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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of VIRGINIA AND CHARLES CHRISTIAN.	
VIRGINIA E. CHRISTIAN, Respondent, v. CHARLES A. CHRISTIAN, Appellant.	E054051 (Super.Ct.No. FAMRS900164) OPINION

APPEAL from the Superior Court of San Bernardino County. Michael J. Torchia, Temporary Judge. (Pursuant to Cal. Const., art VI, § 21.) Affirmed.

J. T. Orr II for Appellant.

Robert J. Falkenthal for Respondent.

I. INTRODUCTION

Appellant Charles A. Christian appeals from judgment awarding his former wife, respondent Virginia E. Christian,[1] $59,025.65 as her separate property interest in the family residence. Charles contends Virginia violated Family Code[2] sections 720 and 721 by acquiring an unfair advantage over him, and section 2640 violated his rights under the federal and state Constitutions.

II. FACTS AND PROCEDURAL BACKGROUND

Charles and Virginia were married in April 2002, and they separated in December 2008. In 2002 they purchased a family residence. Each party contributed approximately $14,000 for the down payment from separate property sources.

Virginia had retirement income from the Public Employees Retirement System (PERS) earned before her marriage to Charles. Beginning in May 2002, she received approximately $100,000 in payments from a workers' compensation claim for an injury suffered in 1999. Virginia used her separate property funds to make all the house payments during the marriage. She paid a total of $200,577.55 in house payments, of which $164,249.90 was for mortgage interest. The mortgage payments she made during the marriage reduced the principal balance on the house by $36,327.65.

Virginia moved out of the family residence when the parties separated, but Charles continued to live there. Beginning in January 2009, each party paid half of the mortgage

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[1] We refer to the parties hereafter by their first names for clarity and convenience, and not intending any disrespect.

[2] All further statutory references are to the Family Code.

payment. Virginia made postseparation mortgage payments of $6,528. She also sought reimbursement of her payments at the time of the purchase, in the sum of $14,167, for the down payment, and $2,000 in closing costs.

Charles testified at trial as to his estimate of the value of the family residence and other property at issue. However, he did not produce any other evidence at trial or file any trial brief.[3] After counsel for Virginia presented her final argument, Charles's counsel stated that section 720 "summarizes a relationship between a man and a wife." After briefly discussing discovery that had been provided, to which counsel for Virginia objected, Charles's counsel said, "I'll just sit down and shut up, you Honor. I think that's probably best considering the case." The following dialogue ensued:

"THE COMMISSIONER: You don't want to make any kind of a closing argument?

"[COUNSEL FOR CHARLES]: I don't hear well. I don't think it would be productive at this point given the comments of the Court and the comments of counsel. I thought it was closing argument. My understanding of closing argument apparently is different from his.

"THE COMMISSIONER: He objected, but I said it was okay for you to argue. I'm not precluding you from argument. Go ahead and argue, if you wish.

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[3] At trial, counsel for Charles stated he had filed a trial brief in November 2010. Counsel for Virginia stated he had never received such a brief, and counsel for Charles conceded he did not have a conformed copy of such a brief. Moreover, the register of actions does not show that a trial brief was filed.

"[COUNSEL FOR CHARLES]: "I'll just stand down, your Honor. I think that's best."

The trial court ruled: "The court is satisfied that [Virginia] has substantiated by a preponderance of the evidence her claim for reimbursement. She has traced adequately her separate property contributions toward the acquisition of the community family residence. In fact, [Charles] apparently concedes this claim, as he offered no evidence to rebut or contradict it. Therefore, the total amount of [Virginia's] claim for reimbursement is $59,025.65."

III. DISCUSSION

Charles appears to contend Virginia violated sections 720[4] and 721[5] by acquiring an unfair advantage over him, and he did not have notice that payments from separate

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[4] Section 720 provides: "Husband and wife contract towards each other obligations of mutual respect, fidelity, and support."

[5] Section 721 provides: "(a) Subject to subdivision (b), either husband or wife may enter into any transaction with the other, or with any other person, respecting property, which either might if unmarried.

"(b) Except as provided in Sections 143, 144, 146, 16040, and 16047 of the Probate Code, in transactions between themselves, a husband and wife are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. This confidential relationship is a fiduciary relationship subject to the same rights and duties of nonmarital business partners, as provided in Sections 16403, 16404, and 16503 of the Corporations Code, including, but not limited to, the following:

"(1) Providing each spouse access at all times to any books kept regarding a transaction for the purposes of inspection and copying.

"(2) Rendering upon request, true and full information of all things affecting any transaction which concerns the community property. Nothing in this section is intended

[footnote continued on next page]

property funds during the marriage to pay down the mortgage on the family home would be subject to reimbursement under section 2640.[6] He argues that under the fiduciary relationship that governs marriage partners, "it would seem impossible that any court in this state would be required to allow one partner in marriage to subvert the requirements of §[]721 and §[]720 by using his/her separate property to pay down community obligations knowing that upon dissolution he/she is able to obtain, if you will, a refund of those monies spent [actually, money not spent but merely invested in a failed business, to wit the marriage]." He further contends "that it would be the rare person the unusual individual who would know that payments on the family home, from whatever source, when made by their spouse could be merely an investment that is subject to reimbursement absent a writing . . . ."

[footnote continued from previous page]
to impose a duty for either spouse to keep detailed books and records of community property transactions.

"(3) Accounting to the spouse, and holding as a trustee, any benefit or profit derived from any transaction by one spouse without the consent of the other spouse which concerns the community property."

[6] Section 2640 provides in part: "(a) 'Contributions to the acquisition of property,' as used in this section, include downpayments, payments for improvements, and payments that reduce the principal of a loan used to finance the purchase or improvement of the property but do not include payments of interest on the loan or payments made for maintenance, insurance, or taxation of the property. [¶] (b) In the division of the community estate under this division, unless a party has made a written waiver of the right to a reimbursement or has signed a writing that has the effect of a waiver, the party shall be reimbursed for the party's contributions to the acquisition of property of the community property estate to the extent the party traces the contributions to a separate property source. The amount reimbursed shall be without interest or adjustment for change in monetary values and may not exceed the net value of the property at the time of the division."

With respect to his arguments that a marriage partner has a fiduciary requirement to inform his or her spouse of entitlement to reimbursement for separate property contributions when the marriage ends and that section 2640, as applied, was invalid, Charles merely makes bald contentions but cites no authority to support those contentions. We therefore deem his arguments forfeited. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852, fn. omitted.)

With respect to his argument that he did not have proper notice of the way property would be distributed after the end of his marriage, Charles cites only *Lambert v. California* (1957) 355 U.S. 225, a case in which the United States Supreme Court held that a local ordinance that required "any convicted person" to remain in the City of Los Angeles for more than five days without registering with the police violated due process when applied to a person who had no knowledge of the duty to register, and there was no proof of the probability of such knowledge. (*Id.* at pp. 229-230.)

Lambert provides no support for Charles's position. In *People v. Sorden* (2005) 36 Cal.4th 65, the California Supreme Court cited with approval a case that held "'*Lambert* does not apply where the circumstances, including *any notice expressly or impliedly provided by the criminal statute*, should have alerted defendant to the registration requirement . . . .'" (*Id.* at p. 71.) Here, section 2640 itself provides notice of the way separate property contributions to the acquisition of property will be treated upon the dissolution of a marriage. It is undisputable that "[c]ourts do not excuse nonlawyers for their ignorance of the law. [Citation.]" (*Mark v. Spencer* (2008) 166 Cal.App.4th

219, 229; see also *Arthur Andersen v. Superior Court* (1998) 67 Cal.App.4th 1481, 1506, and cases collected.)

IV. DISPOSITION

The judgment is affirmed. Costs on appeal shall be paid by Charles.

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HOLLENHORST
Acting P. J.

We concur:

MCKINSTER
J.

CODRINGTON
J.