

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re the Marriage of JACQUELINE F.
GOOD and ROBERT LEE GOOD

ROBERT LEE GOOD,

Appellant,

v.

JACQUELINE F. GOOD,

Respondent.

B233286

(Los Angeles County
Super. Ct. No. BD255342)

APPEAL from an order of the Superior Court of Los Angeles County. Marc Marmaro, Judge. Affirmed.

Robert Lee Good, in pro. per., for Appellant.

No appearance for Respondent.

Robert Lee Good (appellant) appeals from the denial of his motion to vacate a 1999 divorce judgment due to fraud, verbal threats, coercion, and forgery. Appellant argues that the trial court should not have denied his motion pursuant to the one-year statute of limitations found in Family Code section 2122, because he had no personal knowledge of alleged forgeries on certain documents relevant to the divorce judgment.¹ We affirm.

BACKGROUND AND PROCEDURAL HISTORY

Appellant and respondent were married in 1979. Respondent petitioned for dissolution of marriage on March 26, 1997. The judgment of divorce was entered on December 6, 1999, and a stipulation to correct the judgment was filed on February 26, 2001.

On April 1, 2011, appellant filed his amended notice of motion and motion to vacate the judgment due to fraud, verbal threats, coercion, and forgery. In it, appellant alleged that while he was without counsel, he received “countless” telephone calls from respondent’s counsel’s office, mandating with verbal force that he had to sign papers or he would go to jail. Appellant later determined that the individual calling was “[p]aralegal or [n]otary Mr. Godwin M. Tomakili.”

Appellant further alleged that new factual information had recently come to light. He claimed that a nonparty to the dissolution of marriage recently contacted Mr. Tomakili. Mr. Tomakili voluntarily informed this third party that his signature as witness to an “Interspousal Transfer Deed” executed in connection with the Good divorce was not his real signature.

According to appellant’s motion, on March 11, 2011, the same nonparty to the dissolution of marriage contacted the notary department of the California Secretary of State, and retrieved the business address of Mr. Chandar Pandey. Appellant and the third

¹ Respondent Jacqueline F. Good (respondent) has not filed a responsive brief in this appeal. Instead, respondent filed a letter indicating that she has declined to file a responsive brief because she has “already litigated these issues multiple times in the courts, always with a result in my favor.” Moreover, respondent explained that she has serious medical problems that prevent her from participating in the appeal.

party went to the business address of Mr. Pandey and presented the same Interspousal Transfer Deed. Mr. Pandey reviewed the document and stated that the signature on page 2 of the document was not his signature.

Appellant claimed that the alleged acts of forgery were committed by respondent.

Furthermore, appellant attached to his motion as exhibit K a stipulation and order regarding California State Teachers' Retirement System, filed sometime in 2001.² He claimed that sometime during 2010, he employed a paralegal to assist in reviewing and recovering court papers associated with the divorce. On March 7, 2011, he saw exhibit K for the first time. He further alleged that the signature on page 4 of the document is not his own signature but a forgery.

Appellant's motion to vacate the judgment of dissolution was heard and denied on May 4, 2011. The trial court found:

“While Family Code 2121 permits [the] court to set aside a judgment based on fraud, it must be done within one year of when the fraud was discovered or should have been discovered. There is no showing based on the facts that actually are before me the alleged fraud if there was alleged fraud should have been discovered 10 years ago in 2001 when it occurred because the allegation is there was duress, misstatements that happened, it was aware to the [respondent], and so at a minimum the fraud should have been discovered at that time. Secondly, the [appellant] has not met his burden of showing actual fraud since the document on its face shows that it is a transfer of title, and finally it is a requirement to get relief under the code that the moving party demonstrate that were I to grant that relief that there would be a different outcome. There is no showing that there is a different outcome. . . . And just to be clear, it is denied as both untimely as well as on the merits.”

On May 26, 2011, appellant filed his notice of appeal.

DISCUSSION

I. Standard of review

We review the trial court's ruling on appellant's motion to vacate the judgment for abuse of discretion. (*In re Marriage of Brewer & Federici* (2001) 93 Cal.App.4th 1334,

² The date, and much of the text of the document, is illegible.

1346.) “““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.”” [Citations.]” (*In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 682.) The burden is on the complaining party to establish abuse of discretion. (*Ibid.*) “The showing on appeal is insufficient if it presents a state of facts which simply affords an opportunity for a difference of opinion. [Citations.]” (*Ibid.*)

II. Appellant has failed to establish an abuse of discretion

As set forth above, the trial court found that appellant’s motion to vacate the judgment failed both because it was untimely and because it was not meritorious. Family Code section 2122 requires that a motion to vacate a dissolution judgment on the grounds of fraud or perjury must be brought within a year, and appellant failed to establish that the alleged fraud could not have been discovered earlier. Furthermore, appellant did not establish that, were the court to grant the motion, a different outcome would result. Under the circumstances, the trial court’s decision was well within the bounds of reason.

In support of his argument that the trial court abused its discretion, appellant relies on *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131. The *Rubenstein* court acknowledged that Family Code section 2122 prescribes a one-year statute of limitations for a motion to vacate a dissolution judgment. (*Rubenstein*, at p. 1136.) In *Rubenstein*, the appellant raised a claim that her former husband possessed ownership rights to the music of Jimi Hendrix and George Clinton. The matter came to trial six years later, and appellant’s former husband testified under oath that he had no ownership interest in the record catalogs of Jimi Hendrix or his marketing company. (*Id.* at p. 1137.)

Approximately five years later, the appellant filed a complaint again seeking to vacate the dissolution judgment. She attached to her complaint pleadings filed in a federal court action involving Jimi Hendrix’s music, in which her former husband admitted proprietary rights in Hendrix’s music. She claimed that she had only recently learned of these facts from the pleadings discovered in the federal litigation, and that she had brought the action with reasonable diligence. (*Id.* at p. 1139.) The *Rubenstein* court reversed a finding of

summary judgment in favor of the appellant's former husband in part because the facts did not establish as a matter of law that the appellant previously knew or should have known the facts regarding her former husband's fraud and perjury. (*Id.* at p. 1148.)

The facts here are different. As the trial court noted, there was no evidence that the alleged fraud, duress and perjury could not have been discovered at an earlier time. Unlike the appellant's former husband in *Rubenstein*, respondent made no false statements under oath regarding the allegations set forth by appellant. Appellant has presented no evidence as to why he was prevented from discovering this information at an earlier date.

Appellant also cites *In re Marriage of Modnick* (1983) 33 Cal.3d 897. *Modnick* involved one spouse's concealment of community assets from the other spouse. Such an act constitutes extrinsic fraud and "warrants equitable relief from a judgment dividing community property between the parties." (*Id.* at p. 906.) In *Modnick*, the appellant's former husband not only failed to disclose the community property to his wife and the court, he took deliberate steps to conceal the asset. (*Id.* at p. 907.) The former wife was unable to discover the fraud until an IRS investigation was commenced. (*Id.* at p. 909.) Under the circumstances, the trial court's denial of the former wife's motion to vacate the judgment was reversed because "[t]o hold otherwise would serve to encourage spouses to engage in the objectionable practice of secreting community property assets." (*Id.* at p. 913.)

Again, the facts here are different. Appellant has failed to establish any deliberate concealment on the part of respondent, and he has failed to establish any reason that he was unable to discover the alleged fraud earlier. Further, even if he had established concealment or an inability to discover the fraud, he has failed to show that a different outcome in this matter is warranted.³

³ Appellant has also cited *Choice-in-Education League v. Los Angeles Unified School Dist.* (1993) 17 Cal.App.4th 415, in support of his argument that the trial court abused its discretion. Appellant has provided no analysis of the case, and it appears to be irrelevant; therefore we decline to discuss it.

In sum, appellant has failed to establish that the trial court abused its discretion in denying his motion to vacate the judgment of dissolution.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
ASHMANN-GERST