Filed 3/6/17 Marriage of Randolph CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of DENISE and RALPH RANDOLPH.	B262489
RALPH RANDOLPH, Appellant, v. DENISE RANDOLPH, Respondent.	(Los Angeles County Super. Ct. No. BD469356)

APPEAL from an order of the Superior Court of Los Angeles County, Michelle Williams Court, Judge. Reversed.

Lynda Sheridan for Appellant.

No appearance for Respondent.

INTRODUCTION

Denise and Ralph Randolph continued to live in the family residence for several years after dissolution of their marriage. During that time Denise used her separate property to make monthly payments on the home loan and pay property taxes. After the sale of the residence and distribution of the proceeds, Denise sought reimbursement from Ralph. The trial court ordered reimbursement. We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Marriage and Dissolution*

Denise and Ralph were married in September 1982 and separated in July 2007, after almost 25 years of marriage. On March 5, 2008 the trial court entered a judgment of dissolution pursuant to the parties' written stipulation. From the community property, the court awarded Denise, as her separate property, one-half of the household furniture and furnishings, one-half of the community interest in an Individual Retirement Account, a certificate of deposit, and various credit card and other debts. The court awarded Ralph, as his separate property, one-half of the household furniture and furnishings, one-half of the community interest in an Individual Retirement Account, a car, a checking account, and various credit card and other debts.

The judgment also ordered the sale of the Randolphs' community residence and authorized Denise to "manage" the sale, select the real estate broker and selling price, and "determine what work must be done to ready the property for sale." The judgment required the parties to cooperate in selling

the property and provided that, if either party spent money repairing or improving the property for sale, that party would be reimbursed from the sale proceeds before any other distribution. The judgment stated: "The proceeds of sale shall be equally divided between the parties after the parties receive reimbursement as required by this judgment. However, any community property debts which are in default or in collection shall be paid directly from escrow and the party responsible for payment of said debt under this judgment and shall be charged for said payment prior to receiving his or her share of the proceeds of sale." (*Sic.*) The court reserved jurisdiction over several issues, including spousal support and "any dispute regarding" the sale of the residence. The judgment also required Ralph to make one equalization payment to Denise of $2,184.50, to be paid from Ralph's share of the proceeds of the sale of the community residence.

Denise did not sell the residence until June 2013, more than five years after entry of the judgment of dissolution. During this five-year period both Denise and Ralph lived in the residence, along with some members of Denise's family at various times. Also during this period Denise used her separate property to make all the home loan payments, pay all the property taxes, and pay "all of the bills associated with putting the property into shape so as to attract buyers and to get the highest purchase price possible." Ralph was financially unable to contribute to these expenses.

Denise sold the property for $782,000. She and Ralph continued to live at the property until escrow closed and the new owner took possession. The net proceeds were approximately

$430,000, from which Denise and Ralph each received approximately $215,000.

B. *Denise's Motion for an Equalization Payment*

On February 18, 2014, after the escrow company had distributed the proceeds of the sale of the residence, Denise filed a request and a motion for an order requiring Ralph to pay her an equalization payment of $55,961.03. Denise stated that between April 2008 and June 2013 she paid, from her separate property, $94,275.38 towards the note on the family residence, $12,772.30 in property taxes, and $4,874.38 for repairs to the residence. Denise claimed Ralph owed her half of these amounts, i.e., $47,137.69 for the note payments, $6,386.15 for the property taxes, and $2,437.19 for the repairs. She argued: "After the dissolving of the marriage in March of 2008 and having enjoyed the continuing benefits of living at [the residence] until its sale, [Ralph] incurred the obligation to pay half of the mortgage, the taxes, and the repairs made for the purpos[e] of marketing the property for sale, there being no written stipulation or oral agreement in open court to the contrary." Denise argued the court had jurisdiction to hear her motion because the stipulated judgment of dissolution reserved jurisdiction to resolve disputes over the sale of the property.

On December 18, 2014 Ralph filed a declaration in response, stating that, despite having the "exclusive right to manage and control the sale" of the residence since March 2008, Denise had not tried to sell the residence until 2013, allowed her family members to live in the residence (possibly rent-free) in the interim, and (on information and belief) "took advantage of all allowable mortgage interest and tax deductions for the payments

made by her during this time." Ralph stated that, beginning in 2006, when he "was at a financial low," he had "no ability to contribute towards the mortgage payment or other living expenses." He also said that, because he and Denise "had been married for such a long period of time, as long as she was maintaining the bare necessities of life" he chose not to "pursue a spousal support order against her." Given Denise's minimum monthly salary of $5,000, Ralph believed that, had he sought support, he "would have received approximately $1,500.00 per month, according to the Dissomaster printout attached" to his declaration. He also opined that his share of the average monthly payment on the loan for the property and property taxes was $1,000. Ralph stated Denise never made any demand for money spent to repair the property in preparation for selling it, and, even if she had, the time to do so was before escrow closed and the escrow company distributed the sale proceeds. He also noted Denise had presented no documentation of the money she supposedly spent on repairs.

In his supporting memorandum of points and authorities, Ralph argued that under *In re Marriage of Epstein* (1979) 24 Cal.3d 76 (*Epstein*) Denise's payments on the loan were not reimbursable from the community because they were actually, or in lieu of, "spousal support" to him. According to Ralph, Denise's "argument that she should be entitled to reimbursement as her separate funds were used for existing community obligation or mortgage payments on the property would work if [Ralph] was earning income and [Denise] had no obligation to pay support to [Ralph]. However, that is [*sic*] not the facts of this case. In the present case, [Denise] did have an obligation to support [Ralph] as he had no income, and [Denise's] payment towards [the]

community obligation should be deemed to be in lieu of spousal support." Ralph also asserted his share of the monthly loan payments and taxes was less than the spousal support Denise would have had to pay him had he asked for it.

The trial court granted Denise's request "concerning mortgage debt and the tax debt," finding Denise had "met her burden to show that those debts are omitted community property debts and as such, the debts should be divided pursuant to Family Code [s]ection 2556."[1] The court denied without prejudice Denise's request for reimbursement for repairs, citing insufficient evidence of what repairs she made and how much they cost.[2]

DISCUSSION

The trial court's ruling that Ralph had to pay Denise one-half of the amounts she paid on the loan and for taxes was based on a finding that, under section 2556, the debts were omitted community property that should be equally divided. Ralph contends this was error because the court should not have decided the motion under section 2556. He also contends the court erred by failing to make findings on his "claim of *Epstein* credits for the sums sought as reimbursement by [Denise]" and

---

1 Undesignated statutory references are to the Family Code.

2 At the hearing on Denise's motion, counsel for Ralph asked the court to rule on Ralph's *Epstein* and laches arguments, but the court did not do so. The court also denied counsel for Ralph's request for a statement of decision for failure to comply with Code of Civil Procedure section 632.

on his defense of laches. Specifically, Ralph argues the court should have found Denise's loan payments between March 2008 and June 2013 were in lieu of spousal support payments to which he was entitled and could have asked for, and he maintains laches barred Denise's claim for reimbursement because she unreasonably delayed in selling the residence. There is some merit in Ralph's arguments.

A. *Section 2556,* Epstein *Credits, and* Watts *Charges*

Section 2556 provides: "In a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court has continuing jurisdiction to award community estate assets or community estate liabilities to the parties that have not been previously adjudicated by a judgment in the proceeding. A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any community estate asset or liability omitted or not adjudicated by the judgment. In these cases, the court shall equally divide the omitted or unadjudicated community estate asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability."

"Section 2556 was derived from the substantively identical provisions of former Civil Code section 4353. Prior to enactment of former Civil Code section 4353, a spouse who believed that community property had not been adjudicated in a prior dissolution proceeding was required to bring a separate civil action." (*In re Marriage of Hixson* (2003) 111 Cal.App.4th 1116, 1121; see *In re Marriage of Moore & Ferrie* (1993) 14 Cal.App.4th 1472, 1483, fn. 9 [former Civil Code section 4353 "authorizes the

filing of a motion in the same action that originally failed to divide the asset in question"].)[3] To determine whether section 2556 applies, the "'crucial question is whether the benefits were actually litigated and divided in the previous proceeding.'" (*In re Marriage of Thorne and Raccina* (2012) 203 Cal.App.4th 492, 501.) "The mere mention of an asset in the judgment is not controlling." (*Ibid.*; see *In re Marriage of Nassimi* (2016) 3 Cal.App.5th 667, 692; *In re Marriage of Georgiou & Leslie* (2013) 218 Cal.App.4th 561, 575.)

The issue of *Epstein* credits arises when a spouse, after separation, uses separate property to pay a preexisting community obligation, like a home loan secured by a deed of trust on the family residence, and seeks reimbursement for those expenditures from the community. (*Epstein*, *supra*, 24 Cal.3d at p. 84.) However, such "'reimbursement should not be ordered where the payment on account of a preexisting community obligation constituted in reality a discharge of the paying spouse's duty to support the other spouse.'" (*Id.* at p. 85.) *Watts* charges involve the converse issue: When a spouse, after separation, has exclusive use of a community asset, like the family residence, the community may seek reimbursement from

---

[3] "The legislative history of former Civil Code section 4353 indicates" its sponsor "believed that permitting litigation of unadjudicated community property claims by way of orders to show cause in the prior family law matter 'would be considerably less expensive, less burdensome on the court, save a great deal of judicial time, permit resolution of the dispute within a very short period of time, and permit the aggrieved party to obtain attorney fees and costs which would not otherwise be available.'" (*In re Marriage of Hixson*, *supra*, 111 Cal.App.4th at p. 1121.)

that spouse. (*In re Marriage of Watts* (1985) 171 Cal.App.3d 366, 374.)

The rules governing *Epstein* credits and *Watts* charges are a little more complicated when a spouse who is making monthly payments on the home loan after separation also has exclusive use of the family residence. In that situation, if "the monthly payments equal or exceed the reasonable value of the asset's use, the spouse may satisfy the duty to compensate the community for use of the asset by making the monthly finance payments from his or her separate property." (*In re Marriage of Garcia* (1990) 224 Cal.App.3d 885, 890-891.) If, on the other hand, the reasonable rental value of the residence exceeds the spouse-in-possession's monthly payments on the loan, the community may be entitled to reimbursement. The rules governing *Epstein* credits and *Watts* charges are even more complicated where, as here, both spouses live in the family residence (so that neither has exclusive use of the asset), third parties related to one of the spouses move into the house, and the period of time is not only post-separation but also post-judgment.

B. *The Trial Court Erred by Applying Section 2556 and Failing To Address Ralph's Arguments*

The trial court's ruling was error for at least three reasons. First, the court should not have based its ruling on section 2556 because Ralph had no notice the court would do so and thus no meaningful opportunity to argue the statute did not apply to Denise's monthly payments. Denise did not bring her motion pursuant to section 2556, and neither her motion nor Ralph's opposition mentions the statute. Although the trial court stated at the hearing that Denise was requesting reimbursement

"pursuant to Family Code section 2556," Denise actually requested reimbursement pursuant to section 3.4.1(g) of the stipulated judgment, in which the court reserved jurisdiction to resolve disputes regarding the sale of the community property residence. (See *In re Marriage of Thorne & Raccina*, *supra*, 203 Cal.App.4th at p. 500 [comparing modification of a judgment in a family law case where the judgment "contain[s] an express reservation of jurisdiction authorizing the court to subsequently modify it" with division of "a community property asset not mentioned in the judgment" under section 2556].)

Counsel for Ralph noted at the hearing that Denise was making a claim for reimbursement under the terms of the stipulated judgment, not a claim under section 2556, and argued that "to simply make this a [section] 2556 issue and ignore the fact that this property was used by several parties post-judgment, ignores all of" Ralph's claims.[4] The trial court erred by resolving Denise's motion under section 2556 without giving the parties an opportunity to brief the issue. (See *Motores De Mexicali, S. A. v. Superior Court* (1958) 51 Cal.2d 172, 176 [due process "guarantees that any person against whom a claim is asserted in a judicial proceeding shall have the opportunity to be heard and to present his defenses"]; *Monarch Healthcare v. Superior Court*

---

[4] At the hearing counsel for Ralph, upon learning the court was deciding the motion pursuant to section 2556, pointed out that, if the court believed section 2556 applied, Denise's claim would be barred under section 920, which imposes a three-year limit on certain spousal rights to reimbursement. As noted, Ralph did not have an opportunity to brief the issue.

(2000) 78 Cal.App.4th 1282, 1286 [an order should not "issue like a 'bolt from the blue out of the trial judge's chambers'"].)

Second, even if it were proper to apply section 2556, the court should have reached the issue raised by Ralph's laches argument. Section 2556 provides that, in cases involving omitted assets, "the court shall equally divide the omitted or unadjudicated community estate asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability." As part of the court's ruling on whether the interests of justice required an unequal division of the community debt on which Denise had made payments for five years, the court needed to consider and rule on Ralph's argument that Denise's unreasonable delay in selling the residence (while she and her family members lived in it) prejudiced Ralph by inducing him not to ask for spousal support. (See *Lakkees v. Superior Court* (1990) 222 Cal.App.3d 531, 540, fn. 5 [although former Civil Code section 4353, predecessor to section 2556, did not authorize dismissal for delay in prosecution, it did "allow[ ] the court to make equitable adjustments in dividing an asset"]; see also *In re Marriage of Klug* (2005) 130 Cal.App.4th 1389, 1403 [applying the equitable doctrine of unclean hands to a section 2556 motion].)

Third, while the court concluded that the note secured by the property and the property tax liability were omitted assets within the meaning of section 2556 and that section 2556 required an equal division of those debts, the court's conclusion did not answer the questions of how to characterize the monthly payments Denise made from her separate property toward those debts and whether (and how much) reimbursement was proper under *Epstein* and *Watts*. Indeed, had the stipulated judgment of

dissolution stated that each party was responsible for 50 percent of the promissory note and 50 percent of the tax liability, the court would still need to decide whether Denise was entitled to reimbursement. (See *Epstein*, *supra*, 24 Cal.3d at p. 80 [spouse is entitled to reimbursement for separate property payments toward community debt if he or she made the "expenditures subsequent to separation" and not to "fulfill [his or her] support obligations"].) In addition, because Denise lived in the residence during those five years, the court would need to determine whether "the monthly payments equal or exceed the reasonable value of the asset's use," and compare that to the reasonable value of Ralph's use of the asset (which Ralph said was $1,000 per month), before Denise could satisfy her duty to compensate the community for use of the residence by making the monthly loan payments from her separate property. (*In re Marriage of Garcia*, *supra*, 224 Cal.App.3d at pp. 890-891; see *In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 978-979.) In fact, "'reimbursement will usually not be ordered for payments on obligations on the family home made by the spouse remaining in the home . . . .'" (*In re Marriage of Garcia*, *supra*, 224 Cal.App.3d at p. 891.) As the Supreme Court stated in *Epstein*, "'there are a number of situations in which reimbursement is inappropriate, so reimbursement should not be ordered automatically'" (*Epstein*, *supra*, 24 Cal.3d at p. 84), which is what the trial court did here.

DISPOSITION

The order is reversed. Ralph is to recover his costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

SMALL, J.*

---

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.