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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of TONY TROUSSET and ERIN KELLEY.	
TONY TROUSSET, Respondent, v. ERIN KELLEY. Appellant.	A172398 (San Francisco City & County Super. Ct. No. FDI21794361)

This case involves a dispute over the denial of a request for postjudgment attorney fees in a marriage dissolution proceeding between appellant Erin Kelley (Erin) and respondent Tony Trousset (Tony).[1] We reverse and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND[2]

In January 2021, after 16 years of marriage, Tony filed a petition to dissolve his marriage to Erin. In June 2021, Tony filed a request for a domestic violence restraining order ("DVRO") when he realized Erin had placed a tracking device on his car. The family court granted this request,

[1] The parties refer to themselves by their first names in their briefing. We do the same.

[2] We summarize only those facts relevant to disposition of the issues raised on appeal.

finding Tony established by a preponderance of the evidence that Erin had "stalk[ed] and disturb[ed] [his] peace" and had engaged in conduct that fell within Family Code section 6320's definition of "coercive control." Erin later paid Tony attorney fees relative to the DVRO proceedings.

In January 2023, the parties signed a marital settlement agreement ("MSA") in which they divided multiple real properties and assets worth tens of millions of dollars. Tony, an investment banker and the principal in an investment group, also agreed to pay Erin, a former certified public accountant who stopped working when the parties' children were born, a lump sum spousal support buyout of $1 million and an equalizing payment of $2.6 million.

As for the children, Tony retained sole legal and physical custody of the parties' eldest daughter until further agreement or order of the court. He agreed to pay child support to Erin for the younger two children (over whom the parties had joint legal and physical custody), offset by the amount Erin owed him for support of the eldest child. The parties agreed to a child support calculation consisting of "base" child support and "bonus" child support. The base child support is based on an imputed salary for Erin, a salary for Tony based on his net income from the prior year, and imputed investment returns and interest income for both parties. If Tony's income were to exceed his income from the previous year, bonus child support would be calculated as a percentage of the additional income. In order to calculate both base and bonus support, Tony was required to annually provide Erin with financial information from his investment group. If the parties were unable to agree on either the base or bonus support amounts, the MSA reserved jurisdiction for the family court to set such amounts. In addition to the child support amounts, the parties agreed to split various child support add-ons including private school tuition (for which Tony would pay 70 percent and Erin would pay 30 percent) and uninsured medical expenses such as therapy costs for the children (which the parties would split evenly).

Various disputes followed the parties' signing of the MSA, which was ultimately incorporated into a judgment filed on June 21, 2023.

In February 2023, Erin sought an order granting her joint custody of the parties' eldest daughter who was estranged from and did not want to communicate with her. The family court denied this request.

Tony also disclosed his 2022 net income was significantly less than what he and his expert had previously anticipated; consequently, Erin would be receiving a base child support amount that was substantially less than the amount projected when the parties agreed to the MSA in January 2023.[3] On April 3, 2023, the parties signed a stipulation regarding the base child support amount Tony would pay. The following day, Erin filed a request to modify the allocation of child support add-ons on the basis her agreement to the original allocation of add-on expenses was made in reliance on Tony and his expert's projections regarding the child support amount she would receive. In her request, Erin asked that Tony pay 80 instead of 70 percent of the add-on expenses, claiming she could no longer afford her share of private school tuition and therapy sessions for the parties' children in light of the reduced child support amount.

On May 4, 2023, Erin filed a request for attorney fees pursuant to sections 2030 and 3557 of the Family Code.[4] She sought $95,000 for the fees

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[3] Tony represented in a later court filing that this decrease in income resulted from general market conditions in the investment banking industry at that time.

[4] All unlabeled statutory references are to this code.

she incurred since signing the MSA and $80,000 in future fees she anticipated incurring.

On May 26, 2023, Tony filed a motion to modify the base child support amount. In his motion, Tony requested that the base amount be subject to a "true-up" at the end of every year, such that Erin would reimburse him for any child support paid in excess of what he owed based on his income from the previous year.

On August 30, 2023, the family court issued a tentative ruling addressing the parties' postjudgment requests for orders, including Erin's request to modify allocation of the child support add-ons and her request for attorney fees, and Tony's request to modify child support. The court's tentative ruling stated there was a "significant disparity in access to funds to pay legal fees" between Tony and Erin and that a fee award was warranted "[o]n th[at] basis alone." It then indicated it would need updated information regarding the fees incurred by Erin after she filed her request for attorney fees, along with updated income and expense declarations from both parties.

The hearing on the parties' various requests was thereafter continued several times and ultimately set for a long cause hearing before a different judicial officer.

Over the course of these continuances, the parties submitted supplemental declarations regarding their income and expenses and the additional attorney fees incurred by Erin. During this time period, Erin also filed a request that Tony be ordered to submit to a vocational evaluation to determine his earning capacity, which the court denied on the basis Erin could obtain this information through discovery such as a deposition of Tony or the retention of an expert.

On October 15, 2024, the family court held a hearing on the parties' requests and took the matter under submission. On November 7, the court issued written findings and an order in which it denied Tony's request to modify child support and further ruled that, per the parties' stipulation, the child support add-on expenses would be reallocated pro rata based on the annual income of the parties.

As relevant here, the family court also denied Erin's request for attorney fees under sections 2030 and 3557. In determining the propriety of a fee award, the court noted it was required to consider whether there is a disparity in access to legal representation, and whether one party is able to pay for legal representation of both parties. The court then declared: "The Court has reviewed each party's Income and Expense Declaration. Tony clearly has more liquid assets than Erin. However, while there is a disparity in assets, Erin does not demonstrate need. Indeed, she has substantial liquid assets (over $10 million)." The court went on to state that under section 2030, a court must also consider the circumstances described in section 4320 (which are relevant to spousal support). Here, the court identified as relevant the circumstances that Erin already received "substantial payments" from Tony to resolve spousal support and that she had been found to have committed domestic violence against him.

Beyond these factors, the family court found the fees incurred by the parties were not reasonably necessary because the issues were "overlitigated." In this regard, the court noted that both parties filed their requests for orders shortly after reaching agreements about child support and signing the MSA, with Erin seeking to modify the child support add-ons one day after stipulating to the base child support amount, and Tony filing a request to modify child support in response. The court went on to point out that Erin took "full advantage" of the opportunity to conduct postjudgment discovery by deposing both Tony and her own expert relative to the issue of Tony's earning capacity, and that she incurred over $522,000 in attorney fees since signing the MSA while Tony expended $284,000 in fees. Thus, the court concluded, "[w]hile each party may pursue their own litigation strategies, they can also pay their own fees to do so." It therefore denied Erin's request for fees in its entirety.

DISCUSSION

On appeal, Erin contends the trial court erred in denying her request for attorney fees under section 2030 and in failing to apply section 3557 as an alternative basis for a fee award. We agree the court committed error in its denial of Erin's request for fees under section 2030.

A. Section 2030

Applicable Legal Principles

Section 2030 provides that, in a marriage dissolution proceeding, a court must "ensure that each party has access to legal representation . . . by ordering, if necessary based on the income and needs assessments, one party . . . to pay to the other party . . . whatever amount is reasonably necessary for attorney fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding." (§ 2030, subd. (a)(1).) When a party requests attorney fees and costs, the statute requires the court to make findings as to: (1) "whether an award of attorney's fees and costs under this section is appropriate"; (2) "whether there is a disparity in access to funds to retain counsel"; and (3) "whether one party is able to pay for legal representation of both parties." (§ 2030, subd. (a)(2).) "If the findings demonstrate disparity in access and ability to pay, the court *shall* make an order awarding attorney's fees and costs." (*Ibid.*, italics added.)

A court may make a fee award under section 2030 where the making of the award is "just and reasonable under the relative circumstances of the respective parties." (§ 2032, subd. (a).) In determining whether this standard is met, a court shall consider whether an award is needed "to enable each party, to the extent practical, to have sufficient resources to present the party's case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320 [which enumerates factors for determining spousal support]." (§ 2032, subd. (b); see § 4320.)

As the statutory scheme makes clear, in determining an amount that would be "just and reasonable" to award under section 2030, "[t]he fact that the party requesting an award of attorney's fees and costs has resources from which the party could pay the party's own attorney's fees and costs is not itself a bar to an order that the other party pay part or all of the fees and costs requested." (§ 2032, subd. (b).) Rather, "[f]inancial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances." (§ 2032, subd. (b).) The statutory reference to section 4320 reinforces this principle by including considerations such as the earning capacities and needs of each party but also, for example, the extent to which one party contributed to the career advancement of the other, the age and health of the parties, and any documented evidence of domestic violence between the parties. (§ 4320, subds. (a), (b), (d), (h), (i).)

Courts have also held that, "[n]otwithstanding the parties' relative economic circumstances," an award under section 2030 is properly denied if a case has been "overlitigated" or when the fees were not reasonably necessary. (*In re Marriage of Ciprari* (2019) 32 Cal.App.5th 83, 112 (*Ciprari*).)

In reviewing a trial court's ruling on a request for attorney fees under section 2030, we will not disturb the court's exercise of its discretionary authority absent a " 'clear showing of abuse.' " (*In re Marriage of Duncan*, (2001) 90 Cal.App.4th 617, 630.) Applying this standard, "we consider de novo any questions of law raised on appeal, but will uphold any findings of fact supported by substantial evidence." (*In re Marriage of Smith* (2015) 242 Cal.App.4th 529, 532.)

Analysis

Erin asserts the family court erred in denying her attorney fees request without making the requisite findings under section 2030. She contends this error was prejudicial because, between the court's finding of an asset disparity between her and Tony and the indisputable evidence of Tony's ability to pay for both parties' representation, a fee award under section 2030 was mandatory. We conclude the court's failure to make the appropriate findings under section 2030 was error.

Under section 2030, subdivision (a)(2), a court is required to make "express findings," that is, "findings stated in words, either in writing or orally on the record," as to: (1) whether a fee award is appropriate, (2) whether there is a disparity in access to funds to retain counsel, and (3) whether one party is able to pay for legal representation of both parties. (*In re Marriage of Morton* (2018) 27 Cal.App.5th 1025, 1051 (*Morton*).) The failure to make express findings is "legal error." (*Id.* at pp. 1052–1053 [finding legal error where court order omitted explicit findings as to two of the three factors].)

Here, the family court failed to make express findings on the factors referenced in section 2030, subdivision (a)(2). Though the court appeared to find that a fee award was not appropriate (as is evident by its denial of fees after considering the various factors under section 4320 and the parties' litigation conduct), it did not make an express finding on either that issue or the issue of disparity in access to funds, and it made no finding at all regarding the ability of one party to pay fees for both parties.

Concerning the issue of disparity in access to funds to retain counsel, the court found there was a "disparity of *assets*" as "Tony clearly ha[d] more liquid assets than Erin." (Italics added.) And Erin appears to construe this language as an explicit finding of a "disparity in *access to funds* to retain counsel," as contemplated by section 2030, subdivision (a)(2). (Italics added.) We are not so sure. We begin with the general observation that a disparity in assets is not always tantamount to a disparity in access to funds to retain legal counsel. Notably, here, the court's order went on to state: "*However, while there is a disparity in assets*, Erin does not demonstrate need. Indeed, she has substantial liquid assets (over $10 million)." (Italics added.) Thus, though Erin's interpretation appears reasonable, the court's statement could reasonably and alternatively be construed as a finding that there was *no disparity in access* to funds *despite* the parties' disparity in assets.

On this record, we cannot tell what finding the family court intended to make on the issue of the parties' relative access to funds to retain legal counsel. This ambiguity, coupled with the court's complete silence on the issue of whether one party had the ability to pay for legal representation for both parties (see § 2030, subd. (a)(2)), was legal error. (See *Morton*, *supra*, 27 Cal.App.5th at pp. 1052–1053.) But that error by itself does not entitle Erin to relief. Instead, the error must be reversed only if Erin can show by a " 'reasonable probability' " that, in the absence of the error, a more favorable result would have been reached. (*Morton*, at p. 1051; Cal. Const., art. VI, § 13.) Erin has met that burden.

Once again, the language of section 2030, subdivision (a)(2), states the "court *shall* make an order awarding attorney's fees and costs" if it finds "disparity in access and ability to pay." (Italics added; see *Ciprari*, *supra*, 32 Cal.App.5th at p. 112.) Here, the question is close, but we conclude reversal is warranted because there is a reasonable probability—i.e., *a reasonable chance* (see *People v. Hernandez* (Aug. 13, 2026, S282186) ___Cal.5th___ [2026 D.A.R. 7021])—that the family court would have made express findings of disparity in access and ability to pay.

On the issue of ability to pay, as Erin points out on appeal, the record evidence indicates that Tony had substantial income and a net worth of $22.5 million. As such, we conclude it is reasonably probable that the family court would have found that Tony could pay for legal representation for him and Erin, had it made an express finding on this issue. (See *Morton*, *supra*, 27 Cal.App.5th at p. 1051.)

The issue of whether it is reasonably probable the family court would have found a disparity of access in funds to retain legal counsel is closer. As we observed, *ante*, the court's views on this issue were far from clear because it both found there was a "disparity of assets" as "Tony clearly ha[d] more liquid assets than Erin," but also found that Erin had no need because she had "substantial liquid assets (over $10 million)," which could lead to an inference the court believed there to be no disparity in access. Nonetheless, on balance, we conclude that if the court *had* properly evaluated this factor, there appears a reasonable probability it would have found that in addition to a disparity of assets between the parties, there was also a disparity of access to funds available for legal representation.

Two Court of Appeal cases—*Ciprari*, *supra*, 32 Cal.App.5th 83 and *Morton*, *supra*, 27 Cal.App.5th 1025—are instructive on this latter point. In

Ciprari, the husband and wife were both individuals of high net worth with the husband leaving the marriage with approximately $10 million in assets while the wife received $5 million. (*Ciprari*, *supra*, 32 Cal.App.5th at p. 93.) The wife made a posttrial request for attorney fees, which the trial court denied. (*Id.* at p. 111.) The Court of Appeal reversed this decision and, among other things, held that a fee award under section 2030 was mandatory because the trial court impliedly found there was a disparity in access to funds to retain counsel and the husband had the ability to pay for both parties' legal representation, and substantial evidence supported these implied findings. (*Ciprari*, *supra*, 32 Cal.App.5th at pp. 111, 112.) The *Ciprari* court implied these findings from the trial court's following statement: " 'Under a need and ability to pay standard, clearly [Joe], who is substantially gainfully employed and has a greater asset base, is better positioned than [DeeDee]. It is also true that [DeeDee] has a significant asset base from which to draw fees, but she is not employed and has no current employment prospects as far as the court is aware.' " (*Id.* at p. 111.) The *Ciprari* court stated that the fact the wife had a significant asset base from which to draw fees was not a bar to a need-based fee award under section 2030. (*Ibid.*)

As for *Morton*, *supra*, the Court of Appeal held that the record demonstrated a disparity in access to funds to retain counsel where both parties had access to funds resulting from the division of the community assets (amounting to $413,000 per party) but the husband also had access to funds generated by his employment, co-ownership of two companies, rental income, funds from other corporations, and sometimes significant tax refunds, while the wife had minimal employment income before she stopped working as a courier and only had access to the funds obtained from the community assets division. (*Morton*, *supra*, 27 Cal.App.5th at pp. 1052–1053.) Under these circumstances, the court held the record compelled a finding of disparity in access to funds. (*Ibid.*)

Here, as in *Ciprari*, both Tony and Erin have substantial assets. However, Tony has a greater asset base and receives substantial income from his employment, while Erin took a break from her career when the parties' children were born and was not employed when she filed her request for fees. Further, as in *Morton*, even though both Tony and Erin have access to liquid funds, Tony appears to have greater access by virtue of his gainful employment while Erin's access to funds apart from the community assets division is unclear. Given the analogous facts in both *Ciprari* and *Morton* (see *Ciprari*, *supra*, 32 Cal.App.5th at pp. 111–112; *Morton*, *supra*, 27 Cal.App.5th at p. 1053), we think that if the family court here had explicitly considered this factor, there is a reasonable probability it would have found a disparity in access to funds to retain counsel.

That said, due to the closeness of the facts and the ambiguity in the family court's findings, we will not go as far as Erin advocates. In particular, we do not view *Ciprari* and *Morton* as compelling the conclusion that a fee award under section 2030 is mandatory on the record presented. Unlike *Ciprari*, there was no statement by the family court from which we can clearly discern a finding of disparity in access to funds. The facts in this record are also closer than those presented in *Morton*. In *Morton*, each party had access to approximately $413,000 after division of the community assets, but the husband also had other sources of income while the wife had minimal employment income before she stopped working as a courier. (*Morton*, *supra*, 27 Cal.App.5th at pp. 1052–1053.) Here, Erin is unemployed, while Tony draws substantial income as an investment banker and principal in an investment group, but both parties have millions of dollars in assets.

Accordingly, we reverse and remand for the family court to clarify its order by making the explicit findings required under section 2030, subdivision (a)(2), based on the circumstances of the parties at the time of the court's ruling on Erin's fee request.[5] If the court ultimately finds a disparity in access and ability to pay, then it must determine what portion of Erin's requested fees are "appropriate" (§ 2030, subd. (a)(2)), as determined by what is "just and reasonable under the relative circumstances of the respective parties" (§ 2032, subd. (a), *Ciprari*, *supra*, 32 Cal.App.5th at p. 113). In this regard, we would encourage the court to not paint with "too broad a brush" in characterizing all of Erin's fees as unreasonable, but to engage in a more "nuanced and granular inquiry" when assessing reasonableness. (See *Ciprari*, at p. 113.)

B. Section 3557

Section 3557, subdivision (a), provides in relevant part that in an action to enforce an existing order for child support, the court "shall award reasonable attorney fees" in order "to ensure that each party has access to legal representation to preserve each party's rights, upon determining (1) an award of attorney fees and cost under this section is appropriate, (2) there is

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[5] Though section 2030, subdivision (a)(2), requires family courts to make express findings, we do not suggest that any particular words or phrases must be utilized. (See *In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 561, fn. 13 [appellate courts regularly reject claims of error based on a trial court's failure to incant particular " ' magic words' "].) Rather, we hold only that when a family court's intent cannot be clearly discerned from its statements and the record evidence is susceptible to differing conclusions, we will not step in to make findings the court is better equipped to make. (See *Barbanell v. Lodge* (2025) 117 Cal.App.5th 1003, 1010 [trial court is in the best position to determine if criteria for a fee award have been met].)

a disparity in access to funds to retain counsel, and (3) one party is able to pay for legal representation for both parties." The statute requires such an award to be made "absent good cause to the contrary." (§ 3557, subd. (a).)

Erin asserts this statute applies to her efforts contesting Tony's request to modify the existing support order because, in opposing Tony's request, she was seeking to enforce the child support order. She further argues the family court erred when it did not separately determine her entitlement to fees under section 3557 despite the fact that statute "involves a different analysis." Erin's contention is not well taken.

There is nothing about the statutory language that suggests an *opposition* to a party's request to modify a child support order constitutes an "action to enforce . . . [a]n existing order for child support" within the meaning of section 3557. (See § 3557, subd. (a)(1)(A).) Here, the record is clear that Erin did not bring an action to enforce the child support order, and the record contains no indication that Tony was noncompliant with his support obligations under the MSA. As Erin's request for fees under section 3557 is based solely on her response to Tony's request to modify the support order, we perceive no error in the family court's denial of that request.

DISPOSITION

The judgment is reversed and remanded for further proceedings consistent with this opinion. In the interests of justice, the parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

Fujisaki, Acting P.J.

WE CONCUR:

Petrou, J.

Rodríguez, J.

Trial Court: San Francisco City & County Superior Court

Trial Judge: Hons. Roger C. Chan, Victor M. Hwang, and Michelle Tong

Counsel: Complex Appellate Litigation Group LLP, Claudia Ribet, and Matthew B. Stucky for Plaintiff and Appellant.

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