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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of GLORIA and  
ANTHONY MICHAEL PAGE.

GLORIA PAGE,

Appellant,

v.

ANTHONY MICHAEL PAGE,

Respondent.

G044561

(Super. Ct. No. 05D008142)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,  
Robert D. Monarch, Judge. (Retired judge of the Orange Super. Ct. assigned by the  
Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Stablie & Cowhig, John S. Cowhig; Snell & Wilmer, Richard A. Derevan  
and Todd E. Lundell for Appellant.

Sandler, Lasry, Laube, Byer & Valdez, Edward I. Silverman; Dishon,  
Block & Kaufman and Stephen Jay Kaufman for Respondent.

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## INTRODUCTION

In this marital dissolution action, the trial court issued a statement of decision following trial on the division of the community property of Gloria Page and Anthony Michael Page.<sup>1</sup> The statement of decision included the trial court's express finding the marital community had a 50 percent ownership interest in an "umbrella" entity, which had been formed by Anthony and his business partner, Daniel Vesely, and in that entity's subsidiaries. Gloria filed a request for a further statement of decision in which she sought, inter alia, the court's factual and legal basis for its finding that the community had a 50 percent ownership interest in the umbrella entity and its subsidiaries. The trial court declined to issue a further statement of decision and judgment was entered.

Gloria argues the trial court erred by failing to make a finding in the statement of decision as to whether Anthony had breached his fiduciary duty to her. She contends Anthony transferred shares of one of the subsidiary's common stock to Vesely, without receiving consideration in return. She argues she brought that omission to the trial court's attention. Gloria also argues insufficient evidence supported any implied finding Anthony did not breach his fiduciary duty to her.

We affirm. For reasons we will explain, Gloria failed to request that the court make any findings as to whether Anthony breached his fiduciary duty to her, or otherwise object to the statement of decision on the ground it omitted any such findings. Hence, the doctrine of implied findings applies. Substantial evidence supported the court's finding that Anthony and Vesely each owned 50 percent of the umbrella entity and its subsidiaries. Gloria admits that Anthony and Vesely had equal ownership interest in the umbrella entity and its subsidiaries at the time of trial. Substantial evidence also

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<sup>1</sup> We use the parties' first names to avoid confusion and intend no disrespect. (*Nairne v. Jessop-Humblet* (2002) 101 Cal.App.4th 1124, 1126, fn. 1.)

supported the court's implied finding Anthony did not breach his fiduciary duty to Gloria. We find no error.

## FACTS

This appeal is solely based on issues related to the marital community's ownership interest in the umbrella entity, formed by Anthony and Vesely, and in its subsidiaries. We limit our summary of the facts to evidence that is relevant to these issues.

Gloria and Anthony were married in January 1985. Anthony worked for a company called Parexel, which owned a subsidiary, HealthIQ, Inc., a Delaware corporation (HealthIQ Delaware). Anthony, along with Vesely, formed a plan to purchase HealthIQ Delaware from Parexel.

In January 2004, Anthony and Vesely formed an entity called xIQ, LLC, which would become an umbrella company that would "hold[]" entities in which Anthony and Vesely had invested. Anthony and Vesely each had a 50 percent ownership interest in xIQ. The ownership of xIQ has not changed since it was established.

In March 2004, Anthony and Vesely formed PharmaIQ, Inc., which would ultimately acquire HealthIQ Delaware on April 1, 2004. Anthony and Vesely agreed that they would equally split ownership of HealthIQ Delaware. One hundred percent of the \$10,000 cash used to issue PharmaIQ stock came from xIQ. As a condition of selling HealthIQ Delaware to PharmaIQ (and concomitantly, of financing the purchase price), Parexel required that the entity acquiring HealthIQ Delaware be primarily owned by Anthony. Vesely testified Parexel "wanted to see [Anthony] as the owner, his name—his name on the entity. So they wanted to see a certain percentage assigned to [Anthony]." The March 8, 2004 unanimous written consent of PharmaIQ's board of directors reflected that of the issued shares of common stock, 900 shares were issued to Anthony and 100 shares were issued to Vesely. The asset purchase agreement dated March 31, 2004, however, reflected that HealthIQ Delaware would sell certain assets to PharmaIQ which

would be owned 50 percent by xIQ, 40 percent by Anthony, and 10 percent by Vesely. The PharmaIQ stock certificates, dated March 31, 2004, reflected the ownership percentages set forth in the asset purchase agreement.

PharmaIQ was renamed Health IQ, Inc., a California corporation (HealthIQ California). HealthIQ, LLC, is the successor in interest to HealthIQ California and HealthIQ Delaware. HealthIQ, LLC, is “the active business entity that conducts the business of the Health IQ purchased.” HealthIQ, LLC, is a subsidiary of xIQ and is the source of most of xIQ’s profit.

A certified public accountant, who worked for xIQ and its subsidiaries from October 2006 until April 2008, testified he had prepared tax returns for xIQ and its subsidiaries. He testified that in the course of preparing those tax returns, he reviewed data showing that, with the exception of an entity called ReimbursementIQ, Anthony and Vesely each owned 50 percent of xIQ and each of its subsidiaries. It is not contended in this case that ReimbursementIQ ever netted a profit, and Gloria does not argue ReimbursementIQ has any value or that the community was deprived of any interest in ReimbursementIQ. We therefore refer hereafter to xIQ and its subsidiaries, except for ReimbursementIQ, as the xIQ entities.

Gloria and Anthony separated in August 2005. It was undisputed at trial that Anthony’s ownership interest in the xIQ entities constituted community property.

#### PROCEDURAL BACKGROUND

In September 2005, Gloria filed a petition for the dissolution of the marriage. The trial court bifurcated trial on child support and spousal support issues from trial on the division of community property. Following trial on the support issues, the court awarded Gloria monthly spousal support. In April 2009, judgment was entered dissolving the marriage.

In May 2010, a three-day trial was held to determine the division of community property. The trial court ordered that Gloria and Anthony submit closing

arguments in writing. The court provided a tentative statement of decision stating the court's "current reaction to the evidence presented," and "to provide [Gloria and Anthony] feedback to enable [them] to more specifically focus [their] closing arguments." In the tentative statement of decision, the court stated its findings, inter alia, that the "Adjusted Owners' Equity for 100% of Consolidated Entities is \$2,438,156" and "[t]he interest of the community in the business is fifty percent. Accordingly, the fair market value of the community interest is \$1,219,078."<sup>2</sup>

Gloria submitted a brief containing her closing argument, which included the argument that the evidence showed Anthony transferred ownership of 40 percent of his shares of what is now HealthIQ, LLC, to Vesely without consideration and without providing Gloria written notice or obtaining her consent. Gloria argued Anthony's conduct constituted a breach of fiduciary duty in violation of Family Code section 1101, subdivision (a).

Gloria also submitted two separate requests for a statement of decision. Each one requested the court to set forth the factual and legal basis for its decision as to "[t]he determination of the community's ownership percentage in the consolidated businesses."

The trial court issued its statement of decision which, as pertinent to this appeal, contained the same findings set forth in the tentative statement of decision quoted *ante*. Gloria filed a request for a "further Statement of Decision," in which she asked the court, inter alia, to state the factual and legal basis for its findings that (1) "the community interest in the consolidated businesses is 50%"; (2) "as to how, if at all, [Anthony]'s original 90% ownership interest in PharmaIQ impacted the valuation of the consolidated businesses as of 12/31/06"; and (3) "as to how, if at all, [Anthony]'s 400 shares of PharmaIQ, Mr. Vesel[y]'s 100 shares of PharmaIQ, and XIQ's 500 shares of

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<sup>2</sup> On appeal, Gloria does not challenge the trial court's finding as to the value of the xIQ entities.

PharmaIQ are related or connected to [Anthony]’s original 90% ownership interest in PharmaIQ and how, if at all, that impacted the valuation of the consolidated businesses as of 12/31/06.” The court declined to issue a further statement of decision.

Judgment was entered. Gloria timely appealed.

## DISCUSSION

Gloria argues the trial court erred by failing to make a finding in its statement of decision on a principal controverted issue—namely, whether Anthony breached his fiduciary duty to her by transferring away shares of what is now HealthIQ, LLC, without consideration. She argues she brought the trial court’s error to its attention in her request for a further statement of decision, but the court refused her request. She argues she was prejudiced by the court’s error because substantial evidence showed Anthony’s conduct constituted a breach of fiduciary duty.

The record is clear Gloria failed to request that the court make a finding as to whether Anthony breached his fiduciary duty to her, and failed to otherwise object to the statement of decision on the ground it omitted a finding on a principal controverted issue. Consequently, the doctrine of implied findings applies and we review the record to determine whether substantial evidence supported the court’s express finding that Anthony and Vesely each owned 50 percent of the xIQ entities and implied finding that Anthony did not breach his fiduciary duty to Gloria. We conclude substantial evidence supported both findings.

### I.

#### THE DOCTRINE OF IMPLIED FINDINGS

A panel of this court in *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58-60 (*Fladeboe*) provided a comprehensive explanation of the doctrine of implied findings. We do not need to fully restate that explanation here and instead provide the following summary of the law.

“The doctrine of implied findings requires the appellate court to infer the trial court made all factual findings necessary to support the judgment. [Citation.] The doctrine is a natural and logical corollary to three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error. [Citations.]” (*Fladeboe, supra*, 150 Cal.App.4th at p. 58.)

The appellate court in *Fladeboe, supra*, 150 Cal.App.4th at page 58, explained: “In a bench trial, how does an appellant obtain a record affirmatively proving the trial court erred by failing to make factual findings on an issue? The appellant must secure a statement of decision under Code of Civil Procedure section 632 and, pursuant to Code of Civil Procedure section 634, bring any ambiguities and omissions in the statement of decision to the trial court’s attention.” Therefore, “[s]ecuring a statement of decision is the first step, but is not necessarily enough, to avoid the doctrine of implied findings. Litigants must also bring ambiguities and omissions in the statement of decision’s factual findings to the trial court’s attention—or suffer the consequences. Code of Civil Procedure section 634 states if omissions or ambiguities in the statement of decision’s factual findings are timely brought to the trial court’s attention, ‘it shall not be inferred on appeal . . . that the trial court decided in favor of the prevailing party as to those facts or on that issue.’” (*Id.* at p. 59.)

The *Fladeboe* court further explained, “[i]f the party challenging the statement of decision fails to bring omissions or ambiguities in it to the trial court’s attention, then, under Code of Civil Procedure section 634, the appellate court will infer the trial court made implied factual findings favorable to the prevailing party on all issues necessary to support the judgment, including the omitted or ambiguously resolved issues. [Citations.] The appellate court then reviews the implied factual findings under the

substantial evidence standard. [Citations.]” (*Fladeboe, supra*, 150 Cal.App.4th at pp. 59-60.)

## II.

BECAUSE GLORIA NEVER ASKED THE TRIAL COURT TO MAKE A FINDING REGARDING WHETHER ANTHONY BREACHED HIS FIDUCIARY DUTY TO HER, AND DID NOT OBJECT TO THE STATEMENT OF DECISION ON THE GROUND IT OMITTED SUCH A FINDING, THE DOCTRINE OF IMPLIED FINDINGS APPLIES.

Here, neither Gloria’s requests for a statement of decision, nor her request for a further statement of decision, asked the trial court to make any finding as to whether Anthony breached his fiduciary duty to her by transferring away shares of what is now HealthIQ, LLC, without consideration. Gloria did not file any objections to the statement of decision, which brought any omissions or ambiguities in the statement of decision’s factual findings to the trial court’s attention.

In her opening brief, Gloria cites her requests for a statement of decision and request for a further statement of decision, in arguing she “met her obligation both to request the statement of decision and to object when the court’s initial statement failed to address this critical issue.” But, the record does not support her assertion. In her requests for a statement of decision, Gloria requested the factual and legal basis for the court’s finding as to “[t]he determination of the community’s ownership percentage in the consolidated businesses.” In her request for a further statement of decision, she requested “[t]he factual and legal basis for its finding that the community interest in the consolidated businesses is 50%.” That the community’s ownership interest in the xIQ entities was 50 percent at the time of trial is undisputed, and, as such, no further findings on that point were required.

In her opening brief, Gloria states she “did not dispute that the company’s books and records show a *current* 50 percent ownership structure, but claimed that the community *should own* 90 percent.” She also states: “At trial, Gloria did not dispute the evidence (e.g., taxes and partnership returns) showing that Anthony and Vesely *currently*

treat the businesses as owned equally between them. Rather, Gloria argued that the current 50/50 ownership structure resulted from Anthony's improper transfer of a substantial interest in HealthIQ for less than fair market value and, in fact, no value at all." But, Gloria never asked the court to make any finding as to whether the community should be reimbursed for the value of any shares she contends Anthony transferred away in breach of his fiduciary duty to her. The words "fiduciary duty" do not appear in either of Gloria's requests for a statement of decision or in her request for a further statement of decision.

Gloria's request for a further statement of decision also sought "[t]he court's factual and legal analysis" regarding "how, if at all, [Anthony]'s original 90% ownership interest in PharmaIQ impacted the valuation of the consolidated businesses as of 12/31/06" and "how, if at all, [Anthony]'s 400 shares of PharmaIQ, Mr. Vesel[y]'s 100 shares of PharmaIQ, and XIQ's 500 shares of PharmaIQ are related or connected to [Anthony]'s original 90% ownership interest in PharmaIQ and how, if at all, that impacted the valuation of the consolidated businesses as of 12/31/06." To the extent Gloria sought further findings on the court's valuation of the xIQ entities, she does not challenge the trial court's valuation finding on appeal, so we do not need to further address it. In addition, it is undisputed that Anthony was originally issued 90 percent of PharmaIQ's common stock; shortly thereafter, he transferred 500 shares to xIQ and, at some later point in time, made further adjustments to arrive at an equal ownership interest in the xIQ entities with Vesely. Asking the court to explain how Anthony's ownership interest at one point in time was "related or connected" to his ownership interest at a separate point is insufficient to request a breach of fiduciary duty finding. The trial court was not required to make further findings on this point.

Given this record, we must infer the trial court, after giving Gloria a full and fair opportunity to try the issue whether Anthony wrongfully transferred a portion of the community's interest, made every factual finding necessary to support its decision.

(See *Fladeboe*, *supra*, 150 Cal.App.4th at p. 61.) “Because the judgment is presumed correct, and because [Gloria] bore the burden of affirmatively proving error, the doctrine of implied findings instructs us to infer the trial court made every implied factual finding necessary to support the conclusion” that Anthony did not wrongfully deprive the community of a portion of the value of the xIQ entities. (*Id.* at pp. 61-62.) For the reasons we will explain, “that conclusion is legally sound and supported by substantial evidence.” (*Id.* at p. 62.)

### III.

#### SUBSTANTIAL EVIDENCE SUPPORTED THE TRIAL COURT’S EXPRESS FINDING THAT THE COMMUNITY HAD A 50 PERCENT OWNERSHIP INTEREST IN THE xIQ ENTITIES AND THE COURT’S IMPLIED FINDING THE COMMUNITY SHOULD NOT BE REIMBURSED THE VALUE OF THE STOCK TRANSFERRED AWAY BY ANTHONY.

As discussed *ante*, Gloria does not challenge the unrefuted evidence supporting the trial court’s finding that the community’s interest in the xIQ entities at the time of trial was 50 percent. That finding is supported by evidence that Anthony and Vesely agreed they would equally share ownership of what is now HealthIQ, LLC, the profit center of the xIQ entities, and also would equally share ownership of xIQ itself. The certified public accountant’s testimony also showed that Anthony and Vesely each owned 50 percent of the xIQ entities.

Gloria argues insufficient evidence supported the implied finding the community should be awarded the value of those shares of what is now HealthIQ, LLC, that Anthony transferred to Vesely, without consideration. (See Fam. Code, § 1101, subd. (g) [remedies for breach of fiduciary duty by spouse include an award of “50 percent, or an amount equal to 50 percent, of any asset undisclosed or transferred in breach of the fiduciary duty”].) Gloria’s argument is without merit.

Substantial evidence showed that Anthony and Vesely agreed each would have an equal 50 percent ownership interest in HealthIQ Delaware following PharmaIQ’s acquisition of it. Anthony and Vesely each owned 50 percent of xIQ, which paid

100 percent of the \$10,000 in cash that was used to issue PharmaIQ stock to Anthony and Vesely. Although the written consent of PharmaIQ's board of directors reflected that 900 shares of common stock were issued to Anthony and 100 shares of common stock were issued to Vesely, the evidence showed that arrangement was made to meet Parexel's condition that Anthony be assigned a certain percentage of PharmaIQ's stock before it would sell HealthIQ Delaware to PharmaIQ. The record does not show Anthony invested more in PharmaIQ than Vesely did to account for the disparity in the number of their respective shares of common stock; as explained *ante*, it appears xIQ provided the consideration for the issuance of all the shares. Nor is there any evidence Anthony was gifted additional shares of common stock. In accordance with Anthony and Vesely's agreement that they would share an equal ownership interest in HealthIQ Delaware, following PharmaIQ's acquisition of HealthIQ Delaware, the business records reflected that adjustments were made through Anthony's conveyance of some of his shares to xIQ to reflect Anthony and Vesely's equal ownership interest in what is now HealthIQ, LLC.

We find no error.

#### DISPOSITION

The judgment is affirmed. Respondent shall recover costs on appeal.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.