framework of the section 4320 guidelines for spousal support." Such a perfunctory argument that cites no supporting authority⁹ forfeits the issue. (*Dabney v. Dabney* (2002)

⁹ Patrice misleadingly quotes *In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 283 for the proposition that the trial court's "discretionary ruling" under section 4320 "contravene[s] the purposes of the law regarding . . . support." *In re Marriage of Cheriton* concerns an award of child support (the word "child" having been removed from the quote) which is not awarded under section 4320, and not the award of spousal support. Inexplicably, Patrice also cites *In re Marriage of Gray* (2007) 155 Cal.App.4th

104 Cal.App.4th 379, 384; *People ex rel. 20th Century Ins. Co. v. Building Permit Consultants, Inc.* (2000) 86 Cal.App.4th 280, 284; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.)

Moreover, even if Patrice has not forfeited the issue, her argument fails. The trial court’s “discretionary ruling” under section 4320 was an alternative ruling. Prior to addressing its discretion under section 4320, the trial court ruled that it would not consider Randy’s development contract compensation in awarding Patrice spousal support because the development contract had terminated by the time of the trial and so did not constitute income for purposes of support. It further ruled that such income was not evidence of Patrice’s marital lifestyle or needs. Thus, the trial court considered Randy’s development contract compensation within the context of section 4320’s provisions—earning capacity and Patrice’s needs based on the standard of living established during the marriage being factors to consider under subdivisions (a) and (d), respectively, of section 4320. Patrice does not address these rulings on appeal and, accordingly, has forfeited the issue that the trial court erred in failing to consider Randy’s development contract compensation in awarding her spousal support. (*Salas v. Department of Transportation* (2011) 198 Cal.App.4th 1058, 1074; *Badie v. Bank of America, supra*, 67 Cal.App.4th at pp. 784-785.)

III. The Malibu House

Patrice contends that the trial court abused its discretion when it did not permit her to buy out Randy’s community property interest in the Malibu house. The trial court did not err.

504, 515 which addresses whether a “trial court erred in failing to exercise its discretion to divide [a] pension benefit equitably”—the pension benefit at issue being community property.

A. *Background*

The parties stipulated that the Malibu house was a community property asset that had a fair market value of \$4 million and a fair monthly rental value of \$12,500 at the time of trial. They purchased the house for \$5.2 million with a down payment of \$1.7 million. The property was subject to indebtedness from post-purchase refinancing and, at the time of trial, was subject to a loan with a \$4.193 million balance. Randy and Patrice were both obligors on that loan.

At trial, Randy sought an order that the Sierra Mar¹⁰ and Malibu houses be sold. He wanted to eliminate debt and avoid personal liability for the loans. The trial court noted that, under the stipulated facts, the sale of the houses would result in a loss to the community after payment of the indebtedness and ordinary transaction costs. On the other hand, if the houses sold for more than their stipulated values, the community might realize a net profit.

Patrice asked the trial court to award the Malibu house to her and to grant her a reasonable time within which to refinance the house to remove Randy from the loan. She promised to hold Randy harmless from all indebtedness and costs associated with the house until she could obtain refinancing. Randy objected to Patrice's proposal, asserting that he wanted to eliminate the indebtedness and risks associated with the Malibu house.

The trial court ordered both houses sold. It rejected Patrice's proposal for the Malibu house, finding that it posed significant risk to Randy that he was unwilling to assume—i.e., because the indebtedness on the house was not subject to the anti-deficiency judgment limitations applicable to purchase money mortgages, Randy might remain personally liable to the lenders for amounts they could not realize through a sale of the house, forced or otherwise. The trial court reasoned that a further decline in the value of the Malibu house, from general market conditions or otherwise—such as Patrice's inability or unwillingness to pay the mortgage or maintain the house—would only increase Randy's risk. It found that Patrice's promise to hold Randy harmless

¹⁰ The parties stipulated that, at the time of trial, the Sierra Mar house had a fair market value of \$2.4 million and was subject to secured debt of \$2,267,854.

realistically did not protect him by providing the limitation on risk he sought from the sale of the house given her “financial wherewithal and her demonstrated lack of integrity.”¹¹

Although she objected to the sale of the Malibu house, Patrice agreed to the mechanics of the sale. The trial court ordered the house co-listed by Chris Catazo and Todd Marks at the price of \$4.75 million. It would be sold for the best offer above the \$4 million stipulated fair market value or for such other amount as agreed to by the parties. The parties were to bear equally all customary sales costs. Sales proceeds were to be applied to the indebtedness against the house and the costs of sale. The parties would divide equally any net proceeds. They also would divide equally any remaining indebtedness.

The trial court permitted Patrice to occupy the Malibu house until the house was sold or until the trial court ordered otherwise. The trial court ordered that after January 31, 2013, Randy was to pay the lenders, the property taxes, and the homeowner’s insurance on the Malibu house, which payments he was permitted to deduct from Patrice’s spousal support.

B. Application of Relevant Principles

A trial court has broad discretion to determine the manner in which community property is divided, although absent an agreement, it must be divided equally.

¹¹ Post-trial, the trial court held a hearing concerning objections and requests regarding its tentative decision. With respect to a request by Patrice that she be granted 120 days to attempt to remove Randy’s name from the mortgage on the Malibu house, the trial court stated, “The one thing that may need clarification from the court’s point of view is that the court would intend to modify its statement about financial wherewithal because that’s a little vague and make sure it’s understood that one of the reasons for the court’s ordering the way it has is that the court has found that [Patrice’s] financial integrity is lacking. In other words, her honesty in financial affairs leaves a great deal to be desired. The court has found in several respects that she basically has made false statements. And so the court adds that as an additional reason not to adopt [Patrice’s] suggestion.”

(§ 2550¹²; *In re Marriage of Brown* (1976) 15 Cal.3d 838, 848, fn. 10.) Accordingly, we review the trial court’s judgment dividing community property for an abuse of discretion. (*In re Marriage of Dellaria & Blickman-Dellaria* (2009) 172 Cal.App.4th 196, 201; *In re Marriage of Quay* (1993) 18 Cal.App.4th 961, 966.) “An abuse of discretion occurs ‘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.’ [Citation.]” (*In re Marriage of Olson* (1993) 14 Cal.App.4th 1, 7.)

Patrice contends that the trial court’s reasons for denying her request to award her the Malibu house and to allow her to buy out Randy’s community share make little sense because the Malibu house was “‘upside down’”—i.e., the parties owed more on indebtedness than they would realize from the sale of the house—and awarding the house to Patrice would avoid the costs associated with the sale of the house. She contends that the sale of the Malibu house presented a situation analogous to the sale of a business in *In re Marriage of Cream* (1993) 13 Cal.App.4th 81, 89-90 (*Cream*) which held, she contends, that a trial court abuses its discretion when it does not award a family business to one of the spouses who desires to buy out the other and instead orders the business sold at auction. Patrice argues that the rule in *Cream* should apply when one spouse wants community real property and is able to arrange financing or other methods to pay for it.

In *Cream, supra*, 13 Cal.App.4th at pages 89 through 90, the court held that “where the asset at issue is a family business which the court finds either party is capable of operating, and each, seeks its award and can purchase the other’s share, a sale to a third party should not be ordered. Although the business may be difficult to value, and it

¹² Section 2550 states, “Except upon the written agreement of the parties, or on oral stipulation of the parties in open court, or as otherwise provided in this division, in a proceeding for dissolution of marriage or for legal separation of the parties, the court shall, either in its judgment of dissolution of the marriage, in its judgment of legal separation of the parties, or at a later time if it expressly reserves jurisdiction to make such a property division, divide the community estate of the parties equally.”

may be even more difficult to decide the spouse to whom it should be awarded where both have been operating the business and both want it and can purchase it, it will usually be an abuse of discretion not to award it to one of the spouses.” Patrice’s reliance on *Cream* is misplaced. Each of the spouses in *Cream* was able to buy out the other spouse’s community interest. Patrice does not cite any part of the record that shows that she was able to obtain financing on the Malibu house that would enable her to buy out Randy’s community interest in the property and extinguish any potential liability he had. At the post-trial hearing regarding the trial court’s tentative decision, the trial court asked Patrice’s attorney if Patrice had made any attempts to obtain a loan to purchase Randy’s interest in the Malibu house. Counsel responded, “I think she’s trying. But I don’t have any evidence to present to you today. [¶]-[¶] I think she is trying to figure out a way to do it and that’s all I can say.”

Patrice also contends that the trial court erred when it denied her request to be awarded the Malibu house based on its finding that Randy wanted to eliminate debt and avoid personal liability for the loans. According to Patrice, at trial, “Randy himself testified ‘it would be fine’” if she acquired the house as long as his personal obligations on the loans were eliminated. She contends that she was “prepared to do this through refinancing.” Patrice misconstrues Randy’s testimony and inaccurately reflects her ability to obtain the financing necessary to effectuate her request.

At trial, Randy’s attorney asked Randy what his primary concern was in Patrice being awarded the Malibu house. He responded that he was afraid that the lenders would foreclose on the property. Randy said that he did not know how he would live if his credit was ruined. Randy’s attorney asked, “If your wife had a magic wand and could walk in and tell you don’t worry about it, I’ve got this loan completely refinanced, it’s in my name, I can tell you you’ve got no responsibility on the loan, would you then mind if the Malibu residence was awarded to her?” Randy responded, “No. That would be fine.” He explained that the sale of the Malibu house or its award to Patrice was an economic issue to him. Randy objected to the trial court awarding the Malibu house to Patrice because he believed that she might cause the lenders to foreclose on the house. The

matter being a purely economic issue to Randy, he would not object to Patrice being awarded the house if he could be absolutely guaranteed of no future exposure on the house. As stated above, however, Patrice has cited no part of the record that shows that she was able to buy out Randy's community interest in the Malibu house and extinguish any liability Randy had. In fact the record suggests that Patrice was unable to obtain such financing. Because the trial court ordered the Malibu house to be sold and Patrice and Randy to divide equally the costs of that sale and any net loss or gain resulting from the sale, it properly exercised its discretion to divide the community property equally within the meaning of section 2550. (*In re Marriage of Brown, supra*, 15 Cal.3d at p. 848, fn. 10; *In re Marriage of Dellaria & Blickman-Dellaria, supra*, 172 Cal.App.4th at p. 201; *In re Marriage of Quay, supra*, 18 Cal.App.4th at p. 966.)

IV. Patrice's Payment of Property Taxes on the Malibu House

Patrice claims that the trial court abused its discretion when it denied her request that the community reimburse her \$353,382 she paid for property taxes on the Malibu house.¹³ The trial court acted within its discretion.

As set forth above, at the beginning of the case, Patrice requested and was granted temporary monthly support of \$66,301. In support of her request, she claimed a monthly property tax expense of \$4,925.

At trial, Patrice asked the trial court to award her reimbursement from the community of \$353,382 in property taxes she paid on the Malibu house. The trial court denied Patrice's request. It found that Patrice was "not entitled to any reimbursements for amounts she expended on account of community debts she paid respecting the Malibu residence because it would be unfair or inequitable for her to expect such reimbursement." The trial court found that the combined monthly mortgage and property

¹³ Randy disputes Patrice's claim that she paid \$353,382 in property taxes. He argues that the evidence showed that Patrice paid \$277,443, CitiMortgage paid \$41,712 for unpaid taxes in 2007, and \$34,227 in taxes remained unpaid. Because we hold that the trial court did not abuse its discretion in denying Patrice any reimbursement for property taxes paid, we need not decide this factual dispute.

tax payments on the Malibu house, which varied between about \$25,000 and about \$30,000 a month, substantially exceeded the property's \$12,500 fair monthly rental value. It ruled that because the amount Patrice paid substantially exceeded the value of the use of the house, no reimbursement was due under the guidelines in *In re Marriage of Epstein* (1979) 24 Cal.3d 76, 84-85 (*Epstein*).¹⁴ At the same time, the trial court ruled that Patrice would not be required, under *In re Marriage of Watts* (1985) 171 Cal.App.3d 366, 374, to reimburse the community for the value of her exclusive use of the Malibu house post-separation.

When a spouse uses separate property funds after the date of separation to pay community debts, that spouse is entitled to reimbursement out of the community property at dissolution absent circumstances that would make reimbursement inappropriate. (*Epstein, supra*, 24 Cal.3d at pp. 84-85.) A trial court has broad discretion to award reimbursement pursuant to *Epstein*. (*In re Marriage of Hebring* (1989) 207 Cal.App.3d 1260, 1272.) We review a trial court's ruling on a reimbursement claim for an abuse of that discretion. (*Ibid.* ["*Epstein* does not mandate full reimbursement in all cases, but allows the trial court discretion to order reimbursement in an amount that is equitable"]; *In re Marriage of Lister* (1984) 152 Cal.App.3d 411, 420.)

When the trial court ruled that Patrice was not entitled to reimbursement for payments she made on the Malibu house, its ruling was based on the combined mortgage and property tax payments. Those combined payments totaled between about \$25,000 and \$30,000 and substantially exceeded the property's \$12,500 fair monthly rental value. On appeal, Patrice's claim concerns the property tax portion of those payments which, based on her request for temporary support at the outset of the case, was \$4,925 a month. Although that amount, standing alone, did not substantially exceed the fair monthly rental value of the house, the trial court did not err in denying reimbursement because Patrice requested \$66,301 in temporary monthly support, which request included \$4,925 for

¹⁴ *Epstein, supra*, 24 Cal.3d 76 was superseded by statute on other grounds as stated *In re Marriage of Prentis-Margulis & Margulis* (2011) 198 Cal.App.4th 1252, 1280 (*Prentis-Margulis*).

property taxes, and the trial court granted Patrice’s request in full. Having awarded Patrice an amount of temporary monthly support sufficient to pay the property taxes for the Malibu house, the trial court acted within its broad discretion in not awarding Patrice an amount to cover those taxes a second time. (*In re Marriage of Hebring, supra*, 207 Cal.App.3d at p. 1272; *In re Marriage of Lister, supra*, 152 Cal.App.3d at p. 420.)

V. DP’s Furniture and Equipment

Patrice argues that the trial court undervalued DP, Randy’s company, by \$159,526—the value of the furniture and equipment reflected on DP’s tax return depreciation schedule. The trial court erred in assigning no value to the furniture and equipment.

A. Background

The parties stipulated to the admission of a balance sheet (Exhibit 506) that Patrice’s forensic accountants prepared valuing the parties’ separate property and community property. In connection with the valuation of DP, the balance sheet contains a line item valuing DP’s “Furniture & Equipment” at \$159,526. The notes for that entry explain that “[t]he values for property and equipment are based on the 2007 Depreciation Schedule of Form 1120S of Douthit Productions, Ltd. assuming the ‘Rule of Thumb’ method.” The notes then set forth a valuation schedule for DP’s furniture and equipment. The schedule lists the date the items were acquired, the purchase price, a depreciation percentage—25, 50, or 75 percent of the item’s cost based on its age, and a resulting value. Other than by acquisition date, the schedule does not identify the items—e.g., the schedule states that DP acquired furniture or equipment on May 28, 2002, but does not state whether the acquisition was a desk, computer, or other type of furniture or equipment.

Alfred Warsavsky, Patrice’s forensic accountant, testified that he prepared the separate property and community property balance sheet. Warsavsky obtained the “information” concerning DP’s fixed assets—i.e., its furniture and equipment—from

DP's tax returns and depreciated the assets' values depending upon the dates they were acquired. He testified that this valuation method was a "standard procedure that we use."

In its statement of decision, the trial court stated: "[Randy] valued [DP] at [date of separation] at \$160,000. Exh. 266A. [Patrice] argues an additional value of \$159,526 for furniture and equipment using DP's tax depreciation schedule. [Patrice] fails specifically to identify any of the furniture and equipment. Exh. 506, p. 10. There is no evidence of market value at any time for any of the furniture and equipment. A depreciation schedule simply reflects for tax purposes how quickly the item is written off as an expense and provides no basis to assess market value. Accordingly, there is no adequate evidentiary basis to value these items as [Patrice] requests. The court finds on the evidence that the value of DP at [date of separation] is \$160,000 and any conflict, ambiguity or deficiency claimed by [Patrice] in the evidence concerning the value of DP is resolved by the court against [Patrice]. Both Exhibits 266A and 506 were admitted in evidence by stipulation of the parties subject to line item objections thereto being sustained by the court. No objections were lodged as to the valuation of DP contained in these documents which were prepared by the parties' forensic accountant experts. This community property is awarded to [Randy] who shall reimburse the community \$160,000 therefore."

B. Application of Relevant Principles

"The trial court possesses broad discretion to determine the value of community assets as long as its determination is within the range of the evidence presented. [Citation.] The valuation of a particular asset is a factual question for the trial court, and its determination will be upheld on appeal if supported by substantial evidence in the record. [Citation.] All issues of credibility are for the trier of fact, and all conflicts in the evidence must be resolved in support of the judgment. [Citation.] The trial court's judgment is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. [Citation.]" (*In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 670.)

The trial court erred in ruling that “there was no evidence of market value at any time for any of the furniture and equipment.” Exhibit 506 listed the items’ acquisition costs—i.e., their market value at the time of purchase. Warsawsky provided a present day estimate of the items’ values using a depreciation method. Accordingly, there was evidence both of its original market value and its current depreciated value. (See *LaCombe v. A-T-O, Inc.* (5th Cir. 1982) 679 F.2d 431, 432-435 [a homeowner properly testifies about the value of his household property using depreciation schedules].) By assigning no value to the furniture and equipment, the trial court erred. We remand the matter to the trial court for a revaluation of DP.

VI. Qualified Domestic Relations Orders (QDRO’s)

Patrice claims that the trial court erred in entering a final judgment without issuing QDRO’s with respect to “all pensions, 401(k)s, and other retirement accounts.” Without such orders, Patrice argues, “the protections afforded under federal law are not being preserved.” Patrice contends that the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 et seq.) requires that QDRO’s be issued before a judgment is entered. She is mistaken.

A “QDRO is a subset of “domestic relations orders” that recognizes the right of an alternate payee to “receive all or a portion of the benefits payable with respect to a participant under [a retirement benefits] plan.” 29 U.S.C. § 1056(d)(3)(B)(i)(I).’ [Citations.]” (*In re Marriage of Padgett* (2009) 172 Cal.App.4th 830, 840.) A domestic relations order is “any judgment, decree, or order (including approval of a property settlement agreement) which—[¶] (I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and (II) is made pursuant to a State domestic relations law (including a community property law).” (29 U.S.C. § 1056(d)(3)(B)(ii).) 29 U.S.C. section 1056 does not require that a domestic relations order be entered before a judgment for the order to be effective. In support of her claim that ERISA requires that a QDRO be issued before a judgment is entered, Patrice cites 29 U.S.C. sections 1144(b)(7), 1055,

1056(d)(3)(A), 1056(d)(3)(F), and *Boggs v. Boggs* (1997) 520 U.S. 833, 846-847. None of those authorities stands for that proposition.

In its judgment, the trial court ordered that certain retirement accounts “shall be divided by QDRO[’s] equally for contributions (no matter when made) if made for the period of marriage and before Date of Separation.” The part of the judgment requiring that the retirement accounts be divided by QDRO’s is enforceable. Accordingly, the QDRO’s will protect Patrice’s interest in the retirement accounts whether those orders were issued before or after the judgment.

VII. Randy’s Unauthorized Sale of Community Assets

Patrice contends that Randy breached his fiduciary duty by selling community assets—silver and china, a custom piano, and a Ferrari—without her consent. She also contends that Randy violated his fiduciary duty by concealing from her and the trial court his actual earnings and ability to support her and by “bitterly question[ing] maintaining support of his former spouse at the accustomed marital standard of living.” Patrice contends that the trial court failed to remedy adequately Randy’s breaches of fiduciary duty consistent with the mandates of sections 1101 and 2107.

A. The Sold Property

1. Background

Randy and Patrice purchased the silverware and china for about \$100,000. Purportedly to pay attorney fees, Randy sold the silverware and china, without Patrice’s permission, for \$50,812. Randy’s expert valued the silverware and china at the time of trial at \$33,054. At trial, Patrice testified that after Randy sold the silverware and china, she obtained from the relevant merchant the replacement cost of those items. The trial court excluded Patrice’s evidence of that purported replacement cost, and Patrice does not contest on appeal the trial court’s rulings on her proffered evidence.

In its statement of decision, the trial court stated that a replacement cost of \$270,000 had been “identified near the time of trial” and that Randy had offered to value

the silverware and china at \$125,000 as a compromise number. The trial court found that the fair value of the items and the value that best provided Patrice adequate compensation was Randy's compromise value of \$125,000. The trial court ordered Randy to pay Patrice one half of that amount or \$62,500. It noted that the compromise value exceeded the date of sale amount Randy obtained. The trial court specifically rejected as unreasonable Patrice's request that it value the items using their replacement costs, although it noted that the compromise value might reflect an increase in the price of silver as a commodity and thus might reflect the greater replacement cost.

Randy bought the piano for \$45,000. He sold the piano for \$40,542. His expert valued the piano at \$35,000. The trial court found that the replacement cost of the piano was \$118,000, but rejected that amount as unreasonable. It found that the piano's value at the time of trial was \$45,000, which amount included an increase in value over the price at which Randy sold the piano, and ordered Randy to pay Patrice one half of that amount or \$22,500.¹⁵

Randy sold the Ferrari for \$197,672. The trial court ruled that Randy did not have the right to sell the car without notice to Patrice, but ruled that doing so did not "impair" Patrice's community property interest and thus was not a breach of fiduciary duty under section 1101, subdivision (a).¹⁶ The trial court ordered Randy to reimburse the community \$197,672.

¹⁵ In connection with Randy's improper sale of the silverware and china and the custom piano, the trial court awarded Patrice \$40,068 in attorney fees and costs.

¹⁶ Section 1101, subdivision (a) provides: "A spouse has a claim against the other spouse for any breach of the fiduciary duty that results in impairment to the claimant spouse's present undivided one-half interest in the community estate, including, but not limited to, a single transaction or a pattern or series of transactions, which transaction or transactions have caused or will cause a detrimental impact to the claimant spouse's undivided one-half interest in the community estate."

2. Application of Relevant Principles

Relying on *Prentis-Margulis, supra*, 198 Cal.App.4th at page 1279, Patrice contends that section 1101, subdivision (g) required the trial court to value the silverware and china, the custom piano, and the Ferrari at their full replacement cost values rather than using the properties' fair market values. Because a trial court is to value an improperly sold asset at its fair and reasonable value, Patrice is mistaken.

As an initial matter, Patrice has forfeited any claim with respect to the trial court's valuation of the Ferrari because she has failed to demonstrate that the trial court erred in ruling that Randy did not breach his fiduciary duty when he sold the car. With respect to the trial court's ruling that Randy did not breach his fiduciary duty, Patrice makes the following argument: "It was a statutory breach, Randy so admitted. [Pet. Tr. Br., 13-AA-3734-3736, Tab 69] It required the statutory remedies." Patrice's perfunctory argument that cites no supporting authority constitutes a forfeiture of the issue. (*Dabney v. Dabney, supra*, 104 Cal.App.4th at p. 384; *People ex rel. 20th Century Ins. Co. v. Building Permit Consultants, Inc., supra*, 86 Cal.App.4th at p. 284; *Badie v. Bank of America, supra*, 67 Cal.App.4th at pp. 784-785.) Moreover, the part of the record that Patrice cites does not support the assertion that Randy admitted that he violated his fiduciary duty in selling the Ferrari.

As for the silverware and china and the custom piano, neither section 1101, subdivision (g) nor *Prentis-Margulis, supra*, 198 Cal.App.4th 1252 required the trial court to value those assets at their highest "replacement values" as argued by Patrice. Section 1101, subdivision (g) provides: "Remedies for breach of the fiduciary duty by one spouse, including those set out in Sections 721 and 1100, shall include, but not be limited to, an award to the other spouse of 50 percent, or an amount equal to 50 percent, of any asset undisclosed or transferred in breach of the fiduciary duty plus attorney's fees and court costs. The value of the asset shall be determined to be its highest value at the date of the breach of the fiduciary duty, the date of the sale or disposition of the asset, or the date of the award by the court."

Subdivision (g) of section 1101 provides for the time at which a valuation is to be made, but does not provide the method of valuation—that is, subdivision (g) provides that a trial court is to award the highest value of an asset on any of three identified dates, but does not define the term “highest value.” Section 1100, referenced in subdivision (g), provides guidance as to the meaning of “highest value.” Subdivision (b) of section 1100 provides, in relevant part, that “[a] spouse may not . . . dispose of community personal property for less than *fair and reasonable value*, without the written consent of the other spouse.” (Italics added.) Considering sections 1100 and 1101 together, section 1101, subdivision (g) requires a trial court to award as the “highest value” the highest “fair and reasonable value” of an asset “at the date of the breach of the fiduciary duty, the date of the sale or disposition of the asset, or the date of the award by the court.”

As subdivision (g) of section 1101, *Prentis-Margulis, supra*, 198 Cal.App.4th 1252 addresses the timing of a trial court’s valuation of an asset and not the method of valuation. In that case, the court held that a “trial court must value the assets at the highest of three possible dates.” (*Id.* at p. 1279, italics omitted.) The court further held that a trial court is authorized “to use a valuation date that best provides adequate compensation to the injured spouse.” (*Ibid.*) The court did not otherwise explain the method a trial court is to use in determining an asset’s “highest value.”

Accordingly, because a trial court is to value an improperly sold asset at its fair and reasonable value, the trial court did not err in its valuation of the silverware and china and the custom piano.

B. Randy’s Failure to Disclose Income and Assets

Patrice contends that the trial court erred in failing to impose monetary sanctions under section 2107, subdivision (c)¹⁷ because, “[t]hroughout the case, Randy concealed

¹⁷ Subdivisions (a) through (c) of section 2107 provide:

“(a) If one party fails to serve on the other party a preliminary declaration of disclosure under Section 2104 or a final declaration of disclosure under Section 2105, or fails to provide the information required in the respective declarations with sufficient

from Patrice and the trial court his actual earnings and his ability to pay support, and bitterly questioned maintaining support of his former spouse at the accustomed marital standard of living.” Patrice’s claim for monetary sanctions is based on Randy’s alleged failure to disclose timely the three \$500,000 payments under the Her Honor, Inc. development contract, \$500,000 in residual payments, and “clever lawyer arguments” Randy made in connection with Patrice’s insurance claims with respect to flood damage at the Malibu house and the loss of jewelry from the Sierra Mar house.

Apparently based on his failure to disclose the initial \$500,000 payment under the Her Honor, Inc. contract, Randy withdrew a support modification order to show cause. Thereafter, he admitted his responsibility for Patrice’s attorney fees in the amount of \$16,500 in defending against the order to show cause, and the trial court awarded Patrice an additional \$17,981.25 in accountant fees. Patrice acknowledges the trial court’s accountant fees award, but not the attorney fees that Randy agreed to pay, stating that the trial court awarded only a fraction of the \$110,000 in attorney and expert fees she incurred in opposing the order to show cause. She argues that “[t]he failure to make

particularity, and if the other party has served the respective declaration of disclosure on the noncomplying party, the complying party may, within a reasonable time, request preparation of the appropriate declaration of disclosure or further particularity.

“(b) If the noncomplying party fails to comply with a request under subdivision (a), the complying party may do one or more of the following:

“(1) File a motion to compel a further response.

“(2) File a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

“(3) File a motion showing good cause for the court to grant the complying party’s voluntary waiver of receipt of the noncomplying party’s preliminary declaration of disclosure pursuant to Section 2104 or final declaration of disclosure pursuant to Section 2105. The voluntary waiver does not affect the rights enumerated in subdivision (d).

“(c) If a party fails to comply with any provision of this chapter, the court shall, in addition to any other remedy provided by law, impose money sanctions against the noncomplying party. Sanctions shall be in an amount sufficient to deter repetition of the conduct or comparable conduct, and shall include reasonable attorney’s fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust.”

awards sufficient to compensate for these ongoing breaches was not simply a matter of the court having broad discretion to determine the amount of ‘reasonable’ attorneys’ fees. Rather, it is the fundamental question of Patrice’s ‘entitlement’ to secure a fair and just fee award, not just the amount, that is in issue.”

The precise nature of Patrice’s claim is unclear. She only directly refers to the trial court’s \$17,981.25 accountant fees award. If she is arguing that the trial court abused its discretion in setting the amount of recoverable accounting fees (*In re Marriage of Barnert* (1978) 85 Cal.App.3d 413, 429 [an award of accountant fees is reviewed for an abuse of discretion]; *Rosenthal v. Rosenthal* (1963) 215 Cal.App.2d 140, 147-148 [same]) she fails to set forth the trial court’s reduction in the requested fees and to explain why the reduction was an abuse of discretion. If she is arguing that the trial court should have awarded her sanctions for Randy’s conduct under section 2107, subdivision (c) apart from any accountant fees award, she has failed to identify any claim for such sanctions in the trial court, to set forth the trial court’s ruling, or to explain why the trial court erred in failing to award such sanctions. As with her claim with respect to undisclosed income, Patrice has failed to explain her claim that she was entitled to sanctions under section 2107, subdivision (c) because Randy made “clever lawyer arguments” apparently as part of his “bitter” resistance to supporting her at her asserted accustomed marital standard of living. Patrice has not established that the trial court erred in not imposing the sanctions to which she thinks she is entitled.

VIII. Patrice’s Attorney and Expert Witness Fees

Patrice argues that the trial court abused its discretion in its award of attorney and expert witness—i.e., forensic accountant—fees. Patrice contends that the trial court “essentially” limited her fees to those “necessary to ‘prepare for trial.’” Reasonable fees, she asserts, are not narrowly limited to trial preparation, but include fees for such matters as discovery, efforts to “facilitate settlement,” and sanctions under section 2107 for

nondisclosure of assets.¹⁸ Ultimately, Patrice contends that we should order the trial court to adjust its award of attorney and expert witness fees to her in light of the errors she contends the trial court made in its judgment.

An award of attorney fees in a marital dissolution is left to the trial court's sound discretion. (*In re Marriage of Sullivan* (1984) 37 Cal.3d 762, 768-769.) Thus, we must affirm an attorney fees award absent an abuse of discretion. (*In re Marriage of Rosen* (2002) 105 Cal.App.4th 808, 829.) As stated above, a trial court's award of accountant fees is reviewed for an abuse of discretion. (*In re Marriage of Barnert, supra*, 85 Cal.App.3d at p. 429; *Rosenthal v. Rosenthal, supra*, 215 Cal.App.2d at pp. 147-148.) A trial court abuses its discretion when no judge reasonably could have made the same order. (*In re Marriage of Rosen, supra*, 105 Cal.App.4th at p. 829.)

In its statement of decision, the trial court spent some 12 pages addressing the issue of attorney and expert witness fees. Patrice apparently bases her argument that the trial court "narrowly" limited recoverable fees to those fees incurred for "trial preparation" on its statement that "subject to the following, the court endeavors to determine the reasonably necessary fees to prepare and try the case." In context, the trial court's statement was not, as Patrice argues, a limitation on the recoverability of fees based on the *subject matter* of the fees—i.e., trial preparation. Rather, it was a limitation of the recoverability of fees based on the *reasonableness* of those fees.

The trial court did not award Patrice all of the fees she sought because it found that the case was not sufficiently complicated—the couple had no children so there were no custody or child support issues to resolve and the parties and their forensic accountants agreed at trial on nearly all amounts of assets and liabilities that needed to be divided or assigned, even if they disputed how to characterize some of the property; the totality of fees and costs Patrice incurred were not commensurate with the results she obtained; she

¹⁸ The only actual fee ruling Patrice addresses is the trial court's award of fees in connection with Randy's withdrawn order to show cause, which we addressed above. As set forth above, the trial court awarded Patrice attorney and forensic accountant fees in connection with her defense of the order to show cause.

serially hired four law firms to represent her during the five and a half years the matter was pending, much of the evidence necessary to prove contested matters at trial was obtained during the first law firm's representation, and the costly delay and inefficiency in changing attorneys (including resulting duplicative work by the forensic accountants) was not reasonably charged to Randy; and many of Patrice's individual requests for reimbursement were not supported by persuasive evidence, it appearing to the trial court that Patrice's forensic accountants had simply compiled a wish list of reimbursements Patrice sought and much of Warsavsky's testimony at trial about such reimbursements and other matters was not useful or necessary. The trial court further found that Patrice's lack of credibility on many issues added to her fees, although it was unable to determine specifically how much of the billed fees resulted from Patrice's "implausible and non-credible claims." Accordingly, the trial court did not improperly limit its attorney and expert witness fee award to "trial preparation" and thus did not abuse its discretion. (*In re Marriage of Sullivan, supra*, 37 Cal.3d at pp. 768-769; *In re Marriage of Rosen, supra*, 105 Cal.App.4th at p. 829; *In re Marriage of Barnert, supra*, 85 Cal.App.3d at p. 429; *Rosenthal v. Rosenthal, supra*, 215 Cal.App.2d at pp. 147-148.)

DISPOSITION

The trial court's valuation of DP's furniture and equipment is reversed and remanded to the trial court for further proceedings. The judgment is otherwise affirmed. Randy is awarded his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

I concur:

KIRSCHNER, J.*

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

In re Marriage of RANDALL DOUTHIT and PATRICE JONES.
Randall Douthit v. Patrice Jones
B254719

TURNER, P. J., Concurring

I concur in my colleagues' well-stated and reasoned analysis. I would add this thought to the analysis of the market value of the furniture and equipment of Douthit Productions. There is one ground that may not be used to disallow the \$159,526 figure. That ground is that there is no evidence as to the value of the Douthit Productions furniture and equipment. Footnote 6.4 of the exhibit No. 506 sets forth the method of calculation of the \$159,526 figure—as my colleagues explain, that is evidence. But once the remittitur issues, the trial court is free to reject on foundational or other potentially proper grounds Alfred Warsavsky's computation of the furniture and equipment value.

A sound argument can be made that the statement of decision read as a whole indicates the trial court merely found Mr. Warsavsky's valuation was unpersuasive. A solid argument is that the statement of decision's other language indicates the trial court was unpersuaded by the conclusory explanation in footnote 6.4 as to the property's value. But the predicate of the trial court's analysis is that there was "no evidence" of the market value. The reasoning started there and that is why I wholeheartedly join in my colleagues' analysis. Finally, no harmless error argument was presented by Randall Douthit. (*People v. Watson* (1956) 46 Cal.2d 818, 836; Cal. Const., art. VI, § 13.)

TURNER, P. J.