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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

FAYE BEYELER,
Plaintiff and Appellant,
v.
SARAH BEYELER et al.,
Defendants and Respondents.

A133609
(San Francisco County
Super. Ct. No. CGC-10-500594)

This is an appeal from judgment in a lawsuit brought by appellant Faye Beyeler against her three adult children, respondents Sarah, Jonathan and Rochelle Beyeler (collectively, children or respondents).¹ In this lawsuit, Faye alleged her children were unjustly enriched by their receipt of a total of \$750,000 in proceeds from life insurance policies paid out upon the death of their father and Faye's former husband, Hans Beyeler. For reasons discussed below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Hans and Faye Beyeler were married for over 28 years, during which time they raised each of the respondents. On June 23, 2005, after two of the three respondents had reached the age of maturity, Hans filed a petition for dissolution of marriage.

Several noteworthy events followed the filing of this petition for dissolution. First, Hans's employer, Smiths Aerospace, was acquired by General Electric (GE), which

¹ Given the parties' shared surname, we refer to individual family members by their first name to avoid confusion, intending thereby no disrespect.

gave him the new position of Director of Quality Control. The effective date of the acquisition was May 7, 2007.² Under the terms of the acquisition, Hans became eligible for certain GE benefits and, effective 31 days after the May 7, 2007 acquisition date, all of his Smiths benefits terminated. Hans's new GE benefits included life insurance coverage under four Metropolitan Life (MetLife) policies described as follows: (1) Basic Life insurance at 2.5 times his pay (effective November 22, 2007); (2) Accidental Death or Dismemberment (AD/D) insurance at one time his pay (effective May 5, 2007); (3) A Plus Term Life insurance at two times his pay (effective April 01, 2008); and (4) Personal Accident insurance at three times his pay (effective November 22, 2007). With respect to the Basic Life, Personal Accident and A Plus Term Life policies, Hans named respondents as equal beneficiaries. With respect to AD/D policy, Hans did not designate a beneficiary.

Just over a year after Hans began work at GE, on July 7, 2008, he was killed in a car accident. At the time of Hans's death, the divorce had not been finalized. However, the family residence had been sold and all community assets, including the proceeds from the sale of the residence, had been divided. Over Faye's objection, the children received payouts from three of the MetLife policies – to wit, the Basic Life, Personal Accident and A Plus Term Life policies – in the following amounts: (1) Jonathan, \$247,211.09; (2) Sarah, \$254,257.27; and (3) Rochelle, \$246,779.12. Faye, in turn, received over \$100,000 in proceeds on the AD/D policy after the children voluntarily disclaimed interest in it, and received the right to a lifetime monthly payment as a surviving spouse benefit from Hans's Smiths pension plan. She also received, among other things, Hans's final paycheck in an amount that included compensation for his accrued sick and vacation days.

² There is other evidence that the acquisition occurred on May 5, 2007, the date apparently used administratively by GE as Hans's first day of employment for purposes of payroll and benefit calculations. However, to the extent there is any discrepancy, it does not affect the legal analysis or outcome of this case and, thus, is discussed no further.

On October 21, 2010, Faye filed the operative complaint in this lawsuit seeking to recover this money from her children based upon the equitable theory of unjust enrichment and seeking a constructive trust.³ Faye theorized that, before filing for divorce, Hans purchased one or more life insurance policies with community assets that named her as beneficiary and that, after filing for divorce, he improperly removed her as beneficiary and replaced her with respondents. According to the complaint, Faye's removal as beneficiary of these life insurance policies violated the terms of the standard automatic temporary restraining orders entered in the dissolution proceedings (ATROS), as well as the duties Hans owed her in those proceedings to act in good faith and consistent with fair dealing, and to disclose material financial information necessary to enable her to protect her rights to spousal support and community assets.

Trial was held from June 27 to June 29, 2011. Oral and documentary evidence was presented. At the trial's conclusion, the trial court issued a judgment and statement of decision in favor of respondents. In doing so, the trial court specifically found the evidence insufficient to prove the existence of any life insurance plan through Smiths purchased with community assets.⁴ This timely appeal followed.

DISCUSSION

Faye asks this court to reverse the judgment in favor of respondents and enter a new judgment in her favor on the following grounds. First, Faye contends she was deprived of her right to a fair trial by the trial court's erroneous exclusion on hearsay grounds of the deposition testimony of Daniel Pinto, her former divorce lawyer who has since died, regarding the existence of a life insurance policy issued to Hans during the course of his employment at Smiths. Second, Faye contends the record fails to support

³ Faye also asserted causes of action for concealment and intentional interference with economic relationship. However, these causes of action were dismissed before trial.

⁴ In so concluding, the trial court noted the lack of any documentary evidence of a community property life insurance policy and found Faye's testimony that there was such a policy "lacking in credibility." Further, the trial court found that, even if such policy had existed, it ceased to exist as of 31 days from May 7, 2007, the date that Hans's Smiths benefits terminated.

the trial court's finding that Hans's compensation package from Smiths did not include a life insurance policy of which she was named beneficiary. Third, Faye contends the trial court erred as a matter of law by failing to decide key controverted legal issues relating to Hans's alleged breach of fiduciary duties to Faye, including his duty to disclose information relating to his new GE employment and benefits that was reasonably required for the exercise of her rights in the dissolution proceedings. We address each of these issues in turn after setting forth the relevant standards of review.

On appeal, we review issues of fact for substantial evidence. (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 384.) We review rulings to admit or exclude testimony for abuse of discretion. (*Dart Industries, Inc. v. Commercial Union Ins. Co.* (2002) 28 Cal.4th 1059, 1078.) And, of course, we independently review claims of legal error. (*Pannu v. Land Rover North America, Inc.* (2011) 191 Cal.App.4th 1298, 1317.)

I. Did the trial court err by excluding deposition testimony from Daniel Pinto relating to Hans's alleged community-property life insurance policy?

Faye challenges the judgment on the ground that the trial court deprived her of a fair trial by erroneously excluding key evidence relating to the existence of a life insurance benefit that she claimed Hans received during the course of his employment at Smiths. Specifically, during trial, Faye's attorney sought to admit evidence in the form of deposition testimony from Daniel Pinto, Faye's divorce attorney and recently-deceased boyfriend, regarding statements allegedly made by Hans's divorce attorney, Steven Finston, indicating Hans removed her as beneficiary from one or more of his life insurance policies.⁵ Respondents objected on hearsay grounds, and the trial court sustained their objection. The following well-established hearsay rules guide our review.

⁵ The excluded deposition testimony from Pinto was as follows:

“Q. Did opposing counsel mention anything about insurance?”

“A. Yes.

“Q. What did he say?”

“A. That [Faye] had been taken off of insurance.

“Q. Did you make any reply to that?”

“A. Yes.

Where an objection is raised, unless the parties stipulate otherwise, hearsay evidence is generally inadmissible at trial subject to specific statutory exceptions. (Evid. Code, § 1200; *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1354.) However, even where hearsay evidence is erroneously admitted or excluded, such error requires reversal of the final judgment only if the challenging party establishes that a miscarriage of justice has resulted. (Cal. Const., art. VI, § 13; Evid. Code, § 353.)

Here, Faye contends Pinto's statements regarding what Hans's attorney, Finston, said to a court commissioner during an off-the-record conference in chambers should have been admitted pursuant to Evidence Code section 1224 as an authorized vicarious admission made by Finston on behalf of Hans. Under Evidence Code section 1224, "[w]hen the liability, obligation, or duty of a party to a civil action is based in whole or in part upon the liability, obligation, or duty of the declarant, or when the claim or right asserted by a party to a civil action is barred or diminished by a breach of duty by the declarant, evidence of a statement made by the declarant is admissible against the party as it would be if offered against the declarant in an action involving that liability, obligation, duty, or breach of duty." (Evid. Code, § 1224; see also *Markley v. Beagle* (1967) 66 Cal.2d 951, 960 [quoting Wigmore for the proposition that " 'the admissions of

"Q. What did you say?

"A. I said I didn't understand how that could happen because of the automatic restraining orders, and that by my review of the file, I hadn't seen any motion or application to remove her from any insurance policy.

"Q. Did the commissioner make any comment?

"A. I – I think so. I think the commissioner asked whether or not it was all – all policies – all insurance policies of Mr. Finston.

"Q. And what did Mr. Finston say?

"A. Mr. Finston said as far as he knew, yes.

"Q. Okay. Did the commissioner say anything further?

"A. Yeah. The commissioner said, 'Well, you need to restore her to all the insurance policies.'

"Q. Did Mr. Finston reply to that?

"A. Yes.

"Q. What did he say?

"A. He agreed to convey that to [Hans] and that as far as he knew that – that [Faye] would be restored to all insurance policies."

a person having virtually the same interests . . . and the motive and means for obtaining knowledge will in general be likely to be equally worthy of consideration’ as the admissions of the party himself”).) Relying on this Code provision, Faye argues: “Hans and the Respondents are bound by an admission that Hans removed Faye as the beneficiary of his insurance. This admission carries an insurmountable inference that Faye had to be on the insurance before she could be removed.”

The trial court rejected Faye’s reliance on Evidence Code section 1224, finding that Pinto’s testimony was inadmissible hearsay evidence lacking indicia of trustworthiness. In doing so, the trial court expressly declined to “accept Mr. Pinto’s memory of . . . [Mr. Finston’s] representation of what he believed to be his client’s position,” given that his representation was made in chambers out of the presence of the court reporter and was never memorialized for the record or made into a formal order. The trial court reasoned that, “when [an attorney] make[s] statements in chambers, they aren’t necessarily quotes from your client, . . . they are the best representations of what you believe in that moment that your client will want . . .” Further, the trial court noted, nothing precluded Faye from calling Finston, the actual declarant, to the witness stand to question him about his alleged statements regarding Hans’s insurance.

We conclude the trial court’s ruling was within the proper scope of its discretion. In so concluding, we agree with the court that Faye’s reliance on Evidence Code section 1224 is misplaced. As set forth above, this provision provides in relevant part that “evidence of a statement made by *the declarant* is as admissible *against the party*” when “[that party’s] liability, obligation, or duty . . . is based in whole or in part upon the liability, obligation, or duty of the declarant” (Evid. Code, § 1224, italics added.) Here, Faye seeks to admit against *respondents* statements made in deposition by her former attorney, *Pinto*, who has since passed away, regarding statements he allegedly heard Finston make in an unreported chambers conference. Clearly, respondents have no liability, obligation or duty that “is based in whole or in part upon the liability, obligation, or duty to [Pinto].” Nor does Hans have any such liability, obligation or duty with

respect to Pinto (even assuming for the sake of argument it could then be imputed to respondents for purposes of the statute).

Second, we note that, “[u]nder Evidence Code section 1201, where a statement involves multiple levels of hearsay, each level must satisfy a hearsay exception in order for the entire statement to be admissible.” (*Cruey v. Gannett Co.* (1998) 64 Cal.App.4th 356, 366.) Moreover, in satisfying the hearsay exception, the burden is placed squarely on the statement’s proponent (to wit, Faye). Here, Faye has failed to identify any statutory hearsay exception that would support the admission of *Pinto*’s statements during the deposition, as opposed to Finston’s. As such, given her failure of proof, there is no basis to disturb the trial court’s ruling. (See *Byars v. SCME Mortgage Bankers, Inc.* (2003) 109 Cal.App.4th 1134, 1150 [affirming exclusion of an unavailable witness’s deposition testimony on hearsay grounds and noting that “[f]ormer testimony from a deposition rather than a trial is problematic since depositions generally function as a discovery device where examination of one’s own client is typically avoided so as not to reveal a weakness in the case or to prematurely disclose a defense”], citing *Gatton v. A.P. Green Services, Inc.* (1998) 64 Cal.App.4th 688, 694-695.)

Finally, even assuming for the sake of argument the trial court erred by excluding Pinto’s deposition testimony, we would nonetheless conclude any such error was harmless on this record. As the trial court pointed out, the statements Pinto attributed to Finston were notably untrustworthy. Made in an unreported chambers conference, Finston’s statements “[we]ren’t necessarily quotes from [his] client,” but rather “the best representations of what [he] believe[d] in that moment that [his] client will want” Indeed, as respondents point out, “[t]he statement recounted by Mr. Pinto was that Mr. Finston ‘agreed to convey that to Mr. Beyeler and that as far as he knew that — that Ms. Beyeler would be restored to all insurance policies.’ [Citation.] The only representation reflected in that statement is a promise to convey information to Mr. Beyeler. Nothing in that statement can reasonably be interpreted as an acknowledgement or admission that community property life insurance existed, or that Faye was a beneficiary of any separate property life insurance policy.” Moreover,

agreeing to convey the commissioner's command to add Faye back to the policies on its face fails to establish that Finston was authorized to make statements by Hans. And, to the extent the statements could be interpreted other than as a mere promise to convey information, there was a more reliable way to produce such evidence: Faye could have called Finston, the actual declarant, to testify as to their truth.

On this record, we thus conclude Faye has not demonstrated, and cannot demonstrate, "a different result would have been probable" if the purported error in excluding Pinto's statements had not occurred. (*Pannu v. Land Rover North America, Inc.*, *supra*, 191 Cal.App.4th at 1317; see also Evid. Code § 354.)

II. Does substantial evidence support the trial court's findings regarding Hans's life insurance benefits?

Faye's next challenge is to the trial court's findings relating to the nonexistence of any life insurance policy from Smiths under which Faye was or had been named beneficiary that was concealed by Hans. We address the trial court's specific findings in turn below, keeping in mind that our review of factual findings, including findings relating to whether "a particular item is separate or community property," is limited to a determination of whether substantial evidence supports it. (*In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, 849.) We also keep in mind the rule that "an employment-related term life insurance policy is not a community property asset after expiration of the term acquired with community funds/efforts." (*In re Marriage of Spengler* (1992) 5 Cal.App.4th 288, 297; see also *Estate of Logan* (1987) 191 Cal.App.3d 319, 325-326 ["[former wife] has no community interest in [husband's] term life insurance policy since he was insurable when he commenced paying the premiums with his postseparation property earnings"].)

Here, the trial court's primary factual finding was that Hans's compensation plan from Smiths did not include a term life insurance policy. To dispute this finding, Faye relies on her own testimony at trial that, in 1998 or 1999, when Hans's employment with Smiths began, she helped him prepare employment benefit forms. On one of these forms, Faye recalled Hans writing in her name as the primary beneficiary for life insurance.

Faye acknowledged, however, that she did not know the location of this form, and did not find a copy of it or of any other Smiths life insurance form when she reviewed his papers after his death. The trial court rejected as not credible Faye's testimony regarding the existence of this benefit form identifying her as beneficiary, a reasonable determination we decline to second-guess. (*Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 398.)

Moreover, adding support for the trial court's finding, there was no documentary evidence of any Smiths life insurance policy produced at trial by anyone. On the other hand, a response by the Smiths custodian of records to a discovery request for "Beneficiary Designation Form for Life Insurance of Hans Beyeler that was in effect in 2005" stated, "Certification of No Records," with the explanation that "Most likely individual did not complete form." In addition, Faye's Schedule of Assets and Debts that accompanied her answer to Hans's petition for dissolution identified, "None," under the section of the form labeled "Life Insurance With Cash Surrender or Loan Value." To contradict this evidence, Faye points to Hans's pay stub for June 2007 indicating \$18.96 was withheld for life insurance by "General Electric as Disbursing Agent for: Smiths Aerospace LLC," and to a beneficiary designation form prepared by Hans on April 7, 2007, his GE hiring date, both of which she claims proves he had a *continuing* life insurance benefit from Smiths. However, the trial court rejected Faye's interpretation of this evidence, as it was entitled to do. And where, as here, two or more inferences can be reasonably deduced from the evidence, we will not substitute our deductions for those of the trial court.⁶ (*Peak-Las Positas Partners v. Bollag* (2009) 172 Cal.App.4th 101, 105.)

⁶ Faye also disputes the significance of the response by the Smiths custodian of records indicating the absence of any beneficiary designation form for Hans. Specifically, Faye claims "the absence of records does not support the conclusion that life insurance never existed," reasoning that "Smiths was asked to produce 'Beneficiary Designation Form for life insurance of [Hans] that was in effect in 2005.' [Citation.] There was no request for the insurance policy. The responder stated that the company did not have the records. The responder is also asked to state the reasons there are no records. [Citation.] The responder did not state there were no records because Hans did not have life insurance coverage at Smiths. The responder stated 'Most likely individual did not complete form.' [¶] . . . If anything, one can draw an inference that there was life

The trial court alternatively found that, even if Smiths’s compensation plan had at one time included term life insurance, any such plan would have ceased to exist as of 31 days from May 7, 2007, the date that all of Hans’s benefits from Smiths terminated under the terms of the GE acquisition. Documentary evidence in the form of a letter from GE’s Employee Services Department, produced in response to Faye’s subpoena, supports this finding. Specifically, the letter states: “There were no residual Smiths Aerospace or Duarte Aerospace benefits that continued beyond 31 days from the [GE] acquisition date of May 7, 2007.” Faye offers no evidence contradicting the information in this GE letter, which, by itself, provides a sufficient basis upon which to affirm the trial court’s finding. (*In re Marriage of Valle* (1975) 53 Cal.App.3d 837, 844.)

Lastly, in a related finding, the trial court determined no community property funds were used to purchase the life insurance policies that Hans acquired from GE post-separation. Again, substantial evidence supports the trial court. Undisputedly, Hans and Faye separated in 2005, while the life insurance policies paid out to respondents were issued to Hans as part of his employment benefit package with GE. Hans received this package, and the benefits became effective, *on or after* GE acquired Smiths on May 7, 2007.

Thus, because we conclude there is substantial evidence in the record to support the trial court’s factual findings with respect to Hans’s life insurance benefits, Faye’s evidentiary challenges fail.

III. Did the trial court err by failing to decide key issues relating to Hans’s alleged breach of fiduciary duty?

Finally, Faye contends the trial court committed reversible error by failing to decide key legal issues relating to Hans’s alleged breach of fiduciary duty, including his duty to disclose to her information relating to his new GE employment and benefits, such

insurance in effect for Hans and the company does not have a copy of the beneficiary designation.” However, Faye, not respondents, had the burden to prove the existence of the policy. (*In re Marriage of Valle, supra*, 53 Cal.App.3d at p. 844.) If Faye believed her subpoena requests were incomplete or unclear, it was her burden to supplement them.

as his life insurance benefit that was ultimately paid out to respondents. According to Faye, regardless of whether the GE salary and benefits were community or separate property, Hans had a duty to disclose this information because it was “directly related to payment of [spousal] support obligations, security for support obligations, payment of attorney fees and security for the payment of attorney fees.” In making this argument, Faye relies upon the various duties of disclosure and fair dealing required of spouses during marriage pending final disposition of marital property that are set forth in Family Code sections 721 and 2102, subdivision (c), and in Corporations Code section 16403 (which, in turn, is made applicable through Family Code section 721). As explained below, we conclude Faye’s reasoning is flawed.

As an initial matter, we note the record does not support Faye’s claim that the trial court neglected to address her breach-of-duty arguments in its statement of decision. Rather, the record reflects that the trial court found Faye’s legal authority, and in particular the above-mentioned Family and Corporations Code provisions, did not support her theory that Hans owed her any fiduciary duty with respect to his GE life insurance benefit.⁷

⁷ As summarized by other appellate courts under different circumstances: “Taken together, these Family Code provisions [in sections 721 and 1101] 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. 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)).” (*In re Marriage of Prentis-Margulis & Margulis* (2011) 198 Cal.App.4th 1252, 1270-1271.) In addition, “[c]onsistent with these fiduciary obligations, [Fam. Code] section 2100, subdivision (c) provides that ‘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 of marriage or legal separation of

In any event, however, because we affirm the trial court’s factual findings regarding the nonexistence of life insurance from Hans’s pre-separation employment with Smiths, we need not address in detail the trial court’s rejection of Faye’s authority regarding the legal issue of whether Hans breached his fiduciary duty to disclose his GE benefits to her. As the trial court found, Hans’s post-separation GE life insurance benefit was his separate property. (E.g., *Estate of Logan, supra*, 191 Cal.App.3d at p. 325 [“term life insurance covering a spouse who remains insurable is community property only for the period beyond the date of separation for which community funds were used to pay the premium”].) As such, Hans was entitled to name whomever he wished, including his children, as the beneficiaries of his separate property life insurance. And, because Faye has failed to prove she had any legal or equitable entitlement to the proceeds of the life insurance policies paid out to respondents upon Hans’s death in accordance with his contractual will, Faye’s unjust enrichment claim and request for a constructive trust over those proceeds fail regardless of any concealment by Hans of the existence of those policies during the dissolution process. Simply put, Faye’s contention that Hans breached his fiduciary duty by failing to disclose the separate property life insurance policies is moot because she has no legal right to that property.⁸ (See *Hughes v. Wheeler* (8th Cir. 2004) 364 F.3d 920, 924 [“the California statutes [Family Code §§ 1100(e), 721 and 1101(a)] provide for an action for damages for a breach of fiduciary duty, not for a right to some specific property in case of a breach”].)

the parties, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties.” (*In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1476.)

⁸ Faye, it appears, would have this court presume a family law court would have ordered her to be named beneficiary of the GE life insurance policies, had they been disclosed, for reasons relating to spousal support and/or community property division. However, this presumption requires multiple leaps of faith which we decline to take, particularly where she has identified nothing in the record indicating that Hans’s failure to name her as beneficiary has deprived her of some level or amount of support to which she was entitled.

As Faye herself points out, unjust enrichment is a broad equitable principle designed to ensure people do not profit from their own wrongdoing. There is no evidence in this case, however, that respondents engaged in any wrongdoing. Rather, they are simply the beneficiaries of a valid contract entered into by their now-deceased father following his legal separation from their mother. As such, judgment in respondents' favor was appropriate.

DISPOSITION

The judgment is affirmed. Appellant shall bear costs on appeal.

Jenkins, J.

We concur:

McGuinness, P. J.

Pollak, J.