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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re the Marriage of JUN HYEONG
PARK and SANG OK SON.**

SANG OK SON,

Appellant,

v.

JUN HYEONG PARK,

Respondent.

A133345

**(Alameda County
Super. Ct. No. RF09-440877)**

Sang Ok Son (appellant) appeals a marital dissolution judgment on reserved issues in favor of her former husband, Jun Hyeong Park (respondent). Appellant contends the trial court erroneously failed to address the issue of respondent's breach of fiduciary duties (Fam. Code, § 721)¹ in denying her request for reimbursement to the marital community of funds transferred from her father to her and then to respondent's mother, denied her request that the community be reimbursed for respondent's school loans paid from the community, and calculated the equalizing payment awarded to her. We reject these contentions and affirm.

BACKGROUND²

The parties married on February 26, 2007; respondent filed a petition for dissolution on March 12, 2009. On December 18, 2009, a judgment of dissolution was entered as of May 1, 2010. The court found, inter alia, that the parties' October 27, 2007 "Pre-nuptial Agreement" was not enforceable because it was executed after the marriage. The court's written order noted that appellant was pursuing a breach of fiduciary claim arising out of the circumstances surrounding the Pre-nuptial Agreement and stated, "nothing herein is intended to limit the scope of discovery or trial on that claim." The court reserved jurisdiction over other issues.

On October 4, 2010, the court conducted a hearing on the reserved issues. The following facts are undisputed: In 2006, the parties met through a matchmaker in Korea; they were legally married on February 26, 2007, at the United States Embassy in Korea. Soon thereafter, respondent, a dentist, went back to the United States, returning to Korea a couple of times to visit appellant. In April 2007, appellant learned she was pregnant

¹ All undesignated section references are to the Family Code.

² We state the facts in the light most favorable to the trial court's decision, resolving all conflicts and indulging all reasonable inferences to support the order. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053, abrogated on another ground as stated in *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 100.) To the extent the trial court's findings are not challenged on appeal, we accept the facts set forth in its statement of decision. (See *City of Merced v. American Motorists Ins. Co.* (2005) 126 Cal.App.4th 1316, 1322-1323.)

with respondent's child. On September 27, 2007, 170 million Korean won³ was transferred from appellant's father's bank account to appellant's bank account and then to respondent's mother's bank account. On October 27, the parties held a wedding ceremony. On that date they executed the aforementioned Pre-nuptial Agreement which had been drafted by an attorney contacted by appellant.⁴

Appellant testified that, in August 2007, conversations began to take place between the parties' families regarding money. Appellant testified that during these conversations, she said she did not want her family to pay the money to respondent and his mother. She testified respondent replied that, if she did not pay the money, there would be no wedding ceremony, she would not be given a "visa," she would be forced to have an abortion, and he would not return to Korea. Appellant said the families settled on a payment of 170 million Korean won, which respondent told her to put in his mother's bank account. Appellant also testified that in an August 2007 telephone conversation, respondent promised that if the parties divorced, he would return the 170 million Korean won. At the time of trial, respondent had not returned the money.

Respondent testified that, at sometime prior to the October 27, 2007 wedding ceremony, he learned from his mother about a disagreement between the parties' families regarding the transfer of money incident to the parties' marriage. Respondent testified he never discussed the financial disagreement with appellant and never requested money from her or her parents. He also said he did not request or discuss with appellant or her parents a transfer of money in connection with the marriage. Respondent also testified he did not receive any money from appellant or her parents in consideration of the parties' marriage. A couple of days before the wedding ceremony, respondent's mother told him

³ According to respondent, in September 2007, 170 million Korean won was equivalent to about 149,000 United States dollars. According to appellant, in July 2010, 170 million Korean won was equivalent to 180,000 United States dollars.

⁴ The Pre-nuptial Agreement provided, among other things, that appellant had paid respondent 170 million Korean won as additional consideration for the marriage and that respondent would return that full amount plus reasonable interest to appellant in the event of a dissolution of the marriage.

she had received a wire transfer of money from appellant. Respondent said his mother never gave him any of that money and, since the wedding ceremony, had not made a gift to him in excess of \$500. Respondent denied ever telling appellant he would not attend the wedding ceremony or get her a visa unless she paid the money.

On the issue of student loans, respondent testified he incurred two student loans before the marriage and had been continuously making monthly payments of approximately \$3,000 on those loans since February 2007. In posttrial briefing, respondent submitted evidence establishing that during the parties' marriage he made student loan payments totaling \$37,918.11, and those payments were made from his Bank of America checking account.

Statement of Decision

On January 11, 2011, the court issued its statement of decision. In denying appellant's request that respondent be ordered to repay her the 170 million Korean won, the court rejected appellant's assertion that, despite the fact that the Pre-nuptial Agreement was void as unenforceable, its terms are "still subject to the fiduciary duty that exists between spouses" pursuant to section 721. The court found that respondent never had any possessory interest in the disputed money and, based on the evidence presented, determined the funds could be categorized as appellant's father's property, appellant's separate property for the "few moments" she took possession to effect the transfer, or respondent's mother's separate property. It concluded that, on the evidence before it, those funds could not be categorized as a community asset giving rise to an obligation on the part of respondent. The court stated, "However this separate . . . property asset is identified, the one fact that remains is that this court simply does not have the jurisdiction to adjudicate what should happen to these funds." Citing *In re Marriage of Braud* (1996) 45 Cal.App.4th 797, 810, the court stated that disputes over the parties' separate property should be brought by way of a separate civil action.

The court also denied appellant's request that respondent reimburse the community for the \$37,918.11 of community funds used for payment of school loans he

incurred prior to the marriage, and ordered respondent to provide appellant with an equalizing payment of \$69,391.48.⁵

DISCUSSION

I. *Breach of Fiduciary Duty Pursuant to Section 721*

Appellant contends respondent took unfair advantage of her and violated his fiduciary duty to her under section 721 by forcing her to pay the 170 million Korean won and, thereafter, denying that he was a party to the money transfer transaction and refusing to repay her that money. She asserts the court ignored the application of section 721 in denying her request that respondent be ordered to repay her the 170 million won.

Although spouses may enter into transactions with each other, or with any other person respecting property (§ 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” (§ 721, subd. (b)) unmarried business partners, including “[r]endering upon request, true and full information of all things affecting any transaction which concerns the community property” (§ 721, subd. (b)(2)). (*In re Marriage of Starr* (2010) 189 Cal.App.4th 277, 281 (*Starr*).)

Because of this fiduciary relationship, “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. [Citation.] A spouse who gained an advantage from a transaction with the other spouse can overcome that presumption by a preponderance of the evidence. [Citation.]” (*In re Marriage of Starr, supra*, 189 Cal.App.4th at p. 281.) The advantage which raises the presumption of undue

⁵ In its statement of decision the court granted appellant’s request that respondent reimburse her for the \$40,000 in community funds he transferred to his mother. That ruling is not at issue on appeal.

influence in this context is an unfair advantage. (*In re Marriage of Burkle* (2006) 139 Cal.App.4th 712, 730.)

A court's decision whether an interpersonal transaction gives one spouse an unfair advantage giving rise to a presumption of undue influence will not be reversed on appeal if supported by substantial evidence. (*In re Marriage of Lund* (2009) 174 Cal.App.4th 40, 55.) Substantial evidence is evidence that a rational trier of fact could find to be reasonable, credible and of solid value. We view the evidence in the light most favorable to the judgment and accept as true all evidence tending to support the judgment, including all facts that reasonably can be deduced from the evidence. (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429; *Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.) We also defer to the trial court's assessment of credibility in its resolution of fact issues. (*Maslow v. Maslow* (1953) 117 Cal.App.2d 237, 243, overruled on other grounds in *Liodas v. Sahadi* (1977) 19 Cal.3d 278, 287; accord, *Escobar v. Flores* (2010) 183 Cal.App.4th 737, 748-749.)

The record before us supports the court's findings that respondent never received any of the 170 million Korean won transferred by appellant's father to appellant and, thereafter, by appellant to respondent's mother, and never had a possessory interest in the disputed money. We defer to the court's implied rejection of the conflicting factual statement in the unenforceable Pre-nuptial Agreement that appellant had "paid [respondent]" the 170 million Korean won. Since respondent did not have a possessory interest in the funds, the court could reasonably conclude the money could not be categorized as a community asset giving rise to an obligation on the part of respondent.

Appellant also relies on her testimony that respondent told her to put the 170 million Korean won in his mother's account and that she did so in compliance with his specific instructions. However, the court could reject appellant's testimony in favor of respondent's testimony that he never discussed with appellant or requested a transfer of money in connection with their marriage.

Since substantial evidence supports the court's findings that respondent had no possessory interest in the 170 million Korean won and did not direct appellant to transfer

the funds into his mother's account, there was no interspousal transaction regarding those funds. Consequently, the court could reasonably conclude section 721 is inapplicable.

II. *Reimbursement of Community for Student Loan Payments*

Appellant contends the trial court's refusal to reimburse the marital community for respondent's payments on his student loans from community resources is inconsistent with the evidence adduced at trial and constitutes an abuse of discretion.⁶

Respondent used \$37,918.11 in community funds to pay two school loans he incurred prior to the marriage. He maintained only one bank account, a Bank of America checking account, during the course of the marriage. All of respondent's earnings were deposited into that account and his school loans were paid from that account. Appellant asserted no community property interest in respondent's dental practice, which he established prior to the marriage.

Section 2641 establishes the conditions under which a spouse must reimburse the marital community for education loan payments made from community resources. (*In re Marriage of Weiner* (2003) 105 Cal.App.4th 235, 237 (*Weiner*); Cal. Law Revision Com. com., 29D West's Ann. Fam. Code (2004 ed.) p. 604.) The statute was intended to remedy the injustice that results upon dissolution when the spouse, who has received the education, acquires an increased opportunity for higher earnings and fulfillment, from which the other spouse may derive no benefit. (*Weiner*, at p. 240; Cal. Community Property Law (3d ed.) § 3:12, p. 167.)

Section 2641, subdivision (a) provides: " 'Community contributions to education or training' as used in this section means payments made with community or quasi-community property for education or training or for the repayment of a loan incurred for education or training, whether the payments were made while the parties were resident in this state or resident outside this state."

⁶ In violation of California Rules of Court, rule 8.204(a)(2)(C), the statement of facts contained in appellant's opening brief provides no summary of the significant facts regarding this issue. Despite this shortcoming, we disregard the noncompliance. (Rule 8.204(e)(2)(C).)

Section 2641, subdivision (b)(1) states in part: “The community shall be reimbursed for community contributions to education or training of a party that substantially enhances the earning capacity of the party.”

Section 2641, subdivision (c) states: “The reimbursement . . . required by this section shall be reduced or modified to the extent circumstances render such a disposition unjust, including, but not limited to, any of the following: [¶] (1) The community has substantially benefited from the education, training, or loan incurred for the education or training of the party. There is a rebuttable presumption, affecting the burden of proof, that the community has not substantially benefited from community contributions to the education or training made less than 10 years before the commencement of the proceeding”

“In effect, [section 2641, subdivision (c)(1)] recognizes that if the spouses remained married for several years after completion of the education or training, the community may have received many times over the anticipated benefits of the working spouse’s support of the student spouse, enjoying a high standard of living and accumulating substantial community assets as a result. In such event, the underlying premise for ordering reimbursement (redressing economic inequity) may be dispelled.” (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2012) ¶ 8:829, pp. 8-203 to 8-204 (rev. #1, 2003).) Section 2641, subdivision (c)(1) creates a rebuttable presumption that the community has not substantially benefited from community contributions to education or training where those contributions are made less than 10 years before commencement of the proceeding. (Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, ¶ 8:830, p. 8-204 (rev. #1, 2003).) The burden is on the contesting party (here, respondent) to put forth evidence showing the expenditures and the benefit obtained by the community. (*Id.* at ¶ 8:831, p. 8-204 (rev. #1, 2003).)

Appellant argues that, although the marital community “may have benefited” from respondent’s education, there is no evidence of a substantial benefit to the community because no evidence was presented that his dental practice was “thriving” during the

short term of the marriage. Appellant argues *Weiner, supra*, 105 Cal.App.4th 235, relied on by respondent and the court, is distinguishable.

In *Weiner*, the husband graduated from medical school in 1991, and he and the wife married in 1993 and separated in 1999. During the marriage the parties paid approximately \$12,200 in school loans the husband incurred while in medical school. The husband presented evidence that his medical education provided him with monthly allotments and annual bonuses which would not have been paid to him if he had not been a doctor. (*Weiner, supra*, 105 Cal.App.4th 237-238, 241.) The trial court did not consider whether the community had benefited from the husband's medical education because, in its view, section 2641 did not govern premarital educational loans. (*Weiner*, at p. 238 .) The Court of Appeal held that application of section 2641 "is governed solely by whether community funds were used to pay for the education, even if the education took place before marriage." (*Weiner*, at p. 239.) In light of the evidence presented by the husband, the matter was remanded for a determination of whether the husband had overcome the presumption under section 2641, subdivision (c)(1), that the community had not substantially benefited from his medical school education and whether it was unjust to require him to reimburse the community for all of his medical school loan payments. (*Id.* at p. 241.)

In a footnote, *Weiner* stated, "While a community which has paid the separate debts of one spouse is entitled to compensation, the amount it receives is subject to equitable adjustment. [Citation.] Thus even outside the scheme set forth in section 2641, as a matter of equity the debtor on an educational loan might be entitled to a determination as to how much the community benefited from a professional education." (*Weiner, supra*, 105 Cal.App.4th at p. 241, fn. 5.)

Here, in denying appellant's request that respondent reimburse the community for the \$37,918.11 of community funds used for payment of his school loans, the court's statement of decision quoted the aforementioned footnote from *Weiner* and stated, "The record before this court indicates that the community not only benefited substantially from [respondent's] education that enabled him to open what by all accounts is a thriving

dental practice, but that the community benefited exclusively from [respondent's] education. As such, requiring [respondent] to reimburse the community under such circumstances would run afoul of this court's additional role as a court of equity."

We conclude substantial evidence supports the court's denial of reimbursement to the community for respondent's school loans. An October 2009 DissoMaster Report attached to the court's December 18, 2009 dissolution findings and order establishes that respondent's monthly wages plus salary and self-employment income totaled \$12,200, while appellant had no reported wages, salary, or self-employment income. All of respondent's earnings from his dental practice were deposited in his Bank of America checking account. At the time the parties separated, this checking account was the community's most significant asset; the other community asset was a 401K account valued at approximately \$25,200. The \$69,391.48 equalizing payment ordered payable by respondent to appellant is attributable to respondent's earned income. Taken together, these factors support the reasonable inference that the community substantially benefited from respondent's education and dental training, which resulted in the income he derived from his dental practice.

III. *Equalizing Payment*

Finally, appellant contends the \$69,391.48 equalizing payment⁷ ordered payable by respondent to her is unsupported by substantial evidence. She notes that the court's calculations explaining how this amount was derived are not included in the appellate record, and argues that the equalizing payment to her should be \$137,442.⁸ Although appellant filed objections to other aspects of the court's statement of decision, she did not object to its calculation of the amount of the equalizing payment.

⁷ Pursuant to section 2550, when the court divides the marital property in the absence of an agreement by the parties, it must divide the property equally. (*Mejia v. Reed* (2003) 31 Cal.4th 657, 668.)

⁸ In her posttrial brief, appellant asserted she was due an equalizing payment from respondent in the amount of \$95,115.50.

“ ‘Where findings of fact are challenged on a civil appeal, we are bound by the “elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,” to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court.’ [Citation.]

“The substantial evidence standard applies to both express and implied findings of fact made by the superior court in its statement of decision rendered after a nonjury trial. [Citation.] The doctrine of implied findings is based on our Supreme Court’s statutory construction of [Code of Civil Procedure] section 634 and provides that a ‘party must state any objection to the statement in order to avoid an implied finding on appeal in favor of the prevailing party. . . . [I]f a party does not bring such deficiencies to the trial court’s attention, that party waives the right to claim on appeal that the statement was deficient . . . and hence the appellate court will imply findings to support the judgment.’ [Citation.] Stated otherwise, the doctrine (1) directs the appellate court to presume that the trial court made all factual findings necessary to support the judgment so long as substantial evidence supports those findings and (2) applies unless the omissions and ambiguities in the statement of decision are brought to the attention of the superior court in a timely manner. [Citations.]” (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462.)

Applying this standard of review, we conclude the trial court’s decision ordering respondent to pay appellant an equalizing payment in the amount of \$69,391.48 is supported by substantial evidence.

Respondent submitted a closing trial brief which included a chart outlining the basis for his request of an equalizing payment to appellant in the amount of \$49,391.48. The \$49,391.48 was based, in part, on valuations stipulated to by the parties and other valuations established at trial. The \$69,391.48 equalizing payment ordered by the court is exactly \$20,000 more than that requested by respondent. The \$20,000 discrepancy

between respondent's asserted equalizing payment amount and that ordered by the court is explained by the court's statement of decision. Therein, the court stated the evidence established that respondent made four \$10,000 transfers of community funds to his mother during the marriage; appellant sought reimbursement to the community for these transfers. The court concluded that these transfers were unauthorized distributions made by respondent in an effort to hide community funds, and granted appellant's request that respondent reimburse the community for these four transactions totaling \$40,000. The \$40,000 in transfers from respondent to his mother was not included in respondent's chart. In calculating the amount of the equalizing payment due appellant, the court impliedly added one-half of the \$40,000 of community funds, or \$20,000, to the equalizing payment amount requested by respondent. Consequently, substantial evidence supports the equalizing payment amount ordered by the court.

DISPOSITION

The judgment is affirmed. Costs on appeal to respondent.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUINIERS, J.