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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of JEANNE and
MICHAEL MACALUSO.

JEANNE MACALUSO,

Respondent,

v.

MICHAEL MACALUSO,

Appellant.

G045248

(Super. Ct. No. 08D009904)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Claudia Silbar, Judge. Affirmed.

Law Offices of Brian G. Saylin and Brian G. Saylin for Appellant.

John L. Dodd & Associates, John L. Dodd; and John S. Cate, Jr., for
Respondent.

* * *

INTRODUCTION

Before their marriage, Jeanne Macaluso and Michael Macaluso¹ signed two documents: an antenuptial agreement providing that all of their property, whether acquired before or during marriage, would be maintained as separate property; and an acknowledgment that provided, in relevant part, “[w]e . . . acknowledge that the Antenuptial Agreement . . . will not be effective between the two of us should a dispute arise.” During dissolution proceedings, the trial court found the acknowledgment was evidence of Jeanne and Michael’s express intent to ineffectuate the antenuptial agreement, and therefore concluded the antenuptial agreement was invalid and unenforceable. The trial court certified the issue for appeal. We conclude the trial court’s findings are supported by substantial evidence, and affirm.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Jeanne and Michael married on November 19, 2002. At that time, Jeanne’s child from a previous marriage was a ward of the State of California. Michael was concerned that the State of California would “come after” Jeanne financially, and that he could be financially responsible. Therefore, on November 1, before Jeanne and Michael wed, they signed an antenuptial agreement, which stated that they intended that all property would remain separate property during their marriage. At the same time, however, they signed an accompanying letter and acknowledgment which stated, in relevant part, “the [antenuptial] agreement is not effective between the two of you for at least the two following reasons: [¶] 1. The Agreement does not disclose any of your assets, and [¶] 2. In order to be effective, you must each be represented by separate attorneys who can advise you as to the Agreement and attach a certification of doing so.”

¹ To avoid confusion, we will refer to the parties by their first names; we intend no disrespect.

The antenuptial agreement and the acknowledgment were drafted by Jeanne's brother, who is an attorney; Jeanne had asked him, "if there was something that he could do that would help protect Michael in the event that [the state] might come after him for money." Michael stated "that he did not want a prenup," but was only concerned about "the state coming after money." Jeanne's brother did not believe that he was preparing a binding antenuptial agreement, or that the agreement was valid.

Jeanne and Michael did not see either the antenuptial agreement or the acknowledgment before signing them, and had no conversations about the contents of those documents. Neither Jeanne nor Michael read the antenuptial agreement before signing it; Michael read the acknowledgment before signing it.

Michael testified that Jeanne raised the issue of an antenuptial agreement, because she wanted to keep her assets separate. Michael also testified he was agreeable to the idea of an antenuptial agreement, and believed it would protect both of them. Michael testified he signed the antenuptial agreement and the acknowledgment on different days, and he signed the antenuptial agreement first. Michael said he believed the acknowledgment meant that if he and Jeanne later had a disagreement, each should obtain counsel and disclose their assets; he did not believe the acknowledgment voided the antenuptial agreement.

Jeanne filed for dissolution of the marriage in October 2008. The parties stipulated to bifurcate the issue of the validity of the antenuptial agreement.

After a hearing, the trial court found the antenuptial agreement was unenforceable and invalid. A statement of decision was filed, and judgment was entered. The trial court certified the issue of the enforceability of the antenuptial agreement for appeal.

DISCUSSION

"We review factual findings of the family court for substantial evidence, examining the evidence in the light most favorable to the prevailing party. [Citation.] In

reviewing evidence on appeal, all conflicts must be resolved in favor of the prevailing party, and all legitimate and reasonable inferences must be indulged in order to uphold the trial court's finding. [Citation.] In that regard, it is well established that the trial court weighs the evidence and determines issues of credibility and these determinations and assessments are binding and conclusive on the appellate court. [Citation.]” (*In re Marriage of Hill & Dittmer* (2011) 202 Cal.App.4th 1046, 1051-1052.)

Pursuant to Family Code section 1615, the trial court found that the antenuptial agreement would be valid in the absence of the acknowledgment. Neither Jeanne nor Michael challenges this finding.

The trial court made the following findings regarding the acknowledgment, which it referred to as exhibit 2: “Exhibit 2 is a letter prepared by [Jeanne]’s attorney that contains a section at the bottom entitled ‘Acknowledgment’ which was signed and dated on November 1, 2002 by both parties, is found by the Court to be circumstantial evidence of the parties’ intent to ineffectuate [the antenuptial agreement]; [¶] The Court finds that Exhibit 2 is not an addendum to [the antenuptial agreement], but rather is an acknowledgment of the parties’ intent to ineffectuate [the antenuptial agreement]. [¶] The parties did not intend for [the antenuptial agreement] to be valid as between them, and, without the proper intent, and with a document (Exhibit 2) that basically vitiates or voids a prior agreement, there is no enforceable antenuptial agreement. [¶] The Court finds that Exhibit 2 does not have to comply with Family Code §1615 factors and that Exhibit 2 is an acknowledgment, not an agreement. [¶] The Court finds that Exhibit 2 ineffectuated [the antenuptial agreement] from the time [the antenuptial agreement] was signed. [¶] The Court took into consideration the credibility of the parties. The Court did not think that either party was completely honest with the Court and that they exhibited convenient memory lapses on occasion. [¶] The Court does place some weight on the fact that [Michael] denied the existence of any agreement in responding to Form Interrogatories during the pre-hearing discovery phase of this case [¶] Exhibit 2 is

clear and unambiguous. [¶] But for Exhibit 2, [the antenuptial agreement] would be determined to be valid. The Court finds Exhibit 2 renders [the antenuptial agreement] invalid. [¶] The Antenuptial Agreement, Exhibit 1 is invalid and unenforceable.” (Underscoring omitted.)

“The basic goal of contract interpretation is to give effect to the parties’ mutual intent at the time of contracting. [Citations.]” (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 955; see Civ. Code, § 1636.) “Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.” (Civ. Code, § 1642.)

Substantial evidence supports the trial court’s finding that the acknowledgment is evidence of the lack of mutual intent by Jeanne and Michael to enter into the antenuptial agreement. The language of the acknowledgment, standing alone, is sufficient to support the trial court’s finding: “We, [Jeanne and Michael], acknowledge that the Antenuptial Agreement dated October 15, 2002 *will not be effective between the two of us should a dispute arise.*” (Italics added.) The foregoing supports the trial court’s finding that the express intent of Jeanne and Michael in signing the acknowledgment was to ineffectuate the antenuptial agreement. This finding is further supported by the testimony of Jeanne and her brother that Michael did not want a “real” antenuptial agreement, but instead wanted to be able to shield his assets and earnings from any claim relating to Jeanne’s child’s wardship. Jeanne and Michael’s joint acquisition of real property during their marriage, which the antenuptial agreement anticipated the parties would not do, further supports the trial court’s finding that the antenuptial agreement was null and void from the time it was executed.

The trial court’s finding was not, as Michael argues, that the acknowledgment invalidated an effective, enforceable antenuptial agreement. Rather, the court found that Jeanne and Michael never intended the antenuptial agreement to be

effective as between them, and Jeanne and Michael's express intent, as set forth in the acknowledgment itself, fully supports this finding.

In re Marriage of Dawley (1976) 17 Cal.3d 342, on which Michael relies, is distinguishable. In that case, the parties signed an antenuptial agreement providing all property owned at the time of marriage or obtained thereafter by either party would be that party's separate property. (*Id.* at pp. 347-348 & fn. 1.) When the parties divorced almost nine years later, the wife argued the antenuptial agreement was invalid as a violation of public policy because the parties did not contemplate their marriage would last until death. (*Id.* at p. 349.) The Supreme Court rejected the wife's argument. "A rule measuring the validity of antenuptial agreements by the subjective contemplation of the parties hazards the validity of all antenuptial agreements. No agreement would be safe against the risk that a spouse might later testify that he or she anticipated a marriage of short duration when he or she executed the agreement. Disputes concerning the validity of the agreement may arise, moreover, many years after its execution, perhaps even after the death of the parties, thus rendering any attempt to reconstruct the subjective anticipation of the parties fruitless. In consequence, under a test based upon the subjective contemplation of the parties, neither persons dealing with the parties nor even the parties themselves could rely on the terms of an antenuptial agreement." (*Id.* at pp. 351-352.) In the present case, by contrast, there is no concern regarding Jeanne and Michael's unexpressed, subjective intent. Jeanne and Michael signed the acknowledgment, which the trial court found set forth their *express* intent regarding the lack of effect of the antenuptial agreement.

The trial court found that the acknowledgment was neither a part of the antenuptial agreement, nor a separate agreement, and therefore did not need to comply with the Uniform Premarital Agreement Act. (Fam. Code, § 1600 et seq.) We conclude the trial court's finding was correct. No authority supports Michael's argument that a document voiding an antenuptial agreement must meet the same statutory requirements

as the antenuptial agreement itself. By an antenuptial agreement, the parties give away rights to property they would otherwise have, under long-established California law. The statute therefore requires the parties to clearly establish their desire to give up those rights by following the procedures of Family Code section 1615. A document by which the parties acknowledge they do not want to enforce their antenuptial agreement, but desire to simply rely on their rights as established by statute and case law, need not meet any special requirements.

Michael also argues the acknowledgment is unenforceable because the antenuptial agreement provides he and Jeanne “have not entered into any contract, understanding, or agreement, whether express, implied in fact, or implied by law, on their respective property and contractual rights and obligations.” Michael contends that because Jeanne’s brother testified he drafted the acknowledgment before the antenuptial agreement, the acknowledgment is of no force and effect. Looking only at the face of the documents, however, the acknowledgment was dated after the antenuptial agreement—November 1 versus October 15. (Civ. Code, § 1651 [handwritten portion of agreement controls over printed portion]; *Burgess v. Rodom* (1953) 121 Cal.App.2d 71, 74.) Both Jeanne and her brother testified both documents were signed on November 1. Even Michael’s testimony, which was that he signed the antenuptial agreement sometime in October, and the acknowledgment on a later date, is inconsistent with the argument that the later antenuptial agreement disavows the earlier acknowledgment. (See *Duran v. Duran* (1983) 150 Cal.App.3d 176, 180 [contract is not completed or binding if assent to contract terms not evidenced in the manner agreed on]; Civ. Code, § 1626 [written contract takes effect on delivery].)

Michael further argues the acknowledgment should not be enforceable because its object was to defraud the federal and state governments. Michael’s

contention that the acknowledgment constituted a fraudulent transfer is specious.² The acknowledgment is not “[a] transfer made or obligation incurred by a debtor,” and therefore does not meet the first requirement of a fraudulent transfer, pursuant to Civil Code section 3439.04, subdivision (a). As explained *ante*, the trial court’s finding that the acknowledgment is evidence of Jeanne and Michael’s intent to ineffectuate the antenuptial agreement is supported by substantial evidence. Additionally, there is no evidence of any claim against Jeanne in connection with her daughter’s wardship. (See Civ. Code, § 3439.01, subd. (b) [“[c]laim” for purposes of Uniform Fraudulent Transfer Act is “a right to payment”].) The trial court specifically found there was no evidence that the acknowledgment was intended to defraud creditors. Finally, the Uniform Fraudulent Transfer Act does not necessarily make a transfer improper; it limits itself thus: “A transfer made or obligation incurred by a debtor is fraudulent *as to a creditor*” (Civ. Code, § 3439.04, subd. (a), italics added.) Thus, only Jeanne’s creditors, not Michael, would have the ability to challenge any allegedly fraudulent transfer. (Whether the antenuptial agreement constitutes a fraudulent transfer is not an issue before us. Assuming for purposes of this opinion only that the antenuptial agreement was intended by Jeanne and Michael as a means for fraudulently hiding assets from Jeanne’s creditors, then the acknowledgment, as the document invalidating or vitiating the antenuptial agreement, is the opposite of a fraudulent transfer.)

State Bd. of Equalization v. Woo (2000) 82 Cal.App.4th 481, cited by Michael, is inapposite. In that case, the State Board of Equalization sought an earnings withholding order against the wife to pay the husband’s tax debt. (*Id.* at p. 483.) The husband and the wife had, after the tax debt arose, entered a marital agreement transmuting their future earnings to separate property. (*Id.* at pp. 482-483.) The

² Michael’s reliance on Family Code sections 851 and 852 is misplaced, because those sections address transmutations of property after marriage. (See generally Fam. Code, § 850.)

appellate court concluded the attempt to transmute the wife's community property earnings to separate property to protect them from execution to satisfy the tax debt was a fraudulent transfer, in violation of Civil Code section 3439.04, subdivision (a) and Family Code section 851. (*State Bd. of Equalization v. Woo, supra*, at p. 484.) Here, the trial court's finding that Jeanne and Michael expressly intended the acknowledgment to ineffectuate the antenuptial agreement distinguishes this case from *State Bd. of Equalization v. Woo*.

To the extent Michael is claiming the attempt to defraud Jeanne's creditors means that Jeanne has unclean hands, and the acknowledgment must be found to be ineffective, Michael fails to acknowledge that, having signed both the antenuptial agreement and the acknowledgment, he, too, would have unclean hands. Further, if any document actually defrauds creditors by hiding community property from them, it would be the antenuptial agreement, not the acknowledgment. Therefore, Michael's argument on grounds of equity fails for those two reasons.

Jeanne asks this court to award attorney fees against Michael, in an amount to be determined by the trial court on remand. In support of her argument, Jeanne cites *In re Marriage of James & Christine C.* (2008) 158 Cal.App.4th 1261, 1277-1278, in which another panel of this court noted that while the prevailing party "may be entitled to recover her appellate attorney fees under Family Code sections 2030 and 2032, we must leave that decision to the trial court's discretion, upon appropriate motion in that court. [Citations.]" Whether either party is entitled to a needs-based attorney fees award for attorney fees incurred on appeal is a matter to be decided by the trial court, following a motion and hearing. We reject Jeanne's request that this court, in the first instance, order Michael to pay her attorney fees incurred on appeal.

DISPOSITION

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

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.