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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of REE and BRYAN
TARR.

REE TARR,

Appellant,

v.

BRYAN TARR,

Respondent.

D059223

(Super. Ct. No. ED73327)

APPEAL from a judgment of the Superior Court of San Diego County, Joel R.

Wohlfeil, Judge. Affirmed.

In this marital dissolution proceeding, Ree Tarr appeals from a judgment following a trial on reserved issues, including whether Bryan Tarr breached his fiduciary duty to her by spending her inheritance without her knowledge and consent. Ree contends the trial court erred by denying her request to include within its statement of decision a finding regarding whether her medical and physical condition

impaired her ability to monitor her inheritance. We reject Ree's argument and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Ree and Bryan were married in 1991 and separated in 2008. In June 2010, the court held a trial on reserved issues, including: spousal support arrearage; whether Bryan breached his fiduciary duty to Ree; and the division of certain assets.

In August 2010, the court issued its Statement of Intended Decision (Tentative Decision). In regard to Ree's breach of fiduciary duty claim, the court stated:

"At trial, [Ree] testified she received an inheritance of \$232,521 from her mother. [Citation.] [Ree] testified that the amount of \$217,536 was deposited into an account at Financial 21. [Citation.] [Ree] and [Bryan] were joint account holders. [Citation.] Ree testified, in detail, to numerous withdrawals by [Bryan] from the Financial 21 account, the upshot which was that [Ree's] inheritance was converted without her knowledge and consent.

"[Bryan's] alleged conversion of [Ree's] inheritance took place while [Ree] was debilitated, prior to the date of separation on January 1, 2008. Dr. Dominic Addario, [Ree's] expert psychiatrist opined that [Ree] experienced a 'compromised mental state' and suffered from 'chronic pain and medical problems.'

"[Bryan] disputes [Ree's] testimony that he used the monies in the joint account without [Ree's] knowledge and consent. [Bryan] testified 'the monies [] spent from that account were always a joint decision' and 'the monies were consistently used for lifestyle without any interruption.' [Bryan] testified that 'there were multiple financial decisions that [Ree] was involved with including the purchase of [a] Murano [vehicle].' [Bryan] testified that the Financial 21 statements were mailed to the community residence, [Ree] reviewed the mail, and [Ree] was fully aware of the Financial 21 statements.

"[Bryan's] testimony is, at least in part, corroborated by [Ree's] own testimony. [Ree] testified to the Murano's purchase from Mossy Nissan in March 2006. [The evidence] reflects a withdrawal of \$53,583 from the joint account to purchase the [vehicle] for [Ree]. In her supplemental declaration filed June 20, 2008, which the Court takes judicial notice of, [Ree] testified . . . her inheritance was used to purchase a Nissan[] Murano, VW Beetle and Honda Prelude as well as to make a loan and to invest in the business known as Foxtail Group. As [Ree] testified, 'We had disagreements about this.'

"Though the Court questions the credibility of some of [Bryan's] testimony, the Court finds, based on the totality of the evidence, [Ree] has not carried her burden to show that [Bryan] breached his fiduciary duty on the theory that [Bryan] converted her mother's inheritance. The Court denies [Ree's] breach of fiduciary duty claim and the relief [she] seeks from this claim."

Ree objected to the court's Tentative Decision. She asked the court to modify the decision to include a finding regarding whether her "mental and physical condition impaired her ability to monitor financial affairs or give valid, informed consent" to Bryan to use monies from her inheritance. The court denied Ree's request and made the Tentative Decision its final statement of decision with one modification relating to spousal support arrearage.

DISCUSSION

Ree contends the trial court was obligated to issue a statement of decision on whether her medical and physical condition impaired her ability to monitor her inheritance and that the court's denial of her request to do so was reversible error. We disagree.

Code of Civil Procedure section 632 provides that at the request of any party, a court must issue a statement of decision that states "the factual and legal basis for its

decision as to each of the principal controverted issues at trial." In rendering a statement of decision, the trial court is required only to state ultimate rather than evidentiary facts; the trial court need not make findings regarding detailed evidentiary facts. (*Nunes Turfgrass, Inc. v. Vaughan-Jacklin Seed Co.* (1988) 200 Cal.App.3d 1518, 1525.) "Only where a trial court fails to make findings as to a material issue which would fairly disclose the determination by the trial court would reversible error result." (*Ibid.*) "Even then, if the judgment is otherwise supported, the omission to make such findings is harmless error unless the evidence is sufficient to sustain a finding in the complaining party's favor which would have the effect of countervailing or destroying other findings." (*Hellman v. La Cumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224, 1230.)

Here, the trial court's statement of decision adequately set forth the basis for its decision on Ree's breach of fiduciary duty claim. Although Ree challenges the statement of decision as conclusory, as set forth above, the trial court recounted evidence concerning Bryan's withdrawals of money from the parties' joint account and testimony about Ree's mental and physical condition. Based on the totality of the evidence, the court stated that Ree did not satisfy her duty to show a breach of fiduciary duty.

The trial court was not required to make findings regarding whether Ree's mental and physical condition impaired her ability to monitor her inheritance; the ultimate fact is that Bryan did not breach his fiduciary duty to Ree. "It still is the rule that the findings of ultimate facts include by necessary intendment the findings on all

intermediate facts necessary to sustain them [citation], and where this is so, the court may reject a request for specific findings that in reality is a request for a statement of evidentiary facts.'" (*McAdams v. McElroy* (1976) 62 Cal.App.3d 985, 996.) In other words, specific findings are not required if they are necessarily implied by a general finding. "[A] finding on a particular issue is an implied negation of all contradictory propositions.'" (*St. Julian v. Financial Indemnity Co.* (1969) 273 Cal.App.2d 185, 194.) The trial court's finding that Bryan did not breach his fiduciary duty negates Ree's contradictory proposition that her mental and physical condition impaired her ability to monitor her financial affairs or give valid, informed consent to Bryan to use monies from her inheritance. In sum, we reject Ree's claim of error.

DISPOSITION

The judgment is affirmed. Respondent is entitled to costs on appeal.

McINTYRE, J.

WE CONCUR:

BENKE, Acting P. J.

HUFFMAN, J.