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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of BRUCE CHAPMAN and KRISTIN HIIBNER.	B278439
BRUCE CHAPMAN, Petitioner and Respondent, v. KRISTIN HIIBNER, Appellant.	(Los Angeles County Super. Ct. No. GD054862)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark Juhas, Judge. Reversed and remanded with directions.

Law Offices of Gregory R. Ellis and Gregory R. Ellis, for Appellant Kristin Hiibner.

Klopert & Ravden, Scott M. Klopert; Ribet & Silver, Claudia Ribet for Respondent Bruce Chapman.

INTRODUCTION

The trial court found a monthly spousal award to Kristin Hiibner from her former husband, Bruce Chapman, of $10,000 before taxes, combined with Hiibner's monthly income of $5,000 before taxes, would maintain the marital standard of living, which the court found required approximately $16,000 per month after taxes. $15,000 before taxes, however, is considerably less than $16,000 after taxes. Accordingly, we reverse the spousal support award because it is not supported by substantial evidence and remand for a redetermination of the award. We also remand for the trial court to exercise its discretion under the Family Code to determine whether to order Chapman to maintain a life insurance policy naming Hiibner as the sole beneficiary. Finally, we affirm the trial court's ruling denying Hiibner's request for an upward adjustment to the spousal support award based on inflation from the date of the couple's separation to the date of trial.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Marriage and Divorce*

Chapman and Hiibner were married almost 16 years and have one child who was 11 years old at the time of trial. Both parties were practicing lawyers before they were married. Chapman is now an equity partner at a large law firm, and Hiibner is a patent lawyer at a small firm. She works part-time because of health problems. During the marriage the couple had a large primary residence and a beach house, took annual vacations, and sent their son to a private school.

Chapman and Hiibner separated on June 3, 2014. They stipulated to joint legal and physical custody of their son, and the court ordered Chapman to pay Hiibner temporary child and spousal support. Chapman and Hiibner also stipulated to the division of their property, leaving spousal support and attorneys' fees for trial.

B. *Trial*

Family Code section 4330[1] requires a court to consider relevant factors listed in section 4320 in determining a "just and reasonable" amount of spousal support "based on the standard of living established during the marriage." Chapman and Hiibner agreed on most of the facts underlying many of the section 4320 factors. For example, Chapman and Hiibner agreed that in 2015 Chapman had a monthly income of $63,245 and Hiibner had a monthly income of $5,640. They agreed Hiibner could not work more than 25 to 30 hours per week because of her medical issues. And they agreed they each received approximately $2 million after dividing their assets. Neither party contended he or she lacked marketable skills, supported the other during the marriage to permit the supported party to devote time to domestic duties, supported the other during his or her training or education, or had a history of domestic violence. (See § 4320, subds. (a), (i).)

Chapman described the standard of living during the marriage as "an upper-middle class lifestyle," while Hiibner characterized it as "high." Hiibner estimated she needed monthly spousal support of $21,491 after taxes (and a cost of living

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1 Statutory references are to the Family Code.

adjustment) to live at the marital standard of living. Hiibner's forensic accountant, Jack Zuckerman, calculated this amount by taking half of the couple's average disposable monthly income of $37,826 after taxes, child care, and housing, then adding the cost required for Hiibner to replicate the marital standard of housing ("because you can't live in half a house to maintain the marital standard"), and including a cost of living adjustment of 3.51 percent to account for inflation between the time of the couple's separation and the trial. Hiibner requested monthly spousal support of $16,000 (even though her accountant calculated she needed $21,491), plus 20 percent of Chapman's annual income above $758,937. Hiibner argued that this amount, when combined with her gross monthly earnings of approximately $5,200, would allow her to meet her needs based on the marital standard of living.

Both Zuckerman and counsel for Hiibner made contradictory statements at trial about whether Hiibner's estimated marital standard of living and corresponding spousal support payments were or should be net or inclusive of taxes.[2] For example, Zuckerman testified Hiibner's estimated marital standard of living of $21,491 was net of taxes based on the

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[2] Federal law applicable to this case includes spousal support payments in the recipient's gross income for purposes of federal income tax and allows the paying spouse to deduct such payments from gross income. (26 C.F.R. § 1.71-1T (A-1) (1984).) For divorce or separation instruments executed after December 31, 2018, federal tax law will no longer make spousal support taxable to the recipient or deductible by the payor. (See Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2017) ¶10:15, p. 10-7.)

couple's average after-tax disposable income over the five-year period prior to their separation. Counsel for Hiibner asked Zuckerman whether $21,491 was "the appropriate amount of support that would be paid" for Hiibner to live at the marital standard of living, or was it "$21,491 net?" Zuckerman responded, "It's definitely net of tax." During closing arguments, the court asked counsel for Hiibner to explain how she calculated the $16,000 monthly spousal support Hiibner requested. Counsel for Hiibner stated that a spousal support award of $16,000, plus approximately $6,000 in Hiibner's monthly earnings, would bring her "up to the marital standard of living," yet counsel acknowledged these support payments were before taxes. Later, after the court stated that $16,000, plus Hiibner's monthly income, "gets pretty close" to the marital standard of living, counsel for Hiibner responded: "That's after taxes. Those are gross numbers. . . . So 60 percent of my number brings us way off any marital lifestyle."

Soon after this discussion, the court also appeared to confuse pre-tax and post-tax calculations. The court stated, "If she's making [$6,000] a month[3] and her needs are [$20,000],[4] $14,000[5] is your number, and I'm still thinking that's high." Counsel for Hiibner responded, "What you're forgetting are the taxes." The court stated, "I'm not forgetting. They're there. . . . But there's no part of this that is tax free income to her."

Chapman asked the court to award Hiibner $6,700 in monthly spousal support, with a reduction to $5,143 in

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3 A gross figure.

4 A net figure.

5 A combination of a gross figure and a net figure.

subsequent years, plus 16.5 percent of income in excess of $641,000 (up to $730,000) for the first year. He challenged Hiibner's calculation of the amount required for her to enjoy the marital standard of living, arguing the evidence did not support her estimated housing expenses or an adjustment for inflation. Chapman agreed, however, the couple's monthly net disposable income was $37,826. The court asked Chapman's forensic accountant whether that number was "tax impacted," and the accountant responded, "It's reduced for taxes, correct." Chapman's accountant testified Hiibner would need support payments of $31,000 to $33,000 to net $21,491 after taxes. Zuckerman calculated a similar gross monthly support amount ($33,191).

Counsel for Chapman, however, subsequently confused post-tax expenditures and pre-tax income. During his closing argument counsel for Chapman attempted to rebut Zuckerman's analysis, which showed Hiibner required $21,491[6] to live at the marital standard of living, by cutting Hiibner's housing costs in half, thus reducing her estimated cost of living to $16,375.[7] "And then," counsel for Chapman said, "if you subtract from that the earnings that she's receiving, which are [$]5,166[8] a month currently, that gives you a number that's $11,209.[9] Now, we believe that even that number is too high, . . . [b]ut we think . . . that number is more suggestive of what the true marital standard was during the marriage." Hiibner's estimated monthly

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6 A net figure.

7 Also a net figure.

8 A gross figure.

9 A combination of gross and net figures.

cost of living, however, was based on the couple's net disposable income, while Hiibner's monthly income of approximately $5,166 was not net of taxes.[10]

In addition to monthly spousal support, Hiibner asked Chapman to maintain two existing term life insurance policies naming her as the sole beneficiary. Hiibner argued the policies would provide support for her after Chapman's death because her medical condition would preclude her from being "self-supporting in the future." Chapman argued two policies were unnecessary because one of the policies, which had a death benefit of $1.25 million, was "more than adequate to cover both child support and spousal support." The court stated, "So I was thinking about this as I was driving into work this morning. So spousal support lasts until death, remarriage, or further order of the court. . . . So once he's dead, he's dead. And if she dies, there's no spousal support that gets paid. So why are we guaranteeing spousal support that would end upon his death anyway?" The court suggested the Family Code allows for life insurance to secure child support but not spousal support.

Counsel for Hiibner conceded spousal support generally ends with the death of the supporting spouse but argued the court had discretion to order Chapman to maintain life insurance for Hiibner "if it's consistent with [the] marital standard of living." The court asked for the Family Code section giving the court discretion to make such an order. Counsel for Hiibner (mis)cited section 4320, subdivision (n), which directs the court to consider "[a]ny other factors the court determines are just and equitable," and a family law treatise. Counsel for Chapman

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10 See footnotes 6-9.

responded, "I couldn't find any case on point. There's certainly no statute on point." He also noted Hiibner would receive approximately $500,000 in insurance on Chapman's life in connection with the parties' division of assets, assuming she did not cancel the policies for their cash value.

C. *Decision(s)*

On May 9, 2016 the trial court issued a tentative decision on child support, spousal support, and attorneys' fees, which became the court's statement of decision.[11] (See Cal. Rules of Court, rule 3.1590(c)(4).) The court stated its tentative decision was "to be read in concert with the findings and comments made . . . in open court" and did not attempt to address all of the factors listed in section 4230. The court stated: "In this ruling, the court simply focuses on the marital life style and cash flow numbers of the parties as the court fully discussed the other [section] 4320 factors in open court."

The court found that "the marital standard is clear" and that "the issue is what the support amount should be." The court noted the parties agreed that in 2015 Chapman's monthly income was $63,245 and Hiibner's monthly income was $5,640. The court used these figures "as the baseline for the support award," found it unlikely Chapman would receive bonus income in the future, and refused to impute additional income to Hiibner. Following the parties' division of assets, the court found Chapman and Hiibner would have "roughly equivalent and substantial assets." The court adopted $37,826 as the "marital

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[11] Neither party has challenged the trial court's rulings on child support or attorneys' fees.

standard net disposable" income and stated, "It appears [Chapman] does not generally disagree with this number and as a result, the court relies on that number."

The court disagreed with Hiibner that her cost of living was $21,491, finding her expense figures "inflated." The court found "no evidentiary support" for the cost of living adjustment and denied Hiibner's request to "'gross up' the support award to account for taxes she must pay." The court ordered Chapman to pay Hiibner $10,000 in monthly support, stating, "In light of [Hiibner's] roughly $5,000 monthly income, a spousal support award of $10,000 will meet the marital standard that the parties enjoyed." "Because this figure meets the marital standard, the court does not impose a '*Smith/Ostler*' calculation."[12] The court did not purport to make a spousal support award that deviated from the marital standard.

The court in its statement of decision did not address Hiibner's request that Chapman maintain life insurance to benefit her after his death, but the court ordered Chapman to maintain life insurance to guarantee child support. The court's

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[12] "An *Ostler & Smith* percentage is assessed 'over and above guideline support' for 'any discretionary bonus actually received.' [Citation.] It was originally justified on the ground that future bonuses are not guaranteed, and it would be unfair to require the obligor to file motions for modification every time a bonus is reduced." (*In re Marriage of Samson* (2011) 197 Cal.App.4th 23, 27, citing *In re Marriage of Ostler & Smith* (1990) 223 Cal.App.3d 33, 41-42.) We use the terms "*Smith*/*Ostler* calculation," "*Smith*/*Ostler* adjustment," and "*Smith*/*Ostler* percentage" because the trial court used those terms.

statement of decision included some of the parties' stipulations regarding child support, including that Chapman pay 75 percent of his son's private school tuition, 75 percent of any educational therapy, and 75 percent of "[a]ll uninsured medical care."

On July 14, 2016 counsel for the parties returned to court to clarify the statement of decision regarding the *Smith*/*Ostler* calculation. At that hearing the court stated: "I determined that $10,000 a month, when you took that into consideration with [Hiibner's] income, would meet the marital standard of living. . . . Therefore, there wouldn't be the need for a *Smith*/*Ostler* number." On August 16, 2016 the court issued a judgment of dissolution with an attachment regarding spousal support, which appears to repeat almost verbatim the relevant portions of the statement of decision. The attachment also incorporated the court's finding on July 14, 2016 that a *Smith*/*Ostler* percentage "would be unfair because the order of $10,000 per month of spousal support meets the marital standard."

On September 27, 2016 the court entered another judgment with an attachment incorporating the parties' stipulated judgment regarding child support and the division of assets and referencing the judgment of dissolution regarding spousal support and attorneys' fees. Hiibner timely appealed from the August 16, 2016 and September 27, 2016 judgments. On March 16, 2017 the court entered a further judgment on reserved issues with an attachment incorporating the parties' stipulated judgment on child custody. We deemed Hiibner's notice of appeal filed October 14, 2016 an appeal from the final judgment created by the entry of judgment on March 16, 2017.

DISCUSSION

A. *Applicable Law and Standard of Review*

"Permanent spousal support 'is governed by the statutory scheme set forth in sections 4300 through 4360. Section 4330 authorizes the trial court to order a party to pay spousal support in an amount, and for a period of time, that the court determines is just and reasonable, based on the standard of living established during the marriage, taking into consideration the circumstances set forth in section 4320.' [Citations.] The statutory factors include the supporting spouse's ability to pay; the needs of each spouse based on the marital standard of living; the obligations and assets of each spouse, including separate property; and any other factors pertinent to a just and equitable award." (*In re Marriage of Blazer* (2009) 176 Cal.App.4th 1438, 1442-1443, citing § 4320, subds. (c)-(e), (n); see *In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 207.)

"'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.'" (*In re Marriage of McLain* (2017) 7 Cal.App.5th 262, 269; accord, *In re Marriage of Nelson* (2006) 139 Cal.App.4th 1546, 1559.) "'In balancing the applicable statutory factors, the trial court has discretion to determine the appropriate weight to accord to each. [Citation.] But the "court may not be arbitrary; it must exercise its

discretion along legal lines, taking into consideration the applicable circumstances of the parties set forth in [the statute], especially reasonable needs and their financial abilities." [Citation.] Furthermore, the court does not have discretion to ignore any relevant circumstance enumerated in the statute. To the contrary, the trial judge must both recognize and *apply* each applicable statutory factor in setting spousal support." (*In re Marriage of Nelson*, at p. 1559; see *In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 304.)

"The marital standard of living is 'a general description of the station in life the parties had achieved by the date of separation,' rather than a 'mathematical standard.'" (*In re Marriage of McLain*, *supra*, 7 Cal.App.5th at p. 270; see *In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 491.) "Section 4330 does not make 'marital standard of living' the absolute measure of reasonable need. 'Marital standard of living' is merely a threshold or reference point against which all of the statutory factors may be weighed. [Citation.] It is neither a floor nor a ceiling for a spousal support award." (*In re Marriage of Nelson*, *supra*, 139 Cal.App.4th at p. 1560; see *In re Marriage of Ficke* (2013) 217 Cal.App.4th 10, 24 [the marital standard of living is "a baseline for the 'needs of each party'"].) After weighing the marital standard of living against the other statutory factors, "the court may 'fix spousal support at an amount greater than, equal to or less than what the supported spouse may require to maintain the marital standard of living, in order to achieve a just and reasonable result under the facts and circumstances of the case.'" (*In re Marriage of Williamson* (2014) 226 Cal.App.4th 1303, 1316; see *In re Marriage of Smith*, at p. 475.) The court "must make specific factual findings with

respect to the standard of living during the marriage." (*In re Marriage of Khera & Sameer* (2012) 206 Cal.App.4th 1467, 1484.)

"[W]e review spousal support orders under the deferential abuse of discretion standard. [Citation.] We examine the challenged order for legal and factual support. 'As long as the court exercised its discretion along legal lines, its decision will be affirmed on appeal if there is substantial evidence to support it.' [Citations.] 'To the extent that a trial court's exercise of discretion is based on the facts of the case, it will be upheld "as long as its determination is within the range of the evidence presented."'" (*In re Marriage of Blazer*, *supra*, 176 Cal.App.4th at p. 1443; see *In re Marriage of Ackerman, supra,* 146 Cal.App.4th at p. 197.) "'"Substantial evidence . . . is not synonymous with 'any' evidence." . . . Speculation or conjecture alone is not substantial evidence.'" (*In re Marriage of Burwell* (2013) 221 Cal.App.4th 1, 25, fn. 21; see *In re Marriage of Grinius* (1985) 166 Cal.App.3d 1179, 1185 ["'"must actually be 'substantial' proof of the essentials which the law requires in a particular case"'"].)

B. *Substantial Evidence Does Not Support the Trial Court's Spousal Support Award*

Hiibner contends the trial court failed to consider the effect of taxation on the spousal support award, as required by section 4320, subdivision (j), which provides the court shall consider the "immediate and specific tax consequences to each party." In the alternative, Hiibner argues substantial evidence does not support the award because the court "erroneously mixed post-tax and pre-tax figures." We agree with the latter argument.

The trial court, in its statement of decision, found "the marital standard net disposable number was $37,826." Hiibner divided this number by two, made certain adjustments, and argued she needed $21,491 to live at the marital standard of living. The court found "many of [Hiibner's] adjustments appear to be somewhat aggressive," identifying as "aggressive adjustments" the 3.51 percent cost of living increase, the total pre-separation housing cost (compared to Hiibner's share of those costs after separation), and certain unarticulated expenses for the couple's son.[13] The court also found the expense figures in Hiibner's income and expense declaration "inflated." This finding appears to be based on statements at trial regarding Hiibner's phone, email, utilities, and interest expenses. Yet even after "tak[ing] out what appears to be overages and double dips and whatnot," the court stated at trial that Hiibner's "total expenses

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[13] The court stated in its statement of decision: "The court disagrees that the minor child's costs were limited to $5,000 per month. It appears that the parties were spending significant sums on tuition as well as therapy. In addition, the minor child would undoubtedly absorb other assets in the household." Hiibner's accountant used a computer model to estimate that the amount of monthly child care expenses was $4,939. This amount is very close to the combined total monthly costs for tuition, medical and educational expenses, extra-curricular activities, and child care identified by the parties at trial and in their income and expense declarations. There is no evidence in the record to support the trial court's statement that the couple's son would "absorb other assets in the household" in addition to the expenses identified by the parties in their income and expense declarations.

[are] about $20,000 a month." The court made no other specific finding regarding Hiibner's needs based on the marital standard of living (although, as noted, the trial court suggested a spousal support award of $14,000 was "high" even if her needs were $20,000 per month). If we credit the court's findings in its statement of decision that Hiibner made "aggressive adjustments" and submitted "inflated" expenses, however, Hiibner's estimated needs appear closer to $16,000 per month.

The court's statement of decision concluded that, considering Hiibner's monthly (gross) income of approximately $5,000, $10,000 in (taxable) spousal support would be enough for her to meet the marital standard. But $5,000 + $10,000 = $15,000 before taxes is substantially less than $16,000 after taxes. Taking taxes into account, the evidence was that Hiibner required approximately $21,000 in gross monthly spousal support to net $16,000. Thus, substantial evidence does not support the court's finding that $15,000 per month after taxes "will meet the marital standard." Indeed, we cannot reconcile the seemingly arbitrary figure of $10,000 per month after taxes with the evidence, other than to observe that $10,000 is somewhere between what Hiibner requested ($16,000 plus a *Smith*/*Ostler* adjustment) and what Chapman proposed to pay ($6,700 reduced to $5,143 after taxes, plus a *Smith*/*Ostler* adjustment). It is also a little less than the $11,209 figure counsel for Chapman calculated by subtracting Hiibner's gross income from her net cost of living, an amount counsel for Chapman argued was still "too high." But there is no evidentiary support for a monthly spousal support award of $10,000. (See *In re Marriage of Nelson*, *supra*, 139 Cal.App.4th at p. 1559 [spousal support award may not be arbitrary].)

We agree with Chapman that, in general, the marital standard of living "is not the sole focal point" of a spousal support award and that the trial court was not "required to 'gross up' the award" to account for taxes. The trial court might have found that an award of spousal support below (or above) the marital standard was just and reasonable. For example, the trial court might have found that Chapman could not afford to pay Hiibner an amount required to meet the marital standard or that Hiibner would go into debt if she received an amount materially less than the amount required to meet the marital standard. The court might have found that the equal distribution of the couple's assets allowed Hiibner to afford a lifestyle consistent with the marital standard even if spousal support payments were not sufficient or that a spousal support award less than a certain amount would leave Hiibner with a significantly lower standard of living than she enjoyed during the marriage. But the trial court made no such findings, presumably because the court purported to award Hiibner an amount that "will meet" the marital standard. (See *In re Marriage of McLain*, *supra*, 7 Cal.App.5th at p. 270, fn. 2 [although "'a judgment is presumed to be correct and must be upheld in the absence of an affirmative showing of error,'" when "'the record clearly demonstrates what the [family] court did, we will not presume it did something different'"].) As noted, uncontroverted evidence showed the award will not meet the marital standard. The after-tax disposable income generated by $15,000 is approximately $10,050, which is well below what the court found Hiibner needed to maintain the marital standard. Because the trial court mixed gross apples and net oranges, the spousal support award must be reversed. (See *Brock v. Brock* (Fla.Dist.Ct.App. 1997) 690 So.2d

737, 741 ["Comparing net incomes with gross incomes is like comparing 'apples to oranges,' to use a grossly over-worked metaphor. Net figures should be used for both parties."].)

Our decision does not compel the trial court to award Hiibner spousal support in an amount that "will meet" the marital standard. To the contrary, on remand the trial court must consider and weigh the relevant factors in section 4320 against the marital standard of living to determine the amount of a just and reasonable spousal support award. (See *In re Marriage of McLain*, *supra*, 7 Cal.App.5th at p. 269; *In re Marriage of Williamson*, *supra*, 226 Cal.App.4th at p. 1316.) The trial court has discretion to determine the appropriate weight given to each factor, but the court's reasoning must be "tied to the evidence" (*In re Marriage of McLain*, at p. 271) and provide insight into the facts on which it relied in weighing each of the statutory factors (*In re Marriage of Geraci* (2006)144 Cal.App.4th 1278, 1297).

C. *The Trial Court Abused Its Discretion by Failing To Determine Whether To Order Chapman To Maintain Life Insurance for Hiibner's Benefit*

Hiibner argues the trial court erred by failing to require Chapman to maintain life insurance naming Hiibner as the sole beneficiary to secure the spousal support payments. In determining the needs of a supported spouse, section 4360 authorizes a court to "include an amount sufficient to purchase an annuity for the supported spouse or to maintain insurance for the benefit of the supported spouse on the life of the spouse required to make the payment of support . . . so that the supported spouse will not be left without means of support in the

event that the spousal support is terminated by the death of the party required to make the payment of support." (See *In re Marriage of O'Connell* (1992) 8 Cal.App.4th 565, 571-572 ["[i]n a dissolution action the court can order a spouse as a form of support to maintain life insurance to benefit either the other spouse or a minor child"].) Section 4360 does not change the rule that the supporting spouse's death ends his or her support obligation; instead, section 4360 provides that the death of the supporting spouse "creates a new obligation in the insurer or annuity provider to the supported spouse." (*In re Marriage of O'Connell*, at p. 572; see *In re Marriage of Ziegler* (1989) 207 Cal.App.3d 788, 792.) An order requiring the supporting spouse to maintain life insurance for the benefit of the supported spouse, however, must be "just and reasonable in view of the circumstances of the parties." (§ 4360, subd. (a).) Whether to enter an order under section 4360 is within the trial court's discretion. (*In re Marriage of Ziegler,* at p. 793; see Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2018) ¶ 6:897, p. 6-468 ["§ 4360 is discretionary, not obligatory"].)

"'A trial court's failure to exercise discretion is itself an abuse of discretion . . . ." (*In re Marriage of Rosenfeld & Gross* (2014) 225 Cal.App.4th 478, 485; accord*, In re Marriage of Sharples* (2014) 223 Cal.App.4th 160, 165; see *Pratt v. Ferguson* (2016) 3 Cal.App.5th 102, 114 [trial court abused its discretion by failing to consider whether trust assets could satisfy a child support judgment].) It is unclear from the record whether the court did not believe it had discretion to require Chapman to maintain life insurance to benefit Hiibner or whether the court exercised its discretion and denied Hiibner's request. The court initially stated that the Family Code was "silent" on life

insurance in connection with spousal support and that it was inappropriate to order life insurance in this case because spousal support ends with the death of the supporting spouse. Counsel for Hiibner informed the court it had discretion to order life insurance "if it's consistent with the marital standard of living." The court's statement of decision, however, did not address Hiibner's request (but required Chapman to maintain a life insurance policy as security for child support). Because we cannot determine whether the court knew it had, and in fact exercised, discretion under section 4360, we direct the trial court on remand to exercise its discretion regarding whether to order Chapman to maintain a life insurance policy.

D. *The Court Did Not Err By Failing To Adjust the Award To Account for Inflation*

Hiibner contends the trial court erred by refusing to consider inflation in determining the spousal support award. In the alternative, Hiibner contends that, if the court did consider inflation, the court erred by not adjusting the award "for the decrease in purchasing power" that occurred from the time of the couple's separation to trial. The trial court, however, considered and rejected Hiibner's request to adjust her expenses based on the consumer price index (CPI), finding "there is no evidentiary support for the requested CPI adjustment." The court did not err.

Zuckerman testified he calculated the difference between the CPI on December 31, 2013 and February 29, 2016 and adjusted Hiibner's cost of living at the time of separation by that amount (3.51 percent). Zuckerman explained he made this adjustment because Hiibner could not purchase the items she purchased in 2013 for the same amount of money in 2016. On

cross-examination, however, Zuckerman conceded he did not analyze whether each of the costs included in Hiibner's expense declaration actually increased over time or, if so, by how much. He also conceded there were no data supporting a 3.51 percent increase for expenses that did increase or were expected to increase. This evidence supports the court's ruling there was no evidentiary support for an adjustment of 3.51 percent on all of Hiibner's expenses. (See *In re Marriage of McLain*, *supra*, 7 Cal.App.5th at p. 271 [no abuse of discretion where "the court's reasoning is tied to the evidence" and relates to the factors it is legally required to consider].)

DISPOSITION

The judgment is reversed and remanded with directions for the trial court to recalculate Hiibner's permanent spousal support and to exercise its discretion under section 4360 on Hiibner's request for a life insurance policy. The judgment is otherwise affirmed. The parties are to bear their costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

WILEY, J.*

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