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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re the Marriage of ELAINE and CHARLES  
LYONS.

ELAINE D. LYONS,

Appellant,

v.

CHARLES M. LYONS,

Appellant.

F069319

(Super. Ct. No. 687247)

**OPINION**

APPEAL from a judgment of the Superior Court of Stanislaus County. Joseph R. Distaso, Judge.

Garrett C. Dailey for Appellant Elaine D. Lyons.

Dick & Wagner and Stephen James Wagner; McCormick, Barstow, Sheppard, Wayte & Carruth, Kenneth C. Cochrane and Todd W. Baxter for Appellant Charles M. Lyons.

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## INTRODUCTION

While Charles and Elaine Lyons were married, they each signed a document entitled “Post Nuptial Agreement.” Two years later, Elaine<sup>1</sup> filed for divorce.

The primary issue presented in this appeal is whether the “Post Nuptial Agreement” satisfies the “express declaration” requirement for transmutations of property under Family Code section 852, subdivision (a).<sup>2</sup> We conclude it does not and reverse the trial court’s contrary order.

## FACTS

Elaine and Charles Lyons were married in 1979. On January 8, 2010, Charles and Elaine both signed a document entitled “Post Nuptial Agreement” (hereafter the Agreement).<sup>3</sup>

The Agreement, in its entirety, reads as follows:

“Post Nuptial Agreement  
“Charles M. Lyons and Elaine D. Lyons

“[(1)]<sup>4</sup> This testament is an acknowledgement, and agreement between me, Charles M. Lyons and my wife Elaine D. Lyons, for the purpose of clarifying what we agree to be marital community interests, and the actions taken here today to protect them.

“[(2)] We have been asked by representatives of The Lyons family, to sign specific interests of real property into LLC’s [(limited liability company)] that are controlled by them. We have endured constant abuse for the past five years, for our refusal to join these entities, as well as others. Some of that abuse has been, but not limited, to: alienation of affection, mental and emotional abuse, and, in our opinion, unlawful

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<sup>1</sup> Since the parties share a last name, we will refer to them by their first names for clarity.

<sup>2</sup> All undesignated statutory references are to the Family Code.

<sup>3</sup> Before trial, the parties stipulated that the document was authentic.

<sup>4</sup> We, like the parties, have numbered the paragraphs for ease of reference. The Agreement itself does not contain paragraph numbers.

business conduct. Our family has been forced to spend considerable time and money, to protect ourselves from these attacks. This conduct has put incredible stress on our family, both financially, and emotionally. We have been given the ultimatum, to sign these[] documents, or be excluded from future gifts from the Mary Lyons Family, which we rely on for our retirement. Although we do not agree, or desire to be a part of these LLC's, we are reluctantly going to sign the requested documents, in a hope that we may put an end to the constant and persistent abuse.

“[(3)] We have been married for over 30 years. The first 25 years of our lives, we were solely employed by the Lyons family at the Mape's Ranch. During that period[] our family was compensated for our contributions through various [means]<sup>5</sup>. Some compensation was made on a regular pay schedule, while other compensation was given through gifts by William and Mary Lyons into specific entities; for the purposes of tax savings to our family. Some of those entities are, but not limited to; Lyons Investments, Lyons Land and Cattle, Lyons Land Management, Beckwith Dakota Properties, South Paradise LLC and North Paradise LLC.

“[(4)] It has always been the understanding between Elaine and myself, that any gifts received by the William and Mary Lyons family, represented the earnings of both Elaine and I. The years that were dedicated to the service of the Mape's Ranch, and other entities associated with the Mape's Ranch, were difficult at best. The environment, under which we lived and worked, was controlling, and often abusive. We made the commitment together, to be employed, even under these conditions, because of the future benefits to our family. We have both contributed equally and worked hard together, to create security for ourselves, and our family. This agreement will serve as a testament to the marital understanding between each of us, and clarifies the financial security we agree to equally enjoy.

“[(5)] In the event of a marital separation or divorce, it is our intention to preserve each of our interests in the mentioned entities as equal and non transferable to future spouses. Furthermore, in the event that one of us should predecease the other, our individual interests will revert back

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<sup>5</sup> The copy of the Agreement in the appellate record has what appears to be a copying defect which partially obscures the word following “various” in paragraph 3. Even with the copying defect, it is clear the last two letters of the word are “n” and “s.” Elaine's appellate brief indicates the word is “means.” We need not conclusively determine what the word is because neither party contends this sentence is dispositive of the issues before us.

to the surviving spouse or ex-spouse, what ever the case may be, until their death, at which time all interests will revert to the surviving children of Charles M. Lyons and Elaine D. Lyons or their heirs. These children are: Dianne Mary Lyons Wulfsberg, Charles Mape Lyons, Mia Louise Lyons and William Thomas Lyons. Children are defined as the lineal offspring of Charles M. Lyons and Elaine D. Lyons,<sup>[6]</sup> and any other known and unknown offspring of either party has been intentionally excluded from this agreement and inheritance.

“[(6)] Elaine Lyons has been asked to sign specific documents releasing interests in Beckwith/Dakota properties, South Paradise LLC and North Paradise LLC. These documents are, but not limited to, a quitclaim deed for each mentioned property and a separate property waiver and acknowledgement. In exchange for her cooperation, I, Charles M. Lyons, Agree with, and will abide by this testament clarifying our marital relationship and the financial understanding between the two of us. I will give my personal guarantee to protect, not only my interests, but hers. I acknowledge that by Elaine D. Lyons, signing the requested documents and quit[]claim deeds; that she does not relinquish her rights to these properties, or future entities and properties resulting from sales or transfers of these properties, but will retain her interests which I acknowledge and agree to guarantee personally as her husband, Charles M. Lyons. The agreements in this document here today, cannot be altered by Will, or any other means, without the mutual consent of both parties, Elaine D. Lyons and Charles M. Lyons, husband and wife.”

The signatures of Charles and Elaine appear immediately after paragraph 6.

### **Divorce Proceedings**

Elaine filed for divorce on October 9, 2012. In her divorce petition, Elaine asked that the court confirm that the property listed in the Agreement was community property.

Pursuant to a stipulation of the parties, the family court bifurcated the issue of whether the property embraced by the Agreement was validly transmuted into community property under section 852, subdivision (a) and set the issue to be tried before all others.

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<sup>6</sup> The first page of the Agreement ends here and the remainder of the Agreement appears on a second page. Two sets of initials appear at the bottom of the first and second pages.

Ahead of the trial, the parties offered written arguments. No testimony was given at trial and the only evidence submitted to the court was the Agreement itself. The parties also offered oral argument.

On February 10, 2014, the court issued a statement of decision<sup>7</sup> in which the court concluded the Agreement was a valid transmutation under section 852, subdivision (a). Charles challenged the statement of decision and, after hearing additional argument, the court ultimately issued a final statement of decision on March 21, 2014. In the final statement of decision, the court again concluded that the Agreement effected a valid transmutation. The court determined that the Agreement transmuted Charles's separate property interests in "the 'Beckwith/Dakota properties, South Paradise LLC and North Paradise LLC' " into community property.

We granted Charles's motion to appeal pursuant to California Rules of Court, rule 5.392(d). Both parties now challenge aspects of the court's order.

## **DISCUSSION**

### **I. THE AGREEMENT DOES NOT CONTAIN AN "EXPRESS DECLARATION" THAT THE PROPERTY IS CHANGING CHARACTER AND IS THEREFORE NOT A VALID TRANSMUTATION UNDER SECTION 852, SUBDIVISION (A)**

#### **Standard of Review**

Whether the Agreement is a valid transmutation is subject to our independent, de novo review. (See *In re Marriage of Lafkas* (2015) 237 Cal.App.4th 921, 932; *In re Marriage of Barneson* (1999) 69 Cal.App.4th 583, 588.) We " 'are not bound by the interpretation given to the written instruments by the trial court.' " (*In re Marriage of Lund* (2009) 174 Cal.App.4th 40, 50.)

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<sup>7</sup> The February 10, 2014, written decision was entitled "Tentative Decision: Post-Nuptial Agreement – Transmutation." (Boldface, underlining & some capitalization omitted.) In a later order, the court clarified that it intended this document to be a statement of decision and inadvertently failed to make that clear.

## **Principles of Law**

Married persons may, by agreement or transfer, “[t]ransmute separate property of either spouse to community property.” (§ 850, subd. (b).) Such transmutations are subject to section 852, subdivision (a), which provides: “A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.” As its language makes clear, section 852, subdivision (a) imposes three requirements for a valid transmutation: it must (1) be made in writing; (2) contain an express declaration by which the transmutation is made; and (3) be accepted in some fashion by the adversely affected spouse. (See *In re Marriage of Benson* (2005) 36 Cal.4th 1096, 1104.)

### ***“Express Declaration” Requirement***

At the outset, it is important to note the distinction between the first and second elements of section 852, subdivision (a). In enacting both requirements, “the Legislature cannot have intended that *any* signed writing whatsoever by the adversely affected spouse would suffice . . . .” (*Estate of MacDonald* (1990) 51 Cal.3d 262, 269.) That is, section 852, subdivision (a) requires a transmutation “to be both written *and* express . . . .” (*In re Marriage of Benson, supra*, 36 Cal.4th at p. 1100, italics added.) A valid transmutation requires “not only a writing, but a special kind of writing, i.e., one in which the adversely affected spouse expresses a clear understanding that the document changes the character or ownership of specific property.” (*Id.* at p. 1107.)

The transmutation by express declaration must be “ ‘unambiguous[.]’ ” in effecting a change in the character of the subject property. (*In re Marriage of Lafkas, supra*, 237 Cal.App.4th at p. 938.) “Courts have adhered closely to these requirements and declined to find a valid transmutation without a *clear* understanding in writing that *the document* changes the character or ownership of specific property.” (*Id.* at p. 939, italics added.) Consequently, language that merely describes separate property as being co-owned by

spouses is not an “express declaration” (§ 852, subd. (a)) that *itself* effects a transmutation. (Cf. *In re Marriage of Lafkas*, *supra*, 237 Cal.App.4th at pp. 939-940; *Estate of Petersen* (1994) 28 Cal.App.4th 1742, 1754-1755.)

### **Application**

The Agreement in this case does not contain an unambiguous, express declaration as required by section 852, subdivision (a). Specifically, the Agreement is not an express statement that the characterization of property is being *changed*. Instead, the Agreement expresses the parties’ apparent belief that the business interests were *already* community property.<sup>8</sup> This interpretation is based on language found throughout the Agreement:

- “In the event of a marital separation or divorce, it is our intention to *preserve* each of our interests in the mentioned entities as equal . . . .” (Paragraph 5, italics added.)
- “I [Charles] acknowledge that by Elaine D. Lyons, signing the requested documents and quit[.]claim deeds; that she does not *relinquish* her rights to these properties . . . but will *retain* her interests which I acknowledge and agree to guarantee . . . .” (Paragraph 6, italics added.)
- “It has *always been* the understanding between Elaine and myself, that any gifts received by the William and Mary Lyons family, represented the earnings of both Elaine and I.” (Paragraph 4, italics added.)

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<sup>8</sup> Charles now describes this belief as “mistaken[.]” We, however, express no opinion on the proper characterization of the various business interests described in the Agreement. That ultimate determination may depend on several considerations not currently before us (e.g., the date and manner in which the business interests were initially transferred from William and Mary Lyons; whether there were any other relevant agreements between Charles and Elaine; etc.). That is, even though the Agreement before us did not effect a transmutation, we are not in a position to determine whether any other valid transmutation agreements exist or whether the business interests were community property before the Agreement. Our holding is narrow: The Agreement before us is not a valid transmutation under section 852, subdivision (a).

- “This testament is an acknowledgement, and agreement . . . for the purpose of *clarifying* what *we agree to be marital community interests . . .*” (Paragraph 1, italics added.)<sup>9</sup>

Since the Agreement expresses the parties’ belief about the preexisting character of the property rather than “ ‘unambiguously indicat[ing] a *change* in character or ownership of property’ ” (*In re Marriage of Lafkas, supra*, 237 Cal.App.4th at p. 938, italics added), it does not satisfy the express declaration requirement of section 852, subdivision (a).<sup>10</sup> Consequently, it is not a valid transmutation. (§ 852, subd. (a).)

## II. ELAINE CANNOT ESTABLISH EQUITABLE ESTOPPEL USING ONLY INTRINSIC EVIDENCE

Elaine argues that Charles is equitably estopped from “denying the effectiveness of the Agreement.”

“The elements of equitable estoppel are ‘(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the

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<sup>9</sup> In contrast, the trial court concluded that paragraph 1 *supported* the validity of the transmutation. Indeed, the trial court found that paragraph 1 constituted an “express declaration that the property is to be held as community property.” We agree that paragraph 1 reflects Charles’s and Elaine’s belief that the property belonged to the community. But that is not enough. The language needed to indicate that *the Agreement itself was changing* the characterization of the property. Merely recognizing (correctly or not) that the property already belongs to the community is not a transmutation by express declaration under section 852, subdivision (a).

Paragraph 1, especially when viewed in light of the other provisions we have cited, is consistent with our conclusion that the Agreement did not *change* the character of the property, but instead reflects a shared belief that the property *already* belonged to the community.

<sup>10</sup> Because we conclude the Agreement does not effect any transmutation whatsoever, we reject Elaine’s claim on cross-appeal that the Agreement transmuted *more* property than just Charles’s interests in South Paradise LLC, North Paradise LLC, and the Beckwith/Dakota properties.

conduct to his injury. [Citation.]’ [Citation.]” (*Schafer v. City of Los Angeles* (2015) 237 Cal.App.4th 1250, 1261.)

Even assuming, without deciding, that a party can be equitably estopped from invoking the requirements of section 852, subdivision (a),<sup>11</sup> we nonetheless reject Elaine’s claim. Neither party disputes that, in this context, extrinsic evidence is unavailable to establish an equitable estoppel claim. (See *In re Marriage of Campbell* (1999) 74 Cal.App.4th 1058, 1062-1063.) However, Elaine argues that “extrinsic evidence was not required” to establish her estoppel claim. We disagree.

To establish the fourth element of equitable estoppel, Elaine would need to show that she *detrimentally* relied on Charles’s conduct. She attempts to do so by claiming she executed documents “waiving” any interest in the Lyons family businesses *after* signing the Agreement.

But Elaine cannot prove that she actually signed the additional documents as purportedly requested by the Lyons family. Though the Agreement indicates the parties were “reluctantly *going to sign*” certain documents, there is no intrinsic evidence the later documents were actually signed. Even if Elaine could establish that she in fact signed the documents as planned, she cannot show that doing so caused her harm. There is no intrinsic evidence as to the nature or value of any consideration Elaine may have received under the additional documents she was asked to sign.<sup>12</sup> Moreover, the Agreement

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<sup>11</sup> Charles cites *Benson* for the proposition that the equitable estoppel doctrine is categorically inapplicable to section 852, subdivision (a). We conclude *Benson* does not establish such a categorical rule. Though the *Benson* court declined to find estoppel in that case, it also noted: “we need not consider, in this case, whether there are *any* circumstances that might estop a marital partner from invoking section 852[, subdivision ](a).” (*In re Marriage of Benson, supra*, 36 Cal.4th at p. 1109, fn. 6.)

<sup>12</sup> Indeed, the Agreement itself suggests that signing the additional documents entitled or left open the possibility for “future gifts from the Mary Lyons Family” that would not otherwise be forthcoming.

describes only *some* of the additional documents Elaine was being asked to sign. The Agreement notes she “has been asked to sign specific documents releasing interests” in certain property, but notes those documents were “not limited to” the quitclaim deeds and property waiver. Without knowing the nature and effect of the additional documents Elaine was asked to sign—including the value of any consideration she may have received—it cannot be determined from the intrinsic evidence whether her alleged reliance was, in fact, detrimental.

Because Elaine cannot establish detrimental reliance using intrinsic evidence, we reject her equitable estoppel claim.

### **III. ELAINE’S MOTION TO STRIKE PORTIONS OF CHARLES’S APPELLATE BRIEF IS DENIED**

In this court, Elaine has moved to strike portions of Charles’s appellate brief, which contain factual claims concerning the “history” of the case (e.g., describing the initial gifting of fractional business interests from William and Mary Lyons to Charles and his siblings, etc.). We agree with Elaine that since no evidence supporting these factual claims was introduced at the bifurcated trial, we may not consider them in this appeal. And we note that even if supporting evidence had been adduced at trial, it would constitute extrinsic evidence which may not be considered on the transmutation issue. (See *Estate of MacDonald*, *supra*, 51 Cal.3d at pp. 264, 277.) But rather than order these portions of the brief stricken, we elect to simply ignore them. (See *Connecticut Indemnity Co. v. Superior Court* (2000) 23 Cal.4th 807, 813, fn. 2.) Elaine’s motion is therefore denied.

**DISPOSITION**

The trial court's order deeming the January 8, 2010, Agreement a valid transmutation under Family Code section 852, subdivision (a) is reversed. The matter is remanded to the trial court. Appellant Charles M. Lyons shall recover costs.

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DETJEN, J.

WE CONCUR:

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GOMES, Acting P.J.

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KANE, J.