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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of MISCHELYNN
and MARK W. SCARLATELLI.

B270288
(Los Angeles County
Super. Ct. No. KD077685)

MISCHELYNN SCARLATELLI,

Respondent,

v.

MARK W. SCARLATELLI,

Appellant.

APPEAL from a judgment of the Superior Court of
Los Angeles County, Bruce Iwasaki, Judge. Reversed and
remanded with directions.

Law Offices of Stephen R. Wade, Stephen R. Wade, and
W. Derek May for Appellant Mark W. Scarlatelli.

Dagrella Law Firm and Jerry R. Dagrella for Respondent
Mischelynn Scarlatelli.

This appeal arises out of a marital dissolution proceeding initiated in 2009 by Mischelynn Scarlatelli (Mischelynn) against Mark Scarlatelli (Mark).¹ The appeal focuses on two properties in which Mark asserts a community property interest (the 339 Saddlehorn property and the 328 Saddlehorn property), both of which are owned by the Troy and Shirley Isom Trust (the Trust).² In 2014, upon Mark's motion, the trial court ordered the Trust joined as a third party claimant. At the 2015 trial, over Mark's opposition, the court, by a judicial officer other than the one who granted the joinder motion, severed the third party civil matter without prejudice to each side raising its position in the civil department. Trial proceeded on all remaining issues, and as part of its judgment on reserved issues, the court found that the two properties were not part of the community estate and thus not subject to division in that proceeding.³ Mark contends that the court, in making that determination, denied him due process. We agree.

FACTUAL AND PROCEDURAL BACKGROUND

In November 2009, after 15 years of marriage and two children, Mark and Mischelynn separated. In December 2009, Mischelynn filed a petition to dissolve the marriage. A status only judgment was entered in November 2010 with all remaining issues reserved for trial.

¹ We refer to the parties by their first names for convenience and ease of reference. We intend no disrespect.

² Troy and Shirley Isom (the Isoms), both of whom died in March 2015, were Mischelynn's mother and stepfather. Mischelynn is the successor trustee of the Trust.

³ Because the balance of the court's decision is not relevant to this appeal, we do not discuss it.

During 2012 and 2013, Mark filed in civil court multiple lawsuits against Mischelynn, the Isoms, and the Trust.⁴ Each action alleged claims arising out of a dispute over, among other things, the ownership of certain real property, including 339 Saddlehorn and 328 Saddlehorn. Mark eventually dismissed the first two lawsuits, but then filed three new ones against the same parties, again alleging, among other things, a community property ownership interest in the properties.

In response to Mark's lawsuits, the defendants filed three separate motions for sanctions pursuant to Code of Civil Procedure section 128.7, each claiming that the action was brought without legal or factual merit and primarily for the purpose of harassing Mischelynn and the Isoms in the pending family law case. Each motion sought sanctions against both Mark and his then law firm, as well as dismissal of the action with prejudice. In one of the motions, the defendants contended, among other things, that the family law court had exclusive jurisdiction over the causes of action alleged against Mischelynn because such claims pertained to the assets of a community property business that was already the subject of litigation in the pending family law case. In a supporting declaration, Mischelynn stated that the family law proceeding was in the discovery stage and that all of the claims and allegations against her involved issues that were already being litigated in that case. Further, Mischelynn opined that Mark had brought each civil case in retaliation for her attempts to increase his spousal and child support obligations and to expose his misappropriation of community funds.

⁴ These lawsuits are the subject of an unpublished opinion filed by Division Seven of this court. (*Scarlatelli et al. v. Gamut Construction Company Inc., et al.* (Jan. 20, 2015, B252435) [nonpub. opn.].) The facts set forth in the instant opinion which pertain to those lawsuits rely on the Division Seven opinion.

The trial court granted one of the motions, awarded monetary sanctions against both Mark and his then counsel, and ordered the dismissal of the action with prejudice. Mark and his counsel appealed, arguing that the trial court erred in finding that the family law court had exclusive jurisdiction over the subject matter of the action and in ordering sanctions against them.

In January 2015, Division Seven of this court reversed the trial court's sanctions award as well as the order dismissing the lawsuit, concluding that Mark's decision to file the lawsuit was not objectively unreasonable.

In May 2014, while his appeal was pending, Mark filed in the family law proceeding a third party joinder action against the Isoms, individually and as trustees of the Trust. The complaint alleged a total of seven causes of action.⁵ In essence, Mark was

⁵ Mark's joinder motion and related documents were not made a part of the clerk's transcript on appeal. The details set forth in this opinion have been taken from various documents filed by both parties in the family law proceeding.

At trial Mischelynn's counsel said he was not served with the joinder application at the time it was filed, stating that "according to the rules [it is] not required to be served on my client. . . . [Mark] ultimately served my client about a month and a half ago. And we agreed to [an] immediate trial date based upon the history that there are enough discovery in the previous five court actions."

In fact, the statement made at trial by Mischelynn's counsel is inconsistent with rule 5.24 of the California Rules of Court, which requires service of the joinder motion, supporting declaration, and a blank copy of the responsive declaration. Furthermore, once the motion is granted, "the court must direct that a summons be issued using the *Summons (Joinder)* (form FL-375) and that the claimant be served with a copy of the *Notice of Motion and Declaration of Joinder* (form FL-371), the pleading attached thereto, the order of joinder, and the summons. The claimant has 30 days after service to file an appropriate response."

seeking a determination that the Trust's assets included 339 Saddlehorn and 328 Saddlehorn, both of which he alleged were community assets subject to division in the family law proceeding.

The first and second causes of action sought declaratory relief and restitution with regard to 339 Saddlehorn, the parties' marital residence, owned by the Trust. Mark claimed that he paid for the land and built the house on the land and that the Trust holds title to the property in a constructive trust for the benefit of the community. Mark also sought a declaration that he was entitled to restitution of and disgorgement of the monies expended by the community in the purchase and construction of the property.

The third, fourth and fifth causes of action pertained to 328 Saddlehorn, in which Mark also claimed a community interest. Mark was seeking a declaration that Gamut Construction Company Inc., in which he and Mischelynn each held a 50 percent ownership interest, was entitled to an equitable lien against 328 Saddlehorn. Mark also alleged that Troy Isom breached his fiduciary duty to Bella Piazza LLC—a real estate partnership which Mark owned jointly with Troy—by refusing to transfer to Bella Piazza LLC ownership in 328 Saddlehorn and keeping it in the name of the Trust.

Trial in the dissolution action commenced on July 13, 2015. At the outset, the court, by a judicial officer other than the one who granted the joinder motion, questioned why it should adjudicate the joined civil matter as part of the dissolution proceeding. The court noted that counsel for Mischelynn had filed a motion for judgment on the pleadings and a motion for sanctions pursuant to Code of Civil Procedure section 128.7 challenging the sufficiency of the complaint. After hearing argument from counsel, and what appears to be over Mark's objection, the court "severed" the third party civil matter and ordered that the matter be sent to department one for

assignment.⁶ The court found “that it is not in the interests of the parties and the judicial resources of the court to have the matter joined.”

Counsel for the Trust said he had not been served with any joinder motion and indicated his position that the motion should not have been granted in the first instance. He stated, however, that he preferred not waiting another year until another judicial officer decides the issues raised and was ready to proceed.

Counsel for Mischelynn indicated that her client had “disclaimed all interest in the property via her bankruptcy and the discharge.” She proposed that “a judgment should be issued in that matter.” She questioned how issues of child and spousal support could be decided without determining the joinder issues, “which definitely changes what [Mark’s] income is.” Her counsel acknowledged that the court could proceed with the family law matters, that the civil matters could proceed separately, and that any modification which may be needed after the civil matter is concluded could be accommodated postjudgment. Counsel reiterated Mischelynn’s position that there was no property to be divided in the dissolution matter.

Counsel for Mark challenged Mischelynn’s counsel’s position as to Mischelynn’s bankruptcy, insisting that Mischelynn did not disclaim any interest in the Bella Piazza LLC partnership, but rather, took the position that the partnership was community property.

⁶ The court made its ruling “without prejudice to the trustee of the [T]rust, [Mischelynn], challenging the complaint either facially by demurrer or motion for judgment on the pleadings, or by motion for summary judgment.” The ruling was also made “without prejudice to the trustee renewing her motion under Code of Civil Procedure section 128.7.”

On December 21, 2015, the court filed its statement of decision after trial, which was contemporaneously incorporated into the court's judgment on reserved issues. The statement of decision provided, in pertinent part, as follows:

“At trial Mischelynn claimed no interest in the [339 Saddlehorn property] herself, although she has offered contradictory claims about this during the litigation. The Isom Trust owns other real estate as well. Mischelynn is the trustee and a beneficiary of the Isom Trust. The Trust is in litigation with Mark and other beneficiaries. The third-party civil litigation between Mark and the Isom Trust, which has had a convoluted procedural history, was at one point joined with this dissolution proceeding.

“When this matter was presented for trial, the parties indicated that they had agreed to have the third-party action filed by Mark (and companies he was affiliated with) against the Isom Trust—which had been joined to this dissolution action—tried before the dissolution case. In conjunction with that, the Isom Trust interposed motions that the claims in that joinder complaint were defective as a matter of law and for lack of standing, and sought sanctions under Code of Civil Procedure section 128.7. The Trust claimed that this represented the sixth lawsuit filed by Mark against Mischelynn's parents or the Isom Trust, after others had been voluntarily or involuntarily dismissed.

“The Court ordered the two actions severed and proceeded solely with the dissolution trial. Mark's civil case against the Isom Trust and this dissolution matter between Mark and Mischelynn had never been consolidated or related. And the Isom Trust's motions amounted to an immediate request that the Court review voluminous orders and pleadings from years of prior litigation to determine whether the claims should be dismissed, a task akin to virtually instant determination of a summary judgment motion

and attorney fee request at the moment trial was to commence. Because it is highly unorthodox to decide the factual and legal merits of claims before trial begins with no prior notice to the Court, and also to determine whether sanctions are appropriate before hearing the competing claims, and because addressing such matters would delay resolution of matters committed to the Family Law department, the Court severed the third-party civil matter without prejudice to each side raising its position concerning limitations, sanctions, and other grounds in the civil department.”

With regard to the Saddlehorn properties, the court stated:

“An issue that the parties contest in the third-party civil action is the ownership of the former marital residence located at 339 Saddlehorn Lane, La Verne. The only evidence offered was that title was held by the Isom Trust. No evidence was offered that this property was ever conveyed to or purchased by the parties either individually or jointly. No title documents indicating that either or both of the parties owned the property were introduced.

“But in her declaration of financial disclosure, Mischelynn listed the home as community property and ascribed a value to it. Mark argues that this suffices to include the former marital residence in the community estate. Mischelynn’s explanation that this was a mistake is dubious, but in the absence of any evidence that Mischelynn’s parents ever conveyed the home to the parties, or that the parties ever paid any consideration for it during the marriage or received it as a gift, the Court concludes that the property at 339 Saddlehorn Lane is not part of the community estate and not subject to division here. The same applies to 328 Saddlehorn Lane, which is presently being rented out. Mark described other properties of the Isom Trust and his estimates of their value; Mischelynn refused to offer any estimate of the value of the property held by the trust for which she is a trustee. The value of properties of the Isom Trust is not pertinent here. The

Court finds that the properties of 339 Saddlehorn Lane and 328 Saddlehorn Lane in La Verne are not subject to disposition in this proceeding because they are not part of the community estate.”

Later in its decision, the court reiterated that “[t]he Saddlehorn Lane properties are not part of the community estate and not subject to division in this action.” The court also awarded Bella Piazza LLC to Mark as his separate property and confirmed Gamut Construction Company Inc. as Mark’s separate property.

Mark’s appeal followed.

DISCUSSION

The issue presented in this appeal is whether the trial court denied Mark due process by entering a judgment that the two Saddlehorn properties are not part of the community estate. Mark maintains that because the court severed those issues prior to trial so that they could be determined in a civil action, he was denied due process when the judgment nonetheless stated they were not part of the community estate. We agree with Mark that the court’s ruling constitutes a denial of due process.⁷

“ ‘The term “due process of law” asserts a fundamental principle of justice which is not subject to any precise definition but deals essentially with the denial of fundamental fairness, shocking to the universal sense of justice.’ [Citation.]” (*In re Marriage of Carlsson* (2008) 163 Cal.App.4th 281, 290 [appellant was denied due process when trial court abandoned trial without giving appellant opportunity to complete presentation of evidence or offer rebuttal evidence].) In the instant case, the judgment was contrary to what the court represented to the parties, that the joined action would be severed and referred to a civil department. Indeed, the

⁷ In light of our conclusion, we need not address any other issues raised by the parties.

court even refused to allow Mark's attorney in the joined action to participate in the proceedings and precluded the parties from presenting evidence on the characterization of the assets which were the subject of the joinder action. It thus erred in ruling on the claim which it had ordered severed. We express no opinion as to the propriety of the trial court's decision to sever the joinder action. Mark did not challenge that ruling by means of writ petition or otherwise and no effort was made to attack the ruling in this appeal.

DISPOSITION

The challenged findings are reversed. The matter is remanded to the trial court with directions to strike, in its entirety, from the statement of decision after trial, filed December 21, 2016, which document has been incorporated into the judgment on reserved issues, the above-quoted language in the two paragraphs concerning the Saddlehorn properties, as well as the court's finding pertaining to the Saddlehorn properties in the section entitled "summary of findings and orders." In all other respects, the judgment is affirmed. Appellant is awarded his costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.