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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of GENE and ASAKO
GIEGOLDT.

2d Civil No. B232530
(Super. Ct. No. SD033736)
(Ventura County)

GENE GIEGOLDT,

Respondent,

v.

ASAKO GIEGOLDT,

Appellant.

Asako Giegoldt appeals an order denying her motion to set aside and vacate a stipulated judgment of dissolution. Appellant's primary contention is that the stipulated judgment was invalid because respondent failed to disclose the value of his ownership interest in a business, rental income, and earnings from supplemental employment. Noting that appellant suggested the terms of the settlement agreement and was intimately involved in the operation of the business for more than 20 years, the trial court denied the motion relying on the bar of the statute of limitations in Family Code section 2122.¹ In so ruling, the trial court did not abuse its discretion. Accordingly, we affirm.

¹ All statutory references are to the Family Code unless otherwise stated.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

After 23 years of marriage, appellant Asako Giegoldt and respondent Gene Giegoldt were divorced in 2006. Two weeks after the petition for dissolution was filed, on March 15, 2006, Asako's² attorney initiated settlement negotiations by writing to Gene's attorney that he had prepared "a very detailed offer of settlement." The offer was sent to Gene's attorney the following day. The settlement negotiations were initiated before either party had served declarations of disclosure or conducted discovery. A stipulated judgment of dissolution was entered by the court on August 17, 2006, after several months of negotiation between the parties and their attorneys.

The stipulated judgment awarded Gene "[t]he Business known as Canoga Park Bowl, LLC and all properties related thereto (hereinafter, the 'Business;')" as well as bank accounts in his name, a boat, and 50 percent of the household furnishings and personal property. Asako was awarded an equalization payment of \$660,000, bank accounts and IRA's in her name, a car, and 50 percent of the household furnishings and personal property. The parties also agreed as follows:

"5.1 All property divided pursuant to this Stipulated Judgment shall become the separate property and/or obligation of the Party so designated to receive such property immediately upon execution of this Stipulated Judgment. The Parties to whom [*sic*] is transferred shall receive from the other Party any and all documents and instruments necessary to effectuate the transfer of title.

"5.2 Petitioner shall prepare and Respondent shall execute all documents reasonably necessary so that Respondent is no longer personally liable in any way with respect to the Business."

"9.1 The Parties stipulate and the Court therefore finds that this Stipulated Judgment effects an equal division for the community and quasi-community property of the Parties."

² We refer to the parties by their first names for clarity, not out of disrespect.

In addition, Gene agreed to pay \$500 per month in child support, and both parties waived the "right to receive spousal support from the other at any time, now or in the future." Gene agreed to Asako's request that she continue her employment as bookkeeper for the business for at least a year after the divorce.

On February 7, 2011, Asako filed a motion to set aside and vacate the stipulated judgment on the ground that Gene had failed to disclose the true value of the business and his monthly income. In her declaration, Asako stated that she signed the stipulated judgment only because Gene had threatened her with violence, she was unaware of Gene's true income until the IRS conducted an audit of the business in 2011, and she only recently discovered that the business could be worth several million dollars. Gene filed a response denying the allegations of threatened violence and stating he had not failed to disclose the value of the community's assets. He also pointed out that Asako had been the bookkeeper for the business for more than 20 years before they purchased the business in 2004, she had knowledge of the purchase price of the business and Gene's income, and Asako was adamant that she wanted no part of the business.

The trial court denied the motion stating: "The Court finds that the principle of finality of judgment controls here. And that respondent has not met her burden to extend beyond the 2100 section statutes of the two-year maximum. The Court notes that there is no dispute that respondent had counsel during this time. The Court finds that because she worked as a bookkeeper in the business in question for a number of years, possibly over two decades, there was perhaps less of a need to disclose.

"The Court notes that settlements are made for various reasons. And in this case, although the result may appear manifestly unfair, as far as I can tell, this is the consequence of the parties making decisions along the way that I don't believe I have the authority to overturn or second guess."

On appeal, Asako asserts that the stipulated judgment is unenforceable as a matter of public policy when there has been noncompliance with requirements for final declarations of disclosure. She asserts the trial court erred by "not applying [the] judicial presumption requiring [an] advantaged non-disclosing fiduciary to prove that Asako's

MSA was made with full knowledge of the facts." She also asserts the trial court has "equitable jurisdiction" to set aside a judgment obtained by fraud, mistake or accident.³ With respect to the statute of limitations issue, she contends she has met her burden of showing delayed discovery.

DISCUSSION

Standard of Review

We review the trial court's denial of Asako's motion to set aside and vacate the stipulated judgment of dissolution for abuse of discretion. (*In re Marriage of Brewer & Federici* (2001) 93 Cal.App.4th 1334, 1346 (*Brewer*).) When a trial court has discretionary power to decide an issue, an appellate court is not authorized to substitute its judgment for that of the trial judge. The trial court's exercise of discretion will not be disturbed on appeal in the absence of a clear showing of abuse, resulting in injury sufficiently grave as to amount to a manifest miscarriage of justice. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 272.) The burden is on the complaining party to establish abuse of discretion. (*Blank*, at p. 331.) The showing on appeal is insufficient if it presents a state of facts which simply affords an opportunity for a difference of opinion. (*In re Marriage of Rothrock* (2008) 159 Cal.App.4th 223, 230.)

Disclosure Requirements and Statute of Limitations

Asako bases her motion to set aside and vacate the stipulated judgment of dissolution on section 2105. That statute requires the parties to serve each other with final declarations of disclosure and current income and expense declarations prior to or at the time of entering into a marital dissolution agreement. (§ 2105, subd. (a).)

³ Because Asako did not assert mistake or accident in the trial court, we do not discuss it.

Motions brought under section 2105 are subject to the statute of limitations in section 2122. (§ 2105, subd. (a).) Section 2122, subdivision (f), provides that "[a]n action or motion based on failure to comply with the disclosure requirements shall be brought within one year after the date on which the complaining party either discovered, or should have discovered, the failure to comply." Under the delayed discovery rule, the statute of limitations begins to run when a party discovers or should have discovered "the *facts* constituting the fraud or perjury," not when a party suspects or should have suspected that fraud or perjury occurred. (*Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136.)

Asako asserts her motion is not time barred because she did not become aware of the true value of the business or Gene's true income until the IRS audit in 2011. The record contains substantial evidence to the contrary. Asako was employed as sole bookkeeper for the business for more than 20 years and, in this capacity, she had access to and knowledge of the financial aspects of the business. The record contains a settlement statement related to the purchase of the business in December 2004 showing that Asako was one of the buyers and that the purchase price of the business was \$5.4 million.

The record also shows that Asako initiated settlement negotiations without any discussion or request for financial disclosures and was involved in finalizing the terms of the settlement agreement. During settlement negotiations, Asako, through her attorney, expressed the "sincere hope the expense of litigation can be avoided at this early stage" and that "failure to settle this matter will result in . . . a request for fees and costs commensurate with the needs of this case relating to the valuation of the businesses, the properties as well as the investigation into the business affairs of your client." This indicates that she knowingly waived an appraisal of the business in favor of a speedy settlement. In addition, the undisputed evidence shows that Asako insisted that Gene take the business as his separate property because she did not want to be responsible for the debts and liabilities of the business.

Asako's assertions that she did not fully appreciate the import of the stipulation because she does not write or read English very well is belied by undisputed evidence in the record that she was sophisticated in financial matters and fully participated in the negotiation of the stipulated judgment. The fact that she signed the stipulated judgment only after three months of negotiation is very strong evidence contradicting any inference of possible undue influence, fraud, or duress or mistake about the terms of the stipulation. (*In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 685.)

The record supports the trial court's determination that Asako freely and voluntarily entered into the stipulated judgment with a knowledge of all the facts. The delayed discovery rule does not apply here.

Equitable Considerations

Asako asserts the motion should have been granted because the stipulated judgment is unfair and inequitable. Section 2123 provides: "Notwithstanding any other provision of this chapter, or any other law, a judgment may not be set aside simply because the court finds that it was inequitable when made, nor simply because subsequent circumstances caused the division of assets or liabilities to become inequitable, or the support to become inadequate."

Assuming, without deciding, that the stipulated judgment is inequitable, we are confronted with the rule that "parties are free to decide on an unequal distribution" of debts and assets. (See, e.g., *Brewer, supra*, 93 Cal.App.4th at p. 1349.) The mere fact that a stipulated judgment is inequitable typically will not support setting aside a judgment. (*Id.* at p. 1344.) All the factors above discussed, including the important fact that Asako was ably represented by counsel throughout the settlement negotiations,

support the trial court's decision.

The order is affirmed. Respondent shall recover costs on appeal.⁴

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

COFFEE, J. *

⁴ Gene requests sanctions for a frivolous appeal in his respondent's brief. We deny this request without reaching the merits because he has not filed a noticed motion for sanctions. (Cal. Rules of Court, rule 8.276(b)(1); *Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 919.)

* Retired Associate Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Roger L. Lund, Judge
Superior Court County of Ventura

James Studer for Appellant.
Law Office of Robert N. Greenberg and Robert N. Greenberg for
Respondent.