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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of PATRICIA M. and
SEYMOUR BEEK.

PATRICIA M. BEEK,

Appellant,

v.

SEYMOUR BEEK,

Respondent.

G045045

(Super. Ct. No. 08D001690)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard W. Luesebrink, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Reversed and remanded.

Snell & Wilmer, Richard A. Derevan, Christopher B. Pinzon; Richard N. Piantadosi for Appellant.

Law Offices of Marjorie G. Fuller, Marjorie G. Fuller, Lisa R. McCall; Castle & Monarch and Dale A. Castle for Respondent.

* * *

The trial court erred in finding there was no community interest in property. The court also erred in awarding spousal support and in making other orders. We reverse and remand.

I

FACTS

Patricia Beek and Seymour Beek were married on October 12, 1978. They have two grown children. They separated on February 15, 2008. Noting the trial court referred to them as Wife and Husband in its statement of decision, and because several quotes from that document are used in this opinion, for the sake of clarity we will also refer to the parties as Wife and Husband.

At the time of trial in August 2010, Husband was 76 years old and Wife was 62 years old. They were married for 29 years.

The parties were able to resolve many of their disputed issues prior to trial. The remaining issues were decided by the court. Wife claims error in some of those decisions. Pertinent additional facts are set forth here.

Although no executed copy of a prenuptial agreement was introduced at trial, the parties agree there was such an agreement, which states “__ day of October, 1978” as its date, containing the following provision: “2. Promontory Bay Property. Seymour owns as his separate property Lot 4 in Promontory Bay, Newport Beach, California. Said lot is worth approximately \$350,000 as of this date, and it is anticipated that Seymour and Patricia will build a residence on said lot, at a cost of approximately \$150,000. Although the parties shall hold the property in joint tenancy, and it is their intent that the survivor of them shall receive the lot and improvements thereon in accordance with the laws of joint tenancy property in California, the property shall be held during their lives in the proportions of the approximate values (seventy percent [70%] to Seymour and thirty percent [30%] to Seymour and Patricia as a community interest). Any encumbrance on said property as a result of a loan to finance the

construction of said residence shall be considered as between the parties to encumber only the community interest and shall be repaid from community funds.”

During the trial court proceedings, Husband was asked what his purpose was in having his lawyer prepare the prenuptial agreement. Husband explained: “I thought it was important to have the status of my separate property versus community property established in the case of this Promontory Bay lot, if we built a house, it would be a community interest and a separate interest. And if anything happened to me or to Patricia and me, I wanted it clarified what those interests were.” The court asked Wife’s trial lawyer if he was advocating “that the prenuptial be effectuated in this proceeding,” and counsel said “that is true, your Honor.” Counsel for Husband informed the court he was opposing it because “the prenuptial is not relevant.”

Wife and Husband never built a house on Lot 4 as it was not “financially feasible at that time.” After October 1978, there were no other discussions about “executing a document which says [they were] going to place Lot 4 into joint tenancy.”

Husband and his two brothers inherited their mother’s home on Bay Front. Husband and his brothers agreed that in exchange for the Bay Front property, Husband would give his brothers Lot 4 plus \$250,000 of his separate property funds.

As part of that exchange two documents were signed. The three brothers and Wife signed a document entitled “AGREEMENT FOR EXCHANGE OF REAL PROPERTY.” It states in relevant part: “Patricia Beek acknowledges that she is the spouse of H. Seymour Beek who executed this Agreement; further acknowledges that the Promontory Point Property is his separate property; waives any requirement that she join in the execution of any other document required for the transaction set forth in this Agreement; and agrees to execute a quitclaim deed to the Promontory Point Property.” Wife signed a quitclaim deed of Lot 4 to Husband and his two brothers.

About the above quoted prenuptial provision, the court states the following in its statement of decision: “The Court finds that the Antenuptial Agreement has no

effect on the real property located at 528 S. Bay Front, Newport Beach, CA. The Court finds that the Antenuptial Agreement was executed by the parties which would have created a community interest in Lot 4 of Promontory Bay with Expressed plans in the Agreement to build a family residence for the parties and their offspring. However, this family residence was never constructed and Lot 4 of Promontory Bay was conveyed to Husband in his name only on the title. Wife executed a deed and under Evidence Code Section 662, a presumption exists that the property was that of Husband alone and the presumption can only be overcome by clear and convincing evidence. Wife's claim that she knows nothing of the couple's financial matters, and that she was unaware that Lot 4 was transferred or in Husband's name alone was not credible."

Later in its statement of decision, the court stated: "b. Wife freely and voluntarily executed a written agreement for exchange of real property dated September 22, 1982, (Exchange Agreement) that effected the exchange of the Lot 4 of Promontory Bay, NB, CA property for the 528 South Bay Front, NB, CA property. Said agreement for exchange of real property was signed by Husband and also by Wife on September 22, 1982. The document specifically states at page 15 that, 'Patricia Beek acknowledges that she is the spouse of H. Seymour Beek, who executed this agreement; further acknowledges that the Promontory Bay property is his separate property; waives any requirement that she join in the execution of any other document required for the transaction set forth in this agreement; and agrees to execute a Quitclaim Deed to the Promontory Bay property.' [¶] c. The Court finds that there was no undue influence exerted by Husband over Wife to sign the Exchange Agreement [¶] d. Wife freely and voluntarily executed a Quitclaim Deed in favor of Husband and his brothers regarding the Lot 4 of Promontory Bay, NB, CA property [¶] e. The Court finds there was no undue influence exerted by Husband over Wife to sign the Quitclaim Deed in favor of Husband. [¶] f. Wife freely and voluntarily executed a Grant Deed in favor of Husband relinquishing any ownership interest and all right and title to real property at

528 South Bay Front, NB, CA. [¶] g. The Court finds that there was no undue influence exerted by Husband over Wife to sign the Grant Deed in favor of Husband. [¶] h. The court finds that the Husband did not breach his fiduciary duty to Wife, defraud Wife or take unfair advantage of Wife concerning the Deeds and Exchange Agreements signed by Wife as set forth in this section. Husband did not mislead or defraud Wife.”

During their marriage, Wife signed one other pertinent document. Husband testified that in 1994 he refinanced the Bay Front property and “the title company required a signature on a grant deed by my spouse.” Wife signed the grant deed.

The trial court concluded no community interest in Lot 4 was ever effectuated and the Bay Front property was purchased by Husband with his separate funds and his separate interest in Lot 4.

II

DISCUSSION

Bay Front Property

Wife contends the court erred in finding she had no interest in the 528 South Bay Front property on the waterfront of Newport Bay. She says the prenuptial agreement gave her an interest in the property, and the two deeds Husband directed her to sign deprived her of a community interest in the Bay Front property.

This court reviews issues of contract interpretation de novo. (*Ginsberg v. Gamson* (2012) 205 Cal.App.4th 873, 882-883.) We must make an independent determination of the meaning of the language used in an agreement. (*Shanahan v. State Farm General Ins. Co.* (2011) 193 Cal.App.4th 780, 785.) If the meaning a layperson would give to a contract is not ambiguous, we apply that meaning. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 608.)

The trial court interpreted the prenuptial agreement as creating a condition precedent. That is, the court found Wife would receive an interest in Lot 4 only if the couple built a house on it. The court seems to have read an “if” into the agreement when

there is none. “[I]t is the general rule in contract interpretation that stipulations in an agreement are not to be construed as conditions precedent unless such construction is required by clear, unambiguous language; and particularly so where a forfeiture would be involved or inequitable consequences would result. [Citations.]” (*Alpha Beta Food Markets, Inc. v. Retail Clerks* (1955) 45 Cal.2d 764, 771.)

To the extent it can be argued the prenuptial agreement is ambiguous, Husband must take the responsibility and bear the consequences for the ambiguity. “[T]he language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.” (Civ. Code, § 1654.)

We find from the plain language of the contract that a community interest in Lot 4 was created by the prenuptial agreement, despite the fact Wife and Husband never built a home on the lot. The trial court erred in finding otherwise.

A change in the form of community property does not change its character. (*Chuba v. Fishbein* (1970) 13 Cal.App.3d 382, 390.) Thus, since Lot 4 was exchanged for the Bay Front home, Wife has a community interest in the Bay Front home.

The Deeds and the Presumptions

Wife contends that because Husband had a fiduciary duty to her, the trial court erred in placing the burden on her to invalidate the quitclaim and grant deeds. She says the court applied the wrong evidentiary presumption in upholding the deeds and that no substantial evidence supports the court’s finding Husband did not violate his fiduciary duty to Wife.

Husband concedes a rebuttable presumption arose because the parties were in a confidential relationship. He argues both he and Wife are college graduates and sophisticated business people, and there was ample consideration provided to Wife in the exchange because she “received the benefit of living in multi-million dollar waterfront property for over 25 years.” Wife testified that before signing the exchange documents,

Husband and Wife had discussions about “all the opportunities that the house on the island would provide in terms of location, in terms of, we both agreed that it would be easier for us to get to work, since we both worked in the Fashion Island area. And our commute would be a lot less than having to drive around to the end of the peninsula. ¶¶ We talked about that there would be more room at the island house than we had, and a better opportunity for us to utilize our boats. And we’d be closer to the Vamos, as well, when we would be taking trips.”

“The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.” (Evid. Code, § 662.) “[I]n 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” (Fam. Code, § 721, subd. (b).)

The confidential relationship between spouses imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. (*In re Marriage of Delaney* (2003) 111 Cal.App.4th 991, 996; *In re Marriage of Burkle* (2006) 139 Cal.App.4th 712, 730.) To rebut the presumption of undue influence, the advantaged spouse must establish by a preponderance of the evidence the action “‘was freely and voluntarily made, with full knowledge of all the facts, and with a complete understanding of the effect of the transfer.’ [Citations.]” (*In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 296.) Transfers without consideration raise a presumption of undue influence because one spouse obtains a benefit at the expense of the other who receives nothing in return. (*In re Marriage of Burkle, supra*, 139 Cal.App.4th at p. 731.)

“‘Substantial evidence’ is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value. [Citations.]” (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) “[A] trial court’s credibility findings cannot be reversed on appeal unless that testimony is incredible on its facts or inherently improbable. [Citations.]” (*Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 201.) A court’s finding an agreement was entered voluntarily implies the finding was supported by substantial evidence. (*In re Marriage of Hill & Dittmer* (2011) 202 Cal.App.4th 1046, 1052.) In *In re Marriage of Mathews* (2005) 133 Cal.App.4th 624, 632, the court found there was no undue influence on a wife to quitclaim property to a husband, but Evidence Code section 662 was not at issue in that case.

In order to determine whether or not Wife conveyed her interest in Bay Front home back to Husband we must discuss the interplay between the presumption of undue influence in marital transactions and the presumption in favor of title in Evidence Code section 662. *In re Marriage of Haines, supra*, 33 Cal.App.4th 277, is helpful. The opinion states: “This case presents the issue of whether Evidence Code section 662, the common law presumption in favor of title, and its concomitant requirement of clear and convincing evidence to rebut the presumption, properly apply in family law proceedings when there is a conflict with the presumption that a husband and wife occupy a confidential relationship in their transactions with each other.” (*Id.* at p. 282, fn. omitted.) The court concluded “that application of section 662 is improper when it is in conflict with the presumption of undue influence that emanates Any other result would abrogate the protections afforded to married persons and denigrate the public policy of the state that seeks to promote and protect the vital institution of marriage. Because [the wife] successfully proved a number of her defenses to the 1987 quitclaim deed by a preponderance of the evidence, the deed should have been set aside.” (*Id.* at p. 302.)

“We conclude that application of [Evidence Code] section 662 is improper when it is in conflict with the presumption of undue influence that emanates from [section 721]. Any other result would abrogate the protections afforded to married persons and denigrate the public policy of the state that seeks to promote and protect the vital institution of marriage.’ [Citation.]” (*In re Marriage of Delaney, supra*, 111 Cal.App.4th at p. 999.)

Wife contends she was subjected to undue influence in order to obtain her signatures on the quitclaim and grant deeds. She contends Husband directed her to sign a quitclaim deed; Husband “never explained what a quitclaim deed was,” Husband “told her she would have to be a party to the agreement,” and she did not receive any consideration in connection with the quitclaim deed. About the grant deed, Wife says Husband did not discuss it with her but told her “it was something that she needed to sign to help [him] with the refinance.”

With regard to both the quitclaim and the grant deed, Wife granted Husband property interests for no consideration whatsoever. Husband testified the two had no special discussion and did not explain he claimed Bay Front as his separate property. In effect, there was no evidence at all that Husband met his fiduciary burden. In making the determination there was no undue influence, the trial court funneled the evidence through the clear and convincing burden of Evidence Code section 662 it required Wife to bear.

Under the circumstances we find in this record, where the trial court failed to apply the presumption of undue influence, but instead encumbered Wife with the burden under Evidence Code section 662, we must conclude the trial court erred. Substantial evidence does not support the court’s conclusion the deeds were voluntarily signed by Wife with full knowledge of their legal effect or that Husband did not unduly influence Wife to acquire title.

Spousal Support

Wife next contends the trial court abused its discretion in setting the amount of spousal support. The court ordered Husband to pay Wife \$4,000 a month. Wife argues Husband will live in the family residence and have “the affluent lifestyle he enjoys in Newport and Balboa Island” and she “will go from living the life of a socialite on Balboa Island to living a lower middle class lifestyle with no significant property to her name.”

The court made findings to support its order: Husband’s controllable cash flow was stipulated to be \$20,000 per month, and Wife’s was \$1,635 per month; they had a “very comfortable lifestyle” during their marriage; Husband’s assets are substantial and his obligations are minimal; Wife’s spousal support will constitute the substantial portion of her income; the marriage was one of long duration; and, given Wife’s age, health and work experience, she is not expected to obtain gainful employment.

“Spousal support is governed by statute. (See [Family Code] §§ 4300-4360.) In ordering spousal support, the trial court *must* consider and weigh all of the circumstances enumerated in the statute, to the extent they are relevant to the case before it. [Citations.]” (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 302-303, fns. omitted.) As the court’s order makes clear, the court did give some consideration to the factors enumerated in Family Code section 4320.

“[W]hen the order made by the trial court affords one of the spouses a significantly higher standard of living than the other and affords the other a significantly lower standard of living than was accustomed during the marriage, an abuse of discretion is indicated. [Citations.]” (*In re Marriage of Ramer* (1986) 187 Cal.App.3d 263, 273.) *In re Marriage of Andreen* (1978) 76 Cal.App.3d 667, involved a marriage of 27 years. The Court of Appeal found an abuse of discretion and reversed because the spousal support award resulted in much higher standard of living possibilities for the husband than for the wife. The wife would enter the employment market at age 50 and would find

herself barely above poverty level. (*Id.* at pp. 671-672.) Here, by contrast, Wife, because of her age and health, has no employment possibilities at all.

Wife has almost no assets, and her monthly income is \$1,200 from Social Security, \$435 from Husband's retirement fund plus spousal support. Husband, on the other hand, has substantial separate assets and almost four times as much disposable monthly income. Even Husband's lawyer, in delivering his final argument, and who probably argued for just enough to keep a straight face, suggested an amount almost twice what the court ordered. Under the circumstances we find in this case, we must conclude the trial court abused its discretion when it made its spousal award in this case.

Family Code Section 4360

Wife argues "if any case warrants treatment under section 4360, this is it." She says the purpose of the statute is to make sure a supported spouse will not be left without means of support in the event the support order is terminated by the obligor's death.

"For the purpose of Section 4320, where it is just and reasonable in view of the circumstances of the parties, the court, in determining the needs of a supported spouse, may include an amount sufficient to purchase an annuity for the supported spouse or to maintain insurance for the benefit of the supported spouse on the life of the spouse required to make the payment of support, or may require the spouse required to make the payment of support to establish a trust to provide for the support of the supported spouse, so that the supported spouse will not be left without means of support in the event that the spousal support is terminated by the death of the party required to make the payment of support." (Fam. Code, § 4360, subd. (a).)

Here the trial court did make mention of Family Code section 4360 in its statement of decision: "The Court orders that Husband shall pay to Wife the sum of \$4,000 per month as spousal support. Further, the parties appeared to agree that an

annuity on the life of Husband, with Wife as beneficiary, would be appropriate given the ages of the two parties and that Wife would assume the obligations related thereto, but no details were provided and the specifics should be included in the Judgment.” The judgment states: “Said support shall continue until death of either party, remarriage of Petitioner or further order of the court.” The record supports Wife’s claim she is entitled to an appropriate plan under Family Code section 4360, as the trial court indicated it expected a sufficient amount of funds for an annuity to be specified in the judgment. Upon remand, the court shall decide what is appropriate.

Offset Against Attorney Fees for Wife’s Living at Bay Front Postseparation

Wife argues “the court’s imposition of retroactive rent on Patricia as a *Watts* charge was not authorized.” (*In re Marriage of Watts* (1985) 171 Cal.App.3d 366.) She says Husband should have told her he wanted her to pay rent and had she known, she could have moved in with friends or found cheaper lodging. Instead she says she “was broadsided with an \$85,000 liability” she has no ability to pay.

In its statement of decision, the Court stated the parties separated on February 15, 2008 and lived together until the date of the statement of decision, February 1, 2011. The court also stated: “The court finds that Wife is chargeable with \$2,500 per month beginning May 1, 2008 for one-half of the reasonable rental value of the 528 South Bay Front property,” and “The legal basis for the Court’s order is . . . *In re Marriage of Watts* (1985) 171 Cal.App.3d 366” Wife argues “the trial court turned *Watts* on its head.”

In his brief, Husband states: “The court did not impose *Watts* charges because as [Wife] points out, *Watts* only provides reimbursement where there is postseparation, nonexclusive use of a community asset.” A surprising argument since during the underlying proceedings, he argued he was entitled to be reimbursed for “*Watts* charge [for] wife’s use of husband’s separate property residence.”

In *In re Marriage of Watts, supra*, 171 Cal.App.3d 366, the court held the trial court erred when it concluded it had no authority to reimburse the community for the postseparation exclusive use of the family residence. (*Id.* at p. 373.) Here the property was not owned by the community and the use was not exclusive, so the charge under *Watts* was in error.

Promissory Note

Lastly wife contends no evidence supports the court's imposition of a charge on a promissory note. She says the note was never admitted into evidence. Additionally she argues the 1993 note, on its face, was due within three years, and enforcement of it was clearly barred by the statute of limitations.

Husband does not even address this issue. We assume he agrees the ruling was in error. (*Smith v. Williams* (1961) 55 Cal.2d 617, 621.)

III

DISPOSITION

The judgment is reversed. The matter is remanded to the trial court for further proceedings in accordance with this opinion. Wife is entitled to her costs on appeal.

MOORE, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.