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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of WENDY D.  
WARD-JOHNSON and TERRY M.  
JOHNSON.

WENDY D. WARD-JOHNSON,

Respondent,

v.

TERRY M. JOHNSON,

Appellant.

G046598

(Super. Ct. No. 09D003833)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,  
James L. Waltz, Judge. Affirmed in part, reversed in part, and remanded with directions.

Jarvis, Krieger & Sullivan and Robert A. Curtis for Appellant.

Snell & Wilmer and Richard A. Derevan for Respondent.

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## INTRODUCTION

Terry M. Johnson appeals from the judgment, which dissolved his marriage to Wendy D. Ward-Johnson<sup>1</sup> and resolved the issues related to support, custody, and property division. Terry contends the trial court erroneously (1) upheld the validity of an interspousal quitclaim deed he executed in Wendy's favor as to real property in Costa Mesa purchased by Terry and Wendy during the marriage (the Santa Ana Avenue property), and (2) denied Terry's request that the community be reimbursed for the time, skill, and labor, which he devoted, as a general contractor, to improving the value of two additional properties that Wendy had acquired before the marriage and constituted her separate property.

We affirm the portion of the judgment awarding the Santa Ana Avenue property to Wendy as her separate property. Substantial evidence showed Terry's execution of the quitclaim deed conveying his community property interest in the Santa Ana Avenue property to Wendy was not the product of undue influence.

We reverse the portion of the judgment denying Terry's request for reimbursement to the community for the time, skill, and labor he devoted to Wendy's separate property during the marriage. The trial court found Terry invested more than a minimal effort in the improvement of those properties. We remand to the trial court to determine the amount Wendy's separate property increased in value as a result of Terry's efforts and to order reimbursement to the community accordingly.

## FACTS<sup>2</sup>

Terry and Wendy were married in September 2001, and separated, seven years and five months later, in February 2009. They have one child who was born in

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<sup>1</sup> We use the parties' first names to avoid confusion and intend no disrespect. (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 390, fn. 1.)

<sup>2</sup> This summary of the facts is largely based on the summary of the trial court's findings contained in the judgment.

2002. Before the marriage, Wendy had acquired property on Aster Place in Costa Mesa (the Aster Place property) and property on Congress Avenue in Costa Mesa (the Congress Avenue property), both of which constituted her separate property; neither property was encumbered by debt at the time of the marriage. For a period of time during their marriage, Terry and Wendy lived at the Aster Place property.

During the marriage, Terry invested his time, skill, and labor during a six-month period to make substantial capital improvements to the Aster Place property. The judgment stated: “The 3 bedroom 3 bath home was remodeled into a 5 bedroom 4 bath residence. [Terry] also added a second story. Aster Place was enlarged by 800 to 900 square feet. The capital improvements made by [Terry] and others substantially increased the value of Aster Place.” Wendy obtained a loan secured by the Aster Place property to pay for materials and subcontractors involved in making the “substantial capital improvements” to the Aster Place property and to pay for community living expenses.

During the marriage, Terry also “used his labor and skills to make capital improvements to [the] Congress Avenue” property.

In 2002, Wendy and Terry purchased the Santa Ana Avenue property. In 2003, Wendy and Terry had a conversation about Terry’s infidelity. Terry told Wendy he would show her that he was committed to their marriage by signing a deed transferring his interest in the Santa Ana Avenue property to her. Wendy did not take any action at that time.

In July 2004, Wendy again confronted Terry about his infidelity. He told her to have a quitclaim deed prepared for the Santa Ana Avenue property and he would sign it. Seven to 10 days later, Wendy had an escrow company prepare a quitclaim deed that Terry later signed.

It had been Terry’s idea to convey his interest in the Santa Ana Avenue property to Wendy to “prove that [he was] not going anywhere”; Wendy never asked

Terry to sign the quitclaim deed. Although Wendy was angry, she did not threaten to leave Terry or suggest that “something else would happen” if he did not sign the deed. After Terry signed the deed, Wendy kept it in her files. Terry did not tell Wendy that the quitclaim deed could only be used if he filed for divorce. She never promised Terry she would not use the quitclaim deed against him unless he filed for divorce.

In 2009, Wendy filed a petition for dissolution of the marriage.

### PROCEDURAL HISTORY

Following a trial and the court’s issuance of a statement of decision, judgment was entered dissolving the marriage and resolving custody, support, and property division issues. The judgment awarded Terry and Wendy joint legal and physical custody of their child, and awarded Wendy child support but not spousal support.

As pertinent to this appeal, the judgment explained the trial court’s reasons for concluding that Terry had effectively executed a quitclaim deed and thereby relinquished his community property interest in the Santa Ana Avenue property. The judgment also set forth the court’s reasons for denying Terry’s claim for reimbursement to the community for the time, skill, and labor he invested to improve the Aster Place property and the Congress Avenue property, which were both indisputably Wendy’s separate property.

Terry appealed from the judgment.

### DISCUSSION

#### I.

**THE TRIAL COURT DID NOT ERR BY CONCLUDING THE SANTA ANA AVENUE PROPERTY WAS WENDY’S SEPARATE PROPERTY; TERRY’S QUITCLAIM DEED WAS VALID AND NOT PROCURED BY UNDUE INFLUENCE.**

Terry argues the trial court erred by concluding he quitclaimed his community interest in the Santa Ana Avenue property because Wendy failed to rebut the

presumption that Terry’s execution of the quitclaim deed was the product of undue influence. For the reasons we explain, Terry’s argument is without merit.

A.

*Applicable Legal Principles*

“Although spouses may enter transactions with each other (Fam. Code, § 721, subd. (a)), such transactions ‘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’ unmarried business partners, including the right of access to records and information concerning their transactions. (Fam. Code, § 721, subd. (b).) [¶] Because of this, our courts have long held that when an interspousal transaction advantages one spouse, public policy considerations create a presumption that the transaction was the result of undue influence. [Citation.] A spouse who gained an advantage from a transaction with the other spouse can overcome that presumption by a preponderance of the evidence.”  
(*In re Marriage of Starr* (2010) 189 Cal.App.4th 277, 281, fn. omitted.)

B.

*The Trial Court’s Findings*

The judgment explains the trial court’s conclusion that Wendy rebutted the presumption that the quitclaim deed was the product of undue influence. The judgment states in pertinent part: “On July 21, 2004 [Terry] executed a Quitclaim Deed releasing all of his right, title and interest in the Santa Ana Avenue property to [Wendy]. During the trial the parties offered polarized versions of the circumstances surrounding the execution of the Quitclaim Deed. [¶] The court finds that [Wendy]’s version of the

circumstances surrounding the preparation and execution of the Quitclaim Deed was more credible than [Terry]'s version of events. [Terry] knowingly and willingly signed the Quitclaim Deed and he did so after knowing its contents and full meaning. The lack of consideration for the execution of the Quitclaim Deed is not legally significant. [Wendy] proved to the court she did not take oppressive or unfair advantage of [Terry]'s alleged distress over his act or acts of infidelity. [Wendy] proved she did not engage in any coercive persuasion influencing [Terry] to execute the Quitclaim Deed. [Wendy] proved to the court she did nothing to gain any unfair advantage over [Terry] regarding the decision to sign the Quitclaim Deed.”

The judgment further states:

“The execution of the Quitclaim Deed changed the legal character of the Santa Ana Avenue property from community property to [Wendy]'s separate property. The execution of the Quitclaim Deed by [Terry] advantaged [Wendy] and triggered a rebuttable presumption of undue influence. [Wendy] has overcome that rebuttable presumption of undue influence by a preponderance of the evidence. [Wendy] produced substantial and satisfying evidence that:

“1. [Terry] executed the Quitclaim Deed freely and voluntarily free of coercion or persuasion.

“2. [Terry] executed the Quitclaim Deed with full understanding of the pertinent facts.

“3. The Quitclaim Deed was not a complex document. Its contents did not include words of special meaning requiring explanation. The words and phrases were ordinary and easy to understand.

“4. At the time of execution [Terry] was 45 years old, an experienced tradesman in general contracting and given his age, training and work experience it is more likely than not that he understood its legal significance. [Terry] did not claim otherwise at trial.

“5. Above [Terry]’s signature on the Deed was the following statement:

“It is the expressed intent of the Grantor, being the spouse of the Grantee, to convey all right, title and interest of the Grantor, community or otherwise, in and to the herein described property to the Grantee as her sole and separate property.’

“6. The change of character statement is plain on its face. The change of character statement is easily understood and not subject to vagueness or ambiguity.

“7. When reconciling the polarized testimony [Wendy] was more credible than [Terry]. The court is persuaded that [Wendy] did not threaten or pressure [Terry] into signing the deed or threaten to withhold access to [their child]. To the extent [Terry] testified otherwise he was not credible.

“8. There was no evidence that [Wendy] harangued and berated [Terry] over his infidelity. The court rejects [Terry]’s claim that [Wendy] ordered him to sign the Quitclaim Deed. The court does accept [Terry]’s testimony that he executed the Quitclaim Deed as an act of penitence. However, [Terry]’s actions were self directed and he now owns the consequences. [Terry]’s claim that [Wendy] required the signing of the Quitclaim Deed in exchange for forgiveness, even if true, does not constitute undue influence under the circumstances. There was no evidence that [Wendy] withheld access to [their child] in exchange for the Quitclaim Deed. Neither party suggested that there was any physical, emotional or psychological abuse and both parties presented as mentally strong individuals. Neither of the parties is infirm or easily intimidated.

“9. [Terry] has been in the trades all of his adult life. He is a man of grit and determination and not easily intimidated and certainly not intimidated by [Wendy].

“The court rules that the Santa Ana Avenue property is assigned to [Wendy] as her sole and separate property without charge or offset.”

C.

*The Trial Court Did Not Err by Finding Wendy's Testimony Credible and Concluding She Rebutted the Presumption of Undue Influence.*

Substantial evidence supported the trial court's findings in support of its conclusion that Wendy had rebutted the presumption Terry had signed the quitclaim deed as a result of undue influence. Wendy testified that over the course of a year, Terry twice offered to sign a quitclaim deed, conveying his interest in the Santa Ana Avenue property, to demonstrate his commitment to their marriage. Signing the quitclaim deed was his idea, not hers. About a week after Terry offered to sign a quitclaim deed, and as Terry directed, Wendy had the quitclaim deed prepared. Terry signed it. Wendy testified that she was angry about Terry's infidelity, but she did not threaten to leave him, or otherwise threaten him, to secure his signature on the quitclaim deed.

Terry testified Wendy told him that she would not "file" the quitclaim deed unless he filed for divorce. The trial court, however, found Wendy's testimony more credible than Terry's testimony, and believed her testimony that there were no conditions attached to Terry's execution of the quitclaim deed. Nothing in the record shows Wendy's testimony was inherently incredible or otherwise improperly relied upon by the court.

Terry argues that Wendy's testimony she was angry during their July 2004 "emotional conversation" shows Terry "was not thinking clearly when he illogically appeared to forfeit 100% of his interest in the only property he owned and one that he had just devoted hard labor to substantially improve." Terry's argument continues: "The emotional gesture to appease his angry wife was not the product of a knowing, intelligent, and voluntary waiver of his community property interest."

But the trial evidence showed Terry had offered to sign a quitclaim deed about one year before he signed the quitclaim deed at issue in this case. This evidence

directly undercuts Terry’s argument that he suddenly executed a quitclaim deed in a fit of emotion. Furthermore, Terry does not challenge the trial court’s findings contained in the judgment, which further support its conclusion that Wendy rebutted the presumption of undue influence. These findings include the following: Terry executed the quitclaim deed with “full understanding of the pertinent facts”; the quitclaim deed itself contained language that was “ordinary and easy to understand”; Terry was not intimidated by Wendy; and, given Terry’s age, training, and work experience, it was “more likely than not that he understood [the quitclaim deed’s] legal significance.”

We find no error.

## II.

### THE COMMUNITY WAS ENTITLED TO REIMBURSEMENT FOR THE TIME, SKILL, AND LABOR TERRY INVESTED TO SUBSTANTIALLY IMPROVE WENDY’S SEPARATE PROPERTY.

In his opening brief, Terry argues, “equity requires that Terry reap some financial benefit from his efforts improving” the Aster Place property and the Congress Avenue property. (Underscoring, boldface, & some capitalization omitted.) For the reasons we explain, we agree the community was entitled to reimbursement for Terry’s efforts during the marriage to substantially increase the value of Wendy’s separate property.

In *In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, 852 (*Dekker*), the appellate court, following the California Supreme Court’s decision in *Pereira v. Pereira* (1909) 156 Cal. 1, 7, held “where more than minimal community effort combines with a separate capital investment to increase the value of the separate investment, the court must determine the amount of the increase attributable to the capital, and the amount attributable to community effort.” In *Dekker*, the husband claimed a community interest in a corporation that was formed during the marriage using \$1,000 of the wife’s separate

property. (*Dekker, supra*, at pp. 846-847.) At the time of the dissolution of the marriage, the corporation's value had increased to almost \$1 million due to the husband's "effort, expertise and contacts." (*Id.* at pp. 849, 846.) Applying the doctrine of equitable apportionment, the appellate court rejected the wife's argument that the community was not entitled to reimbursement for the husband's efforts which had increased the value of the corporation. (*Id.* at pp. 850-852.)

The appellate court in *Dekker, supra*, 17 Cal.App.4th at pages 850-851, explained: "[P]roperty acquired prior to marriage is separate, while property acquired during the marriage is presumed community property. [Citations.] Income from separate property is separate, the intrinsic increase of separate property is separate, but the fruits of the community's expenditures of time, talent, and labor are community property. [Citations.] [¶] Indeed, the basic concept of community property is that marriage is a partnership where spouses devote their particular talents, energies, and resources to their common good. [Citation.] Acquisitions and gains which are directly or indirectly attributable to community expenditures of labor and resources are shared equally by the community. [Citation.] [¶] Where community efforts increase the value of a separate property business, it becomes necessary to quantify the contributions of the separate capital and community effort to the increase. [Citation.] It is well settled in California that income produced by an asset takes on the character of the asset from which it flows. Thus, rents, issues and profits are community property if derived from community assets, and separate property if derived from separate assets. [Citations.]"

The *Dekker* court continued: "In *Pereira* [v.] *Pereira, supra*, 156 Cal. at page 7, the California Supreme Court first announced the rule that where a husband owns a separate property business and devotes his efforts to the enterprise, there must be an apportionment of the profits. [Citations.] [¶] Viewing the language cited in *Pereira* in light of California's partnership model of marriage, the necessity of apportionment arises when, during marriage, more than minimal community effort is devoted to a separate

property business. [Citations.] ¶ The community is entitled to the increase in profits attributable to community endeavor. [Citations.] Accordingly, courts must apportion profits derived from community effort to the community, and profits derived from separate capital are apportioned to separate property.” (*Dekker, supra*, 17 Cal.App.4th at pp. 851-852, fn. omitted.)

The *Dekker* court concluded: “A fair reading of *Pereira* supports the view that where more than minimal community effort combines with a separate capital investment to increase the value of the separate investment, the court must determine the amount of the increase attributable to the capital, and the amount attributable to community effort. [Citation.] ¶ Here, [the corporation] was started during the marriage. [The wife] was issued all [the corporation’s] stock, valued at \$1,000. The commissioner found the stock was [the wife]’s separate property. She and [the husband] were the only officers of the corporation. [The husband] devoted 100 percent of his effort to building [the corporation] and was primarily responsible for its success. We hold that the trial court’s application of equitable apportionment to the increased value of the [corporation’s] stock is supported by substantial evidence.” (*Dekker, supra*, 17 Cal.App.4th at p. 852.)

A treatise on California family law notes: “[A]pportionment issues most often arise where community effort is devoted to a separate property business. But the right to apportionment of profits is not dependent upon the nature of the underlying property. The same rules apply, e.g., when a spouse uses industry and skill during marriage to generate a profit from separate property real estate or security investments” and are not affected by which spouse owns the underlying separate property. (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2012) ¶¶ 8:337 to 8:338, p. 8-84.11 (rev. #1, 2012).)

Here, the trial court found that Terry had improved Wendy’s separate property through his time, labor, and skill. As to the Aster Place property, the judgment

stated: “Using [Terry]’s labor and skill, in over a period of approximately six months, [Terry] made substantial capital improvements to Aster Place including the following: [¶] The 3 bedroom 3 bath home was remodeled into a 5 bedroom 4 bath residence. [Terry] also added a second story. Aster Place was enlarged by 800 to 900 square feet. The capital improvements made by [Terry] and others substantially increased the value of Aster Place.” The judgment also stated, “[d]uring the marriage [Terry] used his labor and skills to make capital improvements to Congress Avenue and, like Aster Place, [Terry] seeks reimbursement.”

Nevertheless, the trial court did not award the community any reimbursement for two reasons. First, the judgment stated that Terry had not provided any legal authority supporting his reimbursement claim based on a theory of “sweat equity.” It does not appear the trial court was aware of *Dekker, supra*, 17 Cal.App.4th 842; our record does not show the parties ever cited that case to the trial court. We are persuaded by the analysis and holding of *Dekker*, and the analysis of Hogoboom and King, California Practice Guide: Family Law, *supra*, paragraphs 8:337 to 8:338, page 8-84.11. We conclude that the community should have been reimbursed for Terry’s “more than minimal” efforts which resulted in an increase in the value of Wendy’s separate property. (*Dekker, supra*, at p. 852.)

Wendy argues that *Dekker, supra*, 17 Cal.App.4th 842, is distinguishable from this case, because in *Dekker*, the husband spent “100 percent of his effort to building” the corporation (*id.* at p. 852), while in this case, Terry only spent some of his time, skill, and labor on improving Wendy’s separate property. Wendy also argues *Dekker* only supports the proposition that reimbursement is available for one spouse’s improvement of the other spouse’s business enterprise, not real property interest. Although, in *Dekker*, the husband spent all of his time developing a business that was initially capitalized with the wife’s separate property, the appellate court explained reimbursement is not only available when the working spouse devotes 100 percent of his

or her effort to the business enterprise, but also more broadly to circumstances “where more than minimal community effort combines with a separate capital investment to increase the value of the separate investment.” (*Id.* at pp. 847, 852.)

Wendy contends the holding of *Dekker* is bad policy as “it would turn mar[ital] dissolution trials into never-ending disputes about who did what work around the home and the value of those efforts.” But as discussed *ante*, *Dekker* applies when “more than minimal community effort combines with a separate capital investment to increase the value of the separate investment.” (*Dekker, supra*, 17 Cal.App.4th at p. 852.) Therefore, one spouse’s efforts in washing the dishes, mowing the lawn, or changing a light bulb would not support a community reimbursement claim under *Dekker*.

Wendy also argues that *Dekker, supra*, 17 Cal.App.4th 842, erroneously interpreted *Pereira v. Pereira, supra*, 156 Cal. 1, which only involved reimbursement to the community for a spouse’s efforts during the marriage, which increased the value of the spouse’s own separate property business. Wendy further argues that in the case where a spouse substantially improves the other spouse’s separate property, it should be essentially presumed a donation to the other spouse. To Wendy’s credit, in her respondent’s brief, Wendy acknowledges the well-established legal principles that “applying a gift presumption to marital property is inconsistent with public policy, which presumes acquisitions during a marriage are community” and that “California courts do not presume a gift when community funds are contributed to purchase a separate asset or to reduce an encumbrance on a separate asset.” (*In re Marriage of Allen* (2002) 96 Cal.App.4th 497, 504.)

Furthermore, any donation of community resources by Terry to improve Wendy’s separate property would arguably constitute a transmutation of the value of the community resources to Wendy’s separate property. Since January 1985, transmutations must be in writing under Family Code section 852 “to avoid the consequences of

recognizing transmutation by informal agreement, including extensive litigation in dissolution proceedings and encouragement of perjury.” (*In re Marriage of Allen, supra*, 96 Cal.App.4th at p. 504.) Wendy did not produce any evidence of a written transmutation agreement regarding the reimbursement issue presented.

The trial court did not approve reimbursement to the community for Terry’s efforts to improve Wendy’s separate property for a second reason, finding that Terry failed to provide sufficient evidence supporting that claim. The judgment stated, as to the Aster Place property: “At trial [Terry] did not produce documents tracing the expenditure of funds to capital improvements made to Aster Place. At trial [Terry] did not produce records quantifying the labor hours he devoted to Aster Place and its improvements. [Terry] did not keep a log or diary of the hours spent improving Aster Place. [Terry] admitted that one of the exhibits he admitted at trial documenting his hours was incomplete. [Terry] failed to assert a reimbursement claim related to Aster Place within his Final Declaration of Disclosure.<sup>3]</sup> [Terry] failed to produce sufficient evidence quantifying the value of his labor devoted to Aster Place and his improvements. [Terry] failed to prove facts supporting his ‘sweat equity’ reimbursement claim. [Terry]’s trial testimony and trial estimates regarding the quantum meruit value of his work in labor (‘sweat equity’) does not constitute substantial and satisfying evidence supporting his reimbursement claim.” As to the Congress Avenue property, the judgment similarly stated that, “[g]iven the evidentiary gaps in the record, [Terry]’s claim is denied based upon failure of proof.”

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<sup>3</sup> Wendy argues, in her respondent’s brief, that Terry should be estopped from asserting his reimbursement claim because Terry’s final declaration of disclosure under Family Code section 2105 made no specific mention of seeking reimbursement as to the Aster Place property and the Congress Avenue property, but only listed their acquisition dates and estimated equity. The record shows Wendy was on notice of Terry’s claim that the community should be reimbursed as to Wendy’s separate property and the issue was litigated during trial. Thus, Terry has not forfeited that issue.

But, the trial court made express findings that Terry's efforts to improve Wendy's separate property were more than minimal. The trial court's express findings that Terry made "substantial capital improvements" to the Aster Place property, which "substantially increased [its] value," and also made "capital improvements" to the Congress Avenue property are directly inconsistent, as a matter of law, with the court's refusal to award the community *anything* for Terry's efforts that resulted in an increase in the value of Wendy's separate property. Terry did not produce sufficient proof to satisfy the court that the community should be awarded a particular amount as reimbursement for his time, skill, and labor. But, in light of the trial court's express findings that Terry's time, skill and labor substantially improved and increased the value of Wendy's separate property, a reimbursement award to the community, in some amount, was required. The trial court thus erred by denying the community any such reimbursement. On remand, the trial court shall determine the amount of any increased value of Wendy's separate property, which was attributable to Terry's efforts, and order reimbursement to the community accordingly. On remand, the trial court has discretion how to best proceed to resolve this issue.

#### DISPOSITION

We reverse the portion of the judgment denying Terry's request for reimbursement for the time, skill, and labor he devoted to making capital improvements to the Aster Place property and the Congress Avenue property during the parties' marriage. We remand to the trial court to determine the amount of the increase in value of those properties that was attributable to Terry's efforts, and order reimbursement to the

community accordingly. We otherwise affirm the judgment. In the interests of justice, the parties shall bear their own costs on appeal.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.