



Cited

As of: October 18, 2026 6:38 AM Z

In re Marriage of G.C. & R.W.

Court of Appeal of California, Fourth Appellate District, Division One

May 9, 2018, Opinion Filed

D073119

Reporter

23 Cal. App. 5th 1 *; 232 Cal. Rptr. 3d 484 **; 2018 Cal. App. LEXIS 415 ***; 2018 WL 2123912

In re the Marriage of G.C. and R.W. G.C.,
Respondent, v. R.W., Appellant.

[2581](#), had been rebutted, and because there was no evidence in the record of a writing sufficient to rebut the presumption.

Notice: CERTIFIED FOR PARTIAL
PUBLICATION*

Outcome

Amended judgment affirmed in part and reversed and remanded in part.

Prior History: APPEAL from a judgment of the Superior Court of Riverside County, No. IND1201870, Mickie Reed, Temporary Judge. (Pursuant to [Cal. Const., art VI, § 21](#) [***1]).

LexisNexis® Headnotes

Disposition: Affirmed in part; reversed in part; remanded with directions.

Case Summary

Governments > Legislation > Interpretation

Civil Procedure > Appeals > Standards of
Review > De Novo Review

Overview

HOLDINGS: [1]-A trial court properly determined a same sex couple's date of marriage to be in 2009, when they married in Connecticut, because their 2004 New Jersey domestic partnership was not substantially equivalent to a California domestic partnership under [Fam. Code, § 299.2](#), so as to permit its dissolution under California law, in light of the limited nature of the rights and obligations that the parties obtained in entering into a domestic partnership under New Jersey law; [2]-The trial court erred in failing to divide the appreciation in value of the marital residence equally because it did not find that the joint title presumption of community property contained in [Fam. Code, §](#)

[HN1](#) Statutory interpretation claims are reviewed de novo.

Governments > Legislation > Interpretation

[HN2](#) In construing any statute, well-established rules of statutory construction require courts to ascertain the intent of the enacting legislative body so that they may adopt the construction that best effectuates the purpose of the law. Courts first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context. If the statutory language is unambiguous, courts presume the legislature meant what it said,

* Pursuant to California Rules of Court, rule 8.1110, this opinion is certified for publication with the exception of parts III.C.–F.

and the plain meaning of the statute governs. If, however, the statutory language is ambiguous or reasonably susceptible to more than one interpretation, courts will examine the context in which the language appears, adopting the construction that best harmonizes the statute internally and with related statutes, and courts can look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.

Governments > Legislation > Interpretation

HN3 Courts must select the construction that comports most closely with the apparent intent of the legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.

Family Law > Cohabitation > Domestic Partners > Partnership Termination

HN4 [Fam. Code, § 299.2](#), ensures that a union is subject to dissolution under California law so long as the union had the same quasi-marital status under the foreign jurisdiction's law as a California domestic partnership has under the California Domestic Partner Rights and Responsibilities Act, no matter the nomenclature used by the other jurisdiction in describing that union.

Governments > Legislation > Interpretation

Family Law > Cohabitation > Domestic Partners

HN5 Interpreting [Fam. Code, § 299.2](#), as evincing the legislature's intent to recognize a union formed in another jurisdiction for purposes of dissolution under [Fam. Code, § 299](#), so long as the union is substantively comparable to a domestic partnership formed under the California Domestic Partner

Rights and Responsibilities Act is consistent with the legislature's intent both to recognize such unions as equivalent to marriage for purposes of dissolution and to ensure that individuals in such relationships have notice that their union will be treated as having quasi-marital status for purposes of California dissolution law. In contrast, to recognize a relationship not having quasi-marital status under the jurisdiction in which the relationship was formed as nevertheless having such status under California law would be incongruous with the legislature's intent in enacting [Fam. Code, § 299.3](#), to ensure that individuals were aware of the binding effect of the impending changes in the legal consequences of a legally recognized domestic relationship.

Family Law > Cohabitation > Domestic Partners

HN6 [Fam. Code, § 299.2](#), expressly states that only a legal union of two persons of the same sex, that is substantially equivalent to a California domestic partnership shall be recognized under [§ 299.2](#). Thus, polygamous unions are not recognized under [§ 299.2](#) by virtue of the statute's reference to a legal union of two persons.

Family Law > Cohabitation > Domestic Partners

HN7 [Fam. Code, § 299.2](#), provides for the recognition of an out-of-state legal union that is substantially equivalent to a California domestic partnership. Thus, recognition under the statute turns on whether domestic partnerships are substantially equivalent under the other state's and California law, not whether domestic partners are defined similarly in the two jurisdictions.

Family Law > ... > Property Distribution > Inferences & Presumptions > Community Property

Family Law > ... > Property Distribution > Classification > Transmutation

HN8 While, under Lucas, the joint title community property presumption could be overcome by an oral agreement or understanding, under [Fam. Code, § 2581](#), only a writing may be used to rebut the presumption. The legislature changed the rule that a spouse could rebut the presumption of community property for a joint tenancy residence with evidence of an oral agreement that it was separate property. [Fam. Code, § 2581](#), expanded the joint title presumption of [Civ. Code, former § 5110](#), for single-family residences to all property acquired during marriage in joint form. Under [Fam. Code, § 2581](#), property acquired in joint title during marriage is presumed to be community property upon dissolution. The presumption of [§ 2581](#) may be rebutted only by a clear statement in the title document or proof of a written agreement that the property is separate and not community property. [§ 2581](#). The requirement of a writing provides a reliable test by which to determine the understanding of the parties. It seeks to prevent the abuses and unpredictability that have resulted from the oral agreement standard. The legislature also abrogated the Lucas court's holding that separate funds used to acquire a community asset were a gift to the community unless the party could prove an agreement otherwise through the adoption of [Civ. Code, former § 4800.2](#) (current [Fam. Code, § 2640](#)).

Family Law > ... > Equitable
Distribution > Factors > Contributions

HN9 [Fam. Code, § 2640](#), provides a limited reimbursement of separate property contributions as part of the division of the community estate. Any reimbursement ordered pursuant to [§ 2640, subd. \(b\)](#), may not include an amount for appreciation. Any appreciation in the value of a community asset above the amount of the separate property contributions to that asset belongs to the community.

Review > De Novo Review

Family Law > ... > Dissolution & Divorce > Property
Distribution > Characterization

Civil Procedure > Appeals > Standards of
Review > Questions of Fact & Law

HN10 De novo review is appropriate where resolution of the issue of the characterization to be given (as separate or community property) requires a critical consideration, in a factual context, of legal principles and their underlying values, the determination in question amounts to the resolution of a mixed question of law and fact that is predominantly one of law.

Headnotes/Summary

Summary

[*1] CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court entered a judgment of dissolution of appellant's marriage with respondent, his former husband. The trial court determined that the parties' date of union was in 2009 when they married in Connecticut, rather than in 2004, when they entered into a domestic partnership under New Jersey law. The trial court also concluded that the parties had separate property interests in the appreciation in the value of the marital residence, in amounts proportional to their separate property contributions to the downpayment. (Superior Court of Riverside County, No. IND1201870, Mickie Reed, Temporary Judge.†)

The Court of Appeal reversed the amended judgment insofar as the trial court failed to divide the appreciation in value of the marital residence equally, as a community asset, and remanded the matter with directions. The court affirmed the amended judgment in all other respects. The court interpreted [Fam. Code, § 299.2](#), as evincing the Legislature's intent to recognize a union formed in

another jurisdiction for purposes of dissolution under [Fam. Code, § 299](#), so long as the union is substantively comparable to a domestic partnership formed under the California Domestic Partner Rights and Responsibilities Act, even if the union is referred to by another name under the other jurisdiction's law. In light of the limited nature of the rights and obligations that the parties obtained in entering into a domestic partnership under New Jersey law, the court held that the trial court properly determined that the parties' 2004 New Jersey domestic partnership was not substantially equivalent to a California domestic partnership under [§ 299.2](#) so as to permit its dissolution under California law. Accordingly, the trial court properly determined that the parties' date of union was in 2009. However, the trial court [*2] erred in failing to divide the appreciation in value of the marital residence equally. The trial court did not find that the joint title presumption of community property contained in [Fam. Code, § 2581](#), had been rebutted, and there was no evidence in the record of a writing sufficient to rebut the presumption. The trial court erred in applying the Lucas formula for calculating separate and community interests in the property. While respondent and appellant were each entitled to reimbursement pursuant to [Fam. Code, § 2640](#), for their separate property contributions to the acquisition of the residence, the reimbursement award could not include any amounts attributable to appreciation. (Opinion by Aaron, J., with Benke, Acting P. J., and Guerrero, J., concurring.)

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

[CA\(1\)](#) (1)

Statutes § 21—Construction—Legislative Intent— Language—Ambiguity—Extrinsic Aids.

In construing any statute, well-established rules of statutory construction require courts to ascertain the intent of the enacting legislative body so that they

may adopt the construction that best effectuates the purpose of the law. Courts first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context. If the statutory language is unambiguous, courts presume the Legislature meant what it said, and the plain meaning of the statute governs. If, however, the statutory language is ambiguous or reasonably susceptible to more than one interpretation, courts will examine the context in which the language appears, adopting the construction that best harmonizes the statute internally and with related statutes, and courts can look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.

[CA\(2\)](#) (2)

Statutes § 21—Construction—Legislative Intent.

Courts must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.

[CA\(3\)](#) (3)

Marriage § 2—Domestic Partnerships—Out-of-state Legal Union—Dissolution Under California Law.

[Fam. Code, § 299.2](#), ensures that a union is subject to dissolution under California law so long as the union had the same quasi-marital status under the foreign jurisdiction's [*3] law as a California domestic partnership has under the California Domestic Partner Rights and Responsibilities Act,

no matter the nomenclature used by the other jurisdiction in describing that union.

CA(4) (4)

Marriage § 2—Domestic Partnerships—Out-of-state Legal Union—Recognition—Substantially Equivalent Requirement.

Interpreting [Fam. Code, § 299.2](#), as evincing the Legislature's intent to recognize a union formed in another jurisdiction for purposes of dissolution under [Fam. Code, § 299](#), so long as the union is substantively comparable to a domestic partnership formed under the California Domestic Partner Rights and Responsibilities Act is consistent with the Legislature's intent both to recognize such unions as equivalent to marriage for purposes of dissolution and to ensure that individuals in such relationships have notice that their union will be treated as having quasi-marital status for purposes of California dissolution law. In contrast, to recognize a relationship not having quasi-marital status under the jurisdiction in which the relationship was formed as nevertheless having such status under California law would be incongruous with the Legislature's intent in enacting [Fam. Code, § 299.3](#), to ensure that individuals were aware of the binding effect of the impending momentous changes in the legal consequences of a legally recognized domestic relationship.

CA(5) (5)

Marriage § 2—Domestic Partnerships—Out-of-state Legal Union—Recognition—Two Persons.

[Fam. Code, § 299.2](#), expressly states that only a legal union of two persons of the same sex, that is substantially equivalent to a California domestic partnership shall be recognized under [§ 299.2](#). Thus, polygamous unions are not recognized under [§ 299.2](#) by virtue of the statute's reference to a legal union of two persons.

CA(6) (6)

Marriage § 2—Domestic Partnerships—Out-of-state Legal Union—Recognition—Substantially Equivalent Requirement.

[Fam. Code, § 299.2](#), provides for the recognition of an out-of-state legal union that is substantially equivalent to a California domestic partnership. Thus, recognition under the statute turns on whether domestic partnerships are substantially equivalent under the other state's and California law, not whether domestic partners are defined similarly in the two jurisdictions.

CA(7) (7)

Marriage § 2—Domestic Partnerships—Out-of-state Legal Union—Recognition—Substantially Equivalent Requirement.

The trial court properly determined the parties' date of marriage to be in 2009, when they married in Connecticut, because their 2004 New Jersey domestic [*4] partnership was not substantially equivalent to a California domestic partnership under [Fam. Code, § 299.2](#).

[Kirkland et al., Cal. Family Law Practice and Procedure (2017) ch. 3, § 3.02; Cal. Forms of Pleading and Practice (2018) ch. 387, Nonmarital Cohabitation, § 387.11; 11 Witkin, Summary of Cal. Law (11th ed. 2017) Marriage, § 363; 11 Witkin, Summary of Cal. Law (11th ed. 2017) Community Property, § 229.]

CA(8) (8)

Dissolution of Marriage; Separation § 51—Property—Division—Joint Title Community Property Presumption—Rebuttal—Writing Requirement.

While, under Lucas, the joint title community property presumption could be overcome by an oral

agreement or understanding, under [Fam. Code, § 2581](#), only a writing may be used to rebut the presumption. The Legislature changed the rule that a spouse could rebut the presumption of community property for a joint tenancy residence with evidence of an oral agreement that it was separate property. [Fam. Code, § 2581](#), expanded the joint title presumption of [Civ. Code, former § 5110](#), for single-family residences to all property acquired during marriage in joint form. Under [Fam. Code, § 2581](#), property acquired in joint title during marriage is presumed to be community property upon dissolution. The presumption of [§ 2581](#) may be rebutted only by a clear statement in the title document or proof of a written agreement that the property is separate and not community property. The requirement of a writing provides a reliable test by which to determine the understanding of the parties. It seeks to prevent the abuses and unpredictability that have resulted from the oral agreement standard. The Legislature also abrogated the Lucas court's holding that separate funds used to acquire a community asset were a gift to the community unless the party could prove an agreement otherwise through the adoption of [Civ. Code, former § 4800.2](#) (current [Fam. Code, § 2640](#)).

[CA\(9\) \(9\)](#)

Dissolution of Marriage; Separation § 54— Property—Division—Separate Property Contributions—Reimbursement.

[Fam. Code, § 2640](#), provides a limited reimbursement of separate property contributions as part of the division of the community estate. Any reimbursement ordered pursuant to [§ 2640, subd. \(b\)](#), may not include an amount for appreciation. Any appreciation in the value of a community asset above the amount of the separate property contributions to that asset belongs to the community.

Counsel: La Quinta Law Group and Timothy L.

Ewanyshyn for Appellant.

Lewis Brisbois Bisgaard & Smith and Lann G. McIntyre for Respondent.

Judges: Opinion by Aaron, J., with Benke, Acting P. J., and Guerrero, J., concurring.

Opinion by: Aaron, J.

Opinion

[*5]

[**486] AARON, J.—

I.

INTRODUCTION

R.W. appeals from a judgment of dissolution of his marriage with his former husband, respondent, G.C.¹ R.W. raises numerous claims on appeal, two of which we address in published portions of this opinion. First, R.W. claims that the trial court erred in determining that the parties' date of union was in 2009 when the parties married, rather than in 2004, when they entered into a domestic partnership under New Jersey law. R.W. contends that the parties' New Jersey domestic partnership is “substantially equivalent” ([Fam. Code, § 299.2](#))² to a California domestic partnership such that it could be dissolved pursuant to [section 299](#), and thus, that the court should have considered the date of the parties' domestic partnership to be the date of union for purposes of the dissolution. After interpreting [***2] the meaning of “substantially equivalent” in [section 299.2](#) as a matter of first impression, we conclude that in light of the limited nature of the rights and obligations that the parties obtained in entering into a domestic partnership under New Jersey law, the trial court properly

¹ We refer to the parties by their initials, in order to attempt to provide them with some degree of privacy with respect to personal medical information that is discussed in this opinion.

² Unless otherwise specified, all subsequent statutory references are to the Family Code.

determined that the parties' 2004 New Jersey domestic partnership was not “substantially equivalent” to a California domestic partnership under [section 299.2](#) so as to permit its dissolution under California law. We therefore conclude that the trial court properly determined that the parties' date of union was in 2009.

R.W. also claims that the trial court erred in failing to divide equally the appreciation of the value of certain real property that the parties acquired as joint tenants during their marriage, as a community asset. Specifically, R.W. contends that the trial court erred in applying a formula for apportioning separate and community property interests in the value of the appreciation [**487] because the joint title community property presumption contained in [section 2581](#) applied to the property, and the appreciation therefore belonged entirely to the community. We agree with R.W. and conclude that the trial court erred in failing to divide [***3] the appreciation in value of the marital residence equally.

We reject the remainder of R.W.'s claims in unpublished portions of the opinion. Accordingly, we reverse the judgment and remand the matter to the [*6] trial court with directions to divide the appreciation in value of the marital residence equally as a community asset. In all other respects, we affirm.

II.

FACTUAL AND PROCEDURAL BACKGROUND

R.W. and G.C. purchased a home together in New Jersey in 2002. In 2004, the couple entered into a New Jersey domestic partnership. They moved from New Jersey to New York in 2006 and married in Connecticut in 2009.

R.W. and G.C. purchased a home in California (the “marital residence”) in 2011 and moved to California that same year. G.C. filed a form petition for dissolution of marriage the following year.

After conducting a court trial on the petition, the trial court issued a statement of decision and entered a judgment incorporating that statement. Among other issues, the court determined that the parties' date of marriage was February 6, 2009, the date G.C. and R.W. married in Connecticut. The court also concluded that the parties had separate property interests in the appreciation in the value [***4] of the marital residence, in amounts proportional to their separate property contributions to the downpayment.³ The court declined to award R.W. any permanent spousal support or to order that G.C. pay any of R.W.'s attorney fees.⁴

R.W. appealed from the judgment. While R.W.'s appeal was pending, the trial court issued an amended judgment that incorporated a revised statement of decision. R.W. subsequently filed a second notice of appeal from the amended judgment.

[*7]

III.

DISCUSSION

A. The trial court properly determined the parties' date of marriage to be in 2009 because their 2004 New Jersey domestic partnership was not “substantially equivalent” to a California domestic partnership under [section 299.2](#) so as to permit its dissolution under [section 299](#)

R.W. claims that the trial court erred in determining that the parties' date of marriage was February 6, 2009, the date that he and G.C. married in Connecticut. He argues that the court should have instead concluded that the operative date of union was August 10, 2004, the date on which he and G.C. entered into a domestic partnership under New Jersey law.

³The court found that G.C. had a separate property interest in the appreciation in the amount of \$32,745 and that R.W. had a separate property interest in the appreciation in the amount of \$6,705.88.

⁴The court noted that G.C. had paid R.W. temporary spousal support during the pendency of the litigation, and that G.C. had paid \$10,000 for R.W.'s attorney fees pursuant to a prior court order.

R.W. contends that the parties' New Jersey domestic partnership is “substantially equivalent” (§ 299.2) to a California [***5] domestic partnership, and that the [**488] trial court therefore erred in concluding that the 2004 New Jersey domestic partnership was not a valid domestic partnership that could be dissolved under California law. R.W.'s claim turns on the proper interpretation of [section 299.2](#), an issue that we review de novo. (See *In re Marriage of Dellaria & Blickman-Dellaria* (2009) 172 Cal.App.4th 196, 201 [90 Cal. Rptr. 3d 802] [[HN1](#)] statutory interpretation claims are reviewed de novo.)

1. Governing law

a. The relevant statutes

[Section 297](#) permits two persons “of the same sex,”⁵ to enter a domestic partnership by filing a declaration with the Secretary of State establishing their partnership.⁶

[*8]

[Section 297.5, subdivision \(a\)](#) provides that

⁵ Although not relevant here, [section 297](#) also authorizes two persons “over 62 years of age,” who are of “opposite sexes,” to enter a domestic partnership under certain circumstances. (§ 297, *subd. (b)(4)(B).*)

⁶ [Section 297](#) provides in relevant part:

“(a) Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.

“(b) A domestic partnership shall be established in California when both persons file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division, and, at the time of filing, all of the following requirements are met:

“(1) Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.

“(2) The two persons are not related by blood in a way that would prevent them from being married to each other in this state.

“(3) Both persons are at least 18 years of age ...

“(4) Either of the following:

“(A) Both persons are members of the same sex. [¶] ... [¶]

“(5) Both persons are capable of consenting to the domestic partnership.”

domestic partners shall have the same rights and obligations as spouses: “(a) Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.”

[Section 299, subdivision \(d\)](#) governs the dissolution of a domestic partnership and provides in relevant part: “(d) The superior courts shall have jurisdiction over all proceedings relating to the dissolution of domestic partnerships [***6] The dissolution of a domestic partnership ... shall follow the same procedures, and the partners shall possess the same rights, protections, and benefits, and be subject to the same responsibilities, obligations, and duties, as apply to the dissolution of marriage”

[Section 299.2](#) describes the extent to which California law recognizes nonmarital same-sex unions formed in other jurisdictions: “A legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership as defined in this part, shall be recognized as a valid domestic partnership in this state regardless of whether it bears the name domestic partnership.”

[Sections 297, 297.5, 299, and 299.2](#) were enacted in 2003 as part of The California Domestic Partner Rights and Responsibilities Act (the Act). (Stats. 2003, ch. 421, p. 3081.) [**489] ⁷ The Act, which was adopted in 2003, and took effect January 1, 2005, “extend[ed] the rights and duties of marriage to persons registered as domestic partners on and after January 1, 2005.” (Legis. Counsel's Dig.,

⁷ [Section 297](#) was initially adopted in 1999 (Stats. 1999, ch. 588, § 2, p. 4157), and was amended as part of the Act. (Stats. 2003, ch. 421, § 3, p. 3082.) The Act repealed a prior version of [section 299](#), and added current [section 299](#), as well as [section 297.5](#), [section 299.2](#), and [section 299.3](#) (discussed below). (Stats. 2003, ch. 421, §§ 4, 8–10, pp. 3083, 3085–3089.)

Assem. Bill No. 205 (2003–2004 Reg. Sess.) 5 Stats. 2003, Summary Dig., p. 187.)

The Act also enacted [section 299.3](#). [Section 299.3](#) required the Secretary of State to [***7] mail a notice to previously registered domestic partners to inform them that California law related to the rights and responsibilities with respect to registered domestic partners was changing in material ways as a result of the adoption of the Act. The letter informed registered partners that they [*9] would be subject to the changed law unless they terminated their domestic partnership prior to January 1, 2005.⁸

b. Principles of statutory interpretation

In [Acqua Vista Homeowners Assn. v. MWI, Inc.](#)

⁸ The notice referred to in [section 299.3](#) provides in relevant part:

“Dear Registered Domestic Partner:

“This letter is being sent to all persons who have registered with the Secretary of State as a domestic partner.

“Effective January 1, 2005, California’s law related to the rights and responsibilities of registered domestic partners will change (or, if you are receiving this letter after that date, the law has changed, as of January 1, 2005). With this new legislation, for purposes of California law, domestic partners will have a great many new rights and responsibilities, including laws governing community property, those governing property transfer, those regarding duties of mutual financial support and mutual responsibilities for certain debts to third parties, and many others. The way domestic partnerships are terminated is also changing. After January 1, 2005, under certain circumstances, it will be necessary to participate in a dissolution proceeding in court to end a domestic partnership.

“Domestic partners who do not wish to be subject to these new rights and responsibilities MUST terminate their domestic partnership before January 1, 2005. Under the law in effect until January 1, 2005, your domestic partnership is automatically terminated if you or your partner marry or die while you are registered as domestic partners. It is also terminated if you send to your partner or your partner sends to you, by certified mail, a notice terminating the domestic partnership, or if you and your partner no longer share a common residence. In all cases, you are required to file a Notice of Termination of Domestic Partnership.

“If you do not terminate your domestic partnership before January 1, 2005, as provided above, you will be subject to these new rights and responsibilities and, under certain circumstances, you will only be able to terminate your domestic partnership, other than as a result of your domestic partner’s death, by the filing of a court action.”

[\(2017\) 7 Cal.App.5th 1129, 1140 \[213 Cal. Rptr. 3d 323\]](#) (*Acqua Vista*), this court restated the following well-established rules of statutory interpretation:

[HN2 CA\(1\) \(1\)](#) “““In construing any statute, “[w]ell-established rules of statutory construction require us to ascertain the intent of the enacting legislative body so that we may adopt the construction that best effectuates the purpose of the law.” [Citation.] “We first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. [Citation.] The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context.” [Citation.] If the statutory language is unambiguous, “we presume the [**490] Legislature meant what it said, and the plain meaning of the [***8] statute governs.” [Citation.]’ [Citation.]

“““If, however, the statutory language is ambiguous or reasonably susceptible to more than one interpretation, we will “examine the context in which the language appears, adopting the construction that best harmonizes the statute internally and with related statutes,” and we can ““look to a [*10] variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.””” [Citation.]’ [Citation.]

[HN3 CA\(2\) \(2\)](#) ““““We must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.””””

2. Factual and procedural background

a. The parties' pretrial pleadings

G.C. filed a form petition for dissolution of marriage. In his petition, G.C. indicated that the

parties had entered into a domestic partnership in 2004 and a marriage in 2009. G.C. checked a box next to the statement, “Our domestic partnership or marriage to [***9] a person of the same sex was established in a place other than California and a dissolution is requested.” G.C. also checked a box on the form indicating that he was requesting dissolution of the marriage.⁹

In August 2013, R.W. filed a form response in which he indicated that he sought dissolution of a 2004 domestic partnership and a 2009 marriage.

In July 2015, R.W. filed a request for order seeking to be granted permission to file an amended response to indicate that the operative date of dissolution was in 2004, rather than in 2009, as stated in the original response, and to provide a list of alleged separate and community property. In his request, R.W. stated that he and G.C. had entered into a registered domestic partnership in New Jersey in 2004. Citing [section 299.2](#), R.W. contended that California recognized the legitimacy of domestic partnerships entered into in other states. R.W. attached a copy of an August 2004 New Jersey certificate of domestic partnership to his request.

G.C. filed an opposition to the request, and attached a supporting declaration. In his declaration, G.C. stated in relevant part:

“[R.W.] and I signed an affidavit of New Jersey Domestic Partnership with the City of Long [***10] Hill, NJ town clerk on August 10, 2004. Our primary reason for filing was to preserve our rights to act upon each other's behalf during medical emergencies. Our respective rights to employer-provided benefits [*11] were another strong consideration. At the town clerk's office, we were given a copy of the New Jersey Department of Health, Office of Vital Statistics and Registry

publication titled *NOTICE OF RIGHTS AND OBLIGATIONS OF DOMESTIC PARTNERS*, attached hereto as **Exhibit A**

“... At no time did I or [R.W.] consider this to be a marriage as that option was available to us in August 2004 in the state of Massachusetts (since May 2004). When we ultimately did decide to get [**491] married in 2009 (five years after we elected domestic partnership), we went to Connecticut to be married.”

G.C. also stated in his declaration that R.W. failed to provide the court with any evidence of New Jersey domestic partnership law that would permit the court to make the determination whether a New Jersey domestic partnership is “substantially equivalent” ([§ 299.2](#)) to a California domestic partnership. G.C. further stated: “The New Jersey law of domestic partnerships did not offer a right of entitlement to support, [***11] or property sharing, when the relationship dissolved. There was no equivalent of alimony, or division of marital assets, for domestic partners. New Jersey law did not include a domestic partner in the intestate succession scheme. A domestic partner was not entitled to an elective share of the other partner's estate. The New Jersey law did not specifically amend the state's tort laws to give domestic partners standing to sue for the injury or death to the other.”

G.C. attached as an exhibit to his declaration a document entitled “Notice of Rights and Obligations of Domestic Partners” (the Notice of Rights) (capitalization & boldface omitted), issued by the New Jersey Department of Health. Under the heading, “Terminating a Domestic Partnership” (boldface omitted), the Notice of Rights stated that the Superior Court of New Jersey would have jurisdiction over all proceedings to terminate a domestic partnership and that “[i]n all such proceedings, the court shall in no event be required to effect an equitable distribution of property, either real or personal, which was legally and beneficially acquired by both domestic partners or either

⁹The form contains the words, “Petitioner requests” (boldface omitted), a checked box next to the words, “dissolution of the,” an unchecked box next to the words, “domestic partnership,” and a checked box next to the word, “marriage.”

domestic partner during the domestic partnership.” G.C. also attached [***12] the relevant New Jersey statutes governing domestic partnerships.

The trial court granted R.W.'s request to file an amended response. In his amended response, R.W. sought dissolution of the 2004 domestic partnership. R.W. left unchecked a box next to the statement, “We are married.”

R.W. filed a trial brief in which he indicated that “[t]he date of marriage is disputed.” R.W. quoted [section 299.2](#) and contended that “the New Jersey Domestic Partnership created on August 10, 2004, is the operative date of marriage.” R.W. did not present any argument or evidence in support of the [*12] contention that a New Jersey domestic partnership should be deemed “substantially equivalent” to a California domestic partnership under [section 299.2](#).

R.W. subsequently filed a request for a statement of decision in which he requested that the court determine the “[d]ate of marriage for purposes of dissolution.”

b. *The trial*

During the trial, G.C. testified that the parties entered into a domestic partnership in New Jersey in August 2004. G.C. stated that he was aware of the legal rights and obligations that entering the domestic partnership created for the parties. G.C. explained his belief that entering the domestic partnership did not provide either [***13] party with an interest in the other party's assets or obligations. G.C. stated that he and R.W. moved from New Jersey to New York in 2006, married in Connecticut in 2009, and moved to California in 2011.

R.W. testified that he and G.C. purchased a house together in 2002, and that they would have married at that time if gay marriage had been legally recognized. R.W. agreed that he and G.C. entered into a domestic partnership in New Jersey in [**492] 2004 and that they got married in Connecticut in 2009.

The court admitted in evidence the parties' 2004 New Jersey domestic partnership certificate, a copy of the New Jersey Notice of Rights, and the parties' 2009 Connecticut marriage license.

c. *The trial court's ruling*

After the trial, the court issued a proposed statement of decision. The court stated that the parties disputed the proper date of marriage for purposes of the dissolution, with R.W. contending that the date of marriage should be deemed to be in 2004, when the parties entered into a domestic partnership in New Jersey, and G.C. contending that the date of marriage was in 2009, when the parties married in Connecticut. The court further noted that G.C. maintained that “the domestic partnership [***14] laws in New Jersey are not ‘substantially equivalent’ to the domestic partnership laws in California, and therefore the New Jersey domestic partnership should not be recognized in California.”

The court observed that R.W. had not offered any “‘substantial equivalency,’” arguments, and that “a facial comparison of the domestic partnership laws of New Jersey and California shows that each offers widely differing rights and protections.” The court reviewed New Jersey and California law [*13] governing domestic partnerships, and noted that while New Jersey law provided “a few select rights” to domestic partners, California law “extends all of the rights and duties of marriage to domestic partners.” Accordingly, the court determined that a New Jersey domestic partnership cannot be said to be “‘substantially equivalent,’” to a California domestic partnership. The court thus concluded that California law did not recognize the 2004 New Jersey domestic partnership under [section 299.2](#). The court further concluded that the proper date of marriage was February 6, 2009, the date on which the parties married in Connecticut.

R.W. filed a series of objections to the proposed statement of decision. None of the objections [***15] pertained to the date of marriage issue. The trial court subsequently entered

an amended judgment¹⁰ that incorporated a statement of decision identical to the proposed statement of decision with respect to the date of marriage.

3. Application

a. *We reject the parties' procedural arguments*

Before considering the merits of R.W.'s claim, we reject two procedural arguments that the parties raise. First, we reject G.C.'s argument that R.W. forfeited his contention because R.W. did not raise an objection to the trial court's proposed statement of decision with respect to this issue. R.W. clearly raised the issue of the proper date of union for purposes of the dissolution in the trial court, and the issue was fully litigated. G.C. cites no authority, and we are aware of none, that would require a party to reassert an objection to the *merits* of a trial court's decision by way of an objection to a proposed statement of decision in order to preserve the objection for purposes of an appeal. (Cf. [Heaps v. Heaps \(2004\) 124 Cal.App.4th 286, 292 \[21 Cal. Rptr. 3d 239\]](#) ["The main purpose of an objection to a proposed statement of decision is *not* to reargue the merits, but to bring to the court's attention inconsistencies between the court's ruling and the document that *****16** is supposed to embody and explain that ruling" (italics added)].) ****493** Accordingly, we conclude that R.W. did not forfeit his contention that the trial court erred in determining the date of marriage to be in 2009 by failing to raise this issue in his objections to the trial court's proposed statement of decision.

We also reject R.W.'s suggestion that he was not on notice that the date of marriage issue would be decided at trial. R.W. supports this contention by asserting that G.C.'s petition and R.W.'s amended response both "alleged the **[*14]** date of marriage to be 2004." R.W. argues that "[therefore] the date of marriage really was not formally at issue in the operative pleading." R.W.'s argument fails for two

reasons. First, G.C.'s petition stated that the date of marriage was "02/03/09," not "2004." Second, the pleadings described in part III.A.2, *ante*, make it abundantly clear that R.W. had notice that the date of marriage would be, as R.W. stated in his request for a statement of decision, one of the "controverted issues" at trial.

b. *The trial court properly concluded that the parties' 2004 New Jersey domestic partnership is not substantially equivalent to a California domestic partnership *****17** and thus did not provide the applicable date of union for their dissolution*¹¹

R.W. contends that the trial court erred in determining that the 2004 New Jersey domestic partnership did not provide the date of union for purposes of this dissolution proceeding.

As quoted above, [section 299.2](#) provides, "A legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership as defined in this part, shall be recognized as a valid domestic partnership in this state regardless of whether it bears the name domestic partnership."

The text of the statute suggests that to be "recognized as a valid domestic partnership in this state"—and thus subject to dissolution under [section 299](#)—a nonmarital same sex legal union must be "substantially equivalent to a domestic partnership as defined in this part."¹² The Act does

¹¹ Although R.W. contends that the trial court erred in failing to determine the date of *marriage* to be in 2004, it is undisputed that the parties were not *married* until 2009. Thus, we interpret his argument to be that the trial court erred in failing to utilize the 2004 New Jersey domestic partnership as the date of union for purposes of the dissolution.

¹² We interpret "a domestic partnership as defined in this part," as referring to a domestic partnership as defined in [section 297](#) (i.e., a California domestic partnership). [Section 299.2](#) is codified in [part 4 of division 2.5 of the Family Code](#), and [section 297](#) is codified in [part 1 of division 2.5 of the Family Code](#). While [section 299.2](#) refers to "a domestic partnership as defined in this part" (italics added),

¹⁰ The amendment pertained to the issue discussed in the unpublished portion of this opinion. The original judgment was identical to the amended judgment with respect to the date of marriage issue.

not elaborate with respect to the meaning of the phrase “substantially equivalent,” and we are not aware of any case law addressing this issue. However, the statutory text suggests that the Legislature intended to recognize unions formed under the laws of another jurisdiction that are *substantively* [***18] *comparable* to domestic partnerships as defined under the Act, even if the union is referred to by [*15] another *name* under the other jurisdiction's law. Commentators agree with this interpretation. (Cal. Domestic Partnerships and Same-Sex Marriage (Cont.Ed.Bar 2017) [**494] § 1.17, p. 1-13 [in discussing § 299.2, stating, “Although the various jurisdictions may call the same-sex relationships by different names, the substance of the rights, benefits, and privileges, not the name of the institution, controls”]; Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2017) ¶ 20:233, p. 20-47 (Hogoboom) [“Arguably, the out-of-state legal union is *not* of ‘substantial equivalence’ within the meaning of the [Act] if the law under which it was formed does not extend to the partners substantially the same *substantive rights and responsibilities* (property rights, debt liability, partner support, etc.) afforded domestic partners under the [Act]”]; Duncan, *Survey of Interstate Recognition of Quasi-Marital Statuses* (2005) 3 *Ave Maria L.Rev.* 617, 626 [quoting § 299.2 and stating, “California's approach is to treat *quasi-marital* statuses as domestic partnerships” (italics added)].)

CA(3) (3) Our interpretation is supported by a consideration [***19] of the “ostensible objects to be achieved,” by the adoption of [section 299.2](#). (*Acqua Vista, supra*, 7 *Cal.App.5th* at p. 1140.) At the time the Act was adopted, the laws of many states were changing with respect to the types of legal statuses into which same-sex couples could

enter, with a corresponding variety of names for the statuses being recognized. (See generally Stein, *The Topography of Legal Recognition of Same-Sex Relationships* (2012) 50 *Fam. Ct. Rev.* 181 (Stein).)¹³ [HN4 Section 299.2](#) ensures that a union is subject to dissolution under California law so long as the union had the same quasi-marital status under the foreign jurisdiction's law as a California domestic partnership has under the Act, no matter the nomenclature used by the other jurisdiction in describing that union.

This interpretation is bolstered by an examination of other provisions of the Act. (See *Acqua Vista, supra*, 7 *Cal.App.5th* at p. 1140 [in interpreting a statute a court is to consider ““context in which the language appears””].) As the Court of Appeal in *Velez v. Smith* (2006) 142 *Cal.App.4th* 1154, 1165 [48 *Cal. Rptr. 3d* 642] (*Velez*) observed, “The declarations that accompanied the enactment of [the Act] left no doubt of the legislative intent to greatly expand the rights and responsibilities of properly registered domestic partners.” (See *id.* at pp. 1163–1165 [outlining [***20] the history [*16] of domestic partnerships under California law]; § 297.5 [stating that registered domestic partners shall have the same rights and obligations as spouses].) In enacting the Act, the Legislature also made clear its intent that those individuals who had previously registered in California as domestic partners would be provided with notice of the impending change to the legal nature of their partnership, and given an opportunity to terminate the partnership prior to the change in the law. (§ 299.3.)

there is no “domestic partnership” defined in [division 2.5, part 4 of the Family Code](#). However, since [section 299.2](#) and [section 297](#) were both adopted as part of the Act, and [section 297](#) contains the definition of a domestic partnership, it is clear that “a domestic partnership as defined in this part” (§ 299.2) refers to a domestic partnership as defined in [section 297](#).

¹³ Stein specifically notes the wide variety of relationships referred to by states as “domestic partnerships”: “In light of the wide variation in nonmarital relationships labeled ‘domestic partnerships’—from those that provide just a handful of benefits to those that give the full panoply of benefits associated with marriage—henceforth, I refer to domestic partnerships like the kind available in Maryland, which give a small subset of the rights associated with marriage, as *limited domestic partnerships*. In contrast, I refer to domestic partnerships like the kind available in California, which are virtually identical to civil unions, as *broad domestic partnerships*.” (Stein, *supra*, at pp. 188–189.)

[HN5 CA\(4\)](#) (4) Interpreting [section 299.2](#) as evincing the Legislature's intent to recognize a union formed in another jurisdiction for purposes of dissolution under [section 299](#) so **[**495]** long as the union is *substantively comparable* to a domestic partnership formed under the Act is consistent with the Legislature's intent both to recognize such unions as equivalent to marriage for purposes of dissolution and to ensure that individuals in such relationships have notice that their union will be treated as having quasi-marital status for purposes of California dissolution law. In contrast, to recognize a relationship *not* having quasi-marital status under the jurisdiction in which the relationship was formed as nevertheless *having* such status **[***21]** under California law would be incongruous with the Legislature's intent in enacting [section 299.3](#) to ensure that individuals were aware of the “binding effect of the impending momentous changes in the legal consequences of a legally recognized domestic relationship.” ([Velez, supra, 142 Cal.App.4th at p. 1168.](#))¹⁴

[CA\(5\)](#) (5) R.W.'s arguments to the contrary are not persuasive. R.W. asserts that [section 299.2](#) should be interpreted as providing that “a domestic partnership in another state is ‘substantially equivalent’ to a domestic partnership in California if it is a union of *two* persons of the same sex,” and contends that a “polygamous union” in another jurisdiction would thus not be recognized as “substantially equivalent,” under [section 299.2](#). [HN6 Section 299.2](#) expressly states that only a “legal union of two persons of the same sex,” that is “substantially equivalent” to a California domestic partnership shall be recognized under [section 299.2](#). (Italics added.) Thus, polygamous unions are not recognized under [section 299.2](#) by virtue of the statute's reference to a “legal union of two persons.” (Italics added.) R.W.'s interpretation of [section 299.2](#) is unpersuasive since it gives no effect to the words “substantially equivalent” (§ [299.2](#)) in the statute. (See, e.g., [Riverside County Sheriff's Dept.](#)

[v. Stiglitz \(2014\) 60 Cal.4th 624, 630 \[181 Cal. Rptr. 3d 1, 339 P.3d 295\]](#) [““Whenever possible, significance must be given to every word [in **[***22]** a statute] in pursuing the legislative purpose, and the court should avoid a construction that makes some words surplusage””].)

[*17]

[CA\(6\)](#) (6) R.W. also notes that, pursuant to [section 297, subdivision \(a\)](#) domestic *partners* are defined as “two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring,” and contends that, “[s]o long as the domestic partnership law of New Jersey defines domestic *partners* similarly, a New Jersey domestic partnership must be ‘substantially equivalent,’ to a California domestic partnership.” (Italics added.) [HN7 Section 299.2](#) provides for the recognition of an out-of-state “legal union,” that is “substantially equivalent to a [California] domestic partnership.” (Italics added.) Thus, recognition under the statute turns on whether domestic *partnerships* are substantially equivalent under New Jersey and California law, not whether domestic *partners* are defined similarly in the two jurisdictions. With respect to the former issue, which we view as the decisive factor in determining whether the out-of-state union may be dissolved under California law, R.W. presented *no* argument in either the trial court or this court that the parties' 2004 New Jersey domestic partnership **[***23]** is substantively comparable to a domestic partnership formed under the Act.

For example, R.W. does not contend that New Jersey law afforded domestic partners comparable rights with respect to property division, debt liability, or partner support as California law provides domestic partners. Even a cursory examination **[**496]** of the two statutory schemes makes clear that the legal rights conferred by the domestic partnership laws differ dramatically in the two states. (Compare § [297.5, subd. \(a\)](#) [“Registered domestic partners shall have the *same* rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and

¹⁴ Neither party cited, and our own research has not uncovered, any relevant legislative history bearing on the issue presented on appeal.

duties under law ... as are granted to and imposed upon spouses”] with [N.J. Stat. Ann. § 26:8A-2](#) “[a]ll persons in domestic partnerships should be entitled to *certain* rights and benefits that are accorded to married couples under the laws of New Jersey, including: statutory protection ... against various forms of discrimination based on domestic partnership status ... ; visitation rights for a hospitalized domestic partner and the right to make medical or legal decisions for an incapacitated partner; and an additional exemption from the personal income tax and the transfer inheritance tax [***24] on the same basis as a spouse”). New Jersey law expressly provides, “The obligations that two people have to each other as a result of creating a domestic partnership shall be limited to the provisions of this act.” ([N.J. Stat. Ann. § 26:8A-6.a.](#)) Significantly, New Jersey law provides that, in proceedings to terminate a domestic partnership, “[T]he court shall in no event be required to effect an equitable distribution of property, either real or personal, which was legally and beneficially acquired by both domestic partners or either domestic partner during the domestic partnership.” ([N.J. Stat. Ann. § 26:8A-10.a\(3\).](#))¹⁵

[*18]

R.W. contends that to interpret [section 299.2](#) as recognizing only those unions that “grant ... same-sex couples the full range of rights afforded to married spouses,” “discriminates against same-sex couples by treating them differently from traditional married couples.” In support of this contention, R.W. raises an argument that is difficult

to follow, but that culminates with the assertion that, “Clearly, California recognizes the validity of marriages celebrated in other jurisdictions that do not have community property laws. It should not be any different for domestic partnerships.” This argument suggests that the basis for concluding [***25] that the parties' New Jersey domestic partnership was not substantially equivalent to a California domestic partnership for purpose of dissolution under [section 299](#) is that California is a community property state, while New Jersey is not. However, our conclusion that the 2004 New Jersey domestic partnership is not “substantially equivalent” ([§ 299.2](#)) to a California domestic partnership for purposes of dissolution is grounded on the fact that the New Jersey domestic partnership does not confer substantively similar legal rights and benefits to a domestic partnership formed under the Act, not the fact that the two states differ with respect to their recognition of community property principles.¹⁶

[CA\(7\) \(7\)](#) [**497] Accordingly, we conclude that the trial court properly determined the parties' date of marriage to be in 2009, because their 2004 New Jersey domestic partnership is not “substantially equivalent” to a California domestic partnership under [section 299.2](#).¹⁷

¹⁶ While R.W. asserts that it “is a matter of equal protection under the law,” that the New Jersey domestic partnership be recognized as “substantially equivalent” to a California domestic partnership, he fails to adequately raise this claim with supporting authority and argument. The contention is thus forfeited. (See, e.g., [Trinkle v. California State Lottery \(2003\) 105 Cal.App.4th 1401, 1413 \[129 Cal. Rptr. 2d 904\]](#) [“unless a party's brief contains a legal argument with citation of authorities on the point made, the court may treat it as waived and pass on it without consideration”].)

¹⁷ While the trial court stated that California does not “recognize[]” the New Jersey domestic partnership, we do not make such a broad pronouncement here. More specifically, we need not decide in this appeal whether there might be *some instances* in which a California court *would* recognize a New Jersey domestic partnership (as distinguished from a civil union). For example, we have no occasion to determine whether, under [section 299.2](#), a person could enforce “visitation rights for a hospitalized domestic partner” ([N.J. Stat. Ann. § 26:8A-2](#)) in a California court under the theory that the person's New Jersey domestic partnership is “substantially equivalent” to a

¹⁵ In 2006, the New Jersey Legislature passed the [Civil Union Act \(P.L. 2006, ch. 103, § 92\)](#). Pursuant to this statute, which became effective February 19, 2007, same-sex couples were authorized to enter into civil unions with all of the rights and obligations afforded to married couples under state law. ([N.J. Stat. Ann. § 37:1-33](#).) The Civil Union Act expressly states that the law “shall not alter the rights and responsibilities of domestic partnerships existing before the effective date of this act, except that eligible domestic partners shall be given notice and opportunity to enter into a civil union pursuant to the provisions of this act.” ([N.J. Stat. Ann. § 26:8A-4.1](#).) It is undisputed that R.W. and G.C., who moved to New York in 2006, did not enter into a civil union under New Jersey's Civil Union Act.

[*19]

B. The trial court erred in failing to divide the appreciation in value of the marital residence equally

R.W. claims that the trial court erred in failing to divide the appreciation in the value of the marital residence equally. Specifically, [***26] R.W. contends that the trial court erred in applying a formula for apportioning separate and community property interests in the appreciation in value of property discussed in [In re Marriage of Lucas \(1980\) 27 Cal.3d 808 \[166 Cal. Rptr. 853, 614 P.2d 285\]](#) (*Lucas*). R.W. argues that the *Lucas* formula may be applied only in cases in which a spouse maintains a separate property interest in the property. R.W. maintains that the *Lucas* formula may not be used in this case because the trial court did not find that the joint title presumption of community property contained in [section 2581](#) had been rebutted, and there is no such evidence upon which the court could have made such a finding.

G.C. contends that the trial court determined that the “joint title presumption of community property [had been] rebutted,” and that the court correctly calculated the value of his separate property interest pursuant to *Lucas*.

1. Factual and procedural background

The relevant facts are undisputed. The trial court found that the parties acquired the marital residence as joint tenants during marriage. The court further expressly found, “said residence is the community property of the parties.”

“domestic partnership as defined in this part,” for this purpose. ([§ 299.2](#).) We also need not consider any potential applicability of the [full faith and credit clause of the United States Constitution](#), because R.W. presents no argument with respect to this provision. ([U.S. Const., art. IV, § 1](#) [“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State”].) Rather, we need determine only whether the trial court was correct that [section 299.2](#) should not be interpreted to provide that the parties’ 2004 New Jersey domestic partnership *may not be dissolved under section 299*. For the reasons discussed in the text above, we conclude that the trial court properly determined this issue.

The court found that the parties purchased the property for \$395,000 and that they made a \$151,000 downpayment. [***27] R.W. contributed \$23,028.13 in separate property funds and G.C. contributed \$112,431.47 in separate property funds toward the downpayment. Community funds were used for the remainder of the downpayment. The community took out a loan for \$250,000. The fair market value of the marital residence at the time of the trial was \$510,000, which included gross distributable [**498] equity in the amount of \$265,411.01. The court found that, as a result of the 2012 refinancing, the mortgage on the marital residence was placed in G.C.’s name, but that “[t]itle remained joint.”

The court further found that the appreciation in the value of the property was \$115,000 and that, “[G.C.] is entitled to 28.47% of the increase in value [*20] of the real property based on his separate property contribution of \$112,431.47 to the down payment, or \$32,740.45.” The court also found, “[R.W.] is entitled to 5.83% of the increase in value of the real property based on his separate property contribution of \$23,028.13 to the down payment, or \$6,705.88.”

*2. Governing law**a. Prior law under Lucas*

In *Lucas*, the Supreme Court considered “the proper method of determining separate and community property interests in a single family dwelling [***28] acquired during the marriage with both separate property and community property funds.” ([Lucas, supra, 27 Cal.3d at p. 811](#).) In *Lucas*, a husband and wife purchased a single-family residence during their marriage and took title to the property as joint tenants. (*Ibid.*) The wife used her separate property for the downpayment, and the couple assumed a loan for the remainder of the purchase price. (*Ibid.*)

The *Lucas* court noted that, pursuant to former [Civil Code section 5110](#), a single-family residence held in joint tenancy was presumed to be community property at dissolution. ([Lucas, supra,](#)

[27 Cal.3d at p. 814.](#)) The *Lucas* court held that in order to rebut this presumption, a spouse claiming a separate property interest was required to show an “understanding or agreement” that the spouse’s separate property contributions to the acquisition of the property would remain separate property. (*Ibid.*)

Applying this law, the *Lucas* court noted that, although the trial court had found that the wife did not intend for her separate property used for the downpayment to constitute a “gift” to the husband (*Lucas, supra, 27 Cal.3d at p. 815*; see also *id. at p. 812*), there was no evidence of an “agreement” that the wife would retain a separate property interest in the house. (*Id. at p. 815.*) The *Lucas* court thus reversed the trial court’s award of [***29] a separate property interest in the property to the wife. (*Id. at pp. 812, 815.*)

The *Lucas* court remanded the matter to the trial court for further proceedings and stated that if the trial court were to find that the residence was entirely community property on remand, the wife would be barred from seeking any reimbursement for her separate property contributions to the property, absent an agreement providing for such reimbursement. (*Lucas, supra, 27 Cal.3d at p. 816.*) The *Lucas* court explained that a spouse who uses separate property for community purposes during marriage is presumed to have intended a gift to the community. (*Ibid.*)

The *Lucas* court also provided a formula for the trial court to apply in the event that the trial court were to find that there “was an understanding or [*21] agreement that [wife] was to retain a separate property interest in the residence.” (*Lucas, supra, 27 Cal.3d at p. 816.*) In that instance, the *Lucas* court explained, “[T]he spouse who made the separate property down payment [obtains] a separate property interest in the residence in the proportion that the down payment bears to the purchase price; the [**499] community acquires that percentage of the residence which the community loan bears to the purchase price.” (*Ibid.*) The spouse’s separate property [***30]

interest should include an amount that “represents the amount of capital appreciation attributable to the separate funds.” (*Id. at p. 817, fn. 3.*)

b. Current law

CA(8) (8) “The Legislature enacted several statutes in response to *Lucas*, including provisions governing ... ownership of jointly titled property, and reimbursement of the contributions to acquire property.” (*In re Marriage of Bonvino (2015) 241 Cal.App.4th 1411, 1427 [194 Cal. Rptr. 3d 754] (Bonvino).*)¹⁸ With respect to the ownership of jointly titled property, the Legislature enacted former *Civil Code section 4800.1* (current *§ 2581*). **HN8** While, under *Lucas*, the joint title community property presumption could be overcome by an oral agreement or understanding (*Lucas, supra, 27 Cal.3d at p. 816*), under *section 2581* only a writing may be used to rebut the presumption. The *Bonvino* court described the change as follows: “The Legislature ... changed the rule that a spouse could rebut the presumption of community property for a joint tenancy residence with evidence of an oral agreement that it was separate property. [Citation.] In 1983, the Legislature enacted Civil Code former *section 4800.1*, now *Family Code section 2581*, which expanded the joint title presumption of *Civil Code former section 5110* for single-family residences to all property acquired during marriage in joint form. [Citation.] Under *section 2581*, property acquired in joint title during marriage is presumed to be [***31] community property upon dissolution. The presumption of *section 2581* may be rebutted only by a clear statement in the title document or proof of a written agreement that the property is separate and not community property. (*§ 2581.*) ‘The requirement of a writing provides a reliable test by which to determine the understanding of the parties. It seeks to prevent the abuses and unpredictability that have resulted from

¹⁸ The Legislature adopted the two provisions relevant to the issue presented in this appeal, former *Civil Code sections 4800.1* and *4800.2*, current *sections 2581* and *2640*, in the same statute in 1983. (See *In re Marriage of Walrath (1998) 17 Cal.4th 907, 914 [72 Cal. Rptr. 2d 856, 952 P.2d 1124] (Walrath).*)

the oral agreement standard.’ [Citation.]” (*Bonvino, supra, at pp. 1430–1431*, fn. omitted.) *Section 2581* provides:

“For the purpose of division of property on dissolution of marriage or legal separation of the parties, property acquired by the parties during marriage in [*22] joint form, including property held in tenancy in common, joint tenancy, or tenancy by the entirety, or as community property, is presumed to be community property. This presumption is a presumption affecting the burden of proof and may be rebutted by either of the following:

“(a) A clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community property.

“(b) Proof that the parties have made a written agreement that the property is separate property.”

The Legislature also abrogated [***32] the *Lucas* court's holding that “separate funds used to acquire a community asset were a gift to the community unless the party could prove an agreement otherwise” through the adoption of *Civil Code former section 4800.2* [**500] (current *§ 2640*). (*Bonvino, supra, 241 Cal.App.4th at p. 1431*; see *Walrath, supra, 17 Cal.4th at p. 914* [noting that legislative history of *Civ. Code, former § 4800.2* “expressly states that [statute] was enacted to ‘reverse[] the rule of [*Lucas, supra, 27 Cal.3d 808*], and cases following it, which precluded recognition of the separate property contribution of one of the parties to the acquisition of community property, unless the party could show an agreement between the spouses to the effect that the contribution was not intended to be a gift”].)

HN9 CA(9) (9) Section 2640 provides “a limited reimbursement of separate property contributions as part of the division of the community estate” (*Bonvino, supra, 241 Cal.App.4th at p. 1431*.) *Section 2640* provides in relevant part:

“(a) ‘Contributions to the acquisition of property,’ as used in this section, include downpayments, payments for improvements, and payments that reduce the principal of a loan used to finance the purchase or improvement of the property but do not include payments of interest on the loan or payments made for maintenance, insurance, or taxation of the property.

“(b) In the division of the community estate under [***33] this division, unless a party has made a written waiver of the right to reimbursement or has signed a writing that has the effect of a waiver, the party shall be reimbursed for the party's contributions to the acquisition of property of the community property estate to the extent the party traces the contributions to a separate property source. The amount reimbursed shall be without interest or adjustment for change in monetary values and may not exceed the net value of the property at the time of the division.”

[*23]

Any reimbursement ordered pursuant to *section 2640, subdivision (b)* may not include an amount for appreciation. (See *Bonvino, supra, 241 Cal.App.4th at p. 1432* [amount reimbursed under *§ 2640, subdivision (b)* “does not include interest or appreciation”].) “[A]ny appreciation in the value of a community asset above the amount of the separate property contributions to that asset belongs to the community.” (*Walrath, supra, 17 Cal.4th at p. 924*.)

3. Standard of review

Since the relevant facts are undisputed, and the issue on appeal turns on whether the trial court properly applied the law governing the characterization of assets upon dissolution, we apply the de novo standard of review. (See *In re Marriage of Rossin (2009) 172 Cal.App.4th 725, 734 [91 Cal. Rptr. 3d 427]* [“de *HN10* novo review is appropriate where resolution of ‘the issue of the characterization to be given (as separate or community [***34] property) ... requires a critical consideration, in a factual context, of legal

principles and their underlying values, the determination in question amounts to the resolution of a mixed question of law and fact that is predominantly one of law”].)

4. Application

We agree with R.W. that the trial court did not find that the joint title community property presumption contained in [section 2581](#) was rebutted. There is nothing in the trial court’s statement of decision that suggests that the court made such a finding. On the contrary, the court expressly found both that the parties acquired the property as joint tenants during **[**501]** the marriage and that the property was community property.

Nor is there any evidence in the record of a *writing* sufficient to rebut the presumption set forth in [section 2581](#). Accordingly, since G.C. did not “retain a separate property interest in the residence” (*Lucas, supra*, 27 Cal.3d at p. 816), the trial court erred in applying the *Lucas* formula for calculating “separate and community interests” in the property. (*Ibid.*) Specifically, the court erred in awarding G.C. an amount that “represents the amount of capital appreciation attributable to the separate funds.” (*Id. at p. 817, fn. 3.*)

In the absence of the rebuttal of the [section 2581](#) presumption, **[***35]** the court was required to find that the marital residence was community property. G.C. and R.W. were each entitled to reimbursement pursuant to [section 2640](#) for their separate property contributions to the acquisition of the residence. However, reimbursement awarded pursuant to [section 2640](#) may not include **[*24]** any amounts attributable to appreciation.¹⁹ (See, e.g., *Bonvino, supra*, 241 Cal.App.4th at p. 1432.) Therefore, on remand, the trial court shall divide the value of the appreciation of the marital residence evenly, as a community asset.

We are not persuaded by G.C.’s assertion, without record citation, that “the evidence at trial demonstrated the parties’ *understanding* that the marital residence was to be [G.C.’s] separate property.” (Italics added.) Even assuming the existence of such evidence in the record, in the wake of the adoption of [section 2581](#), any such “understanding” on the part of the parties would not be sufficient to defeat the community property presumption contained in the statute. (See, e.g., *In re Marriage of Buol* (1985) 39 Cal.3d 751, 755 [218 Cal. Rptr. 31, 705 P.2d 354] [“Under [*Civil Code former section 4800.1*]²⁰ the only means of rebutting the presumption that property acquired during marriage in joint tenancy is community property is by providing evidence of a written agreement that the property is separate property”].)

We are not persuaded by **[***36]** G.C.’s contention that “[u]nder *Lucas*, the joint title presumption of community property was rebutted.” The Legislature adopted [section 2581](#)’s predecessor statute (*Civ. Code, former § 4800.1*) “for the purpose of changing the rule in *Lucas*.” (*In re Marriage of Neal* (1984) 153 Cal.App.3d 117, 123 [200 Cal. Rptr. 341]; see *In re Marriage of Kahan* (1985) 174 Cal.App.3d 63, 68 [219 Cal. Rptr. 700] [“while under *Lucas* an agreement rebutting the presumption may be proved from the circumstances and actions of the parties, [*Civil Code former section 4800.1* [current [§ 2581](#)] now requires a writing, either in the deed or as a separate agreement”]; see *Hogoboom, supra*, [¶] 8:425, p. 8-157 [stating that [§ 2581](#) “supersedes *Lucas* in part” and explaining that “[w]hereas under *Lucas*, title presumptions may ordinarily be overcome by an oral agreement or understanding or by implication from a statement or conduct [citation] only a *writing* suffices to counter the [§2581](#) presumption” (boldface omitted)].) Even assuming that there was evidence of an “*agreement or understanding*” (*Lucas, supra*, 27 Cal.3d at p. 815, italics added)

¹⁹ G.C. does not argue that he is entitled to any portion of the appreciation in the value of the property as a reimbursement under [section 2640](#).

²⁰ As discussed in the text above, former [Civil Code section 4800.1](#) is currently codified in [section 2581](#).

sufficient to rebut the community property **[**502]** presumption under *Lucas*,²¹ as discussed above, there is no evidence in the record of a *writing* sufficient to rebut the presumption under current law (i.e., [§ 2581](#)).²²

[*25]

The fact that G.C. testified that he was “the only one on the loan,”²³ associated with a 2012 refinance of the property does not demonstrate that he had a separate **[***37]** property interest in the marital residence. G.C. acknowledged that the home remained deeded to both G.C. and R.W., and the trial court expressly found that, notwithstanding the 2012 refinance, “[t]itle remained joint.” Thus, G.C.’s testimony concerning the 2012 refinance does not establish that the [section 2581](#) presumption was rebutted.

We are similarly unpersuaded by G.C.’s argument that R.W. failed to demonstrate prejudice. In support of this argument, G.C. notes that the trial court ordered G.C. to reimburse R.W. for “his separate property interests” in the property and “awarded [R.W.] \$50,000 from the equity in the marital residence upon refinancing and ... an additional equalization payment by [G.C.]” G.C.

contends that these amounts were “more than sufficient to reimburse [R.W.] for his separate and community property interests in the marital residence.”

To begin with, G.C.’s lack of prejudice argument is fundamentally unsound. The fact that the court awarded R.W. *other* amounts does not cure the prejudice of the trial court failing to properly divide the appreciation in value of the marital residence equally. With respect to the specific awards that G.C. mentions, as discussed above, all of the **[***38]** \$115,000 appreciation in the marital residence is community property. Neither G.C. nor R.W. is entitled to any portion of the appreciation as separate property.²⁴ With respect to the “\$50,000 from the equity in the marital residence” that G.C. references, the court’s statement of decision is clear that this payment was a “pre-judgment **[*26]** community property division.” In other words, the court treated the **[**503]** \$50,000 as an “advance” made to R.W. from his eventual share of the community estate. Thus, the award does not render harmless the court’s failure to properly divide the appreciation of the marital residence evenly, as a portion of the community estate. Finally, the “equalization payment” that G.C. references reflects the trial court’s calculation of the amount that G.C. owed in order to effectuate an equal division of the community estate. By its very nature, such a payment cannot cure the prejudice in failing to include an asset in the community estate. On remand, the trial court will be required to recalculate the equalization payment in light of our direction that the court divide the appreciation in

²¹ Aside from referring to evidence pertaining to a 2012 refinance of the property, which we discuss in the text below, G.C. does not identify such evidence in his brief.

²² After the trial court issued a proposed statement of decision that awarded G.C. a 28.47 percent interest in the appreciation in the value of the residence based on his separate property contribution to the downpayment, R.W. filed a written objection in which he raised the same argument that he raises on appeal. During a hearing on R.W.’s objection, the trial court stated that “the better way [to divide the appreciation] was the *Lucas* case way,” and overruled the objection. It is not entirely clear from the court’s comments whether the court applied *Lucas* (rather than [§ 2581](#)) in concluding that the joint title community property presumption was rebutted, or whether the court simply “borrowed” the *Lucas* formula for dividing appreciation without making any determination as to whether the community property presumption had been rebutted. The absence of any mention in the court’s statement of decision suggesting that the court found that the joint title presumption had been rebutted suggests the latter. In either case, the trial court erred.

²³ During the trial, the court asked G.C., “In this refinance, is your name the only one on the loan?” G.C. responded affirmatively.

²⁴ Thus, R.W. is not entitled to the \$6,705.88 that the trial court awarded to him as separate property for his “5.83% of the increase in value of the real property based on his separate property contribution of \$23,028.13 to the down payment.” On remand, the trial court shall ensure that R.W. is not awarded any portion of the appreciation as his separate property. We do not read R.W.’s brief as contending that he is entitled to this amount. Rather, R.W. contends that neither party is entitled to *any* portion of the appreciation of value of the marital residence as *separate* property, and that the entire \$115,000 of appreciation is to be divided equally as *community* property. For the reasons stated in the text above, we agree with R.W.

the marital residence equally, as community property.²⁵

Accordingly, [***39] we conclude that the trial court committed reversible error in failing to divide the appreciation in value of the marital residence equally.

C.-F.* [NOT CERTIFIED FOR PUBLICATION]

IV.

DISPOSITION

The amended judgment is reversed insofar as the trial court failed to divide the appreciation in value of the marital residence equally, as a community asset. The matter is remanded to the trial court with directions to divide the appreciation in value of the [***40] marital residence equally, as a community asset, recalculate an appropriate equalization payment in light of this division of [*27] the appreciation, conduct any necessary ancillary proceedings, and to enter a new judgment. In all other respects, the amended judgment is affirmed. Each party is to bear his own costs on appeal.

Benke, Acting P. J., and Guerrero, J., concurred.

End of Document

²⁵In its judgment, with respect to the division of the community estate, the court stated that G.C. was to receive a net distribution of \$128,305.08 and R.W. was to receive a net distribution of \$82,500. The court then ordered G.C. to pay R.W. \$45,805.08 in order to “equalize the division of community property.” Although not discussed by the parties on appeal, it appears that the amount of the equalization payment should have been *one half* of \$45,805.08, because that is the amount that would equalize the division of community property.

On remand, the parties may address the appropriate equalization payment in light of our order that the trial court divide the appreciation of the marital residence evenly, as a portion of the community estate. The trial court shall ensure that any equalization payment ordered results in an equal division of community property.

* See footnote, *ante*, page 1.



Caution

As of: October 18, 2026 6:38 AM Z

In re Marriage of Haines

Court of Appeal of California, Fourth Appellate District, Division One

March 21, 1995, Decided

No. D016555.

Reporter

33 Cal. App. 4th 277 *; 39 Cal. Rptr. 2d 673 **; 1995 Cal. App. LEXIS 259 ***; 95 Cal. Daily Op. Service 2126; 95 Daily Journal DAR 3597

In re the Marriage of JUDY and CLARENCE
HAINES. JUDY A. HAINES, Appellant, v.
CLARENCE HAINES, Respondent.

Prior History: [***1] Superior Court of San Diego County, No. D280870, Alan B. Clements, Commissioner.

Disposition: The portion of the judgment awarding Clarence reimbursement under former [Civil Code section 4800.2](#) is reversed. The trial court is ordered to amend the judgment to reflect the setting aside of the quitclaim deed and the proper allocation to the parties of the Teebird Lane residence as community property in accordance with the views expressed above.

Case Summary

Procedural Posture

Appellant wife challenged a judgment of the Superior Court of San Diego County (California) in her suit for the dissolution of her marriage to appellee husband, arguing that the trial court erred in concluding that the marital home was appellee's separate property by virtue of a quitclaim deed executed by appellant that conveyed her interest in the property to appellee.

Overview

Appellant wife and appellee husband jointly owned their marital home, which had been owned by appellee prior to the marriage. When the marriage

began to deteriorate, appellee asked appellant to sign a quitclaim deed returning ownership of the residence to him. Appellant executed a quitclaim deed, and filed a petition for dissolution of marriage. The trial court deemed the residence to be appellee's separate property by virtue of the quitclaim deed and concluded that appellant failed to meet the clear and convincing burden of proof under [Cal. Evid. Code § 662](#) to establish undue influence sufficient to set aside the deed. Appellant sought review. In reversing and remanding with instructions to set aside the quitclaim deed, the appellate court concluded that application of [Cal. Evid. Code § 662](#) was improper when it conflicted with the presumption emanating from [Cal. Fam. Code § 721\(b\)](#), under which a presumption of undue influence arose in an interspousal transaction where one spouse received greater benefit. Appellee had the initial burden to rebut the presumption that he gained an advantage in violation of the parties' confidential relationship.

Outcome

The judgment of the trial court was reversed and the matter remanded with instructions to set aside the quit claim deed, as appellee husband bore the initial burden to rebut the presumption of undue influence that arose from the interspousal transaction wherein he received a greater benefit. The trial court erred in imposing the initial burden on appellant wife to rebut the validity of appellee's title.

LexisNexis® Headnotes

Evidence > ... > Presumptions > Exceptions > Comm
on Law Presumptions

Real Property Law > ... > Warranty Deeds > General
Warranty Deeds > Covenants of Title

Real Property Law > Deeds > Types of
Deeds > General Overview

Real Property Law > Deeds > Types of Deeds > Quit
Claim Deeds

HN1 An executed quitclaim deed raises the
common law presumption of title.

Estate, Gift & Trust Law > Estate
Planning > Community Property > General Overview

Family Law > ... > Property
Rights > Characterization > Community Property

Family Law > ... > Property
Distribution > Characterization > Community
Property

HN2 Under California community property law,
because spouses occupy confidential relations with
each other, when an interspousal transaction
advantages one spouse over the other, a
presumption of undue influence arises.

Estate, Gift & Trust Law > Estate
Planning > Community Property > General Overview

Evidence > ... > Presumptions > Exceptions > Comm
on Law Presumptions

Family Law > Marital Duties & Rights > General
Overview

Family Law > ... > Property
Rights > Characterization > Community Property

HN3 The public policy of California, as enunciated
by statute and case law interpretation, demands that
where there is a conflict between the common law
presumption in favor of title as codified in Cal.

Evid. Code § 662 and the presumption that a
husband and wife must deal fairly with each other,
application of § 662 is improper.

Family Law > Marital Duties & Rights > General
Overview

HN4 It is the public policy of California to foster
and promote the institution of marriage. The
structure of society itself largely depends upon the
institution of marriage.

Family Law > Marital Duties & Rights > General
Overview

HN5 It is fundamental that a marriage contract
differs from other contractual relations in that there
exists a definite and vital public interest in
reference to the marriage relation.

Family Law > Marital Duties & Rights > General
Overview

HN6 The laws relating to marriage and divorce
have been enacted because of the profound concern
of our organized society for the dignity and stability
of the marriage relationship. This concern relates
primarily to the status of the parties as husband and
wife. The concern of society as to the property
rights of the parties is secondary and incidental to
its concern as to their status.

Family Law > Marital Duties & Rights > General
Overview

Family Law > Marriage > Nature of Marriage

HN7 Marriage is a matter of public concern. The
public, through the state, has interest in both its
formation and dissolution. The regulation of
marriage and divorce is solely within the province
of the legislature except as the same might be
restricted by the constitution.

Estate, Gift & Trust Law > Estate
 Planning > Community Property > General Overview
 Family Law > ... > Property
 Rights > Characterization > Community Property
 Family Law > ... > Property
 Distribution > Characterization > Community
 Property

HN8 California is a community property state.

Estate, Gift & Trust Law > Estate
 Planning > Community Property > General Overview
 Family Law > Marital Duties & Rights > Property
 Rights > General Overview
 Family Law > ... > Property
 Rights > Characterization > General Overview
 Family Law > ... > Property
 Rights > Characterization > Community Property
 Family Law > ... > Property
 Rights > Characterization > Marital Property
 Family Law > ... > Property
 Rights > Characterization > Separate Property
 Family Law > ... > Property
 Distribution > Characterization > Community
 Property

HN9 The Spanish civil law established two categories of marital property--community property and separate property--in recognition of the equality between husband and wife, based on the separate identity of each and the contribution each made to the success of the marriage. During the marriage, the traditional community property system regards the husband as manager of the community for the benefit of the marital partnership, and each spouse manages his or her own separate property, with community property being the preferred form of ownership.

Estate, Gift & Trust Law > Estate

Planning > Community Property > General Overview
 Family Law > Marital Duties & Rights > General
 Overview
 Family Law > ... > Property
 Rights > Characterization > Community Property

HN10 Under English common law, the wife's identity is merged into that of the husband, whereas under Spanish civil law, the husband and wife enjoy separate legal entities.

Estate, Gift & Trust Law > Estate
 Planning > Community Property > General Overview
 Family Law > Marital Duties & Rights > Property
 Rights > General Overview
 Family Law > ... > Property
 Rights > Characterization > General Overview
 Family Law > ... > Property
 Rights > Characterization > Community Property
 Family Law > ... > Property
 Rights > Characterization > Separate Property
 Family Law > ... > Property
 Distribution > Characterization > Community
 Property
 Family Law > ... > Property
 Distribution > Classification > Gifts
 Family Law > ... > Property
 Distribution > Classification > Inheritances
 Family Law > ... > Property
 Distribution > Classification > Tracing
 Family Law > ... > Property Distribution > Inferences
 & Presumptions > Community Property
 Real Property Law > ... > Present Estates > Marital
 Estates > Separate Property

HN11 A basic rule of a community property system is that all property acquired during marriage is community property unless it comes within a specific exception; the major exceptions to the basic community property rule are those relating to separate property. Thus, there is a general presumption that property acquired during marriage

by either spouse other than by gift or inheritance is community property unless traceable to a separate property source. This is a rebuttable presumption affecting the burden of proof; hence it can be overcome by the party contesting community property status. Since this general community property presumption is not a title presumption, virtually any credible evidence may be used to overcome it, including tracing the asset to a separate property source, showing an agreement or clear understanding between parties regarding ownership status, and presenting evidence that the item was acquired as a gift.

Estate, Gift & Trust Law > Estate

Planning > Community Property > General Overview

Family Law > ... > Property

Rights > Characterization > Community Property

Family Law > ... > Property

Rights > Characterization > Separate Property

Family Law > ... > Dissolution & Divorce > Property Distribution > General Overview

Family Law > ... > Property

Distribution > Characterization > Community Property

Family Law > ... > Property Distribution > Inferences & Presumptions > General Overview

Family Law > ... > Property Distribution > Inferences & Presumptions > Community Property

Real Property Law > Estates > Concurrent Ownership > Joint Tenancies

Real Property Law > Estates > Concurrent Ownership > Tenancies by Entireties

Real Property Law > Estates > Concurrent Ownership > Tenancies in Common

Real Property Law > ... > Present Estates > Marital Estates > Separate Property

HN12 The former Family Law Act contained a community property presumption for the purpose of dividing property on dissolution of marriage or legal separation. Former [Cal. Civ. Code § 4800.1](#) (

[Cal. Fam. Code § 2581](#)) provided that, for the purpose of division of property upon dissolution of marriage or legal separation, property acquired by the parties during marriage in joint form, including property held in tenancy in common, joint tenancy, tenancy by the entirety, or as community property is presumed to be community property. This presumption is a presumption affecting the burden of proof and may be rebutted by either of the following: (1) a clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community property or (2) proof that the parties have made a written agreement that the property is separate property.

Contracts Law > Statute of Frauds > General Overview

Estate, Gift & Trust Law > Estate

Planning > Community Property > General Overview

Evidence > Inferences & Presumptions > Presumptions > Rebuttal of Presumptions

Evidence > Burdens of Proof > General Overview

Family Law > ... > Property

Rights > Characterization > Community Property

Family Law > ... > Property

Distribution > Characterization > Community Property

Family Law > ... > Property Distribution > Inferences & Presumptions > Community Property

Real Property Law > Deeds > Defenses Against Deed Enforcement > Statute of Frauds

HN13 Former [Cal. Civ. Code § 4800.1](#) established a presumption that property acquired by parties during marriage in joint title form is community property for property division purposes upon dissolution or separation. This presumption affecting the burden of proof meant that the party contesting community property status bore the burden of producing sufficient rebuttal evidence showing different ownership interests. The burden

of proof for the party contesting community property status is by a preponderance of the evidence. Former [Cal. Civ. Code § 4800.1](#) limited the rebuttal evidence to written evidence, such as a deed, thereby effectively creating a statute of frauds. Neither tracing nor oral or implied agreements sufficed to rebut the presumption under former [Cal. Civ. Code § 4800.1](#). The same holds true under [Cal. Fam. Code § 2581](#).

Estate, Gift & Trust Law > Estate
Planning > Community Property > General Overview

Family Law > ... > Property
Rights > Characterization > Community Property

Family Law > ... > Dissolution & Divorce > Property
Distribution > General Overview

Family Law > ... > Property
Distribution > Characterization > General Overview

Family Law > ... > Property
Distribution > Characterization > Community
Property

[HN14](#) Characterization of property, for the purpose of community property law, refers to the process of classifying property as separate, community, or quasi-community. Characterization must take place in order to determine the rights and liabilities of the parties with respect to a particular asset or obligation and is an integral part of the division of property on marital dissolution.

Family Law > Marital Duties & Rights > Property
Rights > General Overview

Family Law > ... > Property
Rights > Characterization > General Overview

Family Law > ... > Property
Distribution > Characterization > Community
Property

Family Law > ... > Property
Distribution > Classification > Transmutation

[HN15](#) Generally, factors determinative of whether

property is separate or community are the time of the property's acquisition; operation of various presumptions, particularly those concerning the form of title; and whether the spouses have transmuted or converted the property from separate to community or vice versa.

Estate, Gift & Trust Law > Estate
Planning > Community Property > General Overview

Family Law > Marital Duties & Rights > Property
Rights > General Overview

Family Law > ... > Property
Rights > Characterization > General Overview

Family Law > ... > Property
Rights > Characterization > Community Property

Family Law > ... > Property
Distribution > Characterization > Community
Property

Family Law > ... > Property
Distribution > Classification > Inception of Title

Family Law > ... > Property Distribution > Inferences
& Presumptions > Community Property

[HN16](#) Perhaps the most basic characterization factor is the time when property is acquired in relation to the parties' marital status. This is particularly true because of the general presumption that property acquired during marriage by either husband or wife or both while domiciled in California is community property, except as otherwise provided by statute. This rule can be altered by agreement of the spouses. For example, spouses can indicate their intent with respect to the character of the property initially by specifying the form of title in which it is held, or spouses can later transmute the character of the property as between each other.

Evidence > ... > Presumptions > Exceptions > General
Overview

Evidence > ... > Presumptions > Exceptions > Comm
on Law Presumptions

Family Law > ... > Property
 Distribution > Characterization > Community
 Property

HN17 Where property status cannot otherwise be proved, characterization is determined by applicable presumptions. One category of presumptions includes those presumptions arising from the form of title, such as the joint title form presumption codified in former [Cal. Civ. Code § 4800.1](#) ([Cal. Fam. Code, §2581](#)), and the general common law presumption in favor of title, codified in [Cal. Evid. Code § 662](#). Therefore, absent a contrary statute, and unless ownership interests are otherwise established by sufficient proof, record title is usually determinative of characterization.

Estate, Gift & Trust Law > Estate
 Planning > Community Property > General Overview
 Evidence > Inferences &
 Presumptions > Presumptions > Conflicting
 Presumptions
 Evidence > ... > Presumptions > Exceptions > General
 Overview
 Family Law > Marital Duties & Rights > Property
 Rights > General Overview
 Family Law > ... > Property
 Rights > Characterization > General Overview
 Family Law > ... > Property
 Rights > Characterization > Community Property
 Family Law > ... > Marital Agreements > Antenuptial
 & Premarital Agreements > General Overview
 Family Law > ... > Property
 Distribution > Characterization > Community
 Property
 Family Law > ... > Property
 Distribution > Classification > Business & Practice
 Family Law > ... > Property Distribution > Inferences
 & Presumptions > Community Property

HN18 In general when a conflict arises between the common law form of title presumption and the presumption that property acquired during marriage

is community property in a spousal property dispute, the statutory community property presumption will predominate, and the property will be characterized as community.

Family Law > ... > Property
 Distribution > Characterization > Marital Property

HN19 A transmutation is an interspousal transaction or agreement that works a change in the character of the property, and special rules govern transmutations.

Family Law > ... > Property
 Distribution > Characterization > Marital Property
 Governments > Fiduciaries

HN20 The validity of a transmutation is dependent on a number of factors. Among these are (1) that transmutations made on or after January 1, 1985, must be in writing and contain an express declaration by the spouse whose interest in the property is adversely affected and (2) that spouses are subject to special standards of disclosure towards each other with respect to property, based on their confidential and fiduciary relationship.

Family Law > ... > Property
 Distribution > Characterization > Marital Property
 Family Law > ... > Property
 Distribution > Classification > Transmutation
 Family Law > ... > Property Distribution > Inferences
 & Presumptions > Marital Property
 Governments > Fiduciaries

HN21 Statutorily, spouses have the right to enter into transactions with each other as well as other persons. However, [Cal. Fam. Code § 721\(b\)](#) provides that interspousal transactions must comport with the rules controlling the actions of persons occupying confidential relations with each other. Thus, the competence of spouses to engage

in transactions with each other is subject to the convincing proof.
circumstances being pleasing to the fiduciary standard.

Contracts Law > ... > Affirmative
Defenses > Coercion & Duress > General Overview
Family Law > ... > Property
Distribution > Characterization > Marital Property
Real Property Law > Deeds > Validity
Requirements > Enforceability

HN22 When an interspousal transaction advantages one spouse, the law, from considerations of public policy, presumes such transactions to have been induced by undue influence. Courts of equity view gifts and contracts that are made or take place between parties occupying confidential relations with a jealous eye.

Evidence > ... > Presumptions > Exceptions > Comm
on Law Presumptions
Family Law > ... > Property
Distribution > Characterization > Marital Property
Real Property Law > Deeds > Validity
Requirements > Enforceability

HN23 Because transmutations must conform to the legal standard codified in [Cal. Fam. Code § 721\(b\)](#), where the transmutation is evidenced by a deed, the presumption of undue influence arising from advantage necessarily conflicts with the common law presumption of title, codified in [Cal. Evid. Code § 662](#).

Evidence > Inferences & Presumptions > General
Overview
Real Property Law > Deeds > General Overview

HN24 [Cal. Evid. Code § 662](#) provides that the owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and

Evidence > Inferences & Presumptions > General
Overview

Evidence > ... > Presumptions > Exceptions > Comm
on Law Presumptions

Real Property Law > Deeds > General Overview

HN25 [Cal. Evid. Code § 662](#) codifies a common law presumption recognized in the California cases. The presumption may be overcome only by clear and convincing proof. The presumption is based on promoting the public policy in favor of the stability of titles to property. Allegations that legal title does not represent beneficial ownership have been historically disfavored because society and the courts have a reluctance to tamper with duly executed instruments and documents of legal title.

Evidence > Inferences & Presumptions > General
Overview

Family Law > ... > Property
Distribution > Classification > Transmutation

Real Property Law > Deeds > General Overview

Real Property Law > Deeds > Types of Deeds > Quit
Claim Deeds

HN26 [Cal. Evid. Code § 662](#) is concerned primarily with the stability of titles, which obviously is an important legal concept that protects parties to a real property transaction, as well as creditors.

Business & Corporate Compliance > ... > Negotiable
Instruments > Enforcement > Joint & Several
Instruments

Contracts Law > ... > Negotiable
Instruments > Enforcement > Joint & Several
Instruments

Family Law > ... > Property
Distribution > Characterization > Community

Property

Real Property Law > Purchase & Sale > Fraudulent Transfers

HN27 The law regarding transmutations makes reference to third party rights and affords protections against fraud in transmutations as follows: (1) a transmutation is subject to the laws governing fraudulent transfers, and (2) a transmutation of real property is not effective with respect to third parties that do not have notice of the transmutation unless it is recorded.

Family Law > ... > Property

Distribution > Characterization > Marital Property

HN28 [*Cal. Fam. Code § 721\(b\)*](#) provides in pertinent part that, in transactions between themselves, a husband and wife are subject to the general rules that control the actions of persons occupying confidential relations with each other. This confidential spousal relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other.

Evidence > Inferences & Presumptions > General Overview

Family Law > ... > Property

Distribution > Characterization > Marital Property

HN29 Transactions between husband and wife are subjected to the general rule that controls the actions of persons occupying confidential relations with each other, which, when applied to the relation of husband and wife, has been interpreted to mean that, in every transaction between them by which the superior party obtains a possible benefit, equity raises a presumption against its validity and casts upon that party the burden of proving affirmatively its compliance with equitable requisites and of thereby overcoming the presumption.

Evidence > Inferences & Presumptions > General Overview

Family Law > Marital Duties & Rights > General Overview

HN30 The marriage relationship alone will not support a presumption of undue influence by one spouse over the other where the transaction between them is shown to be fair, but where one spouse admittedly secures an advantage over the other, the confidential relationship will bring into operation a presumption of the use and abuse of that relationship by the spouse obtaining the advantage.

Family Law > Marital Duties & Rights > General Overview

HN31 [*Cal. Fam. Code § 721*](#) is one of mutual accountability, requiring each spouse to show his or her conduct in connection with an interspousal transaction conformed to the legal standard codified in [*Cal. Fam. Code § 721\(b\)*](#).

Evidence > Inferences & Presumptions > General Overview

Evidence > Inferences & Presumptions > Presumptions > Conflicting Presumptions

HN32 A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. The trier of fact is required to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption.

Evidence > Inferences & Presumptions > General Overview

Real Property Law > Deeds > General Overview

Real Property Law > Deeds > Types of Deeds > Quit Claim Deeds

Real Property Law > Deeds > Validity Requirements > Enforceability

HN33 [Cal. Evid. Code § 662](#) establishes a rebuttable presumption in favor of title.

Estate, Gift & Trust Law > Estate Planning > Community Property > General Overview

Estate, Gift & Trust Law > ... > Private Trusts Characteristics > Trustees > General Overview

Evidence > Inferences & Presumptions > General Overview

Family Law > ... > Property Rights > Characterization > Community Property

Family Law > ... > Property Distribution > Characterization > Community Property

Family Law > ... > Property Distribution > Inferences & Presumptions > Community Property

Governments > Fiduciaries

Real Property Law > Deeds > Types of Deeds > Quit Claim Deeds

HN34 A rebuttable presumption of undue influence arises when one spouse obtains an advantage over another in a community property transaction.

Estate, Gift & Trust Law > Estate Planning > Community Property > General Overview

Family Law > ... > Property Rights > Characterization > Community Property

Family Law > ... > Property Distribution > Characterization > Community Property

Family Law > ... > Property Distribution > Inferences & Presumptions > Community Property

HN35 All property acquired by a married person

during marriage is presumed to be community property.

Family Law > Marital Duties & Rights > General Overview

HN36 Between unmarried persons, the party claiming that a confidential relation exists has the burden of proving it. Under [Cal. Fam. Code § 721\(b\)](#), marital partners are parties to a confidential relation as a matter of law.

Evidence > Inferences & Presumptions > General Overview

Family Law > ... > Property Distribution > Characterization > Community Property

HN37 Where one spouse has taken advantage of another in an interspousal transaction, a presumption of undue influence arises under former [Cal. Fam. Code § 721\(b\)](#).

Evidence > Inferences & Presumptions > General Overview

Evidence > Inferences & Presumptions > Presumptions > Conflicting Presumptions

HN38 Where two presumptions are in conflict, the more specific presumption will control over the more general one.

Evidence > Inferences & Presumptions > General Overview

Evidence > Inferences & Presumptions > Presumptions > Conflicting Presumptions

Family Law > ... > Property Distribution > Characterization > Community Property

Real Property Law > Deeds > Types of Deeds > Quit Claim Deeds

HN39 Application of [Cal. Evid. Code § 662](#) is improper when it is in conflict with the presumption of undue influence that emanates from [Cal. Fam. Code § 721\(b\)](#). Any other result would abrogate the protections afforded to married persons and denigrate the public policy of the state that seeks to promote and protect the vital institution of marriage.

Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

In marital dissolution proceedings, the trial court granted the husband reimbursement for his separate property contribution to the acquisition of the couple's community property residence. The husband had previously held sole title to the residence only after the wife, in an earlier transaction, had conveyed her interest in the residence to the husband with a quitclaim deed. The trial court applied the presumption of [Evid. Code, § 662](#) (owner of legal title to property is presumed to be owner of full beneficial title), holding the wife to the burden of clear and convincing evidence in her attempts to void the quitclaim deed. The trial court stated that the wife had not met that burden of proof under [Evid. Code, § 662](#), in her attempts to prove her claims of undue influence, duress, deceit, and constructive fraud. However, the trial court stated she had met the lesser evidentiary standard of preponderance of the evidence regarding her claims. (Superior Court of San Diego County, No. D280870, Alan B. Clements, Commissioner.)

The Court of Appeal reversed the portion of the judgment awarding the husband reimbursement for the residence and ordered the trial court to amend the judgment to reflect the setting aside of the wife's quitclaim deed and the proper allocation to the parties of the residence as community property.

The court held that the trial court erred in granting the husband reimbursement for his separate property contribution to the acquisition of the couple's community property residence. The husband had acquired sole title to the residence by virtue of the wife's quitclaim deed, which prompted the trial court to apply the presumption that title to property reflects its actual ownership ([Evid. Code, § 662](#)). However, application of [Evid. Code, § 662](#), is improper when it conflicts with the presumption of undue influence under Civ. Code, former § 5103, *subd. (b)* (now [Fam Code, § 721, subd. \(b\)](#)), which arises from the confidential relationship spouses occupy with each other. Also, where two presumptions conflict, the more specific one controls. Had the presumption of undue influence been applied, it would have placed the burden on the husband to show that the quitclaim transaction did not violate his fiduciary duties. Instead, the wife was improperly given the initial burden to rebut the presumption of title. Whenever an interspousal transaction is challenged, it should be analyzed under the same statute that gives spouses the conditional authority to transact with each other (Civ. Code, former § 5103, now [Fam. Code, § 721](#)). (Opinion by Haller, J., with Froehlich, Acting P. J., and Nares, J., concurring.)

Headnotes

[CA\(1a\)](#) (1a) [CA\(1b\)](#) (1b) [CA\(1c\)](#) (1c) [CA\(1d\)](#) (1d)
[CA\(1e\)](#) (1e) [CA\(1f\)](#) (1f) [CA\(1g\)](#) (1g)

**Husband and Wife § 26—Property—
Determination of Character of Property—
Presumptions and Burden of Proof—Presumption
in Favor of Title Versus Presumption of
Confidential Relationship in Transactions Between
Spouses.**

--In marital dissolution proceedings, the trial court erred in granting the husband reimbursement for his separate property contribution to the acquisition of the couple's community property residence, where the wife proved, by a preponderance of the evidence, that her earlier quitclaim deed of her

interest in the residence to the husband had been obtained by undue influence, duress, deceit, and constructive fraud. The husband acquired sole title to the residence via the quitclaim deed. This prompted the trial court to apply the presumption that title to property reflects its actual ownership ([Evid. Code, § 662](#)) absent rebuttal by clear and convincing proof. However, application of [Evid. Code, § 662](#), is improper when it conflicts with the presumption of undue influence under Civ. Code, former § 5103, *subd. (b)* (now [Fam Code, § 721, subd. \(b\)](#)), which arises from the confidential relationship spouses occupy with each other. Also, where two presumptions conflict, the more specific one controls. Had the presumption of undue influence been applied, it would have placed the burden on the husband to show that the quitclaim transaction did not violate his fiduciary duties. Instead, the wife was improperly given the initial burden to rebut the presumption of title. Whenever an interspousal transaction is challenged, it should be analyzed under the same statute that gives spouses the conditional authority to transact with each other (Civ. Code, former § 5103, now [Fam. Code, § 721](#)).

[See 11 **Witkin**, Summary of Cal. Law (9th ed. 1990) Community Property, § 245; 1 **Witkin**, Cal. Evidence (3d ed. 1986) § 205.]

[CA\(2\)](#) (2)

Husband and Wife § 2—Nature of Relation—Public Policy to Promote Marriage.

--It is the public policy of this state to foster and promote the institution of marriage. The structure of society itself largely depends upon the institution of marriage.

[CA\(3\)](#) (3)

Husband and Wife § 26—Property—Determination of Character of Property—Presumptions and Burden of Proof—Presumption

Favoring Community Property—Rebuttal of Presumption—Evidence.

--A basic rule of a community property system is that all property acquired during marriage is community property unless it comes within a specific exception. The major exceptions to the basic community property rule are those relating to separate property; thus, there is a general presumption that property acquired during marriage by either spouse other than by gift or inheritance is community property unless traceable to a separate property source ([Fam. Code, § 760](#)). This is a rebuttable presumption affecting the burden of proof; hence, it can be overcome by the party contesting community property status. Since this general community property presumption is not a title presumption, virtually any credible evidence may be used to overcome it, including tracing the asset to a separate property source, showing an agreement or clear understanding between parties regarding ownership status, and presenting evidence that the item was acquired as a gift.

[CA\(4\)](#) (4)

Husband and Wife § 26—Property—Determination of Character of Property—Presumptions and Burden of Proof—Presumption Favoring Community Property—Property Acquired in Joint Title Form.

--Civ. Code, former [§ 4800.1](#) (now [Fam. Code, § 2581](#)), established a presumption that property acquired by parties during marriage in joint title form is community property for property division purposes upon dissolution or separation. This presumption affecting the burden of proof meant that the party contesting community property status bore the burden of producing sufficient rebuttal evidence showing different ownership interests. The burden of proof for the party contesting community property status is by a preponderance of the evidence. Civ. Code, former [§ 4800.1](#), limited the rebuttal evidence to written evidence, such as a deed, thereby effectively creating a statute of

frauds. Neither tracing nor oral or implied agreements sufficed to rebut the presumption under Civ. Code, former [§ 4800.1](#). The same holds true under [Fam. Code, § 2581](#).

[CA\(5\)](#) (5)

Husband and Wife § 25—Property— Determination of Character of Property.

--Characterization of property, for the purpose of community property law, refers to the process of classifying property as separate, community, or quasi-community. Characterization must take place in order to determine the rights and liabilities of the parties with respect to a particular asset or obligation and is an integral part of the division of property on marital dissolution.

[CA\(6\)](#) (6)

Husband and Wife § 25—Property— Determination of Character of Property— Characterization Factors.

--Factors determinative of whether property is separate or community are generally the time of the property's acquisition, operation of various presumptions, particularly those concerning the form of title, and whether the spouses have transmuted or converted the property from separate to community or vice versa. Perhaps the most basic characterization factor is the time when property is acquired in relation to the parties' marital status. This is particularly true because of the general presumption that property acquired during marriage by either husband or wife or both, while domiciled in California, is community property, except as otherwise provided by statute (Civ. Code, former [§ 5110](#), now [Fam. Code, § 760](#)). This rule can be altered by agreement of the spouses. Where property status cannot otherwise be proved, characterization is determined by applicable presumptions. One category of presumptions includes those arising from the form of title, such as

the joint title form presumption codified in Civ. Code, former [§ 4800.1](#) (now [Fam. Code, § 2581](#)), and the general common law presumption in favor of title, codified in [Evid. Code, § 662](#). Therefore, absent a contrary statute, and unless ownership interests are otherwise established by sufficient proof, record title is usually determinative of characterization.

[CA\(7\)](#) (7)

Husband and Wife § 20—Property—Transactions Between Spouses—Transmutations—Validity— Factors.

--A transmutation is an interspousal property transaction or agreement that works a change in the character of the property, and transmutations are governed by special rules ([Fam. Code, § 850 et seq.](#)). The validity of a transmutation is dependent on a number of factors. Among these are (1) transmutations made on or after Jan. 1, 1985, must be in writing and contain an "express declaration" by the spouse whose interest in the property is adversely affected (Civ. Code, former [§ 5110.730, subd. \(a\)](#), now [Fam. Code, § 852, subd. \(a\)](#)), and (2) spouses are subject to special standards of disclosure towards each other with respect to property, based on their confidential and fiduciary relationship (Civ. Code, former §§ 5103, [5125](#), now [Fam. Code, §§ 721, 1100](#)).

[CA\(8\)](#) (8)

Husband and Wife § 23—Property—Transactions Between Spouses—Undue Influence— Presumption—Fiduciary Standard.

--By statute, spouses have the right to enter into property transactions with each other as well as with other persons (Civ. Code, former [§ 5103, subd. \(a\)](#), now [Fam. Code, § 721, subd. \(a\)](#)). However, that same statute also states that interspousal transactions must comport with the rules controlling the actions of persons occupying

confidential relations with each other (Civ. Code, former § 5103, *subd. (b)*, now [Fam. Code, § 721, subd. \(b\)](#)). Thus, the competence of spouses to engage in transactions with each other is subject to the circumstances being pleasing to the fiduciary standard. When an interspousal transaction advantages one spouse, the law, from considerations of public policy, presumes such transactions have been induced by undue influence. Courts of equity view gifts and contracts that are made or take place between parties occupying confidential relations with a jealous eye. Because transmutations must conform to the legal standard codified in Civ. Code, former § 5103, *subd. (b)*, now [Fam. Code, § 721, subd. \(b\)](#), where the transmutation is evidenced by a deed, the presumption of undue influence arising from advantage necessarily conflicts with the common law presumption of title, codified in [Evid. Code, § 662](#).

[CA\(9\)](#) (9)

Real Property § 4—Incidents of Ownership—Presumption That Owner of Legal Title is Owner of Full Beneficial Title: Property § 5—Title and Ownership.

--The presumption in [Evid. Code, § 662](#) (owner of legal title to property presumed to be owner of full beneficial title), is based on promoting the public policy in favor of the stability of titles to property ([Evid. Code, § 605](#)). Allegations that legal title does not represent beneficial ownership have been historically disfavored because society and the courts have a reluctance to tamper with duly executed instruments and documents of legal title. [Evid. Code, § 662](#), is concerned primarily with the stability of titles, an important legal concept that protects parties to a real property transaction, as well as creditors.

[CA\(10\)](#) (10)

Husband and Wife § 20—Property—Transactions

Between Spouses—Transmutations—As Affecting Third Party Rights—Protection Against Fraud.

--The law regarding transmutations makes reference to third party rights and affords protections against fraud in transmutations as follows: (1) a transmutation is subject to the laws governing fraudulent transfers (Civ. Code, former [§ 5110.720](#), now [Fam. Code, § 851](#)); and (2) a transmutation of real property is not effective with respect to third parties that do not have notice of the transmutation unless it is recorded (Civ. Code, former [§ 5110.730, subd. \(b\)](#), now [Fam. Code, § 852, subd. \(b\)](#)). Concerns of stability of title are lessened in characterization problems arising from transmutations that do not involve third parties or the rights of creditors.

[CA\(11\)](#) (11)

Husband and Wife § 18—Property—Transactions Between Spouses—Codified Standard of Confidential Relations.

--The concerns of Civ. Code, former § 5103, now [Fam. Code, § 721](#) (transactions between spouses; fiduciary relationship), are with relational issues such as unfairness and advantage. The statute is one of mutual accountability, requiring each spouse to show that his or her conduct in connection with an interpersonal transaction conformed to the legal standard of confidential relations codified in Civ. Code, former § 5103, *subd. (b)*, now [Fam. Code, § 721, subd. \(b\)](#).

[CA\(12\)](#) (12)

Husband and Wife § 23—Property—Transactions Between Spouses—Undue Influence—Presumption—Dispelling Presumption.

--The presumption of undue influence that arises when one spouse obtains an advantage over another in a community property transaction (Civ. Code, former § 5103, *subd. (b)*, now [Fam. Code, § 721](#),

[subd. \(b\)](#)) continues until it is dispelled. The burden of dispelling the presumption rests on the spouse advantaged by the transaction.

Counsel: Sharron Voorhees for Appellant.

Kim W. Cheatum as Amicus Curiae on behalf of Appellant.

Stephen E. Hartwell for Respondent.

Judges: Opinion by Haller, J., with Froehlich, Acting P. J., and Nares, J., concurring.

Opinion by: HALLER, J.

Opinion

[*282] [**676] HALLER, J.

This case presents the issue of whether [Evidence Code](#) ¹ [section 662](#), the common law presumption in favor of title, and its concomitant requirement of clear and convincing evidence to rebut the presumption, properly apply in family law proceedings when there is a conflict with the presumption that a husband and wife occupy a confidential relationship in their transactions with each other.

[***2] Judy A. Haines appeals a portion of a judgment of dissolution entered November 1, 1990, granting Clarence Haines reimbursement for his separate property contribution to the acquisition of the couple's residence.

Judy's major assignment of error is the trial court improperly applied [section 662](#), holding her to the burden of clear and convincing evidence in her attempts to void a 1987 quitclaim deed in which she deeded her interests in the residence to Clarence. Clarence later conveyed the residence to [*283] himself and Judy as joint tenants, thereby restoring the status of the residence to community

property, which was the status of the property at the time of the dissolution. In the dissolution proceeding, the trial court awarded Clarence reimbursement for this separate property contribution. Among other things, Judy argues preponderance of the evidence, a burden she successfully met below, is the appropriate burden of proof in proceedings under the former Family Law Act. ²

[***3] [**677] Amicus curiae presents two arguments. First, it questions whether [section 662](#) ever applies in marital disputes. Alternatively, it argues that if [section 662](#) does apply, it conflicts with--and must yield to--the presumption arising from the requirement that a husband and wife occupy a confidential relationship in their transactions with each other (see former *Civ. Code*, § 5103 [[Fam. Code](#), § 721]). Finding merit in this latter argument, we conclude [section 662](#) should not apply in marital proceedings when such a conflict appears.

FACTS

Judy and Clarence married on November 13, 1981. They had been married seven years and four months when they separated on March 6, 1989. During the marriage, the family residence was at 7613 Teebird Lane in San Diego.

Clarence purchased the Teebird Lane residence in May 1978, while married to his previous wife, Elsa. Elsa's mother supplied the down payment of approximately \$31,650; in return, she was to live in the house with the couple and would be repaid eventually. Title was taken in the name of Clarence

² The former Family Law Act (former [Civ. Code](#), § 4000 *et seq.*) was enacted in 1969, operative January 1, 1970. (Stats. 1969, ch. 1608, § 8, p. 3314.) Effective January 1, 1994, the Civil Code provisions were repealed and reenacted in various sections in the new Family Code. (Stats. 1992, ch. 162, § 10; Stats. 1993, chs. 219, 876.)

Since the parties briefed this case in 1993 with references to then existing Civil Code sections, we shall quote the former Civil Code sections as well, with references, where it is applicable, to the Family Code [in brackets], where it is applicable.

¹ All subsequent statutory references are to the [Evidence Code](#) unless otherwise specified.

and Elsa. Thereafter, Clarence and Elsa were divorced; as part of the divorce, Clarence received sole title to the Teebird Lane [***4] residence. This transfer was evidenced by a quitclaim deed signed by Elsa on October 9, 1980, and recorded on October 27, 1980.

After Elsa moved out of the Teebird Lane residence, Elsa's mother continued living there, along with Clarence and her two grandchildren, for nine months until November 28, 1981. This was two weeks after Judy moved into the residence following her marriage to Clarence. In 1982, Elsa's mother filed suit against Clarence to recover her down payment. The lawsuit [*284] was settled on November 1, 1983; Clarence agreed to pay Elsa's mother \$31,500.

On November 25, 1983, Clarence conveyed the Teebird Lane residence by quitclaim deed to himself and Judy as joint tenants. The conveyance was necessary to qualify for a refinance loan, the proceeds of which were used to pay off the settlement of the lawsuit by Elsa's mother. Trial exhibit G showed that the new loan and costs totaled \$80,210; \$31,500 of that amount was paid to Elsa's mother, \$45,982.10 was paid to Downey Savings, the existing lender, and the remaining amount was attributed to costs associated with the refinance. Judy testified that after the 1983 refinance, she understood that she and Clarence [***5] both owned the house.

In October 1987, the marriage of Judy and Clarence began deteriorating. There was mounting tension between Judy and Clarence, physical confrontations and talk of separation and divorce. During this period, Clarence asked Judy to sign a quitclaim deed returning ownership of the Teebird Lane residence to him. According to Judy, the conversations concerning the signing of the deed were highly emotional, with Clarence "ranting and raving." She also testified that Clarence pulled her hair and threw water in her face during one episode. Clarence denied this episode took place. He characterized the discussions about the quitclaim

deed as calm and businesslike.

On October 21, 1987, Judy asked Clarence to co-sign a loan to purchase an automobile. There was one car in the household, which was under Clarence's control, and if Judy was to be on her own, she needed a car for herself. The day before Judy had sought a car loan at the credit union and was told she needed a cosignatory. Clarence agreed to co-sign the loan when Judy made the request. They made arrangements to go to the credit union the next day.

On October 22, 1987, while en route to the credit union, Clarence [***6] stopped at a check cashing store that had a notary service. Once inside the store, Clarence told Judy they had to take care of the quitclaim deed; when Judy protested, Clarence, in effect, told her that if she did not sign the quitclaim deed he would not co-sign the automobile loan. Judy signed the quitclaim deed, which conveyed her interest in the Teebird Lane residence to Clarence as his sole and separate property, because she believed she had no alternative.

Judy testified she did not know Clarence was going to stop at the check cashing store [**678] and demand she sign the quitclaim deed; she thought it was unfair and told him so.

[*285] Clarence testified that on October 22 he and Judy planned to take care of two things: the quitclaim deed, and the automobile loan. The decision to stop at the check cashing store to notarize the quitclaim deed was a completely spontaneous decision, Clarence testified. Clarence also testified that once he produced the quitclaim deed inside the check cashing store, Judy voluntarily signed the deed without any discussion; he denied he conditioned his co-signing the automobile loan on Judy signing the quitclaim deed.

Judy and Clarence [***7] then proceeded to the credit union, where they signed the application for the automobile loan. Shortly thereafter, Judy moved out of the Teebird Lane residence and lived with

two friends in a rented house for two days. On October 31, 1987, Judy moved back to the Teebird Lane residence because Clarence asked her to return. The night before, Judy testified, she and Clarence had gone to dinner at a restaurant where he had apologized for making her sign the quitclaim deed and said he would put her name back on the deed. Clarence denied telling her at that dinner that he would restore her ownership interest in the Teebird Lane residence.

On April 28, 1988, Clarence signed a grant deed conveying the house back to himself and Judy as joint tenants. At that time, Clarence and Judy were contemplating purchasing property in Missouri and applied for a loan.

Judy and Clarence separated on March 6, 1989. Judy filed a petition for dissolution of marriage on March 21, 1989. The matter was tried on March 12, 13 and 14, 1990.

The trial court found the Teebird Lane residence was community property by virtue of the April 28, 1988, deed. However, the court also found that at the time Clarence deeded *****8** the residence to Judy and himself, it was his separate property by virtue of the October 22, 1987, quitclaim deed, and therefore, pursuant to then [Civil Code section 4800.2](#),³ Clarence was entitled to reimbursement for his separate property contribution to the acquisition of **[*286]** community property. The trial court stated on the record that it found Judy

had not met the clear and convincing burden of proof under [section 662](#) in her attempts under theories of undue influence, duress, deceit and constructive fraud to set aside the 1987 quitclaim deed. However, the trial court stated Judy had met the lesser evidentiary standard of preponderance of the evidence regarding her claims.

*****9** Based upon appraisal values submitted by the parties, the trial court found the value of the property was \$165,000 at the time Clarence conveyed the property back to himself and Judy⁴ and was \$201,000 on the date of the trial. The trial court further found the community property interest in the property at trial to be approximately \$36,000 (\$201,000 minus \$165,000). The trial court awarded *****679** Judy one-half of that amount or \$18,000 as her share of the community property interest. The amount of the debt on the property on the date of trial was \$80,392.49. The trial court awarded as Clarence's reimbursement all equity in the property except the amount of \$36,000. Since the amount of the debt on the property on the date of trial was \$80,392.49, the value of Clarence's reimbursement award was approximately \$85,000 (\$201,000 minus \$36,000 minus \$80,392.49).

*****10** DISCUSSION

I. Introductory Overview

CA(1a) (1a) This appeal arises from the effects of the 1987 quitclaim deed by which Judy deeded her interests in the Teebird Lane residence to Clarence.

³ Former [Civil Code section 4800.2](#) [[Fam. Code, § 2640](#)] provided: "In the division of community property under this part unless a party has made a written waiver of the right to reimbursement or signed a writing that has the effect of a waiver, the party shall be reimbursed for his or her contributions to the acquisition of the property to the extent the party traces the contributions to a separate property source. The amount reimbursed shall be without interest or adjustment for change in monetary values and shall not exceed the net value of the property at the time of the division. As used in this section, 'contributions to the acquisition of the property' include downpayments, payments for improvements, and payments that reduce the principal of a loan used to finance the purchase or improvement of the property but do not include payments of interest on the loan or payments made for maintenance, insurance, or taxation of the property."

⁴ We have augmented the record on appeal to include exhibit A and its addendum, which lists \$165,000 as the appraised value of the residence on April 28, 1988. (See Cal. Rules of Court, rule 12(a).) We have made this augmentation to resolve an ambiguity in the record on appeal and an apparent error on page 5 of attachment 4f to the judgment, which states: "The value of the residence and real property in October 1987 was \$165,000." The reporter's transcript indicates the trial court used the \$165,000 figure to refer to the appraised value when Clarence conveyed "the property into joint tenancy," which apparently refers to the reconveyance deed. However, the reporter's transcript also indicates the trial court said this occurred in October 1987, which, of course, was when Judy signed the quitclaim deed making the residence Clarence's sole property.

For the parties, the key question was whether, as a result of the quitclaim deed, the residence became Clarence's separate property and thereby justified a reimbursement award under former [Civil Code section 4800.2](#) ([Fam. Code, § 2640](#)). In short, it is a classification or characterization of property issue--whether the residence was community property or separate property after the 1987 deed was executed.

[*287] The quitclaim deed of course was not executed in a vacuum but rather between two spouses, and, consequently, must be considered in the legal context of the marital relationship.⁵

On one hand, we are presented with [HN1](#) an executed quitclaim deed that raises the common **[***11]** law presumption of title. On the other hand, we are presented with a factual scenario in which Judy received Clarence's co-signature in exchange for her 50 percent interest in a residence. [HN2](#) Under California community property law, because spouses occupy confidential relations with each other, when an interspousal transaction advantages one spouse over the other, a presumption of undue influence arises. (See former *Civ. Code*, § 5103, *subd. (b)* [[Fam. Code, § 721, subd. \(b\)](#)]; [Estate of Cover \(1922\) 188 Cal. 133, 143-144 \[204 P. 583\]](#).)

Clearly, under the facts of this case, the common law presumption of title and the community property presumption of undue influence are in conflict. Our task is to resolve that conflict.

As we shall explain below, we conclude [HN3](#) the public policy of the state, as enunciated by statute and case law interpretation, demands that where there is a conflict between the common law presumption in favor of title as codified in [section 662](#) and the presumption that a husband and wife must deal fairly with each other, application of [section 662](#) is improper. In reaching this conclusion we have considered a number of interrelated

concepts that are basic to **[***12]** modern community property law and must be given primacy in the context of a marital proceeding.

II. *The Unique Status of Marriage*

[CA\(2\) \(2\) HN4](#) It is the public policy of this state "to foster and promote the institution of marriage." ([Marvin v. Marvin \(1976\) 18 Cal. 3d 660, 683 \[134 Cal. Rptr. 815, 557 P.2d 106\]](#).) "[T]he structure of society itself largely depends upon the institution of marriage" ([Id. at p. 684](#).)

Recently, the Court of Appeal in [Borelli v. Brusseau \(1993\) 12 Cal. App. 4th 647, 651 \[16 Cal. Rptr. 2d 16\]](#) observed: [HN5](#) " 'It is fundamental that a marriage contract differs from other contractual relations in that there exists a definite and vital public interest in reference to the marriage relation. . . .' [Citation.]

[HN6](#) " 'The laws relating to marriage and divorce [citations] have been enacted because of the profound concern of our organized society for the dignity and **[*288]** stability of the marriage relationship. This concern relates primarily to the status of the parties as husband and wife. The concern of society as to the property rights of the parties is secondary and incidental **[**680]** to its concern as to their status.' [Citation.] [HN7](#)

[*13]** " 'Marriage is a matter of public concern. The public, through the state, has interest in both its formation and dissolution. . . . The regulation of marriage and divorce is solely within the province of the Legislature except as the same might be restricted by the Constitution.' [Citation.]"

III. *California Is a Community Property State*

A. *Historical Background*

[HN8](#) California's status as a community property state dates back to the adoption of the state's first Constitution in 1849, when the constitutional convention opted to perpetuate the community property system of Spain and Mexico in the legal system of the new state. (See *Cal. Const.*, former

⁵Significantly, this is not a case involving a spouse's dealing with a third party nor one that is primarily concerned with stability of titles.

art. XI, § 14 (1849) ⁶ ; see also [Packard v. Arellanes \(1861\) 17 Cal. 525, 537.](#))

HN9 The Spanish civil law established two categories [***14] of marital property--community property and separate property--in recognition of the equality between husband and wife, based on the separate identity of each and the contribution each made to the success of the marriage. (See de Funiak & Vaughn, *Principles of Community Property* (Univ. Ariz. Press ed. 1971) § 11.1, p. 24.) "During the marriage, the traditional community property system regards the husband as manager of the community for the benefit of the marital partnership, and each spouse manages his or her own separate property, with community property being the preferred form of ownership." (Prager, *The Persistence of Separate Property Concepts in California's Community Property System, 1849-1975* (1977) [24 UCLA L.Rev. 1, 6-7](#), fns. omitted.)

Although California had opted for the community property system, the 1850 Legislature enacted implementing legislation that established a marital property law that comported with classic Spanish community property principles in some respects, but differed in others. (Prager, *The Persistence of Separate Property Concepts in California's Community Property System, 1849-1975*, *op. cit. supra*, at pp. 25-33.) For example, contrary [***15] to traditional concepts, under early California law, the husband was given the right to [*289] manage and control not only the community property, but also the wife's separate property. (*Op. cit. supra*, at pp. 26-27.)

Likewise when the 1850 Legislature adopted the common law of England as the rule of decision in California courts, the action critically affected the development of California's community property system. (See McGinty, *Common Law and Community Property: Origins of the California*

System (1976) 51 State Bar J. 478, 537; presently codified at [Civ. Code, § 22.2.](#)) **HN10** Under English common law, the wife's identity is merged into that of the husband ([Peters v. Peters \(1909\) 156 Cal. 32, 34 \[103 P. 219\]](#), overruled on another ground in [Self v. Self \(1962\) 58 Cal. 2d 683, 684 \[26 Cal. Rptr. 97, 376 P.2d 65\]](#)), whereas under Spanish civil law, the husband and wife enjoy separate legal entities ([Packard v. Arellanes, supra, 17 Cal. at p. 537.](#))

With this background, it is not surprising that one modern commentator has argued that California was not the true community property jurisdiction it had previously purported to be until 1973, when the Legislature [***16] enacted significant amendments to the law that in essence embodied the principle of management of the community property by either spouse, irrespective of which one was responsible for its acquisition. (See generally, Prager, *The Persistence of Separate Property Concepts in California's Community Property System, op. cit. supra.*) Put another way: "Accordingly, the community property system mandated by the state constitution has been modified by statutory enactments of the Legislature and interpreted by courts using common-law concepts that are essentially repugnant to, and inconsistent with, basic community property principles. Nevertheless, the influence of common-law principles on the community property system has gradually declined in California. [**681] The common-law view that the husband should bear responsibility for all decisions involving marital property has lost out to the community property view of marriage as a partnership. The enactment of the Family Law Act in 1969 and subsequent amendments to the provisions affecting community property during marriage, as continued in the Family Code, have raised the status of the wife to a position of equal management and [***17] control responsibility with her husband." (1 Cal. Family Law Practice and Procedure (2d ed. 1994) § 20.02, p. 20-7, fns. omitted.)

B. *Basic Community Property Principles and*

⁶ The constitutional provision primarily, if not exclusively, addressed a married woman's right to separate property. For the current version of the provision, see [California Constitution, article I, section 21.](#)

Presumptions

CA(3) (3) HN11 A basic rule of a community property system is that all property acquired during marriage is community property unless it comes within a specific exception; the major exceptions to the basic community property rule are those relating to separate property. (See 22 Cal. Law Revision Com. Rep. (1992) pp. 134-135.) Thus, there is a general presumption that property **[*290]** acquired during marriage by either spouse other than by gift or inheritance is community property unless traceable to a separate property source. (See former [Civ. Code, § 5110](#) [[Fam. Code, § 760](#)].⁷) This is a rebuttable presumption affecting the burden of proof; hence it can be overcome by the party contesting community property status. (*In re Marriage of Mix* (1975) 14 Cal. 3d 604, 611-612 [122 Cal. Rptr. 79, 536 P.2d 479].) Since this general community property presumption is not a title presumption, virtually any credible evidence may be used to overcome it, including tracing the asset to a separate property **[***18]** source, showing an agreement or clear understanding between parties regarding ownership status and presenting evidence the item was acquired as a gift. (Hogoboom & King, Cal. Practice Guide: Family Law 1 (The Rutter Group 1994) § 8.363, p. 8-90.)

CA(4) (4) HN12 The former Family Law Act also contained another community property presumption for the purpose of dividing property on dissolution of marriage or legal separation. Former [Civil Code section 4800.1](#) [[Fam. Code, § 2581](#)] provided in pertinent part: "(b) For the purpose of division of property upon dissolution of marriage or legal separation, property acquired by the parties during marriage in joint form, including property held in tenancy in common, joint tenancy, tenancy by the entirety, or as community property is presumed to be community property. This presumption is a

presumption affecting **[***19]** the burden of proof and may be rebutted by either of the following:

"(1) A clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community property.

"(2) Proof that the parties have made a written agreement that the property is separate property." Thus, **HN13** former [Civil Code section 4800.1](#) established a presumption that property acquired by parties during marriage in *joint title form* is community property for property division purposes upon dissolution or separation. This "presumption affecting the burden of proof" (former [Civ. Code, § 4800.1](#) [[Fam. Code, § 2581](#)]) meant the party contesting community property status bore the burden of producing sufficient rebuttal evidence showing different ownership interests. (See § 606.) The burden of proof for the party contesting community property status is by a preponderance of the evidence. (*In re Marriage of Neal* (1984) 153 Cal. App. 3d 117 [200 Cal. Rptr. 341], disapproved on other grounds in *In re Marriage of Buol* (1985) 39 Cal. 3d 751, 758, fn. 8 [218 Cal. Rptr. 31, 705 P.2d 354].) Former [Civil Code section 4800.1](#) limited the **[***20]** rebuttal evidence to written evidence, such as a **[*291]** deed, thereby effectively creating a statute of frauds. (Hogoboom & King, Cal. Practice Guide: Family Law 1, *op. cit. supra*, § 8:425 at p. 8-104.) Neither tracing nor oral or implied agreements sufficed to rebut the presumption under former [Civil Code section 4800.1](#). The same holds true under [Family Code section 2581](#).

[682]** C. Characterization Principles

CA(5) (5) HN14 Characterization of property, for the purpose of community property law, refers to the process of classifying property as separate, community, or quasi-community. Characterization must take place in order to determine the rights and liabilities of the parties with respect to a particular asset or obligation and is an integral part of the division of property on marital dissolution.

⁷ Former [Civil Code section 5110](#) also contained other presumptions relating to property acquired by a wife that are not pertinent to this appeal. (See now [Fam. Code, § 803](#).)

CA(6) (6) HN15 Generally, factors determinative of whether property is separate or community are the time of the property's acquisition; operation of various presumptions, particularly those concerning the form of title; and whether the spouses have transmuted or converted the property from separate to community or vice versa (see Pt. III. D., *post*).

HN16 Perhaps the most basic characterization [***21] factor is the time when property is acquired in relation to the parties' marital status. (See *In re Marriage of Buol*, *supra*, 39 Cal. 3d at p. 757 ["'The status of property as community or separate is normally determined at the time of its acquisition.'"].) This is particularly true because of the general presumption that property acquired during marriage by either husband or wife or both while domiciled in California is community property, except as otherwise provided by statute. (Former *Civ. Code*, § 5110 [*Fam. Code*, § 760].) This rule can be altered by agreement of the spouses. For example, spouses can indicate their intent with respect to the character of the property initially by specifying the form of title in which it is held, or spouses can later transmute the character of the property as between each other.

HN17 Where property status cannot otherwise be proved, characterization is determined by applicable presumptions. One category of presumptions includes those presumptions arising from the form of title, such as the joint title form presumption codified in former *Civil Code* section 4800.1 (*Fam. Code*, § 2581), and the general common law presumption in favor of [***22] title, codified in *section 662*. Therefore, absent a contrary statute, and unless ownership interests are otherwise established by sufficient proof, record title is usually determinative of characterization. (*In re Marriage of Lucas* (1980) 27 Cal. 3d 808, 813 [166 Cal. Rptr. 853, 614 P.2d 285].)

[*292] **CA(1b) (1b)** Here, by virtue of the 1987 quitclaim deed, Clarence acquired the residence in his sole title. This of course raised the common law

presumption that title to property reflects its actual ownership. (See § 662; *In re Marriage of Lucas*, *supra*, 27 Cal. 3d at p. 813.) Thus, Clarence's acquisition of the residence in sole title during marriage presented a conflict between presumptions: the common law form of title presumption versus the presumption that property acquired during marriage is presumed to be community property.

One text and practice guide on family law speculates, on the basis of modern case law as well as earlier decisions, that **HN18** in general when these two presumptions conflict in a spousal property dispute, the statutory community property presumption will predominate and the property will be characterized as community. (1 Cal. Family Law Practice [***23] and Procedure, *op. cit. supra*, § 20.12[2][a] at pp. 20-35 to 20-36.) As authority, the text cites *In re Marriage of Grinius* (1985) 166 Cal. App. 3d 1179 [212 Cal. Rptr. 803], where the husband during marriage took sole title to property by virtue of a premarital agreement. This court held that when the premarital agreement lapsed the general community property presumption was reinstated and the presumption "arising from the form of title [was] without force." (*Id.* at pp. 1189-1190.) The text also cites *Waldeck v. Hedden* (1928) 89 Cal. App. 485, 490 [265 P. 340] (husband was presumed to have taken property as community property when acquired during marriage with community funds by ordinary grant deed) and *Thomasset v. Thomasset* (1953) 122 Cal. App. 2d 116, 123 [264 P.2d 626] (property acquired during marriage and taken in husband's name was presumed community), disapproved on another ground in *See v. See* (1966) 64 Cal. 2d 778, 786 [51 Cal. Rptr. 888, 415 P.2d 776].

This case is somewhat distinguishable from the cases cited above because here the property acquisition involved a conveyance between [**683] the spouses by quitclaim deed. [***24] To that extent, we are dealing with a situation similar to that involved in *In re Marriage of Broderick* (1989) 209 Cal. App. 3d 489 [257 Cal.

[Rptr. 397](#)], where the Court of Appeal reached a different result than ours. In *Broderick*, the Court of Appeal held that where community property interests are conveyed between spouses by quitclaim deed, title is presumptively held as shown in the deed. ([Id. at pp. 496-497](#).) *Broderick*, however, is not controlling here, for Mrs. Broderick's attempt to set aside the quitclaim deed on the basis of duress was not supported by substantial evidence; indeed the case does not even address the issue of the evidentiary standard. ([Id. at p. 499](#).) Here, the trial court found Judy proved by a preponderance of the evidence her claim of duress and other contract defenses to the deed; she lost because she did not prove them by clear and convincing evidence.

[*293] D. Transmutation Rules

[CA\(7\) \(7\)](#) [CA\(1c\) \(1c\)](#) The manner in which Clarence acquired the residence in 1987 also is significant because it was [HN19](#) a transmutation--an interspousal transaction or agreement which works a change in the character of the property--and special rules govern transmutations. **[***25]** (See generally, [Fam. Code, § 850 et seq.](#))

[HN20](#) The validity of a transmutation is dependent on a number of factors. Among these are (1) transmutations made on or after January 1, 1985,⁸ must be in writing and contain an "express declaration" by the spouse whose interest in the property is adversely affected (former [Civ. Code, § 5110.730, subd. \(a\)](#) [[Fam. Code, § 852, subd. \(a\)](#)]); see also [Estate of MacDonald \(1990\) 51 Cal. 3d 262, 272-273 \[272 Cal. Rptr. 153, 794 P.2d 911\]](#)) and (2) spouses are subject to special standards of

disclosure towards each other with respect to property, based on their confidential and fiduciary relationship (former *Civ. Code*, § 5103, [5125](#) [[Fam. Code, § 721, 1100](#)]).

[*26] [CA\(8\) \(8\)](#) [HN21](#)**

Statutorily, spouses have the right to enter into transactions with each other as well as other persons. (Former *Civ. Code*, § 5103, *subd. (a)* [[Fam. Code, § 721, subd. \(a\)](#)].) However, that same statute also states that interspousal transactions must comport with the rules controlling the actions of persons occupying confidential relations with each other. (Former *Civ. Code*, § 5103, *subd. (b)* [[Fam. Code, § 721, subd. \(b\)](#)].) Thus, the competence of spouses to engage in transactions with each other is subject to the circumstances being pleasing to the fiduciary standard. ([Locke Paddon v. Locke Paddon \(1924\) 194 Cal. 73, 80 \[227 P. 715\]](#); see also Recommendation Relating to Marital Property Presumptions and Transmutations (Sept. 1983) 17 Cal. Law Revision Com. Rep. (1984), 205, 224 [Spouses who transmute property "are subject to . . . the special rules that control the actions of persons occupying confidential relations with each other. See [*Civil Code*] Section 5103."].)

[HN22](#) When an interspousal transaction advantages one spouse, "[t]he law, from considerations of public policy, presumes such transactions to have been induced by undue influence." ([Brison v. Brison \[***27\] \(1888\) 75 Cal. 525, 529 \[17 P. 689\]](#).) "Courts of equity . . . view gifts and contracts which are made or **[*294]** take place between parties occupying confidential relations with a jealous eye." ([Payne v. Payne \(1909\) 12 Cal. App. 251, 254 \[107 P. 148\]](#) [setting aside of deed from enfeebled, elderly woman to daughter-in-law upheld on grounds of undue influence even though no proof of fraud or deceit].)

[HN23](#) Because transmutations must conform to the legal standard codified in former *Civil Code* section 5103, subdivision (b) ([Fam. Code, § 721, subd. \(b\)](#)), where the transmutation is evidenced by a

⁸Transmutations of property made before January 1, 1985, are still governed by the law that existed before that date. (See [Fam. Code, § 852, subd. \(e\)](#).) Under the former law, a transmutation could be made by written or oral agreement. No particular formalities were required for an effective transmutation except that the agreement be fair and based on full disclosure of relevant facts. ([Estate of Wilson \(1976\) 64 Cal. App. 3d 786, 798 \[134 Cal. Rptr. 749\]](#).) The mutual consent of the spouses constituted sufficient consideration to support the transmutation. (*Ibid.*)

deed as is the case here, the presumption of undue influence **[**684]** arising from advantage necessarily conflicts with the common law presumption of title, codified in [section 662](#).

IV. *Conflicting Presumptions*

A. [Section 662](#)--Promoting Stability of Title

[HN24](#) [Section 662](#) provides: "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof."

The Comment of the Law Revision Commission states: [HN25](#) "[Section 662](#) codifies a common law presumption recognized in the California **[***28]** cases. The presumption may be overcome only by clear and convincing proof. [Citing [Olson v. Olson \(1935\) 4 Cal. 2d 434, 437 \(49 P.2d 827\)](#); [Rench v. McMullen \(1947\) 82 Cal. App. 2d 872 \(187 P.2d 111\)](#)]." (7 Cal. Law Revision Com. Rep. (1965) pp. 111-112.) [CA\(9\)](#) (9) The presumption is based on promoting the public "policy . . . in favor of the stability of titles to property." (See [§ 605](#).) "Allegations . . . that legal title does not represent beneficial ownership have . . . been historically disfavored because society and the courts have a reluctance to tamper with duly executed instruments and documents of legal title." ([Weiner v. Fleischman \(1991\) 54 Cal. 3d 476, 489 \[286 Cal. Rptr. 40, 816 P.2d 892\]](#).)⁹

[*29]** [HN26](#) [Section 662](#) is concerned primarily with the stability of titles, which obviously is an important legal concept that protects parties to a real property transaction, as well as creditors. Here,

⁹We note there is only a limited range of issues for which a party is held to the high evidentiary standard of clear and convincing evidence. (2 Strong, McCormick on Evidence (4th ed. 1992) § 340, p. 441; see also 1 Witkin, Cal. Evidence (3d ed. 1986) § 161, pp. 138-139.) Included in this limited range are claims to change the ostensible character of a duly executed deed that purports to convey property. (See [Sheehan v. Sullivan \(1899\) 126 Cal. 189, 193 \[58 P. 543\]](#) [citing "the security of titles and sound public policy" as among the reasons for the high evidentiary standard]; [Spaulding v. Jones \(1953\) 117 Cal. App. 2d 541, 545 \[256 P.2d 637\]](#).)

however, our focus is on characterization of marital property as effected by a transmutation by quitclaim deed. The issue is how property should be divided between spouses **[*295]** upon dissolution. This case does not involve third parties nor does it place at risk the rights of a creditor. [CA\(10\)](#) (10) In any event, we note [HN27](#) the law regarding transmutations makes reference to third party rights and affords protections against fraud in transmutations as follows: (1) a transmutation is subject to the laws governing fraudulent transfers (former [Civ. Code, § 5110.720 \[Fam. Code, § 851\]](#)); and (2) a transmutation of real property is not effective with respect to third parties that do not have notice of the transmutation unless it is recorded (former [Civ. Code, § 5110.730, subd. \(b\) \[Fam. Code, § 852, subd. \(b\)\]](#)). Thus, concerns of stability of title are lessened in characterization problems arising from transmutations that do not involve third parties or the rights of creditors.

B. Former Civil **[***30]** Code Section 5103--Mutual Accountability for Spouses

[CA\(1d\)](#) (1d) At the time of trial, [HN28](#) former Civil Code section 5103, subdivision (b), provided in pertinent part that "in transactions between themselves, a husband and wife are subject to the general rules which control the actions of persons occupying confidential relations with each other."

¹⁰ As clarified by later **[**685]** legislation (see fn.

¹⁰The original version of former Civil Code section 5103 was contained in Civil Code section 158, which was enacted in 1872. Civil Code section 158 was repealed in 1969 and replaced by Civil Code section 5103. (Stats. 1969, ch. 1608, § 3, p. 3313 & § 8, p. 3338.) Civil Code section 5103 was amended in 1984 (Stats. 1984, ch. 892, § 2, p. 2986), in 1986 (Stats. 1986, ch. 820, § 13, p. 2735) and in 1991 (Stats. 1991, ch. 1026, § 2) before it was repealed in 1992 and replaced with [Family Code section 721](#), effective January 1, 1994 (Stats. 1992, ch. 162, § 10, operative Jan. 1, 1994).

The version of former Civil Code section 5103, subdivision (b), in effect at the time of trial read as follows: "(b) Except as provided in [Sections 143, 144, and 146 of the Probate Code](#), in transactions between themselves, a husband and wife are subject to the general rules which control the actions of persons occupying confidential relations with each other." (Stats. 1986, ch. 820, § 13, p. 2735.)

10, *ante*), "[t]his confidential spousal relationship imposes a duty of the highest good faith and fair dealing on each spouse, and [*296] neither shall take any unfair advantage of the other." (See now [Fam. Code, § 721, subd. \(b\).](#))

[***31] In [Estate of Cover, supra, 188 Cal. at pages 143](#) to 144, the Supreme Court observed: "It is the rule in this state that [HN29](#) transactions between husband and wife shall be subjected to the general rule which controls the actions of persons occupying confidential relations with each other, . . . which, when applied to the relation of husband and wife, has been interpreted to mean that 'in every transaction between them by which the superior party obtains a possible benefit, equity raises a presumption against its validity and casts upon that party the burden of proving affirmatively its compliance with equitable requisites and of thereby overcoming the presumption.' [Citations.]"

In [In re Marriage of Baltins \(1989\) 212 Cal. App. 3d 66, 88 \[260 Cal. Rptr. 403\]](#), the Court of Appeal observed: [HN30](#) "The marriage relationship alone will not support a presumption of undue influence by one spouse over the other where the transaction

between them is shown to be fair. But, where one spouse admittedly secures an advantage over the other, the confidential relationship will bring into operation a presumption of the use and abuse of that relationship by the spouse obtaining the advantage." [***32]

Here, where Judy transferred her interest in real property to Clarence for his cosignature on an automobile loan--clearly inadequate consideration for execution of the quitclaim deed--Clarence properly should have borne the burden of rebutting the presumption of undue influence before the 1987 quitclaim deed can be confirmed. ([Estate of Cover, supra, 188 Cal. at p. 143](#); [Barney v. Fye \(1957\) 156 Cal. App. 2d 103, 107 \[319 P.2d 29\]](#).) To demonstrate the advantage was not gained in violation of the confidential relation between marital partners, Clarence's burden properly should have been to prove the quitclaim deed "was freely and voluntarily made, and with a full knowledge of all the facts, and with a complete understanding of the effect of the transfer." ([Brown v. Canadian Indus. Alcohol Co. \(1930\) 209 Cal. 596, 598 \[289 P. 613\]](#); [In re Marriage of Baltins, supra, 212 Cal. App. 3d at p. 88.](#))

As a result of the 1991 amendment, subdivision (b) of former *Civil Code section 5103* read as follows: "(b) Except as provided in [Sections 143, 144, 146, and 16040 of the Probate Code](#), in transactions between themselves, a husband and wife are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. This confidential relationship is a fiduciary relationship subject to the same rights and duties of nonmarital business partners, as provided in [Sections 15019, 15020, 15021, and 15022 of the Corporations Code](#), including the following:" (Stats. 1991, ch. 1026, § 3.)

In an uncoded section of the 1991 legislation, the Legislature expressed the following intent: "The Legislature finds and declares that it is the public policy of this state that marriage is an equal partnership and that spouses occupy a confidential and fiduciary relationship with each other, whereby each spouse places trust and confidence in the integrity, honesty and fairness of the other spouse. Therefore by this act, the Legislature intends to *clarify* the management standards controlling [Sections 5103 and 5125 of the Civil Code](#)." (Stats. 1991, ch. 1026, § 1, italics added.)

[CA\(11\)](#) (11) The concerns of former *Civil Code section 5103* ([Fam. Code, § 721](#)) are with relational issues such as unfairness and advantage. In a sense, [HN31](#) the statute is one of mutual accountability, requiring each spouse to show his or her conduct in connection with an interspousal [***33] transaction conformed to the legal standard codified in former *Civil Code section 5103, subdivision (b)* ([Fam. Code, § 721, subd. \(b\)](#)).

C. The Conflict Between Presumptions in This Case

[CA\(1e\)](#) (1e) We are dealing here with two rebuttable presumptions that under the facts of this case are in irreconcilable conflict. [HN32](#) "A presumption is an [*297] assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action." (§ 600, subd. (a).) The trier of fact is

required to assume the existence of the presumed fact "unless and until evidence is introduced which would support a finding **[**686]** of its nonexistence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption." (§ 604.)

HN33 [Section 662](#) establishes a rebuttable presumption in favor of title. As applied here, it placed the burden on Judy to prove by clear and convincing evidence ¹¹ that her contract defenses (see [Civ. Code, § 1567](#)) are valid and the 1987 quitclaim deed should be set aside.

[*34]** Under former *Civil Code* section 5103, subdivision (b), and related case law governing the duties of trustees, ¹² **HN34** a rebuttable presumption of undue influence arises when one spouse obtains an advantage over another in a community property transaction. Had the presumption been applied here, it would have placed the burden on Clarence to show the 1987 quitclaim transaction was *not* consummated in violation of his fiduciary duties. [CA\(12\) \(12\)](#) The presumption that the advantage was gained by the exercise of undue influence continues until it is dispelled. ([Matassa v. Matassa \(1948\) 87 Cal. App. 2d 206, 215 \[196 P.2d 599\]](#).) The burden of dispelling the presumption rests on the spouse advantaged by the transaction. ([Estate of Cover, supra, 188 Cal. at p. 143.](#))

CA(1f) (1f) Here, the outcome of the case was determined by the party who had the initial burden of producing evidence. Since the trial court applied [section 662](#), **[***35]** Judy was given the initial burden to rebut the presumption of title. She lost because she did not meet the clear and convincing burden of proof standard, although she met the

lesser evidentiary standard of preponderance of the evidence in her attempts to show the deed was procured through duress, constructive fraud, breach of fiduciary duty and other contract defenses. However, if Clarence had been given the initial burden to rebut the presumption that he gained an advantage in violation of the confidential relationship, he could not have met his burden of producing evidence--given the trial court's factual findings that Judy had established the contract defenses by a preponderance of evidence. ¹³ Hence, there would have been a different result had the presumption of former *Civil Code* section 5103 been applied.

[*36] [*298]** Because the trial court applied [section 662](#), Clarence won; relational issues such as unfairness and advantage were not considered as they would have been under former *Civil Code* section 5103.

V. Application of [Section 662](#) in Confidential Relations Cases

Here, the trial court expressly followed the mandate of [section 662](#), finding no reason why the statute should not apply to a family law proceeding. At the time of the trial, there were no published cases on whether [section 662](#) applied to family law disputes. ¹⁴

However, there were analogous published cases dealing with the application of the statute to cases involving parties sharing a confidential relationship. (See **[***37]** [Tannehill v. Finch](#)

¹¹In addition to being a presumption affecting the burden of producing evidence, [section 662](#) is a presumption affecting the burden of proof. (§ 601, 606.)

¹²See, e.g., [Rader v. Thrasher \(1962\) 57 Cal. 2d 244 \[18 Cal. Rptr. 736, 368 P.2d 360\]](#).

¹³We have reviewed Clarence's argument that the record is not clear that the trial court found Judy had proven undue influence and her related claims by a preponderance of the evidence. We reject this argument. The trial court stated on the record that if "the test were a preponderance of the evidence, . . . that burden had been carried by Mrs. Haines." The trial court's comments in this regard resolve any confusion on the issue.

¹⁴With the publication of [In re Marriage of Weaver \(1990\) 224 Cal. App. 3d 478 \[273 Cal. Rptr. 696\]](#), in which the Court of Appeal (Second Dist., Div. Three) held [section 662](#) applies to marital actions, there no longer is a vacuum of legal authority on this issue. We shall discuss *Weaver* in part VI., *post*.

(1986) 188 Cal. App. 3d 224 [232 Cal. Rptr. 749] (Tannehill); Toney v. Nolder (1985) 173 Cal. App. 3d 791 [219 Cal. Rptr. 497] (Toney).) Here, the trial court stated it was relying on Toney, supra, 173 Cal. App. 3d 791. In *Toney*, the Court of Appeal held section 662 properly applied to an alleged oral partnership agreement for the purchase of certain property; the fact the parties shared a confidential relationship created no exception to the statute's mandatory [**687] language. (173 Cal. App. 3d at pp. 794-796.)

Toney also was relied upon in Tannehill, supra, 188 Cal. App. 3d 224, where the Court of Appeal held section 662 should apply to a property dispute involving a man and woman who had lived together for six years. (See Marvin v. Marvin, supra, 18 Cal. 3d 660.) During this period, the man had acquired title to property in his own name; the woman claimed an interest in the property and had sued for breach of contract under *Marvin* when the man refused to divide the property with her. Relying on the *Toney* holding that there is no confidential relationship exception to section 662, the *Tannehill* [***38] court stated: "There is no significant difference between *Toney* and the case now before us: Plaintiff in *Toney* sought to establish a 50 percent interest in the property pursuant to an oral partnership agreement; *Tannehill* sought to establish a 50 percent interest in the property based on an implied *Marvin* agreement. In both actions, plaintiffs sought to establish a contractual agreement which, if proven, would rebut the presumption that the defendants, as owners of legal title, were also the full beneficial owners." (Tannehill, supra, 188 Cal. App. 3d at p. 228.)

[*299] However, what the plaintiffs in *Toney* and *Tannehill* "sought to establish" (188 Cal. App. 3d at p. 228) would have been presumed as a matter of law under principles of community property if the plaintiffs and defendants in those cases had been married. HN35 All property acquired by a married person during marriage is presumed to be community property. (See former Civ. Code, §

5110 [Fam. Code, § 760].)

Moreover, where HN36 between unmarried persons, the party claiming a confidential relation exists has the burden of proving it (Buchmayer v. Buchmayer (1945) 68 Cal. App. 2d 462, 467 [157 [***39] P.2d 9]), under former *Civil Code* section 5103, subdivision (b) (Fam. Code, § 721, subd. (b)), marital partners are parties to a confidential relation as a matter of law. Further, while marriage includes a confidential relationship, it encompasses much more. The trial court in essence equated Judy's and Clarence's relationship to that of the unmarried disputants in *Toney* who shared a confidential relationship based on their partnership status. In so relying on *Toney* to apply section 662, the trial court ignored the unique status of marriage and the unique nature of the marriage contract.

VI. Is "*In re Marriage of Weaver*" Controlling Here?

As pointed out in footnote 14, *ante*, there is now direct legal authority for application of section 662 in marital proceedings. (See In re Marriage of Weaver, supra, 224 Cal. App. 3d 478.) The question for us is whether it is controlling authority here.

In *Weaver*, the parties lived in a house that the wife and her parents had acquired in joint tenancy before she married. When her parents died during the marriage, the wife, as the surviving joint tenant, became the sole legal and record owner of the property. Subsequently, [***40] the wife and husband borrowed \$12,000 secured by a trust deed on the house. They both signed the note and the trust deed. At all times title rested solely in the wife's name. The husband contended the wife had transmuted her separate property interest to community property. By a preponderance of the evidence, the trial court found there had been an oral transmutation. The wife appealed, contending the presumption of section 662 applied and required the court to find clear and convincing evidence to rebut the title presumption in her favor.

The husband argued [section 662](#) had no application in marital disputes. The Court of Appeal disagreed with the husband, holding: "In a case such as this, where one spouse has acquired legal title to a parcel of real property under circumstances which make such acquisition separate property, we see no reason not to apply the higher evidentiary standard set out in [Evidence Code section 662](#). There is nothing in that statutory mandate which [*300] excludes marital actions from those cases involving a claimed dichotomy between the legal and beneficial interests to property." (*In re Marriage of Weaver, supra*, 224 Cal. App. 3d at pp. 486-487, [***41] [**688] fn. omitted.)

Relying on *Tannehill, supra*, 188 Cal. App. 3d 224, and *Toney, supra*, 173 Cal. App. 3d 791, which approved the use of [section 662](#) in nonmarital cases involving a confidential relationship, the *Weaver* court noted the parties in those cases "shared a confidential relationship, not unlike that shared by marital partners. (See Civ. Code, § 5103, subd. (b).)" (*In re Marriage of Weaver, supra*, 224 Cal. App. 3d at p. 486, fn. omitted.) The *Weaver* court also noted there is nothing in the language of [section 662](#) excluding "marital actions from those cases involving a claimed dichotomy between the legal and beneficial interests to property." (224 Cal. App. 3d at pp. 486-487.)

While we have no quarrel with the result in *Weaver*, we do not agree with the implied holding that [section 662](#) is applicable to marital proceedings regardless of any conflict with former *Civil Code* section 5103, subdivision (b) [*Fam. Code, § 721, subd. (b)*]. To that extent, we decline to follow *Weaver*, as we shall explain below.

First, we note *Weaver* is distinguishable. The *Weaver* court used [section 662](#) to protect the original character of [***42] the property from change rather than defend the character of the property after change. Also, the *Weaver* court did not rely on both sentences of [section 662](#), but rather only the second sentence concerning the elevated standard of proof. The *Weaver* court did not use the

rebuttable presumption contained in [section 662](#) to establish the wife's property was her separate property, but rather ruled it was her separate property because she owned it before marriage. (See former *Civ. Code, § 5107* [*Fam. Code, § 770, subd. (a)(1)*].) The *Weaver* court ruled the husband's alleged oral agreement transmuting wife's separate property to community property should be tested by the clear and convincing standard of proof of [section 662](#). In so doing, it placed the higher burden of proof on the marital party that sought to gain an advantage.

Second, we do not believe that the *Weaver* court thoroughly explored the ramifications of former *Civil Code* section 5103, subdivision (b)--perhaps because that case did not involve the overbearing allegations of undue influence, duress and constructive fraud present here. In effect, on the basis of the holdings in *Toney* and *Tannehill* that [***43] [section 662](#) applies to confidential relationships, the *Weaver* court held [section 662](#) should apply to marital actions because former *Civil Code* section 5103, subdivision (b), provided at the time: " 'in transactions between themselves, a husband and wife are subject to the general rules which control the actions of persons [*301] occupying confidential relations with each other.' " (*In re Marriage of Weaver, supra*, 224 Cal. App. 3d at p. 486, fn. 6.) However, as we have emphasized above, the marital relation is much more than a confidential relation between two unmarried partners.

VII. Conclusion

HN37 Where one spouse has taken advantage of another in an interspousal transaction, a presumption of undue influence arises under former *Civil Code* section 5103, subdivision (b) (*Fam. Code, § 721, subd. (b)*). However, this presumption, which the law provides to protect married persons, cannot come into play if [section 662](#) is applied because of the higher evidentiary standard of [section 662](#). Therefore, application of [section 662](#) in such situations can significantly

weaken protections the Legislature intended to provide for spouses who are taken advantage of in interspousal [***44] transactions. This cannot be in keeping with the intent of the Legislature, which conditioned the power of spouses to transact with each other on their compliance with the fiduciary standard. (See former *Civ. Code*, § 5103, [*Fam. Code*, § 721].) As amicus curiae points out, "[w]henever an interspousal transaction is challenged, it should be analyzed under the same statute which gives spouses the conditional authority to transact with each other" (See former *Civ. Code*, § 5103 [*Fam. Code*, § 721].) Application of [section 662](#) would preclude this; in effect, it would abrogate the protections afforded to married persons under former *Civil Code* section 5103, subdivision (b) ([Fam. Code](#), § 721, subd. (b)).

CA(1g) (1g) Finally, we note that [HN38](#) where two presumptions are in conflict, the more specific presumption will control over the more general [**689] one. (See [Rader v. Thrasher, supra](#), 57 *Cal. 2d* at p. 252.) In [McKay v. McKay \(1921\) 184 Cal. 742, 746-747 \[195 P. 385\]](#), the Supreme Court held the specific presumption that any advantage obtained by a husband from a wife was without consideration and under undue influence "must, in the absence of any rebutting evidence, [***45] prevail over" the more general presumption that money paid by one to another was due to the latter. Aside from the prevailing presumption being "the less general of the two," the Supreme Court noted that the undue influence presumption should also prevail because ". . . the very reason for the existence of this particular presumption is to afford relief in just such contingencies as the present, namely, when there has been a transfer of money from the wife to the husband. The result is that the fact of the relationship of the parties creates a presumption of lack of consideration and undue influence which, until it is overcome by other evidence, is paramount to the general presumption, which would arise under ordinary circumstances upon mere proof of payment, to the effect that money is due to the person to whom it is paid."

([184 Cal. at p. 747.](#))

[*302] We conclude that [HN39](#) application of [section 662](#) is improper when it is in conflict with the presumption of undue influence that emanates from former *section 5103, subdivision (b)* ([Fam. Code](#), § 721, subd. (b)). Any other result would abrogate the protections afforded to married persons and denigrate the public policy of the state [***46] that seeks to promote and protect the vital institution of marriage. Because Judy successfully proved a number of her defenses to the 1987 quitclaim deed by a preponderance of the evidence, the deed should have been set aside. In light of this conclusion, it is unnecessary for us to address the other arguments raised by the parties and amicus curiae.

DISPOSITION

The portion of the judgment awarding Clarence reimbursement under former *Civil Code* [section 4800.2](#) is reversed. The trial court is ordered to amend the judgment to reflect the setting aside of the quitclaim deed and the proper allocation to the parties of the Teebird Lane residence as community property in accordance with the views expressed above.

Froehlich, Acting P. J., and Nares, J., concurred.

A petition for a rehearing was denied April 6, 1995.



Neutral

As of: October 18, 2026 6:38 AM Z

In re Marriage of Huntley

Court of Appeal of California, Third Appellate District

April 17, 2017, Opinion Filed

C080534

Reporter

10 Cal. App. 5th 1053 *; 216 Cal. Rptr. 3d 904 **; 2017 Cal. App. LEXIS 344 ***

In re the Marriage of FRANK and DEANNA
HUNTLEY.FRANK HUNTLEY, Respondent, v.
DEANNA HUNTLEY, Appellant.

LexisNexis® Headnotes

Prior History: [***1] APPEAL from a judgment of the Superior Court of Yolo County, No. FL11001946, Kathleen M. White, Judge.

Disposition: Reversed.

Governments > Legislation > Interpretation

Civil Procedure > Appeals > Standards of Review > De Novo Review

Case Summary

Overview

HOLDINGS: [1]-A trial court should have adjudicated the omitted community property as requested in an ex-wife's motion under [Fam. Code, § 2556](#), because [§ 2556](#) provided the court with continuing jurisdiction to divide omitted or unadjudicated community property, and because it erred in ruling the ex-wife was required to move to set aside the default judgment that dissolved her marriage before availing herself of that continuing jurisdiction; [2]-Because the dissolution judgment did not divide -- or even mention -- any community property, the parties' community property remained subject to future litigation; [3]-Although the ex-wife handled the finances during the marriage and was aware of the very community property she sought to have divided under [§ 2556](#), her knowledge did not provide a basis for denying her motion.

Outcome

Judgment reversed and matter remanded.

HN1 Appellate courts review questions of statutory interpretation under the independent standard of review. In doing so, courts' fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. Courts start with the language of the statute, giving the words their usual and ordinary meaning, while construing them in light of the statute as a whole and the statute's purpose.

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Jurisdiction

Family Law > ... > Property Distribution > Characterization > Community Property

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Procedures

HN2 Generally, once a marital dissolution judgment has become final, the court loses jurisdiction to modify or alter it. However, a dissolution judgment does not affect the disposition of community property as to which the judgment is

silent. Under California law, a spouse's entitlement to a share of the community property arises at the time that the property is acquired. That interest is not altered except by judicial decree or an agreement between the parties. Hence, property that is not mentioned in the pleadings as community property is left unadjudicated by decree of divorce, and is subject to future litigation, the parties being tenants in common meanwhile. This rule applies to partial divisions of community property as well as divorces unaccompanied by any property adjudication whatsoever.

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Jurisdiction

Family Law > ... > Property
Distribution > Characterization > Community Property

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Procedures

HN3 In providing courts with continuing jurisdiction, [Fam. Code, § 2556](#), imposes no time limit on former spouses to seek to adjudicate omitted or unadjudicated community property after a dissolution judgment was entered. There is no statute of limitations imposed by [§ 2556](#) on a former spouse who seeks adjudication of omitted or unadjudicated community property. [Section 2556](#) also imposes no limitation for default judgments. Accordingly, [§ 2556](#) applies to require adjudication of the omitted assets. [Section 2556](#) applies even when former spouses were aware of the community property at the time the dissolution judgment was entered.

Governments > Legislation > Interpretation

Civil Procedure > ... > Pretrial Judgments > Default & Default Judgments > Default Judgments

Family Law > ... > Property
Distribution > Characterization > Community Property

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Procedures

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Jurisdiction

HN4 Although *Code Civ. Proc.*, § 473, generally governs the finality of most default judgments, [Fam. Code, § 2556](#), is the more specific statute in specifically addressing assets omitted from a dissolution of marriage. It is the general rule that where the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment. The legislature's specific provision in [Fam. Code, § 2556](#), for adjudication of assets omitted from a marital dissolution judgment is the more specific statute and supplies the governing rule in such cases.

Family Law > ... > Property
Distribution > Characterization > Community Property

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Jurisdiction

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Procedures

HN5 [Fam. Code, § 2556](#), applies to community property not actually adjudicated in the previously entered dissolution judgment. The mere mention of an asset in the judgment is not controlling. The crucial question is whether the community property benefits were actually litigated and divided in the previous proceeding.

Governments > Legislation > Interpretation

Family Law > ... > Property Distribution > Equitable Distribution > Property Settlements

HN6 Former spouses may divide their community property by agreement, even if the division is not

equal. As long as such agreement is based upon a complete and accurate understanding of the existence and value of community and separate assets that are material to the agreement, the parties are free to decide on an unequal distribution. However, to be valid, even an agreement to divide community property equally must comply with [Fam. Code, § 2550](#). The requirement of [§ 2550](#) that an agreement either be written or orally stated in open court is strictly construed. Strictly enforcing [§ 2550](#)'s requirements will actually promote the policy of encouraging the parties to arrive at an out-of-court resolution containing sufficiently definite terms to be enforced by the court without further litigation. Requiring the parties' settlement agreement to be committed to writing or recited in court, as mandated by [§ 2550](#), prevents the risk of the court enforcing an agreement that never was made.

Headnotes/Summary

Summary

[*1053] CALIFORNIA OFFICIAL REPORTS SUMMARY

An ex-wife filed a motion to divide unadjudicated community property under [Fam. Code, § 2556](#), more than two years after entry of a default judgment that dissolved her marriage to her ex-husband. The trial court denied the motion on ground that the ex-wife had not first moved to set aside the default judgment. (Superior Court of Yolo County, No. FL11001946, Kathleen M. White, Judge.)

The Court of Appeal reversed the judgment and remanded the matter. The court held that [Fam. Code, § 2556](#), provided the trial court with continuing jurisdiction to divide omitted or unadjudicated community property and that the trial court erred in ruling the ex-wife was required to move to set aside the default judgment before availing herself of that continuing jurisdiction. The dissolution judgment did not divide—or even

mention—any community property. Consequently, the parties' community property remained subject to future litigation. Although the ex-wife handled the finances during the marriage and was aware of the very community property she sought to have divided under [§ 2556](#), her knowledge did not provide a basis for denying her motion. It was undisputed the judgment of dissolution of marriage did not include any property orders, and there was no evidence of any written agreement or an oral stipulation of the parties in open court. The trial court's finding in its statement of decision on the ex-wife's motion that the parties had divided all of their community property and the assets were now owned by the parties based on their actual title did not address or remedy the absence of any division of community property in the judgment. Accordingly, the trial court did not fulfill its duty to divide the parties' community property as required by [Fam. Code, § 2550](#), and under the continuing jurisdiction provided by [§ 2556](#). (Opinion by Hoch, J., with Butz, Acting P. J., and Renner, J., concurring.)

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

[CA\(1\)](#) (1)

Statutes § 21—Construction—Legislative Intent—Language.

Courts' fundamental task in interpreting a statute is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. Courts start with the language of the statute, giving the words their usual and ordinary meaning, while construing them in light of the statute as a whole and the statute's purpose.

[CA\(2\)](#) (2)

Dissolution of Marriage § 49—Final Judgment—

**Effect on Jurisdiction—Community Property—
Disposition of Omitted Assets.**

Generally, once a marital dissolution judgment has become final, the court loses jurisdiction to modify or alter it. However, a dissolution judgment does not affect the disposition of community property as to which the judgment is silent. Under California law, a spouse's entitlement to a share of the community property arises at the time that the property is acquired. That interest is not altered except by judicial decree or an agreement between the parties. Hence, property that is not mentioned in the pleadings as community property is left unadjudicated by decree of divorce, and is subject to future litigation, the parties being tenants in common meanwhile. This rule applies to partial divisions of community property as well as divorces unaccompanied by any property adjudication whatsoever.

CA(3) (3)

**Dissolution of Marriage § 49—Division of
Community Property—Continuing Jurisdiction—
Omitted Assets.**

In providing courts with continuing jurisdiction, [Fam. Code, § 2556](#), imposes no time limit on former spouses to seek to adjudicate omitted or unadjudicated community property after a dissolution judgment was entered. There is no statute of limitations imposed by [§ 2556](#) on a former spouse who seeks adjudication of omitted or unadjudicated community property. [Section 2556](#) also imposes no limitation for default judgments. Accordingly, [§ 2556](#) applies to require adjudication of the omitted assets. [Section 2556](#) applies even when former spouses were aware of the community property at the time the dissolution judgment was entered.

CA(4) (4)

Dissolution of Marriage § 49—Division of

**Community Property—Continuing Jurisdiction—
Omitted Assets.**

Although *Code Civ. Proc.*, § 473, generally governs the finality of most default judgments, [Fam. Code, § 2556](#), is the more specific statute in specifically addressing assets omitted from a dissolution of marriage. It is the general rule that where the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment. The Legislature's specific provision in [Fam. Code, § 2556](#), for adjudication of assets omitted from a [*1055] marital dissolution judgment is the more specific statute and supplies the governing rule in such cases.

CA(5) (5)

**Dissolution of Marriage § 49—Division of
Community Property—Continuing Jurisdiction—
Unadjudicated Property.**

[Fam. Code, § 2556](#), applies to community property not actually adjudicated in the previously entered dissolution judgment. The mere mention of an asset in the judgment is not controlling. The crucial question is whether the community property benefits were actually litigated and divided in the previous proceeding.

CA(6) (6)

**Dissolution of Marriage § 49—Division of
Community Property—Continuing Jurisdiction—
Adjudication of Omitted Assets.**

The trial court erred in ruling an ex-wife was required to move to set aside the default judgment that dissolved her marriage to her ex-husband before availing herself of the continuing jurisdiction provided by [Fam. Code, § 2556](#), for division of unadjudicated community property. The

dissolution judgment did not divide—or even mention—any community property. Consequently, the parties' community property remained subject to future litigation. Even though the ex-wife waited more than two years after entry of the default judgment before bringing her motion for adjudication of omitted assets, the trial court had jurisdiction under [§ 2556](#) to hear the motion. Although it was undisputed the ex-wife handled the finances during the marriage and was aware of the very community property she sought to have divided under [§ 2556](#), her knowledge did not provide a basis for denying her motion. Consequently, the trial court should have adjudicated the omitted community property as requested in the ex-wife's motion.

[*Kirkland et al., Cal. Family Law Practice and Procedure (2016) ch. 131, § 131.07; Cal. Forms of Pleading and Practice (2016) ch. 221, Dissolution of Marriage: Procedure, § 221.156*; 11 Witkin, Summary of Cal. Law (11th ed. 2017) Community Property, § 258.]

[CA\(7\) \(7\)](#)

Dissolution of Marriage § 75—Property Settlement Agreements—Requirements—Written or Recited in Court.

Former spouses may divide their community property by agreement, even if the division is not equal. As long as such agreement is based upon a complete and accurate understanding of the existence and value of community and separate assets that are material to the agreement, the parties are free to decide on an unequal distribution. However, to be valid, even an agreement to divide community property equally must comply with [Fam. Code, § 2550](#). The requirement of [§ 2550](#) that an agreement either be **[*1056]** written or orally stated in open court is strictly construed. Strictly enforcing [§ 2550](#)'s requirements will actually promote the policy of encouraging the parties to arrive at an out-of-court resolution containing

sufficiently definite terms to be enforced by the court without further litigation. Requiring the parties' settlement agreement to be committed to writing or recited in court, as mandated by [§ 2550](#), prevents the risk of the court enforcing an agreement that never was made.

Counsel: Matthew B. Smith for Appellant.

Bair & Bair and Pamela A. Bair for Respondent.

Judges: Opinion by Hoch, J., with Butz, Acting P. J., and Renner, J., concurring.

Opinion by: Hoch, J.

Opinion

[905] HOCH, J.**—Deanna Huntley challenges the trial court's denial of her motion to divide unadjudicated community property under [Family Code section 2556](#).¹ Deanna filed her motion more than two years after entry of a default judgment that dissolved her marriage to Frank Huntley.² The trial court denied the motion on grounds Deanna had not first moved to set aside the default judgment.

[906]** On appeal, Deanna contends (1) [section 2556](#) confers the trial court with continuing jurisdiction to adjudicate omitted community property without having to first move to set aside the judgment, (2) the dissolution judgment's silence as to the division of any property means all of the community property remains to be divided, and (3) the trial court's error requires reversal for proper division of the parties' community property.

We conclude [section 2556](#) provided the trial court with continuing jurisdiction to divide omitted or unadjudicated community property. The default judgment's silence as to **[***2]** any division of property requires reversal and remand for further proceedings under [sections 2550](#) and [2556](#).

¹ Undesignated statutory citations are to the Family Code.

² For the sake of clarity, we refer to the parties by their first names.

FACTUAL AND PROCEDURAL HISTORY

The Parties' Community Property

The facts of this case are undisputed. Frank and Deanna married in 2000 and separated in June 2011. As the trial court found, “Both parties were [*1057] employed during their marriage and [Deanna] was in charge of the parties' finances. She paid the bills. She was employed with the City of Woodland and was aware of her own employment benefits. [Deanna] was also aware of all of the parties' assets, their debts, their furniture, vehicles, and other assets. [Frank] retired approximately 15 months before the parties separated and began receiving retirement benefits. [Deanna] was well aware of these benefits and was also aware of [Frank's] Deferred Benefit Account, because the parties withdrew substantial funds from that account during their marriage.”

The trial court further found that “there were other assets, namely household furnishings, vehicles, [Deanna's] PERS retirement, and [Frank's] Union Pension Plan and Deferred Compensation Plan. [Frank's] Pension Plan and Deferred Compensation Plan were both in pay status with monthly payments being [***3] received by the parties each month. At one of the hearings in this case, [Deanna] admitted she was aware of all of these assets.”

Petition for Dissolution of Marriage and Default Judgment

In December 2011, Frank served Deanna with a petition for dissolution of marriage, an income and expense declaration, and a community and quasi-community property declaration. Frank's petition stated all community and quasi-community property was listed in his accompanying declaration. However, the declaration did not list any property other than a house with a negative value of \$89,000.

Deanna was served with the petition and attached declarations, but did not respond. In July 2012, Frank filed a request for default and served Deanna with a copy of the request. In October 2012, the trial court entered a default judgment. The default judgment dissolved the marriage but did not mention any community property.

At some point after Deanna received the request to enter a default judgment, she signed a grant deed conveying all title and interest in the house to Frank.

Deanna's Motion To Adjudicate Omitted Assets

In November 2014, Deanna filed a motion to adjudicate omitted community property. After conducting [***4] several hearings, the trial court denied the motion. In denying the motion, the trial court reasoned that “[w]hen [Deanna] received Notice of the Judgment, it was obvious that no property orders were made. She had the opportunity to file a Motion to set aside the Judgment and take further action. She took no action.” The trial court [***907] acknowledged, “the [*1058] Judgment does not award assets to either party,” but found “those assets are now owned by the parties based on their actual title. Retirement benefits and retirement accounts are titled in the sole name of the individual who earned them. [Deanna] has signed a Grant Deed releasing her interest in the residence to [Frank]. Vehicles have titles, which reflect their ownership and the parties apparently divided their furniture and furnishings to their satisfaction.” The trial court further found Deanna's signing of the grant deed to the house “seems to support [Frank's] contention that the parties had an oral agreement as to how to divide their assets and debts.” There is no indication the oral agreement was stated on the record in open court. Ultimately, the trial court determined “this case is concluded.”

Deanna timely filed a notice of appeal. [***5]

DISCUSSION

Motion To Divide Omitted or Unadjudicated Community Property After Entry of a Default Judgment

Deanna contends a motion to vacate the default judgment was not necessary because [section 2556](#) provided the trial court with continuing jurisdiction to hear her “motion for adjudication of omitted assets.” The contention has merit.

A.

Standard of Review

[HN1 CA\(1\)](#) (1) We review questions of statutory interpretation under the independent standard of review. ([Connerly v. State Personnel Bd. \(2006\) 37 Cal.4th 1169, 1175 \[39 Cal. Rptr. 3d 788, 129 P.3d 1\]](#).) ““In doing so, ““our fundamental task is “to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute.”” [Citation.] As always, we start with the language of the statute, “giv[ing] the words their usual and ordinary meaning [citation], while construing them in light of the statute as a whole and the statute's purpose [citation].” [Citation.]” ([Coker v. JPMorgan Chase Bank, N.A. \(2016\) 62 Cal.4th 667, 674 \[197 Cal. Rptr. 3d 131, 364 P.3d 176\]](#), quoting [Apple Inc. v. Superior Court \(2013\) 56 Cal.4th 128, 135 \[151 Cal. Rptr. 3d 841, 292 P.3d 883\]](#).)

[*1059]

B.

The Trial Court's Continuing Jurisdiction Under Section 2556

[HN2 CA\(2\)](#) (2) “Generally, once a marital dissolution judgment has become final, the court loses jurisdiction to modify or alter it.” ([In re Marriage of Thorne & Raccina \(2012\) 203 Cal.App.4th 492, 499 \[136 Cal. Rptr. 3d 887\]](#)

(*Thorne*).) However, as the California Supreme Court has explained, a dissolution judgment does not affect the disposition of community property as to which the judgment is silent. “Under California law, a spouse's [***6] entitlement to a share of the community property arises at the time that the property is acquired. [Citations.] That interest is not altered except by judicial decree or an agreement between the parties. Hence ‘under settled principles of California community property law, “property which is not mentioned in the pleadings as community property is left unadjudicated by decree of divorce, and is subject to future litigation, the parties being tenants in common meanwhile.”’ ([In re Marriage of Brown \[\(1976\)\] 15 Cal.3d \[838,\] 850–851 \[126 Cal. Rptr. 633, 544 P.2d 561\]](#) [Citations.].) This rule applies to partial divisions of community property as well as divorces unaccompanied by any property adjudication whatsoever.” ([Henn v. Henn \(1980\) 26 Cal.3d 323, 330 \[161 Cal. Rptr. 502, 605 P.2d 10\]](#) (*Henn*)).

[**908] At the time the California Supreme Court decided *Henn*, a former spouse was required to file a new case in order to seek division of community property assets that were omitted from a dissolution judgment. ([Henn, supra, 26 Cal.3d at p. 330](#).) To alleviate the burden of filing an entirely new action to divide community property previously omitted in a dissolution judgment, the Legislature enacted [Civil Code former section 4353](#) that was later recodified without substantive change at [Family Code section 2556](#). ([Lakkees v. Superior Court \(1990\) 222 Cal.App.3d 531, 540, fn. 5 \[271 Cal. Rptr. 845\]](#) (*Lakkees*); see also Cal. Law Revision Com. com., 29D West's Ann. [Fam. Code \(2004 ed.\) foll. § 2556](#), p. 516 [“[Section 2556](#) continues former [Civil Code Section 4353](#) without substantive change”].)

[Section 2556](#) provides: “In [***7] a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, *the court has continuing jurisdiction* to award community estate assets or community estate liabilities to the parties that have not been previously adjudicated by a

judgment in the proceeding. A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any community estate asset or liability omitted or not adjudicated by the judgment. *In these cases*, the court shall equally divide the omitted or unadjudicated [*1060] community estate asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability.” (Italics added.)

HN3 CA(3) (3) In providing courts with continuing jurisdiction, [section 2556](#) imposes no time limit on former spouses to seek to adjudicate omitted or unadjudicated community property after a dissolution judgment was entered. In [Lakkees, supra, 222 Cal.App.3d 531](#), the Court of Appeal noted arguments “that a dilatory party who suffers an involuntary dismissal should be barred from the postjudgment relief available under [Civil Code former section 4353](#) are not supported by any statutory language.” (*Id. at p. 540, fn. 5.*) The same observation holds true [***8] for [Civil Code section 4353](#)'s successor: there is no statute of limitations imposed by [Family Code section 2556](#) on a former spouse who seeks adjudication of omitted or unadjudicated community property. [Section 2556](#) also imposes no limitation for default judgments such as that entered in this case. Accordingly, [section 2556](#) applies to require adjudication of the omitted assets.

[Section 2556](#) applies even when former spouses were aware of the community property at the time the dissolution judgment was entered. In [Huddleson v. Huddleson \(1986\) 187 Cal.App.3d 1564 \[232 Cal. Rptr. 722\]](#) (*Huddleson*), the appellate court rejected a contention that a community property pension was immune from postjudgment division because the moving party had known of the asset at the time of judgment. The *Huddleson* court explained, “Regardless of whether the parties know of, or discuss, the vested pension, if the ‘court was not called upon to award it, and did not award it, as community property, separate property, or any

property at all’ [citation], then the pension is a missed asset subject to a postdissolution claim.” ([Huddleson, at p. 1569](#), citing [Henn, supra, 26 Cal.3d at p. 330.](#))

HN4 CA(4) (4) Although *Code of Civil Procedure section 473* generally governs the finality of most default judgments, it does not control in this case. [Section 2556](#) is the more specific statute in specifically addressing assets omitted from a dissolution [***909] of marriage. As the California Supreme [***9] Court has held, “‘It is the general rule that where the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment.’” ([People v. Gilbert \(1969\) 1 Cal.3d 475, 479 \[82 Cal. Rptr. 724, 462 P.2d 580\]](#), quoting [In re Williamson \(1954\) 43 Cal.2d 651, 654 \[276 P.2d 593\]](#); accord, [Stone Street Capital, LLC v. California State Lottery Com. \(2008\) 165 Cal.App.4th 109, 118 \[80 Cal. Rptr. 3d 326\]](#).) The Legislature's specific provision in [section 2556](#) for [*1061] adjudication of assets omitted from a marital dissolution judgment is the more specific statute and supplies the governing rule here.

CA(5) (5) In sum, [HN5 section 2556](#) applies to community property not actually adjudicated in the previously entered dissolution judgment. “‘The mere mention of an asset in the judgment is not controlling. [Citation.] “[T]he crucial question is whether the [community property] benefits were actually litigated and divided in the previous proceeding.’”” ([In re Marriage of Georgiou & Leslie \(2013\) 218 Cal.App.4th 561, 575 \[160 Cal. Rptr. 3d 254\]](#), quoting [Thorne, supra, 203 Cal.App.4th at p. 501.](#))

C.

Motion To Divide Omitted or Unadjudicated Community Property

[CA\(6\)](#) (6) The trial court erred in ruling Deanna was required to move to set aside the default judgment before availing herself of the continuing jurisdiction provided by [section 2556](#) for division of unadjudicated community property. The dissolution judgment did not divide—or even mention—any community property. Consequently, [***10] the parties' community property remained ““subject to future litigation.”” (*Henn, supra*, 26 Cal.3d 323, 330; see [§ 2556](#).) Even though Deanna waited more than two years after entry of the default judgment before bringing her motion for adjudication of omitted assets, the trial court had jurisdiction under [section 2556](#) to hear the motion. (See [Lakkees, supra](#), 222 Cal.App.3d at p. 540, fn. 5.) Although it is undisputed Deanna handled the finances during the marriage and was aware of the very community property she sought to have divided under [section 2556](#), her knowledge did not provide a basis for denying her motion. (*Huddleson, supra*, 187 Cal.App.3d at p. 1569.) Consequently, the trial court should have adjudicated the omitted community property as requested in Deanna's motion.

Frank argues the trial court correctly determined that, even if cognizable, Deanna's motion was properly denied because all of the community property had actually been divided by the parties according to their informal agreement. As the trial court noted, Deanna's signing of a grant deed to the marital residence in favor of Frank after entry of the default judgment indicated the parties had actually reached an informal agreement as to the disposition of their property.

[HN6 CA\(7\)](#) (7) Former spouses may divide their community property by agreement, even if the division is not equal. [***11] “As long as such agreement is based upon a [*1062] complete and accurate understanding of the existence and value of community and separate assets that are material to the agreement, the parties are free to decide on an unequal distribution.” (*In re Marriage of Brewer & Federici* (2001) 93 Cal.App.4th 1334, 1349 [113

[Cal. Rptr. 2d 849](#)].) However, to be valid, even an agreement to divide [***910] community property equally must comply with [section 2550](#). [Section 2550](#) provides: “*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.*” (Italics added.)

The requirement of [section 2550](#) that an agreement either be written or orally stated in open court is strictly construed. *In re Marriage of Dellaria & Blickman-Dellaria* (2009) 172 Cal.App.4th 196 [90 Cal. Rptr. 3d 802] explains that “strictly enforcing ... [section 2550](#)'s requirements will actually promote the policy of encouraging the parties to arrive at an out-of-court resolution containing sufficiently definite terms to be enforced by the court without [***12] further litigation. Requiring the parties' settlement agreement to be committed to writing or recited in court, as mandated by ... [section 2550](#), prevents the risk of the court enforcing an agreement that never was made.” (*Id. at pp. 203–204*.)

In this case, the parties neither reduced their agreement to writing nor did they state terms of the agreement on the record in open court. Consequently, at the time of its judgment of dissolution of marriage, the trial court had the statutory duty to equally divide Frank and Deanna's community property or make a property division based on the written agreement of the parties or on oral stipulation of the parties in open court. ([§ 2550](#).) It is undisputed the judgment of dissolution of marriage did not include any property orders. And there is no evidence of any written agreement or an oral stipulation of the parties in open court. In its statement of decision on Deanna's motion, the trial court found the parties had divided all of their

community property and these assets were “now owned by the parties based on their actual title.” But this later finding does not address or remedy the absence of any division of community property in the judgment. For this reason, the trial court [***13] did not fulfill its duty to divide the parties' community property as required by [section 2550](#) and under the continuing jurisdiction provided by [section 2556](#).³

[*1063]

DISPOSITION

The judgment is reversed, and the matter is remanded for further proceedings under [Family Code sections 2550](#) and [2556](#). The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (5).)

Butz, Acting P. J., and Renner, J., concurred.

End of Document

³We express no opinion as to the factual question of whether the informal division of community property by Frank and Deanna was equal or unequal within the meaning of [sections 2550](#) and [2556](#).



In re Marriage of Lafkas

Court of Appeal of California, Second Appellate District, Division Five

August 6, 2007, Filed

B189280

Reporter

153 Cal. App. 4th 1429 *; 64 Cal. Rptr. 3d 100 **; 2007 Cal. App. LEXIS 1288 ***

In re the Marriage of JOHN and JEAN LAFKAS.
JOHN LAFKAS, Appellant, v. JEAN LAFKAS,
Respondent.

Subsequent History: Decision reached on appeal by [In re Lafkas, 2015 Cal. App. LEXIS 513 \(Cal. App. 2d Dist., June 16, 2015\)](#)

Prior History: [***1] Superior Court of Los Angeles County, No. GD017215, Louise Halevy, Temporary Judge. (Pursuant to [Cal. Const. art. VI, § 21.](#))

Case Summary

Procedural Posture

Appellant husband sought review of an order from the Superior Court of Los Angeles County (California), which ruled in favor of respondent wife in a bifurcated trial involving division of disputed assets in a proceeding that dissolved the parties' marriage.

Overview

In the bifurcated proceeding, the trial court ruled that the husband's partnership agreement in a company resulted in the creation of a community asset. Although the order on the bifurcated trial resolved some of the issues concerning the partnership, it did not resolve all of them, and issues concerning other property were still pending. Moreover, the order on the bifurcated issue did not fix the value of the profits and rental income from the partnership. The husband filed a notice of

appeal from the order on the bifurcated issue without obtaining a certificate of probable cause from the trial court and without moving in the reviewing court to appeal on a bifurcated issue. The court concluded that the order was not final for purposes of appeal because it was merely preliminary to a final order characterizing, valuing, and dividing all the marital assets. Because the husband did not follow the procedure set forth in Cal. Rules of Court, rule 5.180(b), and [Fam. Code, § 2025](#), to obtain an interlocutory appeal on a bifurcated issue by means of a certificate of probable cause from the trial court and a motion in the reviewing court, jurisdiction to hear the appeal was lacking.

Outcome

The court dismissed the appeal.

LexisNexis® Headnotes

Civil Procedure > Appeals > Appellate
Jurisdiction > Final Judgment Rule

HN1 There is no constitutional right to an appeal; the appellate procedure is entirely statutory and subject to complete legislative control. Appellate jurisdiction cannot be created by consent, waiver, or estoppel. A reviewing court has jurisdiction over a direct appeal only when there is (1) an appealable order or (2) an appealable judgment. In civil cases, there normally can only be an appeal from a final

judgment. If there are unresolved causes of action between the parties, the judgment is not final and an appeal therefrom must be dismissed. Whenever there is doubt as to whether the reviewing court has jurisdiction to hear an appeal, the reviewing court must raise that issue on its own initiative.

Civil Procedure > Appeals > Appellate
Jurisdiction > Final Judgment Rule

Family Law > Marital Termination & Spousal
Support > Dissolution & Divorce > Procedures

HN2 Disputes over the division of marital property may be litigated separately from the proceedings to dissolve the marriage. An interlocutory judgment dissolving a marriage, and collateral issues decided with finality that are embodied in the judgment of dissolution, are appealable.

Civil Procedure > Trials > Separate Trials

Family Law > Marital Termination & Spousal
Support > Dissolution & Divorce > Procedures

HN3 A family law court may bifurcate trial on one or more issues, including division of property or child custody, if resolution of the bifurcated issue is likely to simplify the determination of the other issues. Cal. Rules of Court, rule 5.175. Although an order on a bifurcated issue is not separately appealable, the family law court may certify in its order that there is probable cause for immediate appellate review of the issue, or it may do so in response to a party's motion made 10 days after mailing of the decision. Cal. Rules of Court, rule 5.180(b); [Fam. Code, § 2025](#). If the certificate is granted, a party may file in the court of appeal a motion to appeal the decision on the bifurcated issue. Rule 5.180(d). Failure to seek or obtain appellate review of the decision on the bifurcated issue does not preclude review of the decision upon appeal of the final judgment. Rule 5.180(h).

Civil Procedure > ... > Writs > Common Law
Writs > Mandamus

Civil Procedure > Appeals > Appellate
Jurisdiction > General Overview

HN4 Although an appellate court has discretion to treat an imperfect appeal as a petition for writ of mandate, the power should be exercised only in unusual circumstances. Generally, a writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. The interests of clients, counsel, and the courts are best served by maintaining, to the extent possible, bright-line rules which distinguish between appealable and nonappealable orders.

Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court ruled in favor of a wife in a bifurcated trial involving division of disputed assets in a proceeding that dissolved the parties' marriage. In the bifurcated proceeding, the trial court ruled that the husband's partnership agreement in a company resulted in the creation of a community asset. Although the order on the bifurcated trial resolved some of the issues concerning the partnership, it did not resolve all of them, and issues concerning other property were still pending. Moreover, the order on the bifurcated issue did not fix the value of the profits and rental income from the partnership. The husband filed a notice of appeal from the order on the bifurcated issue without obtaining a certificate of probable cause from the trial court and without moving in the reviewing court to appeal on a bifurcated issue. (Superior Court of Los Angeles County, No. GD017215, Louise Halevy, Temporary Judge.*)

* Pursuant to [California Constitution article VI, section 21](#).

The Court of Appeal dismissed the appeal, concluding that the order was not final for purposes of appeal because it was merely preliminary to a final order characterizing, valuing, and dividing all the marital assets. Because the husband did not follow the procedure set forth in Cal. Rules of Court, rule 5.180(b), and [Fam. Code, § 2025](#), to obtain an interlocutory appeal on a bifurcated issue by means of a certificate of probable cause from the trial court and a motion in the reviewing court, jurisdiction to hear the appeal was lacking. (Opinion by Kriegler, J., with Turner, P. J., and Mosk, J., concurring.)

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

[CA\(1\)](#) (1)

Appellate Review § 14—Decisions Appealable— Final Judgments and Orders—When No Unresolved Causes of Action Remain.

There is no constitutional right to an appeal; the appellate procedure is [*1430] entirely statutory and subject to complete legislative control. Appellate jurisdiction cannot be created by consent, waiver, or estoppel. A reviewing court has jurisdiction over a direct appeal only when there is (1) an appealable order or (2) an appealable judgment. In civil cases, there normally can only be an appeal from a final judgment. If there are unresolved causes of action between the parties, the judgment is not final and an appeal therefrom must be dismissed. Whenever there is doubt as to whether the reviewing court has jurisdiction to hear an appeal, the reviewing court must raise that issue on its own initiative.

[CA\(2\)](#) (2)

Dissolution of Marriage § 59—Property Rights— Division of Community and Quasi-community

Property—Appeal—When Property Issues Litigated Separately.

Disputes over the division of marital property may be litigated separately from the proceedings to dissolve the marriage. An interlocutory judgment dissolving a marriage, and collateral issues decided with finality that are embodied in the judgment of dissolution, are appealable.

[CA\(3\)](#) (3)

Dissolution of Marriage § 59—Property Rights— Division of Community and Quasi-community Property—Appeal—When Property Issues Litigated Separately—Certificate of Probable Cause.

A family law court may bifurcate trial on one or more issues, including division of property or child custody, if resolution of the bifurcated issue is likely to simplify the determination of the other issues (Cal. Rules of Court, rule 5.175). Although an order on a bifurcated issue is not separately appealable, the family law court may certify in its order that there is probable cause for immediate appellate review of the issue, or it may do so in response to a party's motion made 10 days after mailing of the decision (Cal. Rules of Court, rule 5.180(b); [Fam. Code, § 2025](#)). If the certificate is granted, a party may file in the court of appeal a motion to appeal the decision on the bifurcated issue (Cal. Rules of Court, rule 5.180(d)(1)). Failure to seek or obtain appellate review of the decision on the bifurcated issue does not preclude review of the decision upon appeal of the final judgment (Cal. Rules of Court, rule 5.180(h)).

[CA\(4\)](#) (4)

Dissolution of Marriage § 59—Property Rights— Division of Community and Quasi-community Property—Appeal—When Property Issues Litigated Separately—Certificate of Probable Cause.

A certificate of probable cause was required by a husband in a divorce case to invoke the appellate jurisdiction of the reviewing court. Although the trial court's order on the bifurcated trial resolved some of the issues concerning the husband's interest in a partnership, it did not resolve all of them, and issues concerning other property were still pending. Moreover, the order on the bifurcated issue did not fix the value of the [*1431] profits and rental income from the partnership that the trial court ordered divided. Thus, the order appealed from was merely preliminary to a final order characterizing, valuing, and dividing all the marital assets. The husband did not follow the procedure in [Fam. Code, § 2025](#), allowing an interlocutory appeal on a bifurcated issue. No certificate of probable cause was obtained from the family law court. Accordingly, the Court of Appeal had no jurisdiction to hear the appeal.

[11 Witkin, Summary of Cal. Law (10th ed. 2005) Husband and Wife, § 123.]

[CA\(5\)](#) (5)

Mandamus and Prohibition § 5—Mandamus—Conditions Affecting Issuance—Treatment of Imperfect Appeal.

Although an appellate court has discretion to treat an imperfect appeal as a petition for writ of mandate, the power should be exercised only in unusual circumstances. Generally, a writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. The interests of clients, counsel, and the courts are best served by maintaining, to the extent possible, bright-line rules which distinguish between appealable and nonappealable orders.

Counsel: Law Office of Jeanne Collachia and Jeanne Collachia for Appellant.

Leslie Ellen Shear for Respondent.

Judges: Kriegler, J., with Turner, P. J., and Mosk,

J., concurring.

Opinion by: Kriegler

Opinion

[101] KRIEGLER, J.**—The family law court bifurcated issues involving division of disputed assets between husband and wife. Following the bifurcated trial, the trial court entered its ruling, generally resolving issues in favor of the wife. Husband filed a notice of appeal from the order on the bifurcated issue, without obtaining a certificate of probable cause from the trial court and without moving in this court to appeal on a bifurcated issue. We lack jurisdiction to consider this appeal in the absence of a certificate of probable cause and an order from this court allowing the appeal on the bifurcated issue. Accordingly, the appeal is dismissed.

Husband John Lafkas and wife Jean Lafkas separated in 1996 after six years of marriage. Marital status was terminated in 2001, although the [*1432] division of assets remained to be resolved. In 2003, the family law court bifurcated trial on one of the extant property [***2] issues—whether husband's interest in Smile Enterprises, a partnership established in 1971 by husband and two partners, was husband's separate property. In a 2005 order entitled “Further Judgment On Bifurcated Issue Of Characterization Of The Parties' Interest In Smile Enterprises,” the family law court ruled that a new partnership agreement in Smile Enterprises, effective June 12, 1995, resulted in the creation of a community asset. As a result, one-third of any acquisitions and appreciation after June 12, 1995, were to be equally divided between husband and wife. Husband and wife were each entitled to one-half of one-third of the total profits of the Harvill properties (which were sold during the pendency of proceedings), and any other property purchased on and after June 12, 1995, including any sale proceeds and rental income.

Husband filed a notice of appeal from the 2005 order. He contends the trial court erred in ruling his interest in Smile Enterprises became community property on June 12, 1995.

The appeal must be dismissed for lack of jurisdiction. Appellate jurisdiction does **[**102]** not lie in this case, because the order on the bifurcated issue is not an appealable judgment or order, **[***3]** and no certificate of probable cause was obtained from the trial court pursuant to [Family Code section 2025](#).¹

HN1 CA(1) (1) “ ‘There is no constitutional right to an appeal; the appellate procedure is entirely statutory and subject to complete legislative control.’ ” ([Anchor Marine Repair Co. v. Magnan \(2001\) 93 Cal.App.4th 525, 528 \[113 Cal. Rptr. 2d 284\]](#); see also [Griset v. Fair Political Practices Com. \(2001\) 25 Cal.4th 688, 696 \[107 Cal. Rptr. 2d 149, 23 P.3d 43\]](#) (*Griset*) [“A trial court's order is appealable when it is made so by statute”]; [Vivid Video, Inc. v. Playboy Entertainment Group, Inc. \(2007\) 147 Cal.App.4th 434, 440 \[54 Cal. Rptr. 3d 232\]](#) (*Vivid Video*).) Appellate jurisdiction cannot be created by consent, waiver, or estoppel. ([Vivid Video, at pp. 440–441](#); [Four Point Entertainment, Inc. v. New World Entertainment, Ltd. \(1997\) 60 Cal.App.4th 79, 81, fn. 1 \[70 Cal. Rptr. 2d 82\]](#).) “A reviewing court has jurisdiction over a direct appeal only when there is (1) an appealable order or (2) an appealable judgment.” ([Griset, supra, 25 Cal.4th at p. 696](#).) In civil cases there normally can only be an appeal from a final judgment. ([Vivid Video, supra, 147 Cal.App.4th at p. 441](#).) If there are unresolved causes of action between the parties, **[***4]** the judgment is not final and an appeal therefrom must be dismissed. ([Griset, supra, 25 Cal.4th at p. 697](#); [Vivid Video, supra, 147 Cal.App.4th at p. 441](#).) “Whenever there is doubt as to whether we have jurisdiction to hear an appeal, we must raise that issue on our own initiative.” ([In re Perris City News \(2002\) 96 Cal.App.4th 1194, 1197 \[118 Cal. Rptr. 2d 38\]](#).)

¹ Hereinafter, all statutory references are to the Family Code.

[*1433]

CA(2) (2) We thus turn to the question of whether this family law appeal is within our jurisdiction. **HN2** Disputes over the division of marital property may be litigated separately from the proceedings to dissolve the marriage. ([In re Marriage of Van Sickle \(1977\) 68 Cal. App. 3d 728, 735–737 \[137 Cal. Rptr. 568\]](#).) An interlocutory judgment dissolving a marriage, and collateral issues decided with finality that are embodied in the judgment of dissolution, are appealable. (*Ibid.*) The appeal in this case was not taken from the judgment dissolving the marriage.

HN3 CA(3) (3) A family law court may bifurcate trial on one or more issues, including division of property or child custody, if resolution of the bifurcated issue is likely to simplify the determination of the other issues. (Cal. Rules of Court, rules 5.175(a), 5.175(c).)² Although an order on a bifurcated issue is not separately appealable, **[***5]**³ the family law court may certify in its order that there is probable cause for immediate appellate review of the issue, or it may do so in response to a party's motion made 10 days after mailing of the decision. (Rule 5.180(b); see [§ 2025](#).)⁴ “If the **[**103]** certificate is granted, a party may ... file in the Court of Appeal a motion to appeal the decision on the bifurcated issue.” (Rule 5.180(d)(1).) Failure to seek or obtain appellate review of the decision on the bifurcated issue does not preclude review of the decision upon

² Hereinafter, all references to rules will refer to the California Rules of Court.

³ “This rule does not apply to appeals from the court's termination of marital status as a separate issue, or to appeals from other orders that are separately appealable.” (Rule 5.180(a).)

⁴ [Section 2025](#) provides: “Notwithstanding any other provision of law, if the court has ordered an issue or issues bifurcated for separate trial or hearing in advance of the disposition of the entire case, a court of appeal may order an issue or issues transferred to it for hearing and decision when the court that heard the issue or **[***6]** issues certifies that the appeal is appropriate. Certification by the court shall be in accordance with rules promulgated by the Judicial Council.”

appeal of the final judgment. (Rule 5.180(h).)

CA(4) (4) A certificate of probable cause was required by husband in this case to invoke the appellate jurisdiction of this court. Although the order on the bifurcated trial resolved some of the issues concerning Smile Enterprises, it did not resolve all of them, and issues concerning other property were still pending.⁵ For example, issues regarding the retirement plans, deferred compensation, and a house on Callita remain unresolved. Moreover, the order on the bifurcated issue did not fix the value of the profits and rental income from Smile Enterprises that the trial court ordered divided, an issue husband indicates could be “especially contentious.” Thus, the order appealed from is merely preliminary to a final order characterizing, valuing, and dividing all the marital assets. Husband did not follow the procedure in [section 2025](#) allowing an interlocutory appeal on a bifurcated issue. No certificate of **[*1434]** probable cause was obtained from the family law court. Accordingly, we have no jurisdiction to hear the appeal.

Acknowledging his failure to obtain the required certificate of probable cause or file a motion before this court to allow an appeal, husband urges us to construe the family court's granting of wife's application for attorney fees to retain appellate counsel as a de facto certificate of probable cause. We reject the argument, because there is no provision in the Family Code or the rules for a de facto certificate of probable cause. Simply stated, the family law court has not made a finding that immediate appellate review is desirable. (See Rule 5.180(b), (c).) We also reject husband's argument that the parties in effect agreed to an immediate appeal, because appellate jurisdiction cannot be conferred by waiver, estoppel, or consent. Husband further argues an immediate appeal would serve the parties' financial interest and the interests of judicial economy, because a final determination of the ownership of Smile Enterprises would go a long

way to bringing this action to a final conclusion. However, appellate jurisdiction is wholly statutory, and husband has not complied with the rules necessary to invoke appellate jurisdiction over an interlocutory **[***8]** order.

Anticipating a holding that we lack appellate jurisdiction, husband asks us to treat this matter as an extraordinary writ. (See [In re Marriage of Doherty \(2002\) 103 Cal.App.4th 895, 898 \[126 Cal. Rptr. 2d 919\]](#) [appellate court dismissed appeal from interlocutory family law court order characterizing property as community property, but exercised discretionary power to treat the appeal as a writ because the parties “agreed to bifurcate the issues” and “each has requested that we consider the merits of the appeal”].) We decline to exercise our discretion to treat this improper appeal as an extraordinary writ.

HN4 CA(5) (5) Although an appellate court has discretion to treat an imperfect appeal as a petition for writ of mandate, the power should be exercised only in unusual **[**104]** circumstances. ([Doran v. Magan \(1999\) 76 Cal.App.4th 1287, 1294 \[91 Cal. Rptr. 2d 60\]](#); [Calhoun v. Vallejo City Unified School Dist. \(1993\) 20 Cal.App.4th 39, 42 \[24 Cal. Rptr. 2d 337\]](#); [Mid-Wilshire Associates v. O'Leary \(1992\) 7 Cal.App.4th 1450, 1455–1456 \[9 Cal. Rptr. 2d 862\]](#).) “Generally, a writ must be issued in all cases ‘where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.’ ” [Doran v. Magan, supra, 76 Cal.App.4th at p. 1294.](#) “The interests of clients, counsel, and the courts **[***9]** are best served by maintaining, to the extent possible, bright-line rules which distinguish between appealable and nonappealable orders.” ([Mid-Wilshire Associates v. O'Leary, supra, 7 Cal.App.4th at pp. 1455–1456.](#))

Husband has shown no exigent reasons why review of the interlocutory order should not await the rendition of a final judgment. Husband has an **[*1435]** adequate appellate remedy by an appeal from the final judgment. While a ruling that husband's interest in Smile Enterprises was separate

⁵ We have taken judicial **[***7]** notice of the superior court file.

property would obviate the need to litigate issues of valuation and division of Smile Enterprises, this asset is not the only asset that must be characterized, valued, and divided before the proceeding can reach a final conclusion. A ruling that the family law court's ruling is correct would leave unresolved issues of valuation of Smile Enterprises as well as issues concerning other marital assets. Neither scenario provides a compelling reason to grant immediate appellate review.

The appeal is dismissed. The parties are to bear their own costs on appeal.

Turner, P. J., and Mosk, J., concurred.



Caution

As of: October 18, 2026 7:03 AM Z

In re Marriage of Lehman

Supreme Court of California

May 28, 1998, Decided

No. S062850.

Reporter

18 Cal. 4th 169 *; 955 P.2d 451 **; 74 Cal. Rptr. 2d 825 ***; 1998 Cal. LEXIS 3189 ****; 98 Cal. Daily Op. Service 4021; 98 Daily Journal DAR 5539

In re the Marriage of MARIETTA and JACK R. LEHMAN. MARIETTA LEHMAN, Respondent, v. JACK R. LEHMAN, Appellant.

Prior History: [****1] Superior Court of Contra Costa County. Super. Ct. No. 182958. Josanna Berkow, Referee.

Disposition: For the reasons stated above, we conclude that we must affirm the judgment of the Court of Appeal.

Core Terms

retirement benefits, marriage, enhance, retirement, pension, community property interest, spouse's, employee's spouse, nonemployee spouse, accrue, early retirement, superior court, community property, putative, formula, severance payment, gram, community asset, time rule, apportionment, dissolute, length of service, separate property interest, separate property, induce, stream, service credit, retirement-benefit, italic, elect

Case Summary

Procedural Posture

Appellant husband sought review of the judgment of the court of appeals (California), finding that because respondent wife owned a community property interest in appellant's retirement benefits under a defined benefit plan she owned a community property interest in the retirement benefits as enhanced by a voluntary retirement

incentive.

Overview

Several years after the entry of a final judgment dissolving the marriage of appellant husband and respondent wife, appellant's employer offered an enhanced retirement program as an incentive for employees to retire early. Respondent filed several motions in the trial court, seeking a declaration that she owned a community property interest in the retirement benefits from the defined benefit plan, as enhanced. In response, appellant admitted that respondent owned an interest in his retirement benefits, but denied that she owned one in them as enhanced. The trial court and the court of appeals held that respondent owned the benefits as enhanced. The court affirmed. The fact that the nonemployee spouse might happen to enjoy an increase, or suffer a decrease, in retirement benefits because of postdissolution events was justified by the nature of the right to retirement benefits as a right to draw from a stream of income that began to flow on retirement, as that stream was then defined. Because the nonemployee spouse was compelled to share the bad with the employee spouse she must be allowed to share the good as well.

Outcome

The court affirmed the judgment of the court of appeal that found that respondent wife owned a community property interest in the retirement benefits as enhanced. The court held that the nature of the right to retirement benefits required that the nonemployee spouse be included in increases and decreases resulting from a postdissolution change

in the benefits.

LexisNexis® Headnotes

Estate, Gift & Trust Law > Estate
Planning > Community Property > General
Overview

Family Law > ... > Property
Rights > Characterization > Community
Property

Family Law > ... > Dissolution &
Divorce > Property Distribution > General
Overview

HN1 Estate Planning, Community Property

Generally, all property acquired by a spouse during marriage before separation is community property. [Cal. Fam. Code §§ 760](#) and [771](#).

Estate, Gift & Trust Law > Estate
Planning > Community Property > General
Overview

Family Law > ... > Property
Rights > Characterization > Community
Property

Family Law > ... > Dissolution &
Divorce > Property Distribution > General
Overview

Family Law > ... > Classification > Retirement
Benefits > General Overview

HN2 Estate Planning, Community Property

Community property may include the right to retirement benefits accrued by the employee spouse as deferred compensation for services rendered. This is the case whether or not the right to

retirement benefits is vested in the sense of surviving discharge or voluntary termination, and whether or not it is matured in the sense of amounting to an unconditional entitlement to immediate payment. What is determinative is not any abstract terminology of this sort, but rather the single concrete fact of time. The right to retirement benefits represents a property interest; to the extent that such a right derives from employment during marriage before separation, it comprises a community asset.

Family Law > ... > Dissolution &
Divorce > Property Distribution > General
Overview

HN3 Dissolution & Divorce, Property Distribution

The right to retirement benefits is a right to draw from a stream of income that begins to flow on retirement, as that stream is then defined.

Family Law > ... > Dissolution &
Divorce > Property Distribution > General
Overview

HN4 Dissolution & Divorce, Property Distribution

If the right to retirement benefits accrues, in some part, during marriage before separation, it is a community asset and is therefore owned by the community in which the nonemployee spouse as well as the employee spouse owns an interest.

Estate, Gift & Trust Law > Estate
Planning > Community Property > General
Overview

Family Law > ... > Property
Rights > Characterization > Community
Property

Family Law > ... > Dissolution &
Divorce > Property Distribution > General
Overview

Family Law > ... > Classification > Retirement
Benefits > General Overview

HN5 Estate Planning, Community Property

A nonemployee spouse who owns a community property interest in an employee spouse's retirement benefits usually owns a community property interest in the latter's retirement benefits as enhanced.

Estate, Gift & Trust Law > Estate
Planning > Community Property > General
Overview

Family Law > ... > Property
Rights > Characterization > Community
Property

Civil Procedure > Appeals > Standards of
Review > Abuse of Discretion

Family Law > ... > Property
Rights > Characterization > Separate Property

Family Law > ... > Dissolution &
Divorce > Property Distribution > General
Overview

Family Law > ... > Classification > Retirement
Benefits > General Overview

HN6 Estate Planning, Community Property

The superior court must apportion an employee spouse's retirement benefits between the community property interest of the employee spouse and the nonemployee spouse and any separate property interest of the employee spouse alone. It has discretion in the choice of methods. Such methods include the time rule. Whatever the method that it may use, however, the superior court

must arrive at a result that is reasonable and fairly representative of the relative contributions of the community and separate estates.

Estate, Gift & Trust Law > Estate
Planning > Community Property > General
Overview

Family Law > ... > Classification > Retirement
Benefits > General Overview

Family Law > ... > Property
Rights > Characterization > Community
Property

Family Law > ... > Property
Rights > Characterization > Separate Property

Family Law > ... > Dissolution &
Divorce > Property Distribution > General
Overview

HN7 Estate Planning, Community Property

The use of the time rule in apportioning an employee spouse's retirement benefits between the community property interest of the employee spouse and the nonemployee spouse and any separate property interest of the employee spouse alone is not unreasonable when the amount of the retirement benefits is substantially related to the number of years of service.

Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

In a postdissolution proceeding initiated after the former husband had retired, the trial court entered a judgment awarding the former wife a community property interest in the husband's pension as enhanced by a retirement benefit the husband's employer offered, 14 years after the marriage was

dissolved, to encourage the husband's early retirement. The husband's employment, which began before the marriage and continued until the early retirement, included retirement benefits computed under a "defined benefit retirement plan," which specified payments in advance in accordance with a formula that included factors such as final compensation, age, length of service, and a per-service-year multiplier. The trial court determined that, since the wife owned a community interest in the husband's pension, she owned an interest in the benefits as enhanced. (Superior Court of Contra Costa County, No. 182958, Josanna Berkow, Referee.) The Court of Appeal, First Dist., Div. Four, No. A073791, affirmed.

The Supreme Court affirmed the judgment of the Court of Appeal. The court held that the former wife owned a community property interest in the former husband's retirement benefits as enhanced by the employer's early retirement program. A nonemployee spouse who owns a community property interest in an employee spouse's retirement benefits owns a community property interest in those benefits as subsequently enhanced. In this case, the husband's right to retirement benefits, which accrued in part during marriage and before separation, underlay the right to the enhancement, which was derivative thereof. The enhancement was not a separate retirement benefit or a benefit separate from the retirement benefits themselves. The court also held that the trial court did not abuse its discretion in its apportionment of the husband's retirement benefits, as enhanced, between community and separate property interests through its application of the "time rule," since the amount of the retirement benefits was substantially related to the number of the husband's years of service. (Opinion by Mosk, J., with George, C. J., Kennard, Werdegarr, and Brown, JJ., concurring. Dissenting opinion by Baxter, J., with Chin, J., concurring.)

Headnotes

[CA\(1a\)](#) (1a) [CA\(1b\)](#) (1b) [CA\(1c\)](#) (1c)

Dissolution of Marriage; Separation § 50.2—Property Rights of Parties—Property Subject to Distribution—Pensions and Retirement Benefits—Husband's Enhanced Retirement Benefit Offered to Encourage His Early Retirement: Husband and Wife § 15—Property—Earnings.

--In a postdissolution proceeding, the trial court did not err in awarding the former wife a community property interest in the former husband's pension as enhanced by a retirement benefit the husband's employer offered, 14 years after the marriage was dissolved, to encourage the husband's early retirement. A nonemployee spouse who owns a community property interest in an employee spouse's retirement benefits owns a community property interest in those benefits as subsequently enhanced. In this case, the husband's right to retirement benefits, which accrued in part during marriage and before separation, underlay the right to the enhancement, which was derivative thereof. The enhancement was not a separate retirement benefit or a benefit separate from the retirement benefits themselves. It was no different from an enhancement effected through additional years of service, an increase in earnings, or an increase in age, which would be a community asset. Indeed, the enhancement was a modification of an asset, not the creation of a new one. By its very terms, it resulted from "improvements to the retirement benefit formula" under the employer's existing plan. Also, the enhancement was not a severance payment, which would have been the husband's separate property, in either name or nature. Finally, the reason the employer offered the enhancement was irrelevant; it was dispositive that the employer enhanced the husband's retirement benefits, in which the wife owned a community property interest.

[See 11 Witkin, Summary of Cal. Law (9th ed. 1990) Community Property, § 47 et seq.]

[CA\(2\)](#) (2)

**Dissolution of Marriage; Separation § 50.2—
Property Rights of Parties—Property Subject to
Distribution—Pensions and Retirement Benefits.**

--Generally, all property acquired by a spouse during marriage and before separation is community property. This property may include the right to retirement benefits accrued by an employee spouse as deferred compensation for services rendered, whether or not the right to retirement benefits is "vested" in the sense of surviving discharge or voluntary termination, and whether or not it is "matured" in the sense of amounting to an unconditional entitlement to immediate payment. What is determinative is not any abstract terminology, but rather a single concrete fact: time. The right to retirement benefits represents a property interest; to the extent that the right derives from employment during marriage and before separation, it comprises a community asset. The community owns all such rights attributable to employment during marriage and before separation.

CA(3) (3)

**Dissolution of Marriage; Separation § 50.2—
Property Rights of Parties—Property Subject to
Distribution—Pensions and Retirement Benefits—
Postseparation Change in Conditions.**

--A nonemployee spouse's community right to the employee spouse's retirement benefits is a right to draw from a stream of income that begins to flow on retirement, as that stream is then defined. The stream's volume at retirement may depend on various events or conditions after separation and even after dissolution, including both changes in the retirement-benefit formula and changes in the basis on which the retirement-benefit formula operates. Thus, the stream's volume at retirement may turn out to be even less than feared, as when the right to retirement benefits fails to vest or mature or when the employment itself ceases because the employer ceases to do business. By contrast, it may turn out to be even more than hoped for, as when the employer increases the per-

service-year multiplier of the retirement-benefit formula, or when the employee spouse lives to a greater than expected age, or serves more than the expected years, or attains a higher than expected final compensation. Because the nonemployee spouse is compelled to share the bad with the employee spouse, he or she must be allowed to share the good as well.

CA(4) (4)

**Dissolution of Marriage; Separation § 50.2—
Property Rights of Parties—Property Subject to
Distribution—Pensions and Retirement Benefits—
Subsequent Enhancement to Retirement Benefit.**

--If the right to an employee spouse's retirement benefits accrues, in some part, during marriage and before separation, it is a community asset and is therefore owned by the community in which the nonemployee spouse as well as the employee spouse owns an interest. The employee spouse is free to change or terminate employment, to agree to a modification of the terms of employment (including retirement benefits), or to elect between alternative retirement programs. Thus, he or she is free to define the nature of the retirement benefits owned by the community. But regardless of how the employee spouse might choose to exercise this freedom, the nonemployee spouse owns an interest in what the employee spouse chooses by owning an interest in the community. It follows that a nonemployee spouse who owns a community property interest in an employee spouse's retirement benefits owns a community property interest in the latter's retirement benefits that may be subsequently enhanced. That is because the right to retirement benefits that accrues, at least in part, during marriage and before separation underlies any right to an enhancement. However, this does not mean that an enhancement is a community asset in its entirety. But the question as to what extent such an enhancement belongs to the community and separate estates is one of apportionment rather than characterization.

[CA\(5\)](#) (5)**Dissolution of Marriage; Separation § 50.2—
Property Rights of Parties—Property Subject to
Distribution—Pensions and Retirement Benefits—
Relevance of Employer's Motive.**

--The issue of whether the right to retirement benefits and retirement benefits themselves are characterized as community property or the employee spouse's separate property does not turn on the employer's motive. In any context, motive is, at best, hard to discern, and in this context, it is also irrelevant, because the employer acts for its own business reasons and not for reasons bearing on the characterization of property for employee spouses and nonemployee spouses.

[CA\(6\)](#) (6)**Dissolution of Marriage; Separation § 50.2—
Property Rights of Parties—Property Subject to
Distribution—Pensions and Retirement Benefits—
Characterization of Retirement Benefits.**

--The single, concrete fact of time is determinative of the characterization of an employee spouse's retirement benefits as community or separate property. The property is a community asset to the extent--and only to the extent--that an employee spouse accrues a right to property during marriage and before separation. The right to retirement benefits represents a certain kind of property interest: It is a right to draw from a stream of income that begins to flow, and is defined, on retirement. Hence, it is a right to payments specified in accordance with a formula as such payments may be specified in accordance with such formula as then obtains, not to some preretirement payments specified in accordance with some preretirement formula. Various events and conditions after separation and even after dissolution may affect the amount of retirement benefits that an employee spouse receives. But these events and conditions will not affect the

character of the benefits. Once the employee spouse has accrued a right to retirement benefits, at least in part, during marriage and before separation, the retirement benefits themselves are stamped a community asset from then on.

[CA\(7\)](#) (7)**Dissolution of Marriage; Separation § 59—
Property Rights of Parties—Property Subject to
Distribution—Pensions and Retirement Benefits—
Appellate Review.**

--On a former husband's appeal from the trial court's characterization as community property of the husband's enhanced retirement benefits offered by his employer as an incentive to retire early, the Court of Appeal properly reviewed the trial court's determination independently. Inasmuch as the basic inquiry required a critical consideration, in a factual context, of legal principles and their underlying values, the determination in question amounted to the resolution of a mixed question of law and fact that was predominantly one of law. As such, it was subject to examination de novo.

[CA\(8a\)](#) (8a) [CA\(8b\)](#) (8b)**Dissolution of Marriage; Separation § 50.2—
Property Rights of Parties—Property Subject to
Distribution—Pensions and Retirement Benefits—
Husband's Enhanced Retirement Benefit Offered
to Encourage His Early Retirement—Method of
Apportionment.**

--In apportioning, between a divorced couple's community property and the former husband's separate property, the husband's retirement benefits as enhanced by his employer's increased retirement benefit to encourage his early retirement, the trial court did not abuse its discretion in its application of the "time rule." The use of the time rule is not unreasonable when the amount of the retirement benefits is substantially related to the number of years of service. That was the situation in this case.

The amount of the husband's retirement benefits as enhanced was the product of his final compensation, length of service, and a per-service-year multiplier. Moreover, the result of the time rule is not unreasonable when the relative contributions of the community and separate estates are accounted for, as was done here. Reflecting the husband's length of service of 17.39 years during marriage and before separation and his length of service of 32.67 years in total, the community property interest in his retirement benefits as enhanced was fixed at 53.23 percent and his separate property interest was fixed at 46.77 percent. Further, the trial court was not required to add the additional putative years the employer credited the husband as part of the inducement to retire early. These years were fictive--they had no independent existence, but were merely a means by which the employer effected the enhancement. The employer, rather than the community, supplied this credit. Adding these years would disturb the balance between the community and separate estates. (Disapproving to the extent it is contrary: [In re Marriage of Gram \(1994\) 25 Cal.App.4th 859 \[30 Cal.Rptr.2d 792\].](#))

CA(9) (9)

Dissolution of Marriage; Separation § 50.2— Property Rights of Parties—Property Subject to Distribution—Pensions and Retirement Benefits— Method of Apportionment—Trial Court's Discretion.

--In marital dissolution proceedings that involve one spouse's retirement benefits, the trial court must apportion the employee spouse's retirement benefits between the community property interest of the employee spouse and the nonemployee spouse and any separate property interest of the employee spouse alone. The court has discretion in the choice of methods, with the "time rule," which compares the employee spouse's years of service during the marriage with his or her total years of service, the one that is employed most frequently.

Whatever the method that it may use, however, the court must arrive at a result that is reasonable and fairly representative of the relative contributions of the community and separate estates.

Counsel: Harry L. Styron for Appellant.

Bernard N. Wolf, Whiting & Rubenstein, Whiting, Rubenstein, Fallon & Ross and R. Ann Fallon for Respondent.

Barbara DiFranza and Soma F. Baldwin as Amici Curiae on behalf of Respondent.

Judges: Opinion by Mosk, J., with George, C. J., Kennard, Werdegarr, and Brown, JJ., concurring. Dissenting opinion by Baxter, J., with Chin, J., concurring.

Opinion by: MOSK

Opinion

[*174] [452] [***826] MOSK, J.**

We granted review in this cause in order to address an important question relating to the characterization of retirement benefits as community or separate property under a so-called "defined benefit retirement plan," which specifies payments in advance in accordance with a formula that comprises factors such as final compensation, age, length of service, and a per-service-year multiplier: Does a nonemployee spouse who owns a community property interest in an employee spouse's retirement benefits under such a plan own a community property [****2] interest in the retirement benefits as enhanced? As we shall explain, we conclude that the answer is: Yes.

I

Jack R. Lehman (Husband) was born on September 3, 1940, and Marietta Lehman (Wife) was born on November 13, 1941. On June 15, 1959, he was hired by the Pacific Gas and Electric Company (PG&E). On June 11, 1960, the couple married. On

May 1, 1962, he began to participate in PG&E's defined benefit retirement plan, and thereby began to accrue a right to [*175] retirement benefits thereunder. On October 29, 1977, the [***827] couple [**453] separated. On December 19, 1978, they obtained an interlocutory judgment of dissolution of marriage from the superior court, which retained jurisdiction for purposes including the division of the community property interest in his retirement benefits at the time of retirement. On February 23, 1979, they obtained a final judgment of dissolution.

In March 1993, in order to avoid discharging certain employees, PG&E offered an enhanced retirement program, called the "Voluntary Retirement Incentive" (VRI). It described the VRI program as a "management tool" to "reduc[e] costs" by "bring[ing] our workforce in line with the needs [****3] of our changing business" through enhancement of retirement benefits by means of "two special improvements to the retirement benefit formula," namely, the crediting of three putative years of service and the waiving of the normal actuarial reduction of 18 percent for early retirement, which is designed to account for more projected payments. It stated that the "decision to participate . . . is completely voluntary." For eligibility, it required, among other things, that the employee in question had attained the age of 50, and had accumulated 15 years of service, as of December 31, 1992. Husband met the conditions. He elected to retire early at about 54 1/3 years of age under the VRI program effective January 1, 1995, with enhanced retirement benefits in the amount of \$ 3,059.30 per month--based on final compensation of \$ 5,360.43 per month, length of service of 35.67 years, including 3 putative years, and a per-service-year multiplier of 1.6 percent. (Without the three-year putative service credit, he would have received enhanced retirement benefits in the amount of \$ 2,802 per month; without the waiver of the normal 18 percent early retirement actuarial reduction, he would have received [****4] enhanced retirement benefits in the amount of \$ 2,508.63 per month.) Had he

waited to retire early at 55 years of age, without the 3-year putative service credit and without the waiver of the normal 18 percent early retirement actuarial reduction, he would have received retirement benefits in the amount of \$ 2,350.39 per month--based on (presumed) final compensation of \$ 5,360.43 per month, length of service of 33.42 years, and a per-service-year multiplier of 1.6 percent. Had he waited to retire at 65 years of age, without the 3-year putative service credit and also without any early retirement actuarial reduction (inasmuch as retirement at that age is not early), he would have received retirement benefits in the amount of \$ 3,724.00 per month--based on (presumed) final compensation of \$ 5,360.43 per month, length of service of 43.42 years, and a per-service-year multiplier of 1.6 percent. By electing to retire early at about 54 1/3 years of age under the VRI program instead of waiting to retire early at 55 years of age, he received enhanced retirement benefits in an amount of \$ 708.91 per month.

After Husband retired, Wife made various motions in the superior court, seeking various [****5] orders together with a determination as to characterization [*176] that she owned a community property interest in his retirement benefits as enhanced. In response, Husband admitted that she owned such an interest in his retirement benefits, but denied that she owned one in them as enhanced. What was in contest was solely characterization, i.e., whether the enhancement was a community asset in any part, and not apportionment, i.e., to what extent the enhancement, if a community asset at least in some part, belonged to the community and separate estates. Generally following [*In re Marriage of Gram* \(1994\) 25 Cal. App. 4th 859 \[30 Cal. Rptr. 2d 792\]](#) (hereafter sometimes *Gram*), which had recently been decided, the superior court issued orders favorable to Wife, including the determination that, by owning a community property interest in Husband's retirement benefits, she owned a community property interest in his retirement benefits as enhanced. As to apportionment, it applied the so-called "time rule."

(See, e.g., *In re Marriage of Judd* (1977) 68 Cal. App. 3d 515, 522 [137 Cal. Rptr. 318]; *In re Marriage of Adams* (1976) 64 Cal. App. 3d 181, 186 [134 Cal. Rptr. [****6] 298].) Under that method, the community property interest in retirement benefits is the percentage representing the fraction whose numerator is the employee spouse's length of service during marriage before separation, here 17.39 years, and whose denominator is the employee spouse's [**454] [***828] length of service in total, here 32.67 years; the separate property interest is the percentage representing the remainder of 100 percent *minus* the community property interest percentage. The superior court determined that the community property interest in Husband's retirement benefits as enhanced was 53.23 percent and that the separate property interest therein was 46.77 percent. It proceeded to award Wife, as her share, one-half of the community property interest, here 26.62 percent--which yielded her an amount of about \$ 814.39 per month, including about \$ 188.71 per month attributable to the enhancement. It declined to follow *Gram* to the extent that *Gram* suggested that it had to add any putative years credited to the employee spouse's service to the denominator of the time-rule fraction.

On Husband's appeal, the Court of Appeal affirmed. Husband claimed that the [****7] superior court erred in its determination as to characterization that, by owning a community property interest in his retirement benefits, Wife owned a community property interest in his retirement benefits as enhanced. Reviewing the ultimate question, as it appears, independently, the Court of Appeal concluded that the superior court was correct in its characterization. In this regard, it agreed with *Gram*. At the same time, it disagreed with the then recent decision in *In re Marriage of Frahm* (1996) 45 Cal. App. 4th 536 [53 Cal. Rptr. 2d 31] (hereafter sometimes *Frahm*), which it read to be in conflict. Neither Husband nor Wife claimed that the superior court erred in its determination as to apportionment of Husband's retirement benefits as enhanced between

community and separate property interests through its [*177] application of the time rule. Hence, the Court of Appeal did not address the point.

On Husband's petition, we granted review. We now affirm.

II

CA(1a) (1a) The question before us is one of characterization of retirement benefits as community or separate property under a defined benefit retirement plan, specifically, whether a nonemployee spouse who owns a [****8] community property interest in an employee spouse's retirement benefits under such a plan owns a community property interest in the latter's retirement benefits as enhanced.

A

CA(2) (2) HN1 Generally, all property acquired by a spouse during marriage before separation is community property. (See *Fam. Code*, § 760, 771.)

Under the leading case of *In re Marriage of Brown* (1976) 15 Cal. 3d 838 [126 Cal. Rptr. 633, 544 P.2d 561, 94 A.L.R.3d 164] (hereafter sometimes *Brown*) and its progeny, **HN2** such property may include the right to retirement benefits accrued by the employee spouse as deferred compensation for services rendered. (*Id.* at pp. 841-842.) This is the case whether or not the right to retirement benefits is "vested" in the sense of "surviv[ing] . . . discharge or voluntary termination," and whether or not it is "matured" in the sense of amounting to an "unconditional" entitlement "to immediate payment." (*Id.* at p. 842.) What is determinative is not any "abstract terminology" of this sort (*id.* at p. 851), but rather a single concrete fact--time. The right to retirement benefits "represent[s] a property interest; to the extent that such [a] right[] derive[s] [****9] from employment" during marriage before separation, it "comprise[s] a community asset" (*Id.* at p. 842.) "Throughout our decisions we have always recognized that the community owns all [such] rights attributable to

employment during marriage" before separation. ([Id. at p. 844.](#))

CA(3) (3) HN3 The right to retirement benefits is a right to "draw[] from [a] stream of income that . . . begins to flow" on retirement, as that stream is then defined. ([In re Marriage of Cornejo \(1996\) 13 Cal. 4th 381, 383 \[53 Cal. Rptr. 2d 81, 916 P.2d 476\]](#); see [In re Marriage of Gillmore \(1981\) 29 \[*178\] Cal. 3d 418, 428 \[174 Cal. Rptr. 493, 629 P.2d 1\]](#); [In re Marriage of \[**455\] Brown, supra, 15 Cal. 3d at p. 848.](#))¹

[**10] [***829]** The stream's volume at retirement may depend on various events or conditions after separation and even after dissolution. (See [In re Marriage of Gillmore, supra, 29 Cal. 3d at p. 428](#); [In re Marriage of Brown, supra, 15 Cal. 3d at p. 848.](#)) Such events and conditions include both changes in the retirement-benefit formula (see [In re Marriage of Brown, supra, 15 Cal. 3d at p. 849, fn. 11](#); [In re Marriage of Gowan \(1997\) 54 Cal. App. 4th 80, 86 \[62 Cal. Rptr. 2d 453\]](#); [In re Marriage of Bergman \(1985\) 168 Cal. App. 3d 742, 767-768 \[214 Cal. Rptr. 661\]](#)), and also changes in the basis on which the retirement-benefit formula operates (see [In re Marriage of Judd, supra, 68 Cal. App. 3d at p. 523](#);

[In re Marriage of Adams, supra, 64 Cal. App. 3d at p. 186](#)). Changes in the retirement-benefit formula may be frequent. (See, e.g., [University of San Francisco Faculty Assn. v. University of San Francisco \(1983\) 142 Cal. App. 3d 942, 950, fn. 2 \[191 Cal. Rptr. 346\]](#) [changes in the retirement-benefit formula are provided for annually in a collective bargaining agreement].) Changes in the basis on which the retirement-benefit formula [****11] operates are virtually constant. (See, e.g., [In re Marriage of Adams, supra, 64 Cal. App. 3d at p. 186](#) [changes in the basis on which the retirement-benefit formula operates are effected continuously through "additional years of service," "increase in earnings," and "increase in age"].)

Thus, the stream's volume at retirement may turn out to be even less than feared, as when the right to retirement benefits fails to vest or mature ([In re Marriage of Brown, supra, 15 Cal. 3d at p. 848](#)), or when the employment itself ceases because the employer ceases to do business. By contrast, it may turn out to be even more than hoped for, as when the employer increases the per-service-year multiplier of the retirement-benefit formula (see [In re Marriage of Bergman, supra, 168 Cal. App. 3d at pp. 767-768](#) [referring to "future [*179] liberalized pension rules or conditions"]; see also [In re Marriage of Gowan, supra, 54 Cal. App. 4th at p. 86](#) [recognizing the possibility of such liberalization]), or when the employee spouse lives to a greater than expected age, or serves more than expected years, or attains a higher than expected final compensation ([In \[****12\] re Marriage of Gillmore, supra, 29 Cal. 3d at p. 428, fn. 9](#)).

That the nonemployee spouse might happen to enjoy an increase, or suffer a decrease, in retirement benefits because of postseparation or even postdissolution events or conditions is justified by the nature of the right to retirement benefits as a right to draw from a stream of income that begins to flow, and is defined, on retirement (see [In re Marriage of Cornejo, supra, 13 Cal. 4th at p. 383](#); [In re Marriage of Gillmore, supra, 29 Cal. 3d at p. 428](#); [In re Marriage of Brown, supra,](#)

¹Contrary to what appears to be the view of our dissenting colleagues, an employee spouse and a nonemployee spouse could not reasonably understand the right to retirement benefits other than as a right to draw from a stream of income that begins to flow on retirement, *as that stream is then defined*. In the typical case at least, the employee spouse is notified by the employer--and the nonemployee spouse must be deemed to be informed by the employee spouse--that, except as to what is vested, the employer reserves the right to amend or even terminate the underlying defined benefit retirement plan prior to the time of retirement. For example, in materials relating to PG&E's defined benefit retirement plan under the VRI program, it is stated: "Since future conditions affecting the company cannot be foreseen, the Board of Directors reserves the right to amend or terminate the plan[] at any time. Although any change in [the] plan or the termination of [the] plan will not affect the benefits paid to plan members before the date the plan was changed or ended, such change may result in reduced levels of benefits or benefit coverage, or increased retiree contributions, after the effective date of any such change. [P] However, no amendment of a plan may deprive any person of a vested interest" therein.

[15 Cal. 3d at p. 848](#)), with the nonemployee spouse, at one and the same time, holding the chance of more (see [In re Marriage of Anderson \(1976\) 64 Cal. App. 3d 36, 39 \[134 Cal. Rptr. 252\]](#); [In re Marriage of Adams, supra](#), 64 Cal. App. 3d at p. 186), and bearing the risk of less ([In re Marriage of Brown, supra](#), 15 Cal. 3d at p. 848), [***830] [**456] equally with the employee spouse. Because the nonemployee spouse is compelled to share the bad with the employee spouse (see *ibid.*), he or she must be allowed to share the good as well.

[CA\(4\) \(4\)](#) Hence, [HN4](#) if the right to retirement benefits accrues, [****13] in some part, during marriage before separation, it is a community asset and is therefore owned by the community in which the nonemployee spouse as well as the employee spouse owns an interest. ([In re Marriage of Brown, supra](#), 15 Cal. 3d at pp. 841-842.)

The employee spouse is "free[] to change or terminate . . . employment, to agree to a modification of the terms of . . . employment (including retirement benefits), or to elect between alternative retirement programs"--in a word, he or she is "free[]" to "define . . . the nature of the retirement benefits owned by the community." ([In re Marriage of Brown, supra](#), 15 Cal. 3d at pp. 849-850.)

But regardless how the employee spouse might choose to exercise such freedom, the "nonemployee spouse owns an interest" in what he or she chooses by owning an interest in the community. ([In re Marriage of Gillmore, supra](#), 29 Cal. 3d at p. 425.)

It follows that [HN5](#) a nonemployee spouse who owns a community property interest in an employee spouse's retirement benefits owns a community property interest in the latter's retirement benefits as enhanced. That is because, practically by definition, the right to retirement benefits [****14] that accrues, at least in part, during marriage before separation underlies any right [*180] to an enhancement. (See Reddall, *The Characterization and Apportionment of Early Retirement*

Enhancements in Pre-Judgment Cases--Again (Summer 1994) 17 Fam. L. News 22, 22-23 (hereafter Reddall).)²

The fact that a nonemployee spouse who owns [****15] a community property interest in an employee spouse's retirement benefits owns a community property interest in the latter's retirement benefits as enhanced does *not* mean that the enhancement is a community asset *in its entirety*. But the question what extent such an enhancement belongs to the community and separate estates is one of apportionment and not characterization.

B

[CA\(5\) \(5\)](#) At the outset, both the *Gram* court and the *Frahm* court recognized that the issue of characterization of property, including the right to retirement benefits and retirement benefits themselves, as the community property of the employee spouse and the nonemployee spouse or the separate property of the employee spouse alone, does not turn on the motive of the employer. In any context, motive is, at best, hard to discern. (See, e.g., [Buss v. Superior Court \(1997\) 16 Cal. 4th 35, 52, fn. 14 \[65 Cal. Rptr. 2d 366, 939 P.2d 766\]](#).) In this context, it is also "irrelevant." ([In re Marriage of Frahm, supra](#), 45 Cal. App. 4th at p. 543; see [In re Marriage of Gram, supra](#), 25 Cal. App. 4th at p. 862.) That is because the employer acts for its own business reasons, and not for reasons [****16] bearing on the characterization of property for employee spouses and nonemployee spouses. ([In re Marriage of Frahm, supra](#), 45 Cal. App. 4th at p. 543; [In re Marriage of Gram, supra](#), 25 Cal. App.

² It is conceivable that, in a given case, a nonemployee spouse who owns a community property interest in an employee spouse's retirement benefits might not own a community property interest in the latter's retirement benefits as enhanced, as perhaps where the right to the enhancement is not derivative. (See *In re Marriage of Adams, supra*, 64 Cal. App. 3d at p. 187, fn. 8 [stating in dictum that "we can envision an increase in benefits after separation that might be caused solely by the employee spouse's earnings"].) Such a case, however, seems the exception and not the rule. In any event, the issue is not presented, and hence need not be resolved today.

[4th at p. 862.](#))

Beyond that point, however, the *Gram* court and the *Frahm* court diverged in their analytical approaches to resolve the issue of characterization.

[**457] [***831] In *Gram*, a nonemployee spouse owned a community property interest in an employee spouse's retirement benefits under a defined benefit retirement plan because the latter had accrued a right thereto during marriage before separation. (See [In re Marriage of Gram, supra, 25 Cal. App. 4th at p. 861.](#)) Years after dissolution, in an attempt to avoid discharging certain employees, the employer offered incentives for early retirement, including an [*181] "Enhanced Early Retirement Option"--which was similar to PG&E's VRI program. (See [id. at pp. 861, 866.](#)) As the record therein reflects, the "Enhanced Early Retirement Option" involved, among other things, the crediting of five putative years of service and five putative years of age. (See also [id. at p. 861.](#)) The employee [****17] spouse elected to retire early under the "Enhanced Early Retirement Option." ([Id. at p. 862.](#)) By doing so, he received enhanced retirement benefits each month. (*Ibid.*) He did not receive any other benefits, such as a severance payment. The superior court characterized the enhancement as his separate property. (*Ibid.*)

The *Gram* court disagreed. After invoking a test derived from a series of decisions in the area of severance payments,³ which looks to whether the benefit in question constitutes deferred compensation for services during marriage before separation or present compensation for loss of earnings thereafter, and after considering what it

deemed to be "relevant factors" identified in those decisions ([In re Marriage of Gram, supra, 25 Cal. App. 4th at pp. 862-866](#)), it held that the nonemployee spouse owned a community property interest in the employee spouse's retirement benefits as enhanced ([id. at pp. 866-867](#)): The "enhanced retirement benefit should have been included in the computation of" the nonemployee spouse's "community interest in the retirement payment" because "it was a part of, and intended to be, the realization of" the employee spouse's [****18] "retirement expectation and thus a form of deferred compensation for services rendered" (*ibid.*).

In *Frahm* too, a nonemployee spouse owned a community property interest in an employee spouse's retirement benefits under a defined benefit retirement plan because the latter had accrued a right thereto during marriage before separation. (See [In re Marriage of Frahm, supra, 45 Cal. App. 4th at pp. 537-538, 541-542, \[****19\] 545.](#)) Years after dissolution, in an attempt to avoid discharging certain employees, the employer offered incentives for early retirement, including a "Voluntary Separation Incentive Program"--which was different from PG&E's VRI program. (See [id. at pp. 541-542.](#)) As the record therein reflects, the "Voluntary Separation Incentive Program" involved both a severance payment and also retirement benefits, which were available together either in a lump sum or by monthly installments. (See *ibid.*) The employee spouse elected to separate himself under the "Voluntary Separation Incentive Program." ([Id. at p. 542.](#)) By doing so, he received, in a lump sum as he had chosen, both a severance payment and also retirement [*182] benefits. ([Id. at pp. 537-538, 542, 544.](#))⁴ As the record therein reflects, the employee spouse admitted that his retirement benefits were a community asset. (See

³ See [In re Marriage of Skaden \(1977\) 19 Cal. 3d 679 \[139 Cal. Rptr. 615, 566 P.2d 249\]](#); [In re Marriage of Lawson \(1989\) 208 Cal. App. 3d 446 \[256 Cal. Rptr. 283\]](#); [In re Marriage of DeShurley \(1989\) 207 Cal. App. 3d 992 \[255 Cal. Rptr. 150\]](#); [In re Marriage of Horn \(1986\) 181 Cal. App. 3d 540 \[226 Cal. Rptr. 666\]](#); [In re Marriage of Kuzmiak \(1986\) 176 Cal. App. 3d 1152 \[222 Cal. Rptr. 644\]](#); [In re Marriage of Wright \(1983\) 140 Cal. App. 3d 342 \[189 Cal. Rptr. 336\]](#); and [In re Marriage of Flockhart \(1981\) 119 Cal. App. 3d 240 \[173 Cal. Rptr. 818\]](#).

⁴ Although there is certain language in *Frahm* that may be read to suggest that the "Voluntary Separation Incentive Program" involved both a severance payment and also enhanced retirement benefits (see [In re Marriage of Frahm, supra, 45 Cal. App. 3d at p. 542](#)), the record therein shows that any such suggestion is incorrect.

also *id. at pp. 537-538*.) The superior court characterized the severance [***832] payment [**458] as his separate property. (*Id. at pp. 538, 542*.)

[****20] The *Frahm* court agreed. After reviewing *Gram* itself and the "severance payment" decisions on which it relied, it stated that it found little "guidance" therein. (*In re Marriage of Frahm, supra, 45 Cal. App. 4th at p. 543*.)⁵ "The cases said 'they were following one bright-line rule or another, but in fact they've simply looked at the menu of factors that point toward separate or community property, selected one or two, and then molded them into a result. The factor that carries the day in one case may not be determinative in the next. . . . About the only "bright line" in these cases is the differentiation between compensation for past services and compensation for future lost wages.' " (*Ibid.*, quoting Comment, 1994 Cal.Fam.L.Rep. 6298.) "Applying the reasoning of these cases to our facts works as well as trying to fit a square peg into a round hole. . . . [T]he results are inconsistent." (*In re Marriage of Frahm, supra, 45 Cal. App. 4th at p. 543*.) At bottom, the "past services or future compensation test is inapt for determining the character of the benefit" (*Ibid.*) The *Frahm* court then turned back to *Brown*, from which it distilled [****21] a "simple" "message": "An employment benefit . . . is community property to the extent a right to it accrues during marriage" before separation. (*In re Marriage of Frahm, supra, 45 Cal. App. 4th at p. 544*.) It held that the nonemployee spouse did not own a community property interest in the employee spouse's severance payment because the latter had not accrued a right thereto during marriage before separation. (*Id. at pp. 544-545*.)⁶ It recognized that

the *amount* of the severance payment that the employee spouse received was based, in part, on his years of service. (*In re Marriage of Frahm, supra, 45 Cal. App. 4th at pp. 544-545*.) But it declared this fact "irrelevant" because his *right* to receive the severance payment was not based thereon. (*Id. at p. 545* & fn. 2.) "The time rule determines the amount of the community share. It does not determine the character of the benefit. Stated another way, a court first looks to see if the right to the [**183] payment accrued during marriage. If so, the time rule determines the extent of the community interest in the payment. But if the right to the payment did not derive from employment, it is separate property." [****22] (*Id. at p. 545, fn. 2*.)

On their respective facts, *Gram* and *Frahm* are each correct in its result as to characterization. *Gram* concludes that a nonemployee spouse who owns a community property interest in an employee spouse's retirement benefits owns a community property interest in the latter's retirement benefits [****23] as enhanced. For its part, *Frahm* concludes that a nonemployee spouse does not own a community property interest in an employee spouse's severance payment when the latter accrues a right thereto solely after separation.

Apart from their results, however, *Frahm* is sounder in its reasoning as to characterization because it cleaves closely to *Brown*, and *Gram* is weaker because it wanders away in the direction of ad hoc decisionmaking. **CA(6) (6)** As we held in *Brown*, what is determinative is the single concrete fact of time. To the extent--and only to the extent--that an employee spouse accrues a right to property during marriage before separation, the property in question is a community asset.

To recall what we made plain in *Brown*: The right to retirement benefits "represent[s] a property interest; to the extent that such [a] right[] derive[s]

⁵ In a misstep, the *Frahm* court treated *Gram* as though it too dealt with a severance payment (*In re Marriage of Frahm, supra, 45 Cal. App. 3d at p. 540*), instead of retirement benefits (*In re Marriage of Gram, supra, 25 Cal. App. 4th at pp. 861-862*).

⁶ The *Frahm* court asserted that the severance payment therein "resulted solely from" the employer's "beneficence." (*In re Marriage of Frahm, supra, 45 Cal. App. 4th at p. 544*.) Whether or not that is

true (cf. *In re Marriage of Brown, supra, 15 Cal. 3d at p. 845* [holding that retirement benefits " 'do not derive from the beneficence of the employer' "]) is of no consequence here.

from employment" during marriage before separation, it "comprise[s] a community asset" (*In re Marriage of Brown, supra*, 15 Cal. 3d at p. 842.) [****459**] [*****833**] "Throughout our decisions we have always recognized that the community owns all [such] rights attributable to employment during marriage" [******24**] before separation. (*Id.* at p. 844.)

And to recall what we made plain in *Brown* and its progeny: The right to retirement benefits represents a certain kind of property interest. It is a right to draw from a stream of income that begins to flow, and is defined, on retirement. (See *In re Marriage of Cornejo, supra*, 13 Cal. 4th at p. 383; *In re Marriage of Gillmore, supra*, 29 Cal. 3d at p. 428; *In re Marriage of Brown, supra*, 15 Cal. 3d at p. 848.) Hence, it is a right to payments specified in accordance with a formula *as such payments may be specified in accordance with such formula as then obtains*--not to some "pre-retirement" payments specified in accordance with some "pre-retirement" formula. As stated, various events and conditions after separation and even after dissolution may affect the amount of retirement benefits that an employee spouse receives. But not their character. Once he or she has accrued a right to retirement benefits, at least in part, during marriage before separation, the retirement benefits themselves are stamped a community asset from then on.

In *Olivo v. Olivo* (1993) 82 N.Y.2d 202 [604 N.Y.S.2d 23, 624 N.E.2d 151] [******25**] (hereafter sometimes *Olivo*), the New York Court of Appeals spoke [***184**] words that are pertinent here.⁷ "By its very nature, a pension right . . . owned as" community property "is subject to modification by future actions of the employee. Should the employed spouse retire early, both parties receive a smaller benefit than they would have otherwise.

The employee is, of course, free to do so, even though it incidentally and adversely affects the other party's rights, and the nonemployee spouse would have no grounds for recovery of the 'loss'. On the other hand, an employee who engages in extended employment at progressively higher wages is not entitled to keep the 'excess' earned beyond what would have accrued at the time of expected retirement." (*Olivo v. Olivo, supra*, 82 N.Y.2d at p. 209 [624 N.E.2d at p. 155]; see *In re Marriage of Gillmore, supra*, 29 Cal. 3d at pp. 425, 428; *In re Marriage of Brown, supra*, 15 Cal. 3d at pp. 849-850.) "Similarly, both parties' rights are generally subject to changes in the terms of a retirement plan, as well as to circumstances largely beyond their control, such as the salary level finally achieved by the employee [******26**] and used to calculate the pension benefit. *What the nonemployee spouse possesses, in short, is the right to share in the pension as it is ultimately determined.* . . . [Any] enhancement" in the amount is a "modification of an asset not the creation of a new one." (*Olivo v. Olivo, supra*, 82 N.Y.2d at pp. 209-210 [624 N.E.2d at p. 155], italics added; see *In re Marriage of Gillmore, supra*, 29 Cal. 3d at pp. 425-426; *In re Marriage of Brown, supra*, 15 Cal. 3d at p. 849, fn. 11.)

III

CA(1b) (1b) Turning to the proceeding at bar, we now consider the decision of the Court of Appeal sustaining the superior court's determination as to characterization that, by owning a community property interest in Husband's retirement benefits under PG&E's defined benefit [******27**] retirement plan, Wife owns a community property interest in his retirement benefits as enhanced by the VRI program.

CA(7) (7) At the threshold, we believe that the Court of Appeal properly reviewed the superior court's determination as to characterization, as it apparently did, independently. Inasmuch as the basic "inquiry requires a critical consideration, in a factual context, of legal principles and their

⁷ Although the law of New York is that of equitable distribution and not community property, it has developed in accord with *Brown*. (See *Majauskas v. Majauskas* (1984) 61 N.Y.2d 481, 492, fn. 6 [474 N.Y.S.2d 699, 463 N.E.2d 15].)

underlying values," the determination in question amounts to the resolution of a mixed question of law and fact that is predominantly one of law. ([Crocker National Bank v. City and County of San Francisco \(1989\) 49 Cal. 3d 881, 888 \[**460\] \[***834\] \[264 Cal. Rptr. 139, 782 P.2d 278\]](#).) As such, it is examined de novo. (*Ibid.*)

[*185] [CA\(1c\) \(1c\)](#) On the merits, we also believe that the Court of Appeal properly concluded that the superior court's determination as to characterization was correct.

The superior court did not err insofar as it determined that Wife owns a community property interest in Husband's retirement benefits. That is undisputed and indisputable. Indeed, Husband admits the point.

Neither did the superior court err insofar as it determined that Wife owns [****28] a community property interest in Husband's retirement benefits as enhanced. As explained, a nonemployee spouse who owns a community property interest in an employee spouse's retirement benefits owns a community property interest in the latter's retirement benefits as enhanced. Husband's right to retirement benefits, which accrued, in part, during marriage before separation, underlies the right to the enhancement, which is derivative thereof. It bears emphasis that the enhancement is not a separate retirement benefit, still less a benefit separate from the retirement benefits themselves. It is the mere description that we apply to the result that we reach when we subtract the amount of retirement benefits that Husband would have received if he had waited to retire early at 55 years of age from the amount that he did in fact receive by electing to retire early at about 54 1/3 years of age under the VRI program. It is no different from an enhancement effected through "additional years of service," "increase in earnings," or "increase in age"--which is uncontestedly a community asset ([In re Marriage of Adams, supra, 64 Cal. App. 3d at p. 186](#)).

Husband argues against our conclusion [****29]

as to characterization. He proves unpersuasive.

Husband asserts that Wife does not own a community property interest in his retirement benefits as enhanced. He concedes that, as a general matter, a nonemployee spouse who owns a community property interest in an employee spouse's retirement benefits owns a community property interest in the latter's retirement benefits as enhanced. He maintains, however, that a nonemployee spouse does not own a community property interest in the employee spouse's retirement benefits as enhanced through a postseparation "contract" between the employee spouse and the employer independent of any right to retirement benefits that accrued, in some part, during marriage before separation--whereby, for example, the employer gives the enhancement in consideration for immediate retirement, and the employee spouse immediately retires in consideration for the enhancement. Husband's retirement benefits, however, were *not* enhanced by a "contract" of this sort. Any such "contract" was derivative of the right to retirement benefits that [*186] accrued, in some part, during marriage before separation. Contrary to his position--to quote *Olivo*--the "enhancement" [****30] is a "modification of an asset not the creation of a new one." ([Olivo v. Olivo, supra, 82 N.Y.2d at p. 210 \[624 N.E.2d at p. 155\]](#).) By its very terms, it results from "improvements to the retirement benefit formula" under PG&E's existing defined benefit retirement plan, not from a new plan altogether. Husband's premise, viz., that he accrued a right to the enhancement solely after separation, is unsupported.

Husband then asserts, more radically, that Wife does not own a community property interest in his retirement benefits as enhanced because the enhancement amounts to a severance payment and, as such, is his separate property. The enhancement here, however, was not a severance payment either in name or in nature. It called itself, and was in fact, an increase *in retirement benefits*. Distinguishable, accordingly, is [In re Marriage of Lawson, supra,](#)

[208 Cal. App. 3d 446](#). There, the court held that a nonemployee spouse did not own a community property interest in a severance payment given to an employee spouse after separation. (*Id. at pp. 448-454*.) But, unlike Husband and his retirement benefits, the employee spouse had not previously accrued any right to [****31] the payment whatsoever. (*Ibid.*) Distinguishable as well is [In re Marriage of Nelson \(1986\) 177 Cal. App. 3d 150 \[222 Cal. Rptr. 790\]](#). There, the court held that a nonemployee [**461] [***835] spouse did not own a community property interest in a stock option granted to an employee spouse after separation. (*Id. at pp. 156-158*.) Again, unlike Husband and his retirement benefits, the employee spouse had not previously accrued any right to the option whatsoever. (*Ibid.*)⁸ At oral argument, Husband acknowledged that *what* the employer does is material and not *why*. It is of no consequence that PG&E enhanced his retirement benefits *because it wanted him to retire immediately*. Just as it would be of no consequence that he himself enhanced his retirement benefits, as by seeking and obtaining higher final compensation, *because he wanted to retire comfortably*. (See [In re Marriage of Gillmore, supra, 29 Cal. 3d at p. 428, fn. 9](#).) Rather, it is dispositive that PG&E *enhanced his retirement benefits*--in which Wife admittedly owns a community property interest.

[****32] [CA\(8a\) \(8a\)](#) Although neither Husband nor Wife claimed in the Court of Appeal, or claims here, that the superior court erred in its determination as to apportionment of Husband's retirement benefits as enhanced between community and separate property interests through its application of the time [**187] rule, we shall

address that question because their arguments about characterization may be deemed to reach apportionment by implication.

[CA\(9\) \(9\) HN6](#) The superior court must apportion an employee spouse's retirement benefits between the community property interest of the employee spouse and the nonemployee spouse and any separate property interest of the employee spouse alone. (See, e.g., *In re Marriage of Adams, supra*, 64 Cal. App. 3d at pp. 186-187; [In re Marriage of Bergman, supra, 168 Cal. App. 3d at pp. 748-751](#).) It has discretion in the choice of methods. (See, e.g., *In re Marriage of Adams, supra*, 64 Cal. App. 3d at pp. 186-187; see also [In re Marriage of Henkle \(1987\) 189 Cal. App. 3d 97, 99 \[234 Cal. Rptr. 351\]](#); [In re Marriage of Poppe \(1979\) 97 Cal. App. 3d 1, 8 \[158 Cal. Rptr. 500\]](#) (per Kaufman, J.).) Such methods include the time rule, which is apparently [****33] the one that is employed most frequently. ([In re Marriage of Henkle, supra, 189 Cal. App. 3d at p. 99](#); [In re Marriage of Poppe, supra, 97 Cal. App. 3d at p. 8](#).) Whatever the method that it may use, however, the superior court must arrive at a result that is "reasonable and fairly representative of the relative contributions of the community and separate estates." ([In re Marriage of Poppe, supra, 97 Cal. App. 3d at p. 11](#).)

[CA\(8b\) \(8b\)](#) Reviewing the matter, as we must, for abuse of discretion (see, e.g., [In re Marriage of Adams, supra, 64 Cal. App. 3d at p. 187](#)), we believe that the superior court did not err in its apportionment of Husband's retirement benefits as enhanced between community and separate property interests through its application of the time rule. [HN7](#) The use of the time rule is not unreasonable when the "amount of the retirement benefits is substantially related to the number of years of service." ([In re Marriage of Poppe, supra, 97 Cal. App. 3d at p. 8](#); accord, [In re Marriage of Judd, supra, 68 Cal. App. 3d at pp. 522-523](#).) That is the case here. The amount of Husband's retirement benefits as enhanced was the product of his final [****34] compensation, length of service, and a per-service-year multiplier. Moreover, the

⁸ In [In re Marriage of Hug \(1984\) 154 Cal. App. 3d 780 \[201 Cal. Rptr. 676, 46 A.L.R.4th 623\]](#), the court suggested in dictum that a nonemployee spouse might not own a community property interest in a stock option granted to an employee spouse after dissolution if the employee spouse--unlike Husband and his retirement benefits--had not accrued any right thereto during marriage before separation. (See [id. at p. 793](#).) Noting, however, that the "issue [was] not before" it in that matter, it passed on. (*Ibid.*) So shall we.

result of the time rule is not unreasonable when the "relative contributions of the community and separate estates" are accounted for. (*In re Marriage of Poppe, supra, 97 Cal. App. 3d at p. 11.*) That is also the case here. Reflecting Husband's length of service of 17.39 years during marriage before separation and his length of service of 32.67 years in total, the community property interest in Husband's retirement benefits as enhanced was fixed at 53.23 percent and his [**462] [***836] separate property interest was fixed at 46.77 percent.

We find unsound *Gram's* suggestion that, in applying the time rule to apportion an employee spouse's retirement benefits as enhanced between community and separate property interests, the superior court must add any putative years credited to the employee spouse's service to the denominator [**188] of the time-rule fraction. (See Reddall, *supra*, 17 Fam. L. News at pp. 23-24 [criticizing the suggestion of *In re Marriage of Gram, supra, 25 Cal. App. 4th at p. 867*].) Such years are *fictive*--they have no independent existence, [****35] but are merely a means by which the employer effects the enhancement. The employer can achieve exactly the same outcome, for example, by crediting a putative sum to the employee spouse's final compensation--in this proceeding, \$ 492.23 to \$ 5,360.43 per month, for a total of \$ 5,852.66 per month. Or by increasing the per-service-year multiplier in the retirement-benefit formula that operates on the basis provided by the employee spouse--in this proceeding, from 1.6 percent to 1.74692 percent. Neither the community nor the employee spouse supplied the putative service credit as a mechanism of enhancement. The employer did. But both the community and the employee spouse supplied part of the basis on which the retirement-benefit formula operates, specifically, the years of service. And they both must share in what the putative service credit yields, because that credit amounts to a postseparation and even postdissolution event or condition on which the volume of the stream of income that constitutes retirement benefits depends.

When, in a case such as this, the superior court uses the time rule, with the employee spouse's length of service during marriage before separation in the numerator, [****36] and with the employee spouse's length of service in total in the denominator, it arrives at a result that is "reasonable and fairly representative of the relative contributions of the community and separate estates." (*In re Marriage of Poppe, supra, 97 Cal. App. 3d at p. 11.*) The superior court would disturb the balance if it were to add to the denominator any putative years credited to the employee spouse's service: the employee spouse did not supply this fiction. It would not restore the balance if it were to add such putative years to the numerator as well: even if the fact that the community did not supply this fiction is ignored, the value of a fraction, other than 1/1, does not remain constant through the addition of the same number to both numerator and denominator. It must, accordingly, leave the balance as it finds it, without adding any putative years credited to the employee spouse's service to either the numerator or the denominator. To the extent that *Gram* is to the contrary, it is disapproved.

IV

For the reasons stated above, we conclude that we must affirm the judgment of the Court of Appeal.

It is so ordered.

George, C. J., Kennard, J., Werdegar, [****37] J., and Brown, J., concurred.

Dissent by: BAXTER

Dissent

BAXTER, J.

I respectfully dissent. A marital community has a contractual entitlement to all benefits earned by a spouse during the marriage under [**189] terms and conditions of employment *then in effect*. In my

view, however, a dissolved community has no stake, by contract or otherwise, in any "enhancement" of benefits that was first offered *after the marital separation* and was *not in effect* during the marriage. This should particularly be the rule when the enhanced benefits are a new employer "subsidy" provided for the purpose of inducing a voluntary termination of employment, the future earnings and pension rights from which would themselves have been the employee spouse's separate property.

While this couple was married, the marital community, through the employed husband, contributed its services in return for a contractual right to compensation including (1) the husband's current salary during that period, and (2) the conditional future right to collect retirement pension benefits, insofar as attributable to work performed during the marriage, under the terms of the company retirement **[**463]** **[***837]** **[****38]** plan *as in effect when the work was performed*. That plan would apparently have allowed the husband to choose either "normal" retirement at age 65, or "early" retirement between ages 55 and 65 subject to a reduced monthly benefit payment. The monthly payment for "early" retirement would be lower for two reasons. First, by selecting early retirement, the husband would cease earning service credits and salary increases relevant to computation of a final pension. Second, he would sustain an actuarial adjustment in the monthly benefit, reflecting the longer life expectancy over which the pension earned would be paid.

Years after the marital community ceased to exist, at a time when the employee's salary and service credits were his alone, the employer, in an effort to eliminate positions, sought to induce his voluntary early retirement by offering him an increase in the reduced monthly pension benefits to which early retirement would otherwise entitle him. The increase was accomplished by granting years of putative future service credit and waiving the actuarial adjustment for early retirement.

*The erstwhile community performed not one minute of work under an employment contract [****39] that included these "enhanced" benefits, or in expectation thereof.* Instead, the community offered its services under the terms and conditions of compensation *then in effect*, and passed from existence with that understanding. The new benefits, announced long after dissolution of the marriage, sought to encourage and compensate the divorced husband's early withdrawal from his own employment, the future earnings and pension credits from which would have accrued solely to him.

Certainly the community, though long extinct, is entitled to share pro rata in the pension payments for which the husband became eligible at his **[*190]** retirement *under the plan in effect during the marriage*. When contributing its time, effort, and skill to the husband's work during the marriage, the community contracted for, earned, and expected no less. (See, e.g., [In re Marriage of Brown \(1976\) 15 Cal. 3d 838, 844 \[126 Cal. Rptr. 633, 544 P.2d 561, 94 A.L.R.3d 164\]](#) (Brown) ["community owns all pension rights attributable to employment during the marriage"].)

Yet the majority go further. They reason that once an employee "has accrued a right to retirement benefits, at least in part, **[****40]** during marriage before separation, the retirement benefits themselves are stamped a community asset from then on." (Maj. opn., *ante*, at p. 183.) Hence, they conclude, when a pension's terms *change* in the employee's favor *after* the marriage has ended, as a means of inducing the employee to forgo his own future work earnings and retire early, the ancient community retroactively gains a full proportionate share of the *enhancement*. The majority refuse even to concede the now-unmarried employee the full benefit of years of *future age and service credit* attributed to him under the "enhanced" voluntary retirement plan, though by actually working during the same future period, the husband would without doubt have accrued those same years of age and service for his sole account.

I cannot accept such a holding. The majority's result is at odds with the fundamental premise that community property is limited to that acquired during the marriage (*Fam. Code, § 760*), while assets earned or accumulated by the marital parties at any time after their separation are their separate property (*id.*, *§ 771, 772*).

In support of their views, the majority advance two related premises. [****41] First, the majority imply, by contributing labor toward a spouse's pension, the community makes an "investment" in, and thus earns and acquires a pro rata "property" right to, the "stream of income" for which the employee will finally be eligible, as determined by all intervening events, both good and bad, that precede the employee's retirement. Second, the majority suggest, the community has earned an interest in any final pension, including postmarital "enhancements" thereof, insofar as it contributed eligibility credit toward the final pension. These theorems, in the extreme form the majority apply them, are supported neither by our prior decisions nor by sound logic.

[**464] [***838] Thus, prior to *Brown, supra, 15 Cal. 3d 838*, California adhered to the rule that pension interests which had not "vested" (i.e., which remained subject to forfeiture through termination of employment) at the time of dissolution [*191] remained a mere "expectancy," and were thus not a divisible item of community property. (E.g., *In re Marriage of Fithian (1974) 10 Cal. 3d 592, 596 [111 Cal. Rptr. 369, 517 P.2d 449]*; *French v. French (1941) 17 Cal. 2d 775, 778 [112 [****42] P.2d 235, 134 A.L.R. 366]*.) Our seminal *Brown* decision abrogated this doctrine, concluding that accrued rights in a pension arising from the explicit terms and conditions of employment could constitute divisible community property even if such rights were not yet "vested" at the time of dissolution. Our opinion emphasized that the right to earn a pension is *contractual* in nature, a form of deferred compensation which "derive[s] from the *terms of the employment contract*." (*Brown, supra, 15 Cal. 3d 838, 845*,

italics added.)

We observed that the constitutional prohibition against impairment of contracts had been held to preclude a public employer from unilaterally withdrawing even nonvested pension rights which have already been earned by the employee's performance of work. (*Brown, supra, 15 Cal. 3d 838, 845-846*.) A parallel rule had arisen in the private sector, we noted, such that an employer could not repudiate even nonvested pension rights "once the employee performed services *in reliance upon the promised pension*" (*id.*, at p. 846, italics added); instead, the employee "could enforce his right . . . either under *traditional contract principles* [****43] of *offer, acceptance and consideration* or under the doctrine of *promissory estoppel*. [Citation.]" (*Ibid.*, italics added.)

Thus, we reasoned, this interest is a chose in action rather than a mere "expectancy" or hope of future beneficence as to which no *enforceable right* exists. Insofar as the community contributed its time, labor, and effort toward the accumulation of such *contractual* rights, we concluded, it must share pro rata in their value. (*Brown, supra, 15 Cal. 3d 838, 844-847*.)

"*Brown's* message is very simple. An employment benefit, whether or not vested, is community property to the extent a right to it *accrues during marriage*." (*In re Marriage of Frahm (1996) 45 Cal. App. 4th 536, 544 [53 Cal. Rptr. 2d 31]* (*Frahm*), italics added.)

No such accrual occurred here. When the instant community performed its work, there was *no* contractual right or interest, "vested" or "nonvested," [*192] "mature" or "immature," ¹ *nor even a bare "expectancy,"* in the "enhanced" benefits over which the wife now seeks to assert a community interest. By performing its services, the

¹As *Brown* explained, in discussions of community property interests in pensions, a pension right is deemed "mature" when a present right to payment of benefits has arisen, as on eligibility for retirement. (*Brown, supra, 15 Cal. 3d 838, 842*.)

community did not "accept" the employer's "offer" of [****44] "enhanced" pension terms, nor did the community contribute its labor in "reliance" on a "promise" of such terms. The employer acquired no legal or equitable obligation, by virtue of the community's efforts, to provide such "enhanced" benefits. They simply were not in the contemplation of the parties when the community effort was expended. Hence, nothing in the reasoning or holding of *Brown* supports the view that this community acquired rights in pension "enhancements" offered by the husband's employer only after the community had dissolved.²

[****45] [**465] [***839] Until today, no subsequent decision of this court had expanded *Brown*'s holding to recognize a community interest in employment benefits first afforded after the community had dissolved. In *In re Marriage of Skaden* (1977) 19 Cal. 3d 679 [139 Cal. Rptr. 615,

[566 P.2d 249](#)], we concluded, for reasons similar to those set forth in *Brown*, that the dissolved community had an interest in "severance payments," the rights to which were spelled out in the *initial employment contract* under which the community had contributed its labor. *In re Marriage of Stenquist* (1978) 21 Cal. 3d 779 [148 Cal. Rptr. 9, 582 P.2d 96] held that an employee cannot entirely defeat an ex-spouse's community pension interest by electing a separate-property disability [*193] pension in lieu of a normal longevity pension for which the employee is also eligible. *In re Marriage of Gillmore* (1981) 29 Cal. 3d 418 [174 Cal. Rptr. 493, 629 P.2d 1] (Gillmore) and *In re Marriage of Cornejo* (1996) 13 Cal. 4th 381 [53 Cal. Rptr. 2d 81, 916 P.2d 476] simply explained that if an ex-spouse has not previously been "cashed out" of his or her community property [****46] interest in the employee's pension, an employee who chooses to continue working after eligibility for retirement has occurred may nonetheless be required to start paying the ex-spouse the latter's pension share.³

²Taken out of context, *Brown*'s assertions that pension rights "derive" from, or are "attributable to" employment, and that pension benefits are a form of "deferred compensation," may have contributed to subsequent misunderstanding in the Courts of Appeal about a former community's rights in employment benefits offered to or received by the employee after the marriage has ended. Since *Brown* was decided, a number of lower court decisions, addressing a wide range of situations, have assumed that employment-related benefits are community property to the extent they are "attributable" to prior community effort or appear intended as "deferred compensation" for past work rather than compensation for loss of future earnings, even though the payment or benefit was not part of the terms and conditions of employment when the community contributed its labor. (See, e.g., *In re Marriage of Gram* (1994) 25 Cal. App. 4th 859, 862-867 [30 Cal. Rptr. 2d 792] (Gram); *In re Marriage of Lawson* (1989) 208 Cal. App. 3d 446, 452 [256 Cal. Rptr. 283]; *In re Marriage of Horn* (1986) 181 Cal. App. 3d 540, 547-548 [226 Cal. Rptr. 666]; *Downer v. Bramet* (1984) 152 Cal. App. 3d 837, 843 [199 Cal. Rptr. 830]; *In re Marriage of Wright* (1983) 140 Cal. App. 3d 342, 344-345 [189 Cal. Rptr. 336]; *In re Marriage of Flockhart* (1981) 119 Cal. App. 3d 240, 242-243 [173 Cal. Rptr. 818]; also cf. *In re Marriage of Gowan* (1997) 54 Cal. App. 4th 80, 87-91 [62 Cal. Rptr. 2d 453]; *In re Marriage of Melton* (1994) 28 Cal. App. 4th 931, 938-939 [33 Cal. Rptr. 2d 761].) However, as indicated above, *Brown* merely acknowledged the community's interest in enforceable *contractual* rights accrued by reason of the terms and conditions under which the community's employment *actually took place*. Neither *Brown* nor our subsequent cases (see text discussion, *post*) provide any basis for a conclusion that postmarital benefits are community property.

³In *Gillmore*, we observed that a nonemployee spouse who elects to "cash out" of the employee's pension at the time of dissolution thereby forfeits the right to share in the "increased [future] value" of the pension benefits. However, we made clear that any such "increased value" was that which "might accrue due to *increased age, longer service and a higher salary*.'" (*Gillmore, supra*, 29 Cal. 3d 418, 428, fn. 9, quoting *In re Marriage of Luciano* (1980) 104 Cal. App. 3d 956, 961 [164 Cal. Rptr. 93], italics added.) This passage does not imply that the nonemployee spouse, by deferring his or her pension share until the employee becomes eligible to retire, thereby acquires an interest in intervening *changes in the pension formula*.

In establishing the general principle that an employee cannot manipulate his pension rights to the *prejudice* of the former community, our decisions have suggested that the employee can agree to a postmarital "modification" of the pension terms so long as the former community's interest in the pension is not thereby *defeated or substantially impaired*. (E.g., *Gillmore, supra*, 29 Cal. 3d 418, 425-426; *Brown, supra*, 15 Cal. 3d 838, 849, & fn. 11.) But by placing limits on the employee's contractual right to *undermine* the pension already earned by the former community, we did not intimate that *more favorable* pension terms first offered to the employee after the marriage has ended must inure to the *benefit* of the former community, which did not supply its labor on those terms.

[****47] Neither of the majority's reasons for now deeming postmarital pension "enhancements" to be community property is persuasive. The majority first advance the notion that even if "enhanced" pension benefits were first *offered* only after the marriage was dissolved, the community nonetheless earned and thus "acquired" rights thereto during the marriage insofar as community efforts account for a portion of the employment (including age and service credit eligibility requirements) which "underlies" the pension as a whole. The premise appears to be that when the community contributes, during any period, its time, effort, and skill to a particular employment, it then and there earns and acquires rights to a pro rata share of *any* pension the employee spouse ultimately receives, including amounts that stem from postmarital improvements to the pension plan.

For a simple reason, however, I cannot agree. As indicated above, a community provides its time, effort, and skill on the basis of the terms of compensation then in effect. Those terms include the conditional right to a future pension under the existing pension [**466] [****840] rules, but do not include new and [*194] [****48] additional pension benefits conferred on the employed spouse only after the marriage has dissolved. While it existed and contributed its labor, the community earned and accrued no interest, expectancy, entitlement, or enforceable right in such changes.

⁴ [****49] By definition, such postmarital benefits cannot be "property . . . *acquired* by a married person *during the marriage*" (Fam. Code, § 760, italics added), and thus community property, but instead must constitute postseparation "earning[s]" or "accumulation[s]" that inure to the sole benefit of the employee (*id.*, § 771, 772). (Frahm, supra, 45 Cal. App. 4th 536, 544; see In re Marriage of Nelson (1986) 177 Cal. App. 3d 150, 156-157 [222

Cal. Rptr. 790] [stock options and bonus conferred only after separation are employee's separate property]; also cf. In re Marriage of Walker (1989) 216 Cal. App. 3d 644, 651 [265 Cal. Rptr. 32] ["The community has an interest in employment benefits *conferred* during marriage."].)⁵

[****50] The majority insist their rule is necessary to treat the community fairly because, having borne the "risk" of intervening contingencies that might reduce or eliminate the ultimate pension amount, the community is entitled to the potential "reward" of beneficial contingencies, including postmarriage improvements to the plan. But this reasoning is flawed, because the "risks" [*195] the community faces are not commensurate with the "reward" the majority confers.

⁵ Even if I agreed that postmarital pension "enhancements" should inure to the former community's benefit insofar as the community contributed years of age and service bearing on the employee's entitlements, I would dispute the majority's application of that principle to the facts before us. Besides allowing retirement up to nine months before the usual minimum retirement age of fifty-five, the instant employer's "Voluntary Retirement Incentive" (VRI) plan "enhanced" the employee's pension in two ways: first, by adding three years of putative or "fictive" service credit, and second, by waiving the actuarial reduction for retirement at an early age. The majority accord the community a *full* pro rata share of both "enhancements" by direct application of the "time rule"; under their formula, the community's years of service credit are divided by the husband's total *actual* years of service credit to determine the community's percentage share of the total "enhanced" monthly pension amount. (Community years of service (17.39) divided by husband's actual total years of service (32.67) equals .5323 or 53.23 percent.) However, neither of the "enhancers" in the VRI plan operates or depends, by its terms, upon years of age or service credit previously contributed by the community. Instead, the "fictive" additional years of service credit serve as a *replacement* for credits the husband, but for the early retirement, would have earned *for his own account* in the future. (See Gram, supra, 25 Cal. App. 4th 859, 867 [concluding that "fictive" years of service credit in postmarital early retirement plan must be added to husband's actual years of credit before "time rule" is applied].) The actuarial waiver also seems simply a means of redressing a disadvantage *caused by the early retirement itself*, and is the equivalent of adding "fictive" years of employee age which were *not* contributed by the community. (Cf. Gram, supra, at p. 861.) No persuasive reason appears why "enhancing" features of this kind should simply be allocated pro rata to the community.

⁴ Thus, it seems clear that if the wife in this case had elected at the time of dissolution to receive the present value of her pension rights as a lump sum, no value could have been assigned to the possibility of future beneficial changes in the terms of the pension plan. (See fn. 3, *ante*.)

When a married employee performs labor and accrues rights under the terms of an existing plan to pay future pension benefits, the community faces, and can assess as it continues to work, the "risk" that the contingencies and conditions *set forth in the plan itself* will not come to pass in the most advantageous way. As the community works, it well understands *by reference to the plan already in existence* that the pension amount ultimately due, and the community's share thereof, may be eliminated or reduced insofar as the employee dies before retirement, retires early, changes jobs, is discharged from employment, or fails to attain the hoped-for level of final compensation. By the same token, the community should [****51] reap the "reward" when the pension rules *under which the community's labor was contributed* turn out to produce a favorable result.

But an *improvement* in the plan that occurs only after the marriage has ended is not the mere favorable resolution of a contingency or condition the community assumed when performing its services. Instead, such an [**467] [****841] enhancement is a new and unforeseeable development, one unrelated to the assumptions under which the community supplied its labor. Such a postmarital improvement constitutes no legitimate "reward" for the "risks" the community faced when earlier deciding whether to contribute its time, effort, and skill. Considerations of fairness do not suggest that the community, long interred, may rise from its ashes to claim a retroactive stake in such a benefit. ⁶ On the contrary, by retaining its

rights under any and all pension terms in existence when community contributions were made, the community obtains the full benefit of its bargain.

[****52] [*196] Even if there are circumstances in which a former community might properly participate in postmarital pension changes, this is not such a case. The "enhanced" benefits offered the husband in this case were not part of a companywide retroactive upgrade of the terms and conditions of employment. On the contrary, they were part of a limited program, targeted at a particular category of employees, and based upon specific personnel considerations applicable to that group at the time the program was announced. They were not intended as a reward for an employee's past work, nor did they reflect the true value of pension credits earned by the employee's actual service (including community service). On the contrary, they represented a new subsidy by the employer, offered for the sole purpose of inducing the targeted employees including husband, who was now unmarried and working for his sole account, to forgo future employment and the earnings associated therewith.

As the majority disclose, the program, announced

a vested interest in the Retirement Plan and Savings Fund Plan benefits."

The majority also propose that by supplying labor under the terms of a pension plan which expressly permits future modification of nonvested rights, as such plans typically do, a community thereby understands it is acquiring an interest in whatever increased "stream" of retirement income such future modifications may produce. (Maj. opn., ante, p. 178, fn. 1.) The premise is unpersuasive. By reserving the freedom to modify the pension's terms in the future, except as to vested rights, the employer merely warns that it can, and may, *reduce or eliminate* retirement benefits attributable to work *thereafter performed*, or as to which no contractual right has otherwise yet arisen. Such a warning does not give the community a right to share retroactively in *beneficial* pension changes that occur only after the community has dissolved. Moreover, the increased benefits at issue in this case did not stem from a routine pension "modification" the community might have anticipated at the time it contributed its time, effort, and skill. Instead, they arose from a later special arrangement between the employer and particular employees, outside the usual pension program, as a means to induce and compensate early retirements desired by the employer. (See discussion, post.)

⁶The majority imply that the community may indeed face the "risk" of disadvantageous changes in a pension plan which occur after dissolution of the marriage. But that "risk" is sharply limited by the principles of vested contractual rights. In essence, these provide that pension rights *already earned* cannot be eliminated or materially impaired, either by the employer unilaterally (see, e.g., [Betts v. Board of Administration \(1978\) 21 Cal. 3d 859, 863-864 \[148 Cal. Rptr. 158, 582 P.2d 614\]](#); [Brown, supra, 15 Cal. 3d 838, 846](#), & fn. 7; [Hunter v. Sparling \(1948\) 87 Cal. App. 2d 711, 725 \[197 P.2d 807\]](#)), or by the employee's agreement (see fn. 3, ante). Indeed, while the instant employer reserved the right to amend the VRI plan as changing circumstances might require, it acknowledged in the VRI brochure that "no amendment of a plan may deprive a person of

in March 1993, was labeled a "Voluntary Retirement *Incentive*." (Italics added.) It was offered only to employees who, as of December 31, 1992, were 50 or older with [****53] at least 15 years of credited service, and who, as of February 17, 1993, worked in specified departments of the company. Those eligible were promised "valuable financial *incentives*" (italics added), "available *only* if you elect to retire through the program" (italics added), which would "make retirement an even more attractive option." The informational brochure described the program as a "management tool" to "reduc[e] costs" by "bring[ing] our workforce in line with the needs of our changing business." "This VRI," the brochure explained, "is developed to suit the needs of a particular situation[,] . . . is targeted to areas where reduction [in the workforce] is most needed[,] and strikes a balance between the stated objectives of cost reduction and fair treatment for our employees." As already recounted (see fn. 5, *ante*), the proffered "incentives" included, for the first time, the [**468] [***842] rights (1) to retire up to nine months *before* the usual minimum early retirement date, (2) to receive fictional years of service credit, and (3) to receive a monthly benefit calculated as though retirement was occurring at age sixty-five, the "normal" retirement [****54] age.

Manifestly, the increased monthly retirement benefit offered in return for participation in the VRI program was intended as consideration for the [197] employee's postmarital agreement to retire early, and as a partial replacement of the future compensation, both in monthly salary and in continuing accrual of pension rights, that the employee would thereby give up. Pension rights under the VRI option stemmed from a separate contract between the employee and the employer, offered and accepted after the marriage ended for reasons unrelated to the former community's efforts. This contract was intended to govern future, not past, relations between employer and employee. It was subsidized anew by the employer rather than reflecting the value of credits previously accumulated. Accordingly, it was independent of

any community interest.⁷

[****55] In concluding otherwise, the majority merely restate the same unpersuasive theories discussed above. The dispositive point, the majority insist, is that the early retirement inducement was

⁷Even when incorporated into an existing pension plan, such an "enhancement" is necessarily a new "subsidy," just as a lump-sum "severance payment" would be, to the extent it exceeds the present value of pension credits accumulated and funded under the existing plan. We recently acknowledged this principle in another context. In *In re Marriage of Oddino* (1997) 16 Cal. 4th 67 [65 Cal. Rptr. 2d 566, 939 P.2d 1266] (*Oddino*), the husband's pension plan (Plan) allowed early retirement between ages 55 and 65, and also utilized the "Rule of 75," under which an eligible employee whose years of age and service credit totaled 75 or more could retire early without suffering a consequent actuarial reduction in monthly benefits. When the husband reached age 55, he was qualified for early retirement under the Rule of 75 but chose to continue working. The ex-wife sought to require the Plan to begin immediate payments of her pension share, calculated as though the husband had retired on his 55th birthday *under the Rule of 75*. The federal Employee Retirement Income Security Act of 1974 (ERISA) provides that a private pension plan need make direct payments to persons other than the covered employee only if directed to do so by a state court's "qualified domestic relations order" (QDRO). A QDRO may be used to enforce an ex-spouse's state-law right to immediate pension payments when the employee, though eligible to retire, has elected to postpone retirement. In such a case, however, payments under the QDRO must be calculated on the basis of the "present value of benefits actually accrued and *not taking into account . . . any employer subsidy for early retirement*." (29 U.S.C. § 1056(d)(3)(E)(i)(II), italics added.) We upheld the Plan's contention that when calculating payments to the ex-spouse under her QDRO, the Plan must *apply* the usual actuarial reduction for early retirement, because *waiver* of that reduction under the Rule of 75 is an early retirement "subsidy." (*Oddino, supra*, 16 Cal. 4th at pp. 82-88.) Among other things, we noted that "employers not infrequently subsidize employees' early retirement as an incentive for specified groups of employees to leave the employer's work force voluntarily, so as to reduce its wage burden or 'avoid litigation that might result from laying off an employee.' [Citation.] Such subsidized early retirement programs are a '*quid pro quo between the plan sponsor and the participant*.' [Citation.]" (*Id. at p. 88*, italics added.)

The issues and policies under consideration in *Oddino* are not directly dispositive here. However, *Oddino's* analysis supports the principle that pension amounts not actually earned by employment, but offered after the employee's marriage has ended as a subsidy for early retirement, are a matter between the employee and employer alone, and are not "attributable" to community effort so as to transmute them into community property. Indeed, the "fictive" service and age credits provided by the instant VRI plan closely resemble the "subsidized" pension enhancements at issue in *Oddino*.

provided through the *pension*, a [*198] form of benefit that "derive[s]" from past employment and depends in part on effort, years of chronological age, and service longevity contributed by the community. By earning rights in the pension itself, the majority conclude, the community thus also earned and acquired a right in *any terms* under which the pension was ultimately payable, even terms first offered after the marriage ended in order to induce the employee to retire early.

As I have already demonstrated, however, the majority's expansive notion of community pension rights does not comport with the contract and community property principles set forth in *Brown*. Moreover, for reasons the majority themselves suggest, the community or separate nature of a postmarital early [*469] [***843] retirement inducement should not depend on the precise means by which an employer has chosen to provide the inducement. The employer acts for its own business convenience, and is not primarily [****56] motivated by a concern for the community property consequences of its action. Here it is clear that by promising a new benefit to designated employees who agreed to retire early, the employer sought to encourage such early retirements and to provide the workers who chose that option at least partial compensation for their resulting loss of future earnings. That the employer elected to accomplish these goals through "enhanced" pension benefits, rather than some other means such as stock options or lump-sum severance payments, should not affect how the inducement is treated under the laws of community property.

Finally, the majority's holding will be a negative influence on the overall disposition of dissolution proceedings. Wherever possible, the parties to a marital dissolution should be encouraged to divide their property promptly and get on with their lives. (See, e.g., [*Phillipson v. Board of Administration* \(1970\) 3 Cal. 3d 32, 46 \[89 Cal. Rptr. 61, 473 P.2d 765\]](#).) However, the rule announced today will weigh against a nonemployee spouse's decision to

"cash out" of the employee's pension at the time of dissolution. If, and only if, division of the pension is left open until [****57] the employee retires--often years after the marriage has ended--the ex-spouse may gain a share of favorable pension terms later offered to the employee as an inducement to retire early. There appears no persuasive ground to impose this further incentive for delay in the final division of marital property.

For all these reasons, I conclude that the instant community is entitled to share pro rata, by application of the "time rule," in the \$ 2,350.39 monthly benefit the husband would receive for early retirement at age 55 under the previously existing pension plan, but has no interest in the additional \$ 708.91 monthly amount attributable to the VRI "enhancement." I would [*199] therefore reverse the judgment of the Court of Appeal. I would remand the cause to that court with directions to order further trial court proceedings consistent with the views expressed in this opinion.

Chin, J., concurred.

End of Document



Caution

As of: October 18, 2026 7:03 AM Z

In re Marriage of Mathews

Court of Appeal of California, Fourth Appellate District, Division One

June 30, 2005, Filed

D045372

Reporter

133 Cal. App. 4th 624 *; 35 Cal. Rptr. 3d 1 **; 2005 Cal. App. LEXIS 1639 ***; 2005 Cal. Daily Op. Service 9188; 2005 Daily Journal DAR 12507

In re the Marriage of TODD and YATSUKO A. MATHEWS. TODD C. MATHEWS, Respondent, v. YATSUKO A. MATHEWS, Appellant.

Subsequent History: [***1] The Publication Status of this Document has been Changed by the Supreme Court from Unpublished to Published October 19, 2005.

Ordered published by In re Mathews, 2005 Cal. LEXIS 11800 (Cal., Oct. 19, 2005)

Prior History: Superior Court of San Diego County, No. D479425, William J. Howatt, Jr., Judge.

Case Summary

Procedural Posture

Appellant wife appealed a judgment of the San Diego County Superior Court, California, in favor of respondent husband in a marriage dissolution proceeding awarding the husband their residence as his separate property.

Overview

The parties could not agree on the characterization of the residence, which the wife had quitclaimed to the husband. Applying [Fam. Code, § 721](#), the wife argued that the husband had the burden of proof to rebut a presumption of undue influence over her in signing the quitclaim deed. The wife contended that clear and convincing evidence was required to overcome this presumption and that the husband

did not meet this evidentiary standard. The instant court held that substantial evidence supported the trial court's findings that the residence was the husband's separate property and that no undue influence existed, even though the trial court erred in not applying the proper burden of proof standard. Because [§ 721](#) did not apply a greater burden, the husband could and did rebut the presumption of undue influence by a preponderance of the evidence. The husband entrusted almost all financial matters to the wife, relying on her judgment and management. The wife had separate investment accounts and made her own investment decisions. There was no basis for overturning the trial court's decision that the quitclaim deed was valid and executed freely and voluntarily in good faith.

Outcome

The judgment was affirmed.

LexisNexis® Headnotes

Family Law > Marital Duties & Rights > Property Rights > General Overview

HN1 Statutorily, spouses have the right to enter into transactions with each other as well as other persons. [Fam. Code, § 721, subd. \(a\)](#). However, interspousal transactions must comport with the rules controlling the actions of persons occupying

confidential roles with each other. [Fam. Code, § 721, subd. \(b\)](#).

Family Law > Marital Duties & Rights > Property Rights > General Overview

[HN2](#) See [Fam. Code, § 721, subd. \(b\)](#).

Family Law > Marital Duties & Rights > Property Rights > General Overview

Family Law > ... > Antenuptial & Premarital Agreements > Defenses > Undue Influence

[HN3](#) [Fam. Code, § 721, subd. \(b\)](#), requires interspousal transactions to be pleasing to the fiduciary standard. If one spouse secures an advantage from the transaction, a statutory presumption arises under [§ 721](#) that the advantaged spouse exercised undue influence and the transaction will be set aside. The prerequisite elements for the statutory presumption under [§ 721](#) to apply are: (1) there exists an interspousal transaction; and (2) one spouse has obtained an advantage over the other. Generally, a spouse obtains an advantage if that spouse's position is improved, he or she obtains a favorable opportunity, or otherwise gains, benefits, or profits.

Evidence > Burdens of Proof

Family Law > Marital Duties & Rights > Property Rights > General Overview

Family Law > ... > Antenuptial & Premarital Agreements > Defenses > Undue Influence

[HN4](#) A rebuttable presumption of undue influence arises when one spouse obtains an advantage over another in an interspousal property transaction. The burden of rebutting the presumption of undue influence is on the spouse who acquired an advantage or benefit from the transaction. In every transaction between a husband and wife in which one party obtains a possible benefit, equity raises a

presumption against its validity and casts upon that party the burden of proving compliance and overcoming the presumption.

Evidence > Burdens of Proof > Preponderance of Evidence

Family Law > Marital Duties & Rights > Property Rights > General Overview

Family Law > ... > Antenuptial & Premarital Agreements > Defenses > Undue Influence

[HN5](#) The burden of rebutting the presumption of undue influence in an interspousal property transaction is by a preponderance of the evidence.

Evidence > Burdens of Proof > Preponderance of Evidence

[HN6](#) See [Evid. Code, § 115](#).

Civil Procedure > Appeals > Standards of Review > General Overview

[HN7](#) If the decision of a lower court is correct on any theory of law applicable to the case, the judgment or order will be affirmed regardless of the correctness of the grounds on which the lower court reached its conclusion.

Civil Procedure > Appeals > Standards of Review > Substantial Evidence

Family Law > ... > Antenuptial & Premarital Agreements > Defenses > Undue Influence

[HN8](#) Whether a spouse gaining an advantage over the other spouse in an interspousal property transaction has overcome the presumption of undue influence is a question for the trier of fact, whose decision will not be reversed on appeal if supported by substantial evidence.

Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

In a marriage dissolution proceeding, the trial court awarded the husband the marital residence as his separate property. The parties could not agree on the characterization of the residence, which the wife had quitclaimed to the husband. Applying [Fam. Code, § 721](#), the wife argued that the husband had the burden of proof to rebut a presumption of undue influence over her in signing the quitclaim deed. The wife contended that clear and convincing evidence was required to overcome this presumption and that the husband did not meet this evidentiary standard. (Superior Court of San Diego County, No. D479425, William J. Howatt, Jr., Judge.)

The Court of Appeal affirmed. The court held that substantial evidence supported the trial court's findings that the residence was the husband's separate property and that no undue influence existed, even though the trial court erred in not applying the proper burden of proof standard. Because [Fam. Code, § 721](#), did not apply a greater burden, the husband could and did rebut the presumption of undue influence by a preponderance of the evidence. The husband entrusted almost all financial matters to the wife, relying on her judgment and management. The wife had separate investment accounts and made her own investment decisions. She controlled both her income and the husband's, and paid all of the household bills. There was no basis for overturning the trial court's decision that the quitclaim deed was valid and executed freely and voluntarily in good faith. (Opinion by McDonald, J., with Benke, Acting P. J., and Nares, J., concurring.)

Headnotes

CA(1) (1)

Husband and Wife § 18—Property—Transactions Between Spouses—.

Pursuant to [Fam. Code, § 721, subd. \(a\)](#), spouses have the [*625] right to enter into transactions with each other as well as other persons. However, pursuant to [§ 721, subd. \(b\)](#), interspousal transactions must comport with the rules controlling the actions of persons occupying confidential roles with each other.

CA(2) (2)

Husband and Wife § 23—Property—Transactions Between Spouses—Presumption of Undue Influence—Applicability.

[Fam. Code, § 721, subd. \(b\)](#), requires interspousal transactions to be pleasing to the fiduciary standard. If one spouse secures an advantage from the transaction, a statutory presumption arises under [§ 721](#) that the advantaged spouse exercised undue influence and the transaction will be set aside. The prerequisite elements for the statutory presumption under [§ 721](#) to apply are: (1) there exists an interspousal transaction; and (2) one spouse has obtained an advantage over the other. Generally, a spouse obtains an advantage if that spouse's position is improved, he or she obtains a favorable opportunity, or otherwise gains, benefits, or profits.

CA(3) (3)

Husband and Wife § 23—Property—Transactions Between Spouses—Presumption of Undue Influence—Burden of Rebutting.

A rebuttable presumption of undue influence arises when one spouse obtains an advantage over another in an interspousal property transaction. The burden of rebutting the presumption of undue influence is on the spouse who acquired an advantage or benefit from the transaction. In every transaction between a husband and wife in which one party obtains a

possible benefit, equity raises a presumption against its validity and casts upon that party the burden of proving compliance and overcoming the presumption.

CA(4) (4)

Husband and Wife § 23—Property—Transactions Between Spouses—Presumption of Undue Influence—Burden of Rebutting—Preponderance of Evidence.

The burden of rebutting the presumption of undue influence in an interspousal property transaction is by a preponderance of the evidence.

CA(5) (5)

Husband and Wife § 23—Property—Transactions Between Spouses—Presumption of Undue Influence—Burden of Rebutting—Preponderance of Evidence—Quitclaim Deed.

In an action in which the parties could not agree on the characterization of a residence, which a wife had quitclaimed to her husband, there was no basis for overturning the trial court's decision that the quitclaim deed was valid and executed freely and voluntarily in good faith, where the husband rebut-
[**626] ted the presumption of undue influence by a preponderance of the evidence.

[11 Witkin, Summary of Cal. Law (10th ed. 2005) Community Property, § 133; 1 Witkin, Cal. Evidence (4th ed. 2000) Burden of Proof and Presumptions, § 87.]

CA(6) (6)

Appellate Review § 126—Scope of Review—Correctness of Grounds—

If the decision of a lower court is correct on any theory of law applicable to the case, the judgment or order will be affirmed regardless of the

correctness of the grounds on which the lower court reached its conclusion.

Counsel: Edward Castro for Appellant.

No appearance for Respondent.

Judges: McDonald, J., with Benke, Acting P. J., and Nares, J., concurring.

Opinion by: McDONALD

Opinion

[**2] **McDONALD, J.**—Yatsuko A. Mathews (Wife) appeals a judgment in favor of Todd C. Mathews (Husband) in a marriage dissolution proceeding awarding Husband their residence as his separate property. This action arose when the parties could not agree on the characterization of the residence, which Wife had quitclaimed to Husband. Wife contends: (1) the trial court erred by placing the burden of proof on her to establish the quitclaim deed was the result of husband's undue influence; (2) Husband had the burden of proof to rebut a presumption of undue influence over Wife; and (3) Husband did not rebut the presumption of undue influence by clear and convincing evidence. She argues the residence should be characterized as community property. We conclude the trial court erred in not applying the proper burden of proof standard; [***2] however, substantial evidence supports the court's findings that no undue influence existed and the residence is Husband's separate property. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

We note that Husband has been served with the notice required by California Rules of Court, rule 17(a)(2). Husband did not file a respondent's brief. Accordingly, the case has been submitted on the record, Wife's opening brief and on oral argument presented by Wife.

[*627] *A. Facts Surrounding Residence and Quitclaim Deed*

Wife, then a resident of Japan, met Husband in 1990 during his deployment with the United States Navy. They married in Japan in 1995. In 1997 Husband was transferred and the couple moved to the United States.

In 2002 the couple purchased the residence at issue for \$ 156,655 in El Cajon, California. To obtain a more favorable interest rate on a mortgage Wife quitclaimed her interest in the residence to Husband, and the residence was acquired in his name alone. The quitclaim deed was validly executed and recorded. Wife acknowledged the residence was acquired solely in Husband's name but believed her name would be added to the title at [***3] a later date. Throughout the marriage, Wife and Husband both believed the residence was community property and after the separation discovered title to the residence was in his name alone.

B. Wife's Language Comprehension, Work Experience and Education

Wife asserts difficulty understanding the complicated terms, contract language and legal effect of the quitclaim deed. Although Japanese is her first language, she attended English classes in Japan. Since their first meeting in 1990, all conversations [**3] between Husband and Wife have been conducted in English.

In 1995 Wife accepted a job at an international company in Japan as an operator taking calls from Japanese- and English-speaking customers. Additionally, her first job in the United States required her to speak English about half of the time. In 2003 she began working as a translator of written and oral communications for a United States-based Japanese company.

After moving to the United States, Wife completed an entrance exam for college and received a 98 percent grade in English proficiency. In 2001, one year prior to signing the quitclaim deed, Wife

completed an eight-month certificate program taught only in English [***4] at a college in California and finished in the top 10 percent of her class.

In addition to Wife's proficiency in English, she managed the marital household finances. She maintained a bank account in her name alone in Japan, maintained separate United States accounts in her name, and maintained a joint account with Husband.

C. Lower Court Action and Findings

The couple separated in 2003 and the residence at issue was sold. Husband and Wife agreed on the division of all community and separate property [*628] except the residence. In July 2004 a court trial was held on the issue of whether the residence was Husband's separate property or community property. Wife contended there was a presumption Husband exerted undue influence to obtain her signature on the quitclaim deed, he did not rebut that presumption and the quitclaim deed was therefore ineffective to relinquish her community property interest in the residence.

The trial court declined to apply a presumption of undue influence on Husband and determined Wife entered into the transaction freely, voluntarily and with a full understanding of the quitclaim deed. The court concluded the quitclaim deed was executed in good faith [***5] and characterized the residence as Husband's separate property. Wife requests de novo review of the trial court's decision.

DISCUSSION

Wife argues the trial court erred by refusing to apply [*In re Marriage of Haines* \(1995\) 33 Cal.App.4th 277 \[39 Cal. Rptr. 2d 673\]](#) (*Haines*) and [Family Code section 721](#)¹ to a determination that the residence was Husband's separate property. Wife further argues, applying *Haines* and [section](#)

¹ All statutory references are to the Family Code unless otherwise specified.

[721](#),² Husband has the burden of proof to rebut a presumption of undue influence over Wife in signing the quitclaim deed. Additionally, Wife contends that clear and convincing evidence is required to overcome this presumption and Husband did not meet this evidentiary standard.

A. [***6] *Application of Haines and Section 721*

[CA\(1\)](#) (1) [HN1](#) Statutorily, spouses have the right to enter into transactions with each other as well as other persons. ([§ 721, subd. \(a\)](#).) However, interspousal transactions must comport with the rules controlling the actions of persons occupying confidential roles with each other. ([§ 721, subd. \(b\)](#).) [Section 721, subdivision \(b\)](#) provides: [HN2](#) “[I]n [***4] transactions between themselves, a husband and wife are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other.” [CA\(2\)](#) (2) [HN3](#) [Section 721, subdivision \(b\)](#) requires interspousal transactions to be “pleasing to the fiduciary standard.” ([Haines, supra, 33 Cal.App.4th at p. 293](#).) If one spouse secures an advantage from the [*629] transaction, a statutory presumption arises under [section 721](#) that the advantaged spouse exercised undue influence and the transaction will be set aside. ([Haines, at pp. 293–294](#).)

The prerequisite elements for the statutory presumption [***7] under [section 721](#) to apply are: (1) there exists an interspousal transaction; and (2) one spouse has obtained an advantage over the other. ([Haines, supra, 33 Cal.App.4th at p. 301](#).) Generally, a spouse obtains an advantage if that spouse's position is improved, he or she obtains a favorable opportunity, or otherwise gains, benefits, or profits. ([Bradner v. Vasquez \(1954\) 43 Cal.2d](#)

[147, 152 \[272 P.2d 11\]](#).) In the present case, Husband and Wife entered into an interspousal transaction by signing a quitclaim deed permitting the residence to be acquired in Husband's name only. Through this transaction, the residence was acquired as Husband's separate property. Husband received an advantage or benefit from Wife's execution of the quitclaim deed when the residence became his separate property. Because the prerequisite elements are met, the statutory presumption of [section 721](#) and [Haines](#) apply to the instant case.

The trial court declined to apply *Haines* and [section 721](#) in this case based solely on a determination that the cases were factually distinguishable. In *Haines*, the wife executed a quitclaim deed conveying her joint interest in the property to the [***8] husband, making it his separate property. The wife testified she did so under considerable emotional and physical duress; the husband disputed this, characterizing the transaction as “calm and businesslike.” ([Haines, supra, 33 Cal.App.4th at pp. 283–285](#).) During a period of reconciliation, the husband reconveyed his separate property interest in the property to himself and his wife as joint tenants. After the parties later separated, the wife filed for dissolution. ([Id. at p. 285](#).)

In the division of property, the trial court awarded the husband reimbursement for the full value of the property at the time of the second transfer to joint property as his separate property contribution to the community. ([Haines, supra, 33 Cal.App.4th at pp. 285–286](#).) Concluding the presumption of undue influence trumped the conflicting presumption of record title and the husband had not rebutted the wife's claim of duress in the transaction, this court reversed the trial court's reimbursement of the husband's separate property interest. ([Id. at pp. 301–302](#).)

Although the facts of *Haines* differ from those here, the reasoning and [***9] analysis supporting the applicability of [section 721](#) is the same in both

² Although the trial court refused to apply *Haines* and made no mention of [section 721](#), *Haines* is an interpretation of [section 721](#) and they are both equally applicable to the present case.

cases. The rationale of *Haines* applies to any **[**5]** interspousal property transaction in which the evidence shows one spouse obtained an advantage over the other. (*In re Marriage of Delaney* (2003) 111 Cal.App.4th 991, 999 [4 Cal. Rptr. 3d [*630] 378] (*Delaney*)). Nothing in *Haines* confines its holding to situations in which the interspousal property conveyance was the result of actual fraud, deceit or coercion.

B. The Burden of Proof and Presumption under *Haines* and Section 721

CA(3) (3) HN4 A rebuttable presumption of undue influence arises when one spouse obtains an advantage over another in an interspousal property transaction. (*Haines, supra, 33 Cal.App.4th at p. 297.*) The burden of rebutting **[**6]** the presumption of undue influence is on the spouse who acquired an advantage or benefit from the transaction. (*Ibid.*) In every transaction between a husband and wife in which one party obtains a possible benefit, equity raises a presumption against its validity and “ ‘casts upon that party the burden’ ” of proving compliance and overcoming the presumption. (*Estate of Cover* (1922) 188 Cal. 133, 143–144 [204 P. 583]; **[***10]** see *Delaney, supra, 111 Cal.App.4th at pp. 996–997*; *In re Marriage of Lange* (2002) 102 Cal.App.4th 360, 364 [125 Cal. Rptr. 2d 379].)

The trial court here improperly refused to apply the section 721 presumption of undue influence that places the burden of proof on Husband. As the party asserting the residence acquired during the marriage is separate rather than community property, Husband bore the burden of overcoming the presumption against that assertion. Consequently, it was Husband's burden to establish Wife's signing of the quitclaim deed was freely and voluntarily made, with full knowledge of all the facts, and with a complete understanding of its effect of making the residence Husband's separate property. (*Haines, supra, 33 Cal.App.4th at p. 296.*)

C. Evidentiary Standard to Rebut a Presumption of Undue Influence

Wife contends Husband presented insufficient evidence to rebut the presumption of undue influence. *Haines* and section 721 do not specifically delineate an evidentiary standard for overcoming the presumption of undue influence; however, *Haines* does specify several factors that rebut the presumption of undue influence. These factors **[***11]** include evidence the quitclaim deed was freely and voluntarily made, with a full knowledge of all the facts and with a complete understanding of the effect of the quitclaim deed. (*Haines, supra, 33 Cal.App.4th at p. 296.*)

Wife contends Husband must overcome the presumption of undue influence by clear and convincing evidence. Wife points out that although *Haines* does not articulate a specific standard of proof to rebut the presumption of undue influence, it does offer authority for applying a clear and convincing **[*631]** evidentiary standard. However, Wife's contention that a presumption is rebuttable only by clear and convincing evidence is not generally accepted.³

CA(4) (4) Although Wife agrees section 721 applies, nothing **[***12]** in the statute requires the presumption of undue influence be overcome by clear and convincing evidence. Because statutory law does not provide the answer, we look to case law to determine the degree of proof required to rebut undue influence in the marital confidential fiduciary relationship. Although some authority requires clear and convincing evidence to rebut the presumption (*Bank of America v. Crawford* (1945) 69 Cal. App. 2d 697, 701 [160 P.2d 169]), the weight of authority concludes **HN5** the burden of rebutting the presumption of undue influence is by a preponderance of the evidence. (See *Estate of*

³ *Haines* notes there is a limited range of issues for which a party will be held to the higher evidentiary standard of clear and convincing evidence, suggesting the need to apply a lower standard in most situations. (*Haines, supra, 33 Cal.App.4th at p. 294, fn. 9.*)

[Stephens \(2002\) 28 Cal.4th 665, 677 \[122 Cal. Rptr. 2d 358, 49 P.3d 1093\]](#); [Estate of Gelonese \(1974\) 36 Cal. App. 3d 854, 863 \[111 Cal. Rptr. 833\]](#).) Moreover, [Evidence Code section 115](#) defines burden of proof and states, [HN6](#) “Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.” Because [section 721](#) does not specify a greater burden, Husband may overcome the presumption of undue influence by a preponderance of the evidence.

The trial court concluded that Wife did not establish Husband used undue influence to obtain [***13] the quitclaim deed. However, it was Husband's burden to establish the quitclaim deed was freely and voluntarily made, with a full knowledge of all the facts and with a complete understanding of the transfer. ([Haines, supra, 33 Cal.App.4th at p. 296](#).) Substantial evidence in the record supports the conclusion that Husband satisfied his burden of proof by a preponderance of the evidence and rebutted the presumption of undue influence. The record shows Husband and Wife agreed that she sign the quitclaim deed as the only way to obtain a lower interest rate on the mortgage. Wife freely and voluntarily executed the quitclaim deed to help with the purchase of the residence and acknowledged title to the residence would be taken in Husband's name alone. Wife had full knowledge of all of the facts surrounding the execution of the quitclaim deed and the reasons for it were clear to her. Wife further admitted to asking questions when she was unclear but asked none when she signed the quitclaim deed. Husband placed no pressure on Wife to sign and, by both of their admissions, the quitclaim deed allowed a lower interest rate on the mortgage. The purchase of the residence was not [***14] dependant on Wife signing the quitclaim deed.

[CA\(5\)](#) (5) Husband's most difficult factor in overcoming the presumption of undue influence was showing Wife had a complete understanding of the effect [*632] of the quitclaim deed. Wife contends that language barriers limited her

comprehension of the purchase of the residence. However, the record shows Wife was above average in her English skills and competent to complete a college certification course taught in English. She spoke English from the time she met Husband and eventually worked as a translator, suggesting a more than adequate command of the English language. Further, Husband entrusted almost all financial matters to wife, relying on her judgment and management. Wife had separate investment accounts and made her own investment decisions with those accounts. She controlled both her income and Husband's, and paid all of the household bills. Wife acknowledged her bad credit rating prevented her and Husband from receiving a lower interest rate if they both acquired title to the residence, and made a conscious decision to sign the quitclaim deed. Wife further admitted to knowing her name was not on the title and assumed it would be added later. On [***15] this record, there is no basis for overturning the trial court's decision that the quitclaim deed was valid and executed freely and voluntarily in good faith. Husband rebutted the presumption of undue influence by a preponderance of the evidence.

[CA\(6\)](#) (6) The trial court should have applied the standard set out in [Haines, supra, 33 Cal.App.4th 277](#) and [section 721](#); however, [HN7](#) “If the decision of a lower court is correct on any theory of law applicable to the case, the judgment or order will be affirmed regardless of the correctness of the grounds [on] which the lower court reached its conclusion. The rationale for this principle is twofold: (a) an appellate court reviews the action of the lower court and not the reasons given [***7] for its action; and (b) there can be no prejudicial error from erroneous logic or reasoning if the decision itself is correct.” ([In re Estate of Beard \(1999\) 71 Cal.App.4th 753, 776 \[84 Cal. Rptr. 2d 276\]](#); see also [Davey v. Southern Pacific Co. \(1897\) 116 Cal. 325, 329 \[48 P. 117\]](#) [“[A] ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason.”].)

Substantial evidence supports the trial [***16]

court's conclusion that the quitclaim deed was the voluntary and deliberate act of Wife, taken with full knowledge of its legal effect, and Husband did not unduly influence Wife to acquire title to the residence in his name alone. It is correct, as Wife contends, that when a husband secures a property advantage from his wife, the burden is on him to show that there has been no undue influence. ([Haines, supra, 33 Cal.App.4th at p. 296.](#)) It is also correct, however, that [HN8](#) whether the spouse gaining an advantage has overcome the presumption of undue influence is a question for the trier of fact, whose decision will not be reversed on appeal if supported by substantial evidence. ([Weil v. Weil \(1951\) 37 Cal.2d 770, 788 \[236 P.2d 159\].](#)) Substantial evidence supports the conclusion that Husband rebutted the presumption of undue influence over Wife's signing the quitclaim deed by a preponderance of the evidence. The court correctly determined the residence was the separate property of Husband.

[*633] DISPOSITION

The judgment is affirmed. Husband is entitled to costs on appeal.

Benke, Acting P. J., and Nares, J., concurred.



Positive

As of: October 18, 2026 7:03 AM Z

In re Marriage of Olson

Court of Appeal of California, Second Appellate District, Division One

July 30, 2015, Opinion Filed

B258767

Reporter

238 Cal. App. 4th 1458 *; 190 Cal. Rptr. 3d 715 **; 2015 Cal. App. LEXIS 661 ***

In re the Marriage of CHRISTOPHER DALE OLSON and HEATHER RAE OLSON. CHRISTOPHER DALE OLSON, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; HEATHER RAE OLSON, Real Party in Interest.

Outcome

Mandate petition denied.

LexisNexis® Headnotes

Subsequent History: Review denied by [In re Olson, 2015 Cal. LEXIS 8694 \(Cal., Oct. 28, 2015\)](#)

Prior History: ORIGINAL PROCEEDINGS; petition for writ of mandate, Superior Court of Los Angeles County, No. YD060250, John Slawson*, Temporary Judge. (Pursuant to [Cal. Const., art. VI, § 21 \[***1\]](#)).

Disposition: Petition denied.

Case Summary

Overview

HOLDINGS: [1]-Because a parent has standing under [Fam. Code, § 3087](#), to request a modification of a child custody judgment notwithstanding that the judgment sought to be modified was a default judgment taken against the parent who is petitioning for the change, a trial court's entry of a default judgment of divorce against a mother did not bar her from seeking a modification of the joint custody arrangement unless she first obtained relief from the default judgment.

Civil Procedure > ... > Pretrial Judgments > Default & Default Judgments > Default Judgments

Civil

Procedure > ... > Justiciability > Standing > General Overview

Family Law > Child Custody > Custody Modification > General Overview

Family Law > Child Custody > Child Custody Procedures

HN1 A parent has standing under [Fam. Code, § 3087](#), to request a modification of a child custody judgment notwithstanding that the judgment sought to be modified was a default judgment taken against the parent who is petitioning for the change.

Civil Procedure > Appeals > Appellate Jurisdiction > Final Judgment Rule

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Procedures

HN2 Under *Code Civ. Proc.*, § 904.1, subd. (a)(2),

* Pursuant to [California Constitution, article VI, section 21](#).

a party may appeal from an order made after a final judgment. However, not every order following a final judgment is appealable. To be appealable, a postjudgment order must either affect the judgment or relate to it by enforcing it or staying its execution. In particular, postjudgment orders that lack finality in that they are also preparatory to later proceedings fail this test and are not appealable. In divorce cases, this rule has been applied to dismiss appeals from orders that contemplated further proceedings.

Civil
Procedure > ... > Justiciability > Mootness > General Overview

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

Civil Procedure > Appeals > Dismissal of Appeals > Involuntary Dismissals

Constitutional Law > ... > Case or Controversy > Mootness > General Overview

HN3 A question becomes moot when, pending an appeal from a judgment of a trial court, events transpire which prevent the appellate court from granting any effectual relief. However, if an action involves a matter of continuing public interest and the issue is likely to recur, or if there is a distinct possibility that the controversy between the parties may recur, an appellate court may decide an issue that would otherwise be dismissed as moot.

Family Law > ... > Dissolution & Divorce > Jurisdiction > General Overview

Family Law > Child Custody > Jurisdiction > Continuing Jurisdiction

Family Law > Child Custody > Custody Modification > General Overview

HN4 The supervision of the custody of children is fundamentally different from other court functions. The court's primary concern must be the well-being of the children, not the preferences of the parties

themselves. [Fam. Code, § 3020, subd. \(a\)](#). For this reason, the court retains jurisdiction of a divorce case in order to supervise issues such as custody: The court may, during the pendency of a proceeding or at any time thereafter, make an order for the custody of a child during minority that seems necessary or proper. [Fam. Code, § 3022](#). The court's power to order modifications of custody for the benefit of children when circumstances change must take precedence over the wishes of the parents.

Family Law > Child Custody > Custody Modification > General Overview

Family Law > ... > Custody Awards > Standards > Best Interests of Child

Family Law > ... > Dissolution & Divorce > Jurisdiction > Ex Parte Divorce

Governments > Courts > Rule Application & Interpretation

Civil Procedure > ... > Pretrial Judgments > Default & Default Judgments > Default Judgments

HN5 The California Family Code expressly authorizes parents to seek modifications: An order for joint custody may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interest of the child requires modification or termination of the order. [Fam. Code, § 3087](#). Nothing in [§ 3087](#) or any provision of the Family Code suggests that it does not apply in cases where a divorce was granted via default judgment. To the extent that this provision conflicts with the general rules applicable to default judgments, the general provision must yield to one that is special. [Fam. Code, § 210](#), provides that, except to the extent that any other statute or rules adopted by the California Judicial Council provide applicable rules, the rules of practice and procedure applicable to civil actions generally apply to, and constitute the rules of practice and procedure in, proceedings in family court.

Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

After a default judgment of marriage dissolution, including a child custody order, was granted against a mother, she petitioned for a modification of the custody order. The trial court ruled that the mother had standing to seek the modification and ordered the mother and the father to participate in a parenting plan assessment program. (Superior Court of Los Angeles County, No. YD060250, John Slawson, Temporary Judge.*)

The Court of Appeal exercised its discretion to treat the father's appeal as a petition for a writ of mandate and denied the petition. The court held that a parent has standing under Fam. Code, § 3087, to request a modification of a child custody judgment notwithstanding that the judgment sought to be modified was a default judgment taken against the parent who is petitioning for the change. Accordingly, the trial court's entry of a default judgment against the mother did not bar her from seeking a modification of the joint custody arrangement unless she first obtained relief from the default judgment. (Opinion by Rothschild, P. J., with Chaney and Johnson, JJ., concurring.) [*1459]

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

CA(1) (1)

**Dissolution of Marriage; Separation § 92—
Custody of Children—Modification—Standing.**

A parent has standing under Fam. Code, § 3087, to request a modification of a child custody judgment notwithstanding that the judgment sought to be modified was a default judgment taken against the parent who is petitioning for the change.

CA(2) (2)

**Appellate Review § 30—Decisions Appealable—
Postjudgment Orders—Divorce Cases.**

Under Code Civ. Proc., § 904.1, subd. (a)(2), a party may appeal from an order made after a final judgment. However, not every order following a final judgment is appealable. To be appealable, a postjudgment order must either affect the judgment or relate to it by enforcing it or staying its execution. In particular, postjudgment orders that lack finality in that they are also preparatory to later proceedings fail this test and are not appealable. In divorce cases, this rule has been applied to dismiss appeals from orders that contemplated further proceedings.

CA(3) (3)

**Appellate Review § 120—Dismissal—Grounds—
Mootness—Exceptions.**

A question becomes moot when, pending an appeal from a judgment of a trial court, events transpire which prevent the appellate court from granting any effectual relief. However, if an action involves a matter of continuing public interest and the issue is likely to recur, or if there is a distinct possibility that the controversy between the parties may recur, an appellate court may decide an issue that would otherwise be dismissed as moot.

CA(4) (4)

**Dissolution of Marriage; Separation § 92—
Custody of Children—Modification—Standing.**

The trial court's entry of a default judgment of

* Pursuant to [California Constitution, article VI, section 21](#).

marriage dissolution against a mother did not bar her from seeking a modification of a joint child custody arrangement granted by the trial court unless she first obtained relief from the default judgment.

[Kirkland et al., Cal. Family Law Practice and Procedure (2015) ch. 33, § 33.08; Cal. Forms of Pleading and Practice (2015) ch. 223, Dissolution of Marriage: Child Custody, § 223.27; 10 Witkin, Summary of Cal. Law (10th ed. 2005) Parent and Child, § 265.]

CA(5) (5)

Dissolution of Marriage; Separation § 87— Custody of Children—Jurisdiction—Continuing— Modification of Custody.

The supervision of the custody of children is fundamentally different from other court functions. The court's primary concern must be the well-being of the children, not the preferences of the parties themselves (Fam. Code, § 3020, subd. (a)). For this reason, the court retains jurisdiction of a [*1460] divorce case in order to supervise issues such as custody (Fam. Code, § 3022). The court's power to order modifications of custody for the benefit of children when circumstances change must take precedence over the wishes of the parents. The Family Code expressly authorizes parents to seek modifications (Fam. Code, § 3087). Nothing in § 3087 or any provision of the Family Code suggests that it does not apply in cases where a divorce was granted via default judgment. To the extent that this provision conflicts with the general rules applicable to default judgments, the general provision must yield to one that is special.

Counsel: Rombro & Associates, S. Roger Rombro, Melinda A. Manley and Kelly A. Tufts for Petitioner.

No appearance for Respondent.

No appearance for Real Party in Interest.

Judges: Opinion by Rothschild, P. J., with Chaney and Johnson, JJ., concurring.

Opinion by: Rothschild, P. J.

Opinion

[**717] **ROTHSCHILD, P. J.**—Christopher Dale Olson filed for divorce from Heather Rae Olson, requesting joint custody of their two young children.¹ Heather did not respond, and a default judgment of dissolution, including a custody order, was granted. Over a year later, Heather petitioned for a modification of the custody order. Christopher objected, contending that because the default judgment remained in effect, Heather lacked standing to request a modification.

The trial court ruled that Heather did have standing to seek the modification and ordered the couple to participate in a parenting plan assessment program. Although this order is not appealable, we exercise our discretion to treat this appeal as a [***2] petition for a writ of mandate and deny the petition.

CA(1) (1) We hold that HN1 a parent has standing under Family Code section 3087 to request a modification of a child custody judgment notwithstanding that the judgment sought to be modified was a default judgment taken against the parent who is petitioning for the change.

[*1461]

FACTS AND PROCEEDINGS BELOW

On October 12, 2011, Christopher filed a petition for dissolution of marriage to obtain a divorce from Heather, his wife of nine years. Heather did not file a response, and on February 19, 2013, the court granted the divorce in a default judgment. Heather was present in court as a witness. The court granted a judgment of dissolution of the marriage and

¹ We refer to the parties as Christopher and Heather for clarity. No disrespect is intended.

granted the parties joint legal custody of their twin seven-year-old daughters. Each parent was entitled to physical custody of the children approximately half the time. The judgment reserved spousal and child support to be determined at a later date.

The relationship between Christopher and Heather subsequently deteriorated, and in June 2014, Heather filed a petition to modify joint custody. Heather proposed that Christopher have custody of the twins only on Thursday nights and alternate weekends. The remainder of the week, they [***3] would stay with Heather. Christopher opposed Heather's request, arguing for the existing joint custody schedule to remain in effect.

Christopher also filed a separate petition in which he contended that because the divorce judgment was granted by default judgment against Heather, Heather lacked the standing to request a change in the judgment, and that the court lacked jurisdiction to consider her petition.

On August 20, 2014, the court denied Christopher's petition, ruling that Heather did have standing, and the court did have jurisdiction to decide her petition. The court also ordered Christopher and Heather to attend a two-day parenting plan assessment to attempt to work out their disagreements. The court declined to rule on the financial aspects of Heather's petition until the custody matter was resolved.

On September 9, 2014, Heather filed a motion requesting child support from Christopher. The next day, September 10, Heather filed a petition requesting that the court order Christopher to produce documents in response to a discovery request. On the same day, Christopher filed a notice of appeal from the court's order [**718] accepting jurisdiction and proceeding on the merits of Heather's [***4] child custody request.

After participating in the parenting plan assessment, the parties agreed to a stipulated order, filed October 16, 2014, which confirmed the existing joint custody schedule as had been

provided in the default judgment. The court entered this stipulated order.

[*1462]

DISCUSSION

1. Appealability and Mootness

CA(2) (2) The order from which Christopher has appealed is not appealable. **HN2** Under *Code of Civil Procedure* section 904.1, subdivision (a)(2), a party may appeal “[f]rom an order made after a [final] judgment.” However, not every order following a final judgment is appealable. (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651 [25 Cal. Rptr. 2d 109, 863 P.2d 179].) To be appealable, a postjudgment order must “either affect the judgment or relate to it by enforcing it or staying its execution.” (*Id.* at pp. 651–652, quoting *Olson v. Cory* (1983) 35 Cal.3d 390, 400 [197 Cal. Rptr. 843, 673 P.2d 720].) In particular, postjudgment orders that “lack[] finality in that they [are] also preparatory to later proceedings” fail this test and are not appealable. (*Lakin*, at p. 653.) In divorce cases, this rule has been applied to dismiss appeals from orders that contemplated further proceedings. (E.g., *In re Marriage of Ellis* (2002) 101 Cal.App.4th 400, 403 [124 Cal. Rptr. 2d 719]; *In re Marriage of Levine* (1994) 28 Cal.App.4th 585, 589 [33 Cal. Rptr. 2d 559].) For example, in *In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1218 [92 Cal. Rptr. 3d 17], the court held that a postjudgment court order approving an arbitration award was not appealable because it required the appointment of a forensic accountant to calculate the amount of the award. The decision as to the [***5] amount of the award would not become final until adopted by the judge, and the order would not become final and appealable until then. (*Ibid.*)

In this case, Christopher did not appeal from a court order finally approving or denying a modification of custody, but rather from an order that the parties attend a parenting plan assessment. This order was “preparatory t[o a] later proceeding[.]” and therefore

not appealable. ([Lakin v. Watkins Associated Industries, supra](#), 6 Cal.4th at p. 653.)

Nevertheless, we will decide this case on the merits. This case presents “unusual circumstances” in which an appellate court may exercise its “discretion to treat a purported appeal from a nonappealable order as a petition for writ of mandate.” ([H. D. Arnaiz, Ltd. v. County of San Joaquin](#) (2002) 96 Cal.App.4th 1357, 1366–1367 [118 Cal. Rptr. 2d 71].) As in [H. D. Arnaiz, Ltd. v. County of San Joaquin](#), the record in the current case is sufficient, there is no indication that the trial court will appear in the writ proceeding, and, most importantly, dismissing the appeal at this point would be ““unnecessarily dilatory and circuitous.”...” (*Id.* at p. 1367, citation omitted.) Christopher has opposed three separate requests by Heather on the grounds of standing, and there is every indication Christopher will continue his opposition in the case of all future similar requests. Thus, it is in the interests [***6] of judicial economy to decide this case on the merits.

[*1463]

CA(3) (3) For similar reasons, we will decide this case on the merits even though we could dismiss it as moot. **HN3** “A question becomes moot when, pending an appeal from a judgment of a trial court, events [**719] transpire which prevent the appellate court from granting any effectual relief. [Citation.]” ([Lester v. Lennane](#) (2000) 84 Cal.App.4th 536, 566 [101 Cal. Rptr. 2d 86].) Here, the court ordered the same child custody arrangement as contained in the original default judgment. Because the trial court granted Christopher's request regarding the custody arrangement, there is no “effectual relief” we can provide to Christopher. (*Ibid.*) However, “[i]f an action involves a matter of continuing public interest and the issue is likely to recur” ([Liberty Mut. Ins. Co. v. Fales](#) (1973) 8 Cal.3d 712, 715–716 [106 Cal. Rptr. 21, 505 P.2d 213]), or if “there is a distinct possibility that the controversy between the parties may recur” ([Westchester Secondary Charter School v. Los Angeles Unified](#)

[School Dist.](#) (2015) 237 Cal.App.4th 1226, 1233, fn. 2 [188 Cal. Rptr. 3d 792], quoting [Bullis Charter School v. Los Altos School Dist.](#) (2011) 200 Cal.App.4th 1022, 1034 [134 Cal. Rptr. 3d 133]), an appellate court may decide an issue that would otherwise be dismissed as moot (*ibid.*). Both circumstances are present here.

2. Modification of Custody Following a Default Judgment

CA(4) (4) Christopher claims that the trial court's entry of a default judgment against Heather bars Heather from seeking a modification of the joint custody arrangement unless she first obtains relief from the [***7] default judgment. We disagree.

Christopher argues that this case should be viewed as if it were any other civil dispute. He relies on [Family Code section 210](#), which provides that unless another law or rule specifies otherwise, family court cases are governed by the same procedural rules as civil cases generally. Because a defendant in a civil case who has had a default judgment against her may not file pleadings or take further steps in the case while the default judgment remains in effect ([Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.](#) (1984) 155 Cal.App.3d 381, 385–386 [202 Cal. Rptr. 204]), Christopher contends that Heather has no standing to seek a modification of the joint custody arrangement ordered in the default judgment.

CA(5) (5) We disagree. **HN4** The supervision of the custody of children is fundamentally different from other court functions. The court's primary concern must be the well-being of the children, not the preferences of the parties themselves. (See [Fam. Code, § 3020, subd. \(a\)](#); [In re Marriage of Goodarzirad](#) (1986) 185 Cal.App.3d 1020, 1026 [230 Cal. Rptr. 203] [“The entire scheme underlying custody decrees is that primary consideration must be given to the welfare of the child.”].) For this reason, the court retains jurisdiction of a [*1464] divorce case in order to supervise issues such as custody: “The court may, during the pendency of a proceeding or at any time

thereafter, make an order for the custody of a child [***8] during minority that seems necessary or proper.” (*Fam. Code, § 3022*, italics added.) The court's power to order modifications of custody for the benefit of children when circumstances change must take precedence over the wishes of the parents. (*In re Marriage of Brown & Yana* (2006) 37 Cal.4th 947, 957 [38 Cal. Rptr. 3d 610, 127 P.3d 28].)

Indeed, *HN5* the Family Code expressly authorizes parents to seek modifications: “An order for joint custody may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interest of the child requires modification or termination of the order.” (*Fam. Code, § 3087*.) Nothing in this section or any provision of the Family Code suggests that it does not apply in cases where a divorce was granted via default judgment. To the extent [**720] that this provision conflicts with the general rules applicable to default judgments, the “general ... provision must yield to one that is special.” (*Kroupa v. Kroupa* (1949) 91 Cal.App.2d 647, 651 [205 P.2d 683] [court's statutory authority to modify alimony decisions takes precedence over the general rules regarding default judgments]; see *Fam. Code, § 210* [“Except to the extent that any other statute or rules adopted by the Judicial Council provide applicable rules, the rules of practice and procedure applicable to civil actions generally ... apply to, and [***9] constitute the rules of practice and procedure in, proceedings ...” in family court. (italics added)].)

As Christopher notes, the case law regarding custody disputes after default judgments is sparse.²

² Christopher cites several divorce cases in which a default judgment must be set aside before the court will consider any modifications: *In re Marriage of Park* (1980) 27 Cal.3d 337 [165 Cal. Rptr. 792, 612 P.2d 882]; *In re Marriage of Stevenot* (1984) 154 Cal.App.3d 1051 [202 Cal. Rptr. 116]; *Holsinger v. Holsinger* (1950) 95 Cal.App.2d 835 [214 P.2d 412]; and *Deyl v. Deyl* (1948) 88 Cal.App.2d 536 [199 P.2d 424, 199 P.2d 425]. These cases are not directly applicable, however, because in each of them, the defaulted party sought to overturn the entire judgment of divorce or to reopen the

The relevant cases that exist suggest that a default divorce judgment does not bar the defaulted parent from petitioning the court regarding custody. In *Osgood v. Landon* (2005) 127 Cal.App.4th 425 [25 Cal. Rptr. 3d 379], the court decided on the merits an ex-husband's petition to prevent his ex-wife from moving with their child out of state. The court was aware that the man had been defaulted in his divorce proceeding, but it did not question his right to petition the court regarding the custody arrangement. (See *id. at pp. 432–437*.) As early as 1947, Justice Traynor recognized in an analogous case that the existence of a default divorce judgment did not prevent the court from using its jurisdiction to modify a spousal support award. (See *Bowman v. Bowman* (1947) 29 Cal.2d 808, 814 [178 P.2d 751] [*1465] (*Bowman*), abrogated on other grounds in *In re Marriage of Lippel* (1990) 51 Cal.3d 1160, 1168–1170 [276 Cal. Rptr. 290, 801 P.2d 1041].) In *Bowman*, the defendant husband sought to have a default judgment of divorce set aside in order to challenge an award that the court characterized as support and maintenance. (*Bowman, at pp. 811–812*.) The court ruled that he had waited too long after the entry of default to attack the default judgment. (*Id. [***10] at p. 813*.) The court recognized, however, that in spite of the default, it had continuing jurisdiction to modify spousal and child support decrees in cases where a party could demonstrate changed circumstances.³ (*Bowman, at p. 814*.)

Christopher suggests that if his position were adopted, Heather would not necessarily be barred from obtaining a modification of the joint custody order because Heather could petition the court for relief from the default judgment. But relief from the default is not what Heather sought. She did not ask that the dissolution of the marriage be set aside.

Christopher also argues that Heather should have

distribution of marital property, not merely to modify custody or support.

³ In that case, the jurisdiction was conferred by *Civil Code former section 139*, predecessor to today's *Family Code section 4336*.

obtained a court order before attempting to obtain discovery from him. Heather's motion to compel discovery was filed on September [***11] 10, 2014, the same date that Christopher filed his notice of appeal. The record does not contain the trial court's ruling on this issue. [**721] Because any ruling on Heather's discovery motion came after Christopher initiated this proceeding, the issue is not before us.

DISPOSITION

Having treated this appeal as a petition for a writ of mandate, we deny the petition. Petitioner is to bear his own costs.

Chaney, J., and Johnson, J., concurred.

A petition for a rehearing was denied August 31, 2015, and petitioners petition for review by the Supreme Court was denied October 28, 2015, S229060.



Caution

As of: October 18, 2026 7:03 AM Z

In re Marriage of Pasco

Court of Appeal of California, Third Appellate District

November 25, 2019, Opinion Filed

C085721

Reporter

42 Cal. App. 5th 585 *; 255 Cal. Rptr. 3d 583 **; 2019 Cal. App. LEXIS 1174 ***; 2019 WL 6270831

In re the Marriage of ZOE KATHERINE and
RICHARD ANTHONY PASCO.ZOE
KATHERINE PASCO, Respondent, v. RICHARD
ANTHONY PASCO, Appellant.

Prior History: [***1] APPEAL from a judgment
of the Superior Court of Sacramento County, No.
12FL03919, Ernest W. Sawtelle, Judge.

Disposition: Reversed and remanded.

Case Summary

Overview

HOLDINGS: [1]-A trial court abused its discretion where it denied an ex-husband's request for an order terminating spousal support based upon changed circumstances without considering any actual evidence, but rather, it based its decision solely on the argument of counsel and the ex-wife's unsworn statements in response to its questions; [2]-Assuming, as the wife did, the trial court relied on the parties' previously filed declarations in reaching its decision, that was error because none of the declarations filed in support of or in opposition to the husband's request for an order were admitted into evidence.

Outcome

Order reversed and matter remanded.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of
Review > Abuse of Discretion

Family Law > Marital Termination & Spousal
Support > Spousal Support > Procedures

Family Law > ... > Spousal Support > Modification &
Termination > Changed Circumstances

HN1 Trial courts have broad discretion in deciding whether to modify a spousal support order based upon changed circumstances. In exercising its discretion, however, a trial court must follow established legal principles and base its findings on substantial evidence. If the trial court conforms to these requirements its order will be upheld whether or not the appellate court agrees with it or would make the same order if it were a trial court. However, a court abuses its discretion if its findings are wholly unsupported, since a consideration of the evidence is essential to a proper exercise of judicial discretion.

Civil Procedure > Trials

Evidence > Types of Evidence

HN2 A trial brief is not evidence, it is argument.

Family Law > Marital Termination & Spousal
Support > Spousal Support > Procedures

Governments > Courts > Rule Application &
Interpretation

Evidence > Admissibility > Procedural Matters

Civil Procedure > Pleading & Practice > Motion
Practice > Supporting Memoranda

HN3 The family court is bound by the rules of evidence. [Fam. Code, § 210](#); Cal. Rules of Court, rule 5.2(d). Declarations filed in support of a request for order are intended only to give notice to the opposing party of the basis of the request. Cal. Rules of Court, rule 5.92(b)(1). They are not automatically admitted into evidence. Thus, unless the parties' declarations are offered as evidence, marked, and subject to objections, they are not evidence the court may consider in resolving disputed factual issues.

Evidence > Types of Evidence

HN4 The argument of counsel and the unsworn statements of either party are not evidence.

Headnotes/Summary

Summary

[*585] CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court denied an ex-husband's request for an order terminating spousal support based upon changed circumstances. (Superior Court of Sacramento County, No. 12FL03919, Ernest W. Sawtelle, Judge.)

The Court of Appeal reversed the order and remanded the matter. The court held that the trial court abused its discretion by denying the ex-husband's request for an order without considering any actual evidence. The trial court based its decision on the husband's request for an order solely on the argument of counsel and the ex-wife's unsworn statements in response to the trial court's questions, neither of which was evidence. Moreover, because a prima facie showing of changed circumstances already was made based on the offer of proof in the husband's declarations at

trial, the trial court was precluded from relying on the parties' declarations unless they were admitted into evidence, which they were not. (Opinion by Hoch, J., with Raye, P. J., and Butz, J., concurring.)

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

[CA\(1\)](#) (1)

Dissolution of Marriage § 69—Spousal Support— Modification—Changed Circumstances—Judicial Discretion.

Trial courts have broad discretion in deciding whether to modify a spousal support order based upon changed circumstances. In exercising its discretion, however, a trial court must follow established legal principles and base its findings on substantial evidence. If the trial court conforms to these requirements its order will be upheld whether or not the appellate court agrees with it or would make the same order if it were a trial court. However, a court abuses its discretion if its findings are wholly unsupported, since a consideration of the evidence is essential to a proper exercise of judicial discretion.

[CA\(2\)](#) (2)

Trial § 1—Briefs.

A trial brief is not evidence, it is argument.

[CA\(3\)](#) (3)

Courts § 9—Family—Rules of Evidence.

The family court is bound by the rules of evidence ([Fam. Code, § 210](#); Cal. Rules of Court, rule 5.2(d)).

CA(4) (4)**Motions § 10—Supporting Declarations—Admissibility.**

Declarations filed in support of a request for order are intended only to give notice to the opposing party of the basis of the request (Cal. Rules of Court, rule 5.92(b)(1)). They are not automatically admitted into evidence. Thus, unless the parties' declarations are offered as evidence, marked, and subject to objections, they are not evidence the court may consider in resolving disputed factual issues.

CA(5) (5)**Evidence § 1—What Constitutes—Argument of Counsel—Unsworn Statements.**

The argument of counsel and the unsworn statements of either party are not evidence.

CA(6) (6)**Dissolution of Marriage § 72—Spousal Support—Termination—Evidence—Failure to Consider.**

In denying an ex-husband's request for an order terminating spousal support, the trial court based its decision on the husband's request for an order solely on the argument of counsel and the ex-wife's unsworn statements in response to the court's questions. The trial court did not consider any actual evidence. That was an abuse of the trial court's discretion.

[*Kirkland et al., Cal. Family Law Practice and Procedure (2019) ch. 52, § 52.03; Cal. Forms of Pleading and Practice (2019) ch. 225, Dissolution of Marriage: Spousal Support, § 225.240; 11 Witkin, Summary of Cal. Law (11th ed. 2017) Marriage, § 318.*]

Counsel: [*587] Law Office of Stephanie J. Finelli and Stephanie J. Finelli for Appellant.

Downey Brand, Jay-Allen Eisen, Sheila W. Pendergast; Hemmer & Barr and Jill L. Barr for Respondent.

Judges: Opinion by Hoch, J., with Raye, P. J., and Butz, J., concurring.

Opinion by: Hoch, J.

Opinion

[**585] **HOCH, J.**—Richard Anthony Pasco (Richard) appeals from a postjudgment order denying his request for an order terminating spousal support. He claims the trial court abused its discretion by denying his request on the first day of trial “without ever actually taking evidence.” Respondent Zoe Katherine Pasco (Zoe) argues the trial court acted within its discretion “in refusing to hear” oral evidence. The issue here is not whether the trial court had discretion to refuse to hear oral evidence; the issue is that the trial court denied Richard's request without taking *any* evidence. This was an abuse of the court's discretion. Accordingly, we reverse the court's September 11, 2017 order¹ and remand the matter with directions to proceed with the previously scheduled, two-day trial unless intervening circumstances or settlement [***2] have obviated the need for this trial.

BACKGROUND

The parties were married for just over 20 years. A stipulated judgment dissolving their marriage was filed on December 19, 2014, and included the parties' agreement for spousal support. The parties

¹ In his notice of appeal, filed on October 11, 2017, Richard indicated he was appealing from the August 18, 2017 order. That order was superseded by an amended minute order filed by the court on September 11, 2017, that corrected a typographical error but made no substantive changes. We liberally construe the notice of appeal to encompass the September 11, 2017 amended minute order. (*Russell v. Foglio (2008) 160 Cal.App.4th 653, 661 [73 Cal. Rptr. 3d 87]* [“notices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear what appellant was trying to appeal from”].)

agreed Richard would pay to Zoe \$ 2,500 each month for spousal support (plus a percentage of bonuses) and they would “review spousal support in December 2016.” They also agreed “the marital standard of living has not been established” and Zoe would obtain a teaching credential for special education.

On January 4, 2017, Richard filed a request for order terminating spousal support (the request) based on Zoe's new job and increased monthly income. Richard retained an expert who, after reviewing financial records, “indicated [*588] [Zoe] would need \$ 3,300 per month after taxes in order to maintain the marital standard of living.” A hearing was set for February 22, 2017.

Zoe opposed the request. She argued there were “several factors that the court will need to consider when conducting the evidentiary hearing on this motion.” Zoe noted she was no longer receiving child support and argued, “this is a change of circumstances to which the court should take [***3] note.” She had to take out a mortgage on the family home, and she disagreed with Richard's expert on the marital standard of living so would have to retain her own expert. Zoe asked “the court [to] set this matter for an evidentiary hearing so that the court may hear evidence on the appropriate [Family Code section 4320](#) factors.” She also asked for attorney fees.

On February 22, 2017, the parties and their counsel appeared before the court on the law and motion calendar. The court set the matter for a two-day trial, as well as the mandatory settlement conference. (Super. Ct. Sacramento County, Local Rules, rule 5.28(A) [court required to set a settlement conference prior to trial date].) Prior to the mandatory settlement conference, the parties each submitted a statement of issues and contentions, along with their proposed dispositions. (Super. Ct. Sacramento County, Local Rules, rule 5.29(A) [parties required to submit a statement of issues and contentions in advance of the mandatory settlement conference].)

[**586] In his statement of issues and contentions, Richard continued to argue that because Zoe now had a job, she was able to meet the marital standard of living, as determined by his expert, without spousal support. In her statement [***4] of issues and contentions, Zoe argued that “[o]nce the court goes through the appropriate Marital Standard of Living analysis, it will be clear that the order for spousal support should not be terminated and it should continue as [Zoe] still needs spousal support.” She said her expert did not agree with the marital standard of living reached by Richard's expert; her expert would “testify that the standard of living was much higher.”

She further argued that, although she now received a paycheck, her expenses also had increased and she was no longer receiving child support. She thus claimed that “arguably, there is no substantial change in circumstances, which is required for the court to modify a spousal support order.” Zoe “reserve[d] her right to fully address the factors of [Family Code section 4320](#) in a trial brief in the event that this matter does not resolve at settlement conference.”

The matter did not resolve at the mandatory settlement conference and the two-day trial was confirmed.

On the first day of trial, August 18, 2017, Zoe filed a trial brief in which she again said there was “arguably” no showing of changed circumstances [*589] and “[t]he evidence [would] demonstrate that [she] cannot maintain the [***5] standard of living based upon her earning capacity.” She addressed each of the [Family Code section 4320](#) factors and argued that “[t]he equities” weighed in favor of continuing the existing order for support. She reiterated her request for attorney fees.

At the start of trial, the court asked Zoe's counsel, Jill Barr, to address her “threshold” argument, that there were no changed circumstances. Barr began: “My argument is that the—when you look at the overall cash flow, there really hasn't been a material

change in circumstances.” The court then engaged Barr and Zoe in a colloquy regarding Zoe's circumstances. Barr indicated the facts they were discussing would “come out in the evidence.”

The court asked Richard's counsel, Frank Dougherty, if he wanted “to be heard.” Dougherty responded: “the problem with the argument about no change of circumstances is it's heavily based on assumption of facts the Court has to hear the evidence for. So it's not a preliminary matter in that sense, but let me address it anyway in terms of what the evidence will show.”

Dougherty went on to describe the evidence he intended to present at trial. He argued it would both demonstrate changed circumstances and show Zoe could meet [***6] or exceed the marital standard of living on her own. Barr challenged Dougherty's factual assertions as well as his conclusions. The court asked if the matter was submitted. Barr said, “Yes.” Dougherty did not respond: “(No audible response.)”

The court ruled there were “no material changes in circumstances at this time to warrant a hearing on modification/termination of spousal support.” The court then asked the parties to make their arguments relative to Zoe's request for attorney fees.

Rather than respond to Zoe's request for fees, Dougherty objected repeatedly to the court's ruling. Dougherty argued the court was precluded from ruling on Richard's request without first considering evidence. Dougherty asked the court to recuse itself under [Code of Civil Procedure section 170.1](#) and send the parties back to the presiding judge for a new trial judge. Dougherty argued the court's ruling demonstrated Richard could not get a fair [**587] hearing in this courtroom. The court asked Dougherty for authority to support his recusal motion. Dougherty responded: “In my wildest dreams I did not imagine or come prepared with case law that a judge after the issue of change of circumstances had not been raised by opposing

counsel or her client. [***7] ²
[**590]

“The Court: It's in her motion. It's in her brief.

“[Dougherty]: In what brief?

“The Court: Her brief. That's one of the first thing[s] she addresses.

“[Dougherty]: That she handed me today.

“The Court: August 18 is when this is filed”

The court recessed to conduct its own research, returned, and denied Dougherty's recusal motion. Relying on [Code of Civil Procedure section 170.4, subdivision \(b\)](#), the court found Dougherty's request was not properly made. The court continued to press Dougherty to limit his argument to Zoe's request for attorney fees. Dougherty acquiesced and argued against Zoe's request for fees.

Dougherty argued Richard incurred significant fees preparing for a trial that did not happen. The equities, therefore, dictated Richard should not be ordered to pay Zoe's fees. The court was not persuaded and ordered Richard to pay \$ 2,500 to Zoe for her attorney fees, reduced from her original request for fees because there was no trial.

Richard appeals from this order.

DISCUSSION

Richard contends the trial court abused its discretion by denying his request for an order terminating spousal support without considering any evidence. We agree.

[HN1 CA\(1\)](#) (1) Trial courts have broad discretion in deciding whether to modify a spousal support order [***8] based upon changed circumstances. ([In re Marriage of Swain \(2018\) 21 Cal.App.5th 830, 836 \[230 Cal. Rptr. 3d 614\]](#).) In exercising its discretion, however, “a trial court must ‘follow

² We recognize this quote does not make sense, but may demonstrate how surprised counsel was by the trial court's ruling.

established legal principles and base its findings on substantial evidence.’ [Citation.] ‘If the trial court conforms to these requirements its order will be upheld whether or not the appellate court agrees with it or would make the same order if it were a trial court.’ [Citation.] However, ‘a court abuses its discretion if its findings are wholly unsupported, since a consideration of the evidence “is essential to a proper exercise of judicial discretion.”’ [Citations.].” (*Id. at pp. 836–837.*)

CA(2) (2) Here, the court found no changed circumstances but did so without considering any evidence. Zoe argues the trial court considered the evidence [*591] “before the court ... in the stipulated judgment and the income and expense declarations and fact based declarations of the parties.” Zoe, however, does not include a citation to the record to support this assertion and we can find nothing in the record to support it. Indeed, the trial court was nearly silent on exactly what documents it did or did not consider in reaching its decision. There is some indication the court was looking at Zoe’s trial brief but nothing [***9] more. **HN2** A trial brief is not evidence, it is argument.

Assuming, as Zoe does, the court relied on the parties’ previously filed declarations in reaching its decision, that was error because none of the declarations filed in [**588] support of or in opposition to Richard’s request for an order were admitted into evidence.

HN3 CA(3) (3) The family court is bound by the rules of evidence. (See *In re Marriage of Boblitt* (2014) 223 Cal.App.4th 1004, 1022 [167 Cal. Rptr. 3d 777] [family proceedings governed by same statutory rules of evidence and procedure applicable in other civil actions]; *Fam. Code, § 210* [“the rules of practice and procedure applicable to civil actions generally ... apply to, and constitute the rules of practice and procedure in, proceedings under [the Family Code]”]; Cal. Rules of Court, rule 5.2(d).) **CA(4) (4)** Declarations filed in support of a request for order are intended only to give

notice to the opposing party of the basis of the request. (*In re Marriage of Shimkus* (2016) 244 Cal.App.4th 1262, 1271 [198 Cal. Rptr. 3d 799] (*Shimkus*); Cal. Rules of Court, rule 5.92(b)(1).) They are not, as Zoe apparently assumes, automatically admitted into evidence. (*Shimkus, at p. 1271.*) Thus, unless the parties’ declarations are offered as evidence, marked, and subject to objections, they are not evidence the court may consider in resolving disputed factual issues. (*Shimkus, at p. 1271.*)³

The parties were well past making an offer of proof to establish a prima facie showing of changed [***10] circumstances. (See, e.g., *In re Marriage of Brown & Yana* (2006) 37 Cal.4th 947, 962 [38 Cal. Rptr. 3d 610, 127 P.3d 28] [evidentiary hearing on a move away request required only if moving party able to make prima facie showing the move would be detrimental to child].) The parties already appeared on the court’s law and motion calendar, and the [*592] court set the matter for a two-day trial along with the mandatory settlement conference.⁴ In anticipation

³The Court of Appeal in *In re Marriage of Binette* (2018) 24 Cal.App.5th 1119 [235 Cal.Rptr.3d 354], held the parties’ conduct resulted in an “implicit agreement ... to rely on the documents submitted, unless the court directed otherwise.” (*Id. at p. 1130.*) The court went on to suggest, in dicta, that pursuant to the decision in *Shimkus, supra*, 244 Cal.App.4th at page 1271, unless the trial court provides “clear direction” that it will only be considering oral testimony, the parties’ declarations will be automatically admitted into evidence. (*Binette, at p. 1130.*) We disagree with this characterization of the holding in *Shimkus*. Moreover, as noted in *Shimkus*, this is not how the rules of evidence work: documents must be marked and subject to objections before they can be admitted into evidence. (*Shimkus, supra*, 244 Cal.App.4th at p. 1271; Cal. Rules of Court, rule 5.92(b)(1).)

⁴At the trial, Barr argued the court did not find a prima facie showing of changed circumstances. She says the parties stipulated to set the matter for trial.

That stipulation is not in the record. In any event, a stipulation to set the matter for trial is a tacit agreement that Richard made a prima facie showing of changed circumstances in his declarations. It is reasonable to assume that if Zoe believed she could avoid a two-day evidentiary hearing by arguing Richard failed to make a prima facie showing of changed circumstances with his declarations, she would have argued that at the short cause hearing.

of the mandatory settlement conference, the parties each prepared a statement of issues and contentions, in which they discussed evidence related to the [Family Code section 4320](#) factors. They discussed their competing experts' opinions with regard to the marital standard of living. And they each discussed whether Zoe could meet the marital standard of living without Richard's support.

In her statement of issues and contentions, Zoe did say that because her expenses increased along with her income, there “arguably” were no changed circumstances. But she did not argue that Richard **[**589]** could not make, or had not made, a *prima facie* showing of changed circumstances, and she did not object to the two-day trial being set. Accordingly, on this record, we must assume a *prima facie* showing of changed circumstances already was made. (See [In re Marriage of Brown & Yana, supra, 37 Cal.4th at p. 962](#) [not entitled to evidentiary **[***11]** hearing on request to modify final custody order, must make *prima facie* showing of changed circumstances].)

CA(5) (5) Because a *prima facie* showing of changed circumstances already was made based on the offer of proof in Richard's declarations at trial, the court was precluded from relying on the parties' declarations unless they were admitted into evidence—they were not. (See [In re Marriage of Boblitt, supra, 223 Cal.App.4th at p. 1022](#).) The court also was precluded from relying on **HN4** the argument of counsel and the unsworn statements of either party, neither of which is evidence. ([In re Heather H. \(1988\) 200 Cal.App.3d 91, 95 \[246 Cal. Rptr. 38\]](#) [“unsworn testimony does not constitute ‘evidence’ within the meaning of the Evidence Code”]; [People v. Superior Court \(Crook\) \(1978\) 83 Cal.App.3d 335, 341 \[147 Cal. Rptr. 856\]](#) [statements by counsel are not evidence]; see also Rules Prof. Conduct, rule 3.4(g) [attorneys must not “assert personal knowledge of facts in issue except when testifying as a witness”].)

CA(6) (6) In sum, the trial court based its decision

on Richard's request for an order solely on the argument of counsel and Zoe's unsworn statements in response to the court's questions. The court did not consider any actual **[*593]** evidence. **[***12]** This was an abuse of the court's discretion. ([In re Marriage of Swain, supra, 21 Cal.App.5th at pp. 836–837](#).)

DISPOSITION

The trial court's September 11, 2017 order is reversed. The matter is remanded for further proceedings consistent with this opinion. Richard Anthony Pasco is awarded his costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

Raye, P. J., and Butz, J., concurred.

End of Document



Positive

As of: October 18, 2026 7:03 AM Z

In re Marriage of Prentis-Margulis & Margulis

Court of Appeal of California, Fourth Appellate District, Division Three

August 11, 2011, Filed

G041948

Reporter

198 Cal. App. 4th 1252 *; 130 Cal. Rptr. 3d 327 **; 2011 Cal. App. LEXIS 1182 ***

In re Marriage of ELAINE PRENTIS-MARGULIS, and ALAN D. MARGULIS. ELAINE PRENTIS-MARGULIS, Appellant, v. ALAN D. MARGULIS, Appellant.

Prior History: [***1] APPEAL from a judgment of the Superior Court of Orange County, No. 02D005672, Robert H. Gallivan, Temporary Judge. (Pursuant to [Cal. Const., art. VI, § 21.](#))

[In re the Marriage of Prentis-Margulis & Margulis, 198 Cal. App. 4th 277, 2011 Cal. App. LEXIS 1060 \(Cal. App. 4th Dist., 2011\)](#)

Disposition: Reversed.

Case Summary

Procedural Posture

Cross-appeals were taken from a judgment of the Superior Court of Orange County (California), which, in a marital dissolution proceeding, awarded a house to the wife, ordered her to make an equalizing payment, and sanctioned the husband for a breach of fiduciary duty.

Overview

The husband controlled the parties' finances during the marriage. He continued to manage the community investments after separation and to pay community obligations. The wife offered into evidence a list of assets prepared many years earlier. The husband asserted that the assets no

longer existed because of stock market losses and community expenditures, but he offered no evidence to corroborate this claim. The court held that the burden of proof should have been shifted to the husband to show the disposition and valuation of the community assets in his control after the separation. The parties' unequal access to evidence justified shifting the normal burden of proof in [Evid. Code, § 500](#), to ensure the equal division of property required by [Fam. Code, § 2550](#). In accordance with [Fam. Code, §§ 721, subd. \(b\), 1100, 1101, 2100, 2102, subd. \(a\)\(1\), 2552, subd. \(b\)](#), a spouse managing community assets had fiduciary obligations of disclosure and accounting that included those specified in [Corp. Code, § 16403](#), and the trial court had the authority to use an alternate valuation date. Commingling precluded reimbursement for payment of community obligations without tracing of separate funds.

Outcome

The court reversed the judgment.

LexisNexis® Headnotes

Evidence > Burdens of Proof > Burden Shifting

Family Law > ... > Property

Distribution > Classification > Valuation

HN1 Once a nonmanaging spouse makes a prima facie showing concerning the existence and value of community assets in the control of the other

spouse postseparation, the burden of proof shifts to the managing spouse to rebut the showing or prove the proper disposition or lesser value of these assets. If the managing spouse fails to meet this burden, the court should charge the managing spouse with the assets according to the prima facie showing.

Evidence > Burdens of Proof > Allocation

[HN2](#) See [Evid. Code, § 500](#).

Evidence > Burdens of Proof > Burden Shifting

[HN3](#) The general rule in [Evid. Code, § 500](#), applies except as otherwise provided by law. Courts may alter the normal allocation of the burden of proof based on considerations of fairness and policy. Indeed, California courts consistently approve shifting the burden of proof where circumstances make it impossible for a plaintiff to prove his or her case. These burden-shifting decisions recognize that determining the incidence of the burden of proof is merely a question of policy and fairness based on experience in the different situations. In deciding the issue, fundamental fairness must be the lodestar for a court's analysis. In determining whether the normal allocation of the burden of proof should be altered, the courts consider a number of factors: the knowledge of the parties concerning the particular fact, the availability of the evidence to the parties, the most desirable result in terms of public policy in the absence of proof of the particular fact, and the probability of the existence or nonexistence of the fact.

Evidence > Burdens of Proof > Burden Shifting

[HN4](#) Given that bedrock concerns of policy and fairness drive the analysis, a common trigger for burden-shifting is when the parties have unequal access to evidence necessary to prove a disputed issue. Where the evidence necessary to establish a

fact essential to a claim lies peculiarly within the knowledge and competence of one of the parties, that party has the burden of going forward with the evidence on the issue although it is not the party asserting the claim.

Evidence > Burdens of Proof > Burden Shifting

Family Law > ... > Property

Distribution > Classification > Valuation

[HN5](#) Concerns over unequal access to evidence are particularly pressing in the context of a marital dissolution where financial records can be crucial to ensuring the equal division of property required by [Fam. Code, § 2550](#). Where one spouse has exercised exclusive control over community property, the parties will have vastly unequal access to evidence concerning the disposition of that property. When this occurs, fairness requires shifting to the managing spouse the burden of proof on missing assets.

Family Law > Marital Duties & Rights > Property
Rights > General Overview

[HN6](#) See [Fam. Code, § 721, subd. \(b\)](#).

Family Law > Marital Duties & Rights > Property
Rights > General Overview

[HN7](#) The specific incorporation in [Fam. Code, § 721, subd. \(b\)](#), of the same rights and duties of nonmarital business partners, as provided in [Corp. Code, § 16403](#), makes clear that the duty to disclose relevant information concerning transactions affecting the community property is an affirmative and broad obligation.

Business & Corporate Law > ... > Management
Duties & Liabilities > Fiduciary Duties > Duty of
Disclosure

[HN8 Corp. Code, § 16403, subd. \(1\)](#), requires each partner to furnish to a partner, without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter.

Family Law > Marital Duties & Rights > Property Rights > General Overview

[HN9 Fam. Code, § 1100](#), delineates the scope of a managing spouse's accountability. That statute not only prohibits a spouse from engaging in certain conduct, such as making a unilateral gift of community personal property or disposing of it for less than fair and reasonable value, without the written consent of the other spouse, as stated in [§ 1100, subd. \(b\)](#), but it also requires each spouse to act as a fiduciary toward the other in the management of community assets in accordance with the general rules governing fiduciary relationships as specified in [Fam. Code, § 721](#), until such time as the assets and liabilities have been divided by the parties or by a court. This duty includes the obligation to make full disclosure to the other spouse of all material facts and information regarding the existence, characterization, and valuation of all assets in which the community has or may have an interest. [§ 1100, subd. \(e\)](#).

Family Law > Marital Duties & Rights > Causes of Action > General Overview

Family Law > Marital Duties & Rights > Property Rights > General Overview

[HN10 Fam. Code, § 1101](#), creates a right of action and specific remedies for the breach of fiduciary duty between spouses. [Section 1101, subd. \(a\)](#), gives each spouse 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. The statutory remedies for a breach of

fiduciary duty, specifically including a breach of those duties set out in [Fam. Code, §§ 721, 1100](#), include a mandatory award of 50 percent of any asset undisclosed or transferred in breach of the fiduciary duty plus attorney's fees and court costs. [§ 1101, subd. \(g\)](#). If the nondisclosure or wrongful disposition of community property falls within the ambit of [Civ. Code, § 3294](#) (punitive damages upon clear and convincing evidence of oppression, fraud or malice), the court must award to the injured spouse the entire value of the asset. [§ 1101, subd. \(h\)](#).

Family Law > ... > Dissolution & Divorce > Property Distribution > General Overview

[HN11 Fam. Code, § 2100](#), makes clear that the fiduciary obligations of disclosure and accounting continue to bind spouses after separation until final distribution of assets.

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Procedures

Family Law > ... > Dissolution & Divorce > Property Distribution > General Overview

[HN12](#) See [Fam. Code, § 2100](#).

Family Law > Marital Termination & Spousal Support > Costs & Attorney Fees

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Procedures

Family Law > ... > Dissolution & Divorce > Property Distribution > General Overview

[HN13 Fam. Code, § 2107, subd. \(c\)](#), mandates an award of sanctions, including reasonable attorney fees, against a spouse who fails to comply with the fiduciary duties of disclosure and accounting in [Fam. Code, § 2100](#).

Family Law > Marital Termination & Spousal
Support > Dissolution & Divorce > Procedures

Family Law > ... > Dissolution & Divorce > Property
Distribution > General Overview

Family Law > ... > Property
Distribution > Classification > Valuation

HN14 Taken together, [Fam. Code, §§ 721, subd. \(b\), 1100, 1101, 2100](#), impose on a managing spouse affirmative, wide-ranging duties to disclose and account for the existence, valuation, and disposition of all community assets from the date of separation through final property division. These statutes obligate a managing spouse to disclose soon after separation all the property that belongs or might belong to the community and its value, and then to account for the management of that property, revealing any material changes in the community estate, such as the transfer or loss of assets. In a trial where community assets are missing, these statutory duties of disclosure and accounting serve to shift the burden of proof on missing assets to the managing spouse.

Family Law > Marital Termination & Spousal
Support > Dissolution & Divorce > Procedures

Family Law > ... > Dissolution & Divorce > Property
Distribution > General Overview

Family Law > ... > Property
Distribution > Classification > Valuation

HN15 The substantial sua sponte duties of disclosure and accounting bind a managing spouse until the community property is divided ([Fam. Code, §§ 2100, subd. \(c\); 2102, subd. \(a\)\(1\)](#)). It follows, then, that these statutory duties can play a significant role at a trial to divide the property. In a situation where the nonmanaging spouse makes a prima facie showing that community assets are missing, that showing implicates the managing spouse's duty to update and augment disclosure as to any material changes in the community property ([§ 2100, subd. \(c\)](#)).

Family Law > ... > Property
Distribution > Classification > Valuation

HN16 [Fam. Code, § 2552, subd. \(b\)](#), allows a trial court to use an alternate valuation date where fairness requires.

Family Law > ... > Property
Distribution > Classification > Valuation

HN17 [Fam. Code, § 1101](#), mandates that, for purposes of awarding the injured spouse 50 percent of the value of an undisclosed or wrongfully transferred asset (or 100 percent, in the event of oppression, fraud, or malice), the trial court must value the assets at the highest of three possible dates.

Family Law > ... > Property
Distribution > Classification > Valuation

HN18 See [Fam. Code, § 1101, subd. \(g\)](#).

Family Law > ... > Property
Distribution > Classification > Valuation

HN19 [Fam. Code, §§ 1101, subd. \(g\), 2552, subd. \(b\)](#), authorize a trial court to use a valuation date that best provides adequate compensation to the injured spouse.

Family Law > ... > Dissolution & Divorce > Property
Distribution > General Overview

Family Law > ... > Property
Distribution > Classification > Valuation

HN20 Requiring a managing spouse to account for the disposition of missing assets does not entail a detailed accounting. To the contrary, the managing spouse simply must show by competent evidence management of assets in his or her control in accord with the fiduciary obligations set forth in

[Fam. Code, §§ 721, 1100](#). The trial court undoubtedly will take into account the length of the separation and the attendant difficulties of proof in determining whether the account made is satisfactory. Nevertheless, the duty to account for the disposition of community property exists from separation to final distribution of assets. [Fam. Code, §§ 1100, subd. \(e\), 2100, subd. \(c\), 2102, subd. \(a\)\(1\)](#). The duty to account does not dissipate over the course of an unusually long separation. Weighing equities, the property in issue belongs to both spouses and the nonmanaging spouse's right to an accounting outweighs the burden on the managing spouse to account.

Family Law > ... > Equitable
Distribution > Factors > Contributions

HN21 As a general rule, a spouse who, after separation of the parties, uses earnings or other separate funds to pay preexisting community obligations should be reimbursed therefor out of the community property upon dissolution. Conversely, if the managing spouse uses community money to pay a community obligation, there is no basis for reimbursing the spouse for that payment.

Family Law > ... > Equitable
Distribution > Factors > Contributions

HN22 A spouse is entitled to reimbursement for payment of community obligations only if those payments are made from the spouse's separate property.

Family Law > ... > Property
Distribution > Classification > Tracing

HN23 Commingling creates a rebuttable presumption that all the funds in the account are community property. The mere commingling of separate property and community property funds does not alter the status of the respective property

interests, provided that the components of the commingled mass can be adequately traced to their separate property and community property sources. But if the separate property and community property interests have been commingled in such a manner that the respective contributions cannot be traced and identified, the entire commingled fund will be deemed community property pursuant to the general community property presumption of [Fam. Code, § 760](#). A spouse who has commingled community and separate funds can defeat the presumption with evidence, employing traditional family law tracing methods, such as direct tracing or the family expense method of tracing.

Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

After a 33-year marriage and subsequent lengthy separation, the wife filed a petition for marital dissolution. During the marriage, the husband exercised complete control over the parties' finances and he continued that practice during the separation, managing their community investments and paying community obligations, while freely commingling community funds with his own. Just before trial, the husband disclosed for the first time that the community's once-brimming investment and bank accounts were virtually empty. The wife's only evidence of the value of the missing community property was a joint financial statement the husband had prepared three years into the separation and nine years before trial. The trial court concluded the document was insufficient evidence the community accounts had contained the stated amounts postseparation and declined to charge the husband with the missing funds. The ensuing property division required the wife to make a large equalizing payment to the husband. (Superior Court of Orange County, No. 02D005672, Robert H. Gallivan, Temporary

Judge.*)

The Court of Appeal reversed, holding that the burden of proof should have been shifted to the husband [***2] to show the disposition and value of the community assets in his control postseparation. The parties' unequal access to evidence justified shifting the normal burden of proof to the managing spouse (*Evid. Code, § 500*). The Court of Appeal also based its conclusion on the managing spouse's extensive fiduciary obligations of disclosure and accounting (*Fam. Code, §§ 721, subd. (b), 1100, 1101, 2100, 2102, subd. (a)(1), 2552, subd. (b)*), which include those specified in *Corp. Code, § 16403*. The property division also incorrectly reimbursed the husband for his payment of community obligations because he commingled and failed to trace the payments to his separate funds. (Opinion by Aronson, J., with Bedsworth, Acting P. J., and O'Leary, J., concurring.) [*1253]

Headnotes

CALIFORNIA OFFICIAL REPORTS
HEADNOTES

CA(1) (1)

Dissolution of Marriage § 52—Division of Community and Quasi-community Property—Valuation—Assets Controlled by One Spouse—Shifting Burden of Proof.

Once a nonmanaging spouse makes a prima facie showing concerning the existence and value of community assets in the control of the other spouse postseparation, the burden of proof shifts to the managing spouse to rebut the showing or prove the proper disposition or lesser value of these assets. If the managing spouse fails to meet this burden, the court should charge the managing spouse with the assets according to the prima facie showing.

CA(2) (2)

Evidence § 21—Burden of Proof—Burden Shifting.

The general rule in *Evid. Code, § 500*, applies except as otherwise provided by law. Courts may alter the normal allocation of the burden of proof based on considerations of fairness and policy. Indeed, California courts consistently approve shifting the burden of proof where circumstances make it impossible for a plaintiff to prove his or her case. These burden-shifting decisions recognize that determining the incidence of the burden of proof is merely a question of policy and fairness based on experience in the different situations. In deciding the issue, fundamental fairness must be the lodestar for a court's analysis. In determining whether the normal allocation of the burden of proof should be altered, the courts consider a number of factors: the knowledge of the parties concerning the particular fact, the availability of the evidence to the parties, the most desirable result in terms of public policy in the absence of proof of the particular fact, and the probability of the existence or nonexistence of the fact.

CA(3) (3)

Evidence § 21—Burden of Proof—Burden Shifting—Unequal Access to Evidence.

Given that bedrock concerns of policy and fairness drive the analysis, a common trigger for burden-shifting is when the parties have unequal access to evidence necessary to prove a disputed issue. Where the evidence necessary to establish a fact essential to a claim lies peculiarly within the knowledge and competence of one of the parties, that party has the burden of going forward with the evidence on the issue although it is not the party asserting the claim.

CA(4) (4)

* Pursuant to *California Constitution, article VI, section 21*.

Evidence § 21—Burden of Proof—Burden Shifting—Unequal Access to Evidence—Financial Records in Marital Dissolution Cases.

Concerns over unequal access to evidence are particularly pressing in the context of a marital dissolution where financial records can be crucial to ensuring the equal division of property required by [Fam. Code, § 2550](#). Where one spouse has exercised exclusive control over community [*1254] property, the parties will have vastly unequal access to evidence concerning the disposition of that property. When this occurs, fairness requires shifting to the managing spouse the burden of proof on missing assets.

[CA\(5\)](#) (5)

Husband and Wife § 34—Community Property—Duty to Disclose Transactions.

The specific incorporation in [Fam. Code, § 721, subd. \(b\)](#), of the same rights and duties of nonmarital business partners, as provided in [Corp. Code, § 16403](#), makes clear that the duty to disclose relevant information concerning transactions affecting the community property is an affirmative and broad obligation.

[CA\(6\)](#) (6)

Husband and Wife § 34—Community Property—Fiduciary Obligations of Disclosure and Accounting.

[Fam. Code, § 2100](#), makes clear that the fiduciary obligations of disclosure and accounting continue to bind spouses after separation until final distribution of assets. [Fam. Code, § 2107, subd. \(c\)](#), mandates an award of sanctions, including reasonable attorney fees, against a spouse who fails to comply with the fiduciary duties of disclosure and accounting in [§ 2100](#).

[CA\(7\)](#) (7)

Dissolution of Marriage § 14—Proceedings—Evidence—Duty to Disclose Transactions Affecting Community Property.

Taken together, [Fam. Code, §§ 721, subd. \(b\), 1100, 1101, 2100](#), impose on a managing spouse affirmative, wide-ranging duties to disclose and account for the existence, valuation, and disposition of all community assets from the date of separation through final property division. These statutes obligate a managing spouse to disclose soon after separation all the property that belongs or might belong to the community and its value, and then to account for the management of that property, revealing any material changes in the community estate, such as the transfer or loss of assets. In a trial where community assets are missing, these statutory duties of disclosure and accounting serve to shift the burden of proof on missing assets to the managing spouse.

[CA\(8\)](#) (8)

Dissolution of Marriage § 14—Proceedings—Evidence—Duty to Disclose Transactions Affecting Community Property.

The substantial sua sponte duties of disclosure and accounting bind a managing spouse until the community property is divided ([Fam. Code, §§ 2100, subd. \(c\), 2102, subd. \(a\)\(1\)](#)). It follows, then, that these statutory duties can play a significant role at a trial to divide the property. In a situation where [*1255] the nonmanaging spouse makes a prima facie showing that community assets are missing, that showing implicates the managing spouse's duty to update and augment disclosure as to any material changes in the community property ([§ 2100, subd. \(c\)](#)).

[CA\(9\)](#) (9)

Dissolution of Marriage § 14—Duty to Disclose Transactions Affecting Community Property—Assets Controlled by One Spouse—Shifting

Burden of Proof.

A husband, as managing spouse, had full access to the facts concerning the disposition of funds in the community accounts, both as to his own withdrawals and expenditures and the purported losses from stock market downturns. The wife had neither personal knowledge nor access to records establishing those facts. The husband's superior knowledge of the disposition and value of the accounts in his control required that he bear the burden of proof on both issues.

[*Gray & Wagner, Complex Issues in California Family Law* (2010) ch. B11, § B11.05; 11 Witkin, Summary of Cal. Law (10th ed. 2005) Community Property, §§ 18, 133 et seq., 134, 225.]

CA(10) (10)

Dissolution of Marriage § 52—Division of Community and Quasi-community Property—Valuation—Date.

Fam. Code, § 2552, subd. (b), allows a trial court to use an alternate valuation date where fairness requires.

CA(11) (11)

Dissolution of Marriage § 14—Proceedings—Evidence—Duty to Account for Disposition of Community Property.

Fam. Code, § 1101, mandates that, for purposes of awarding the injured spouse 50 percent of the value of an undisclosed or wrongfully transferred asset (or 100 percent, in the event of oppression, fraud, or malice), the trial court must value the assets at the highest of three possible dates. *Fam. Code, §§ 1101, subd. (g), 2552, subd. (b)*, authorize a trial court to use a valuation date that best provides adequate compensation to the injured spouse. Requiring a managing spouse to account for the disposition of missing assets does not entail a detailed accounting. To the contrary, the managing

spouse simply must show by competent evidence management of assets in his or her control in accord with the fiduciary obligations set forth in *Fam. Code, §§ 721, 1100*. The trial court undoubtedly will take into account the length of the separation and the attendant difficulties of proof in determining whether the account made is satisfactory. Nevertheless, the duty to account for the disposition of community property exists from separation to final distribution of assets (*Fam. Code, §§ 1100, [*1256] subd. (e), 2100, subd. (c), 2102, subd. (a)(1)*). The duty to account does not dissipate over the course of an unusually long separation. Weighing equities, the property in issue belongs to both spouses and the nonmanaging spouse's right to an accounting outweighs the burden on the managing spouse to account.

CA(12) (12)

Dissolution of Marriage § 54—Division of Community and Quasi-community Property—Additional Award or Offset for of Restitution—Use of Separate Funds to Pay Community Obligations.

As a general rule, a spouse who, after separation of the parties, uses earnings or other separate funds to pay preexisting community obligations should be reimbursed therefor out of the community property upon dissolution. Conversely, if the managing spouse uses community money to pay a community obligation, there is no basis for reimbursing the spouse for that payment.

CA(13) (13)

Dissolution of Marriage § 54—Division of Community and Quasi-community Property—Additional Award or Offset for Restitution—Use of Separate Funds to Pay Community Obligations.

A spouse is entitled to reimbursement for payment of community obligations only if those payments are made from the spouse's separate property.

CA(14) (14)**Dissolution of Marriage § 52—Division of Community and Quasi-community Property—Valuation—Commingling and Tracing.**

Commingling creates a rebuttable presumption that all the funds in the account are community property. The mere commingling of separate property and community property funds does not alter the status of the respective property interests, provided that the components of the commingled mass can be adequately traced to their separate property and community property sources. But if the separate property and community property interests have been commingled in such a manner that the respective contributions cannot be traced and identified, the entire commingled fund will be deemed community property pursuant to the general community property presumption of [Fam. Code, § 760](#). A spouse who has commingled community and separate funds can defeat the presumption with evidence, employing traditional family law tracing methods, such as direct tracing or the family expense method of tracing.

[*1257]

Counsel: Law Offices of Steven E. Briggs and Luis A. McKissick for Appellant Elaine Prentis-Margulis.

Law Offices of Burch, Coulston & Buncher and Todd P. Coulston for Appellant Alan D. Margulis.

Stephen Temko and Dawn Gray for the Association of Certified Family Law Specialists and the Southern California Chapter of the American Academy of Matrimonial Lawyers as Amici Curiae, upon the request of the Court of Appeal.

Judges: Opinion by Aronson, J., with Bedsworth, [***3] Acting P. J., and O'Leary, J., concurring.

Opinion by: Aronson

Opinion

[**329] **ARONSON, J.**—In a marital dissolution proceeding to divide the community property, where the nonmanaging spouse offers prima facie evidence that community assets of a certain value have disappeared while in the control [**330] of the managing spouse postseparation,¹ should the managing spouse have the burden of proof to account for the missing assets? The answer is yes.

Husband and wife separated after a 33-year marriage and, for 12 postseparation years, continued to handle their joint finances as before: Husband had complete control of substantial community investment accounts and paid all the bills; wife trusted him to manage their finances for their mutual benefit. Just before trial, however, husband disclosed for the first time that the once-brimming investment accounts were virtually empty. Without any corroborating evidence, he attributed the dissipation of account values to proper expenditures and stock market losses.

At trial, wife argued the court should charge husband with [***4] the missing funds unless he proved he did not misappropriate the money. Her only evidence of missing funds was a financial statement husband prepared three years after separation and nine years before trial. The trial court concluded the document was insufficient evidence the accounts had contained the stated amounts postseparation, and declined to charge husband with the missing funds. The ensuing property division required wife to make a large equalizing payment to husband.

Based on relevant Family Code provisions, equitable principles, and case law, we conclude the trial court erred in failing to shift to the managing [**1258] spouse the burden of proof concerning the

¹ As used here, “postseparation” means after the spouses have begun “living separate and apart,” as that expression is used in [Family Code section 771, subdivision \(a\)](#).

missing community assets. Once a nonmanaging spouse makes a prima facie showing of the existence and value of community assets in the other spouse's control postseparation, the burden of proof shifts to the managing spouse to prove the proper disposition or lesser value of those assets. Failing such proof, the court should charge the managing spouse with the assets according to the prima facie showing.

I

FACTUAL AND PROCEDURAL BACKGROUND

Alan D. Margulis and Elaine Prentis-Margulis separated after more than 33 years of marriage. [***5] On August 12, 1996, Alan² moved out of the family residence in Irvine and relocated to Chicago to start a new job. Elaine remained in the family home (the Sycamore house), while the couple's two adult children lived elsewhere.

Marital Finances from Separation Through Filing of Dissolution Petition

During the marriage, Alan had been the sole breadwinner and exercised complete control of the couple's finances. He managed several community checking accounts from which he paid the bills. He also managed their investment portfolio, which included brokerage accounts at various institutions, including Sutro & Company, John Hancock Clearing Corporation, and Charles Schwab, the custodian of two community individual retirement accounts (IRA's) held in Alan's name.

As explained more fully below, the record contains limited documentary evidence of the *value* of the community investment accounts Alan was

managing at separation, or afterward.³ The joint income tax returns [**331] Alan [***6] submitted into evidence provide some inkling of value. The Margulises' 1996 schedule D, the statement of their capital gains and losses, reported that between January and July of 1996, they sold \$1,142,111 worth of short- and long-term stock holdings, and two other long-term investments that generated another \$68,091.

The size of the community estate grew larger postseparation due to several substantial infusions of community cash. This increase consisted of [*1259] \$104,839.75 in severance pay related to Alan's preseparation employment, \$179,708 from the sale of the couple's Palm Desert house, and \$84,858 from cashing out a life insurance policy.⁴ Collectively, these additional [***7] sums amounted to \$369,405.

After Alan moved to Chicago, he continued to manage the community investments and to pay Elaine's bills, including all the expenses for the Sycamore house, and other community obligations. On a number of occasions, Alan also wrote a check directly to Elaine, typically for \$1,000 to \$1,500.

Initially, Alan paid the bills with checks drafted from the couple's Merrill Lynch money market checking account. In September 1998, Alan began paying his, the community's, and Elaine's bills from a new separate property account, identified as his "Chevy Chase" bank account. In testimony, Alan acknowledged that he freely transferred community

³ Despite repeated requests from a court-appointed forensic accountant, Alan never produced any account statements for the Sutro & Company or John Hancock investment accounts. As for the two community Charles Schwab IRA accounts, Alan produced only two statements for each account, reflecting the balance of each as of December 31, 1996, and January 31, 1999. According to those statements, on December 31, 1996, four months after separation, account No. 0916 had a balance of \$170,062 and account No. 1106 had a balance of \$32,701.

⁴ At trial, Alan stipulated to the community property character of the proceeds received from the desert house and life insurance policy; the trial court found the severance pay was a community asset and Alan does not challenge that finding on appeal.

² For clarity and convenience, "we refer to the parties by their first names We do not intend this informality to reflect a lack of respect. [Citation.]" (*In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1513, fn. 2 [47 Cal. Rptr. 3d 183].)

property funds into his Chevy Chase account and other separate bank accounts.

Both parties appeared content with the postseparation status quo since neither filed for divorce, and Elaine did not seek a temporary support order. During the separation, as before, Elaine left management of their [***8] joint finances entirely to Alan. She received no account statements from the various banks or brokerage firms holding the community assets.

The Petition for Dissolution and Alan's Property Disclosures

In 2001, Elaine began paying the mortgage on the Sycamore house and also began earning income as an actress. On June 7, 2002, nearly six years after separation, Elaine filed a marital dissolution petition. Alan waited until February 21, 2007, to file his response. Neither document disclosed the extent of the marital property. Elaine's declaration regarding community assets listed only the Sycamore house and miscellaneous art and jewelry, but stated she would amend the petition to add community assets as they became known. Alan claimed in his declaration that "[t]he nature and extent of community ... property has not yet been ascertained" and that he would amend the petition as the property "is discovered."

The mandatory settlement conference briefs, exchanged in October 2007, more than 11 years after separation, gave the first inkling of the dispute brewing. The two briefs painted dramatically different views of the community property subject to division.

[*1260]

[**332] Elaine's brief identified the following [***9] community assets within Alan's possession and control, and thus chargeable to him in the division: \$180,000 proceeds from the sale of the Palm Desert house; \$100,000 proceeds from a Bank of America line of credit; \$271,000 severance package from his preseparation employer; \$350,000

proceeds "from the IRA and securities sale"; and \$75,000 when Alan cashed out a life insurance policy. Elaine estimated the total community property chargeable to Alan as approximately \$901,000. Elaine asserted the court could achieve an equal property division if it allowed her to retain the Sycamore house, with \$450,270 in equity, and \$20,000 cash received from refinancing the property in 1994, and she paid an outstanding tax obligation of \$45,000, with Alan providing her a \$237,865 equalizing payment.

Alan's settlement conference brief identified the Sycamore house as "the main remaining community asset" and proposed that it be sold and the proceeds divided equally between the parties. He asserted the court could achieve an equal property division by halving any community retirement or pension benefits and allowing each party to keep the car, bank accounts, and "other financial accounts in [his or her] [***10] name since the date of separation."

Alan's brief failed to mention any of the community property investment accounts that had existed at the date of separation, such as the Sutro & Company account or the John Hancock and Charles Schwab accounts. Nor did his brief mention the Merrill Lynch bank account or the \$369,405 in community funds Alan received postseparation from the severance package, desert house sale, and life insurance policy.

On April 4, 2008, the parties obtained a status-only judgment of dissolution and a trial date to resolve the reserved property division issues.

The parties' trial briefs simply expanded on their settlement briefs. Elaine's trial brief asserted higher values for the investment accounts chargeable to Alan, based on a key document she would later offer into evidence as "exhibit 18." She contended Alan had received "from Charles Schwab [IRA] accounts ... \$230,000" and "from Sutro EQ Account ... \$450,000"

Alan's trial brief asserted the only "presently

existing community” property consisted of the Sycamore house, the personal property within it, and an IRS tax loss carryforward of \$312,122. As for the various financial accounts Alan maintained postseparation, [***11] he asserted these had been depleted over the ensuing 12 years by paying community expenses, Elaine's “daily maintenance and expenses,” and by stock market losses. He claimed he would introduce evidence of both the expenditures and market losses that depleted the accounts.

[*1261]

Evidence and Findings on the Community Assets Chargeable to Alan

Though the parties clashed at trial on a number of issues relating to the value of the community assets chargeable to Alan,⁵ the most significant dispute concerned whether to charge Alan with the value of the stock brokerage and money market accounts in Alan's postseparation control, namely, the Sutro & Company, John Hancock, [**333] Charles Schwab, and Merrill Lynch accounts.

Except as to the Charles Schwab IRA's, Alan presented no evidence on the value of these community accounts at any time postseparation. Instead, Alan generally testified that these community accounts were now virtually [***12] empty (except for \$20,000 at Charles Schwab) due to stock market losses and expenditures for the community's or Elaine's benefit. Alan argued that the only community assets chargeable to him were the \$20,000 remaining in the Charles Schwab IRA's.

Alan produced no evidence at trial to show how he disposed of the funds under his control. Nor did he produce evidence tracing funds from community

accounts to community expenditures or purchases. The only specific evidence he offered concerning the disposition of any community funds was his testimony about withdrawing funds from the Charles Schwab IRA's in 1999, 2000, and 2001, in amounts collectively totaling \$164,390, as reported on the couple's joint tax returns. Alan testified that he withdrew these IRA funds because he needed money to pay current expenses and wanted to avoid further losses in a declining market. Alan did not offer any evidence to corroborate this claim.

In closing argument, Alan claimed that his general assertion of loss-related IRA withdrawals corresponded to the \$312,000 tax loss carryforward identified as a community asset in his trial brief. Alan's counsel asserted, [***13] “The remaining balance [in those investment accounts] would have been ... in the tax loss carried forward” In other words, he argued that after subtracting Alan's expenditures for the community and for Elaine, all that remained in the investment accounts was \$312,000, a sum that was lost in the market as “evidenced” by the \$312,000 tax loss carryforward that existed at the time of trial.⁶

[*1262]

Elaine introduced evidence to prove the value of the investment accounts in Alan's control postseparation. She testified that, as the nonmanaging spouse, she had no personal knowledge or records of the [***14] value of the accounts at any particular time. But she offered into evidence as exhibit 18 a two-page document entitled “confidential personal financial statement” for “Alan/Elaine Margulis,” dated February 1, 1999, reflecting total assets of \$1,305,500. The

⁵ The other asset disputes relevant to this appeal concern a \$100,000 line of credit from Bank of America and Elaine's claim Alan unilaterally benefitted from a \$46,500 payment for unused vacation received in 1995. Alan asserted both sums were used for the benefit of the community.

⁶ The limited documentary evidence in the record belies Alan's counsel's assertion that the \$312,000 tax loss carryforward explains what happened to the “remaining” community funds from 1999 onward, when Alan began the IRA withdrawals. According to the couple's joint tax records, in 1999 they already had a preexisting loss carryover of \$299,717 from 1998. Moreover, the couple reported receiving approximately \$1,570,000 in cash from their short—and long-term stock sales in 1999. Obviously, a market loss of \$312,000 would not have wiped out investment accounts holding sales proceeds of that magnitude.

itemized list of assets included \$133,000 in a money market (identified on the second page as the Merrill Lynch account); \$230,000 in the Charles Schwab IRA's; \$424,000 in "marketable securities" (presumably the Sutro & Company account); real estate; and other investments. Alan admitted under cross-examination that he had prepared and signed this document in February 1999. Elaine's counsel argued the trial court should accept the values of the Merrill Lynch, Charles Schwab, and Sutro & Company accounts as stated on exhibit 18 unless Alan proved he properly disposed of those assets for community purposes or the stock holdings lost value due to market decline. In other words, Elaine argued the burden of proof should *****334** shift to Alan to *disprove* the values stated on exhibit 18 because he controlled those accounts and therefore was the only one with the personal knowledge or records to prove the value and disposition of the community funds *****15** postseparation. The trial court admitted exhibit 18 into evidence.

In closing argument, Alan's counsel argued exhibit 18 should be given "little weight" because Elaine presented no testimony explaining the document Alan created, and the document was unreliable because it failed to distinguish between community and separate property. Alan also argued exhibit 18 was outdated and therefore shed little light on the value of "the community assets present now."

The trial court ultimately did not rely on the account values listed in exhibit 18. The court explained, "I don't believe it supports, standing alone, [that] your assets listed did, in fact, exist." Without exhibit 18, the trial court had no evidence on the value of any specific investment accounts, except for the Charles Schwab IRA's. As for the IRA's, Charles Schwab account statements showed a combined value in December 1996 of \$202,763, tax records reported Alan's withdrawal of \$164,390 from those accounts in 1999–2001, and current account statements showed \$20,000 remaining in the IRA's. Based on that evidence, the trial court charged Alan with \$184,390 in IRA funds. The trial court made no findings on the value of the other

investment *****16** accounts at separation or later, and did not charge Alan with any **[*1263]** of those funds, impliedly accepting Alan's assertion that he spent the money from these accounts on the community and Elaine, and lost the remainder in market downturns.

The trial court also charged Alan with the \$369,405 community cash he received from the desert property, life insurance policy, and severance pay. The trial court rejected Elaine's argument that Alan should be charged with the \$100,000 Bank of America line of credit or the \$46,500 for unused vacation, concluding Alan used both sums for the community's benefit.

Evidence and Findings on Alan's Right to Reimbursement for Postseparation Payments

The other major trial issue concerned Alan's right to be reimbursed from the community property for his postseparation payments on community debts or for Elaine's benefit. The parties stipulated that Dennis Sperry, a certified public accountant, would serve as the court's forensic accountant ([Evid. Code, § 730](#)) "to conduct a tracing and analysis of both parties' claims for credits" regarding postseparation payments on community property obligations or for the benefit of the other party. In the stipulation, the parties *****17** agreed to provide Sperry with all documents previously produced in discovery and to "cooperate with any reasonable requests" for additional information.

Sperry asked Alan to produce "[a]ll personal bank statements and check registers" for all bank accounts Alan held in his own name or jointly with another from the date of separation through the present. Sperry also asked for "[a]ll brokerage statements for any investments owned individually or jointly" for the same time period.

In response, Alan gave Sperry bank documents for only two accounts, Merrill Lynch and Chevy Chase, although he admitted at trial that he maintained various other community and separate

property accounts and freely commingled them. The bank documents Alan provided for the two accounts were incomplete. He gave Sperry Merrill Lynch check registers but no bank statements. Alan provided check registers for the Chevy Chase account from September 10, 1998, through November **[**335]** 12, 2007, but the Chevy Chase bank statements he provided were from December 1, 1999, forward.

Alan gave Sperry no brokerage statements for the Sutro & Company, John Hancock, or Charles Schwab community investment accounts mentioned in **[*1264]** the tax records, **[***18]** or for Alan's own brokerage accounts, such as Raymond James or another account referred to in a check register as "LFG trading account."⁷

Despite Sperry's initial charge to "conduct a tracing" and analyze Alan's claim for reimbursement, his eventual report merely recorded and summarized all the checks listed on the Merrill Lynch and Chevy Chase check registers Alan provided. As Sperry explained at trial, he could not substantiate or disprove Alan's claim for reimbursement for postseparation payments because Alan failed to provide the complete documentation needed for such an analysis. Sperry conceded that his report shed little light on the validity of Alan's claim for credits.

Alan retained his own forensic accounting expert, Jack White, to testify on the issue of credits. White's report, accepted into evidence, purported to do what **[***19]** Sperry's did not: It stated the total amount of credits due Alan for postseparation payments made for the benefit of the community or Elaine. White testified that, based on the check registers and Alan's verbal "explanations," he tallied the checks Alan wrote from the Merrill

Lynch and Chevy Chase accounts and characterized each payment as a community expense, Elaine's expense, or Alan's expense. In his report, White concluded that, postseparation, Alan paid \$517,774.85 for community expenses, \$25,387.56 for Elaine's separate expenses and \$37,825 directly to Elaine. Adding these sums together, White concluded Alan should be credited with reimbursable payments totaling \$580,987.

At trial, Elaine objected to White's testimony and report as lacking proper foundation. She argued White had no basis for concluding that particular payments were for the benefit of the community or her, and thus reimbursable, based merely on check registers and Alan's "explanations." She argued White could only conclude a payment was reimbursable if it was made from separate funds, and Alan admitted he commingled funds to such an extent that he could not trace the source of any payments. Consequently, she argued, **[***20]** the trial court should exclude White's opinion that Alan was due reimbursement for payments totaling \$580,987.

The trial court overruled Elaine's objections. The trial court stated it found White's testimony persuasive and awarded Alan all the credits White recommended.

[*1265]

The Findings on Alan's Breach of Fiduciary Duty

The trial court specifically found Alan breached the fiduciary duty he owed to Elaine "to maintain proper records of all community assets which he had exclusive control and management over" The court noted that Alan, as managing spouse, "had the best knowledge of where the assets and accounts were located in spite of his protestations otherwise. ... [H]ad [Alan] taken the opportunity to avail himself of the possibility of locating the documentation ... it might have enabled the financial experts to present a more detailed **[**336]** analysis of the financial issues in this matter." Instead, Alan produced few records and

⁷When pressed at trial to explain his failure to produce these documents, Alan offered two excuses. First, he stated that when he moved to Chicago in 1996, he left all then existing financial records at the Sycamore house. Second, he testified that he did not keep financial records in his Chicago residence because he shared the house with three other men.

his failure to keep adequate records hampered the equitable disposition of assets: The court concluded that “the evidence is insufficient to support what really happened to these accounts.” Accordingly, the trial court ordered Alan to pay Elaine \$20,000 in sanctions [***21] for the breach of fiduciary duty and \$30,000 as “a contributed share of [Elaine’s] attorney fees and costs”

The Property Division

The trial court awarded the Sycamore house to Elaine, but ordered her to make an equalizing payment to Alan of \$189,736, after subtracting the \$50,000 he owed her for the sanctions and attorney fees. The court furthered ordered Elaine to sell the house if she could not make the equalizing payment in 45 days.

Elaine appealed from the judgment ordering her to make the equalizing payment or sell the house. Alan filed a cross-appeal from the finding he breached his fiduciary duty and from the resulting award to Elaine of sanctions and attorney fees.

II

DISCUSSION

A. Elaine’s Appeal

Elaine argues the trial court erred in its community property division, both undervaluing the community assets chargeable to Alan and overcrediting him for payments purportedly made for the community’s and Elaine’s benefit. She is correct on both counts.

1. The Trial Court Erred in Tallying the Community Assets Chargeable to Alan

Elaine contends the trial court erred when it excluded from the community property chargeable to Alan the investment account funds he controlled [*1266] postseparation [***22] but which were unaccountably missing at time of trial. We agree the trial court erred in refusing to “count” these

missing assets, and, more fundamentally, in refusing to shift the burden of proof to *Alan* to show the disposition and valuation of community assets in his control postseparation.

Though Alan never stated a value for the community investment accounts at separation or otherwise (except the Charles Schwab IRA’s), the tax records he offered into evidence suggest that in 1996 these accounts likely held more than \$1 million, and approximately \$1.5 million in 1999.⁸ Exhibit 18, which Alan prepared in early 1999, acknowledged the value of just three of the couple’s accounts (Sutro & Company, Charles Schwab, and Merrill Lynch) stood at \$787,000. Collectively, the brokerage and checking accounts were the most valuable community assets the couple owned. By the time of trial, however, Alan claimed that all that was left of this community property was a mere \$20,000 in the Charles Schwab IRA’s.

While the judgment did charge Alan with a portion of the IRA funds he had controlled—the \$164,000 he admittedly removed and the \$20,000 that remained—it made no provision for the rest of the community funds Alan had managed postseparation. The trial court was explicit about [***337] its reason for refusing to charge Alan with any of these other missing funds: Elaine’s only proof that money was missing was exhibit 18, and the court considered the exhibit insufficient to establish the account values. The court stated: “I don’t believe [exhibit 18] supports, standing alone, [that] your assets listed did, in fact, exist.” The judgment further noted: “The court finds there was no showing as to the total amounts of funds available to [Alan] and it has not heard any evidence to support argument on [Elaine’s] part that [Alan] should be charged with the receipt of” the community assets listed on exhibit 18.

⁸The Margulises’ 1996 schedule D, the statement of their capital gains and losses, reported that between January and July 1996, they sold \$1,142,111 worth of short- and long-term stock holdings, [***23] and two other long-term investments that generated another \$68,091. Their 1999 schedule D reported sales of short- and long-term stock holdings totaling \$1,570,150.

In other words, the trial court concluded that Elaine, the nonmanaging spouse who lacked both personal knowledge and records concerning [***24] the assets listed on exhibit 18, failed to meet the difficult burden of proving these now missing assets had existed (i.e., that there had been \$424,000 in Sutro & Company, \$133,000 in Merrill Lynch, and \$230,000 in Charles Schwab IRA's in 1999).

The trial court's failure to place the burden of proof on Alan relieved him of the duty to account for his postseparation management of these assets. Thus, Alan did not have to prove the *amounts* that had been in these accounts [*1267] or that he had properly disposed of those sums. This lack of accountability poses a risk of abuse and runs afoul of the statutory scheme imposing broad fiduciary duties of disclosure and accounting on a managing spouse.

CA(1) (1) We thus adopt a rule advocated by amici curiae⁹ but not fully articulated in any published case to date. We conclude that HN1 once a nonmanaging spouse makes a prima facie showing concerning the existence and value of community assets in the control of the other spouse postseparation, the burden of proof shifts to the managing spouse to rebut the showing or prove the proper disposition or lesser value of these assets. If the managing spouse fails to meet this burden, the court should charge the managing spouse [***25] with the assets according to the prima facie showing. As we explain in detail below, we find support for this rule in general case law explaining the circumstances and equitable principles that justify shifting the burden of proof, Family Code provisions that impose fiduciary duties of disclosure and accounting on spouses, and family law cases addressing the problem of missing

community assets.

a. Principles Governing the Decision Whether to Shift the Burden of Proof

CA(2) (2) We begin by reviewing the principles relevant to deciding whether to shift the burden of proof on a particular issue. Ordinarily, HN2 “a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.” (*Evid. Code*, § 500.) HN3 This general rule applies “[e]xcept [***26] as otherwise provided by law.” (*Ibid.*) “[C]ourts may alter the normal allocation of the burden of proof” based on considerations of fairness and policy. (*Amaral v. Cintas Corp. No. 2 (2008)* 163 Cal.App.4th 1157, 1188 [78 Cal. Rptr. 3d 572] (*Amaral*).)

Indeed, California courts consistently approve shifting the burden of proof where circumstances make it impossible for a plaintiff to prove his or her case as, for [**338] example, in the wage-and-hour context when employers’ “inadequate records prevent employees from proving their claims for unpaid overtime hours [citation] and unpaid meal and rest breaks [citation].” (*Amaral, supra*, 163 Cal.App.4th at p. 1189; see also *Fowler v. Seaton (1964)* 61 Cal.2d 681, 687 [39 Cal. Rptr. 881, 394 P.2d 697] [applying *res ipsa loquitur* in case of small child injured at preschool].)

[*1268]

These burden-shifting decisions recognize that “ ‘determining the incidence of the burden of proof ... “... is merely a question of policy and fairness based on experience in the different situations.” ’ [Citation.]” (*Adams v. Murakami (1991)* 54 Cal.3d 105, 120 [284 Cal. Rptr. 318, 813 P.2d 1348], original italics (*Adams*).) In deciding the issue, “Fundamental fairness must be the lodestar [***27] for our analysis.” (*Id.* at p. 119.)

The factors relevant to the burden-shifting analysis are well established: “ ‘In determining whether the normal allocation of the burden of proof should be altered, the courts consider a number of factors: the

⁹In response to an invitation from this court, the Association of Certified Family Law Specialists and the Southern California Chapter of the American Academy of Matrimonial Lawyers have filed a joint amicus curiae brief. Amici curiae indicate in their brief that they do not write in support of any party in this case, but only to address an issue of concern to family law practitioners.

knowledge of the parties concerning the particular fact, the availability of the evidence to the parties, the most desirable result in terms of public policy in the absence of proof of the particular fact, and the probability of the existence or nonexistence of the fact.’ [Citation.]” (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 660–661 [25 Cal. Rptr. 2d 109, 863 P.2d 179].)

HN4 CA(3) (3) Given that “bedrock concerns” of “policy and fairness” drive the analysis (*Adams, supra*, 54 Cal.3d at p. 120), it is not surprising that a common trigger for burden-shifting is “when the parties have unequal access to evidence necessary to prove a disputed issue. ‘ “Where the evidence necessary to establish a fact essential to a claim lies peculiarly within the knowledge and competence of one of the parties, that party has the burden of going forward with the evidence on the issue although it is not the party asserting the claim.” [Citations.]’ [***28] [Citation.]” (*Amaral, supra*, 163 Cal.App.4th at p. 1189; see also *Wolf v. Superior Court* (2003) 107 Cal.App.4th 25, 35 [130 Cal. Rptr. 2d 860] [“where essential financial records are in the exclusive control of the defendant who would benefit from any incompleteness, public policy is best served by shifting the burden of proof to the defendant, thereby imposing the risk of any incompleteness in the records on the party obligated to maintain them”].)

HN5 CA(4) (4) Concerns over “unequal access to evidence” (*Amaral, supra*, 163 Cal.App.4th at p. 1189) are particularly pressing in the context of a marital dissolution where financial records can be crucial to ensuring the equal division of property required by *Family Code section 2550*. (All further statutory references are to the Family Code unless otherwise indicated.) Undoubtedly, in marriages and separations like the Margulises’ where one spouse exercised exclusive control over community property, the parties will have vastly *unequal* access to evidence concerning the disposition of that property. When this occurs, fairness requires shifting to the managing spouse the burden of proof on missing assets. Moreover, as explained in the

next part, the [***29] statutory fiduciary duties of disclosure and accounting owed between spouses further justify that result.

[*1269]

b. *Fiduciary Duties of Disclosure and Accounting Under the Family Code*

Family Code provisions detailing the fiduciary obligations between spouses provide [***339] strong support for shifting the burden of proof to the managing spouse when determining the value and disposition of missing assets. The starting point is *section 721*, which provides that accountability for the management of community assets is a fundamental aspect of the fiduciary duties owed between spouses.

Section 721, subdivision (b), states, in relevant part: **HN6** “[I]n transactions between themselves, a husband and wife are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. This confidential relationship is a fiduciary relationship subject to the same rights and duties of nonmarital business partners, as provided in *Sections 16403, 16404, and 16503 of the Corporations Code*, [***30] including, but not limited to, the following: [¶] (1) Providing each spouse access at all times to any books kept regarding a transaction for the purposes of inspection and copying. [¶] (2) Rendering upon request, true and full information of all things affecting any transaction which concerns the community property. Nothing in this section is intended to impose a duty for either spouse to keep detailed books and records of community property transactions. [¶] (3) Accounting to the spouse, and holding as a trustee, any benefit or profit derived from any transaction by one spouse without the consent of the other spouse which concerns the community property.”

HN7 CA(5) (5) *Section 721, subdivision (b)*’s

specific incorporation of “the same rights and duties of nonmarital business partners, as provided in” [section 16403 of the Corporations Code](#), makes clear that the duty to disclose relevant information concerning transactions affecting the community property is an affirmative and broad obligation. [HN8 Corporations Code section 16403](#) requires each partner to “furnish to a partner ... [¶] (1) *Without demand*, any information concerning the partnership's business and affairs reasonably required for the proper [***31] exercise of the partner's rights and duties under the partnership agreement or this chapter” ([Corp. Code, § 16403, subd. \(c\)](#), italics added.)

[HN9 Section 1100](#) further delineates the scope of a managing spouse's accountability. That statute not only prohibits a spouse from engaging in certain conduct, such as making a unilateral gift of community personal property or disposing of it “for less than fair and reasonable value, without the written [*1270] consent of the other spouse” ([§ 1100, subd. \(b\)](#)), but it also requires each spouse to act as a fiduciary toward the other in the management of community assets “in accordance with the general rules governing fiduciary relationships ... as specified in [Section 721](#), until such time as the assets and liabilities have been divided by the parties or by a court. This duty includes the obligation to make full disclosure to the other spouse of all material facts and information regarding the existence, characterization, and valuation of all assets in which the community has or may have an interest” ([§ 1100, subd. \(e\)](#).)

Importantly, [HN10 section 1101](#) creates a right of action and specific remedies for the breach of fiduciary duty between spouses. [Subdivision \(a\) of section 1101](#) [***32] gives each spouse “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” The statutory remedies for a breach of fiduciary duty, specifically including a breach of “those [duties] set out in

[Sections 721](#) and [1100](#),” [***340] include a mandatory award of 50 percent “of any asset undisclosed or transferred in breach of the fiduciary duty plus attorney's fees and court costs. ...” ([§ 1101, subd. \(g\)](#).) If the nondisclosure or wrongful disposition of community property “falls within the ambit” of [Civil Code section 3294](#) (punitive damages upon clear and convincing evidence of oppression, fraud or malice), the court must award to the injured spouse the entire value of the asset ([§ 1101, subd. \(h\)](#)).

[CA\(6\) \(6\)](#) Finally, [HN11 section 2100](#) makes clear that these fiduciary obligations of disclosure and accounting continue to bind spouses after separation until final distribution of assets. [Section 2100](#) states: [HN12](#) “[A] full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of a proceeding for dissolution [***33] of marriage or legal separation of the parties Moreover, each party has a continuing duty to immediately, fully, and accurately *update* and *augment* that disclosure to the extent there have been *any material changes* so that at the time the parties enter into an agreement for the resolution of any of these issues, or at the time of trial on these issues, each party will have a full and complete knowledge of the relevant underlying facts.” ([§ 2100, subd. \(c\)](#), italics added; see also [§ 2102, subd. \(a\)\(1\)](#) [from date of separation to date community assets are distributed, spouses are subject to [§ 721](#)'s fiduciary duty to disclose assets and update material changes].) [HN13 Section 2107, subdivision \(c\)](#), mandates an award of sanctions, including reasonable attorney fees, against a spouse who fails to comply with these fiduciary duties of disclosure and accounting. ([§ 2107, subd. \(c\)](#); [In re Marriage of Feldman \(2007\) 153 Cal.App.4th 1470, 1477 \[64 Cal.Rptr.3d 29\]](#) (Feldman).)

[HN14 CA\(7\) \(7\)](#) Taken together, these Family Code provisions impose on a managing spouse affirmative, wide-ranging duties to disclose and account for the [***1271] *existence, valuation, and disposition* of all community assets from the date of

separation [***34] through final property division. These statutes obligate a managing spouse to disclose soon after separation all the property that belongs or might belong to the community, and its value, and then to account for the management of that property, revealing any material changes in the community estate, such as the transfer or loss of assets. This strict transparency both discourages unfair dealing and empowers the nonmanaging spouse to remedy any breach of fiduciary duty by giving that spouse the “information concerning the [community’s] business” needed for the exercise of his or her rights (*Corp. Code*, § 16403, *subd. (c)(1)*; see *Fam. Code*, § 721, *subd. (b)*), including the right to pursue a claim for “impairment to” his or her interest in the community estate (§ 1101, *subds. (a), (g) & (h)*). And most importantly for present purposes, in a trial where community assets are missing, these statutory duties of disclosure and accounting serve to shift the burden of proof on missing assets to the managing spouse.

We find support for this crucial shift of the burden of proof in the recurring mandate, running throughout the statutory scheme, that the managing spouse must furnish information to [***35] the other spouse concerning the community property. For example, various statutes require the managing spouse to make “full and accurate disclosure of all [community] assets” (§ 2100, *subd. (c)*) and “of all material facts ... regarding the existence, characterization, and valuation” of those assets (§ 1100, *subd. (e)*), and to “immediately, fully, and accurately update and augment” that disclosure (§ 2100, *subd. (c)*). Collectively, these provisions impose a sua [**341] sponte duty on the managing spouse to advise the nonmanaging spouse of the *existence* and *value* of the community property. (See *Feldman, supra*, 153 Cal.App.4th at p. 1488 [“Aaron had a fiduciary duty to disclose the existence of the 401(k) account ... in the first place without prodding from Elena ...”]; *In re Marriage of Brewer & Federici* (2001) 93 Cal.App.4th 1334, 1347–1348 [113 Cal.Rptr.3d 849] [managing spouse had affirmative duty to acquire and disclose information concerning value of community

pension plan].)

These Family Code statutes impose a similar sua sponte duty on the managing spouse to furnish information concerning the *disposition* of community assets. For example, *section 721* requires a spouse to produce “full information [***36] of all things affecting any transaction which concerns the community property” (§ 721, *subd. (b)(2)*), to “[a]ccount[] to the [other] spouse, and hold[] as a trustee, any benefit or profit derived from any transaction ... which concerns the community property” (§ 721, *subd. (b)(3)*), and to furnish “[w]ithout demand, any information concerning the [community’s] business” that the other spouse requires for the exercise of his or her rights (*Corp. Code*, § 16403, *subd. (c)(1)*, italics added; see *Fam. Code*, § 721, *subd. (b)*). (See *In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 296 [39 Cal.Rptr.2d 673] (*Haines*) [§ 721 is a statute “of mutual accountability, requiring each [*1272] spouse to show his or her conduct in connection with an interspousal transaction conformed to the legal standard” applicable to fiduciaries].) ¹⁰

¹⁰ *In re Marriage of Walker* (2006) 138 Cal.App.4th 1408 [42 Cal.Rptr.3d 325] (*Walker*) explains that although certain language in *section 721, subdivision (b)*, suggests the spousal duty of disclosure depends upon a “request” for information, the legislative history of the statute compels a contrary conclusion. (See *Walker, at pp. 1419–1428*.) *Walker* cites the ambiguity created [***37] by *subpart (2) of subdivision (b)* of the statute, which lists as one of the fiduciary duties of a spouse “[r]endering upon request, true and full information of all things affecting any transaction which concerns the community property. ...” (§ 721, *subd. (b)(2)*, italics added.) The “upon request” language in that subpart conflicts with *subdivision (b)*’s broader requirement that spouses act in conformity with the fiduciary duties of nonmarital business partners “as provided in [Corporations Code] Sections 16403, 16404, and 16503,” including the duty to furnish “[w]ithout demand, any information concerning the partnership’s business and affairs reasonably required for the proper exercise of the partner’s rights and duties under the partnership agreement or this chapter” (*Corp. Code*, § 16403, *subd. (c)(1)*, italics added.)

Walker reviewed the legislative history of *section 721* and, specifically, the 2002 amendment of the statute which “define[d]” the rights and duties of spouses by incorporating “the Corporations Code sections enacted in 1996,” i.e., *Corporations Code sections*

[**342] [HN15 CA\(8\)](#) (8) These substantial sua sponte duties of disclosure and accounting bind the managing spouse until the community property is divided. ([§§ 2100, subd. \(c\)](#), [2102, subd. \(a\)\(1\)](#).) It follows, then, that these statutory duties can play a significant role at a trial to divide the property. In a situation like the present case, where the nonmanaging spouse makes a prima facie showing that community assets are missing, that showing implicates the managing spouse's duty to "update and augment" disclosure as to "any material changes" in the community property. ([§ 2100, subd. \(c\)](#).) In fact, [section 2100](#) states that the purpose of this continuing disclosure requirement is "so that ... at the time of trial on these issues, each party will have a full and complete knowledge of the relevant underlying facts." ([§ 2100, subd. \(c\)](#).) That statutory purpose is served, and the duty to account enforced, by placing the burden of proof to account for missing assets on the managing spouse.

[*1273]

This discussion brings us back to the evidentiary problem at the heart of this case. The evidence at trial showed that Elaine, as the nonmanaging spouse, had no personal knowledge of the [***40] extent of the community assets at separation; nor had she personal knowledge of how

Alan handled those assets in the ensuing years. Elaine offered exhibit 18 to show that substantial community assets under Alan's control had disappeared between separation and trial. Although the trial court found Elaine had satisfied the requisite foundation to admit the exhibit, which Alan conceded he prepared, the court accorded the document little or no weight because Elaine had no evidence to support it. Consequently, the trial court concluded Elaine failed to carry her burden of proving the accounts itemized in exhibit 18 ever had the *values* listed in that document. Having rejected Elaine's proof of the *values* of these investment accounts, the trial court excused Alan from his duty to account for those sums. Alan instead painted a general picture of legitimate expenditures and losses that wiped out all of the couple's investment money, leaving no "missing" funds chargeable to Alan (except for the funds in the Charles Schwab IRA's). But, as discussed above, the trial court misapplied the burden of proof.

Elaine's introduction of exhibit 18 satisfied her initial burden to show that Alan controlled [***41] community assets of a certain value postseparation. The statutory fiduciary duties of disclosure and accounting then effectively shifted the burden to Alan to rebut the presumption charging him with the assets listed on exhibit 18, a document that constituted prima facie evidence of the account values it stated.¹¹ The trial court erred in failing to shift this burden of proof to Alan.

[16403](#), [16404](#), [16503](#). ([Walker, supra](#), [138 Cal.App.4th at p. 1427](#).) The court reasoned that because these Corporations [***38] Code sections "impose a duty on partners to furnish each other *without demand* 'any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties. ...' [citation]," the Legislature intended by this amendment to create "a new obligation ... imposing, for the first time, a specific requirement that a spouse convey certain information about the partnership's, i.e., community's affairs, even if the other spouse has not requested this information" ([Walker, supra](#), [at p. 1427](#), original italics.) Consequently, the *Walker* court concluded [section 721, subdivision \(b\)](#), imposes a sua sponte duty of disclosure on the managing spouse, but declined to apply the statute retroactively in that particular case because it would be unfair. ([Walker, supra](#), [at p. 1428](#) [though wife failed to advise husband of depletion of funds in community IRA account, it was undisputed she used the funds for community purposes; moreover, all undisclosed withdrawals occurred before the effective date of the amendment to [§ 721, subd. \(b\)](#)]; see also [Feldman, supra](#), [153 Cal.App.4th at p. 1488](#) [managing spouse had duty under [§§ 721, subd. \(b\)](#), and [1101, subd. \(e\)](#), [***39] to disclose assets "without prodding"].)

¹¹ Another way to state this evidentiary burden is that Elaine's prima facie evidence that Alan controlled \$787,000 worth of community funds in 1999 created a rebuttable presumption of the value of those funds and that Alan misappropriated or wrongfully transferred the now-missing funds. " 'A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action.' [Citation.] The trier of fact is required to assume the existence of the presumed fact 'unless and until evidence is introduced which would support a finding of its nonexistence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption.' [Citation.]" ([Haines, supra](#), [33 Cal.App.4th at pp. 296-297](#).)

This [***42] error significantly harmed Elaine's case. The court's failure to shift the burden [**343] may have excluded from the property division a substantial pool of community assets.¹² It also improperly curtailed the trial court's analysis [*1274] of Alan's alleged breach of his fiduciary duties. As mentioned above, the trial court did not hold Alan to account for the investment sums listed in exhibit 18 because Elaine failed to prove the accuracy of the asset values stated in the exhibit. The court therefore failed to require Alan to trace the missing money to proper expenditures to determine whether he had "take[n] any unfair advantage of" Elaine. (§ 721, *subd. (b)*.) Nor did the trial court hold Alan to his duty to "update" Elaine as to the "material changes" in the community estate that occurred between the date Alan prepared exhibit 18 in 1999 and the date of trial. (§ 2100, *subd. (c)*.)

Instead, the trial court found a single, narrow breach of duty by Alan: a breach of the duty "to maintain proper records of all community assets" within his exclusive control. Though the evidence supports this finding, the trial court's failure to consider whether Alan also breached additional fiduciary duties of disclosure and accounting was an error tied to its erroneous decision on the burden of proof. And in failing to consider other possible breaches of fiduciary duty, the trial court may have deprived Elaine of her right to recover damages under [section 1101, subdivisions \(g\) and \(h\)](#) for "any asset undisclosed or transferred in breach of the fiduciary duty"

Thus, this case illustrates the importance of shifting to the managing spouse the burden of proof on missing assets. It also illustrates how shifting this

burden of proof furthers the statutory purposes of requiring complete transparency and accountability in the management of community assets and of providing a remedy to the nonmanaging [***44] spouse when a breach of that fiduciary duty occurs.

c. Cases Addressing the Problem of Missing Community Assets

Although there is a lack of case law addressing the specific problem of proof this case presents, three cases lend support to our conclusion that the managing spouse should bear the burden of proving the proper disposition of missing assets if the nonmanaging spouse makes the requisite prima facie showing. Of these three opinions, two reversed trial court judgments which failed to take into account missing assets in the division of marital property, thereby clarifying the trial court's duty to make findings on all community assets under a spouse's control postseparation. (See [Williams v. Williams \(1971\) 14 Cal.App.3d 560 \[92 Cal. Rptr. 385\]](#) (Williams); [In re Marriage of Ames \(1976\) 59 Cal.App.3d 234 \[130 Cal. Rptr. 435\]](#) (Ames).) The third opinion, [In re Marriage of Valle \(1975\) 53 Cal.App.3d 837 \[126 Cal. Rptr. 38\]](#) (Valle), affirmed a judgment that charged the managing spouse with missing property because he failed to prove its proper disposition. In other words, Valle shifted the burden of proof to the managing spouse to show the proper disposition of community property—a [***45] key aspect of the approach we adopt [*1275] here. While none of these three cases addresses the added problem of proving the *value* of missing assets, they provide [**344] support for the burden-shifting approach we adopt.

The rationale for shifting the evidentiary burden concerning missing assets to the managing spouse arises from the simple fact that an accounting of all community property is required so the court may divide it equally. In [Williams, supra, 14 Cal.App.3d 560](#), the appellate court reversed an interlocutory judgment dividing the community property because the trial court failed to include missing assets in the

¹² The trial court's rejection of the exhibit 18 asset values effectively deleted \$602,610 from the property division. According to exhibit 18, in 1999 the couple had \$133,000 in the Merrill Lynch account, \$424,000 in the Sutro & Company account, and \$45,610 more in the Charles Schwab IRA's than the trial court charged [***43] to Alan (exhibit 18 stated a Charles Schwab account value of \$230,000, but the court charged Alan with only \$184,390 of that sum), for a total of \$602,610 excluded from the property division.

property division, the same failure that occurred here when the court erroneously rejected Elaine's prima facie showing and required no rebuttal by Alan.

The husband and wife in *Williams* were married almost 13 years when, with divorce imminent, the husband withdrew \$110,489.26 from community accounts (\$39,251.50 from savings and \$73,237.76 from a stock fund). (*Williams, supra, 14 Cal.App.3d at p. 563.*) An accountant appointed to audit the couple's financial records was unable to trace \$49,363 of the withdrawn funds, and the accountant could not determine whether the husband spent [***46] the balance on community or separate debts. The trial court made no findings concerning the \$110,489.26, and disregarded it in dividing the community estate. The appellate court reversed, agreeing that in failing to require the husband to account for the missing funds, the trial court failed to perform its duty "to equally divide the community property." (*Id. at p. 564.*)

The court noted, "The \$110,489.26 in dispute here was intact immediately prior to the filing of the action. Under these circumstances, the husband would obtain 'an unfair advantage' over his wife if he is not required to account for that portion of the money which was community property and to reimburse the wife for her share of any of the community property not shown to have been used for community purposes." (*Williams, supra, 14 Cal.App.3d at p. 567.*) The court remanded for a "retrial of the issue of community property ... includ[ing] all sums of money received and disposed of by the husband ... when the divorce action was imminent." (*Id. at p. 568.*)

Ames, supra, 59 Cal.App.3d 234 is the second case where the court reversed a partial judgment dividing community property because the trial court failed to award the nonmanaging [***47] spouse her share of missing community funds. *Ames* concluded the trial court abused its discretion in finding the husband "had properly accounted for \$24,655 of community property." (*Id. at p. 237.*)

The appellate court found, through its own "most benign reading of an incredibly vague record," that the husband "failed to sustain his burden [to account for community funds] by a very large amount." (*Id. at fn. 4.*) Specifically, the court concluded "about \$9,000 [remains] unexplained by [*1276] George." (*Id. at p. 237.*) Though the discussion in *Ames* is relatively cryptic, the lesson is clear: A judgment for marital dissolution must take into account all community property in a spouse's management and control postseparation, and the property's "disappearance" at time of trial does not excuse the court from making the necessary findings on its disposition.

Significantly, Justice Thompson's concurrence in the *Williams* case sought to provide the trial court with additional guidance rather than merely remanding the matter with instructions to make findings on the missing funds. Unlike the majority, Justice Thompson viewed "the question" in *Williams* as "one of burden of [***345] proof and of producing evidence." [***48] (*Williams, supra, 14 Cal.App.3d at p. 568* (conc. opn. of Thompson, J.)). He explained his reasoning as follows: "In a dispute over disposition of property in a divorce action, the wife has the burden of proof of establishing the existence of community property, and except as she may be aided by presumptions must produce evidence which carries that burden. [Citations.] [¶] Where, as here, the wife has concededly established the existence of community assets, has established that certain of those assets are missing, and has presented evidence from which it may be inferred that the husband wrongfully disposed of them, she has, in my opinion, met her burden of proof. The issue then shifts to the validity of dispositions of community property by the husband. On that issue, whether dispositions of community property by the husband are proper on the one hand or fraudulent or illegal on the other, I think the better rule would place the burden of producing evidence of the nature of the dispositions upon the husband." (*Id. at pp. 568–569.*)

Justice Thompson cited the equitable “principle of burden based upon superior knowledge of the facts” as justification for shifting to the managing spouse [***49] the burden of proof on the “unexplained disappearance of community funds” (*Williams, supra*, 14 Cal.App.3d at p. 569 (conc. opn. of Thompson, J.), citing *See v. See* (1966) 64 Cal.2d 778, 784 [51 Cal. Rptr. 888, 415 P.2d 776].) Justice Thompson explained: “It is appropriate to place the burden of producing evidence upon the party who has access to the facts where those facts are inaccessible to the other party to the litigation. [Citation.] ... [T]he husband, as manager and controller of the community property, has access to the facts from which it may be determined whether a disposition of community assets by him was proper or improper. Conversely, the wife, as the [nonmanaging spouse] has little if any access to those facts.” (*Williams, at p. 569.*)

Although no published case has adopted the concurring view in *Williams*, the opinion in *Valle, supra*, 53 Cal.App.3d 837 implicitly endorsed the burden-shifting approach Justice Thompson advocated. In *Valle, supra*, 53 Cal.App.3d 837, the husband appealed the community property division, [*1277] arguing the trial court improperly charged to him the value of the community's automobile and Mexican realty which he lost in satisfaction of community debts. (*Id. at p. 844.*) [***50] In affirming the judgment, the appellate court approved the trial court's decision to place upon the husband the burden of proving the proper disposition of these two community assets.

The *Valle* court explained its reasoning as follows: “The uncontroverted evidence discloses that these items were community property and were in Manuel's possession [at] the time of separation. Under these circumstances it was incumbent upon Manuel to persuade the trial court that the assets in dispute had been lost by reason of discharging community debts [citation]. The record, however, is consistent with the conclusion, implicit in the court's ruling, that Manuel fell short of sustaining the burden of proof. Although he testified at the

trial that the Pontiac automobile had been given to his brother in return for a loan ... and that the real property had been lost due to default in making the monthly payments thereon, he failed to substantiate these allegations in any manner. ... In this situation, the trial court was fully justified in disregarding Manuel's uncorroborated testimony and in including the assets in question in the community [***346] property.” (*Valle, supra*, 53 Cal.App.3d at p. 844.)

CA(9) (9) Although *Valle* [***51] provides support for placing the burden of proof on the managing spouse to show the disposition of missing community assets, it is Justice Thompson's concurrence in *Williams* that best articulates the equitable basis for shifting the burden of proof, namely, the “principle of burden based on superior knowledge of the facts” (*Williams, supra*, 14 Cal.App.3d at p. 569 (conc. opn. of Thompson, J.).) Here, Alan, as managing spouse, had full access to the facts concerning the disposition of funds in the community accounts, both as to his own withdrawals and expenditures and the purported losses from stock market downturns. Elaine had neither personal knowledge nor access to records establishing those facts. Alan's superior knowledge of the disposition and value of the accounts in his control require that he bear the burden of proof on both issues.

Alan objects to this burden-shifting approach, arguing that it erroneously presumes the managing spouse breached a fiduciary duty from the “mere” fact that assets are missing at time of trial. Alan argues a managing spouse should not be charged with missing assets unless there is evidence of mismanagement or misappropriation. But there is no [***52] statutory or equitable basis for imposing such a prerequisite on the nonmanaging spouse before shifting the burden of proof to the managing spouse. As a practical matter, Alan's proposal increases the risk of an unfair property division because a nonmanaging spouse who lacks personal knowledge or records of the disposition of missing community assets would find it extremely

difficult to [*1278] make the initial showing of mismanagement or fraud to shift the burden of proof. No sound policy reason supports the adoption of Alan's proposed rule; indeed, the rule would contradict a managing spouse's obligation to provide the full disclosure and accounting owed to a nonmanaging spouse.

As authority for requiring a predicate showing of fraud or mismanagement before shifting the burden of proof, Alan cites [*Bono v. Clark* \(2002\) 103 Cal.App.4th 1409 \[128 Cal. Rptr. 2d 31\]](#) (*Bono*). The case does not persuade us to adopt the rule he proposes.

In [*Bono, supra*, 103 Cal.App.4th 1409](#), the husband and wife separated in 1994 and their dissolution action was still pending in 1998, when the husband died. The wife sued her husband's estate for declaratory relief, asserting she was entitled to her one-half share [***53] of certain personal property assets of the community that the husband controlled at separation, but were missing from the estate inventory list. The assets consisted of approximately \$25,000 worth of "livestock (11 or 12 cows and four horses)" and a few vehicles. (*Id. at p. 1429.*) At trial, the wife argued her husband must have disposed of the assets in violation of his fiduciary duties under the Family Code. The trial court rejected the wife's claim for half of the missing assets, finding she "failed to carry her burden of proving decedent's breach of fiduciary duty." (*Id. at pp. 1429–1430.*)

The Court of Appeal affirmed on the ground that the wife "offered no evidence" showing her husband "had disposed of the items in contravention of his fiduciary duties" and "[t]he mere absence of the assets four years after separation is insufficient to raise an inference that decedent disposed of them inappropriately. With respect to the cows and horses, for example, it might be equally reasonable to infer that they had died in the intervening years." ([*Bono, supra*, 103 Cal.App.4th at p. 1430.](#))

[**347] We believe [*Bono*](#) has limited applicability

here, given its unusual circumstances involving an action against [***54] an *estate* for missing livestock and farm vehicles. The equitable principle of burden based on superior knowledge did not apply because the managing spouse had died, leaving the estate at a disadvantage in explaining what had happened to the livestock and vehicles. Thus, *Bono* does not support Alan's argument that proof of mismanagement or fraud should be a prerequisite to shifting the burden of proof on missing community assets to the managing spouse.

[*CA\(10\)* \(10\)](#) Alan's other arguments similarly lack merit. First, he argues that allowing Elaine to use exhibit 18 as prima facie evidence of the value of the assets that should be charged to him violates the rule that, for purposes of marital property division, assets should be valued as near as practicable to [*1279] time of trial, citing [*section 2552, subdivision \(a\)*](#). Alan's argument ignores [*HN16 subdivision \(b\)*](#) of that statute, which allows the trial court to use an alternate valuation date where fairness requires. (See [*In re Marriage of Duncan* \(2001\) 90 Cal.App.4th 617, 625 \[108 Cal. Rptr. 2d 833\]](#) [court has broad discretion to determine valuation date to accomplish equitable division]; [*In re Marriage of Reuling* \(1994\) 23 Cal.App.4th 1428, 1435 \[28 Cal. Rptr. 2d 726\]](#) [***55] [same].)

Alan's argument also ignores the statutory remedies for breach of fiduciary duty in the management of community property set forth in [*section 1101, HN17*](#) That statute mandates that, for purposes of awarding the injured spouse 50 percent of the value of an undisclosed or wrongfully transferred asset (or 100 percent, in the event of oppression, fraud, or malice), the trial court must value the assets at the *highest* of three possible dates: [*HN18*](#) "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." (§ [*1101, subd. \(g\)*](#).) [*HN19*](#) These statutes clearly authorize a trial court to use a valuation date that best provides adequate compensation to the injured

spouse.

Alan's reliance on [*In re Marriage of Priddis* \(1982\) 132 Cal.App.3d 349 \[183 Cal. Rptr. 37\]](#) is likewise fruitless. Alan cites *Priddis* for the proposition that “the mere passage of time alone between the dates of separation and trial is an insufficient basis for setting the valuation date at a time other than ‘as near as practicable to the time of trial.’” (*Id. at p. 358.*) The present [***56] case, however, involves more than simply “the mere passage of time,” as was the case in *Priddis*. Instead, Elaine points to the unexplained postseparation disappearance of substantial community funds as apt justification for an alternate valuation date.

Finally, Alan argues that shifting to the managing spouse the burden of proof on the disposition of missing assets is overly burdensome in the circumstances of a long separation, such as the 12-year separation involved here, and it conflicts with [section 721](#)'s admonition that “[n]othing in this section is intended to impose a duty for either spouse to keep detailed books and records of community property transactions.” ([§ 721, subd. \(b\)\(2\).](#)) The argument lacks merit.

[HN20 CA\(11\)](#) (11) Requiring a managing spouse to account for the disposition of missing assets does not entail a “detailed” accounting. To the contrary, the managing spouse simply must show by competent evidence management of assets in his or her control in accord with the fiduciary obligations set forth in [sections 721](#) and [1100](#). The trial court undoubtedly will take into account the length of the separation and the attendant difficulties of proof [**348] in determining whether the account made [***57] is satisfactory. [*1280]

Nevertheless, it remains clear that the duty to account for the disposition of community property exists from separation to final distribution of assets. ([§§ 1100, subd. \(e\), 2100, subd. \(c\), 2102, subd. \(a\)\(1\).](#)) The duty to account does not dissipate over the course of an unusually long separation. Weighing equities, the property in issue belongs to

both spouses and the nonmanaging spouse's right to an accounting outweighs the burden on the managing spouse to account.

We do not address Elaine's specific challenges to the trial court's finding that Alan should not be charged with possession of two other community assets, a payment of \$46,500 for unused vacation and \$100,000 proceeds from a Bank of America line of credit. We need not discuss these issues because the trial court's erroneous placement of the burden of proof as to the disposition of assets necessitates a complete retrial of the community property issues.

2. The Trial Court Erred in Reimbursing Alan from the Community Property for Postseparation Payments

Elaine contends the trial court erred in ordering that Alan be reimbursed from community property a total of \$580,987 for payments he made for the benefit [***58] of the community and Elaine after separation. She contends the trial court improperly relied on opinion testimony from Alan's expert, Jack White, which she moved to strike as lacking a proper basis. (See [Evid. Code, § 803.](#)) Elaine's argument has merit.

[CA\(12\)](#) (12) In the seminal case of [*In re Marriage of Epstein* \(1979\) 24 Cal.3d 76 \[154 Cal. Rptr. 413, 592 P.2d 1165\]](#) (*Epstein*), superseded by statute on other grounds, the California Supreme Court recognized a spouse's right to reimbursement from community property for payment of postseparation community expenses from the spouse's *separate* funds. The high court adopted the view expressed in [*In re Marriage of Smith* \(1978\) 79 Cal.App.3d 725 \[145 Cal. Rptr. 205\]](#) (*Smith*), as follows: [HN21](#) “ ‘[A]s a general rule, a spouse who, after separation of the parties, uses earnings or other separate funds to pay preexisting community obligations should be reimbursed therefor out of the community property upon dissolution’ ” (*Epstein, at p. 84, quoting Smith, at p. 747.*) Conversely, if the managing spouse uses community money to pay a community obligation,

there is no basis for reimbursing the spouse for that payment. (See [Smith, at p. 744](#) [judgment reimbursing [***59] husband for postseparation payments on community debts reversed because “there is no showing these payments by husband were made with his separate funds”; court ordered retrial rather than entry of judgment for wife because evidence suggested “some of the funds paid came from husband's ... separate property”].) [*1281]

White's opinion lacks a proper basis because White testified that Alan was entitled to reimbursement from the community property for postseparation payments without knowing whether Alan used his *separate* funds to make the payments in issue. In fact, Alan himself admitted it would be impossible to trace his payments to either a community or separate property source because after the separation he freely commingled community property with separate property in his various checking accounts.

[CA\(13\)](#) (13) Consequently, in his testimony and report, White did not trace individual payments to separate property sources. Rather he simply concluded Alan was entitled [**349] to reimbursement for particular payments based on the nature and *purpose* of the payment. In other words, if White determined a payment was for the benefit of either the community or Elaine, based on the corresponding check register entry [***60] and Alan's explanation, then he concluded Alan should be reimbursed. But the *purpose* of a payment is only part of the equation. As [Epstein](#) and [Smith](#) make clear, the *source* of the postseparation payment is crucial. [HN22](#) A spouse is entitled to reimbursement for payment of community obligations only if those payments are made from the spouse's separate property.

Because there is no evidence Alan's postseparation payments for the community or for Elaine came from separate funds, we must reverse the judgment giving Alan a substantial credit for those payments in the community property division. ([Smith, supra](#),

[79 Cal.App.3d at p. 744](#).) On remand, the trial court must limit any reimbursement to payments that Alan proves came from separate property.

[CA\(14\)](#) (14) We note that Alan's evidentiary burden on retrial will be difficult because he commingled community and separate property funds. [HN23](#) Commingling creates a rebuttable presumption that all the funds in the account are community property. “[T]he mere commingling of separate property and community property funds does not alter the status of the respective property interests, provided that the components of the commingled mass can be adequately traced to [***61] their separate property and community property sources. [Citation.] But if the separate property and community property interests have been commingled in such a manner that the respective contributions cannot be traced and identified, the entire commingled fund will be deemed community property pursuant to the general community property presumption of [section 760](#). [Citation.]” (*In re Marriage of Braud* (1996) 45 Cal.App.4th 797, 822–823 [53 Cal. Rptr. 2d 179].)

Of course, a spouse who has commingled community and separate funds can defeat the presumption with evidence, employing traditional family law tracing methods, such as direct tracing or the family expense method of [*1282] tracing. (See *In re Marriage of Mix* (1975) 14 Cal.3d 604, 612 [122 Cal. Rptr. 79, 536 P.2d 479]; *In re Marriage of Cochran* (2001) 87 Cal.App.4th 1050, 1058–1059 [104 Cal. Rptr. 2d 920].) Thus, to obtain reimbursement for any postseparation payments made from his commingled accounts, Alan should employ one of these tracing methods.

Tracing undoubtedly will raise additional questions concerning whether Alan owed the community reimbursement for his apparent use of community funds for separate purposes. (See [Epstein, supra](#), 24 Cal.3d at p. 89 [***62] [“trial court erred in failing to charge husband's share of the community property for” funds withdrawn to pay his separate expenses].) For example, the Merrill Lynch check

registers indicate Alan transferred approximately \$37,000 of community funds from that account into either his separate accounts or unidentified accounts. On remand, the trial court can deal with all such reimbursement issues.¹³

[350]** Elaine raises another challenge to the trial court's order granting Alan credits for postseparation payments. She contends the court failed to make the necessary finding **[***63]** under *Epstein* on whether Alan made any part of the payments "in discharge of his support obligation" (*Epstein, supra, 24 Cal.3d at p. 86.*) *Epstein* held that otherwise reimbursable postseparation payments made from separate property may not be reimbursed if "such sums were paid to fulfill [the spouse's] support obligations." (*Id. at p. 80.*)

Alan argues Elaine waived the issue of "*Epstein* credits" by failing to raise it in the trial court. We need not resolve the issue of waiver, however, because reversal is required for insufficiency of the evidence, as discussed above. On remand, the trial court must make the necessary findings identified in *Epstein*, including whether the parties "entered into an 'agreement' for support ... and whether husband should be estopped ... from denying that his payments were in discharge of his duty to support." (*Epstein, supra, 24 Cal.3d at p. 86*, fn. omitted.)

B. Alan's Cross-appeal

In his cross-appeal, Alan challenges the trial court's finding that he breached his fiduciary duty "to maintain proper records of all community **[*1283]** assets" within his exclusive control, and the award to Elaine of sanctions and attorney fees for that

breach. The cross-appeal is moot, **[***64]** however. The trial court's error in failing to shift the burden of proof on missing assets to Alan affected not only the court's division of community property, but also its analysis of the scope of Alan's alleged breach of his fiduciary duties under the Family Code. (See *ante*, pt. IIA.1.b.) Upon remand, the trial court will necessarily retry the issue of Alan's alleged breach of fiduciary duties and revisit the question of the appropriate statutory remedies for any breach of duty it finds.

III

DISPOSITION

The judgment is reversed. Elaine is entitled to her costs on appeal.

Bedsworth, Acting P. J., and O'Leary, J., concurred.

On August 26, 2011, and September 9, 2011, the opinion was modified to read as printed above.

End of Document

¹³Of course, careful tracing may also reveal additional community property subject to division. For example, the Merrill Lynch check registers reflect Alan transferred \$25,000 of community funds into the "LFG trading account," and used another \$4,000 of these community funds for "MP Stock purchase." White's report identified both expenditures as Alan's separate expenses, based on Alan's explanation. Other documentary evidence suggests Alan's separate Raymond James brokerage account may include funds from various community accounts; in fact, Alan's trial brief refers to the Raymond James account as a community property account.



In re Marriage of Starr

Court of Appeal of California, Second Appellate District, Division Eight

September 30, 2010, Filed

B219539

Reporter

189 Cal. App. 4th 277 *; 116 Cal. Rptr. 3d 813 **; 2010 Cal. App. LEXIS 1778 ***

In re the MARRIAGE of RON and MARTHA STARR. RON STARR, Appellant, v. MARTHA STARR, Respondent.

Subsequent History: [***1] The Publication Status of this Document has been Changed by the Court from Unpublished to Published October 15, 2010.

Prior History: APPEAL from a judgment of the Superior Court of Los Angeles County, No. KD060847, H. Don Christian, Temporary Judge (Pursuant to [Cal. Const., art. VI, § 21](#)).

Disposition: Affirmed.

Case Summary

Procedural Posture

The Los Angeles County Superior Court, California, found that a house plaintiff former husband bought in his name only while married to defendant former wife was community property and ordered plaintiff to convey the property to them both as tenants in common. Plaintiff appealed.

Overview

Defendant quitclaimed her interest in the house after plaintiff promised to add her to the title after the purchase was completed, but plaintiff failed to do so. The court concluded that the house was community property based on plaintiff's promise to put defendant on title after the purchase was completed. Plaintiff's failure to add defendant to the

title was constructive fraud under [Fam. Code, § 721](#), and plaintiff breached his fiduciary duty to defendant. Constructive fraud was presumed to be undue influence, which meant the transaction was not free and voluntary. When the trial court found defendant did not act freely and voluntarily, it necessarily found that she quitclaimed her interest in the house as the result of undue influence. The trial court, which ordered that plaintiff be reimbursed his \$ 50,000 separate property down payment for the house, properly valued the community and separate property interests in the house. Plaintiff did not contend that the \$ 50,000 amount was in error and did not suggest some other means of calculating the amount of his reimbursement. The trial court did not err by denying plaintiff's request for reimbursement of overpaid child support.

Outcome

The judgment was affirmed.

LexisNexis® Headnotes

Business & Corporate Law > Agency
Relationships > Fiduciaries > General Overview
Contracts Law > ... > Affirmative
Defenses > Coercion & Duress > General Overview
Evidence > Inferences &
Presumptions > Presumptions > Rebuttal of
Presumptions

Evidence > Burdens of Proof > Preponderance of Evidence

Family Law > Marital Duties & Rights > Property Rights > General Overview

HN1 Although spouses may enter transactions with each other, [Fam. Code, § 721, subd. \(a\)](#), such transactions are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. This confidential relationship is a fiduciary relationship subject to the same rights and duties of unmarried business partners, including the right of access to records and information concerning their transactions. [§ 721, subd. \(b\)](#). Because of this, courts have long held that when an interspousal transaction advantages one spouse, public policy considerations create a presumption that the transaction was the result of undue influence. A spouse who gained an advantage from a transaction with the other spouse can overcome that presumption by a preponderance of the evidence.

Evidence > Inferences & Presumptions > Presumptions

Real Property Law > Deeds > General Overview

HN2 Evid. Code. § 662, creates a presumption that title is actually held as described in a deed.

Contracts Law > ... > Affirmative Defenses > Coercion & Duress > General Overview

HN3 Undue influence is a contract defense based on the notion of coercive persuasion. Its hallmark is high pressure that works on mental, moral, or emotional weakness, and it is sometimes referred to as overpersuasion. Undue influence is statutorily defined as taking unfair advantage of another's weakness of mind, [Civ. Code, § 1575](#), P 2, or

taking a grossly oppressive or unfair advantage of another's necessity or distress, [§ 1575](#), P 3. However, there is another type of conduct that amounts to undue influence: the use of confidence or authority to obtain an unfair advantage. [§ 1575](#), P 1. This is triggered by one party's breach of a confidential relationship.

Contracts Law > ... > Affirmative Defenses > Coercion & Duress > General Overview

Estate, Gift & Trust Law > Trusts > Constructive Trusts

Torts > ... > Fraud & Misrepresentation > Actual Fraud > General Overview

HN4 The betrayal of a confidential relationship is constructively fraudulent, and gives rise to a constructive trust. This is independent of any element of actual fraud. The law, from considerations of public policy, presumes such transactions to have been induced by undue influence.

Contracts Law > ... > Affirmative Defenses > Coercion & Duress > General Overview

Family Law > Marital Duties & Rights > Property Rights > General Overview

HN5 The influence which the law presumes to have been exercised by one spouse over the other is not an influence caused by any act of persuasion or importunity, but is that influence which is superinduced by the relation between them, and generated in the mind of the one by the confiding trust which he or she has in the devotion and fidelity of the other. Such influence the law presumes to have been undue, whenever this confidence is subsequently violated or abused.

Civil Procedure > Trials > Bench Trials

Civil Procedure > ... > Standards of Review > Substantial Evidence > General Overview

HN6 In nonjury trials, unless a statement of decision has been requested and rendered, an appellate court will presume that the trial court made all the factual findings necessary to support the judgment, so long as those implied findings are supported by substantial evidence. If a statement of decision is given, it provides the appellate court with the trial court's reasoning on disputed issues and is the touchstone to determine whether or not the trial court's decision is supported by the facts and the law.

Civil Procedure > Appeals > Standards of Review > General Overview

Evidence > Inferences & Presumptions > Inferences

HN7 Whatever uncertainties may exist in the findings of the trial court are to be so resolved, if reasonably possible, as to support the judgment rather than defeat it. Therefore, an appellate court resolves all conflicts and ambiguities in the findings, and infers all logical and reasonable findings, in support of the judgment.

Family Law > ... > Property
Rights > Characterization > Separate Property

HN8 [Fam. Code, § 2640](#), provides that the spouse making a separate property down payment is entitled to be reimbursed for the contribution.

Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court found that a house plaintiff bought in his name only while married to defendant was community property and ordered plaintiff to convey the property to them both as tenants in common. Defendant quitclaimed her interest in the house

based on plaintiff's promise to put her on title after the purchase was completed, but plaintiff failed to do so. (Superior Court of Los Angeles County, No. KD060847, H. Don Christian, Temporary Judge.)*

The Court of Appeal affirmed the judgment. The court concluded that the house was community property based on plaintiff's promise to put defendant on title after the purchase was completed. Plaintiff's failure to add defendant to the title was constructive fraud under [Fam. Code, § 721](#), and plaintiff breached his fiduciary duty to defendant. Constructive fraud is presumed to be undue influence, which meant the transaction was not free and voluntary. When the trial court found defendant did not act freely and voluntarily, it necessarily found that she quitclaimed her interest in the house as the result of undue influence. The trial court, which ordered that plaintiff be reimbursed his \$50,000 separate property downpayment for the house, properly valued the community and separate property interests in the house. Plaintiff did not contend that the \$50,000 amount was in error and did not suggest some other means of calculating the amount of his reimbursement. The trial court did not err by denying plaintiff's request for reimbursement of overpaid child support. (Opinion by Rubin, Acting P. J., with Flier and Grimes, JJ., concurring.) [***278**]

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

[CA\(1\)](#) (1)

Husband and Wife § 6—Interspousal Transactions—Fiduciary Relationships—Good Faith and Fair Dealing—Undue Influence.

Although spouses may enter transactions with each other, such transactions are subject to the general

* Pursuant to [California Constitution, article VI, section 21](#).

rules governing fiduciary relationships, which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. This confidential relationship is a fiduciary relationship subject to the same rights and duties of unmarried business partners, including the right of access to records and information concerning their transactions. Because of this, courts have long held that when an interspousal transaction advantages one spouse, public policy considerations create a presumption that the transaction was the result of undue influence. A spouse who gained an advantage from a transaction with the other spouse can overcome that presumption by a preponderance of the evidence.

CA(2) (2)

Deeds § 14—Title—Presumption.

Evid. Code, § 662, creates a presumption that title is actually held as described in a deed.

CA(3) (3)

Contracts § 5—Undue Influence—Coercive Persuasion—Breach of Confidential Relationship.

Undue influence is a contract defense based on the notion of coercive persuasion. Its hallmark is high pressure that works on mental, moral, or emotional weakness, and it is sometimes referred to as overpersuasion. Undue influence is statutorily defined as taking unfair advantage of another's weakness of mind (Civ. Code, § 1575, subd. 2), or taking a grossly oppressive or unfair advantage of another's necessity or distress (§ 1575, subd. 3). However, there is another type of conduct that amounts to undue influence: the use of confidence or authority to obtain an unfair advantage (§ 1575, subd. 1). This is triggered by one party's breach of a confidential relationship.

CA(4) (4)

Trusts § 28—Constructive—Betrayal of Confidential Relationship—Undue Influence.

The betrayal of a confidential relationship is constructively fraudulent, and gives rise to a constructive trust. This is independent of any element of actual fraud. The law, from considerations of public policy, presumes such transactions to have been induced by undue influence.

CA(5) (5)

Contracts § 5—Undue Influence—Spouses.

The influence the law presumes to have been exercised by one spouse over the other is not an influence caused by any act of persuasion or importunity, but is that [*279] influence that is superinduced by the relation between them, and generated in the mind of the one by the confiding trust which he or she has in the devotion and fidelity of the other. Such influence the law presumes to have been undue, whenever this confidence is subsequently violated or abused.

CA(6) (6)

Husband and Wife § 6—Community Property—Promise—Constructive Promise.

Defendant quitclaimed her interest in a house after plaintiff promised to add her to the title after the purchase was completed, but plaintiff failed to do so. The house was community property based on plaintiff's promise, and plaintiff's failure to keep his promise was constructive fraud under Fam. Code, § 721.

[Cal. Forms of Pleading and Practice (2010) ch. 122, Community Property, § 122.51; 11 Witkin, Summary of Cal. Law (10th ed. 2005) Community Property, § 133; 10 Witkin, Summary of Cal. Law

(10th ed. 2005) Parent and Child, § 428; 7 Witkin, Cal. Procedure (5th ed. 2008) Trial, § 398.]

CA(7) (7)

Husband and Wife § 6—Separate Property— Downpayment—Reimbursement.

Fam. Code, § 2640, provides that the spouse making a separate property downpayment is entitled to be reimbursed for the contribution.

Counsel: Law Offices of Gary W. Kearney and Gary W. Kearney for Appellant.

Daniel G. McMeekin for Respondent.

Judges: Opinion by Rubin, P. J., with Flier and Grimes, JJ., concurring.

Opinion by: Rubin

Opinion

[**815]

RUBIN, Acting P. J.—Ron Starr appeals from the judgment entered after the family law court found that the house he bought in his name only while married to former wife Martha Starr was community property and ordered him to convey the property to them both as tenants in common. The evidence shows that Martha quitclaimed her interest in the house based on Ron's promise to put her on title after the purchase was completed, but that Ron failed to do so. As a result, the evidence supports a finding that the house was community property based on Ron's violation of his fiduciary duties to Martha. We also conclude that the trial court properly valued the community and separate property interests in the house, and did not err in denying [***2] Ron's request to refund his overpayment of child support credits. We therefore affirm the judgment. [*280]

FACTS AND PROCEDURAL HISTORY

In late 1996, Ron Starr bought a house in Glendora, taking title in his name only as his separate property even though he was then married to Martha Starr.¹ Ron filed for divorce in April 2004. In his petition, signed under penalty of perjury, he listed the house as community property, but sought the return of his separate property contributions to the property. By the time of trial, however, Ron contended the house was his separate property.²

Ron testified that the house was bought in his name only because the \$ 50,000 downpayment came from his separate property funds, and he and Martha intended all along that the house would be his separate property. In accord with that plan, Martha [***3] quitclaimed her interest in the house before escrow closed. Property taxes and [**816] mortgage payments came from community property earnings, Ron testified.

Under Family Code section 721, Ron had the burden of proving that the quitclaim transaction satisfied his fiduciary duties to Martha. She testified that because of her poor credit history, the lender recommended she agree to the quitclaim so she and Ron could qualify for a better interest rate. The loan broker told Martha and Ron they could add Martha back onto the title by way of a quitclaim deed within 45 days of the close of escrow. Martha had a discussion with Ron about adding her onto the title, and he said he would do that. Martha said she and Ron jointly offered to buy the house, and that the deed to Ron was mailed to them both after it had been recorded. Although Ron never added Martha onto the title, she never worried about it because “He's my husband. I just don't ... mistrust him. You know, it was our house.” She signed the quitclaim deed freely and voluntarily.

¹ We will refer to Martha Starr and Ron Starr by their first names.

² Ron was represented by counsel when he filed his divorce petition. At trial, he had a new lawyer, who asked the court to let Ron amend the petition to reflect his new contention. The court denied the request, but later said the pleadings were not conclusive and the issue was a matter of proof during the trial.

Ron was impeached with his deposition testimony, where he said title was taken in his name in order to facilitate the financing. When asked on cross-examination about [***4] the statement on his divorce petition that the house was community property, Ron said he could not recall whether his former lawyer went over his assets with him before signing the petition, and that he probably did not read it before signing.

The trial court found that the house was community property, but that Ron was entitled to reimbursement of the \$ 50,000 downpayment from his separate property funds. Ron was ordered to convey the house to himself and Martha [*281] as tenants in common. In its statement of decision, the court said the “controlling cases on the issue” were *In re Marriage of Benson* (2005) 36 Cal.4th 1096 [32 Cal. Rptr. 3d 471, 116 P.3d 1152] (*Benson*), *In re Marriage of Mathews* (2005) 133 Cal.App.4th 624 [35 Cal. Rptr. 3d 1] (*Mathews*), *In re Marriage of Delaney* (2003) 111 Cal.App.4th 991 [4 Cal. Rptr. 3d 378] (*Delaney*), and *In re Marriage of Haines* (1995) 33 Cal.App.4th 277 [39 Cal. Rptr. 2d 673] (*Haines*). In a separate paragraph, the trial court found that Ron did not meet his burden of proof that Martha's quitclaim deed was signed “freely and voluntarily. The reason [Martha] did not sign the quitclaim deed freely and voluntarily was because the intent of the lender controlled title to the [house] when the lender suggested that [Martha's] name be left off of the mortgage [***5] for the purposes of financing, and [Martha] agreed to execute the quitclaim deed based on the lender's suggestion.”

Ron contends the trial court erred because it relied on the “lender's intent” theory, which is applicable only to determining whether loan proceeds obtained during marriage are community or separate property. Instead, according to Ron, the court should have applied the reasoning of the factually similar *Mathews, supra*, 133 Cal.App.4th 624, and found that he satisfied his fiduciary obligations to Martha based on her testimony that she signed the quitclaim deed freely and voluntarily.

DISCUSSION

1. [Family Code Section 721](#)

HN1 CA(1) (1) Although spouses may enter transactions with each other ([Fam. Code, § 721, subd. \(a\)](#)), such transactions “are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. This confidential relationship is a fiduciary relationship subject [**817] to the same rights and duties of” unmarried business partners, including [***6] the right of access to records and information concerning their transactions. ([Fam. Code, § 721, subd. \(b\)](#).)³

Because of this, our courts have long held that when an interspousal transaction advantages one spouse, public policy considerations create a presumption that the transaction was the result of undue influence. (*Haines, supra*, 33 Cal.App.4th at pp. 293–294.) A spouse who gained an advantage from a transaction with the other spouse can overcome that presumption by a preponderance of the evidence. (*Mathews, supra*, 133 Cal.App.4th at pp. 631–632.) [*282]

2. *The Haines Decision*

In *Haines*, a wife who quitclaimed her interest in the house she jointly owned with her husband sought to invalidate the deed during their divorce proceedings because she was coerced into signing it. The wife testified that she and her husband had several arguments about signing the deed as their marriage deteriorated. She claimed the husband ranted and raved, pulled her hair, and threw water in her face during one of these arguments. Later, the husband agreed to cosign a loan for the wife so she could buy herself a car that she would need

³ We will refer to [Family Code section 721](#) as [section 721](#).

once she was on her [***7] own. While the husband was driving the wife to her credit union to cosign the loan, he told her he would not do so unless she agreed to the quitclaim deed. She signed the deed because she felt she had no alternative.

HN2 CA(2) (2) Evidence Code section 662 creates a presumption that title is actually held as described in a deed. The trial court found that the wife failed to meet her burden of rebutting that presumption by clear and convincing evidence, as required by that provision, but found she would have satisfied it if the preponderance of the evidence standard of proof had applied. The *Haines* court quoted Brison v. Brison (1888) 75 Cal. 525, 529 [17 P. 689] (*Brison I*) for the proposition that when a spouse gained an advantage from a transaction with the other spouse, “ ‘[t]he law, from considerations of public policy, presumes such transactions to have been induced by undue influence.’ ” (Haines, supra, 33 Cal.App.4th at p. 293.) When that presumption arose, it trumped the competing presumption created by Evidence Code section 662. (Haines, at pp. 297, 299–301.) Therefore, the husband had to show that the deed “ ‘was freely and voluntarily made, and with a full knowledge of all the facts, and with a complete [***8] understanding of the effect of the transfer.’ ” (Id. at p. 296, quoting Brown v. Canadian Indus. Alcohol Co. (1930) 209 Cal. 596, 598 [289 P. 613].) Because the trial court found the wife met the lesser standard of proof applicable to the section 721 presumption, it reversed the judgment and held that the quitclaim deed was invalid. (Haines, at p. 302.)

3. The Mathews Decision

The facts in *Mathews* are similar to this case. While a husband and wife were in the process of buying a house, the wife quitclaimed her interest in the house to the husband in order to obtain a better interest rate. Title to the house was taken in the husband's name alone. The wife knew title was taken in that manner, but believed she would be added to the title later on. The wife contested the

validity of the quitclaim deed, primarily on the basis that she was a native of Japan and [***818] did not speak English well enough to fully understand what she was doing. The trial court refused to apply section 721's presumption of undue influence and awarded the house to the husband as his [*283] separate property. The Court of Appeal held that the trial court erred by refusing to apply the presumption, because the husband clearly gained an advantage [***9] when the wife quitclaimed her interest to him. (Mathews, supra, 133 Cal.App.4th at p. 630.)

Citing to Haines, supra, 33 Cal.App.4th at page 296, the *Mathews* court held that the husband had to prove the quitclaim deed was freely and voluntarily made, with full knowledge of all the facts and a complete understanding of its effects. (Mathews, supra, 133 Cal.App.4th at p. 631.) The trial court's error was harmless, the *Mathews* court held, because the evidence supported the trial court's finding that the wife freely and voluntarily quitclaimed her interest in the house with full knowledge of the facts. This included evidence that: the wife asked questions when she did not understand something, but asked none when she signed the quitclaim deed; the husband put no pressure on her to sign; and she did so in order to get better financing; and completion of the purchase did not depend on her signing the quitclaim deed. Although the wife was a native of Japan, evidence that she was fully fluent in English, handled her own separate finances as well as their joint finances, and admitted knowing her name was not on the title but “assumed it would be added later,” led the court to conclude the quitclaim deed [***10] was “valid and executed freely and voluntarily in good faith.” As a result, the husband “rebutted the presumption of undue influence by a preponderance of the evidence.” (Mathews, supra, 133 Cal.App.4th at pp. 631–632.)

4. Mathews Is Not Applicable; Instead Ron's Failure to Add Martha onto the Title Was a Breach of His Fiduciary Duty

It is easy to see why Ron relies on *Mathews*. The factual setting seems virtually identical to this case, with the added bonus of Martha's testimony that she signed the quitclaim deed freely and voluntarily. There is a critical—and we believe fatal—distinction, however. In *Mathews*, the wife said she merely assumed she would be added onto the title after escrow closed, while Martha testified that Ron told her he would do so. The importance of this distinction is tied up in both [section 721](#) and its statutory predecessor, and the sometimes confusing use of the term “undue influence” by decisions interpreting those provisions.

[Section 721](#) never mentions undue influence. Instead, it states that spouses are in a confidential and fiduciary relationship and have a duty to each other of the highest good faith and fair dealing. Its predecessor, Civil Code former **[*284]** section 158 **[***11]** (Cal. Law Revision Com. com., 29C West's Ann. Fam. Code (2004) foll. [§ 721](#), p. 267) was substantially similar.⁴

Despite that omission, the court in *Haines, supra*, [33 Cal.App.4th 277](#), relying on *Brison I, supra*, [75 Cal. at page 529](#), noted that an interspousal transaction that benefits one of the spouses creates a presumption of undue influence, requiring the husband who obtained his wife's quitclaim deed to the family home to show that the deed was freely and voluntarily made. **[**819]** *Mathews, supra*, [133 Cal.App.4th at page 630](#), cited *Haines* for the same proposition. The trial court's statement of decision in this case made findings concerning whether Martha's quitclaim deed was freely and voluntarily made, and Ron has understandably focused his appellate arguments on the concept of undue influence as expressed in *Mathews*.

HN3 CA(3) (3) Undue influence is a contract defense based on the notion of coercive persuasion.

⁴Civil Code former section 158 provided that while spouses could transact with each other, those transactions were “subject ... to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the title on trusts.”

Its hallmark is high **[***12]** pressure that works on mental, moral, or emotional weakness, and it is sometimes referred to as overpersuasion. (*Odorizzi v. Bloomfield School Dist. (1966) 246 Cal.App.2d 123, 130 [54 Cal. Rptr. 533]*.) Undue influence is statutorily defined as taking unfair advantage of another's weakness of mind (*Civ. Code, § 1575, subd. 2*), or taking a grossly oppressive or unfair advantage of another's necessity or distress (*Civ. Code, § 1575, subd. 3*). *Haines* and *Mathews* appear to fall into these categories. (*Mathews, supra*, [133 Cal.App.4th at pp. 631–632](#) [husband overcame presumption of undue influence because the evidence showed he did not pressure wife, who understood what she was signing]; *Haines, supra*, [33 Cal.App.4th at pp. 283–284](#) [husband berated and assaulted wife, and refused to cosign a car loan unless she agreed to quitclaim her interest in their house].)

However, there is another type of conduct that amounts to undue influence: the use of confidence or authority to obtain an unfair advantage. (*Civ. Code, § 1575, subd. 1*.) This is triggered by one party's breach of a confidential relationship. (*O'Neil v. Spillane (1975) 45 Cal.App.3d 147, 152–153 [119 Cal. Rptr. 245]*.) It is also the type of conduct at issue in *Brison I, supra*, [75 Cal. 525](#), **[***13]** which, as we next discuss, explains not only how “undue influence” became shorthand for conduct that violates [section 721](#), but why the evidence in this case supports the judgment.⁵

CA(4) (4) In *Brison I*, a husband was about to embark on a long and potentially perilous business trip. Based on the wife's promise that she would reconvey **[*285]** to him upon request, the husband deeded real property to her so she could avoid going through probate if he died. When he returned and the wife refused to deed back the property, he sued to compel a reconveyance. The Supreme Court reversed the trial court's order sustaining a demurrer to the complaint. The complaint alleged that under Civil Code former section 158, the

⁵We asked for, and received, supplemental briefing on these issues.

parties were in a confidential relationship, and the husband was induced to make the deed based on his confidence in her and her promise to reconvey. [HN4](#) “The betrayal of such confidence is constructively fraudulent, and gives rise to a constructive trust. This is independent of any element of actual fraud. [Citation.] The law, from considerations of public policy, presumes such transactions to have been induced by undue influence. [Citations.]” (*Brison I, supra*, 75 Cal. at p. 529.)

[CA\(5\)](#) (5) Upon [***14] remand from *Brison I*, the case went to trial, resulting in a judgment for the husband, and another appeal. (*Brison v. Brison* (1891) 90 Cal. 323 [27 P. 186] (*Brison II*).) The wife appealed from an order denying her motion for a new trial, and the Supreme Court affirmed, holding that the evidence justified that order. In accord with his complaint, the husband testified that he deeded the property to his wife based on her promise to reconvey, and that he intended her to have the property only if he died. The Supreme Court held that the evidence of the wife's “subsequent refusal to reconvey was not merely the breach of an agreement, but was the [**820] betrayal of a confidence, and the violation of a trust, constituting a constructive fraud, which a court of equity will remedy. [HN5](#) The influence which the law presumes to have been exercised by one spouse over the other is not an influence caused by any act of persuasion or importunity, but is that influence which is superinduced by the relation between them, and generated in the mind of the one by the confiding trust which he has in the devotion and fidelity of the other. Such influence the law presumes to have been undue, whenever this confidence is subsequently [***15] violated or abused.” (*Brison II, supra*, at p. 336, citing to *Civ. Code*, § 1575, subd. 1.)

Brison I and *II* are significant for three reasons. First, they announced the overarching principle that constructive fraud due to breach of a confidential relationship amounts to undue influence, terminology that was adopted by other courts.

Second, they differentiated such constructive fraud from the other forms of undue influence based on acts of coercion or overpersuasion. Third, they established a paradigm of constructive fraud arising from one spouse's conveyance of property to the other spouse based on an unfulfilled promise by the other spouse to reconvey. This fact pattern has been applied by our courts many times in cases involving spouses and other persons in confidential relationships. (See, e.g., *Alaniz v. Casenave* (1891) 91 Cal. 41, 46 [27 P. 521] [in action to reconvey deeds conveyed to trusted family member, court held that if a deed is obtained without consideration by way of an oral promise to reconvey in a transaction between those in a [*286] confidential relationship, the breach of promise is constructive fraud]; *Sparks v. Sparks* (1950) 101 Cal.App.2d 129, 135 [225 P.2d 238] [in action to quiet title [***16] and void deed from father and one son to other son based on breach of fiduciary duties, judgment affirmed; undue influence is a species of constructive fraud and depends on the facts and circumstances of each case]; *Holmes v. Holmes* (1950) 98 Cal.App.2d 536, 538 [220 P.2d 603] [affirming judgment for woman who sued man with whom she lived as husband and wife when man obtained deed to plaintiff's restaurant on promise to invest his own funds and work at the restaurant; because they behaved as a married couple, the same confidential relationship arose, and the man's breaches of promise were constructive fraud]; *Hilton v. Hilton* (1921) 54 Cal.App. 142, 155 [201 P. 337] [invalidating deed by wife to husband as part of divorce settlement on ground of undue influence; equating undue influence with lack of free will in entering transaction].)

Perhaps most notable of these for our purposes is *Jones v. Jones* (1903) 140 Cal. 587 [74 P. 143] (*Jones*), where a wife conveyed land to her husband on the advice of a lawyer who told them the transfer was required in order to bring an action to eject a tenant in possession of the land. Instead, the husband conveyed the land to a third party so the third party could bring the action, and the [***17] third party then claimed he was the true

owner. The wife sued her husband and the third party. The trial court found those facts were true, but found that the husband had not acted fraudulently, but instead intended to carry out the plan to eject the tenant. The trial court entered judgment for the wife and enjoined the husband and the third party from making any claims to the property.

The Supreme Court affirmed, partly in reliance on [Brison I, supra, 75 Cal. 525](#). ([Jones, supra, 140 Cal. at p. 590](#).) Even if the attorney who advised the wife had been employed by her, the husband was not exonerated because, “by accepting the deed upon the statement made in his presence of the [**821] purposes for which he was to hold the land, [he] became a party to the transaction, and by implication promised to fulfill the purpose of the trust.” ([Id. at p. 591](#).) As a result, the failure to fulfill this agreement was constructive fraud, allowing the wife to have the deed declared void. ([Id. at p. 590](#).) In short, even when the suggestion to convey came from a third party adviser and no express promises were made by the husband, he impliedly promised to fulfill the conditions of the transfer, and the failure [***18] to do so was constructive fraud.

By substituting the Starrs' loan broker for the lawyer in *Jones*, and adding in an express promise by Ron to essentially reconvey Martha's quitclaimed interest in place of an implied promise, we believe [Jones](#) is applicable here. Viewing the evidence most favorably to the judgment, Martha and Ron were told by the lender they should have Ron take title in his name only, with Martha quitclaiming her interest in the house, so they could get a better [*287] interest rate. The lender said Ron could add Martha back onto the title after escrow closed, and Ron told Martha he would do that. Martha never questioned what happened because Ron was her husband and she trusted him. Ron declared under penalty of perjury in his divorce petition that the house was community property, but claimed he probably never read the declaration before signing it. This evidence falls

squarely within the *Brison-Jones* paradigm and supports a finding that Ron's failure to add Martha onto the title as promised was constructive fraud and undue influence, thereby breaching his fiduciary duty to Martha.

For the same reason, we hold that [Mathews](#) is not applicable here. While the *Mathews* court mentioned [***19] in passing that the wife “assumed” or “believed” she would be added onto the title, there is no indication that her husband ever promised that would happen. The *Mathews* court did not develop the point, and it played no part in that court's analysis. Because the *Brison-Jones* fact pattern was not present in *Mathews*, and was not part of its decision, we hold that *Mathews* is not applicable here. We next consider whether the trial court's statement of decision allows us to affirm based on such a finding.

5. The Statement of Decision Was Ambiguous

[HN6](#) In nonjury trials, unless a statement of decision has been requested and rendered, we will presume that the trial court made all the factual findings necessary to support the judgment, so long as those implied findings are supported by substantial evidence. If a statement of decision is given, it provides us with the trial court's reasoning on disputed issues and “is our touchstone to determine whether or not the trial court's decision is supported by the facts and the law.” ([Slavin v. Borinstein \(1994\) 25 Cal.App.4th 713, 718 \[30 Cal. Rptr. 2d 745\]](#).) Ron contends the trial court's statement of decision shows that the trial court's reasoning was flawed and that we should [***20] reverse the judgment because (1) of the four decisions listed in the trial court's statement of decision, only one—*Mathews*—is legally and factually applicable; and (2) the trial court's finding that the quitclaim deed was not signed freely and voluntarily is based on the lender's intent doctrine, which is also inapplicable.

Implicit in Ron's contentions is the notion that the statement of decision clearly and unambiguously shows the trial court erred. We disagree. Instead,

we conclude that the statement of decision is ambiguous. Because the record does not show that Ron (or Martha) objected to the statement of decision, [HN7](#) “whatever uncertainties [****822**] tmay exist in the findings of the trial court are to be so resolved, if reasonably possible, as to support the judgment rather than defeat it [citation].” ([Reinsch v. City of Los Angeles \(1966\) 243 Cal.App.2d 737, \[*288\] 746 \[52 Cal. Rptr. 613\]](#).) Therefore, we resolve all conflicts and ambiguities in the findings, and infer all logical and reasonable findings, in support of the judgment. ([Associated Creditors' Agency v. Dunning Floor Covering, Inc. \(1968\) 265 Cal.App.2d 558, 559 \[71 Cal. Rptr. 494\]](#).)

The first “finding” Ron relies on is the paragraph in the statement of decision [*****21**] listing the four appellate decisions that the trial court believed were controlling. This is not a finding of fact, however. Instead it is immaterial surplusage that we may disregard. ([Canadian Indem. Co. v. Motors Ins. Corp. \(1964\) 224 Cal.App.2d 8, 17–18 \[36 Cal. Rptr. 159\]](#).)⁶

The second finding Ron points to as the source of the trial court's error is the statement that he did not meet his burden of showing by a preponderance of the evidence that Martha signed the quitclaim deed “freely and voluntarily. The reason [Martha] did not sign the quitclaim deed freely and voluntarily was because the intent of the lender controlled title to the [property] when the lender suggested that

[Martha's] name be left off of the mortgage for the purposes of financing, and [Martha] agreed to execute the quitclaim deed based on the lender's suggestion.”

According to Ron, this shows the trial court was relying on a family law property characterization doctrine known as the lender's intent theory, which applies to only the characterization of loan proceeds obtained during marriage. Ron correctly cites to [In re Marriage of Grinius \(1985\) 166 Cal.App.3d 1179 \[212 Cal. Rptr. 803\]](#) (Grinius) for the definition and applicability of that theory. ([Id. at p. 1186](#) [the character of credit acquisitions during marriage is “ ‘determined according to the intent of the lender to rely upon’ ” either the separate property of one spouse or [*****23**] the community property of both].) He is wrong in contending that the trial court was unambiguously referring to that doctrine in its statement of decision.

Nothing in the record shows that this theory was ever mentioned at trial. Martha's lawyer did not raise it during his closing argument, contending [***289**] instead, but without elaboration, that the critical issue in regard to the house had to do with Ron's fiduciary duties to her. Moreover, the *Grinius* court noted that it was not reaching any issues arising from the husband's supposed breach of his fiduciary duty to his wife. ([Grinius, supra, 166 Cal.App.3d at p. 1190, fn. 4.](#)) Ron does not explain how or why t [****823**] he trial court chose to rely on a theory that was not at issue and was without a doubt inapplicable to the issue before it: whether Ron breached his fiduciary duties to Martha. Furthermore, the trial court's language leaves a gap between the lender's “suggestion” and any conduct by Ron that influenced and affected Martha. Based on this, we conclude the finding is ambiguous. However, we also conclude the ambiguity can be resolved.

[CA\(6\)](#) (6) As we have seen, the failure to add Martha onto the title is constructive fraud under [section 721](#), and constructive [*****24**] fraud is

⁶We have already discussed how *Haines* and *Mathews* differ from the facts of this case. [Benson, supra, 36 Cal.4th 1096](#), concerned the rules governing the transmutation of community property pension benefits to separate property under [Family Code section 852](#). The court said the husband had waived any issues under [section 721](#) which was, in any event, inapplicable. ([Benson, at pp. 1111–1112.](#)) [Delaney, supra, 111 Cal.App.4th 991](#), concerned the invalidation of a deed by which the husband conveyed his separate property home to himself and his wife as joint tenants. The primary issue was who bore the burden of proof under [section 721](#), with the court choosing to follow *Haines*. ([Delaney, at p. 998.](#)) On the merits, the court held the evidence supported a finding of undue influence because the husband had cognitive impairments and relied on the wife to handle their financial affairs. No promise to reconvey was at issue, and the undue influence [*****22**] therefore was of the coercive kind under [Civil Code section 1575, subdivision 2](#).

presumed to be undue influence, which means the transaction was not free and voluntary. When the trial court found Martha did not act freely and voluntarily, it necessarily found that she quitclaimed her interest in the house as the result of undue influence. (See *In re Marriage of Dawley* (1976) 17 Cal.3d 342, 354–355 [131 Cal. Rptr. 3, 551 P.2d 323] [when trial court found that wife signed antenuptial agreement freely and voluntarily, Supreme Court implied necessary finding that the transaction was *not* the result of undue influence].) Under *Jones, supra*, 140 Cal. 587, the lender's suggestion to have Martha quitclaim her interest in the house and have Ron add her to the title later, combined with Ron's failure to fulfill his promise to do so, is constructive fraud amounting to undue influence. We believe that when the trial court referred to the lender's suggestion as the source of the undue influence, it was attempting to make this connection. Once read this way, the finding of fact squares with both the applicable law and the facts of this case. We therefore construe the finding in that manner. (See *Mintz v. Rowitz* (1970) 13 Cal.App.3d 216, 227–228 [91 Cal. Rptr. 435] [in action by heirs to enforce agreement between spouses [***25] making mutual wills that the survivor would not alter agreed-upon estate distribution plan, trial court found for plaintiff heirs, but made inconsistent and irreconcilable finding that the wife, who was the first spouse to die, had fully understood the consequences of her will, which in fact did not include the agreed-upon distribution plan; under rule to construe ambiguous findings in support of judgment, appellate court affirmed, holding that “it seems quite clear that what the court meant to say was that” the wife understood her will to be a memorandum of the separate agreement].)

6. Valuation of Ron's Separate Property Interest in the House

CA(7) (7) The trial court ordered that Ron be reimbursed his \$ 50,000 separate property downpayment for the house, pursuant to *Family*

Code section 2640. Ron contends this was error, because that section applies only to property [***290] taken in joint title during the marriage. *HN8* That section provides that the spouse making a separate property downpayment is entitled to be reimbursed for his contribution. (*Fam. Code, § 2640, subd. (b).*) Ron contends this rule is subject to *Family Code section 2580*, which declares the Legislature's findings and declarations in a [***26] part of the Family Law Code devoted to establishing a uniform method for determining the character of property acquired by spouses during marriage in joint title form.

We do not believe *Family Code section 2580* somehow prevents a court from awarding separate property contributions to a spouse under these circumstances. *Family Code section 2640, subdivision (b)* states that reimbursement is awarded upon “division of the community estate,” and says nothing about the requirement that the property have first been acquired in joint title form. Furthermore, Ron's contention is based on the assertion that the judgment did not change the fact that [***824] title was in his name as his separate property. He overlooks that the trial court ordered him to convey the property to himself and Martha as tenants in common, however. More fundamentally, we fail to see how Ron has been harmed by this award, when it in fact ensures that he is reimbursed for his separate property contribution. He does not contend that the \$ 50,000 amount is in error, and does not suggest some other means of calculating the amount of his reimbursement. Because he has failed to show any harm from the trial court's ruling, we will affirm.

7. Child [***27] Support Reimbursement

Ron and Martha have two children. In 2005, they stipulated to a DissoMaster-generated child support payment from Ron that was erroneously based on the entry of data showing they had four children. As a result, Ron overpaid his child support obligation by \$ 3,112. In 2006, the court modified the support order to reflect the proper amount, and reserved for trial the issue of whether Ron was

entitled to reimbursement of the overpayment. At trial, the court found that the then current support order was inadequate, increased the amount, and declined to reimburse Ron for his overpayments. Ron contends the trial court erred because it did not make the findings required to justify a child support award above the guideline amounts. Martha contends that under [*In re Marriage of Peet* \(1978\) 84 Cal.App.3d 974 \[149 Cal. Rptr. 108\]](#) (*Peet*) the court had discretion to deny the reimbursement claim.

Peet involved a spouse's claim for reimbursement of voluntary overpayments, which the trial court granted. The Court of Appeal affirmed, holding that the trial court had discretion in such matters. We hold that [*Peet*](#) is applicable here. This is not a case where the trial court awarded child support above the [***28] guideline amounts in the first instance. Instead, based on a clerical error, the parties *stipulated* to an amount they believed was correct, and the [*291] court ordered support in that amount. Therefore, the requirements to deviate from the guideline amount ([*Fam. Code, § 4056*](#)) are not applicable. Given the trial court's determination that support in the correct amount was inadequate, we hold that the court did not abuse its discretion by declining Ron's request for reimbursement.

DISPOSITION

The judgment is affirmed. Respondent shall recover her appellate costs.

Flier, J., and Grimes, J., concurred.



Caution

As of: October 18, 2026 7:03 AM Z

In re Marriage of Stoll

Court of Appeal of California, Fourth Appellate District, Division Three

May 1, 1998, Decided

No. G018998.

Reporter

63 Cal. App. 4th 837 *; 74 Cal. Rptr. 2d 506 **; 1998 Cal. App. LEXIS 394 ***; 98 Cal. Daily Op. Service 3348

In re the Marriage of CATHERINE DEE and ALAN WALTER STOLL. CATHERINE DEE STOLL, Respondent, v. ALAN WALTER STOLL, Appellant.

Prior History: [***1] Appeal from a judgment of the Superior Court of Orange County. Super. Ct. No. 94D00749. John C. Woolley, Judge.

Disposition: The judgment is reversed to the extent that it characterizes the Laurinda property as solely community. We will not, however, direct a new judgment be entered based on Alan's proffered opinion as to value. It is possible that, on remand, Catherine herself may be able to present evidence that the Laurinda property had a lower value in 1983 than represented by Alan's opinion, and the trier of fact might side with her on the conflict. Either way, of course, there is still going to be a substantial amount of reimbursement under [Family Code section 2640](#) due Alan.

Case Summary

Procedural Posture

Appellant husband challenged the decision of the Superior Court of Orange County (California), that entered a judgment of dissolution which determined that the house was 100 percent community property.

Overview

Appellant acquired 100 percent of a family residence from his former wife. Appellant

subsequently paid down the mortgage on his residence in order to refinance at a lower interest rate and deeded the property to himself and to respondent second wife as joint tenants. During dissolution proceedings the trial court refused to allow appellant husband to render an opinion as to the value of his separate property share in the house. The trial court then held that appellant failed to meet his burden of tracing contributions to the separate source property within the meaning of [Cal. Fam. Code § 2640](#) and concluded that house was community property. The court determined that the strict recordkeeping rule set forth in case precedent was not applicable to separate real property later transmuted into community property, and that [§ 2640](#) did not contain a rigid requirement that for authentic written documentation to establish the exact value of the property. Accordingly the case was remanded for further proceedings on the question of value and reimbursement.

Outcome

The judgment was reversed to the extent that it characterized the house as community property because appellant should have been allowed to offer opinion testimony as to the value of his separate property, and the case was remanded for further proceedings on the question of value and reimbursement.

LexisNexis® Headnotes

Estate, Gift & Trust Law > Estate
 Planning > Community Property > General Overview
 Family Law > ... > Dissolution & Divorce > Property
 Distribution > General Overview

HN1 See [Cal. Fam. Code § 2640](#).

Estate, Gift & Trust Law > Estate
 Planning > Community Property > General Overview
 Family Law > ... > Dissolution & Divorce > Property
 Distribution > General Overview

HN2 Tracing is done either directly, or by a process of elimination whereby a spouse shows the exhaustion of available community funds at the time of acquisition. Direct tracing to a separate source, however, has traditionally been subject to a requirement that it be done by specific records. Mere oral testimony of intent has been held to be inadequate to do the job in light of the general presumption that property acquired during a marriage is community.

Family Law > ... > Dissolution & Divorce > Property
 Distribution > General Overview

HN3 It is well established that an owner is perfectly competent to testify as to the value of his or her own property. [Cal. Evid. § 813\(a\)\(2\)](#) could not be plainer: (a) The value of property may be shown only by the opinions of any of the following: (2) The owner or the spouse of the owner of the property or property interest being valued.

Family Law > ... > Dissolution & Divorce > Property
 Distribution > General Overview

HN4 An owner may testify competently as to the value of his property.

Family Law > ... > Dissolution & Divorce > Property
 Distribution > General Overview

HN5 A property owner's statements of value, should be accepted as prima facie evidence of value.

Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

In a dissolution proceeding, the trial court did not allow the husband to offer his opinion as to the value of his separate property house, which was later converted to community property. The trial court consequently ruled that the husband failed to trace any separate interest in the property and that the house was 100 percent community property. (Superior Court of Orange County, No. 94D00749, John C. Woolley, Judge.)

The Court of Appeal reversed the judgment to the extent it characterized the real property as solely community and remanded for further proceedings. The court held that the trial court erred when it refused to allow the husband to offer his opinion as to the value of his separate property house. The rationale for strict recordkeeping applicable to commingling of funds in a bank account does not apply when the asset transmuted from separate to community is real property. Any value assigned to a home can only be an estimate, even if it may be a very precise estimate based on a written appraisal. Moreover, a strict recordkeeping requirement to establish the value of separate real property runs contrary to the clear legislative purpose behind [Fam. Code, § 2640](#) (party's right to reimbursement for separate property contributions). (Opinion by Sills, P. J., with Wallin and Bedsworth, JJ., concurring.)

Headnotes

[CA\(1\)](#) (1)

Husband and Wife § 11—Commingling of

**Community and Separate Property—Tracing—
Real Property—Spouse's Opinion on Value of
Converted Separate Property Home: Dissolution
of Marriage; Separation § 52—Property Rights of
Parties—Valuation.**

--In a marital dissolution proceeding, the trial court erred when it refused to allow the husband to offer his opinion as to the value of his separate property house, which was later converted to community property. The rationale for strict recordkeeping applicable to commingling of funds in a bank account does not apply when the asset transmuted from separate to community is real property. Any value assigned to a home can only be an estimate, even if it may be a very precise estimate based on a written appraisal. Moreover, a strict recordkeeping requirement to establish the value of separate real property runs contrary to the clear legislative purpose behind [Fam. Code, § 2640](#) (party's right to reimbursement for separate property contributions). In light of the fact that an estimate of value is necessarily the best that can be achieved, imposition of a strict recordkeeping requirement would amount to nothing more than judicial repeal of [Fam. Code, § 2640](#). Also, an owner is competent to testify as to the value of his or her own property ([Evid. Code, § 813, subd. \(a\)\(2\)](#)).

[See 11 Witkin, Summary of Cal. Law (9th ed. 1981) Community Property, § 81 et seq.]

Counsel: Steven D. Schatz for Appellant.

Jeffrey W. Doeringer for Respondent.

Judges: Opinion by Sills, P. J., with Wallin and Bedsworth, JJ., concurring.

Opinion by: SILLS

Opinion

[*838] [**507] OPINION

SILLS, P. J.

The trial judge refused to allow the husband in a dissolution proceeding to render an opinion as to the value of his separate property house at the time he acquired it. The house later became community property. Because the trial judge refused the husband's proffered testimony, he consequently ruled that the [***2] husband had failed to *trace* any separate interest in the property. The result is a judgment of dissolution which confers a windfall on the wife by determining that the house was 100 percent community property.

We reverse. The trial judge simply failed to apprehend the distinction between tracing a separate interest to its *source*--to which case law has traditionally appended a recordkeeping requirement--with an owner's right to render an opinion as to the value of his or her own property--for which [*839] there are no per se documentary requirements. Because the concerns which animate the recordkeeping requirements of tracing contributions to a separate property source do not logically apply where there is no dispute about the source, the trial court erred.

FACTS

Alan originally acquired the family residence on Laurinda Lane in 1968 when he was married to his *first* wife, Jill. During the dissolution of that marriage in 1979, Jill received the property and Alan received a note on the property secured by a deed of trust. Later, in June 1983, Jill defaulted on the Laurinda note, and Alan acquired possession of the property through a foreclosure. Alan refinanced the [***3] property in August 1983 for \$ 106,500. Concurrent with this refinancing, Alan's second wife, respondent Catherine, executed a quitclaim deed on the property.

Fourteen months passed before Catherine and Alan moved into the residence on Laurinda. Throughout that period the \$ 1,034 monthly mortgage payments came from the wages and earnings of the parties.

In November 1986, while refinancing the Laurinda property to obtain a lower fixed-rate interest, Alan,

who had sole title to the house, deeded the property to himself and Catherine as husband and wife as joint tenants. At that time, the outstanding balance due on the trust deed was \$ 105,000. However, in order to qualify for the new interest rate, the bank required a pay-down to \$ 90,000, which Alan financed by a sale of \$ 20,000 worth of Scott Paper stock given to him by his mother. It is uncontroverted that after the 1986 refinancing the parties considered the Laurinda residence as community property.

At trial in August 1995, Alan's attorney tried to elicit from him opinion testimony as to the value of his separate property share of the Laurinda property when he reacquired it as his separate property in 1983. He was singularly [***4] unsuccessful in light of the trial court's intervention:

"Q. Mr. Stoll, in June of 1983 do you have an opinion as to the value of the residence at 487 Laurinda in Orange?

"A. Yes. It was--

"Q. And what was that opinion?

"MS. WILSON: Objection, foundation.

[*840] "THE COURT: Sustained.

"MR. KLEIN: Your Honor, he has a right to value his own property.

"THE COURT: Does he?"

After admonishing counsel of the need to establish that Alan was an owner of the Laurinda property, the court inquired whether Alan's opinion was based on anything *other* than being the property owner. Alan stated his opinion was based on such things as a bank appraisal and checking "the value of other houses in the area." After nine sustained objections for foundation, and various other objections on the grounds of hearsay and vagueness, counsel again tried to get Alan's testimony on the record as to his opinion of the 1983 value of his property.

"Q. Did you have an independent opinion of your own as to the value of the house at that time?

"A. Yes.

[**508] "THE COURT: Upon what did you base that opinion?

"A. On the realtor's suggestion of what Kay and I should put the house on the market for.

[***5] "THE COURT: We basically have established he has no independent knowledge of his own. If you'd like to speed through this . . . I'll decide what weight to give it if any."

In a final attempt to show the basis for his opinion as to the value of the Laurinda property, Alan produced, and unsuccessfully attempted to enter into evidence, a copy of Great Western Saving's closing statement on the 1983 refinance of the property. Ultimately, the trial court ruled that Alan had "failed to meet his burden of tracing" and concluded that all of the Laurinda property was community. Alan then pursued this appeal.

DISCUSSION

[HN1](#) [Family Code section 2640](#) provides in pertinent part: "In the division of the community estate . . . unless a party has made a written waiver of the right to reimbursement . . . the party shall be reimbursed for the party's contributions to the acquisition of the property to the extent the party *traces* the contributions to a separate property source." (Italics added.) The present case thus revolves around the meaning of that little word, "trace," in the [*841] context of a spouse seeking reimbursement for the value of separate real property which was later transmuted [***6] into community property.

[HN2](#) It is hornbook California family law that tracing is done either directly, or by a process of elimination whereby a spouse shows the exhaustion of available community funds at the time of acquisition. (E.g., [In re Marriage of Braud \(1996\) 45 Cal. App. 4th 797, 823 \[53 Cal. Rptr. 2d 179\].](#))

Direct tracing to a separate source, however, has traditionally been subject to a requirement that it be done by specific records. Mere oral testimony of *intent* has been held to be inadequate to do the job in light of the general presumption that property acquired during a marriage is community. (E.g., [Estate of Murphy \(1976\) 15 Cal. 3d 907, 919 \[126 Cal. Rptr. 820, 544 P.2d 956\]](#); [In re Marriage of Frick \(1986\) 181 Cal. App. 3d 997, 1011 \[226 Cal. Rptr. 766\]](#); see generally, Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 1997) P 8:528, rev. # 1, 1998, p. 8-134.)

The granddaddy of the specific-record requirement was our Supreme Court's decision in *See v. See* (1966) 64 Cal. 2d 778 [51 Cal. Rptr. 888, 415 P.2d 776]. The relevant text concerning recordkeeping and tracing appears at pages 783 and 784 of the opinion. The context [***7] of the discussion is the *commingling of funds in a bank account* and a rich husband's attempt to trace his separate property in that account. (See [64 Cal. 2d at p. 783](#).) The court explained, in light of the general community property presumption, that a spouse cannot "invoke the burden of record keeping as a justification for a recapitulation of income and expenses at the termination of the marriage that disregards any acquisitions that *may* have been made during the marriage with *community funds*." ([Id. at p. 784](#), italics added.) Hence the court concluded that, once the husband "commingles, he assumes the burden of keeping records adequate to establish the balance of community income and expenditures at the time an asset is acquired with commingled property." (*Ibid.*)

CA(1) (1) There are three reasons we must part company with the trial judge as to the need for strict recordkeeping to establish the *value* of a separate property home for which a spouse seeks reimbursement under [Family Code section 2640](#).

First, the rationale for strict recordkeeping as explained in *See* plainly does not apply to a case where the asset is real property which was [***8]

transmuted [***8] from separate to community.¹ In such a situation, there is no [***509] danger, unlike the case of a commingled bank account as feared by the *See* court, that without exact written records the community property presumption will be subverted because of the possibility that the asset was acquired with *some* community funds. There is, to paraphrase *See*, no *acquisition* which *may* have been made during the marriage. Whatever else we know about the Laurinda house in 1983, we know it was 100 percent Alan's separate property at that time.

[***9] Second, unlike the bank account at issue in *See*, the separate property home in this case is not inherently susceptible to a strict recordkeeping requirement. Necessarily, in the absence of an actual sale, any value assigned to a separate property home which later is transmuted into community property can only be an estimate, even if it may be a very precise estimate based on a written appraisal. That is a far cry from the bank record precision with which the *See* court was obviously concerned, where inexactitude would mean that the community would not receive credit for *actual contributions* it had made.

Third, a strict recordkeeping requirement to establish the value of separate real property later transmuted into community real property runs contrary to the clear legislative purpose behind [Family Code section 2640](#). As our Supreme Court recently noted in [In re Marriage of Walrath \(1998\) 17 Cal. 4th 907 \[72 Cal. Rptr. 2d 856, 952 P.2d 1124\]](#) [section 2640](#) was born of an attempt to "avoid the inequity that may result in a case where property taken in joint tenancy form is divided equally between the spouses despite a showing that

¹ The scenario of the transmutation of a separate property house into a community one should be distinguished from the case where property remains separate but commingled or community funds are used to make the payments. (Cf. [In re Marriage of Higinbotham \(1988\) 203 Cal. App. 3d 322, 328-330 \[249 Cal. Rptr. 798\]](#).) The latter situation is functionally the same as a separate bank account into which commingled or community funds have been transferred, and therefore the rationale from the *See* case should still apply.

one spouse contributed a substantial [***10] portion of separate funds to the acquisition.' " ([Walrath, supra, 17 Cal. 4th at p. 915](#), quoting Assem. Com. on Judiciary, Analysis of Assem. Bill No. 26 (1983-1984 Reg. Sess.) as amended Apr. 4, 1983, p. 4.)

The transmutation of one spouse's separate property house to community property is one of the most common occasions for [Family Code section 2640](#) tracing. In light of the fact that an *estimate* of value is necessarily the best that can be achieved, imposition of a strict recordkeeping requirement-- [***843] itself a product of common law--would amount to nothing more than judicial repeal of [section 2640](#).²

[***11] To put our third reason another way, in interpreting the word "trace" in [Family Code section 2640](#), we must select an interpretation that " 'comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute.' " (*In re Marriage of Walrath, supra*, 17 Cal. 4th at p. 918, quoting [Mercy Hospital & Medical Center v. Farmers Ins. Group of Companies \(1997\) 15 Cal. 4th 213, 219 \[61 Cal. Rptr. 2d 638, 932 P.2d 210\]](#).) *An interpretation which precludes a well-recognized means of establishing the value of real property in other contexts--the opinion of the owner--defeats rather than promotes the purpose of [section 2640](#), which is to assure that separate contributions are reimbursed "off the top" of the community asset. (See Walrath, supra, 17 Cal. 4th at p. 927 (conc. and dis. opn. of Baxter, J.)) We therefore conclude that the word "trace" as it appears in [section 2640](#) entails no rigid requirement that a spouse submit authenticated written documentation establishing an exact value*

for real separate property later transmuted into community property.

[HN3](#) And on that note, it is, course, well established that [***12] an owner is perfectly competent to testify as to the value of his or her own property. [Evidence Code 813, subdivision \(a\)\(2\)](#) could not be plainer: "(a) The value of property may be shown only by the opinions of any of the following: [P] . . . [P] (2) The owner or the spouse of the owner of the property or property interest being valued." [***510] (See also [In re Marriage of Hargrave \(1985\) 163 Cal. App. 3d 346, 351 \[209 Cal. Rptr. 764\]](#) [" . . . the law is that the owner of property is qualified to give his opinion of its value"]; [Wade v. Lake County Title Co. \(1970\) 6 Cal. App. 3d 824, 829 \[86 Cal. Rptr. 182\]](#) [HN4](#) ["An owner may testify competently as to the value of his property"]; [In re S.S. \(1995\) 37 Cal. App. 4th 543, 547 \[43 Cal. Rptr. 2d 768\]](#) [HN5](#) ["a property owner's statements of value, . . . 'should be accepted as prima facie evidence of value' ".])

DISPOSITION

The judgment is reversed to the extent that it characterizes the Laurinda property as solely community. We will not, however, direct a new judgment [***844] be entered based on Alan's proffered opinion as to value. It is possible that, on remand, Catherine herself may be able to present evidence that [***13] the Laurinda property had a lower value in 1983 than represented by Alan's opinion, and the trier of fact might side with her on the conflict. Either way, of course, there is still going to be a substantial amount of reimbursement under [Family Code section 2640](#) due Alan.

The case is remanded for further proceedings on the value and reimbursement question. Alan shall also recover his costs on appeal.

Wallin, J., and Bedsworth, J., concurred.

²In this light we must add that, in contrast to bank statements, homeowners often do not receive copies of written appraisals obtained by lenders at the time real property is refinanced. Thus while strict recordkeeping requirements make sense in the context of commingled bank accounts, they run contrary to practical reality when applied to separate real property later transmuted, as sometimes happens in a refinancing, to community property.



Caution

As of: October 18, 2026 7:03 AM Z

In re Marriage of Valli

Supreme Court of California

May 15, 2014, Filed

S193990

Reporter

58 Cal. 4th 1396 *; 324 P.3d 274 **; 171 Cal. Rptr. 3d 454 ***; 2014 Cal. LEXIS 3280 ****

In re the Marriage of FRANKIE and RANDY VALLI. FRANKIE VALLI, Respondent, v. RANDY VALLI, Appellant.

Subsequent History: Reported at [In re Valli, 2014 Cal. LEXIS 6401 \(Cal., May 15, 2014\)](#)

Prior History: [****1] Superior Court of Los Angeles County, No. BD414038, Mark A. Juhas, Judge. Court of Appeal, Second Appellate District, Division Five, No. B222435.

[In re Marriage of Valli, 195 Cal. App. 4th 776, 124 Cal. Rptr. 3d 726, 2011 Cal. App. LEXIS 593 \(Cal. App. 2d Dist., 2011\)](#)

Core Terms

transmute, spouse, marriage, community property, third party, acquisition of property, gift, separate property, exempt, necklace, community funds, trial court, marital dissolution proceedings, interspousal transaction, life insurance policy, express declaration, insurance policy, jewelry, community property funds, buy, community property law, husband and wife, dissolution, undue influence, married person, scenario, italic, the, preponderance, ownership

Case Summary

Procedural Posture

In a marital dissolution proceeding, the trial court ruled that an insurance policy on respondent

husband's life was community property because it was acquired during the marriage with community funds. The trial court awarded the policy to the husband. The California Court of Appeal, Second Appellate District, Division Five, reversed, holding that the insurance policy was appellant wife's separate property. Review was granted.

Overview

The Supreme Court concluded that the transmutation requirement of an express written declaration applied to the wife's claim that the life insurance policy the husband purchased during the marriage with community funds was her separate property. The wife did not contend that she presented evidence at trial sufficient to satisfy the express declaration requirement, nor did the Supreme Court's examination of the record disclose such evidence. The husband never expressly declared in writing that he gave up his community interest in the policy bought with community funds. Accordingly, the trial court properly characterized the insurance policy as community property.

Outcome

The appellate court's judgment was reversed, and the matter was remanded to that court for further proceedings.

LexisNexis® Headnotes

Evidence > Burdens of Proof > Preponderance

of Evidence

Family Law > ... > Property

Distribution > Characterization > Community Property

Family Law > ... > Property

Distribution > Characterization > Separate Property

HN1 Burdens of Proof, Preponderance of Evidence

In a marital dissolution proceeding, a court's characterization of the parties' property - as community property or separate property - determines the division of the property between the spouses. Property that a spouse acquired before the marriage is that spouse's separate property. [Fam. Code, § 770, subd. \(a\)\(1\)](#). Property that a spouse acquired during the marriage is community property, [Fam. Code, § 760](#), unless it is (1) traceable to a separate property source, (2) acquired by gift or bequest, [§ 770, subd. \(a\)\(2\)](#), or (3) earned or accumulated while the spouses are living separate and apart, Fam. Code., § 771, subd. (a). A spouse's claim that property acquired during a marriage is separate property must be proven by a preponderance of the evidence.

Family Law > ... > Property

Rights > Characterization > Community Property

Family Law > ... > Property

Rights > Characterization > Separate Property

Family Law > ... > Property

Distribution > Classification > Transmutation

HN2 Characterization, Community Property

Married persons may, through a transfer or an agreement, transmute - that is, change - the character of property from community to separate or from separate to community. [Fam. Code, § 850](#).

A transmutation of property, however, is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected. [Fam. Code, § 852, subd. \(a\)](#). To satisfy the requirement of an express declaration, a writing signed by the adversely affected spouse must expressly state that the character or ownership of the property at issue is being changed. The express declaration requirement does not apply to a gift between the spouses of clothing, wearing apparel, jewelry, or other tangible articles of a personal nature that is used solely or principally by the spouse to whom the gift is made and that is not substantial in value taking into account the circumstances of the marriage. [§ 852, subd. \(c\)](#).

Family Law > ... > Property

Distribution > Characterization > Community Property

Family Law > ... > Property

Distribution > Classification > Transmutation

HN3 Characterization, Community Property

The transmutation statutes provide an express exemption for gifts of relatively inexpensive personal items. [Fam. Code, § 852, subd. \(c\)](#). Because spouses most often use community funds to purchase such gifts for each other, the statutory exemption necessarily implies that gifts not qualifying for the exemption (because they are substantial in value or because they are not items of a personal nature) are transmutations subject to the express declaration requirement, notwithstanding that a great many, if not most, involve purchases from third parties. Enactment of the transmutation statutes, [Fam. Code, §§ 850-853](#), abrogated earlier judicial decisions that were inconsistent with the statutory requirements. One such decision was [In re Marriage of Lucas, 27 Cal. 3d 808, 166 Cal. Rptr. 853 \(1980\)](#).

Headnotes/Summary

CALIFORNIA OFFICIAL REPORTS HEADNOTES

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

In a marital dissolution proceeding, the trial court ruled that an insurance policy on the husband's life was community property because it was acquired during marriage with community funds. The trial court awarded the policy to the husband and ordered him to buy out the wife's interest in the policy by paying her \$182,500, representing one-half of the policy's cash value at the time of trial. (Superior Court of Los Angeles County, No. BD414038, Mark A. Juhas, Judge.) The Court of Appeal, Second Dist., Div. Five, No. B222435, reversed, holding that the insurance policy was the wife's separate property.

The Supreme Court reversed the judgment of the Court of Appeal and remanded the matter to that court for further proceedings. The court concluded that the transmutation requirement of an express written declaration applied to the wife's claim that the life insurance policy the husband purchased during the marriage with community funds was her separate property. The wife did not contend that she presented evidence at trial sufficient to satisfy the express declaration requirement, nor did the Supreme Court's examination of the record disclose such evidence. The husband never expressly declared in writing that he gave up his community interest in the policy bought with community funds. Accordingly, the trial court properly characterized the insurance policy as community property. (Opinion by Kennard, J.,* with Cantil-Sakauye, C. J., Baxter, Werdegar, Chin, Corrigan, and Liu, JJ., concurring. Concurring opinion by Chin, J., with Corrigan, and Liu, JJ., concurring (see p. 1407).)

Headnotes

*Retired Associate Justice of the Supreme Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

CA(1) (1)

Dissolution of Marriage § 48—Community or Separate Property—Characterization.

In a marital dissolution proceeding, a court's characterization of the parties' property—as community property or separate property—determines the division of the property between the spouses. Property that a spouse acquired before the marriage is that spouse's separate property ([Fam. Code, § 770, subd. \(a\)\(1\)](#)). Property that a spouse acquired during the marriage is community property ([Fam. Code, § 760](#)), unless it is (1) traceable to a separate property source, (2) acquired by gift or bequest ([§ 770, subd. \(a\)\(2\)](#)), or (3) earned or accumulated while the spouses are living separate and apart ([Fam. Code, § 771, subd. \(a\)](#)). A spouse's claim that property acquired during a marriage is separate property must be proven by a preponderance of the evidence.

CA(2) (2)

Dissolution of Marriage § 48—Community or Separate Property—Transmutation—Express Declaration Requirement.

Married persons may, through a transfer or an agreement, transmute—that is, change—the character of property from community to separate or from separate to community ([Fam. Code, § 850](#)). A transmutation of property, however, is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected ([Fam. Code, § 852, subd. \(a\)](#)). To satisfy the requirement of an express declaration, a writing signed by the adversely affected spouse must expressly state that the character or ownership of the property at issue is being changed. The express declaration

requirement does not apply to a gift between the spouses of clothing, wearing apparel, jewelry, or other tangible articles of a personal nature that is used solely or principally by the spouse to whom the gift is made and that is not substantial in value taking into account the circumstances of the marriage ([§ 852, subd. \(c\)](#)).

CA(3) (3)

Dissolution of Marriage § 48—Community or Separate Property—Transmutation—Express Declaration Requirement—Gift Exemption—Inexpensive Personal Items.

The transmutation statutes provide an express exemption for gifts of relatively inexpensive personal items ([Fam. Code, § 852, subd. \(c\)](#)). Because spouses most often use community funds to purchase such gifts for each other, the statutory exemption necessarily implies that gifts not qualifying for the exemption (because they are substantial in value or because they are not items of a personal nature) are transmutations subject to the express declaration requirement, notwithstanding that a great many, if not most, involve purchases from third parties.

[*1398] CA(4) (4)

Dissolution of Marriage § 48—Community or Separate Property—Transmutation—Express Declaration Requirement—Life Insurance Policy.

In a marital dissolution proceeding, the transmutation requirement of an express written declaration applied to the wife's claim that a life insurance policy the husband purchased during the marriage with community funds was her separate property. The wife did not contend that she presented evidence at trial sufficient to satisfy the express declaration requirement, nor did examination of the record disclose such evidence. The husband never expressly declared in writing that he gave up his community interest in the policy

bought with community funds. Accordingly, the trial court properly characterized the insurance policy as community property.

[[Cal. Forms of Pleading and Practice \(2014\) ch. 122, Community Property, § 122.34](#); 11 Witkin, Summary of Cal. Law (10th ed. 2005) Community Property, §§ 154, 155.]

Counsel: Jaffe and Clemens, Williams S. Ryden and Nancy Braden-Parker for Appellant.

Garrett C. Dailey; Walzer & Melcher, Peter Walzer and Christopher C. Melcher for Respondent.

Charlotte K. Goldberg and Herma Hill Kay as Amici Curiae on behalf of Respondent.

Grace Ganz Blumberg and Herma Hill Kay as Amici Curiae on behalf of Respondent.

Sideman & Bancroft and Diana E. Richmond for Northern California Chapter of the American Academy of Matrimonial Lawyers and the Association of Certified Family Law Specialists as Amici Curiae on behalf of Respondent.

Law Office of Kim W. Cheatum and Kim W. Cheatum as Amici Curiae on behalf of Respondent.

Judges: Opinion by Kennard, J.*, with Cantil-Sakauye, C. J., Baxter, Werdegarr, Chin, Corrigan, Liu, JJ., concurring. Concurring opinion by Chin J., with Corrigan, J., Liu, J., concurring.

Opinion by: Kennard

Opinion

[*1399] [275] [***456]**

KENNARD, J.*—During a marriage the husband

*Retired Associate Justice of the Supreme Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

*Retired Associate Justice of the Supreme Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

used community property funds to purchase an insurance [****2] policy on his life, naming his wife as the policy's only owner and beneficiary. Upon dissolution of the marriage, is the life insurance policy community property or the wife's separate property? We conclude that, unless the statutory transmutation requirements have been met, the life insurance policy is community property. Because the Court of Appeal reached a different conclusion, we reverse that court's judgment.

I

After a 20-year marriage, Frankie Valli (husband) and Randy Valli (wife) separated in September 2004. Their three children were minors at the time of separation but have since become adults. Before the separation, in March 2003, husband used community property funds from a joint bank account to buy a \$ 3.75 million insurance policy on his life, naming wife as the sole owner and beneficiary. Until the parties separated, the policy premiums were likewise paid with community property funds from a joint bank account.

At the marital dissolution proceeding, wife testified that she and husband, while he was in the hospital for “heart problems,” had talked about buying a life insurance policy. Wife said that husband and their business manager, Barry Siegel, told her that they would [****3] make her the policy's owner. Husband testified that he “put everything in [wife's] name, figuring she would take care and give to the kids what they might have coming” and that he had no plans to separate from wife when he bought the policy.

The trial court ruled that the insurance policy was community property because it was acquired during marriage with community funds. The court awarded the policy to husband and ordered him to buy out wife's interest in the policy by paying her \$ 182,500, representing one-half of the policy's cash value [**276] at the time of trial. The Court of Appeal reversed, holding that the insurance policy

was wife's separate property.

II

HN1 CA(1) (1) In a marital dissolution proceeding, a court's characterization of the parties' property—as community property or separate property—determines the division of the property between the spouses. (*In re Marriage of Benson* (2005) 36 Cal.4th 1096, 1102 [32 Cal. Rptr. 3d 471, 116 P.3d 1152]; *In re [*1400] Marriage of Haines* (1995) 33 Cal.App.4th 277, 291 [39 Cal. Rptr. 2d 673].) Property that a spouse acquired before the marriage is that spouse's [***457] separate property. (*Fam. Code*, § 770, subd. (a)(1).) Property that a spouse acquired during the marriage is community property (*id.*, § 760) unless it is (1) traceable [****4] to a separate property source (*In re Marriage of Lucas* (1980) 27 Cal.3d 808, 815 [166 Cal. Rptr. 853, 614 P.2d 285]; *In re Marriage of Mix* (1975) 14 Cal.3d 604, 610, 612 [122 Cal. Rptr. 79, 536 P.2d 479]), (2) acquired by gift or bequest (*Fam. Code*, § 770, subd. (a)(2)), or (3) earned or accumulated while the spouses are living separate and apart (*id.*, § 771, subd. (a)). A spouse's claim that property acquired during a marriage is separate property must be proven by a preponderance of the evidence. (*In re Marriage of Ettefagh* (2007) 150 Cal.App.4th 1578, 1591 [59 Cal. Rptr. 3d 419]; see *Estate of Murphy* (1976) 15 Cal.3d 907, 917 [126 Cal. Rptr. 820, 544 P.2d 956] [a spouse asserting that property acquired by purchase during a marriage is separate property must prove that the property is not community].)

Here, as mentioned earlier, husband during the marriage took out a \$ 3.75 million insurance policy on his life, designating wife as the policy's sole owner and beneficiary. The parties do not dispute that the policy was purchased with community property funds from a joint bank account. What they do dispute is the policy's characterization. Husband argues that the policy is community property because it was purchased during the marriage with community funds. (See *Tyre v. Aetna*

[Life Ins. Co. \(1960\) 54 Cal.2d 399, 402 \[6 Cal. Rptr. 13, 353 P.2d 725\]](#) [****5] [“A policy of insurance on the husband's life is community property when the premiums have been paid with community funds.”]; [Grimm v. Grimm \(1945\) 26 Cal.2d 173, 175 \[157 P.2d 841\]](#) [same].) Wife argues that the policy is her separate property because husband arranged for the policy to be put solely in her name, thereby changing the policy's character from community property to separate property.

HN2 CA(2) (2) Married persons may, through a transfer or an agreement, transmute—that is, change—the character of property from community to separate or from separate to community. ([Fam. Code, § 850](#).) A transmutation of property, however, “is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.” (*Id.*, [§ 852, subd. \(a\)](#).) To satisfy the requirement of an “express declaration,” a writing signed by the adversely affected spouse must expressly state that the character or ownership of the property at issue is being changed. ([Estate of MacDonald \(1990\) 51 Cal.3d 262, 272 \[272 Cal. Rptr. 153, 794 P.2d 911\]](#).) The “express declaration” requirement “does not apply to a gift between the spouses of clothing, wearing apparel, jewelry, or other [****6] tangible articles of a personal nature that is used solely or principally by the spouse to whom the gift is [*1401] made and *that is not substantial in value taking into account the circumstances of the marriage.*” ([Fam. Code, § 852, subd. \(c\)](#), italics added.)

Here, husband contends that because the express written declaration requirement was not satisfied, his act of placing the life insurance policy in wife's name did not transmute the policy, which was purchased during the marriage with community funds, into a separate property asset of wife. Wife argues that the transmutation requirements apply only to transactions between spouses, and not to one spouse's acquisition of property from a third

party. Here, she argues, the only transaction was between husband and the insurance company issuing the policy. Because there was *no interspousal transaction*, in her view the transmutation requirements do not apply.

[**277] [***458] The Legislature adopted the statutory transmutation requirements in 1984 upon a recommendation of the California Law Revision Commission. ([Estate of MacDonald, supra, 51 Cal.3d at p. 268](#).) In its report to the Legislature, the commission observed that under then existing law it was “ ‘quite [****7] easy for spouses to transmute both real and personal property’ ” because a transmutation could be proved by evidence of an oral agreement between the spouses or by “ ‘implications from the conduct of the spouses.’ ” (*Id. at p. 269*.) This “ ‘rule of easy transmutation ... generated extensive litigation in dissolution proceedings’ ” where it encouraged spouses “ ‘to transform a passing comment into an “agreement” or even to commit perjury by manufacturing an oral or implied transmutation.’ ” (*Ibid.*) As this court has concluded, therefore, in adopting the statutory transmutation requirements the Legislature intended “to remedy problems which arose when courts found transmutions on the basis of evidence the Legislature considered unreliable.” (*Ibid.*; accord, [In re Marriage of Benson, supra, 36 Cal.4th at p. 1106](#) [the transmutation statute “blocks efforts to transmute marital property based on evidence—oral, behavioral, or documentary—that is easily manipulated and unreliable”].)

The distinction that wife here urges us to draw between interspousal property transactions (which are subject to the transmutation statutes) and property acquisitions from third parties (which would not be subject [****8] to those statutes even when it has the claimed effect of changing community property funds to a separate property asset or vice versa) bears no relation to these legislative concerns, and it produces arbitrary and irrational results that the Legislature could not have intended. A few hypothetical examples illustrate

this point.

Suppose a husband, shopping at a jewelry store, uses community funds to buy a particularly expensive diamond necklace that is “substantial in value taking into account the circumstances of the marriage” (*Fam. Code, § 852, [*1402] subd. (c)*), intending to give it to his wife a few days later as a birthday present. Because of the particular necklace's value in comparison to the particular couple's financial situation, the gift exception does not apply. Under the analysis urged here by wife, the transmutation statutes would not apply to the necklace's *purchase* because it was a third party transaction with the jewelry store. But because the husband used community funds to buy the necklace and did not immediately transfer title or possession to the wife, the purchase itself did not cause any transmutation, and the necklace would be community property at least until the wife's [****9] birthday. On that day, the husband's act of giving the necklace to the wife, together with the wife's act of accepting the husband's gift, would be an interspousal transaction to which the transmutation requirements would apply even under the analysis urged here by wife. Absent an express written declaration, therefore, the necklace would remain community property even after the wife received it as a birthday gift from the husband.

Next, suppose that instead of buying the necklace for his wife before her birthday, the husband, on his wife's birthday, promises to buy a diamond necklace of her choice. They go to a jewelry store, the wife selects a particular necklace that is “substantial in value taking into account the circumstances of the marriage” (*Fam. Code, § 852, subd. (c)*), the husband pays for it with community funds, and they leave the store with the wife wearing the [***459] new jewelry. In this scenario, there would appear to be a single transaction, the jewelry store purchase. Under the analysis urged here by wife, the transmutation statutes would not apply to that single transaction because it was a purchase from a third party, and thus no “express declaration” would be required to

[****10] transmute the community property funds to the wife's separate property asset.

For purposes of the transmutation statutes, it is difficult to conceive any justification for treating these two hypothetical scenarios differently. Under either scenario, the husband could present evidence, in a later dissolution proceeding, that he and the wife had discussed the advantages of diamonds [**278] as an investment, that they had orally agreed the necklace would eventually be passed on to their daughter, and that it was therefore understood between them that although this very expensive necklace would be the wife's to wear on special occasions, it would remain a community asset. To rebut the husband's evidence, the wife could deny having any conversation with the husband about investing in diamonds or purchasing jewelry as a family legacy, and she could present evidence of a contrary understanding that the necklace was to be hers alone. If the transmutation statutes did not apply, and in the absence of a writing expressly memorializing the parties' understanding and intent, the trial court in the dissolution proceeding would be obliged to base its decision regarding the necklace's character as community [****11] or separate property on a difficult assessment of the spouses' credibility as [*1403] witnesses. (See, e.g., *In re Marriage of Steinberger* (2001) 91 Cal.App.4th 1449, 1456 [111 Cal. Rptr. 2d 521].) Putting the trial court in such a position is what the transmutation statutes were enacted to prevent.

One could argue, perhaps, that the second hypothetical scenario, like the first, can and should be viewed as two transactions—a purchase from a third party *and* an interspousal giving of a gift—that are legally distinguishable even though they occurred simultaneously. Adopting that approach, one would conclude that the interspousal gift transaction was subject to the transmutation statutes in the second scenario just as in the first. But if the second jewelry gift scenario can be parsed into two simultaneous but legally separable transactions, then so here could husband's purchase of the life

insurance policy, with title taken in wife's name. If, as wife here claims, the effect of the policy purchase with money from a joint bank account was to convert community property funds into her separate property asset, then the purchase necessarily involved a gift from husband to wife because wife has never maintained that she [****12] gave husband anything in exchange for his community interest in the purchase money. If the policy was a gift by husband to wife, then the giving and receiving of that gift was an interspousal transaction to which the transmutation statutes apply. (Cf. [*Burkle v. Burkle* \(2006\) 141 Cal.App.4th 1029, 1036, fn. 5 \[46 Cal. Rptr. 3d 562\]](#) [the elements of a gift include “ ‘delivery, either actual or symbolical’ ” and “ ‘acceptance, actual or imputed’ ”].)

This point can be further illustrated by another hypothetical. Suppose in this case husband had initially taken title to the insurance policy jointly in his and wife's names, and then on a later date, after receiving estate planning advice and discussing the matter with wife, he had instructed the insurer to transfer the title to wife's name alone. In that situation, where wife acquired sole title to the policy some time after the policy's purchase, it appears that wife would concede the transmutation statutes' applicability to any [***460] claim by her, in a marital dissolution proceeding, that the change in title changed the character of the policy from community to separate property.¹ Therefore, under the analysis urged here by wife, whether the transmutation statutes apply [****13] to the insurance policy depends upon the entirely fortuitous circumstance of when she acquired sole title to the insurance policy, whether during the

purchase or after the purchase of the policy. We are unwilling to conclude [*1404] the Legislature intended application of the transmutation statutes to turn on such fortuitous distinctions.

We recognize that some court decisions have stated that a transmutation requires an interspousal transaction and that one spouse's acquisition of an asset from a third party is therefore exempt from the statutory transmutation restrictions. Those decisions are [****14] unpersuasive, however.

[**279] The notion that third party transactions cannot be transmutions may be traced to the Court of Appeal's 1995 decision in [*In re Marriage of Haines, supra, 33 Cal.App.4th 277*](#). There, the Court of Appeal said that a transmutation is “an interspousal transaction or agreement which works a change in the character of the property.” (*Id. at p. 293*.) Referring to the wife's signing of a quitclaim deed conveying the family residence to the husband during the marriage, the court concluded that this was a transmutation subject to the statutory express declaration requirement. (*Ibid.*) The court did not consider whether any other transaction was a transmutation, and in particular it did not consider whether one spouse's purchase of property from a third party could be a transmutation.

The statement that a transmutation is “an interspousal transaction or agreement” ([*In re Marriage of Haines, supra, 33 Cal.App.4th at p. 293*](#)) was later repeated in the Court of Appeal decisions in [*In re Marriage of Campbell* \(1999\) 74 Cal.App.4th 1058, 1062 \[88 Cal. Rptr. 2d 580\]](#) and [*In re Marriage of Cross* \(2001\) 94 Cal.App.4th 1143, 1147 \[114 Cal. Rptr. 2d 839\]](#) (Cross). But neither decision exempted a third party transaction from the transmutation [****15] requirements on the basis that it was not “interspousal.” Indeed, Cross said that the transmutation statutes address situations such as “where a wife buys a car for her husband with community property funds” ([*Cross, at pp. 1147–1148*](#)), a typical third party transaction. (See [*In re Marriage of Buie & Neighbors* \(2009\) 179 Cal.App.4th 1170, 1173–1175 \[102 Cal. Rptr.](#)

¹Wife here might argue that instructing the insurance company to transfer title after the policy's purchase would be a third party transaction, like the initial purchase of the policy, because it could be done without her knowledge or participation. If we were to accept that argument, however, the result would be drawing an arbitrary distinction between assets as to which title transfers are always made through a third party, such as the insurance company here, and assets such as real property, as to which title transfers are normally made by deed or similar conveyances between the affected parties.

[3d 387](#)] [applying transmutation statutes to a husband's purchase of a car for himself using the wife's separate funds].) In 2005, this court likewise stated that a transmutation is an “interspousal transaction” (*In re Marriage of Benson, supra*, [36 Cal.4th 1096, 1100](#)), but we did not consider whether this definition excludes spousal purchases during the marriage from third parties with community funds.

The first decision to hold that a spousal purchase from a third party during a marriage was not subject to the statutory **[***461]** transmutation requirements was *In re Summers* (9th Cir. 2003) [332 F.3d 1240](#), which was a bankruptcy proceeding rather than a marital dissolution proceeding. There, the federal appellate court was attempting to construe and apply California law “to determine whether the requirements of California's transmutation statute ... **[*1405]** must **[****16]** be met when realty is transferred from a third party to spouses as joint tenants.” (*Id. at p. 1242*, citation omitted.) Relying on the statement by the California Court of Appeal in *Cross* that a transmutation is an “ ‘interspousal transaction or agreement’ ” (*Cross, supra*, [94 Cal.App.4th at p. 1147](#)), the federal court concluded “that the transmutation requisites had no relevance to the conveyance in this case.” (*In re Summers, at p. 1245.*)

The year 2008 saw the first decision by a California state appellate court exempting from the transmutation requirements a spousal purchase from a third party: *In re Marriage of Brooks & Robinson* (2008) [169 Cal.App.4th 176](#) [[86 Cal. Rptr. 3d 624](#)]. In that marital dissolution proceeding, the husband and the wife disputed ownership of residential property they had purchased during the marriage, taking title solely in the wife's name. (*Id. at pp. 179–180.*) On appeal, the husband argued, among other things, that the purchase of the property in the wife's name alone was an attempted transmutation that was invalid because it did not comply with the statutory transmutation requirements. (*Id. at p. 191.*)

Rejecting the husband's argument, the Court of Appeal stated that there were “no facts **[****17]** suggesting a transmutation, valid or otherwise” because the property “was acquired in [the wife's] name in a transaction with a third person, not through an interspousal transaction.” (*Ibid.*)

As mentioned earlier, these last two decisions (*In re Summers, supra*, [332 F.3d 1240](#); *In re Marriage of Brooks & Robinson, supra*, [169 Cal.App.4th 176](#)) are not persuasive insofar as they purport to exempt from the transmutation requirements purchases made by one or both spouses from a third party during the marriage. **[**280]** Neither decision attempts to reconcile such an exemption with the legislative purposes in enacting those requirements, which was to reduce excessive litigation, introduction of unreliable evidence, and incentives for perjury in marital dissolution proceedings involving disputes regarding the characterization of property. Nor does either decision attempt to find a basis for the purported exemption in the language of the applicable transmutation statutes. Also, these decisions are inconsistent with three Court of Appeal decisions stating or holding that the transmutation requirements apply to one spouse's purchases from a third party during the marriage. (*In re Marriage of Buie & Neighbors, supra*, [179 Cal.App.4th at pp. 1173–1175](#); **[****18]** *Cross, supra*, [94 Cal.App.4th at pp. 1147–1148](#); *In re Marriage of Steinberger, supra*, [91 Cal.App.4th at pp. 1463–1466.](#))

CA(3) (3) Our examination of the statutory language leads us to reject the purported exemption for spousal purchases from third parties. As we have said (*ante*, pp. 1400–1401), [HN3](#) the transmutation statutes provide an express exemption for gifts of relatively inexpensive personal items. (*Fam. Code, § 852, subd. (c).*) Because spouses most often use community funds to purchase such gifts for each other, the statutory exemption necessarily implies **[*1406]** that gifts not qualifying for the exemption (because they are “substantial in value” or because they are not items

“of a personal nature”) are *****462** transmutations subject to the express declaration requirement, notwithstanding that a great many, if not most, involve purchases from third parties.²

As mentioned, the Court of Appeal here concluded that the transmutation statutes were “not relevant to this case” because the disputed life insurance policy “was acquired from a third party and not through an interspousal transaction.” After stating that conclusion, which we have determined to be erroneous, the court added: “Moreover, [wife] did not contend in the trial court, and does not contend on appeal, that the policy is her separate property through transmutation. Instead, [wife] contends that the policy is her separate property by operation of the form of title presumption.” Referring to [Evidence Code section 662](#), which states that “[t]he owner of the legal title to property is presumed to be the owner of the full beneficial title,” the Court of Appeal here asserted that “because the form of title presumption applies ... a transmutation theory is not involved.”

This ******20** reasoning by the Court of Appeal, we also conclude, is erroneous. We need not and do not decide here whether [Evidence Code section 662](#)'s form of title presumption ever applies in marital dissolution proceedings. Assuming for the sake of argument that the title presumption may sometimes apply, it does not apply when it conflicts with the transmutation statutes. (See [In re Marriage of Barneson \(1999\) 69 Cal.App.4th 583, 593 \[81 Cal. Rptr. 2d 726\]](#).)

CA(4) (4) For the reasons we have given, the

² Enactment of the transmutation statutes ([Fam. Code, §§ 850–853](#)) abrogated earlier judicial decisions that were inconsistent with the statutory requirements. One such decision was [In re Marriage of Lucas, supra, 27 Cal.3d 808](#), in which this court upheld a trial court's characterization of a motor home acquired during a marriage as entirely the wife's separate ******19** property. From the husband's failure to object when title was taken in the wife's name alone the trial court inferred that the husband had made a gift to the wife of his interest in community funds used to purchase the motor home. ([In re Marriage of Lucas, at pp. 817–818](#).) That portion of the decision is no longer good law.

transmutation requirement of an express written declaration applies to wife's claim, in this marital dissolution proceeding, that the life insurance policy husband purchased during the marriage with community funds is her separate property. Wife does not contend that she presented evidence at trial sufficient to satisfy the express declaration requirement, nor does our examination of the record disclose such evidence. Husband never expressly declared in writing that he gave up his community interest in the policy bought with community funds. Accordingly, we agree with the trial court's characterization of the insurance policy as community property.

****281** Because it concluded that the trial court had erred in characterizing the policy as ******21** community property, the Court of Appeal did not reach wife's ***1407** contentions “that the trial court erred in awarding ownership solely to [husband] at the policy's cash value and that it abused its discretion in failing to maintain [wife] as a beneficiary on the policy as spousal support.” The Court of Appeal will address those contentions by wife on remand.

DISPOSITION

The Court of Appeal's judgment is reversed and the matter is remanded to that court for further proceedings consistent with this opinion.

Cantil-Sakauye, C. J., Baxter, J., Werdegare, J., Chin, J., Corrigan, J., and Liu, J., concurred.

Concur by: Chin

Concur

*****463** **CHIN, J.**, Concurring.—I agree with the majority opinion, which I have signed. I write separately to discuss a threshold question that has been the primary focus of the briefs of the parties and amici curiae: What role, if any, does a common law rule codified in [Evidence Code section 662](#)

([section 662](#)) have in determining, in an action between the spouses, whether property acquired during a marriage is community or separate?

[Family Code section 760](#) provides: “Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the [****22] marriage while domiciled in this state is community property.” [Family Code section 802](#) refers to the “presumption that property acquired during marriage is community property.” In combination, these statutes provide a presumption that property acquired during the marriage is community property. (*In re Marriage of Benson* (2005) 36 Cal.4th 1096, 1103 [32 Cal. Rptr. 3d 471, 116 P.3d 1152].) (I will sometimes refer to this presumption as the [section 760](#) presumption.) It appears this presumption can be overcome by a preponderance of the evidence. (*In re Marriage of Ettefagh* (2007) 150 Cal.App.4th 1578 [59 Cal. Rptr. 3d 419].)

Although the [section 760](#) presumption is rebuttable, not just any evidence can overcome the presumption, but only evidence showing that another statute makes the property something other than community property. “By its own terms, the definition of community property in [section 760](#) applies ‘[e]xcept as otherwise provided by statute.’ It therefore exempts property defined as separate under other provisions. (E.g., [*Fam. Code.*] §§ 770 [property acquired by gift or inheritance], 771 [earnings and accumulations while living separate and apart].)” (*In re Marriage of Benson, supra*, 36 Cal.4th at p. 1103.) Thus, the general rule is that [****23] property acquired during marriage is community unless the preponderance of the evidence establishes that a specifically enumerated statutory exemption applies to make it something else.

[*1408]

As applied here, this presumption means that the life insurance policy is presumed to be community property, but that the wife (wife) can overcome that presumption if she can show, by a preponderance

of the evidence, that some other statutory provision makes it her separate property. There is, or should be, nothing particularly complex or difficult about this rule.

But wife, in arguing that the policy is her separate property, and the Court of Appeal, in so concluding, rely heavily on a different presumption found in the Evidence Code. [Section 662](#) provides: “The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.” Because legal title in the policy was in wife's name, wife argues, and the Court of Appeal found, the policy is presumed to be her separate property, a presumption rebuttable only by clear and convincing evidence.

Obviously, both presumptions cannot be given effect. The life insurance policy cannot [****24] both be presumed to be community property (because acquired during the marriage) and to be wife's separate property (because [**282] placed in her name). One statutory presumption must yield to the other.

In my view, as in the view of all amici curiae to appear in this case—law professors and attorneys specializing in the field—the [Family Code section 760](#) presumption controls in characterizing property acquired [***464] during the marriage in an action between the spouses. [Evidence Code section 662](#) plays no role in such an action. The detailed community property statutes found in the Family Code, including [section 760](#), are self-contained and are not affected by a statute found in the Evidence Code. I explain why.

California is, and always has been, a community property state. “The community property system originated in continental Europe, came to Mexico from Spain, and became California law through the treaty of 1848.” (11 Witkin, Summary of Cal. Law (10th ed. 2005) Community Property, § 1, p. 529.) “From the inception of its statehood, California has retained the community property law that predated its admission to the Union and consistently has

provided as a general rule that property acquired by spouses during marriage, [****25] including earnings, is community property.” (*In re Marriage of Bonds* (2000) 24 Cal.4th 1, 12 [99 Cal. Rptr. 2d 252, 5 P.3d 815].) “The general theory is that the husband and wife form a sort of partnership, and that property acquired during the marriage by the labor or skill of either belongs to both.” (11 Witkin, Summary of Cal. Law, *supra*, Community Property, § 1, p. 529.)

The presumption, now codified in the Family Code, that property acquired during the marriage is community, is perhaps the most fundamental principle [*1409] of California's community property law. “This presumption is fundamental in the community property system and is an integral part of the community property law not only of this state but of other states and countries where the system is in operation.” (11 Witkin, Summary of Cal. Law, *supra*, Community Property, § 15, p. 542, quoting *Wilson v. Wilson* (1946) 76 Cal. App. 2d 119, 126 [172 P.2d 568].)

Section 662 may not nullify this fundamental presumption whenever, as is often the case, the contested property is in the name of one of the spouses. I agree with the amici curiae that, as the brief of the Northern California chapter of the American Academy of Matrimonial Lawyers and the Association of Certified Family Law [****26] Specialists puts it, “section 662 has no place in the characterization of property in actions between spouses.” As that brief further states, applying section 662 to disputes between spouses “would subvert basic tenets of California family law.”

This is not a recent concept. Nine years after California became a state, this court, in an opinion authored by Justice Field, rejected the argument that common law rules regarding title apply to the characterization of property acquired during the marriage. (*Meyer v. Kinzer and Wife* (1859) 12 Cal. 247 (Meyer).) In *Meyer*, the husband and wife sold certain property acquired during the marriage and

received in return a note and mortgage on the property that was in both the husband's and wife's names. Later the husband, without the wife joining, assigned the note and mortgage to another party. The wife claimed that, because the mortgage was in her name as well as her husband's, one-half of the note and mortgage was her separate property. This court disagreed.

In concluding that the mortgage was community property, this court cited statutory provisions including, as relevant here, a provision substantially similar to section 760: “ ‘[A]ll property [****27] acquired after marriage, by either husband or wife, except such as may be acquired by gift, bequest, devise or descent, shall be common property’ ” (*Meyer, supra*, 12 Cal. at p. 251.) The court explained that these provisions “are borrowed from the Spanish law, and *there is hardly any analogy between them and the doctrines of the common law* in respect to the rights of property consequent upon marriage. The statute proceeds [***465] upon the theory that the marriage, in respect to property acquired during its existence, is a community of which each spouse is a member To the community all acquisitions by either, whether made jointly or separately, belong. *No form of transfer* or mere intent of parties can overcome this positive rule of law.” (*Ibid.*, italics added.)

[**283] Absent proof that the purchase was made with separate funds of either spouse, the *Meyer* court explained, the presumption that property acquired [*1410] after marriage is community property “was absolute and conclusive, and it made no difference whether the conveyance was taken in the name of one or the other, or in the names of both.” (*Meyer, supra*, 12 Cal. at p. 252.) The court quoted with approval an opinion from Louisiana, another community [****28] property state, that involved, as does this case, property purchased during the marriage but placed in the wife's name: “ ‘All property acquired by either spouse during the existence of the community, the law presumes to belong to it If the wife sets up a separate claim,

she must make legal proof of it. *The title being in her name does not raise even a presumption in her favor.*” (*Id. at p. 253*, italics added by Meyer.) The opinion additionally explained that “common law authorities are entirely inapplicable under our system. The statute prescribes the effect of the acquisition of property by either spouse, and its operation cannot be defeated or evaded by the form of the conveyance, or the intention of the husband, in taking it in the name of his wife. In every form the community character of the property continues.” (*Id. at p. 255*, italics added.)

As relevant here, these principles still generally apply. The statutes governing California's community property law are found in the Family Code; a statute outside of the community property law, such as [Evidence Code section 662](#), cannot nullify those statutes. This circumstance was recognized when [section 662](#) was enacted. (Stats. [****29] 1965, ch. 299, § 2, p. 1297.) The Law Revision Commission comment to that section states that it “codifies a common law presumption recognized in the California cases.” (Cal. Law Revision Com. com., 29B pt. 2 West's Ann. Evid. Code (1995 ed.) foll. [§ 662](#), p. 210.) But California's community property law has no common law roots. It derives from the European continent, not England. In its comment, the Law Revision Commission cited [Olson v. Olson \(1935\) 4 Cal.2d 434 \[49 P.2d 827\]](#). (See [People v. Semaan \(2007\) 42 Cal.4th 79, 88 \[64 Cal. Rptr. 3d 1, 163 P.3d 949\]](#) [recognizing “that [§ 662](#) codifies the rule of *Olson v. Olson*”].) But that case indicates the common law presumption does not apply in the marital context: “The deed of gift, a written instrument, signed and acknowledged by appellant, and unimpaired by any presumption of undue influence arising out of a marital relation between the parties [(the parties were not married at the critical time)], was entitled to the full credit given to it by the trial court” ([Olson v. Olson, at p. 438](#), italics added.) Neither the common law rule nor [section 662](#), which codified that rule, ever applied to characterizing property acquired during marriage in actions between the spouses.

[Section 662](#)'s [****30] purpose is to promote the public policy in favor of “the stability of titles to property.” ([Evid. Code, § 605](#); see [In re Marriage of Haines \(1995\) 33 Cal.App.4th 277, 294 \[39 Cal. Rptr. 2d 673\]](#) (*Haines*).) That policy is largely irrelevant to characterizing property acquired during the marriage in an action between the spouses. *Haines* is instructive. The *Haines* [*1411] court held that [section 662](#) “must yield to” another presumption within California's community property law—“the presumption arising from the requirement [***466] that a husband and wife occupy a confidential relationship in their transactions with each other.” ([Haines, at p. 283](#); see [Fam. Code, § 721](#).)

Haines explained that [section 662](#)'s “presumption is based on promoting the public ‘policy ... in favor of the stability of titles to property.’” (See [\[Evid. Code,\] § 605](#).) ‘Allegations ... that legal title does not represent beneficial ownership have ... been historically disfavored because society and the courts have a reluctance to tamper with duly executed instruments and documents of legal title.’ [Citation.] [¶] [Section 662](#) is concerned primarily with the stability of titles, which obviously is an important legal concept that protects parties to a real [****31] property transaction, as well as creditors. Here, however, our focus is on characterization of marital property as effected by a transmutation by quitclaim deed. The issue is how property should be divided between spouses upon dissolution. This case does not involve third parties nor does it place at risk the rights of a creditor. ... Thus, concerns of stability of [**284] title are lessened in characterization problems arising from transmutations that do not involve third parties or the rights of creditors.” ([Haines, supra, 33 Cal.App.4th at pp. 294–295](#), fn. omitted.)

The presumption of undue influence exists to protect married persons. ([Haines, supra, 33 Cal.App.4th at p. 301](#).) “[A]pplication of [section 662](#) in such situations can significantly weaken protections the Legislature intended to provide for spouses who are taken advantage of in interspousal

transactions. This cannot be in keeping with the intent of the Legislature Application of [section 662](#) would ... in effect ... abrogate the protections afforded to married persons under” what is now [Family Code section 721, subdivision \(b\)](#). (*Haines, at p. 301*, citations omitted.) Accordingly, the *Haines* court “conclude[d] that application of [section 662](#) [****32] is improper when it is in conflict with the presumption of undue influence Any other result would abrogate the protections afforded to married persons and denigrate the public policy of the state that seeks to promote and protect the vital institution of marriage.” (*Id. at p. 302*; see *In re Marriage of Fossum* (2011) 192 Cal.App.4th 336, 344–345 [121 Cal. Rptr. 3d 195] [following *Haines*]; *In re Marriage of Delaney* (2003) 111 Cal.App.4th 991, 997 [4 Cal. Rptr. 3d 378] [following *Haines*].)

What *Haines* said about the presumption regarding undue influence applies just as much, if not more so, to the more fundamental presumption that property acquired during the marriage is community. [Section 662](#) may not abrogate the more fundamental presumption just as it may not abrogate the less fundamental presumption. Much property acquired during marriage is in the name of one of the spouses, such as salaries, stock options, retirement [*1412] benefits, and the like. Applying [section 662](#) to all such property—and concluding that it is separate property unless shown to be otherwise by clear and convincing evidence—would largely nullify the presumption that property acquired during marriage is community.

In concluding that [section 662](#) applies, the [****33] Court of Appeal relied heavily on two cases: *In re Marriage of Lucas* (1980) 27 Cal.3d 808 [166 Cal. Rptr. 853, 614 P.2d 285] (*Lucas*) and *In re Marriage of Brooks & Robinson* (2008) 169 Cal.App.4th 176 [86 Cal. Rptr. 3d 624] (*Brooks*). Neither case supports the conclusion.

In *Lucas*, this court was concerned primarily with deciding “the proper method of determining separate and community property interests in a

single family dwelling acquired during the marriage with [***467] both separate property and community property funds.” (*Lucas, supra, 27 Cal.3d at p. 811*.) Most of the opinion concerns the characterization of a house in which title was in the form of joint tenancy. Although it discusses presumptions at length, *Lucas* never cites [section 662](#) even though that section had been enacted long before the opinion. Rather, it discusses two statutory presumptions, both of which used to be found in [Civil Code former section 5110](#) and are now found in two separate sections of the Family Code. (*Fam. Code, §§ 760, 2581*.) One is the familiar presumption that property acquired during marriage is community property. (*Id.*, [§ 760](#).) The other is a presumption, found in a statute within the community property law and fully consistent with the general presumption, [****34] that specifically governs real property designated as a joint tenancy. (*Lucas, at p. 814*.) As quoted in *Lucas*, that statute provided: “ ‘When a single-family residence of a husband and wife is acquired by them during marriage as joint tenants, for the purpose of the division of such property upon dissolution of marriage or legal separation only, the presumption is that such single-family residence is the community property of the husband and wife.’ ” (*Id. at fn. 2*, quoting [Civ. Code, former § 5110](#) [see now [Fam. Code, § 2581](#)].) Both of these presumptions favor a finding of community property, and thus they are compatible.

Significantly, the statutory presumption regarding property in the form of joint tenancy applies “[f]or the purpose of division of property on dissolution of marriage.” (*Fam. Code, § 2581*; see [Civ. Code, former § 5110](#).) This language suggests that rules that apply to an action between the spouses to characterize [**285] property acquired during the marriage do not necessarily apply to a dispute between a spouse and a third party.

Thus, the form of title presumption the *Lucas* court discussed is a specific statutory presumption found within California's community property [****35] law, not the more general presumption

found in [section 662](#). That this is so is made [*1413] clear later in the opinion when the court stated that certain “evidence and findings are insufficient to rebut the presumption arising from title set forth in [Civil Code section 5110](#) [(i.e., current [Fam. Code, § 2581](#))].” ([Lucas, supra, 27 Cal.3d at p. 815](#), italics added.) *Lucas* does not address [section 662](#)'s role in an action between the spouses.

Brooks also did not present this question. At the appellate level, the dispute in [Brooks, supra, 169 Cal.App.4th 176](#), did not involve an action between the spouses. Rather, on appeal, the sole dispute was between a *third party*, to whom the wife had sold certain real property, and the husband, who claimed an interest in the property and sought to set aside the sale. The wife did not even appear in the appeal. The Court of Appeal used [section 662](#) to help resolve the dispute in favor of the third party, whom the trial court found to be a bona fide purchaser who had purchased the property without knowing of any community property claim the husband might have had. The Court of Appeal noted that the trial “court did not expressly determine whether the Property was a [****36] community property asset.” ([Brooks, at pp. 182–183](#).) Rather, the trial court had merely held that the third party was a bona fide purchaser and, as such, “ ‘takes it[s] title free of any unknown community property claim [the husband] may have with respect to the Property.’ ” ([Id. at p. 183](#).) The Court of Appeal agreed with this conclusion. It [***468] emphasized [section 662](#)'s purpose of promoting the stability of titles to property. ([169 Cal.App.4th at p. 185](#).) Unlike in the case of an action between the spouses, this policy *does* play a role in a dispute between a spouse and an innocent third party purchaser.

The *Brooks* court stressed that the appeal “does not involve a division of the community estate between [husband and wife]. Whether [the wife] might be obligated to reimburse [the husband] for his contributions to the Property was not before the trial court and is not an issue on appeal.” ([Brooks,](#)

[supra, 169 Cal.App.4th at p. 188](#).) Accordingly, *Brooks* concerned the rights of a third party that purchased property in good faith not knowing of any possible community property claims. *Brooks* might have been correct to apply [section 662](#) to an action between one of the spouses and a third party bona fide purchaser. [****37] That question is not implicated here, and I express no opinion on it. To the extent *Brooks* said anything suggesting [section 662](#) would apply to an action between the spouses, it mistakenly relied on [Lucas, supra, 27 Cal.3d 808](#), and is, accordingly, unpersuasive.

In short, the statutes in the Family Code governing community property, including the [section 760](#) presumption, are sufficient unto themselves. [Evidence Code section 662](#)'s common law presumption does not nullify the community property statutes. *All* property acquired during the marriage is presumed to be community property. Evidence that certain property is in the [*1414] name of one spouse might, depending on the circumstances, be relevant to help overcome the presumption if and only if it demonstrates that one of the statutory exemptions to the presumption applies. But that evidence does not itself reverse the presumption. Future courts resolving disputes over how to characterize property acquired during the marriage in an action between the spouses should apply the community property statutes found in the Family Code and not [section 662](#).

Corrigan, J., and Liu, J., concurred.