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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FILIMON HERNANDEZ et al.,

Plaintiffs and Respondents,

v.

FELICITAS RODRIGUEZ et al.,

Defendants and Appellants.

B236830

(Los Angeles County Super. Ct.
No. BC405663)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert H. O'Brien, Judge. Affirmed in part, reversed in part and remanded.

Law Offices of Stephen E. Ensberg, Stephen E. Ensberg and Nancy J. Skovholt for Defendants and Appellants.

Law Offices of Gomez & Lombardi, Robert J. Gomez, Jr.; Law Offices of David A. Xavier, David A. Xavier and Mark D. Licker for Plaintiffs and Respondents.

Defendants and appellants Felicitas Rodriguez, Roberto Rodriguez, Jr., and Lupe Casas appeal from the judgment following a court trial quieting title in the two-unit residential property located at 210 and 212 S. Sunol Drive, Los Angeles (the Sunol property), in favor of plaintiffs and respondents Maria Hernandez, Oscar Hernandez, and the estate of Filimon Hernandez. Appellants argue the trial court's statement of decision was inadequate with respect to their contention that the statute of limitations barred respondents' action and that there was insufficient evidence to support the trial court's determination that the deed transferring an ownership interest in the 210 unit of the Sunol property to Roberto and Lupe was invalid.

We remand to the trial court for the limited purpose of issuing a proper statement of decision with respect to whether the statute of limitations bars respondents' complaint. In all other respects, the judgment is affirmed.

FACTS

Filimon Hernandez,¹ now deceased,² emigrated from Mexico in the late 1960's. He was not literate in Spanish or English, and his ability to speak English was very limited. He purchased the Sunol property with his wife in 1971. Filimon and his wife occupied the front unit of the Sunol property (212) until their respective deaths.

Sometime in the early to mid-1970's, Filimon's sister, Felicitas Rodriguez and her husband moved into the rear unit of the Sunol property (210), which had a separate street address. Felicitas paid all utility bills and half of the property taxes for the 210 unit. She did not pay rent to Filimon. Felicitas either lived in the 210 unit or leased the unit to tenants and retained the rental income generated through the lease continuously from that time on. Filimon allowed Felicitas to use the unit because she was his sister and was in

¹ Because the parties are family members with common last names, we refer to them by their first names throughout.

² Filimon died prior to trial. All references to his testimony refer to his deposition testimony, which was admitted into evidence by stipulation of the parties.

need. Her husband was seriously ill and their house had been foreclosed upon, leaving them without a place to live. Filimon paid the mortgage on the Sunol property, half of the property taxes, and the utility bills for the 212 unit. Filimon denied transferring an ownership interest in the 210 unit to Felicitas at any time.

Filimon testified that soon after his wife's death in 2001, he told Felicitas he wanted to transfer his ownership interest in the Sunol property to two of his children, Oscar and Maria. Felicitas offered to help him by obtaining a notary, who was a friend of her daughter. The notary, Lenore Gonzales, met with Filimon and had him execute two blank grant deed forms. The forms were later filled out, each stating a legal description of the Sunol property, but setting forth the two separate addresses. One of the grant deeds purported to convey Filimon's ownership interest in the 210 unit to his niece and nephew (Felicitas's children), Roberto Rodriguez and Lupe Casas. The other purported to convey Filimon's ownership interest in the 212 unit to his children, Oscar and Maria. Three days later, a second notary, Pedro Morello, notarized an affidavit of death of joint tenant, which attested to Filimon's sole ownership of the Sunol property upon his wife's death. All three documents were recorded the same day the affidavit was executed.

Filimon testified he was unaware that he had added Roberto and Lupe to the title to the Sunol property when he signed the grant deeds. He became aware of the unintended transfer in 2008, when he noticed Roberto's name on the property tax statement. Filimon acknowledged that Roberto's name had, in fact, appeared on his property tax statements from the fiscal year 2002-2003 forward but explained that he had not thought to look at the name on the statements until the 2008 statement arrived, when he discovered Roberto's name on the previous property tax statements. Filimon also acknowledged that his property taxes increased substantially in 2002 but explained that this did not cause him to scrutinize his property tax statement, because when the government asked for more money, it was his practice to pay without asking questions. When he discovered Roberto's name on the tax statement, he confronted Felicitas about the matter, but her response was that what was done was done.

Felicitas testified that she purchased the 210 unit from Filimon for \$11,000 sometime in the 1970's. Although they did not memorialize the transfer in writing, it was the parties' understanding that Felicitas owned the rear unit, and her actions evidenced this. She paid utility bills for the 210 unit, half the property taxes for the Sunol property, and maintained control of the 210 unit, including earning income by leasing the unit. She never paid rent to Filimon. According to Felicitas, it was Filimon's intention to transfer the front unit to Oscar and Maria and the rear unit to Roberto and Lupe. He broached the subject with her, and she offered to assist him by obtaining a notary for him, which she did.

Respondents brought suit against appellants in January of 2009. They sought to quiet title in the Sunol property in Filimon, Oscar, and Maria, and sought damages for elder abuse and fraud in procurement of the 2001 grant deeds.³ Appellants cross-complained for quiet title and reformation of the deeds to reflect that Roberto and Lupe owned a one-half undivided interest in the Sunol property, and for elder abuse and ouster of Felicitas from the 210 unit. The trial court quieted title in respondents, found in favor of appellants on respondents' remaining claims, and found in favor of respondents on appellants' cross-claims. Appellants challenge the trial court's ruling quieting title in the property in favor of respondents.

³ Respondents also sued notary Lenore Gonzalez but settled with her before trial.

DISCUSSION⁴

Whether the Trial Court's Statement of Decision Was Adequate

Appellants contend the trial court's statement of decision was inadequate because it failed to address their argument that the statute of limitations barred respondents' action for quiet title. Respondents counter that this court may infer implied findings of the trial court support the judgment.

It is undisputed appellants argued at trial that the three-year statute of limitations (Code Civ. Proc., § 338)⁵ had run on respondents' quiet title claim. Specifically, they argued that Filimon should have reasonably discovered his mistake in executing the grant deed in favor of Roberto and Lupe was upon receipt of his substantially increased property tax statement in 2002, which was addressed to his nephew, Roberto, as well as to his daughter, Maria. Filimon did not exercise the reasonable diligence to protect his rights necessary to avoid application of the statute of limitations. He received property tax statements co-addressed to Roberto every year from 2002 through 2008 before he noticed Roberto's name. This occurred after an unreasonable delay, many years after the statute of limitations had run, barring his complaint.

The trial court issued a tentative decision, finding, in relevant part, that Filimon had not been aware that he was transferring an interest in the 210 unit to Roberto and Lupe when he signed the grant deed, and that it was not his intention to do so. Among other things, the tentative decision quieted title in respondents. The tentative ruling did

⁴ Respondents urge us to exercise our discretion to dismiss this appeal for failing to fairly set forth the evidence as required for a substantial evidence review. Although we decline to do so, appellant's counsel is cautioned to be mindful that this court has such discretion should counsel fail to fairly set forth the evidence in subsequent filings. (See *Doe v. The Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218.)

⁵ All statutory references are to the California Code of Civil Procedure unless otherwise noted.

not mention the statute of limitations, Filimon's delay, or the reasonableness of the delay. Appellants timely requested the trial court issue a statement of decision pursuant to section 632, which provides that any party may request the court issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial. Appellants specifically raised the issues of the statute of limitations and the unreasonableness of Filimon's delay in bringing suit. The court then issued a statement of decision adopting its tentative ruling in full, without supplement. Appellants objected to the statement of decision pursuant to section 634, again raising the issues of the statute of limitations and Filimon's unreasonable delay.

Although it was not required to make findings as to individual items of evidence or to address every question listed in appellants' request for a statement of decision, the trial court was required to make findings as to material issues and to provide "an explanation of the factual and legal basis for the court's decision regarding such principal controverted issues at trial as are listed in the request. [Citation.]" [Citations.]" (*Bandt v. Board of Retirement* (2006) 136 Cal.App.4th 140, 162, quoting *Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 67-68.) Whether respondents could avoid the three-year statute of limitations by establishing that Filimon's delay in discovery was reasonable is a dispositive issue. (*Welsher v. Glickman* (1969) 272 Cal.App.2d 134, 140 [where an action to quiet title and to cancel instrument rests on fraud, the three-year statute of limitations of § 338, subd. (d) applies and may bar the action].) The facts in support of a finding that the delay was reasonable are therefore material. It is impossible to discern the court's basis for finding that Filimon was not barred by the statute of limitations, or to discern if the court considered the issue at all. The court's finding that Filimon was unaware he had transferred an interest in the 210 unit to Roberto and Lupe goes to the issue of the validity of the grant deed, but it sheds no light on the reasonableness of Filimon's discovery of the transfer years after the statute of limitations would have barred his quiet title action.

Respondents argue that despite the trial court's failure, this court may affirm the trial court's ruling under the doctrine of implied findings. "The doctrine of implied

findings is based on our Supreme Court’s statutory construction of 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.) Here, appellants met these requirements by first requesting a statement of decision and specifically a decision as to the application of the statute of limitations, and then objecting to the statement of decision on that specific ground. Under these circumstances, we may not imply that the trial court made appropriate findings as respondents suggest.

The trial court’s failure to address the issue of whether the statute of limitations barred respondents’ action for quiet title is reversible error. (See *Karlsen v. Superior Court* (2006) 139 Cal.App.4th 1526, 1530-1531.) In such situations, the appropriate remedy is to remand to the trial court for the limited purpose of issuing a proper statement of decision. (See *id.* at p. 1531.)

Whether Sufficient Evidence Supports the Trial Court’s Finding that the Deed in Favor of Roberto and Lupe was Invalid

Appellants also contend there is insufficient evidence in the record to support the trial court’s finding that the grant deed in favor of Roberto and Lupe was invalid. Appellants argue they are entitled to the presumption that the deed is valid under Evidence Code section 662. Although they acknowledge this court is bound by the substantial evidence standard of review, they assert the standard must be applied “with an

eye to determining whether there is substantial evidence to sustain a conclusion by the trial court that ‘clear and convincing evidence’ demonstrates the invalidity of the deeds.” This is an incorrect statement of the law. Regardless of whether the standard of proof at trial is the “preponderance of the evidence” standard or the higher “clear and convincing evidence” standard applied here, our standard of review remains substantial evidence. (*In re Marriage of Ruelas* (2007) 154 Cal.App.4th 339, 345.)

“‘Substantial evidence’ is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value. [Citation.] ‘Substantial evidence . . . is not synonymous with “any” evidence.’ Instead, it is “‘substantial’ proof of the essentials which the law requires.” [Citations.] The focus is on the quality, rather than the quantity, of the evidence. ‘Very little solid evidence may be “substantial,” while a lot of extremely weak evidence might be “insubstantial.”’ [Citation.]” (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.)

“In resolving the issue of the sufficiency of the evidence, we are bound by the established rules of appellate review that all factual matters will be viewed most favorably to the prevailing party [citations] and in support of the judgment [citation]. All issues of credibility are likewise within the province of the trier of fact. [Citation.] ‘In brief, the appellate court ordinarily *looks only at the evidence supporting the successful party, and disregards the contrary showing.*’ [Citation.] All conflicts, therefore, must be resolved in favor of the respondent.” (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925-926; accord *Nelson v. United Technologies* (1999) 74 Cal.App.4th 597, 606.)

Here, substantial evidence to support the judgment is contained in Filimon’s testimony, which the trial court found credible. Filimon testified that he did not transfer an ownership interest in the 210 unit to Felicitas at any time, and that she never gave him \$11,000 for the property. He allowed Felicitas to live in the unit because she was a family member experiencing hardship. Filimon spoke with Felicitas about his desire to transfer ownership of the Sunol property to his children, Maria and Oscar. Filimon was not literate in either Spanish or English and had a limited ability to speak English. When Felicitas offered to help him by obtaining a notary, he trusted her, as a family member, to

assist him. Although the grant deeds that he signed were blank, Filimon had been told, and believed, that they would be made in favor of his children.

Appellants argue that Filimon's testimony should be discredited, and their version of the facts deemed true, compelling reversal. It is not our role to judge Filimon's credibility, or to reweigh the evidence considered by the trial court. Viewing the evidence here in the light most favorable to respondents, it was reasonable for the court to conclude that Filimon allowed his sister to possess the 210 unit out of kindness and concern for a family member and signed the grant deeds in the mistaken belief that he was transferring the Sunol property to his own children.

DISPOSITION

We remand to the trial court for the limited purpose of issuing a statement of decision addressing the application of the statute of limitations. In all other respects, the judgment is affirmed. Costs on appeal are awarded to appellants.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.