Filed 8/21/26

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of R.M. and P.N.	
R.M., Respondent, v. P.N., Appellant, DEPARTMENT OF CHILD SUPPORT SERVICES, Respondent.	D086317 (Super. Ct. No. D541463)

APPEAL from orders of the Superior Court of San Diego County, Chandra Reid, Judge. Affirmed.

Joshua M. Searcy for Appellant.

R.M., in pro per, for Respondent, R.M.

Rob Bonta, Attorney General, Cheryl L. Feiner, Assistant Attorney General, Maureen C. Onyeagbako and Ricardo Enriquez, Deputy Attorneys General, for Respondent Department of Child Support Services.[1]

R.M. (Father) and P.M. (Mother) are the divorced parents of a special-needs daughter, F.N. (Daughter). After Father lost his job, the family court calculated new spousal and child support obligations using the statutory formula at Family Code section 4055,[2] which requires assessing each spouse's gross income as defined in section 4058. (§§ 4055, 4058.) Mother appeals the orders, contending the court erred by including in her gross income the payments Mother received for In Home Supportive Services (IHSS) she provided to Daughter. Mother contends the IHSS payments should have been excluded under section 4058, subdivision (c), which excludes "income derived from any public assistance program, eligibility for which is based on a determination of need." (§ 4058, subd. (c).) Mother also contends that the court erred by failing to consider Father's substantial assets and his ability to cover significant monthly expenses, and basing its calculation on Father's self-reported income despite Father's record of concealing assets.

We conclude that IHSS payments are income from a needs-based public assistance program. But because Daughter, not Mother, was the recipient of

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1 California's Family Code provides that in all actions involving paternity or support, the local child support agency and the Attorney General represent the public interest in establishing, modifying, and enforcing support obligations. (Fam. Code, § 17406, subd. (a).)

2 Undesignated statutory references are to the Family Code.

those services, and her needs, not Mother's, determined eligibility for IHSS payments, we conclude the family court properly declined to exclude Mother's IHSS payments from Mother's gross income under section 4058, subdivision (c). We further hold the court did not abuse its discretion in determining Father's income.

We affirm the spousal and child support orders.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father were married for 13 years and have three children, including Daughter. During the marriage Mother was the in-home caregiver for the children and did not work outside the home. Father and Mother divorced in 2013.

Daughter has special needs and requires 24-hour care. Daughter lives with her siblings and Mother in a two-bedroom apartment. Mother works as an IHSS caregiver for Daughter and as a parttime classroom aide. Mother is unable to work fulltime due to being Daughter's primary caretaker.

Prior family court orders required Father to pay $1,850 per month in child support and $1,300 per month in spousal support. In July 2024, Father filed a request to reduce his child and spousal support obligations after he lost his job that paid $17,830 per month.

Mother objected to Father's requests. She claimed Father had substantial assets, investment and rental income, the ability to earn, and a history of altering income to avoid paying child and spousal support. Mother claimed she was at full earning capacity given her need to care for Daughter. Mother stated Daughter spent 99 percent of the time with her and one percent with Father.

While Father's motion was pending, Mother filed a request to extend child support for Daughter under section 3910 on the grounds that Daughter was incapacitated from earning a living and without sufficient means to support herself. Father opposed extending child support because Daughter had reached the age of majority (18 years old) and she was no longer in high school.

Following a consolidated hearing on all pending requests, the family court issued a written order, attaching its guideline calculations. It denied Father's motion to terminate child support, ruling Daughter was enrolled in a program equivalent to high school and was entitled to child support up until her nineteenth birthday under section 3901 subdivision (a)(1). The court granted Mother's motion to extend support for Daughter, ruling that although she was an adult, Daughter was incapacitated, unable to earn a living, and without sufficient means to support herself.

The court calculated new child support amounts. It determined Father received $1,950 per month in unemployment from August 1, 2024, through January 31, 2025. Starting February 1, 2025, Father's income increased to $3,050[3] a month in self-employment. The court calculated Mother's income as $7,608 per month, which, according to supporting documents, consisted of $1,448 earned as an instructional aid and $6,160 in IHSS payments. The

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3 The court cited a different amount, $3,405 per month, as Father's monthly self-employment income in its analysis of spousal support. It is unclear how the court arrived at this figure. Father's financial documents supported monthly self-employment income of $3,050 per month, and his counsel cited the same amount at the hearing. While the court recited the lower amount in its written order, it appears to have relied on the higher figure, $3,405, in calculating the guideline child support, based on the worksheet attached to the court order. Father asks us to affirm the court's orders and did not object to its use of the higher figure in its findings or its calculation of child support.

court found that IHSS monies were income for calculating child support. It found Father had a one percent timeshare.

The court ordered support as follows: From August 1, 2024, through January 31, 2025, Father's child support was reduced to $297 per month. Effective February 1, 2025, the child support obligation increased to $660 per month.

Turning to spousal support, the court found that Father's loss of employment constituted a material change of circumstances that was not voluntary. The court then applied the section 4320 factors to calculate new levels of spousal support. The court found Mother had an associate's degree and training and experience as a pharmacy technician, but had not worked in that field since 2000 due to Daughter's needs. Father had degrees in economics and business.

The court found Mother's earning capacity was impaired by periods of unemployment incurred during the marriage to permit her to devote time to domestic duties, specifically to be the primary caregiver for Daughter, who required 24-hour care.

The court found Father's income had dropped to $1,950 in unemployment from August 1, 2024, through January 1, 2025. He began earning self-employment of $3,405 monthly in February 2025.[4] The court found Father's earning capacity was $100,000. The court further found Father owned $400,000 in cryptocurrency, $300,000 in retirement accounts, $250,000 in real estate, $200,000 in collectible automobiles, and $115,000 in stocks. But it ruled it had insufficient evidence of the purchase prices,

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4 As stated, the documents reflected $3,050 per month in self-employment income to Father.

current values, or liquidity of Father's assets to include them in Father's income, and relied solely on his unemployment benefits and subsequent self-employment income.

The family court found Mother had assets of $5,300 in a bank account and $168,000 in a retirement account in addition to her combined monthly income. The court accepted Father's claim of monthly expenses of approximately $11,264.50 and Mother's claim of $8,587 in expenses, and concluded neither party could meet these needs in a way consistent with the standard of living maintained during the marriage.

The court concluded that the balance of the hardships favored Mother, as she was unable to work fulltime hours due to being the primary caregiver for Daughter. Although Father was unemployed, the court saw nothing to prevent him from reaching his earning capacity.

After analyzing the section 4320 factors, the court reduced Father's spousal support obligation from $1,300 to $0 for the period Father was on unemployment. Starting February 1, 2025, Father was ordered to pay $650 per month in spousal support.

Mother timely appealed the child and spousal support orders. The San Diego Department of Social Services (Department) filed a responsive brief supporting the court's decision to include Mother's IHSS payments in calculating her gross income for child support. Father filed a responsive brief urging us to affirm the family court's spousal and child support orders.[5]

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5 Father does not appeal the denial of his request to terminate child support.

DISCUSSION

I. *Standard of Review*

We review both child support and spousal support awards for abuse of discretion. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 282-283 (*Cheriton*), superseded by statute on other grounds as stated in *In re Marriage of Morton* (2018) 27 Cal.App.5th 1025, 1049.) However, with respect to child support we must " 'recognize that determination of a child support obligation is a highly regulated area of the law, and the only discretion a trial court possesses is the discretion provided by statute or rule.' " (*Cheriton* at p. 283.) Accordingly, a court's discretion does not permit it to "ignore or contravene the purposes of the law regarding . . . child support." (*County of Stanislaus v. Gibbs* (1997) 59 Cal.App.4th 1417, 1425.)

To the extent that the court's decision reflects an interpretation of the statutory definition of income for child support purposes, this is a question of law that we review de novo. (*In re Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361, 1371–1372 (*Pearlstein*).)

II. *Calculating Child Support*

In determining child support, the family court uses the statewide uniform guideline set forth in section 4055. (§ 4055, subd. (a); *In re Marriage of Wittgrove* (2004) 120 Cal.App.4th 1317, 1326.) This calculation requires the court to determine each parent's "net monthly disposable income." (§ 4055, subd. (b)(1)(C).) Net monthly disposable income, in turn, is determined by first calculating a parent's "annual gross income" under the broad provisions of section 4058. (§ 4055, subd. (b)(2); see *County of Placer v. Andrade* (1997) 55 Cal.App.4th 1393, 1395–1396.)

Section 4058 defines a parent's gross income as "income from whatever source derived," and provides a non-exhaustive list of sources. (§ 4058, subd. (a); see also *Cheriton, supra,* 92 Cal.App.4th at p. 285.) Subdivision (c) of section 4058 exempts from income the following: "any income derived from child support payments actually received," "income derived from any public assistance program, eligibility for which is based on a determination of need," and child support received for children from another relationship.

Because Mother raises a question of the statutory definition of income for child support purposes, we review this issue de novo. To resolve Mother's claim we must interpret the language "public assistance program, eligibility for which is based on a determination of need" in subdivision (c) of section 4058 and determine if IHSS fits within that interpretation. (§ 4058, subd. (c).)

Our task in construing a statute is to " 'ascertain the intent of the Legislature so as to effectuate the purpose of the law.' " (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977.) To do so, "[t]he words of the statute are the starting point. 'Words used in a statute . . . should be given the meaning they bear in ordinary use. [Citations.] If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature.' " (*Id.* at p. 977.)

A. *Public Assistance Program*

The court in *Elsenheimer v. Elsenheimer* (2004) 124 Cal.App.4th 1532 (*Elsenheimer*) had occasion to consider the language of the income exclusion at section 4058 subdivision (c). In that case, a disabled mother received federal Supplemental Security Income (SSI) benefits and argued that those payments should be excluded from her annual gross income under section 4058, subdivision (c) for purposes of calculating child support. Examining the language of the statute, the court observed that the exclusion "on its face applies broadly to include *any* public assistance program, so long as eligibility for the program is based on a determination of the individual's need." (*Id*. at pp. 1538–1539.) The court considered definitions of "public assistance" in other statutes, and found in Welfare and Institutions Code section 10061 a definition of public assistance programs as "[state] public social service programs . . . [that] provide aid and medical assistance to those in need including those who are aged, blind, or disabled." (*Id*. at p. 1539.)

The court concluded that SSI qualified as such a need-based program, since eligibility "is based on a person's status as aged, blind, or disabled and how much income the person has from other sources." (*Elsenheimer, supra,* 124 Cal.App.4th at p. 1539.) The court ultimately construed section 4058 subdivision (c) to cover the disabled mother's SSI benefits. (*Elsenheimer,* at pp. 1538–1539; see also *In re S.M.* (2012) 209 Cal.App.4th 21, 30 [The basic purpose underlying the SSI program is to provide " 'minimal cash welfare benefits for the indigent blind, aged, and disabled.' "].)

With this understanding, we turn to the IHSS program.

B. *The IHSS Program*

The IHSS program provides supportive services "to aged, blind, or disabled persons . . . who cannot perform the services themselves and who cannot safely remain in their homes unless the services are provided." (Welf. & Inst. Code, § 12300, subd. (a); *Basden v. Wagner* (2010) 181 Cal.App.4th 929, 939 (*Basden*).)

California's Department of Social Services oversees the IHSS program and promulgates regulations to assist in its implementation. (*Norasingh v. Lightbourne* (2014) 229 Cal.App.4th 740, 744.) County welfare departments process IHSS applications, determine an applicant's eligibility and needs, and authorize services. (*Basden*, *supra*, 181 Cal.App.4th at p. 834.) An applicant for IHSS benefits must undergo a needs assessment, which covers the recipient's living environment, alternative resources, and functional abilities in the activities of daily living. (Welf. & Inst. Code, § 12309.) The applicant must supply a certification from a licensed health care professional that the applicant is unable to perform some activities of daily living independently. (Welf. & Inst. Code, § 12309.1.)

If approved, the IHSS recipient may receive supportive services such as domestic services, personal care services, protective supervision, and accompaniment to health-related appointments. (Welf. & Inst. Code, § 12300, subd. (b).) The program compensates persons who provide services to the incapacitated person. (*Basden, supra,* 181 Cal.App.4th at p. 931.)

The county may hire in-home supportive service providers for the IHSS recipient, or make direct payment to the recipient to allow the recipient to "purchase" the services. (Welf. & Inst. Code, §§ 12302, 12304, subd. (a); see also *Basden*, *supra,* 181 Cal.App.4th at p. 934.)

If a county hires the IHSS provider, the county assumes certain "employer" duties with respect to the provider, such as those related to unemployment compensation, unemployment compensation disability benefits, and workers' compensation, though the county is expressly not deemed to be the provider's employer for purposes of liability due to the provider's negligence or intentional torts. (Welf. & Inst. Code, §§ 12301.6, subds. (c)(1), (c)(2)(A), (f)(1); *Basden*, *supra,* 181 Cal.App.4th at p. 940; *In re Marriage of Scheppers* (2001) 86 Cal.App.4th 646, 650 (*Scheppers*); *Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912, 934 [both the state and county are employers of the IHSS provider for purposes of the Fair Labor Standards Act].)

In some regards, the IHSS recipient is viewed as the employer of the care provider, and the provider as his or her employee. (*In-Home Supportive Services v. Workers' Comp. Appeals Bd.* (1984) 152 Cal.App.3d 720, 731 [an IHSS provider was a dual employee of the IHSS recipient and the state for purposes of workers' compensation coverage]; see also Welf. & Inst. Code, §§ 12302.2 [the state or county shall pay contributions, premiums, and taxes "on the recipient's behalf as the employer"], 12302.5 [agents may act on behalf of an IHSS recipient designated as the employer of the IHSS worker if the recipient is unable to ensure compliance with wage, hour, and workplace laws].)

Payments to the in-home care providers are referred to as "wages" in the statutes. (See Welf. & Inst. Code, §§ 12306.1, 12306.2, 12306.21, 12316.9.) Providers must undergo a background check, provide proof of identification, attend an orientation and sign an enrollment form. (See Welf. & Inst. Code, §§ 12305.86, 12306.6, 12300.41; *Bedoe v. County of San Diego* (2013) 215 Cal.App.4th 56, 63.) Providers must timely submit signed payroll timesheets. (Welf. & Inst. Code, §12300.4, subd. (g); see, e.g., *Bedoe*, at p. 62 [son who submitted timesheets but did not actually provide IHSS care to his mother was required to return money to county].)

Our review convinces us that the IHSS program is a public assistance program based on need. Borrowing the language of *Elsenheimer*, the IHSS program is a "[state] public social service program[ ] . . . [that] provide[s] aid and medical assistance to those in need including those who are aged, blind, or disabled." (*Elsenheimer*, *supra,* 124 Cal.App.4th at p. 1539.) Eligibility for IHSS is based on a person's status as an aged, blind or disabled individual, and considers the availability of other resources to assist the person. (Welf. & Inst. Code, §§ 12300, 12309.)

In *Elsenheimer* the disabled mother received the SSI benefits. Here, Daughter is the one who is eligible as the "aged, blind, or disabled" individual, and her need determines her eligibility for IHSS benefits. Mother, for her part, was not the statutory recipient of the need-based public assistance and was not eligible based on her need. Instead, she was a provider compensated for the in-home services she provided to Daughter. She received wages and submitted timesheets. We therefore conclude that the IHSS payments Mother received as Daughter's caregiver were not "income derived from any public assistance program, eligibility for which is based on a determination of need" within the meaning of section 4058, subdivision (c), and were properly included in calculating Mother's gross income under 4058, subdivision (a) in determining guideline child support. To the extent the guideline amount would be unjust or inappropriate, section 4057 gives courts broad discretion to modify the child support amount.

C. *Reilly Is Inapposite*

Mother urges us to follow *Reilly v. Marin Housing Authority* (2020) 10 Cal.5th 583 (*Reilly*) to conclude that IHSS payments to a *provider*, not the recipient, should not be included as income. In *Reiley*, our Supreme Court concluded that "IHSS compensation" received by a mother to provide in-home care for her severely-disabled adult daughter should not be included as income in determining the family's eligibility for the Housing and Urban Development's Section 8 program, which provides low-income families a monthly subsidy to pay for a portion of their rent. (*Reilly*, at pp. 585, 603.)

We decline to extend *Reilly* to Mother's case for several reasons. First, in *Reilly* the court interpreted a federal regulation that excluded "amounts paid by a state agency to a family with a member who has a developmental disability . . . to offset the cost of services . . . needed to keep the developmentally disabled family member at home." (24 C.F.R. § 5.609(a)(3) (2020); *Reilly*, *supra,* 10 Cal.5th at p. 590.) As a result, the court devoted a significant portion of its discussion to the meaning of "offset" in the language of the regulation. (*Reilly,* at pp. 590–596.) The *Reilly* court did not interpret the specific language of the statute at issue in Mother's case, section 4058 subdivision (c), which, among other differences, does not use the term "offset."

Second, the purpose of the income calculation at issue in *Reilly* was to determine the family's eligibility for a Section 8 housing subsidy, prompting the court to consider the purposes of the Section 8 program in its statutory construction. (*Reilly, supra*, 10 Cal.5th at pp. 586–87.) California's child support regime has its own policies and purposes. As the court in *Cheriton* noted: "California has a strong public policy in favor of adequate child support. [Citations.] That policy is expressed in statutes embodying the statewide uniform child support guideline." (*Cheriton, supra*, 92 Cal.App.4th at p. 283.)

Finally, at issue in *Reilly* was the annual income of the "Section 8 family." (*Reilly*, *supra*, 10 Cal.5th at p. 587 ["[T]he amount of the housing subsidy depends in large part on the 'annual income' *the Section 8 family* receives or expects to receive" (italics added)].) The exception to income concerned "amounts paid by a state agency *to a family*" to offset the costs of providing care to their disabled family member. (24 C.F.R. § 5.609(a)(3) (2020); *Reilly*, at p. 590, italics added.) Illuminating this point, the parties in *Reilly* did not dispute that if the disabled adult daughter received IHSS care from a *third party* rather than a family member, the amounts paid for that care would qualify under the federal exclusion and would not have been included in the income calculation. (*Reilly,* at p. 590.) Put another way, the adult daughter's receipt of those services would not have been included in *the* *family's* income. The California Supreme Court's decision ensured that payments for care provided in the home by the mother were similarly excluded from the family's income. It was thus not material to the outcome for the court to identify which family member—the caretaker mother or disabled daughter—was the recipient of the needs-based IHSS compensation.

Here, we must determine whether the IHSS payments constituted income to *Mother* from a need-based public assistance program. The issue before us is Mother's own gross income under section 4058 to calculate her share of child support, not the family's or household's income to qualify for Section 8 housing assistance. (§ 4058, subd. (a).) As discussed above, the IHSS program identifies Daughter as the recipient of the IHSS benefits and Mother as a provider who was paid compensation for the IHSS services. As a result, *Reilly, supra,* 10 Cal.5th 583 is inapplicable.

D. *Tax Treatment Is Not Dispositive*

Mother further contends that the IHSS payments should be excluded from her gross income because the Internal Revenue Service specifically excludes IHSS payments from taxable income. But the tax treatment of the payments is not dispositive. "[S]ection 4058 specifically includes some types of income, such as workers' compensation payments, that are excluded from taxable income under the Internal Revenue Code." (*In re Marriage of Alter* (2009) 171 Cal.App.4th 718, 735 (*Alter*).) This is because federal tax law and state support law have different purposes. "The Internal Revenue Code does not so much define the term 'income' as identify that which, consistent with prevailing federal tax policy, might be taxed. [Citation.] In contrast, California's child support statutes are designed to ensure that parents take 'equal responsibility to support their child in the manner suitable to the child's circumstances.' " (*Alter*, at p. 735.)

Notably, section 4053, which lists the principles to be followed by the court in setting the child support award, states that the guideline takes into account the parents' "actual income," not their *taxable* income. (§ 4053, subd. (c).) A parent may have income that is not taxable but that would be available for support for the child. (*Alter*, *supra,* 171 Cal.App.4th at p. 735.) The child support laws focus on "how much money a parent has available for the support of the minor children." (*Id*. at p. 734.) So too here. Indeed, the fact that the IHSS payments are untaxed to Mother means she has more money available to support her child than parents who receive other types of compensation.

E. *Consideration of Father's Assets*

Mother contends the family court abused its discretion by failing to consider Father's substantial wealth in determining his support obligation. While Mother does not specify whether she challenges child or spousal support, Mother only cites statutes and authorities relating to the determination of child support, so we confine our discussion to the child support order.

Challenging the court's finding that it lacked sufficient information to include Father's assets in determining his income, Mother argues that the court had enough evidence to recite the value of Father's assets in its support order, and Father's own testimony about selling assets demonstrated the liquidity of at least some of the assets. Mother also contends the court erred by trusting Father's self-reported income "when it was clearly demonstrated that [Father] had omitted significant assets and income and enjoyed a much more affluent lifestyle" than his reported income could sustain.

As stated above, a parent's gross income includes income from whatever source derived. (§ 4058.) We note initially that, while the definition of income in section 4058 is broad, it is not limitless. (*Scheppers, supra,* 86 Cal.App.4th at p. 649.) Generally, the types of income specified in the statute consist of money that the support obligor actually receives, and not unrealized increases in the value of assets. (*Pearlstein*, *supra*, 137 Cal.App.4th at p. 1372; *In re Marriage of Henry* (2005) 126 Cal.App.4th 111, 119 ["If the Legislature had intended that the unrealized increase in the value of an asset should be considered income, it would have said so."].) "Support payments usually are paid from present earnings, not liquidation of preexisting assets." (*Mejia v. Reed* (2003) 31 Cal.4th 657, 670; *Scheppers, supra,* 86 Cal.App.4th at p. 651 [" 'Income is the key factor in our system, not capital or net worth.' "]; *In re Marriage of Reynolds* (1998) 63 Cal.App.4th 1373, 1380 ["Only investment income, not investment principal, should be available to pay spousal support . . . ."].)

When a parent's annual gross income is unknown, section 4058, subdivision (b)(1)(A) gives the court discretion to consider the parent's earning capacity in lieu of the parent's income. In doing so, the court must consider the parent's specific circumstances, including evidence of the parent's assets, among other factors, affecting the parent's ability to earn. (§ 4058, subd. (b)(2).) Courts *may* consider a parent's assets in setting child support, at least to the extent the assets can produce income. (*Cheriton*, *supra,* 92 Cal.App.4th at p. 291).

Father's declarations and exhibits and his testimony at the hearing supplied substantial evidence for the court to reasonably conclude that the earning potential and availability of Father's assets was too uncertain to rely on in determining Father's monthly income. Father submitted an income and expense declaration, earnings statements from his prior employer, and a profit and loss report from his self-employment. At the hearing, Father provided additional details regarding his assets. He explained that he had sold some cryptocurrency, though there was a cost associated with doing so, and the proceeds were not accurately represented by Mother's counsel. He stated he used the proceeds to pay his expenses during his period of unemployment and they were unavailable to pay support. Father said that two of the five vehicles listed among his assets were "broken" and would not reach market value until he repaired them. Father said he owned real estate in Arnold, California, which he had succeeded in renting out on three occasions for $500 per month or less each time.

Father also provided explanations for income Mother claimed he had failed to report, including a $25,000 transfer from a Wells Fargo account, a $40,000 severance payment Father received from his prior employer, and other income totaling $120,000. Father further explained that he reported many of the assets on the profit and loss statement for his limited liability company.

Ultimately, there was substantial evidence supporting the family court's decision not to impute additional income from Father's assets. The court could conclude from Father's testimony that those assets were not regularly producing income, and it was uncertain when and how much income they could produce. Moreover, the court, having assessed Father's credibility, was apparently satisfied with Father's explanations and made no finding that Father omitted assets as Mother alleges.

We conclude the court did not abuse its discretion.

DISPOSITION

The support orders are affirmed. Father shall recover his costs on appeal.

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

DO, J.